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

**THE HIGH COURT OF MADHYA PRADESH, JABALPUR
AS ON 29.02.2020**

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

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49 = 2011 (1) MPHT 35 (DB)	294 = 2011 (2) MPLJ 354 = 2011 (4) MPHT 191
53 = 2011 (1) MPLJ 361	300 = 2011 (2) MPHT 175 = 2011 (II) MPJR 90
58 = 2011 (1) MPHT 24 (DB) = 2011 (1) MPLJ 466	307 = 2011 (1) MPHT 12
68 = 2011 (3) MPHT 294	312 = 2011 (1) MPHT 420
96 = 2011 (2) MPHT 406	351 = 2011 (1) MPLJ 172 = 2011 (2) MPHT 226 (DB)
117 = 2011 (1) JLJ 181 = 2011 (1) MPLJ 245 = 2011 (2) MPHT 361	358 = 2011 (1) MPHT 522 (DB) = 2011 (2) MPLJ 219
124 = 2011 (1) MPHT 20 (DB) = 2011 (1) MPLJ 472	364 = 2011 (2) MPHT 21 (DB) = 2011 (2) MPLJ 211
128 = 2011 (1) MPLJ 147 = 2011 (3) MPHT 447 (DB)	387 = 2011 (1) MPLJ 43
144 = 2011 (4) MPHT 455 (DB)	392 = 2011 (1) MPHT 89 (DB) = 2011 (1) MPLJ 359 = 2011 (I) MPJR 112
147 = 2011 (2) MPHT 393	400 = 2011 (3) MPHT 11 (DB)
154 = 2011 (2) MPHT 488 (DB) = 2011 (3) MPLJ 184	441 = 2011 (4) MPHT 441
175 = 2011 (1) MPHT 298 = 2011 (2) MPLJ 271	444 = 2011 (1) MPHT 67 = 2011 (1) MPLJ 169
182 = 2011 (1) MPLJ 444	474 = 2011 (1) MPHT 266 = 2011 (1) MPLJ 606
239 = 2011 (2) MPHT 399 (DB)	479 = 2011 (1) JLJ 270 = 2011 (1) MPLJ 401
248 = 2011 (2) MPHT 164	548 = 2011 (1) MPLJ 274
253 = 2011 (2) MPHT 158	555 = 2011 (2) MPHT 15 (DB)
259 = 2011 (4) MPHT 444	562 = 2011 (1) JLJ 303 = 2011 (1) MPHT 55
270 = 2011 (1) MPLJ 122 = 2011 (2) MPHT 244	572 = 2011 (1) MPHT 264 = 2011 (1) MPLJ 644 = 2011 (I) MPJR 250
278 = 2011 (2) MPLJ 48	

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575 = 2011 (1) MPHT 408 (FB) = 2011 (1) MPLJ 547	732 = 2011 (1) MPLJ 292 = 2011 (3) MPHT 115
586 = 2011 (1) JLJ 254 (FB) = 2011 (1) MPLJ 682 = 2011 (2) MPHT 74 (FB)	774 = 2011 (2) MPHT 57 (DB)
598 = 2011 (1) MPHT 203 (DB)	780 = 2011 (2) MPHT 8 (DB) = 2011 (I) MPJR 57 (DB)
603 = 2011 (2) MPLJ 52	787 = 2011 (3) MPHT 483
606 = 2011 (III) MPJR 40	792 = 2011 (2) MPHT 67 = 2011 (2) MPLJ 116
609 = 2011 (3) MPHT 474 (DB)	796 = 2011 (3) MPLJ 144
614 = 2011 (1) MPHT 72 (DB) = 2011 (1) MPLJ 454	808 = 2011 (3) MPHT 137
621 = 2011 (2) MPHT 48 (DB) = 2011 (2) MPLJ 453 = 2011 (III) MPJR 53	819 = 2011 (2) MPLJ 646 = 2011 (4) MPHT 233 = 2011 (I) MPJR 210
656 = 2011 (2) MPHT 45 = 2011 (2) MPLJ 74	826 = 2011 (1) MPHT 343 (DB) = 2011 (1) MPLJ 96
659 = 2011 (1) MPHT 80 (DB)	839 = 2011 (1) MPHT 314 (DB) = 2011 (2) MPLJ 224
671 = 2011 (1) MPHT 281 (DB) = 2011 (1) MPLJ 373	859 = 2011 (1) MPLJ 513
676 = 2011 (1) MPHT 180 (DB) = 2011 (1) MPLJ 118	918 = 2011 (2) MPLJ 96
682 = 2011 (1) MPHT 177 (DB) = 2011 (1) MPLJ 127	921 = 2011 (2) MPLJ 399
684 = 2011 (1) MPHT 174 (DB) = 2011 (1) MPLJ 624	926 = 2011 (2) MPLJ 333 = 2011 (II) MPJR SN 2
693 = 2011 (4) MPHT 312 (DB)	929 = 2011 (5) MPHT 78 (DB)
696 = 2011 (1) MPLJ 164 = 2011 (2) MPHT 258	932 = 2011 (2) MPLJ 390
703 = 2011 (3) MPHT 481	934 = 2011 (5) MPHT 62 (DB)
705 = 2011 (4) MPHT 224 (DB)	948 = 2011 (II) MPJR SN 15
714 = 2011 (1) MPLJ 580 = 2011 (3) MPHT 111 = 2011 (I) MPJR 265	951 = 2011 (1) MPLJ 583 = 2011 (I) MPJR 124
718 = 2011 (3) MPHT 488 (DB) = 2011 (3) MPLJ 594	969 = 2011 (2) MPHT 250 (DB) = 2011 (2) MPLJ 196 = 2011 (I) MPJR SN 10
722 = 2011 (1) JLJ 146 = 2011 (1) MPLJ 264	972 = 2011 (1) MPHT 196 = 2011 (2) MPLJ 201
	985 = 2011 (3) MPHT 75 = 2011 (3) MPLJ 200
	992 = 2011 (1) MPLJ 571

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997 = 2011 (1) MPLJ 700	1226 = 2011 (2) MPLJ 324 = 2011 (III) MPJR 8
1026 = 2011 (4) MPHT 424 (DB)	1231 = 2011 (3) MPLJ 164 = 2011 (III) MPJR 281
1047 = 2011 (2) MPHT 208	1259 = 2011 (3) MPLJ 127
1051 = 2011 (1) MPLJ 196	1272 = 2011 (1) MPHT 50 (DB)
1056 = 2011 (2) MPHT 200 = 2011 (2) MPLJ 410	1277 = 2011 (1) MPHT 385 (DB)
1063 = 2011 (4) MPHT 308	1310 = 2011 (4) MPHT 457 (DB)
1068 = 2011 (1) MPLJ 636 = 2011 (2) JLJ 47 = 2011 (3) MPHT 145 (DB)	1323 = 2011 (5) MPHT 300 = 2011 (I) MPJR 269
1082 = 2011 (2) MPHT 264 (DB = 2011 (3) MPLJ 680)	1343 = 2011 (3) MPHT 35 (DB)
1085 = 2011 (1) MPHT 491 = 2011 (2) MPLJ 643 = 2011 (I) MPJR 276	1355 = 2011 (2) JLJ 119 = 2011 (5) MPHT 241 (DB) = 2011 (II) MPJR 155
1089 = 2011 (5) MPHT 296 = 2011 (II) MPJR 135	1371 = 2011 (2) JLJ 178
1093 = 2011 (2) MPLJ 311 = 2011 (5) MPHT 81	1378 = 2011 (1) MPHT 359 = 2011 (1) MPLJ 540
1104 = 2011 (1) JLJ 294 = 2011 (4) MPHT 181	1387 = 2011 (1) MPLJ 620 = 2011 (2) MPHT 87 = 2011 (II) MPJR 160
1119 = 2011 (2) JLJ 80 (SC) = 2011 (III) MPJR 15 (SC)	1392 = 2011 (2) MPLJ 690 = 2011 (3) MPHT 28
1124 = 2011 (2) JLJ 6 = 2011 (3) MPLJ 47 = 2011 (III) MPJR 12	1401 = 2011 (2) MPHT 320 = 2011 (2) MPLJ 420
1128 = 2011 (2) MPLJ 134	1418 = 2011 (2) MPHT 499
1133 = 2011 (2) MPHT 307	1422 = 2011 (2) MPLJ 652
1171 = 2011 (1) MPHT 256 (DB) = 2011 (1) MPLJ 461 = 2011 (I) MPJR 138	1428 = 2011 (4) MPHT 216 (DB)
1180 = 2011 (3) MPLJ 132	1433 = 2011 (2) JLJ 30 (SC) = 2011 (III) MPJR 156 (SC)
1182 = 2011 (2) MPHT 153 = 2011 (2) MPLJ 424	1437 = 2011 (1) MPLJ 589 = 2011 (2) MPHT 465 (DB)
1187 = 2011 (3) MPLJ 148	1441 = 2011 (2) JLJ 71 = 2011 (2) MPLJ 178 = 2011 (4) MPHT 479 (DB)
1211 = 2011 (2) JLJ 193 = 2011 (2) MPLJ 590	1445 = 2011 (2) MPLJ 546 = 2011 (II) MPJR 220
1221 = 2011 (2) MPHT 346 = 2011 (3) MPLJ 233	

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1456 = 2011 (2) MPHT 181 (DB) = 2011 (2) MPLJ 407	1688 = 2011 (2) MPLJ 680
1464 = 2011 (1) MPLJ 575 = 2011 (2) MPHT 341 (DB)	1693 = 2011 (3) MPHT 425 (DB) = 2011 (3) MPLJ 561
1470 = 2011 (2) MPLJ 267 = 2011 (II) MPJR 205	1695 = 2011 (II) MPJR 411
1475 = 2011 (3) MPHT 410 = 2011 (4) MPLJ 356 = 2011 (I) MPJR 148	1702 = 2011 (3) MPHT 499 (DB) = 2011 (3) MPLJ 604 = 2011 (II) MPJR 368
1484 = 2011 (2) MPLJ 121	1724 = 2011 (3) MPLJ 121
1504 = 2011 (2) MPHT 519 (DB) = 2011 (2) MPLJ 618 = 2011 (II) MPJR 201	1731 = 2011 (3) MPHT 528 = 2011 (3) MPLJ 333
1509 = 2011 (3) MPHT 418 (DB) = 2011 (3) MPLJ 547	1745 = 2011 (3) MPHT 41
1513 = 2011 (III) MPJR 27	1747 = 2011 (4) MPHT 79
1519 = 2011 (2) MPHT 196 = 2011 (2) MPLJ 433	1752 = 2011 (3) MPHT 445
1534 = 2011 (2) MPLJ 342	1755 = 2011 (5) MPHT 84
1549 = 2011 (2) MPHT 85	1762 = 2011 (3) MPHT 173 (DB)
1551 = 2011 (3) MPHT 140 = 2011 (3) MPLJ 205	1768 = 2011 (2) JLJ 294 = 2011 (5) MPHT 316
1581 = 2011 (3) MPHT 155 (DB)	1777 = 2011 (2) MPHT 314 = 2011 (3) MPLJ 675
1607 = 2011 (3) MPHT 39 = 2011 (3) MPLJ 678	1781 = 2011 (2) MPHT 523
1613 = 2011 (II) MPJR 199	1787 = 2011 (3) MPHT 395 (DB)
1623 = 2011 (2) JLJ 1 (SC) = 2011 (II) MPJR 268 (SC)	1807 = 2011 (3) MPHT 81 (FB) = 2011 (2) JLJ 94 (FB) = 2011 (3) MPLJ 210
1637 = 2011 (2) JLJ 138 (FB) = 2011 (2) MPHT 443 (FB) = 2011 (2) MPLJ 101 = 2011 (II) MPJR 183 (FB)	1843 = 2011 (3) MPLJ 124
1661 = 2011 (3) MPLJ 22	1852 = 2011 (2) MPLJ 697
1668 = 2011 (3) MPLJ 53	1859 = 2011 (2) MPHT 317 = 2011 (2) MPLJ 416 = 2011 (II) MPJR 345
1678 = 2011 (2) MPLJ 133	1862 = 2011 (2) MPLJ 674
1680 = 2011 (3) MPHT 492 = 2011 (3) MPLJ 588	1867 = 2011 (2) MPLJ 392 = 2011 (II) MPJR 143
	1878 = 2011 (II) MPJR 391
	1895 = 2011 (3) MPHT 366 = 2011 (3) MPLJ 325

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1912 = 2011 (4) MPLJ 311	2153 = 2011 (3) MPLJ 329
1932 = 2011 (3) MPHT 414 (DB) = 2011 (3) MPLJ 456	2168 = 2011 (5) MPHT 218
1941 = 2011 (4) MPHT 289 = 2011 (4) MPLJ 144	2191 = 2011 (3) MPLJ 347 = 2011 (4) MPHT 364 = 2011 (III) MPJR SN 13
1945 = 2011 (4) MPHT 511 (DB) = 2011 (4) MPLJ 373	2194 = 2011 (3) MPLJ 355 = 2011 (4) MPHT 360
1947 = 2011 (III) MPJR 133	2199 = 2011 (4) MPHT 261 = 2011 (4) MPLJ 228
1954 = 2011 (4) MPLJ 83 = 2011 (5) MPHT 188	2255 = 2011 (3) MPHT 44 (DB) = 2011 (3) MPLJ 663
1958 = 2011 (3) MPLJ 579 = 2011 (5) MPHT 105	2277 = 2011 (4) MPHT 146 = 2011 (III) MPJR 122
1988 = 2011 (3) MPLJ 529 = 2011 (5) MPHT 325 = 2011 (III) MPJR 42	2280 = 2011 (3) MPLJ 403 = 2011 (4) MPHT 135 (DB)
2004 = 2011 (4) MPHT 24	2315 = 2011 (3) MPLJ 412 = 2011 (5) MPHT 94 (DB)
2016 = 2011 (2) MPHT 508 = 2011 (2) MPLJ 314	2322 = 2011 (4) MPHT 512 (DB) = 2011 (4) MPLJ 360 = 2011 (III) MPJR 286
2020 = 2011 (III) MPJR 19	2333 = 2011 (3) MPLJ 563 = 2011 (4) MPHT 328
2059 = 2011 (3) MPHT 276	2337 = 2011 (5) MPHT 66
2063 = 2011 (2) MPHT 294 = 2011 (II) MPJR SN 20	2342 = 2011 (4) MPLJ 463
2070 = 2011 (2) MPLJ 573	2354 = 2011 (4) MPLJ 252 = 2011 (III) MPJR 258
2073 = 2011 (3) MPLJ 405 = 2011 (4) MPHT 72	2377 = 2011 (4) MPHT 370 = 2011 (4) MPLJ 447
2085 = 2011 (4) MPHT 140	2390 = 2011 (4) MPLJ 207
2091 = 2011 (4) MPHT 1 (SC)	2401 = 2011 (5) MPHT 180 (DB)
2097 = 2011 (3) MPLJ 119 = 2011 (5) MPHT 35 (DB)	2410 = 2011 (4) MPLJ 108 = 2011 (5) MPHT 233 = 2011 (III) MPJR 160
2100 = 2011 (3) MPLJ 292	2416 = 2011 (4) MPHT 532
2106 = 2011 (3) MPLJ 318 = 2011 (II) MPJR 253	2425 = 2011 (4) MPLJ 477 = 2011 (5) MPHT 168 (DB)
2119 = 2011 (III) MPJR 138	2453 = 2011 (5) MPHT 162
2134 = 2011 (3) MPLJ 336 = 2011 (4) MPHT 277	
2147 = 2011 (4) MPHT 504	

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2464 = 2011 (3) MPLJ 294 = 2011 (5) MPHT 400	2983 = 2011 (4) MPHT 525 (DB)
2468 = 2011 (3) MPLJ 387 = 2011 (III) MPJR 100	3071 = 2011 (5) MPHT 405
2487 = 2011 (4) MPHT 257 (DB) = 2011 (4) MPLJ 121	3099 = 2011 (4) MPLJ 307
2491 = 2011 (4) MPLJ 99	3106 = 2011 (4) MPLJ 104
2498 = 2011 (4) MPHT 292 (DB)	3141 = 2011 (5) MPHT 146
2591 = 2011 (III) MPJR 125	3209 = 2011 (4) MPHT 381
2616 = 2011 (5) MPHT 38 (DB)	3235 = 2011 (5) MPHT 364 (DB)
2625 = 2011 (5) MPHT 177 (DB)	*4 = 2011 (1) JLJ 115 = 2011 (2) MPHT 229
2629 = 2011 (4) MPHT 33 (DB)	*7 = 2011 (I) MPJR 165
2665 = 2011 (III) MPJR 301 (SC)	*8 = 2011 (1) MPLJ 424 = 2011 (2) MPHT 419 = 2011 (II) MPJR 35
2681 = 2011 (3) MPLJ 598 = 2011 (4) MPHT 122 (DB)	*11 = 2011 (1) MPLJ 70
2705 = 2011 (3) MPLJ 618	*12 = 2011 (1) JLJ 5
2734 = 2011 (III) MPJR 59	*13 = 2011 (2) MPHT 169 (DB) = 2011 (2) MPLJ 428
2739 = 2011 (4) MPLJ 101	*15 = 2011 (1) MPLJ 223 = 2011 (3) MPHT 124
2743 = 2011 (4) MPHT 386 = 2011 (4) MPLJ 409 = 2011 (III) MPJR SN 12	*17 = 2011 (1) MPHT 396 = 2011 (1) MPLJ 279
2749 = 2011 (5) MPHT 47	*20 = 2011 (1) MPLJ 86
2753 = 2011 (III) MPJR 288	*21 = 2011 (2) MPHT 122 (DB)
2762 = 2011 (4) MPLJ 327	*23 = 2011 (2) MPHT 474 (DB) = 2011 (2) MPLJ 365 = 2011 (I) MPJR 44
2789 = 2011 (5) MPHT 271	*24 = 2011 (4) MPHT 194 (DB)
2801 = 2011 (3) MPLJ 575 = 2011 (5) MPHT 97	*26 = 2011 (2) MPHT 137 (DB)
2806 = 2011 (3) MPLJ 306	*35 = 2011 (1) MPHT 186 (DB) = 2011 (1) MPLJ 366 = 2011 (III) MPJR 380
2811 = 2011 (3) MPLJ 350 = 2011 (4) MPHT 270 = 2011 (III) MPJR 148	*36 = 2011 (1) MPLJ 475 = 2011 (I) MPJR 298
2901 = 2011 (5) MPHT 112	*39 = 2011 (II) MPJR 236
2919 = 2011 (4) MPHT 74	*40 = 2011 (1) MPHT 368 = 2011 (2) MPLJ 237
2973 = 2011 (4) MPHT 483 = 2011 (4) MPLJ 452	

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*45 = 2011 (1) JLJ 337 = 2011 (1) MPHT 495 = 2011 (1) MPLJ 436 = 2011 (I) MPJR 316	*88 = 2011 (2) MPLJ 307 = 2011 (I) MPJR 152
*47 = 2011 (1) MPHT 287 = 2011 (1) MPLJ 596 = 2011 (I) MPJR 104	*89 = 2011 (II) MPJR 306
*49 = 2011 (1) JLJ 355 = 2011 (I) MPJR SN 11	*91 = 2011 (3) MPHT 194 (DB) = 2011 (3) MPLJ 187
*51 = 2011 (1) MPLJ 410 = 2011 (4) MPHT 7	*93 = 2011 (2) MPLJ 328 = 2011 (II) MPJR 214
*57 = 2011 (1) MPLJ 692	*95 = 2011 (2) JLJ 432 = 2011 (3) MPHT 263 (DB) = 2011 (3) MPLJ 297
*58 = 2011 (2) MPHT 108 = 2011 (2) MPLJ 649 = 2011 (I) MPJR 272	*97 = 2011 (3) MPLJ 341
*59 = 2011 (1) MPLJ 663 = 2011 (2) MPHT 118	*99 = 2011 (4) MPLJ 369
*62 = 2011 (2) MPHT 30 (DB) = 2011 (2) MPLJ 123	*101 = 2011 (II) MPJR 290
*63 = 2011 (1) JLJ 330 = 2011 (5) MPHT 304	*102 = 2011 (2) JLJ 234 = 2011 (2) MPLJ 461 = 2011 (4) MPHT 90 (DB) = 2011 (II) MPJR 261
*66 = 2011 (3) MPHT 426 = 2011 (3) MPLJ 458	*103 = 2011 (2) JLJ 413 = 2011 (4) MPLJ 170
*68 = 2011 (2) JLJ 19 = 2011 (2) MPLJ 381	*104 = 2011 (2) JLJ 84 = 2011 (2) MPLJ 601 = 2011 (3) MPHT 285 (DB)
*69 = 2011 (2) JLJ 60 = 2011 (2) MPHT 102	*105 = 2011 (4) MPHT 62 (DB)
*70 = 2011 (2) JLJ 212 = 2011 (3) MPHT 311 = 2011 (3) MPLJ 511	*106 = 2011 (2) MPLJ 657
*72 = 2011 (1) MPLJ 592	*110 = 2011 (3) MPHT 531
*73 = 2011 (2) MPHT 324 (DB)	*111 = 2011 (4) MPLJ 195 = 2011 (III) MPJR 112
*75 = 2011 (2) MPHT 253	*112 = 2011 (4) MPHT 470 = 2011 (4) MPLJ 391 = 2011 (III) MPJR 107
*76 = 2011 (2) MPHT 143 (DB) = 2011 (2) MPLJ 529 = 2011 (II) MPJR 349	*116 = 2011 (2) JLJ 245
*77 = 2011 (2) MPLJ 317	*118 = 2011 (2) JLJ 254 = 2011 (III) MPJR 251
*78 = 2011 (2) MPLJ 335	*119 = 2011 (3) MPLJ 369 = 2011 (4) MPHT 150 (DB)
*79 = 2011 (2) JLJ 264	*120 = 2011 (5) MPHT 193
*83 = 2011 (3) MPHT 371	*121 = 2011 (III) MPJR SN 7
	*122 = 2011 (4) MPLJ 396

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*124 = 2011 (4) MPLJ 417	*140 = 2011 (4) MPLJ 131 = 2011 (III) MPJR 292
*125 = 2011 (2) JLJ 375 = 2011 (III) MPJR 63	*144 = 2011 (4) MPLJ 340
*132 = 2011 (4) MPLJ 404	*153 = 2011 (III) MPJR 178 (SC)
*133 = 2011 (II) MPJR 1 (SC)	*154 = 2011 (4) MPLJ 270
*137 = 2011 (4) MPLJ 427 = 2011 (5) MPHT 129	

ILR M.P. Series 2012 = Other Journals

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

ILR = Other Journals	264 = 2012 (2) MPHT 74 = 2012 (II) MPJR 199
1 = 2012 (1) JLJ 1	272 = 2012 (2) MPHT 281
30 = 2012 (1) MPHT 226 (DB) = 2012 (1) MPLJ 348 = 2012 (III) MPJR 195	305 = 2012 (2) MPHT 1 (SC) = 2012 (II) MPJR 158 (SC)
42 = 2012 (1) MPLJ 118 = 2012 (1) MPLJ 477	308 = 2012 (II) MPJR 289
49 = 2012 (1) MPHT 40 = 2012 (1) MPLJ 548	320 = 2012 (3) MPLJ 641 = 2012 (II) MPJR 109
64 = 2012 (1) MPHT 50 = 2012 (1) MPLJ 503	326 = 2012 (1) MPHT 123 (DB) = 2012 (2) MPLJ 347 = 2012 (II) MPJR 103
94 = 2012 (1) MPLJ 585 = 2012 (2) MPHT 98	365 = 2012 (1) MPHT 464 = 2012 (1) MPLJ 562 = 2012 (II) MPJR 87
109 = 2012 (IV) MPJR 12	378 = 2012 (II) MPJR 114
121 = 2012 (1) MPLJ 469	382 = 2012 (3) MPHT 387 = 2012 (I) MPJR 147
131 = 2012 (1) MPLJ 120 = 2012 (III) MPJR 24	416 = 2012 (1) MPLJ 329 = 2012 (2) MPHT 240
136 = 2012 (2) MPLJ 589 = 2012 (I) MPJR 41	420 = 2012 (1) MPLJ 365 = 2012 (2) MPHT 277
151 = 2012 (1) MPLJ 373	424 = 2012 (2) JLJ 421 = 2012 (2) MPHT 215 = 2012 (2) MPLJ 605
157 = 2012 (1) MPHT 409 = 2012 (1) MPLJ 93 = 2012 (II) MPJR 27	443 = 2012 (I) MPJR 136
160 = 2012 (IV) MPJR 78	446 = 2012 (II) MPJR 57
220 = 2012 (1) MPHT 507	453 = 2012 (II) MPJR 80
224 = 2012 (1) MPHT 185	458 = 2012 (II) MPJR 84
230 = 2012 (1) MPHT 401 (DB)	
237 = 2012 (1) JLJ 232	
252 = 2012 (I) MPJR 206	

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462 = 2012 (II) MPJR 152	725 = 2012 (2) MPHT 440 (DB)
464 = 2012 (I) MPJR 384	726 = 2012 (2) MPHT 441 = 2012 (3) MPLJ 170 = 2012 (IV) MPJR 23
471 = 2012 (1) MPLJ 436	730 = 2012 (2) MPHT 203 = 2012 (2) MPLJ 536 = 2012 (IV) MPJR 21
480 = 2012 (1) MPHT 252 = 2012 (1) MPLJ 168	733 = 2012 (3) MPLJ 584
490 = 2012 (1) MPHT 498 = 2012 (1) MPLJ 149	737 = 2012 (2) MPLJ 105
503 = 2012 (2) MPLJ 42 = 2012 (3) MPHT 117	744 = 2012 (4) MPLJ 179 = 2012 (II) MPJR 296
507 = 2012 (2) MPHT 462	752 = 2012 (1) MPHT 244
519 = 2012 (1) MPLJ 707 = 2012 (2) MPHT 155 = 2012 (I) MPJR 57	774 = 2012 (IV) MPJR 1
522 = 2012 (2) MPHT 42 = 2012 (2) MPLJ 80 = 2012 (II) MPJR 202	785 = 2012 (3) MPHT 149 = 2012 (3) MPLJ 609 = 2012 (II) MPJR 303
557 = 2012 (3) MPHT 436	794 = 2012 (IV) MPJR 10
593 = 2012 (1) MPHT 201	796 = 2012 (2) MPHT 274 = 2012 (I) MPJR 81
604 = 2012 (2) MPHT 211	803 = 2012 (2) MPHT 179
610 = 2012 (1) MPHT 241	811 = 2012 (2) JLJ 153 = 2012 (2) MPLJ 661 = 2012 (I) MPJR 66
613 = 2012 (2) MPHT 182 (DB)	833 = 2012 (2) MPHT 270
632 = 2012 (I) MPJR 292	837 = 2012 (1) JLJ 145 = 2012 (1) MPHT 382 (FB) = 2012 (1) MPLJ 303 (FB)
654 = 2012 (2) MPHT 78 = 2012 (2) MPLJ 516 = 2012 (II) MPJR 54	840 = 2012 (2) MPLJ 579 = 2012 (I) MPJR 279
657 = 2012 (2) MPHT 46	853 = 2012 (2) MPHT 174 (DB)
661 = 2012 (II) MPJR 62	865 = 2012 (2) MPHT 434 (DB) = 2012 (3) MPLJ 214
685 = 2012 (2) JLJ 20 (FB) = 2012 (2) MPHT 169 (FB) = 2012 (2) MPLJ 529 (FB) = 2012 (II) MPJR 319 (FB)	883 = 2012 (2) MPLJ 128 = 2012 (5) MPHT 396
691 = 2012 (1) JLJ 179 (FB) = 2012 (1) MPHT 375 (FB) = 2012 (1) MPLJ 677 (FB) = 2012 (II) MPJR 330 (FB)	890 = 2012 (2) MPLJ 37 = 2012 (5) MPHT 450
698 = 2012 (1) MPHT 74	895 = 2012 (2) MPLJ 90 = 2012 (5) MPHT 240
702 = 2012 (II) MPJR 324	907 = 2012 (2) MPLJ 453
710 = 2012 (I) MPJR 395	911 = 2012 (1) MPLJ 710 = 2012 (2) MPHT 317

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916 = 2012 (2) MPLJ 426	1119 = 2012 (2) MPHT 394 = 2012 (2) MPLJ 218 = 2012 (I) MPJR 28
928 = 2012 (2) MPHT 310 (DB) = 2012 (2) MPLJ 448	1125 = 2012 (4) MPHT 258 = 2012 (II) MPJR 357
937 = 2012 (3) MPHT 130 = 2012 (3) MPLJ 447	1129 = 2012 (2) MPHT 331 = 2012 (2) MPLJ 543
942 = 2012 (1) MPHT 516 = 2012 (2) MPLJ 147 = 2012 (I) MPJR 284	1134 = 2012 (2) JLJ 307 = 2012 (2) MPLJ 380
951 = 2012 (1) JLJ 285 = 2012 (1) MPLJ 353 = 2012 (I) MPJR 24	1142 = 2012 (2) MPLJ 75
956 = 2012 (2) MPLJ 86 = 2012 (I) MPJR 37	1146 = 2012 (2) MPLJ 82 = 2012 (3) MPHT 527
962 = 2012 (1) JLJ 18 = 2012 (2) MPHT 253 (DB) = 2012 (2) MPLJ 522	1150 = 2012 (1) MPLJ 703 = 2012 (2) MPHT 477
968 = 2012 (2) MPHT 389 = 2012 (2) MPLJ 205 = 2012 (II) MPJR 49	1156 = 2012 (II) MPJR 176
974 = 2012 (3) MPHT 7 (DB) = 2012 (3) MPLJ 44	1159 = 2012 (2) MPHT 502 = 2012 (2) MPLJ 435
985 = 2012 (3) MPHT 140 = 2012 (3) MPLJ 457	1164 = 2012 (2) MPHT 305 = 2012 (2) MPLJ 456
991 = 2012 (2) MPLJ 704 = 2012 (3) MPHT 284	1170 = 2012 (3) MPLJ 562
1014 = 2012 (I) MPJR SN 2	1175 = 2012 (3) MPLJ 433 = 2012 (5) MPHT 224 = 2012 (III) MPJR 147
1019 = 2012 (2) MPHT 322 (DB)	1181 = 2012 (3) MPHT 179 = 2012 (3) MPLJ 464 = 2012 (II) MPJR 172
1032 = 2012 (3) MPHT 134 (DB)	1186 = 2012 (2) JLJ 321 = 2012 (3) MPHT 539 = 2012 (3) MPLJ 413 = 2012 (II) MPJR 205
1037 = 2012 (2) MPLJ 547	1218 = 2012 (3) MPLJ 490 = 2012 (5) MPHT 221 (DB) = 2012 (II) MPJR 179
1041 = 2012 (2) MPHT 328 = 2012 (2) MPLJ 527	1221 = 2012 (III) MPJR 190
1044 = 2012 (2) MPHT 303 = 2012 (2) MPLJ 534	1227 = 2012 (3) MPLJ 637 = 2012 (IV) MPJR 246
1060 = 2012 (3) MPLJ 51	1233 = 2012 (3) MPHT 170 = 2012 (3) MPLJ 385 = 2012 (II) MPJR 350
1068 = 2012 (2) MPHT 50	1257 = 2012 (IV) MPJR 257
1073 = 2012 (2) MPHT 445 (DB)	1262 = 2012 (I) MPJR 59
1081 = 2012 (2) MPHT 515 = 2012 (I) MPJR 354	1271 = 2012 (2) MPLJ 713
1092 = 2012 (2) MPHT 88	
1107 = 2012 (1) MPHT 397 (DB) = 2012 (2) MPLJ 27	

COMPARATIVE TABLE 2012

1275 = 2012 (3) MPHT 288 = 2012 (3) MPLJ 57	1501 = 2012 (2) JLJ 181 (SC)
1282 = 2012 (3) MPHT 360 = 2012 (II) MPJR 169	1509 = 2012 (2) MPHT 299 (DB) = 2012 (2) MPLJ 598
1286 = 2012 (2) MPLJ 715	1514 = 2012 (2) MPLJ 690 = 2012 (3) MPHT 253 (DB)
1321 = 2012 (2) JLJ 38	1519 = 2012 (4) MPLJ 132 = 2012 (5) MPHT 364 (DB)
1327 = 2012 (3) MPHT 36 (DB)	1521 = 2012 (3) MPLJ 663
1339 = 2012 (2) MPHT 265 = 2012 (I) MPJR 33	1527 = 2012 (1) MPLJ 359 = 2012 (4) MPHT 65
1376 = 2012 (2) JLJ 169 = 2012 (4) MPHT 333 (DB)	1555 = 2012 (3) MPLJ 234
1381 = 2012 (III) MPJR 124	1560 = 2012 (2) MPLJ 232
1391 = 2012 (5) MPHT 251	1567 = 2012 (3) MPHT 232 (DB) = 2012 (3) MPLJ 180
1399 = 2012 (2) MPHT 498	1581 = 2012 (2) MPLJ 552 = 2012 (3) MPHT 299
1402 = 2012 (3) MPHT 146 = 2012 (3) MPLJ 463	1613 = 2012 (4) MPHT 233 (DB) = 2012 (4) MPLJ 142
1404 = 2012 (2) MPLJ 707 = 2012 (3) MPHT 417	1616 = 2012 (4) MPHT 544 (DB) = 2012 (4) MPLJ 439
1410 = 2012 (2) MPLJ 337	1619 = 2012 (3) MPHT 330 = 2012 (3) MPLJ 428 = 2012 (III) MPJR 152
1414 = 2012 (2) MPLJ 418 = 2012 (3) MPHT 125	1629 = 2012 (III) MPJR 99
1419 = 2012 (2) MPLJ 687	1641 = 2012 (2) MPLJ 711
1434 = 2012 (1) JLJ 421	1644 = 2012 (2) MPLJ 683 = 2012 (3) MPHT 258
1441 = 2012 (3) MPHT 82 = 2012 (3) MPLJ 534	1656 = 2012 (IV) MPJR 305
1447 = 2012 (4) MPHT 116 = 2012 (II) MPJR 213	1664 = 2012 (4) MPHT 36
1451 = 2012 (II) MPJR 237	1724 = 2012 (3) JLJ 323 = 2012 (IV) MPJR SN 11
1454 = 2012 (4) MPHT 358 = 2012 (4) MPLJ 617	1732 = 2012 (III) MPJR 212
1466 = 2012 (3) MPHT 548 = 2012 (II) MPJR 21	1735 = 2012 (3) MPLJ 239
1469 = 2012 (3) MPHT 262	1743 = 2012 (IV) MPJR 308
1493 = 2012 (3) MPHT 348 = 2012 (IV) MPJR 223	1758 = 2012 (IV) MPJR 304
	1777 = 2012 (3) MPHT 441

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1780 = 2012 (3) MPHT 354 = 2012 (3) MPLJ 529 = 2012 (II) MPJR 147	2008 = 2012 (3) MPHT 264
1788 = 2012 (3) MPLJ 536	2027 = 2012 (5) MPHT 333
1808 = 2012 (1) MPLJ 406	2034 = 2012 (4) MPHT 464 (DB)
1812 = 2012 (2) MPHT 449 (DB) = 2012 (2) MPLJ 369 = 2012 (II) MPJR 188	2064 = 2012 (3) MPHT 158 = 2012 (4) MPLJ 191
1827 = 2012 (2) MPLJ 254 = 2012 (5) MPHT 246	2070 = 2012 (5) MPHT 23
1833 = 2012 (5) MPHT 62	2083 = 2012 (4) MPHT 504
1856 = 2012 (4) MPHT 95 = 2012 (4) MPLJ 150	2085 = 2012 (3) JLJ 125 (SC)
1859 = 2012 (4) MPLJ 251 = 2012 (III) MPJR 56	2091 = 2012 (4) MPLJ 212 = 2012 (5) MPHT 97 (FB) = 2012 (IV) MPJR 197 (SB)
1867 = 2012 (4) MPHT 236 (DB) = 2012 (4) MPLJ 122	2108 = 2012 (3) MPLJ 612 = 2012 (III) MPJR 142
1875 = 2012 (4) MPHT 290 (DB) = 2012 (4) MPLJ 334	2113 = 2012 (III) MPJR 63
1885 = 2012 (4) MPLJ 331	2122 = 2012 (3) MPLJ 645
1888 = 2012 (3) MPLJ 678 = 2012 (5) MPHT 322 = 2012 (IV) MPJR 61	2128 = 2012 (4) MPLJ 399 = 2012 (III) MPJR 339
1900 = 2012 (5) MPHT 313	2146 = 2012 (5) MPHT 108 (DB)
1911 = 2012 (3) MPLJ 219 = 2012 (4) MPHT 202	2148 = 2012 (4) MPLJ 385 = 2012 (5) MPHT 127
1917 = 2012 (IV) MPJR 31	2162 = 2012 (3) MPHT 311 = 2012 (3) MPLJ 425
1922 = 2012 (4) MPHT 173 = 2012 (4) MPLJ 363	2170 = 2012 (III) MPJR 214
1926 = 2012 (4) MPHT 349	2174 = 2012 (4) MPLJ 208 = 2012 (5) MPHT 376
1935 = 2012 (2) MPHT 490 = 2012 (I) MPJR 337	2179 = 2012 (4) MPHT 394
1950 = 2012 (2) JLJ 234	2214 = 2012 (3) MPHT 15
1973 = 2012 (3) MPHT 422 = 2012 (IV) MPJR SN 7	2219 = 2012 (4) MPHT 376
1995 = 2012 (IV) MPJR 261	2271 = 2012 (3) MPLJ 492
1998 = 2012 (3) MPLJ 258 = 2012 (4) MPHT 512	2273 = 2012 (3) MPLJ 485
2005 = 2012 (3) MPHT 452	2285 = 2012 (4) MPHT 400
	2292 = 2012 (3) MPLJ 467 = 2012 (4) MPHT 507
	2300 = 2012 (4) MPHT 208 = 2012 (4) MPLJ 615

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2317 = 2012 (2) MPHT 249 (DB) = 2012 (2) MPLJ 518	2596 = 2012 (4) MPHT 521 = 2012 (4) MPLJ 635
2322 = 2012 (3) JLJ 58 = 2012 (4) MPLJ 393	2602 = 2012 (3) MPHT 249 = 2012 (4) MPHT 26
2334 = 2012 (4) MPLJ 702 = 2012 (5) MPHT 283 (DB)	2606 = 2012 (3) MPLJ 541
2342 = 2012 (2) MPHT 429 (DB) = 2012 (2) MPLJ 438	2613 = 2012 (4) MPLJ 166
2347 = 2012 (4) MPLJ 171 = 2012 (5) MPHT 198 (DB)	2619 = 2012 (4) MPLJ 427
2353 = 2012 (IV) MPJR SN 10	2632 = 2012 (IV) MPJR 107
2359 = 2012 (IV) MPJR SN 5	2638 = 2012 (IV) MPJR 315
2385 = 2012 (3) MPLJ 708 = 2012 (5) MPHT 339 = 2012 (III) MPJR 163	2645 = 2012 (3) MPLJ 652
2395 = 2012 (4) MPLJ 415	2660 = 2012 (3) JLJ 363 = 2012 (5) MPHT 299
2399 = 2012 (4) MPLJ 350	2692 = 2012 (4) MPHT 516 = 2012 (4) MPLJ 622
2412 = 2012 (3) MPLJ 590	2768 = 2012 (3) MPLJ 717 = 2012 (IV) MPJR SN 1
2416 = 2012 (4) MPLJ 257 = 2012 (5) MPHT 386	2774 = 2012 (3) MPLJ 673
2425 = 2012 (4) MPHT 406 = 2012 (4) MPLJ 479	2780 = 2012 (4) MPLJ 202 = 2012 (5) MPHT 402
2428 = 2012 (5) MPHT 111 (DB)	2847 = 2012 (4) MPLJ 537 = 2012 (IV) MPJR 298
2466 = 2012 (4) MPLJ 222 = 2012 (5) MPHT 255	2850 = 2012 (4) MPLJ 670
2469 = 2012 (4) MPLJ 412	2864 = 2012 (IV) MPJR 275
2473 = 2012 (3) MPHT 426	2872 = 2012 (4) MPHT 182
2481 = 2012 (IV) MPJR SN 13	2887 = 2012 (4) MPHT 458
2526 = 2012 (5) MPHT 259	2901 = 2012 (IV) MPJR 94
2549 = 2012 (5) MPHT 86	2920 = 2012 (3) MPLJ 657 = 2012 (4) MPHT 19
2554 = 2012 (3) MPLJ 129	2927 = 2012 (5) MPHT 17 = 2012 (III) MPJR SN 11
2558 = 2012 (3) MPLJ 517 = 2012 (4) MPHT 310	2930 = 2012 (4) MPLJ 690
2564 = 2012 (4) MPLJ 44 = 2012 (5) MPHT 442	2946 = 2012 (4) MPLJ 194 = 2012 (5) MPHT 118 (DB)
	2956 = 2012 (4) MPLJ 549 = 2012 (5) MPHT 350

COMPARATIVE TABLE 2012

3046 = 2012 (2) JLJ 392 = 2012 (3) MPHT 513 (DB) = 2012 (3) MPLJ 616	*30 = 2012 (2) MPLJ 211 = 2012 (I) MPJR 49
3054 = 2012 (4) MPLJ 441 = 2012 (5) MPHT 420	*31 = 2012 (4) MPHT 58 (DB)
3090 = 2012 (3) MPHT 245 = 2012 (3) MPLJ 247	*33 = 2012 (1) MPLJ 598
3095 = 2012 (3) MPLJ 480 = 2012 (4) MPHT 363	*37 = 2012 (2) MPHT 472 = 2012 (2) MPLJ 55
3102 = 2012 (3) MPLJ 526	*38 = 2012 (2) JLJ 296 (SC)
3112 = 2012 (4) MPHT 505 = 2012 (4) MPLJ 707 = 2012 (5) MPHT 267	*39 = 2012 (1) MPHT 257 (DB)
*1 = 2012 (I) MPJR 305	*42 = 2012 (2) JLJ 410 (SC)
*3 = 2012 (I) MPJR 123	*43 = 2012 (1) JLJ 187
*5 = 2012 (I) MPJR 187	*44 = 2012 (3) MPLJ 199 = 2012 (4) MPHT 121
*9 = 2012 (1) MPLJ 423 = 2012 (I) MPJR 255	*47 = 2012 (2) JLJ 128 (SC) = 2012 (3) MPHT 363 (SC) = 2012 (II) MPJR 248 (SC)
*10 = 2012 (1) JLJ 307 = 2012 (1) MPLJ 172	*48 = 2012 (2) MPLJ 209
*11 = 2012 (1) MPLJ 482	*50 = 2012 (2) MPLJ 407 = 2012 (4) MPHT 42
*13 = 2012 (1) JLJ 256 = 2012 (2) MPHT 158	*51 = 2012 (3) MPLJ 567 = 2012 (4) MPHT 189 (DB)
*14 = 2012 (2) MPHT 108	*52 = 2012 (3) MPHT 521
*16 = 2012 (1) MPLJ 53	*53 = 2012 (3) JLJ 113
*17 = 2012 (1) MPLJ 386 = 2012 (2) MPHT 336 = 2012 (II) MPJR 128	*54 = 2012 (5) MPHT 31
*20 = 2012 (4) MPHT 72 = 2012 (4) MPLJ 104	*55 = 2012 (2) MPLJ 326 = 2012 (3) MPHT 75
*21 = 2012 (1) MPHT 490 (DB)	*56 = 2012 (IV) MPJR 110
*23 = 2012 (II) MPJR 181	*58 = 2012 (3) MPLJ 191 = 2012 (5) MPHT 162
*25 = 2012 (1) JLJ 322 = 2012 (1) MPLJ 579 = 2012 (2) MPHT 233 = 2012 (IV) MPJR SN 2	*61 = 2012 (2) MPLJ 110 = 2012 (5) MPHT 234
*26 = 2012 (1) JLJ 357 = 2012 (1) MPLJ 593 = 2012 (II) MPJR 232	*64 = 2012 (3) MPHT 325 (DB)
*27 = 2012 (1) MPLJ 714	*65 = 2012 (2) MPLJ 386
*28 = 2012 (2) JLJ 189 = 2012 (2) MPLJ 312 = 2012 (5) MPHT 144	*67 = 2012 (2) MPHT 482
*29 = 2012 (1) MPHT 387 = 2012 (2) JLJ 25	*68 = 2012 (3) MPHT 86 = 2012 (3) MPLJ 100
	*69 = 2012 (2) JLJ 27

COMPARATIVE TABLE 2013

*72 = 2012 (1) MPHT 146 = 2012 (1) MPLJ 269	*95 = 2012 (3) JLJ 396
*73 = 2012 (3) JLJ 313	*96 = 2012 (3) JLJ 130 = 2012 (4) MPHT 531 = 2012 (IV) MPJR 96
*75 = 2012 (2) MPLJ 195 = 2012 (I) MPJR 269	*97 = 2012 (4) MPHT 492 (DB)
*76 = 2012 (III) MPJR 157	*100 = 2012 (3) MPLJ 146
*77 = 2012 (5) MPHT 183 (DB)	*103 = 2012 (3) JLJ 245 (SC) = 2012 (5) MPHT 1 (SC) = 2012 (III) MPJR 287 (SC)
*78 = 2012 (2) JLJ 115	*105 = 2012 (III) MPJR 181
*81 = 2012 (1) MPLJ 602	*106 = 2012 (III) MPJR 134
*82 = 2012 (5) MPHT 207 (DB)	*108 = 2012 (4) MPLJ 654 = 2012 (5) MPHT 80 (DB)
*83 = 2012 (3) JLJ 170 (SC) = 2012 (3) MPLJ 595 (SC) = 2012 (III) MPJR 1 (SC)	*109 = 2012 (IV) MPJR 51
*84 = 2012 (I) MPJR 84	*110 = 2012 (4) MPLJ 708
*86 = 2012 (2) MPLJ 460 = 2012 (3) MPHT 270 = 2012 (4) MPLJ 152	*112 = 2012 (4) MPLJ 323 = 2012 (III) MPJR 318
*88 = 2012 (3) MPLJ 75	*113 = 2012 (IV) MPJR 70
*92 = 2012 (4) MPHT 408 = 2012 (4) MPLJ 446	*114 = 2012 (III) MPJR 220 (SC)
*93 = 2012 (3) JLJ 72 (SC) = 2012 (III) MPJR 32 (SC)	*118 = 2012 (IV) MPJR 290
	*119 = 2012 (4) MPLJ 429
	*120 = 2012 (4) MPLJ 680

ILR M.P. Series 2013 = Other Journals*(Note: An asterisk (*) denotes Note number)*

ILR = Other Journals	80 = 2013 (2) MPHT 7 = 2013 (2) MPLJ 508 = 2013 (II) MPJR 50
1 = 2013 (1) JLJ 141	111 = 2013 (1) MPHT 276 (DB) = 2013 (1) MPLJ 298
10 = 2013 (1) MPHT 232 (DB)	114 = 2013 (1) MPLJ 404 = 2013 (3) MPHT 180
16 = 2013 (1) MPHT 225 (DB)	130 = 2013 (2) MPHT 150
38 = 2013 (1) MPHT 309	133 = 2013 (1) MPLJ 278 = 2013 (2) MPHT 507
50 = 2013 (1) MPHT 314 (DB)	138 = 2013 (2) MPHT 308 (DB) = 2013 (2) MPLJ 445 = 2013 (I) MPJR 218
53 = 2013 (1) MPLJ 238	
62 = 2013 (1) MPLJ 106	
70 = 2013 (1) MPHT 447	
74 = 2013 (1) MPLJ 229	

COMPARATIVE TABLE 2013

172 = 2013 (1) MPHT 56 (DB)	542 = 2013 (2) JLJ 15 = 2013 (2) MPHT 393 (DB) = 2013 (3) MPLJ 378
212 = 2013 (1) MPHT 464	
249 = 2013 (1) MPHT 279 = 2013 (2) MPLJ 587	552 = 2013 (2) MPHT 489 (DB) = 2013 (3) MPLJ 16
293 = 2013 (1) MPHT 322 (DB)	560 = 2013 (1) MPLJ 439
299 = 2013 (1) MPLJ 498 = 2013 (2) MPHT 440 (DB)	564 = 2013 (1) MPLJ 374
308 = 2013 (4) MPHT 41 (DB)	572 = 2013 (1) MPLJ 396 = 2013 (2) MPHT 135
310 = 2013 (1) MPLJ 295	581 = 2013 (1) MPLJ 144 = 2013 (2) MPHT 59
314 = 2013 (1) MPHT 127 = 2013 (1) MPLJ 51	584 = 2013 (1) MPHT 346 = 2013 (1) MPLJ 300
316 = 2013 (1) MPHT 529 (DB) = 2013 (1) MPLJ 127	597 = 2013 (2) MPHT 320 = 2013 (3) MPLJ 184
345 = 2013 (1) MPHT 469 = 2013 (1) MPLJ 281	605 = 2013 (1) MPLJ 609 = 2013 (3) MPHT 125 = 2013 (II) MPJR 134
363 = 2013 (2) MPHT 503 = 2013 (3) MPLJ 19	609 = 2013 (2) MPHT 182 = 2013 (2) MPLJ 280
367 = 2013 (2) MPHT 297 = 2013 (3) MPLJ 244	613 = 2013 (2) MPLJ 664 = 2013 (4) MPHT 495
410 = 2013 (1) MPHT 388	619 = 2013 (2) JLJ 138 = 2013 (2) MPHT 207 (DB) = 2013 (3) MPLJ 258
421 = 2013 (1) MPLJ 544 = 2013 (2) MPHT 65	628 = 2013 (II) MPJR SN 1
424 = 2013 (1) MPLJ 683 = 2013 (3) MPHT 364	635 = 2013 (2) MPLJ 379
460 = 2013 (2) JLJ 156 = 2013 (2) MPHT 312	668 = 2013 (5) MPHT 208 (DB)
477 = 2013 (1) JLJ 233 = 2013 (1) MPHT 351 (DB) = 2013 (1) MPLJ 472	672 = 2013 (1) MPLJ 487 = 2013 (2) MPHT 448
486 = 2013 (1) MPLJ 511	688 = 2013 (1) MPLJ 466 = 2013 (2) MPHT 170
497 = 2013 (I) MPJR 221	696 = 2013 (1) MPLJ 643 = 2013 (2) JLJ 67 = 2013 (3) MPHT 172 = 2013 (II) MPJR SN 21
503 = 2013 (2) MPHT 294 (DB)	
514 = 2013 (1) MPHT 24	713 = 2013 (III) MPJR SN 3
533 = 2013 (1) JLJ 429	724 = 2013 (1) MPHT 398
538 = 2013 (2) MPHT 124 (FB) = 2013 (2) MPLJ 442	729 = 2013 (2) MPHT 116
	738 = 2013 (3) MPHT 352

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741 = 2013 (2) JLJ 207 (SC)	1015 = 2013 (1) MPLJ 320 = 2013 (2) MPHT 143
762 = 2013 (3) MPLJ 74 = 2013 (4) MPHT 459 (DB) = 2013 (III) MPJR 177	1022 = 2013 (2) MPHT 331 = 2013 (3) MPLJ 207
780 = 2013 (1) MPLJ 288	1027 = 2013 (2) JLJ 219 = 2013 (2) MPLJ 345 = 2013 (3) MPHT 247 = 2013 (II) MPJR 281
785 = 2013 (1) MPLJ 593 = 2013 (2) MPHT 484	1043 = 2013 (2) MPLJ 185
791 = 2013 (1) MPLJ 625 = 2013 (2) MPHT 434	1065 = 2013 (3) MPHT 377 = 2013 (4) MPLJ 101
802 = 2013 (1) MPLJ 568	1069 = 2013 (4) MPHT 542
813 = 2013 (1) MPLJ 634 = 2013 (3) MPHT 48	1072 = 2013 (3) MPLJ 640
820 = 2013 (1) MPLJ 694 = 2013 (II) MPJR 140	1088 = 2013 (1) MPHT 258 = 2013 (1) MPLJ 630
827 = 2013 (2) JLJ 440 = 2013 (2) MPHT 215 = 2013 (2) MPLJ 359 = 2013 (I) MPJR 267	1092 = 2013 (1) JLJ 355 = 2013 (2) MPLJ 157
837 = 2013 (2) MPLJ 419 = 2013 (4) MPHT 468 = 2013 (I) MPJR 280	1122 = 2013 (3) MPLJ 619
854 = 2013 (1) MPHT 52	1137 = 2013 (2) MPLJ 646 = 2013 (3) MPHT 67
868 = 2013 (2) MPLJ 583 = 2013 (3) MPHT 96	1169 = 2013 (2) JLJ 339
877 = 2013 (2) MPLJ 306 = 2013 (5) MPHT 172 = 2013 (I) MPJR 233	1177 = 2013 (2) JLJ 275
946 = 2013 (2) MPHT 408 (DB) = 2013 (III) MPJR 19	1193 = 2013 (2) MPHT 402 = 2013 (2) MPLJ 371
956 = 2013 (II) MPJR 170	1214 = 2013 (2) JLJ 75 = 2013 (3) MPHT 229
961 = 2013 (II) MPJR 89	1227 = 2013 (3) MPHT 116
967 = 2013 (II) MPJR 205	1245 = 2013 (4) MPHT 184 (SC) = 2013 (4) MPLJ 586 (SC) = 2013 (III) MPJR 1 (SC)
979 = 2013 (2) MPHT 272 = 2013 (II) MPJR 12	1265 = 2013 (3) JLJ 175
984 = 2013 (3) MPLJ 363 = 2013 (4) MPHT 306 = 2013 (II) MPJR 9	1279 = 2013 (3) JLJ 127 = 2013 (3) MPLJ 434 (FB) = 2013 (4) MPHT 276 (FB)
989 = 2013 (3) MPHT 135 (DB)	1294 = 2013 (1) MPLJ 699 = 2013 (2) MPHT 378 (DB)
995 = 2013 (1) MPHT 198 = 2013 (1) MPLJ 99 = 2013 (I) MPJR 22	1304 = 2013 (2) MPLJ 226 = 2013 (3) MPHT 36 (DB) = 2013 (III) MPJR 113
	1312 = 2013 (1) MPLJ 380 = 2013 (3) MPHT 190

COMPARATIVE TABLE 2013

1319 = 2013 (1) MPLJ 712	1582 = 2013 (3) MPLJ 172 = 2013 (4) MPHT 339
1332 = 2013 (II) MPJR 253	
1339 = 2013 (2) MPLJ 573 = 2013 (III) MPJR 265	1589 = 2013 (2) MPLJ 55 = 2013 (II) MPJR SN 24
1357 = 2013 (2) MPLJ 206 = 2013 (3) MPHT 141	1619 = 2013 (III) MPJR SN 4
1394 = 2013 (2) MPHT 499 = 2013 (2) MPLJ 702 = 2013 (II) MPJR 15	1639 = 2013 (2) MPHT 186 = 2013 (2) MPLJ 328
1399 = 2013 (2) MPHT 279 = 2013 (2) MPLJ 100	1645 = 2013 (2) MPLJ 220
1406 = 2013 (3) MPLJ 114 = 2013 (4) MPHT 48	1656 = 2013 (3) JLJ 279 = 2013 (3) MPLJ 700 = 2013 (IV) MPJR SN 18
1422 = 2013 (3) MPLJ 561 = 2013 (III) MPJR 292	1671 = 2013 (3) JLJ 390 = 2013 (3) MPLJ 540
1466 = 2013 (2) JLJ 379 = 2013 (3) MPLJ 372 = 2013 (4) MPHT 30 (DB)	1685 = 2013 (IV) MPJR 303
1474 = 2013 (3) MPLJ 33 = 2013 (4) MPHT 144	1728 = 2013 (4) MPHT 85
1478 = 2013 (2) JLJ 104 = 2013 (3) MPLJ 277 = 2013 (IV) MPJR SN 17	1755 = 2013 (4) MPHT 320
1489 = 2013 (1) MPLJ 662	1770 = 2013 (3) MPHT 479 = 2013 (III) MPJR 184
1512 = 2013 (2) MPLJ 407 = 2013 (II) MPJR 68	1783 = 2013 (5) MPHT 184
1521 = 2013 (3) MPLJ 146 = 2013 (4) MPHT 347 (DB)	1793 = 2013 (2) MPLJ 447 = 2013 (3) JLJ 235
1526 = 2013 (1) MPLJ 345 = 2013 (2) MPHT 153	1822 = 2013 (1) MPLJ 172
1546 = 2013 (1) MPLJ 612	1842 = 2013 (1) MPLJ 412
1553 = 2013 (2) MPLJ 212 = 2013 (3) MPHT 394 (DB)	1854 = 2013 (1) MPLJ 652 = 2013 (2) JLJ 23 = 2013 (2) MPHT 93
1561 = 2013 (2) JLJ 293 = 2013 (2) MPLJ 595 = 2013 (3) MPHT 534 (DB)	1870 = 2013 (III) MPJR 24
1569 = 2013 (3) MPHT 89 = 2013 (3) MPLJ 135 = 2013 (II) MPJR SN 28	1883 = 2013 (III) MPJR 37
1574 = 2013 (II) MPJR 189	1907 = 2013 (4) MPHT 314 = 2013 (4) MPLJ 35
1578 = 2013 (4) MPHT 161 = 2013 (4) MPLJ 206	1913 = 2013 (4) MPLJ 185 = 2013 (5) MPHT 396
	1930 = 2013 (2) MPHT 327 = 2013 (3) MPLJ 255 = 2013 (II) MPJR 81
	1934 = 2013 (2) MPHT 230 = 2013 (3) JLJ 49 = 2013 (3) MPLJ 281 = 2013 (I) MPJR SN 5
	1953 = 2013 (4) MPLJ 634
	1971 = 2013 (IV) MPJR 72

COMPARATIVE TABLE 2013

1982 = 2013 (II) MPJR SN 4	2366 = 2013 (3) MPHT 541 = 2013 (4) MPLJ 418 = 2013 (III) MPJR 161
2012 = 2013 (5) MPHT 163	
2022 = 2013 (4) MPHT 240	2377 = 2013 (3) MPLJ 490 = 2013 (4) MPHT 366 (DB)
2029 = 2013 (2) MPHT 381	2386 = 2013 (3) MPLJ 487 = 2013 (4) MPHT 78 = 2013 (III) MPJR 284
2038 = 2013 (4) MPHT 508	
2046 = 2013 (5) MPHT 118	2389 = 2013 (3) MPLJ 716
2063 = 2013 (3) JLJ 44	2395 = 2013 (3) MPLJ 391 = 2013 (III) MPJR 97
2068 = 2013 (2) MPHT 345 (DB) = 2013 (2) MPLJ 170	2464 = 2013 (IV) MPJR 82
2072 = 2013 (IV) MPJR 123	2503 = 2013 (3) JLJ 1
2108 = 2013 (1) MPLJ 423 = 2013 (3) MPHT 166	2510 = 2013 (1) MPLJ 649
2137 = 2013 (4) MPLJ 480	2513 = 2013 (4) MPLJ 533
2146 = 2013 (I) MPJR 55	2518 = 2013 (1) MPLJ 604 = 2013 (3) MPHT 417
2154 = 2013 (2) MPHT 336 (DB) = 2013 (2) MPLJ 123	2526 = 2013 (1) MPLJ 718 = 2013 (2) MPHT 349 (DB)
2183 = 2013 (4) MPLJ 167 = 2013 (5) MPHT 391	2530 = 2013 (2) MPLJ 89
2224 = 2013 (5) MPHT 188 (DB)	2544 = 2013 (1) MPLJ 709 = 2013 (2) MPHT 388 (DB)
2231 = 2013 (3) JLJ 31 = 2013 (4) MPHT 358 (DB)	2548 = 2013 (1) MPLJ 546
2238 = 2013 (5) MPHT 273 (DB)	2552 = 2013 (3) MPLJ 94
2247 = 2013 (3) JLJ 290 = 2013 (4) MPLJ 403	2569 = 2013 (3) MPLJ 247 = 2013 (4) MPHT 214
2254 = 2013 (II) MPJR 259	2579 = 2013 (3) JLJ 109 = 2013 (3) MPLJ 106 = 2013 (5) MPHT 196
2277 = 2013 (2) MPLJ 460 = 2013 (3) MPHT 72	2589 = 2013 (3) MPLJ 497 = 2013 (4) MPHT 295 (DB)
2291 = 2013 (3) JLJ 274	
2320 = 2013 (5) MPHT 298 (DB) = 2013 (IV) MPJR 182	2617 = 2013 (III) MPJR SN 5
2338 = 2013 (1) MPLJ 428	2622 = 2013 (III) MPJR 289
2354 = 2013 (3) MPLJ 160	2660 = 2013 (2) MPLJ 699
2360 = 2013 (3) MPLJ 237 = 2013 (4) MPHT 165	2664 = 2013 (IV) MPJR 197
	2670 = 2013 (4) MPLJ 39 = 2013 (IV) MPJR 7

COMPARATIVE TABLE 2013

2680 = 2013 (4) MPLJ 135 = 2013 (5) MPHT 423	*15 = 2013 (2) JLJ 185 = 2013 (2) MPHT 287 (DB) = 2013 (2) MPLJ 402
2693 = 2013 (5) MPHT 486 (DB)	*16 = 2013 (2) MPLJ 390 = 2013 (5) MPHT 107
2697 = 2013 (5) MPHT 491 = 2013 (III) MPJR 243	*17 = 2013 (2) MPLJ 110
2720 = 2013 (3) MPLJ 431 = 2013 (4) MPHT 154	*18 = 2013 (1) MPLJ 390 = 2013 (IV) MPJR 249
2731 = 2013 (2) MPLJ 293	*19 = 2013 (3) JLJ 103 = 2013 (II) MPJR SN 20
2734 = 2013 (5) MPHT 100	*20 = 2013 (I) MPJR 275
2795 = 2013 (3) MPHT 316 (DB)	*21 = 2013 (3) MPHT 257 = 2013 (3) MPLJ 62
2800 = 2013 (3) MPLJ 410 = 2013 (5) MPHT 45	*22 = 2013 (2) MPHT 412 = 2013 (2) MPLJ 323
2806 = 2013 (3) JLJ 358 = 2013 (III) MPJR 237	*23 = 2013 (1) MPLJ 334
2813 = 2013 (4) MPLJ 525 = 2013 (IV) MPJR 283	*24 = 2013 (2) MPHT 201 = 2013 (2) MPLJ 289
2832 = 2013 (4) MPLJ 701	*25 = 2013 (2) MPLJ 376 = 2013 (3) MPHT 354
2850 = 2013 (2) MPLJ 669	*28 = 2013 (3) JLJ 92 = 2013 (3) MPLJ 126 = 2013 (III) MPJR 217
2887 = 2013 (3) JLJ 7 = 2013 (4) MPLJ 679	*29 = 2013 (3) JLJ 55 = 2013 (3) MPLJ 650 = 2013 (4) MPHT 233 (DB) = 2013 (III) MPJR 170
2904 = 2013 (4) MPHT 393 = 2013 (4) MPLJ 111 = 2013 (IV) MPJR 256	*30 = 2013 (III) MPJR 203
2917 = 2013 (4) MPLJ 578 = 2013 (5) MPHT 280	*32 = 2013 (3) MPLJ 688 = 2013 (5) MPHT 160 (DB) = 2013 (III) MPJR 153
2952 = 2013 (4) MPHT 529 (DB)	*33 = 2013 (4) MPLJ 68
2977 = 2013 (1) MPLJ 503 = 2013 (3) MPHT 408	*34 = 2013 (2) MPLJ 437
*4 = 2013 (1) MPHT 238 (DB)	*37 = 2013 (1) MPHT 21
*5 = 2013 (1) JLJ 90 = 2013 (4) MPHT 100	*38 = 2013 (3) MPLJ 674
*7 = 2013 (1) MPLJ 453	*42 = 2013 (3) MPHT 451 = 2013 (4) MPLJ 42 = 2013 (IV) MPJR SN 15
*8 = 2013 (1) JLJ 43	
*14 = 2013 (1) MPHT 339	

COMPARATIVE TABLE 2014

ILR M.P. Series 2014 = Other Journals

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

ILR = Other Journals	384 = 2014 (2) MPLJ 464 = 2014 (3) MPHT 212
8 = 2014 (2) MPHT 335 (DB) = 2014 (2) MPLJ 611	388 = 2014 (3) MPHT 293 = 2014 (3) MPLJ 283
11 = 2014 (2) MPHT 369 (DB)	392 = 2014 (3) MPHT 45 = 2014 (3) MPLJ 51
13 = 2014 (1) MPHT 331 (DB) = 2014 (2) JLJ 69 = 2014 (2) MPLJ 239	424 = 2014 (1) MPLJ 203
24 = 2014 (I) MPJR 315	455 = 2014 (II) MPJR 138
26 = 2014 (1) MPHT 262 (DB) = 2014 (II) MPJR 135	481 = 2014 (2) MPLJ 286 = 2014 (3) MPHT 441
69 = 2014 (1) MPHT 473 (DB) = 2014 (2) MPLJ 429	547 = 2014 (IV) MPJR SN 21
73 = 2014 (2) MPLJ 455 = 2014 (I) MPJR 110	598 = 2014 (2) MPHT 160
75 = 2014 (2) MPHT 23 = 2014 (III) MPJR 72	673 = 2014 (3) MPHT 175 (DB)
100 = 2014 (2) MPHT 82 = 2014 (2) MPLJ 436	690 = 2014 (I) MPJR SN 7
105 = 2014 (2) MPHT 305 = 2014 (2) MPLJ 126	695 = 2014 (2) MPHT 34 (DB) = 2014 (3) MPLJ 415
108 = 2014 (2) MPLJ 459	712 = 2014 (3) MPHT 216 = 2014 (3) MPLJ 149
184 = 2014 (1) MPHT 196 = 2014 (1) MPLJ 710	716 = 2014 (3) MPHT 13 (DB) = 2014 (3) MPLJ 47
189 = 2014 (3) MPHT 398	720 = 2014 (III) MPJR 62
214 = 2014 (1) MPLJ 363 = 2014 (2) JLJ 233	726 = 2014 (IV) MPJR 105
277 = 2014 (3) MPHT 302	733 = 2014 (2) JLJ 168 = 2014 (2) MPLJ 411 = 2014 (3) MPHT 72
327 = 2014 (1) MPLJ 94	763 = 2014 (1) MPHT 69 (DB)
341 = 2014 (4) MPLJ 369	785 = 2014 (I) MPJR 276
371 = 2014 (2) MPLJ 84 = 2014 (3) MPHT 261 (DB)	819 = 2014 (2) MPLJ 395 = 2014 (3) MPHT 178
375 = 2014 (2) MPLJ 82	851 = 2014 (2) JLJ 434
378 = 2014 (2) MPHT 338 (DB)	858 = 2014 (2) JLJ 25 = 2014 (2) MPHT 449
380 = 2014 (2) MPHT 145 = 2014 (2) MPLJ 48	867 = 2014 (3) MPHT 142
	871 = 2014 (3) MPHT 91

COMPARATIVE TABLE 2014

873 = 2014 (2) MPHT 526	1396 = 2014 (3) MPHT 382 = 2014 (III) MPJR 92
877 = 2014 (IV) MPJR 49	
974 = 2014 (3) MPLJ 234	1451 = 2014 (3) MPHT 390
985 = 2014 (3) MPLJ 268	1483 = 2014 (3) MPLJ 252 = 2014 (4) MPHT 237 (DB) = 2014 (IV) MPJR SN 16
993 = 2014 (1) MPLJ 573 = 2014 (I) MPJR SN 24	
1015 = 2014 (2) JLJ 341 = 2014 (2) MPHT 381	1531 = 2014 (2) MPLJ 524 = 2014 (3) MPHT 48
1020 = 2014 (3) MPHT 423 = 2014 (3) MPLJ 670	1537 = 2014 (2) MPLJ 530 = 2014 (3) MPHT 151
1027 = 2014 (3) MPHT 136 (DB) = 2014 (3) MPLJ 147	1580 = 2014 (1) MPHT 128
1031 = 2014 (3) MPLJ 117	1610 = 2014 (3) JLJ 16 = 2014 (3) MPHT 406 (DB)
1034 = 2014 (3) MPLJ 133 = 2014 (IV) MPJR 75	1629 = 2014 (3) MPHT 42 = 2014 (3) MPLJ 137
1073 = 2014 (1) MPHT 326 (DB) = 2014 (2) MPLJ 407	1632 = 2014 (1) MPHT 515
1095 = 2014 (3) MPHT 199 (DB) = 2014 (3) MPLJ 190	1641 = 2014 (2) MPHT 329
1128 = 2014 (I) MPJR SN 12	1667 = 2014 (2) MPHT 540
1135 = 2014 (IV) MPJR 71	1675 = 2014 (3) MPHT 476
1209 = 2014 (3) MPHT 1 (SC)	1679 = 2014 (3) MPHT 485 = 2014 (3) MPLJ 574
1270 = 2014 (1) MPLJ 198	1687 = 2014 (1) JLJ 365 (SC)
1293 = 2014 (3) MPLJ 334 = 2014 (IV) MPJR 52	1694 = 2014 (1) JLJ 301 (SC)
1296 = 2014 (2) JLJ 439 = 2014 (3) MPHT 464 = 2014 (3) MPLJ 561	1698 = 2014 (1) JLJ 92 (FB) = 2014 (1) MPLJ 348 (FB)
1330 = 2014 (2) MPLJ 116	1702 = 2014 (3) MPLJ 709 = 2014 (5) MPHT 255 (DB)
1339 = 2014 (1) JLJ 140 = 2014 (3) MPLJ 211	1706 = 2014 (3) MPHT 62 (DB) = 2014 (I) MPJR 131
1346 = 2014 (3) MPLJ 174	1739 = 2014 (3) MPHT 23
1355 = 2014 (2) JLJ 397 = 2014 (3) MPHT 470 = 2014 (III) MPJR 146	1743 = 2014 (1) MPLJ 218
1384 = 2014 (3) MPHT 192	1753 = 2014 (3) MPLJ 717
1393 = 2014 (3) MPHT 139	1756 = 2014 (2) MPLJ 59
	1771 = 2014 (2) MPLJ 184

COMPARATIVE TABLE 2014

1831 = 2014 (2) MPLJ 86 = 2014 (3) MPHT 186	2348 = 2014 (3) MPLJ 612 = 2014 (4) MPHT 156
1838 = 2014 (1) MPHT 506 = 2014 (2) MPLJ 95 = 2014 (II) MPJR 169	2353 = 2014 (3) JLJ 58 = 2014 (3) MPLJ 552
1879 = 2014 (1) MPHT 318 = 2014 (1) MPLJ 680	2407 = 2014 (1) MPHT 461 (DB)
1911 = 2014 (1) MPHT 73 (DB)	2415 = 2014 (4) MPHT 316 (DB)
1916 = 2014 (II) MPJR SN 4	2431 = 2014 (3) MPHT 492
1923 = 2014 (II) MPJR SN 5	2441 = 2014 (4) MPHT 212 (DB)
1961 = 2014 (2) MPHT 346 = 2014 (3) MPLJ 21	2466 = 2014 (2) MPLJ 137
1976 = 2014 (3) MPHT 480	2487 = 2014 (4) MPHT 245 (DB) = 2014 (IV) MPJR 46
1979 = 2014 (1) JLJ 246 = 2014 (1) MPHT 225 (SC)	2509 = 2014 (3) MPLJ 356
2002 = 2014 (3) JLJ 163 = 2014 (4) MPLJ 355 = 2014 (5) MPHT 133 (DB)	2514 = 2014 (III) MPJR 178
2012 = 2014 (3) JLJ 104 = 2014 (5) MPHT 99 (DB)	2684 = 2014 (5) MPHT 158
2076 = 2014 (2) MPHT 362 = 2014 (2) MPLJ 586	2701 = 2014 (3) JLJ 33
2080 = 2014 (III) MPJR 127	2709 = 2014 (4) MPHT 311
2085 = 2014 (3) MPLJ 193 = 2014 (4) MPHT 45 (DB) = 2014 (III) MPJR 172	2714 = 2014 (4) MPHT 165
2091 = 2014 (4) MPHT 89 (DB) = 2014 (4) MPLJ 91	2722 = 2014 (2) MPHT 44 (DB) = 2014 (I) MPJR 162
2096 = 2014 (4) MPLJ 184	2728 = 2014 (I) MPJR 100
2106 = 2014 (4) MPLJ 573 = 2014 (5) MPHT 339	2739 = 2014 (5) MPHT 81 = 2014 (IV) MPJR 154
2149 = 2014 (1) MPLJ 455	2744 = 2014 (4) MPHT 301
2174 = 2014 (4) MPLJ 610	2749 = 2014 (3) JLJ 91 = 2014 (4) MPHT 133
2224 = 2014 (1) MPHT 167 (DB)	2756 = 2014 (3) JLJ 52
2271 = 2014 (4) MPHT 374 = 2014 (4) MPLJ 177	2763 = 2014 (2) MPLJ 168
2279 = 2014 (3) JLJ 150 = 2014 (4) MPHT 173 (DB) = 2014 (4) MPLJ 109	2789 = 2014 (2) MPLJ 17 = 2014 (I) MPJR 196
2338 = 2014 (3) MPLJ 618 = 2014 (5) MPHT 297	2792 = 2014 (1) MPLJ 620 = 2014 (I) MPJR 122
2341 = 2014 (3) JLJ 97 = 2014 (3) MPLJ 593 = 2014 (5) MPHT 182	2806 = 2014 (1) MPHT 20 = 2014 (1) MPLJ 630
	2837 = 2014 (2) MPHT 38 (DB) = 2014 (3) MPLJ 418
	2840 = 2014 (2) MPHT 389 (DB) = 2014 (2) MPLJ 610
	2841 = 2014 (II) MPJR 65

COMPARATIVE TABLE 2015

2865 = 2014 (2) MPLJ 466	3146 = 2014 (4) MPLJ 510 = 2014 (5) MPHT 426
3020 = 2014 (3) MPLJ 634 = 2014 (4) MPHT 184	3183 = 2014 (1) MPLJ 514
3033 = 2014 (3) MPLJ 120	3231 = 2014 (3) JLJ 130
3077 = 2014 (2) JLJ 90 (SC)	3247 = 2014 (5) MPHT 233 (DB)
3088 = 2014 (2) MPHT 439	3289 = 2014 (3) MPHT 103
3114 = 2014 (1) MPHT 324 = 2014 (2) MPLJ 387	3303 = 2014 (2) JLJ 444
3116 = 2014 (3) MPLJ 433	3308 = 2014 (4) MPHT 232
3122 = 2014 (3) MPLJ 546	*5 = 2014 (2) MPLJ 43
3143 = 2014 (2) MPHT 370	*10 = 2014 (3) MPHT 277 (DB) = 2014 (3) MPLJ 256
	*15 = 2014 (3) MPLJ 675

ILR M.P. Series 2015 = Other Journals*(Note: An asterisk (*) denotes Note number)***ILR = Other Journals**

26 = 2015 (1) MPLJ 153 = 2015 (2) MPHT 29 (DB)	638 = 2015 (1) MPHT 356 = 2015 (2) MPLJ 101
137 = 2015 (1) MPHT 21	641 = 2015 (1) MPLJ 8
139 = 2015 (1) MPLJ 626 = 2015 (II) MPJR 67	741 = 2015 (1) MPHT 37 = 2015 (1) MPLJ 452
143 = 2015 (4) MPLJ 52	754 = 2015 (1) MPHT 301 (DB) = 2015 (2) MPLJ 39
185 = 2015 (1) MPLJ 719 = 2015 (II) MPJR 34	758 = 2015 (1) MPHT 454 = 2015 (1) MPLJ 379
277 = 2015 (1) MPHT 224	780 = 2015 (1) MPHT 171 = 2015 (1) MPLJ 596
376 = 2015 (1) MPHT 438 (DB) = 2015 (1) MPLJ 428 = 2015 (I) MPJR 194	803 = 2015 (1) MPHT 340
379 = 2015 (1) JLJ 371 = 2015 (3) MPLJ 469 = 2015 (II) MPJR 46	807 = 2015 (I) MPJR 172 (SC)
406 = 2015 (1) MPLJ 430	908 = 2015 (I) MPJR SN 8
415 = 2015 (4) MPLJ 188	944 = 2015 (1) MPLJ 652
479 = 2015 (2) MPHT 309	958 = 2015 (1) JLJ 27 = 2015 (1) MPLJ 466
501 = 2015 (1) JLJ 412	964 = 2015 (1) JLJ 61 = 2015 (1) MPHT 11 (DB) = 2015 (1) MPLJ 399
518 = 2015 (III) MPJR 78	1016 = 2015 (4) MPLJ 193
532 = 2015 (1) MPHT 29	1020 = 2015 (1) JLJ 158

COMPARATIVE TABLE 2015

1029 = 2015 (2) MPHT 207 = 2015 (2) MPLJ 686	1729 = 2015 (1) JLJ 266 = 2015 (2) MPLJ 218
1041 = 2015 (1) MPHT 328	1749 = 2015 (1) MPHT 23
1083 = 2015 (1) MPHT 57	1754 = 2015 (1) MPHT 181 (DB) = 2015 (1) MPLJ 560
1111 = 2015 (2) MPLJ 1	1766 = 2015 (2) MPHT 201 (DB) = 2015 (2) MPLJ 673
1133 = 2015 (1) JLJ 42	1772 = 2015 (2) MPLJ 382 = 2015 (3) MPHT 42 (DB) = 2015 (II) MPJR 318
1145 = 2015 (1) MPHT 234 (DB)	1808 = 2015 (4) MPLJ 178
1165 = 2015 (I) MPJR 289	1810 = 2015 (1) MPHT 219
1191 = 2015 (1) MPHT 141	1867 = 2015 (1) MPLJ 290
1204 = 2015 (1) MPLJ 389	1896 = 2015 (2) MPHT 196
1211 = 2015 (1) JLJ 304 = 2015 (2) MPHT 73 = 2015 (2) MPLJ 311	1905 = 2015 (1) JLJ 113 = 2015 (2) MPHT 260
1230 = 2015 (2) MPLJ 51	1912 = 2015 (1) JLJ 421
1280 = 2015 (1) MPHT 291	1943 = 2015 (2) JLJ 433
1284 = 2015 (1) JLJ 202 = 2015 (2) MPLJ 120 = 2015 (I) MPJR 99	1949 = 2015 (IV) MPJR 48 (SC)
1311 = 2015 (2) MPHT 212 = 2015 (3) MPLJ 65	1989 = 2015 (2) MPLJ 374
1352 = 2015 (1) MPHT 305 (DB)	2014 = 2015 (2) MPLJ 458
1395 = 2015 (1) JLJ 100	2075 = 2015 (2) MPHT 382 (DB) = 2015 (3) MPLJ 172
1403 = 2015 (1) JLJ 282 (SC)	2084 = 2015 (3) MPHT 68 = 2015 (3) MPLJ 226
1475 = 2015 (1) MPLJ 436	2088 = 2015 (3) MPLJ 657
1495 = 2015 (2) MPLJ 650 = 2015 (I) MPJR SN 21	2107 = 2015 (2) JLJ 398 = 2015 (3) MPLJ 611
1502 = 2015 (2) MPLJ 702	2168 = 2015 (3) MPHT 89 = 2015 (3) MPLJ 213
1582 = 2015 (1) MPHT 54	2223 = 2015 (III) MPJR 106
1589 = 2015 (1) MPHT 265	2274 = 2015 (2) JLJ 439
1597 = 2015 (1) MPHT 45	2293 = 2015 (3) JLJ 76 (SC) = 2015 (III) MPJR 66 (SC)
1600 = 2015 (3) MPHT 19 (DB) = 2015 (I) MPJR SN 25	2377 = 2015 (1) JLJ 358 = 2015 (2) MPHT 21
1625 = 2015 (1) JLJ 241 (SC) = 2015 (2) MPHT 1 (SC)	2387 = 2015 (2) JLJ 26 = 2015 (3) MPLJ 280
1642 = 2015 (2) JLJ 44 = 2015 (3) MPHT 8 (SC)	2402 = 2015 (2) MPHT 132 = 2015 (2) MPLJ 285
1662 = 2015 (1) JLJ 262 = 2015 (2) MPHT 128 (DB) = 2015 (2) MPLJ 148	2408 = 2015 (2) MPLJ 450 = 2015 (3) MPHT 171
1704 = 2015 (1) MPLJ 121 = 2015 (II) MPJR SN 1	2437 = 2015 (IV) MPJR 81

COMPARATIVE TABLE 2015

2456 = 2015 (3) MPLJ 83	2977 = 2015 (1) JLJ 341 = 2015 (1) MPLJ 677 = 2015 (II) MPJR 87
2462 = 2015 (2) MPLJ 694	
2487 = 2015 (4) MPLJ 309	2998 = 2015 (1) JLJ 280 = 2015 (4) MPLJ 36
2494 = 2015 (1) MPHT 252	3016 = 2015 (4) MPLJ 514
2505 = 2015 (4) MPLJ 134	3026 = 2015 (4) MPLJ 338
2533 = 2015 (1) JLJ 79 (SC) = 2015 (1) MPHT 1 (SC) = 2015 (3) MPLJ 485 = 2015 (I) MPJR 218 (SC)	3127 = 2015 (1) MPHT 349
2545 = 2015 (3) JLJ 102 (SC)	3130 = 2015 (1) MPHT 270
2551 = 2015 (2) JLJ 388 (SC) = 2015 (IV) MPJR 219 (SC)	3137 = 2015 (3) JLJ 131 (SC) = 2015 (IV) MPJR 217 (SC)
2556 = 2015 (4) MPLJ 480 = 2015 (IV) MPJR SN 16	3141 = 2015 (3) JLJ 181 (FB) = 2015 (4) MPLJ 406 (FB)
2579 = 2015 (1) MPLJ 138	3157 = 2015 (4) MPLJ 439 (FB) = 2015 (IV) MPJR 275
2597 = 2015 (3) MPLJ 95	3204 = 2015 (2) MPLJ 526
2607 = 2015 (2) MPHT 396 = 2015 (3) MPLJ 130	3217 = 2015 (2) MPHT 217 = 2015 (2) MPLJ 472
2636 = 2015 (2) MPHT 434 = 2015 (3) MPLJ 145	3275 = 2015 (III) MPJR 180
2640 = 2015 (3) JLJ 177 = 2015 (4) MPLJ 301	3395 = 2015 (3) MPLJ 590
2712 = 2015 (1) JLJ 391 = 2015 (1) MPLJ 579	3427 = 2015 (2) MPHT 78
2726 = 2015 (1) MPHT 106 = 2015 (1) MPLJ 593	*1 = 2015 (1) MPHT 48 = 2015 (2) JLJ 55
2730 = 2015 (2) MPLJ 446	*3 = 2015 (2) MPLJ 540
2745 = 2015 (3) MPLJ 463	*4 = 2015 (1) MPLJ 693
2752 = 2015 (1) JLJ 134	*8 = 2015 (1) MPHT 231 (DB) = 2015 (1) MPLJ 630
2788 = 2015 (2) MPHT 177	*12 = 2015 (1) MPHT 406 = 2015 (1) MPLJ 78 = 2015 (I) MPJR 284
2807 = 2015 (2) MPHT 91	*14 = 2015 (2) MPHT 166
2845 = 2015 (3) MPHT 59 (DB) = 2015 (3) MPLJ 356	*15 = 2015 (1) JLJ 88 = 2015 (1) MPHT 149 = 2015 (1) MPLJ 304
2914 = 2015 (4) MPLJ 27	*18 = 2015 (1) MPLJ 618 = 2015 (2) MPHT 437
2921 = 2015 (3) MPLJ 673	*29 = 2015 (1) MPHT 179
2927 = 2015 (3) MPLJ 459	*38 = 2015 (II) MPJR 356

COMPARATIVE TABLE 2011 to 2015
Other Journals = ILR (M.P. Series)
(Note: An asterisk () denotes Note number)*

2011 (1) MPHT	12	=	ILR(2011)MP	307	"	"	118	=	"	"	*59	
"	"	20 (DB)	=	"	"	124	"	"	122 (DB)	=	"	*21
"	"	24 (DB)	=	"	"	58	"	"	137 (DB)	=	"	*26
"	"	35 (DB)	=	"	"	49	"	"	143 (DB)	=	"	*76
"	"	50 (DB)	=	"	"	1272	"	"	153	=	"	1182
"	"	55	=	"	"	562	"	"	158	=	"	253
"	"	67	=	"	"	444	"	"	164	=	"	248
"	"	72 (DB)	=	"	"	614	"	"	169 (DB)	=	"	*13
"	"	80 (DB)	=	"	"	659	"	"	175	=	"	300
"	"	89 (DB)	=	"	"	392	"	"	181 (DB)	=	"	1456
"	"	174 (DB)	=	"	"	684	"	"	196	=	"	1519
"	"	177 (DB)	=	"	"	682	"	"	200	=	"	1056
"	"	180 (DB)	=	"	"	676	"	"	208	=	"	1047
"	"	186 (DB)	=	"	"	*35	"	"	226 (DB)	=	"	351
"	"	196	=	"	"	972	"	"	229	=	"	*4
"	"	203 (DB)	=	"	"	598	"	"	244	=	"	270
"	"	256 (DB)	=	"	"	1171	"	"	250 (DB)	=	"	969
"	"	264	=	"	"	572	"	"	253	=	"	*75
"	"	266	=	"	"	474	"	"	258	=	"	696
"	"	281 (DB)	=	"	"	671	"	"	264 (DB)	=	"	1082
"	"	287	=	"	"	*47	"	"	294	=	"	2063
"	"	298	=	"	"	175	"	"	307	=	"	1133
"	"	314 (DB)	=	"	"	839	"	"	314	=	"	1777
"	"	343 (DB)	=	"	"	826	"	"	317	=	"	1859
"	"	359	=	"	"	1378	"	"	320	=	"	1401
"	"	368	=	"	"	*40	"	"	324 (DB)	=	"	*73
"	"	385 (DB)	=	"	"	1277	"	"	341 (DB)	=	"	1464
"	"	396	=	"	"	*17	"	"	346	=	"	1221
"	"	408 (FB)	=	"	"	575	"	"	361	=	"	117
"	"	420	=	"	"	312	"	"	393	=	"	147
"	"	491	=	"	"	1085	"	"	399 (DB)	=	"	239
"	"	495	=	"	"	*45	"	"	406	=	"	96
"	"	522 (DB)	=	"	"	358	"	"	419	=	"	*8
2011 (2) MPHT	8 (DB)	=	"	"	780	"	"	443 (FB)	=	"	"	1637
"	"	15 (DB)	=	"	"	555	"	"	465 (DB)	=	"	1437
"	"	21 (DB)	=	"	"	364	"	"	474 (DB)	=	"	*23
"	"	30 (DB)	=	"	"	*62	"	"	488 (DB)	=	"	154
"	"	45	=	"	"	656	"	"	499	=	"	1418
"	"	48 (DB)	=	"	"	621	"	"	508	=	"	2016
"	"	57 (DB)	=	"	"	774	"	"	519 (DB)	=	"	1504
"	"	67	=	"	"	792	"	"	523	=	"	1781
"	"	74 (FB)	=	"	"	586	2011 (3) MPHT	11 (DB)	=	"	"	400
"	"	85	=	"	"	1549	"	"	28	=	"	1392
"	"	87	=	"	"	1387	"	"	35 (DB)	=	"	1343
"	"	102	=	"	"	*69	"	"	39	=	"	1607
"	"	108	=	"	"	*58	"	"	41	=	"	1745

COMPARATIVE TABLE

"	"	44 (DB) =	" "	2255	"	"	224 (DB) =	" "	705
"	"	75 =	" "	985	"	"	233 =	" "	819
"	"	81 (FB) =	" "	1807	"	"	257 (DB) =	" "	2487
"	"	111 =	" "	714	"	"	261 =	" "	2199
"	"	115 =	" "	732	"	"	270 =	" "	2811
"	"	124 =	" "	*15	"	"	277 =	" "	2134
"	"	137 =	" "	808	"	"	289 =	" "	1941
"	"	140 =	" "	1551	"	"	292 (DB) =	" "	2498
"	"	145 (DB) =	" "	1068	"	"	308 =	" "	1063
"	"	155 (DB) =	" "	1581	"	"	312 (DB) =	" "	693
"	"	173 (DB) =	" "	1762	"	"	328 =	" "	2333
"	"	194 (DB) =	" "	*91	"	"	360 =	" "	2194
"	"	263 (DB) =	" "	*95	"	"	364 =	" "	2191
"	"	276 =	" "	2059	"	"	370 =	" "	2377
"	"	285 (DB) =	" "	*104	"	"	381 =	" "	3209
"	"	294 =	" "	68	"	"	386 =	" "	2743
"	"	311 =	" "	*70	"	"	424 (DB) =	" "	1026
"	"	366 =	" "	1895	"	"	441 =	" "	441
"	"	371 =	" "	*83	"	"	444 =	" "	259
"	"	395 (DB) =	" "	1787	"	"	455 (DB) =	" "	144
"	"	410 =	" "	1475	"	"	457 (DB) =	" "	1310
"	"	414 (DB) =	" "	1932	"	"	470 =	" "	*112
"	"	418 (DB) =	" "	1509	"	"	479 (DB) =	" "	1441
"	"	425 (DB) =	" "	1693	"	"	483 =	" "	2973
"	"	426 =	" "	*66	"	"	504 =	" "	2147
"	"	445 =	" "	1752	"	"	511 (DB) =	" "	1945
"	"	447 (DB) =	" "	128	"	"	512 (DB) =	" "	2322
"	"	474 (DB) =	" "	609	"	"	525 (DB) =	" "	2983
"	"	481 =	" "	703	"	"	532 =	" "	2416
"	"	483 =	" "	787	2011 (5) MPHT	35 (DB) =	" "	2097	
"	"	488 (DB) =	" "	718	"	"	38 (DB) =	" "	2616
"	"	492 =	" "	1680	"	"	47 =	" "	2749
"	"	499 (DB) =	" "	1702	"	"	62 (DB) =	" "	934
"	"	528 =	" "	1731	"	"	66 =	" "	2337
"	"	531 =	" "	*110	"	"	78 (DB) =	" "	929
2011 (4) MPHT		1 (SC) =	" "	2091	"	"	81 =	" "	1093
"	"	7 =	" "	*51	"	"	84 =	" "	1755
"	"	24 =	" "	2004	"	"	94 (DB) =	" "	2315
"	"	33 (DB) =	" "	2629	"	"	97 =	" "	2801
"	"	62 (DB) =	" "	*105	"	"	105 =	" "	1958
"	"	72 =	" "	2073	"	"	112 =	" "	2901
"	"	74 =	" "	2919	"	"	129 =	" "	*137
"	"	79 =	" "	1747	"	"	146 =	" "	3141
"	"	90 (DB) =	" "	*102	"	"	162 =	" "	2453
"	"	122 (DB) =	" "	2681	"	"	168 (DB) =	" "	2425
"	"	135 (DB) =	" "	2280	"	"	177 (DB) =	" "	2625
"	"	140 =	" "	2085	"	"	180 (DB) =	" "	2401
"	"	146 =	" "	2277	"	"	188 =	" "	1954
"	"	150 (DB) =	" "	*119	"	"	193 =	" "	*120
"	"	181 =	" "	1104	"	"	218 =	" "	2168
"	"	191 =	" "	294	"	"	233 =	" "	2410
"	"	194 (DB) =	" "	*24	"	"	241 (DB) =	" "	1355
"	"	216 (DB) =	" "	1428	"	"	271 =	" "	2789

COMPARATIVE TABLE

"	"	296	=	"	"	1089	"	"	265	=	"	"	1339
"	"	300	=	"	"	1323	"	"	270	=	"	"	833
"	"	304	=	"	"	*63	"	"	274	=	"	"	796
"	"	316	=	"	"	1768	"	"	277	=	"	"	420
"	"	325	=	"	"	1988	"	"	281	=	"	"	272
"	"	364 (DB)	=	"	"	3235	"	"	299 (DB)	=	"	"	1509
"	"	400	=	"	"	2464	"	"	303	=	"	"	1044
"	"	405	=	"	"	3071	"	"	305	=	"	"	1164
2012 (1) MPHT	40	=	ILR (2012) MP 49	"	"	310 (DB)	=	"	"	=	"	"	928
"	"	50	=	"	"	64	"	"	317	=	"	"	911
"	"	74	=	"	"	698	"	"	322 (DB)	=	"	"	1019
"	"	123 (DB)	=	"	"	326	"	"	328	=	"	"	1041
"	"	146	=	"	"	*72	"	"	331	=	"	"	1129
"	"	185	=	"	"	224	"	"	336	=	"	"	*17
"	"	201	=	"	"	593	"	"	389	=	"	"	968
"	"	226 (DB)	=	"	"	30	"	"	394	=	"	"	1119
"	"	241	=	"	"	610	"	"	429 (DB)	=	"	"	2342
"	"	244	=	"	"	752	"	"	434 (DB)	=	"	"	865
"	"	252	=	"	"	480	"	"	440 (DB)	=	"	"	725
"	"	257 (DB)	=	"	"	*39	"	"	441	=	"	"	726
"	"	375 (FB)	=	"	"	691	"	"	445 (DB)	=	"	"	1073
"	"	382 (FB)	=	"	"	837	"	"	449 (DB)	=	"	"	1812
"	"	387	=	"	"	*29	"	"	462	=	"	"	507
"	"	397 (DB)	=	"	"	1107	"	"	472	=	"	"	*37
"	"	401 (DB)	=	"	"	230	"	"	477	=	"	"	1150
"	"	409	=	"	"	157	"	"	482	=	"	"	*67
"	"	464	=	"	"	365	"	"	490	=	"	"	1935
"	"	490 (DB)	=	"	"	*21	"	"	498	=	"	"	1399
"	"	498	=	"	"	490	"	"	502	=	"	"	1159
"	"	507	=	"	"	220	"	"	515	=	"	"	1081
"	"	516	=	"	"	942	2012 (3) MPHT	7 (DB)	=	"	"	974	
2012 (2) MPHT	1 (SC)	=	"	"	305	"	"	15	=	"	"	2214	
"	"	42	=	"	"	522	"	"	36 (DB)	=	"	"	1327
"	"	46	=	"	"	657	"	"	75	=	"	"	*55
"	"	50	=	"	"	1068	"	"	82	=	"	"	1441
"	"	74	=	"	"	264	"	"	86	=	"	"	*68
"	"	78	=	"	"	654	"	"	117	=	"	"	503
"	"	88	=	"	"	1092	"	"	125	=	"	"	1414
"	"	98	=	"	"	94	"	"	130	=	"	"	937
"	"	108	=	"	"	*14	"	"	134 (DB)	=	"	"	1032
"	"	155	=	"	"	519	"	"	140	=	"	"	985
"	"	158	=	"	"	*13	"	"	146	=	"	"	1402
"	"	169 (FB)	=	"	"	685	"	"	149	=	"	"	785
"	"	174 (DB)	=	"	"	853	"	"	158	=	"	"	2064
"	"	179	=	"	"	803	"	"	170	=	"	"	1233
"	"	182 (DB)	=	"	"	613	"	"	179	=	"	"	1181
"	"	203	=	"	"	730	"	"	232 (DB)	=	"	"	1567
"	"	211	=	"	"	604	"	"	245	=	"	"	3090
"	"	215	=	"	"	424	"	"	249	=	"	"	2602
"	"	233	=	"	"	*25	"	"	253 (DB)	=	"	"	1514
"	"	240	=	"	"	416	"	"	258	=	"	"	1644
"	"	249 (DB)	=	"	"	2317	"	"	262	=	"	"	1469
"	"	253 (DB)	=	"	"	962	"	"	264	=	"	"	2008

COMPARATIVE TABLE

"	"	270	=	"	"	*86	"	"	464 (DB)	=	"	"	2034
"	"	284	=	"	"	991	"	"	492 (DB)	=	"	"	*97
"	"	288	=	"	"	1275	"	"	504	=	"	"	2083
"	"	299	=	"	"	1581	"	"	505	=	"	"	3112
"	"	311	=	"	"	2162	"	"	507	=	"	"	2292
"	"	325 (DB)	=	"	"	*64	"	"	512	=	"	"	1998
"	"	330	=	"	"	1619	"	"	516	=	"	"	2692
"	"	348	=	"	"	1493	"	"	521	=	"	"	2596
"	"	354	=	"	"	1780	"	"	531	=	"	"	*96
"	"	360	=	"	"	1282	"	"	544 (DB)	=	"	"	1616
"	"	363 (SC)	=	"	"	*47	2012 (5) MPHT	1 (SC)	=	"	"	*103	
"	"	387	=	"	"	382	"	"	17	=	"	"	2927
"	"	417	=	"	"	1404	"	"	23	=	"	"	2070
"	"	422	=	"	"	1973	"	"	31	=	"	"	*54
"	"	426	=	"	"	2473	"	"	62	=	"	"	1833
"	"	436	=	"	"	557	"	"	80 (DB)	=	"	"	*108
"	"	441	=	"	"	1777	"	"	86	=	"	"	2549
"	"	452	=	"	"	2005	"	"	97 (FB)	=	"	"	2091
"	"	513 (DB)	=	"	"	3046	"	"	108 (DB)	=	"	"	2146
"	"	521	=	"	"	*52	"	"	111 (DB)	=	"	"	2428
"	"	527	=	"	"	1146	"	"	118 (DB)	=	"	"	2946
"	"	539	=	"	"	1186	"	"	127	=	"	"	2148
"	"	548	=	"	"	1466	"	"	144	=	"	"	*28
2012 (4) MPHT		19	=	"	"	2920	"	"	162	=	"	"	*58
"	"	26	=	"	"	2602	"	"	183 (DB)	=	"	"	*77
"	"	36	=	"	"	1664	"	"	198 (DB)	=	"	"	2347
"	"	42	=	"	"	*50	"	"	207 (DB)	=	"	"	*82
"	"	58 (DB)	=	"	"	*31	"	"	221 (DB)	=	"	"	1218
"	"	65	=	"	"	1527	"	"	224	=	"	"	1175
"	"	72	=	"	"	*20	"	"	234	=	"	"	*61
"	"	95	=	"	"	1856	"	"	240	=	"	"	895
"	"	116	=	"	"	1447	"	"	246	=	"	"	1827
"	"	121	=	"	"	*44	"	"	251	=	"	"	1391
"	"	173	=	"	"	1922	"	"	255	=	"	"	2466
"	"	182	=	"	"	2872	"	"	259	=	"	"	2526
"	"	189 (DB)	=	"	"	*51	"	"	267	=	"	"	3122
"	"	202	=	"	"	1911	"	"	283 (DB)	=	"	"	2334
"	"	208	=	"	"	2300	"	"	299	=	"	"	2660
"	"	233 (DB)	=	"	"	1613	"	"	313	=	"	"	1900
"	"	236 (DB)	=	"	"	1867	"	"	322	=	"	"	1888
"	"	258	=	"	"	1125	"	"	333	=	"	"	2027
"	"	290 (DB)	=	"	"	1875	"	"	339	=	"	"	2385
"	"	310	=	"	"	2558	"	"	350	=	"	"	2956
"	"	333 (DB)	=	"	"	1376	"	"	364 (DB)	=	"	"	1519
"	"	349	=	"	"	1926	"	"	376	=	"	"	2174
"	"	358	=	"	"	1454	"	"	386	=	"	"	2416
"	"	363	=	"	"	3095	"	"	396	=	"	"	883
"	"	376	=	"	"	2219	"	"	402	=	"	"	2780
"	"	394	=	"	"	2179	"	"	420	=	"	"	3054
"	"	400	=	"	"	2285	"	"	442	=	"	"	2564
"	"	406	=	"	"	2425	"	"	450	=	"	"	890
"	"	408	=	"	"	*92	2013 (1) MPHT	21	=	ILR (2013) MP	*37		
"	"	458	=	"	"	2887	"	"	24	=	"	"	514

COMPARATIVE TABLE

"	"	52	=	"	"	854	"	"	381	=	"	"	2029
"	"	56 (DB)	=	"	"	172	"	"	388 (DB)	=	"	"	2544
"	"	127	=	"	"	314	"	"	393 (DB)	=	"	"	542
"	"	198	=	"	"	995	"	"	402	=	"	"	1193
"	"	225 (DB)	=	"	"	16	"	"	408 (DB)	=	"	"	946
"	"	232 (DB)	=	"	"	10	"	"	412	=	"	"	*22
"	"	238 (DB)	=	"	"	*4	"	"	434	=	"	"	791
"	"	258	=	"	"	1088	"	"	440 (DB)	=	"	"	299
"	"	276 (DB)	=	"	"	111	"	"	448	=	"	"	672
"	"	279	=	"	"	249	"	"	484	=	"	"	785
"	"	309	=	"	"	38	"	"	489 (DB)	=	"	"	552
"	"	314 (DB)	=	"	"	50	"	"	499	=	"	"	1394
"	"	322 (DB)	=	"	"	293	"	"	503	=	"	"	363
"	"	339	=	"	"	*14	"	"	507	=	"	"	133
"	"	346	=	"	"	584	2013 (3) MPHT	36 (DB)	=	"	"	1304	
"	"	351 (DB)	=	"	"	477	"	"	48	=	"	"	813
"	"	388	=	"	"	410	"	"	67	=	"	"	1137
"	"	398	=	"	"	724	"	"	72	=	"	"	2277
"	"	447	=	"	"	70	"	"	89	=	"	"	1569
"	"	464	=	"	"	212	"	"	96	=	"	"	868
"	"	469	=	"	"	345	"	"	116	=	"	"	1227
"	"	529 (DB)	=	"	"	316	"	"	125	=	"	"	605
2013 (2) MPHT	"	7	=	"	"	80	"	"	135 (DB)	=	"	"	989
"	"	59	=	"	"	581	"	"	141	=	"	"	1357
"	"	65	=	"	"	421	"	"	166	=	"	"	2108
"	"	93	=	"	"	1854	"	"	172	=	"	"	696
"	"	116	=	"	"	729	"	"	180	=	"	"	114
"	"	124 (FB)	=	"	"	538	"	"	190	=	"	"	1312
"	"	135	=	"	"	572	"	"	229	=	"	"	1214
"	"	143	=	"	"	1015	"	"	247	=	"	"	1027
"	"	150	=	"	"	130	"	"	257	=	"	"	*21
"	"	153	=	"	"	1526	"	"	316 (DB)	=	"	"	2795
"	"	170	=	"	"	688	"	"	352	=	"	"	738
"	"	182	=	"	"	609	"	"	354	=	"	"	*25
"	"	186	=	"	"	1639	"	"	364	=	"	"	424
"	"	201	=	"	"	*24	"	"	377	=	"	"	1065
"	"	207 (DB)	=	"	"	619	"	"	394 (DB)	=	"	"	1553
"	"	215	=	"	"	827	"	"	408	=	"	"	2977
"	"	230	=	"	"	1934	"	"	417	=	"	"	2518
"	"	272	=	"	"	979	"	"	451	=	"	"	*42
"	"	279	=	"	"	1399	"	"	479	=	"	"	1770
"	"	287 (DB)	=	"	"	*15	"	"	534 (DB)	=	"	"	1561
"	"	294 (DB)	=	"	"	503	"	"	541	=	"	"	2366
"	"	297	=	"	"	367	2013 (4) MPHT	30 (DB)	=	"	"	1466	
"	"	308 (DB)	=	"	"	138	"	"	41 (DB)	=	"	"	308
"	"	312	=	"	"	460	"	"	48	=	"	"	1406
"	"	320	=	"	"	597	"	"	78	=	"	"	2386
"	"	327	=	"	"	1930	"	"	85	=	"	"	1728
"	"	331	=	"	"	1022	"	"	100	=	"	"	*5
"	"	336 (DB)	=	"	"	2154	"	"	144	=	"	"	1474
"	"	345 (DB)	=	"	"	2068	"	"	154	=	"	"	2720
"	"	349 (DB)	=	"	"	2526	"	"	161	=	"	"	1578
"	"	378 (DB)	=	"	"	1294	"	"	165	=	"	"	2360

COMPARATIVE TABLE

"	"	184 (SC) =	" "	1245	"	"	506 =	" "	1838
"	"	214 =	" "	2569	"	"	515 =	" "	1632
"	"	233 (DB) =	" "	*29	2014 (2) MPHT	23	=	" "	75
"	"	240 =	" "	2022	"	"	34 (DB) =	" "	695
"	"	276 (FB) =	" "	1279	"	"	38 (DB) =	" "	2837
"	"	295 (DB) =	" "	2589	"	"	44 (DB) =	" "	2722
"	"	306 =	" "	984	"	"	82 =	" "	100
"	"	314 =	" "	1907	"	"	145 =	" "	380
"	"	320 =	" "	1755	"	"	160 =	" "	598
"	"	339 =	" "	1582	"	"	305 =	" "	105
"	"	347 (DB) =	" "	1521	"	"	329 =	" "	1641
"	"	358 (DB) =	" "	2231	"	"	335 (DB) =	" "	8
"	"	366 (DB) =	" "	2377	"	"	338 (DB) =	" "	378
"	"	393 =	" "	2904	"	"	346 =	" "	1961
"	"	459 (DB) =	" "	762	"	"	362 =	" "	2076
"	"	468 =	" "	837	"	"	369 (DB) =	" "	11
"	"	495 =	" "	613	"	"	370 =	" "	3143
"	"	508 =	" "	2038	"	"	381 =	" "	1015
"	"	529 (DB) =	" "	2952	"	"	389 (DB) =	" "	2840
"	"	542 =	" "	1069	"	"	439 =	" "	3088
2013 (5) MPHT	45	=	" "	2800	"	"	449 =	" "	858
"	"	100 =	" "	2734	"	"	526 =	" "	873
"	"	107 =	" "	*16	"	"	540 =	" "	1667
"	"	118 =	" "	2046	2014 (3) MPHT	1 (SC)	=	" "	1209
"	"	160 (DB) =	" "	*32	"	"	13 (DB) =	" "	716
"	"	163 =	" "	2012	"	"	23 =	" "	1739
"	"	172 =	" "	877	"	"	42 =	" "	1629
"	"	184 =	" "	1783	"	"	45 =	" "	392
"	"	188 (DB) =	" "	2224	"	"	48 =	" "	1531
"	"	196 =	" "	2579	"	"	62 (DB) =	" "	1706
"	"	208 (DB) =	" "	668	"	"	72 =	" "	733
"	"	273 (DB) =	" "	2238	"	"	91 =	" "	871
"	"	280 =	" "	2917	"	"	103 =	" "	3289
"	"	298 (DB) =	" "	2320	"	"	136 (DB) =	" "	1027
"	"	391 =	" "	2183	"	"	139 =	" "	1393
"	"	396 =	" "	1913	"	"	142 =	" "	867
"	"	423 =	" "	2680	"	"	151 =	" "	1537
"	"	486 (DB) =	" "	2693	"	"	175 (DB) =	" "	673
"	"	491 =	" "	2697	"	"	178 =	" "	819
2014 (1) MPHT	20	=	ILR (2014) MP 2806	"	"	"	186 =	" "	1831
"	"	69 (DB) =	" "	763	"	"	192 =	" "	1384
"	"	73 (DB) =	" "	1911	"	"	199 (DB) =	" "	1095
"	"	128 =	" "	1580	"	"	212 =	" "	384
"	"	167 (DB) =	" "	2224	"	"	216 =	" "	712
"	"	196 =	" "	184	"	"	261 (DB) =	" "	371
"	"	225 (SC) =	" "	1979	"	"	277 (DB) =	" "	*10
"	"	262 (DB) =	" "	26	"	"	293 =	" "	388
"	"	318 =	" "	1879	"	"	302 =	" "	277
"	"	324 =	" "	3114	"	"	382 =	" "	1396
"	"	326 (DB) =	" "	1073	"	"	390 =	" "	1451
"	"	331 (DB) =	" "	13	"	"	398 =	" "	189
"	"	461 (DB) =	" "	2407	"	"	406 (DB) =	" "	1610
"	"	473 (DB) =	" "	69	"	"	423 =	" "	1020

COMPARATIVE TABLE

"	"	441	=	"	"	481	"	"	265	=	"	"	1589
"	"	464	=	"	"	1296	"	"	270	=	"	"	3130
"	"	470	=	"	"	1355	"	"	291	=	"	"	1280
"	"	476	=	"	"	1675	"	"	301 (DB)	=	"	"	754
"	"	480	=	"	"	1976	"	"	305 (DB)	=	"	"	1352
"	"	485	=	"	"	1679	"	"	328	=	"	"	1041
"	"	492	=	"	"	2431	"	"	340	=	"	"	803
2014 (4) MPHT		45 (DB)	=	"	"	2085	"	"	349	=	"	"	3127
"	"	89 (DB)	=	"	"	2091	"	"	356	=	"	"	638
"	"	133	=	"	"	2749	"	"	406	=	"	"	*12
"	"	156	=	"	"	2348	"	"	438 (DB)	=	"	"	376
"	"	165	=	"	"	2714	"	"	454	=	"	"	758
"	"	173 (DB)	=	"	"	2279	2015 (2) MPHT	1 (SC)	=	"	"	1625	
"	"	184	=	"	"	3020	"	"	21	=	"	"	2377
"	"	212 (DB)	=	"	"	2441	"	"	29 (DB)	=	"	"	26
"	"	232	=	"	"	3308	"	"	73	=	"	"	1211
"	"	237 (DB)	=	"	"	1483	"	"	78	=	"	"	3427
"	"	245 (DB)	=	"	"	2487	"	"	91	=	"	"	2807
"	"	301	=	"	"	2744	"	"	128 (DB)	=	"	"	1662
"	"	311	=	"	"	2709	"	"	132	=	"	"	2402
"	"	316 (DB)	=	"	"	2415	"	"	166	=	"	"	*14
"	"	374	=	"	"	2271	"	"	177	=	"	"	2788
2014 (5) MPHT		81	=	"	"	2739	"	"	196	=	"	"	1896
"	"	99 (DB)	=	"	"	2012	"	"	201 (DB)	=	"	"	1766
"	"	133 (DB)	=	"	"	2002	"	"	207	=	"	"	1029
"	"	158	=	"	"	2684	"	"	212	=	"	"	1311
"	"	182	=	"	"	2341	"	"	217	=	"	"	3217
"	"	233 (DB)	=	"	"	3247	"	"	260	=	"	"	1905
"	"	255 (DB)	=	"	"	1702	"	"	309	=	"	"	479
"	"	297	=	"	"	2338	"	"	382 (DB)	=	"	"	2075
"	"	339	=	"	"	2106	"	"	396	=	"	"	2607
"	"	426	=	"	"	3146	"	"	434	=	"	"	2636
2015 (1) MPHT		1 (SC)	=	ILR 2015 MP	2533		"	"	437	=	"	"	*18
"	"	11 (DB)	=	"	"	964	2015 (3) MPHT	8 (SC)	=	"	"	1642	
"	"	21	=	"	"	137	"	"	19 (DB)	=	"	"	1600
"	"	23	=	"	"	1749	"	"	42 (DB)	=	"	"	1772
"	"	29	=	"	"	532	"	"	59 (DB)	=	"	"	2845
"	"	37	=	"	"	741	"	"	68	=	"	"	2084
"	"	45	=	"	"	1597	"	"	89	=	"	"	2168
"	"	48	=	"	"	*1	"	"	171	=	"	"	2408
"	"	54	=	"	"	1582	2011 (1) MPLJ	43	=	ILR (2011) MP	387		
"	"	57	=	"	"	1083	"	"	70	=	"	"	*11
"	"	106	=	"	"	2726	"	"	86	=	"	"	*20
"	"	141	=	"	"	1191	"	"	96	=	"	"	826
"	"	149	=	"	"	*15	"	"	118	=	"	"	676
"	"	171	=	"	"	780	"	"	122	=	"	"	270
"	"	179	=	"	"	*29	"	"	127	=	"	"	682
"	"	181 (DB)	=	"	"	1754	"	"	147	=	"	"	128
"	"	219	=	"	"	1810	"	"	164	=	"	"	696
"	"	224	=	"	"	277	"	"	169	=	"	"	444
"	"	231 (DB)	=	"	"	*8	"	"	172	=	"	"	351
"	"	234 (DB)	=	"	"	1145	"	"	175	=	"	"	36
"	"	252	=	"	"	2494	"	"	196	=	"	"	1051

COMPARATIVE TABLE

"	"	223	=	"	"	*15	"	"	219	=	"	"	358
"	"	245	=	"	"	117	"	"	224	=	"	"	839
"	"	264	=	"	"	722	"	"	237	=	"	"	*40
"	"	274	=	"	"	548	"	"	267	=	"	"	1470
"	"	279	=	"	"	*17	"	"	271	=	"	"	175
"	"	292	=	"	"	732	"	"	307	=	"	"	*88
"	"	359	=	"	"	392	"	"	311	=	"	"	1093
"	"	361	=	"	"	53	"	"	314	=	"	"	2016
"	"	366	=	"	"	*35	"	"	317	=	"	"	*77
"	"	373	=	"	"	671	"	"	324	=	"	"	1226
"	"	401	=	"	"	479	"	"	328	=	"	"	*93
"	"	410	=	"	"	*51	"	"	333	=	"	"	926
"	"	424	=	"	"	*8	"	"	335	=	"	"	*78
"	"	436	=	"	"	*45	"	"	342	=	"	"	1534
"	"	444	=	"	"	182	"	"	354	=	"	"	294
"	"	454	=	"	"	614	"	"	357	=	"	"	284
"	"	461	=	"	"	1171	"	"	365	=	"	"	*23
"	"	466	=	"	"	58	"	"	381	=	"	"	*68
"	"	472	=	"	"	124	"	"	390	=	"	"	932
"	"	475	=	"	"	*36	"	"	392	=	"	"	1867
"	"	513	=	"	"	859	"	"	399	=	"	"	921
"	"	540	=	"	"	1378	"	"	407	=	"	"	1456
"	"	547	=	"	"	575	"	"	410	=	"	"	1056
"	"	571	=	"	"	992	"	"	416	=	"	"	1859
"	"	575	=	"	"	1464	"	"	420	=	"	"	1401
"	"	580	=	"	"	714	"	"	424	=	"	"	1182
"	"	583	=	"	"	951	"	"	428	=	"	"	*13
"	"	589	=	"	"	1437	"	"	433	=	"	"	1519
"	"	592	=	"	"	*72	"	"	453	=	"	"	621
"	"	596	=	"	"	*47	"	"	461	=	"	"	*102
"	"	606	=	"	"	474	"	"	529	=	"	"	*76
"	"	620	=	"	"	1387	"	"	546	=	"	"	1445
"	"	624	=	"	"	684	"	"	573	=	"	"	2070
"	"	636	=	"	"	1068	"	"	590	=	"	"	1211
"	"	644	=	"	"	572	"	"	601	=	"	"	*104
"	"	663	=	"	"	*59	"	"	618	=	"	"	1504
"	"	682	=	"	"	586	"	"	643	=	"	"	1085
"	"	692	=	"	"	*57	"	"	646	=	"	"	819
"	"	700	=	"	"	997	"	"	649	=	"	"	*58
2011 (2) MPLJ		48	=	"	"	278	"	"	652	=	"	"	1422
"	"	52	=	"	"	603	"	"	657	=	"	"	*106
"	"	74	=	"	"	656	"	"	674	=	"	"	1862
"	"	96	=	"	"	918	"	"	680	=	"	"	1688
"	"	101	=	"	"	1637	"	"	690	=	"	"	1392
"	"	116	=	"	"	792	"	"	697	=	"	"	1852
"	"	121	=	"	"	1484	2011 (3) MPLJ	22	=	"	"	1661	
"	"	123	=	"	"	*62	"	"	47	=	"	"	1124
"	"	133	=	"	"	1678	"	"	53	=	"	"	1668
"	"	134	=	"	"	1128	"	"	119	=	"	"	2097
"	"	178	=	"	"	1441	"	"	121	=	"	"	1724
"	"	196	=	"	"	969	"	"	124	=	"	"	1843
"	"	201	=	"	"	972	"	"	127	=	"	"	1259
"	"	211	=	"	"	364	"	"	132	=	"	"	1180

COMPARATIVE TABLE

"	"	144	=	"	"	796	"	"	170	=	"	"	*103
"	"	148	=	"	"	1187	"	"	195	=	"	"	*111
"	"	164	=	"	"	1231	"	"	207	=	"	"	2390
"	"	184	=	"	"	154	"	"	228	=	"	"	2199
"	"	187	=	"	"	*91	"	"	252	=	"	"	2354
"	"	200	=	"	"	985	"	"	270	=	"	"	*154
"	"	205	=	"	"	1551	"	"	307	=	"	"	3099
"	"	210	=	"	"	1807	"	"	311	=	"	"	1912
"	"	233	=	"	"	1221	"	"	327	=	"	"	2762
"	"	292	=	"	"	2100	"	"	340	=	"	"	*144
"	"	294	=	"	"	2464	"	"	356	=	"	"	1475
"	"	297	=	"	"	*95	"	"	360	=	"	"	2322
"	"	306	=	"	"	2806	"	"	369	=	"	"	*99
"	"	318	=	"	"	2106	"	"	373	=	"	"	1945
"	"	325	=	"	"	1895	"	"	391	=	"	"	*112
"	"	329	=	"	"	2153	"	"	396	=	"	"	*122
"	"	333	=	"	"	1731	"	"	404	=	"	"	*132
"	"	336	=	"	"	2134	"	"	409	=	"	"	2743
"	"	341	=	"	"	*97	"	"	417	=	"	"	*124
"	"	347	=	"	"	2191	"	"	427	=	"	"	*137
"	"	350	=	"	"	2811	"	"	447	=	"	"	2377
"	"	355	=	"	"	2194	"	"	452	=	"	"	2973
"	"	369	=	"	"	*119	"	"	463	=	"	"	2342
"	"	387	=	"	"	2468	"	"	477	=	"	"	2425
"	"	403	=	"	"	2280	2012 (1) MPLJ	53	=	ILR (2012) MP *16			
"	"	405	=	"	"	2073	"	"	93	=	"	"	157
"	"	412	=	"	"	2315	"	"	118	=	"	"	42
"	"	456	=	"	"	1932	"	"	120	=	"	"	131
"	"	458	=	"	"	*66	"	"	149	=	"	"	490
"	"	511	=	"	"	*70	"	"	168	=	"	"	480
"	"	529	=	"	"	1988	"	"	172	=	"	"	*10
"	"	547	=	"	"	1509	"	"	269	=	"	"	*72
"	"	561	=	"	"	1693	"	"	303 (FB)	=	"	"	837
"	"	563	=	"	"	2333	"	"	329	=	"	"	416
"	"	575	=	"	"	2801	"	"	348	=	"	"	30
"	"	579	=	"	"	1958	"	"	353	=	"	"	951
"	"	588	=	"	"	1680	"	"	359	=	"	"	1527
"	"	594	=	"	"	718	"	"	365	=	"	"	420
"	"	598	=	"	"	2681	"	"	373	=	"	"	151
"	"	604	=	"	"	1702	"	"	386	=	"	"	*17
"	"	618	=	"	"	2705	"	"	406	=	"	"	1808
"	"	663	=	"	"	2255	"	"	423	=	"	"	*9
"	"	675	=	"	"	1777	"	"	436	=	"	"	471
"	"	678	=	"	"	1607	"	"	469	=	"	"	121
"	"	680	=	"	"	1082	"	"	477	=	"	"	42
2011 (4) MPLJ		83	=	"	"	1954	"	"	482	=	"	"	*11
"	"	99	=	"	"	2491	"	"	503	=	"	"	64
"	"	101	=	"	"	2739	"	"	548	=	"	"	49
"	"	104	=	"	"	3106	"	"	562	=	"	"	365
"	"	108	=	"	"	2410	"	"	579	=	"	"	*25
"	"	121	=	"	"	2487	"	"	585	=	"	"	94
"	"	131	=	"	"	*140	"	"	593	=	"	"	*26
"	"	144	=	"	"	1941	"	"	598	=	"	"	*33

COMPARATIVE TABLE

"	"	602	=	"	"	*81	"	"	589	=	"	"	136
"	"	677 (FB)	=	"	"	691	"	"	598	=	"	"	1509
"	"	703	=	"	"	1150	"	"	605	=	"	"	424
"	"	707	=	"	"	519	"	"	661	=	"	"	811
"	"	710	=	"	"	911	"	"	683	=	"	"	1644
"	"	714	=	"	"	*27	"	"	687	=	"	"	1419
2012 (2) MPLJ		27	=	"	"	1107	"	"	690	=	"	"	1514
"	"	37	=	"	"	890	"	"	704	=	"	"	991
"	"	42	=	"	"	503	"	"	707	=	"	"	1404
"	"	55	=	"	"	*37	"	"	711	=	"	"	1641
"	"	75	=	"	"	1142	"	"	713	=	"	"	1271
"	"	80	=	"	"	522	"	"	715	=	"	"	1286
"	"	82	=	"	"	1146	2012 (3) MPLJ	44	=	"	"	974	
"	"	86	=	"	"	956	"	"	51	=	"	"	1060
"	"	90	=	"	"	895	"	"	57	=	"	"	1275
"	"	105	=	"	"	737	"	"	75	=	"	"	*88
"	"	110	=	"	"	*61	"	"	100	=	"	"	*68
"	"	128	=	"	"	883	"	"	129	=	"	"	2554
"	"	147	=	"	"	942	"	"	146	=	"	"	*100
"	"	195	=	"	"	*75	"	"	170	=	"	"	726
"	"	205	=	"	"	968	"	"	180	=	"	"	1567
"	"	209	=	"	"	*48	"	"	191	=	"	"	*58
"	"	211	=	"	"	*30	"	"	199	=	"	"	*44
"	"	218	=	"	"	1119	"	"	214	=	"	"	865
"	"	232	=	"	"	1560	"	"	219	=	"	"	1911
"	"	254	=	"	"	1827	"	"	234	=	"	"	1555
"	"	312	=	"	"	*28	"	"	239	=	"	"	1735
"	"	326	=	"	"	*55	"	"	247	=	"	"	3090
"	"	337	=	"	"	1410	"	"	258	=	"	"	1998
"	"	347	=	"	"	326	"	"	385	=	"	"	1233
"	"	369	=	"	"	1812	"	"	413	=	"	"	1186
"	"	380	=	"	"	1134	"	"	425	=	"	"	2162
"	"	386	=	"	"	*65	"	"	428	=	"	"	1619
"	"	407	=	"	"	*50	"	"	433	=	"	"	1175
"	"	418	=	"	"	1414	"	"	447	=	"	"	937
"	"	426	=	"	"	916	"	"	457	=	"	"	985
"	"	435	=	"	"	1159	"	"	463	=	"	"	1402
"	"	438	=	"	"	2342	"	"	464	=	"	"	1181
"	"	448	=	"	"	928	"	"	467	=	"	"	2292
"	"	453	=	"	"	907	"	"	480	=	"	"	3095
"	"	456	=	"	"	1164	"	"	485	=	"	"	2273
"	"	460	=	"	"	*86	"	"	490	=	"	"	1218
"	"	516	=	"	"	654	"	"	492	=	"	"	2271
"	"	518	=	"	"	2317	"	"	517	=	"	"	2558
"	"	522	=	"	"	962	"	"	526	=	"	"	3102
"	"	527	=	"	"	1041	"	"	529	=	"	"	1780
"	"	529 (FB)	=	"	"	685	"	"	534	=	"	"	1441
"	"	534	=	"	"	1044	"	"	536	=	"	"	1788
"	"	536	=	"	"	730	"	"	541	=	"	"	2606
"	"	543	=	"	"	1129	"	"	562	=	"	"	1170
"	"	547	=	"	"	1037	"	"	567	=	"	"	*51
"	"	552	=	"	"	1581	"	"	584	=	"	"	733
"	"	579	=	"	"	840	"	"	590	=	"	"	2412

COMPARATIVE TABLE

"	"	595 (SC)	=	"	"	*83	"	"	635	=	"	"	2596
"	"	609	=	"	"	785	"	"	654	=	"	"	*108
"	"	612	=	"	"	2108	"	"	670	=	"	"	2850
"	"	616	=	"	"	3046	"	"	680	=	"	"	*120
"	"	637	=	"	"	1227	"	"	690	=	"	"	2930
"	"	641	=	"	"	320	"	"	702	=	"	"	2334
"	"	645	=	"	"	2122	"	"	707	=	"	"	3112
"	"	652	=	"	"	2645	"	"	708	=	"	"	*110
"	"	657	=	"	"	2920	2013 (1) MPLJ	51		=	ILR (2013) MP	314	
"	"	663	=	"	"	1521	"	"	99	=	"	"	995
"	"	673	=	"	"	2774	"	"	106	=	"	"	62
"	"	678	=	"	"	1888	"	"	127	=	"	"	316
"	"	708	=	"	"	2385	"	"	144	=	"	"	581
"	"	717	=	"	"	2768	"	"	172	=	"	"	1822
2012 (4) MPLJ		44	=	"	"	2564	"	"	229	=	"	"	74
"	"	104	=	"	"	*20	"	"	238	=	"	"	53
"	"	122	=	"	"	1867	"	"	278	=	"	"	133
"	"	132	=	"	"	1519	"	"	281	=	"	"	345
"	"	142	=	"	"	1613	"	"	288	=	"	"	780
"	"	150	=	"	"	1856	"	"	295	=	"	"	310
"	"	152	=	"	"	*86	"	"	298	=	"	"	111
"	"	166	=	"	"	2613	"	"	300	=	"	"	584
"	"	171	=	"	"	2347	"	"	320	=	"	"	1015
"	"	179	=	"	"	744	"	"	334	=	"	"	*23
"	"	191	=	"	"	2064	"	"	345	=	"	"	1526
"	"	194	=	"	"	2946	"	"	374	=	"	"	564
"	"	202	=	"	"	2780	"	"	380	=	"	"	1312
"	"	208	=	"	"	2174	"	"	390	=	"	"	*18
"	"	212	=	"	"	2091	"	"	396	=	"	"	572
"	"	222	=	"	"	2466	"	"	404	=	"	"	114
"	"	251	=	"	"	1859	"	"	412	=	"	"	1842
"	"	257	=	"	"	2416	"	"	423	=	"	"	2108
"	"	323	=	"	"	*112	"	"	428	=	"	"	2338
"	"	331	=	"	"	1885	"	"	439	=	"	"	560
"	"	334	=	"	"	1875	"	"	453	=	"	"	*7
"	"	350	=	"	"	2399	"	"	466	=	"	"	688
"	"	363	=	"	"	1922	"	"	472	=	"	"	477
"	"	385	=	"	"	2148	"	"	487	=	"	"	672
"	"	393	=	"	"	2322	"	"	498	=	"	"	299
"	"	399	=	"	"	2128	"	"	503	=	"	"	2977
"	"	412	=	"	"	2469	"	"	511	=	"	"	486
"	"	415	=	"	"	2395	"	"	544	=	"	"	421
"	"	427	=	"	"	2619	"	"	546	=	"	"	2548
"	"	429	=	"	"	*119	"	"	568	=	"	"	802
"	"	439	=	"	"	1616	"	"	593	=	"	"	785
"	"	441	=	"	"	3054	"	"	604	=	"	"	2518
"	"	446	=	"	"	*92	"	"	609	=	"	"	605
"	"	479	=	"	"	2425	"	"	612	=	"	"	1546
"	"	537	=	"	"	2847	"	"	625	=	"	"	791
"	"	549	=	"	"	2956	"	"	630	=	"	"	1088
"	"	615	=	"	"	2300	"	"	634	=	"	"	813
"	"	617	=	"	"	1454	"	"	643	=	"	"	696
"	"	622	=	"	"	2692	"	"	649	=	"	"	2510

COMPARATIVE TABLE

"	"	652	=	"	"	1854	"	"	62	=	"	"	*21
"	"	662	=	"	"	1489	"	"	74	=	"	"	762
"	"	683	=	"	"	424	"	"	94	=	"	"	2552
"	"	694	=	"	"	820	"	"	106	=	"	"	2579
"	"	699	=	"	"	1294	"	"	114	=	"	"	1406
"	"	709	=	"	"	2544	"	"	126	=	"	"	*28
"	"	712	=	"	"	1319	"	"	135	=	"	"	1569
"	"	718	=	"	"	2526	"	"	146	=	"	"	1521
2013 (2) MPLJ	55	=	"	"	1589	"	"	160	=	"	"	2354	
"	"	89	=	"	"	2530	"	"	172	=	"	"	1582
"	"	100	=	"	"	1399	"	"	184	=	"	"	597
"	"	110	=	"	"	*17	"	"	207	=	"	"	1022
"	"	123	=	"	"	2154	"	"	237	=	"	"	2360
"	"	157	=	"	"	1092	"	"	244	=	"	"	367
"	"	170	=	"	"	2068	"	"	247	=	"	"	2569
"	"	185	=	"	"	1043	"	"	255	=	"	"	1930
"	"	206	=	"	"	1357	"	"	258	=	"	"	619
"	"	212	=	"	"	1553	"	"	277	=	"	"	1478
"	"	220	=	"	"	1645	"	"	281	=	"	"	1934
"	"	226	=	"	"	1304	"	"	363	=	"	"	984
"	"	280	=	"	"	609	"	"	372	=	"	"	1466
"	"	289	=	"	"	*24	"	"	378	=	"	"	542
"	"	293	=	"	"	2731	"	"	391	=	"	"	2395
"	"	306	=	"	"	877	"	"	410	=	"	"	2800
"	"	323	=	"	"	*22	"	"	431	=	"	"	2720
"	"	328	=	"	"	1639	"	"	434 (FB)	=	"	"	1279
"	"	345	=	"	"	1027	"	"	487	=	"	"	2386
"	"	359	=	"	"	827	"	"	490	=	"	"	2377
"	"	371	=	"	"	1193	"	"	497	=	"	"	2589
"	"	376	=	"	"	*25	"	"	540	=	"	"	1671
"	"	379	=	"	"	635	"	"	561	=	"	"	1422
"	"	390	=	"	"	*16	"	"	619	=	"	"	1122
"	"	402	=	"	"	*15	"	"	640	=	"	"	1072
"	"	407	=	"	"	1512	"	"	650	=	"	"	*29
"	"	419	=	"	"	837	"	"	674	=	"	"	*38
"	"	437	=	"	"	*34	"	"	688	=	"	"	*32
"	"	442	=	"	"	538	"	"	700	=	"	"	1656
"	"	445	=	"	"	138	"	"	716	=	"	"	2389
"	"	447	=	"	"	1793	2013 (4) MPLJ	35	=	"	"	1907	
"	"	460	=	"	"	2277	"	"	39	=	"	"	2670
"	"	508	=	"	"	80	"	"	42	=	"	"	*42
"	"	573	=	"	"	1339	"	"	68	=	"	"	*33
"	"	583	=	"	"	868	"	"	101	=	"	"	1065
"	"	587	=	"	"	249	"	"	111	=	"	"	2904
"	"	595	=	"	"	1561	"	"	135	=	"	"	2680
"	"	646	=	"	"	1137	"	"	167	=	"	"	2183
"	"	664	=	"	"	613	"	"	185	=	"	"	1913
"	"	669	=	"	"	2850	"	"	206	=	"	"	1578
"	"	699	=	"	"	2660	"	"	403	=	"	"	2247
"	"	702	=	"	"	1394	"	"	418	=	"	"	2366
2013 (3) MPLJ	16	=	"	"	552	"	"	480	=	"	"	2137	
"	"	19	=	"	"	363	"	"	525	=	"	"	2813
"	"	33	=	"	"	1474	"	"	533	=	"	"	2513

COMPARATIVE TABLE

"	"	578	=	"	"	2917	"	"	133	=	"	"	1034
"	"	586 (SC)	=	"	"	1245	"	"	137	=	"	"	1629
"	"	634	=	"	"	1953	"	"	147	=	"	"	1027
"	"	679	=	"	"	2887	"	"	149	=	"	"	712
"	"	701	=	"	"	2832	"	"	174	=	"	"	1346
2014 (1) MPLJ		94	=	ILR (2014) MP 327			"	"	190	=	"	"	1095
"	"	198	=	"	"	1270	"	"	193	=	"	"	2085
"	"	203	=	"	"	424	"	"	211	=	"	"	1339
"	"	218	=	"	"	1743	"	"	234	=	"	"	974
"	"	348 (FB)	=	"	"	1698	"	"	252	=	"	"	1483
"	"	363	=	"	"	214	"	"	256	=	"	"	*10
"	"	455	=	"	"	2149	"	"	268	=	"	"	985
"	"	514	=	"	"	3183	"	"	283	=	"	"	388
"	"	573	=	"	"	993	"	"	334	=	"	"	1293
"	"	620	=	"	"	2792	"	"	356	=	"	"	2509
"	"	630	=	"	"	2806	"	"	415	=	"	"	695
"	"	680	=	"	"	1879	"	"	418	=	"	"	2837
"	"	710	=	"	"	184	"	"	433	=	"	"	3116
2014 (2) MPLJ		17	=	"	"	2789	"	"	546	=	"	"	3122
"	"	43	=	"	"	*5	"	"	552	=	"	"	2353
"	"	48	=	"	"	380	"	"	561	=	"	"	1296
"	"	59	=	"	"	1756	"	"	574	=	"	"	1679
"	"	82	=	"	"	375	"	"	593	=	"	"	2341
"	"	84	=	"	"	371	"	"	612	=	"	"	2348
"	"	86	=	"	"	1831	"	"	618	=	"	"	2338
"	"	95	=	"	"	1838	"	"	634	=	"	"	3020
"	"	116	=	"	"	1330	"	"	670	=	"	"	1020
"	"	126	=	"	"	105	"	"	675	=	"	"	*15
"	"	137	=	"	"	2466	"	"	709	=	"	"	1702
"	"	168	=	"	"	2763	"	"	717	=	"	"	1753
"	"	184	=	"	"	1771	2014 (4) MPLJ	91		=	"	"	2091
"	"	239	=	"	"	13	"	"	109	=	"	"	2279
"	"	286	=	"	"	481	"	"	177	=	"	"	2271
"	"	387	=	"	"	3114	"	"	184	=	"	"	2096
"	"	395	=	"	"	819	"	"	355	=	"	"	2002
"	"	407	=	"	"	1073	"	"	369	=	"	"	341
"	"	411	=	"	"	733	"	"	510	=	"	"	3146
"	"	429	=	"	"	69	"	"	573	=	"	"	2106
"	"	436	=	"	"	100	"	"	610	=	"	"	2174
"	"	455	=	"	"	73	2015 (1) MPLJ	8		=	ILR 2015 MP 641		
"	"	459	=	"	"	108	"	"	78	=	"	"	*12
"	"	464	=	"	"	384	"	"	121	=	"	"	1704
"	"	466	=	"	"	2865	"	"	138	=	"	"	2579
"	"	524	=	"	"	1531	"	"	153	=	"	"	26
"	"	530	=	"	"	1537	"	"	290	=	"	"	1867
"	"	586	=	"	"	2076	"	"	304	=	"	"	*15
"	"	610	=	"	"	2840	"	"	379	=	"	"	758
"	"	611	=	"	"	8	"	"	389	=	"	"	1204
2014 (3) MPLJ		21	=	"	"	1961	"	"	399	=	"	"	964
"	"	47	=	"	"	716	"	"	428	=	"	"	376
"	"	51	=	"	"	392	"	"	430	=	"	"	406
"	"	117	=	"	"	1031	"	"	436	=	"	"	1475
"	"	120	=	"	"	3033	"	"	452	=	"	"	741

COMPARATIVE TABLE

"	"	466	=	"	"	958	"	"	36	=	"	"	2998
"	"	560	=	"	"	1754	"	"	52	=	"	"	143
"	"	579	=	"	"	2712	"	"	134	=	"	"	2505
"	"	593	=	"	"	2726	"	"	178	=	"	"	1808
"	"	596	=	"	"	780	"	"	188	=	"	"	415
"	"	618	=	"	"	*18	"	"	193	=	"	"	1016
"	"	626	=	"	"	139	"	"	301	=	"	"	2640
"	"	630	=	"	"	*8	"	"	309	=	"	"	2487
"	"	652	=	"	"	944	"	"	338	=	"	"	3026
"	"	677	=	"	"	2977	"	"	406 (FB)	=	"	"	3141
"	"	693	=	"	"	*4	"	"	439 (FB)	=	"	"	3157
"	"	719	=	"	"	185	"	"	480	=	"	"	2556
2015 (2) MPLJ	1		=	"	"	1111	"	"	514	=	"	"	3016
"	"	39	=	"	"	754	2011 (1) JLJ	5		=	ILR (2011) MP *12		
"	"	51	=	"	"	1230	"	"	115	=	"	"	*4
"	"	101	=	"	"	638	"	"	146	=	"	"	722
"	"	120	=	"	"	1284	"	"	181	=	"	"	117
"	"	148	=	"	"	1662	"	"	196 (FB)	=	"	"	36
"	"	218	=	"	"	1729	"	"	254 (FB)	=	"	"	586
"	"	285	=	"	"	2402	"	"	270	=	"	"	479
"	"	311	=	"	"	1211	"	"	294	=	"	"	1104
"	"	374	=	"	"	1989	"	"	303	=	"	"	562
"	"	382	=	"	"	1772	"	"	330	=	"	"	*63
"	"	446	=	"	"	2730	"	"	337	=	"	"	*45
"	"	450	=	"	"	2408	"	"	355	=	"	"	*49
"	"	458	=	"	"	2014	2011 (2) JLJ	1 (SC)		=	"	"	1623
"	"	472	=	"	"	3217	"	"	6	=	"	"	1124
"	"	526	=	"	"	3204	"	"	19	=	"	"	*68
"	"	540	=	"	"	*3	"	"	30 (SC)	=	"	"	1433
"	"	650	=	"	"	1495	"	"	47	=	"	"	1068
"	"	673	=	"	"	1766	"	"	60	=	"	"	*69
"	"	686	=	"	"	1029	"	"	71	=	"	"	1441
"	"	694	=	"	"	2462	"	"	80 (SC)	=	"	"	1119
"	"	702	=	"	"	1502	"	"	84	=	"	"	*104
2015 (3) MPLJ	65		=	"	"	1311	"	"	94 (FB)	=	"	"	1807
"	"	83	=	"	"	2456	"	"	119	=	"	"	1355
"	"	95	=	"	"	2597	"	"	138 (FB)	=	"	"	1637
"	"	130	=	"	"	2607	"	"	178	=	"	"	1371
"	"	145	=	"	"	2636	"	"	193	=	"	"	1211
"	"	172	=	"	"	2075	"	"	212	=	"	"	*70
"	"	213	=	"	"	2168	"	"	234	=	"	"	*102
"	"	226	=	"	"	2084	"	"	245	=	"	"	*116
"	"	280	=	"	"	2387	"	"	254	=	"	"	*118
"	"	356	=	"	"	2845	"	"	264	=	"	"	*79
"	"	459	=	"	"	2927	"	"	294	=	"	"	1768
"	"	463	=	"	"	2745	"	"	375	=	"	"	*125
"	"	469	=	"	"	379	"	"	413	=	"	"	*103
"	"	485	=	"	"	2533	"	"	432	=	"	"	*95
"	"	590	=	"	"	3395	2012 (1) JLJ	1		=	ILR (2012) MP 1		
"	"	611	=	"	"	2107	"	"	18	=	"	"	962
"	"	657	=	"	"	2088	"	"	145	=	"	"	837
"	"	673	=	"	"	2921	"	"	179 (FB)	=	"	"	691
2015 (4) MPLJ	27		=	"	"	2914	"	"	187	=	"	"	*43

COMPARATIVE TABLE

"	"	232	=	"	"	237	"	"	339	=	"	"	1169
"	"	256	=	"	"	*13	"	"	379	=	"	"	1466
"	"	285	=	"	"	951	"	"	440	=	"	"	827
"	"	307	=	"	"	*10	2013 (3) JLJ	1	=	"	"	2503	
"	"	322	=	"	"	*25	"	"	7	=	"	"	2887
"	"	357	=	"	"	*26	"	"	31	=	"	"	2231
"	"	421	=	"	"	1434	"	"	44	=	"	"	2063
2012 (2) JLJ	20 (FB)	=	"	"	685	"	"	49	=	"	"	1934	
"	"	25	=	"	"	*29	"	"	55	=	"	"	*29
"	"	38	=	"	"	1321	"	"	92	=	"	"*	28
"	"	115	=	"	"	*78	"	"	103	=	"	"	*19
"	"	128 (SC)	=	"	"	*47	"	"	109	=	"	"	2579
"	"	153	=	"	"	811	"	"	127	=	"	"	1279
"	"	169	=	"	"	1376	"	"	175	=	"	"	1265
"	"	181 (SC)	=	"	"	1501	"	"	235	=	"	"	1793
"	"	189	=	"	"	*28	"	"	274	=	"	"	2291
"	"	234	=	"	"	1950	"	"	279	=	"	"	1656
"	"	272	=	"	"	*69	"	"	290	=	"	"	2247
"	"	296 (SC)	=	"	"	*38	"	"	358	=	"	"	2806
"	"	307	=	"	"	1134	"	"	390	=	"	"	1671
"	"	321	=	"	"	1186	2014 (1) JLJ	92 (FB)	=	ILR (2014) MP 1698			
"	"	392	=	"	"	3046	"	"	140	=	"	"	1339
"	"	410 (SC)	=	"	"	*42	"	"	246	=	"	"	1979
"	"	421	=	"	"	424	"	"	301 (SC)	=	"	"	1694
2012 (3) JLJ	58	=	"	"	2322	"	"	365 (SC)	=	"	"	1687	
"	"	72 (SC)	=	"	"	*93	2014 (2) JLJ	25	=	"	"	858	
"	"	113	=	"	"	*53	"	"	69	=	"	"	13
"	"	125 (SC)	=	"	"	2085	"	"	90 (SC)	=	"	"	3077
"	"	130	=	"	"	*96	"	"	168	=	"	"	733
"	"	170 (SC)	=	"	"	*83	"	"	233	=	"	"	214
"	"	245 (SC)	=	"	"	*103	"	"	341	=	"	"	1015
"	"	313	=	"	"	*73	"	"	397	=	"	"	1355
"	"	323	=	"	"	1724	"	"	434	=	"	"	851
"	"	363	=	"	"	2660	"	"	439	=	"	"	1296
"	"	396	=	"	"	*95	"	"	444	=	"	"	3303
2013 (1) JLJ	43	=	ILR (2013) MP *8	2014 (3) JLJ	16	=	"	"	1610				
"	"	90	=	"	"	*5	"	"	33	=	"	"	2701
"	"	141	=	"	"	1	"	"	52	=	"	"	2756
"	"	233	=	"	"	477	"	"	58	=	"	"	2353
"	"	355	=	"	"	1092	"	"	91	=	"	"	2749
"	"	429	=	"	"	533	"	"	97	=	"	"	2341
2013 (2) JLJ	15	=	"	"	542	"	"	104	=	"	"	2012	
"	"	23	=	"	"	1854	"	"	130	=	"	"	3231
"	"	67	=	"	"	696	"	"	150	=	"	"	2279
"	"	75	=	"	"	1214	"	"	163	=	"	"	2002
"	"	104	=	"	"	1478	2015 (1) JLJ	27	=	ILR 2015 MP 958			
"	"	138	=	"	"	619	"	"	42	=	"	"	1133
"	"	156	=	"	"	460	"	"	61	=	"	"	964
"	"	185	=	"	"	*15	"	"	79 (SC)	=	"	"	2533
"	"	207 (SC)	=	"	"	741	"	"	88	=	"	"	*15
"	"	219	=	"	"	1027	"	"	100	=	"	"	1395
"	"	275	=	"	"	1177	"	"	113	=	"	"	1905
"	"	293	=	"	"	1561	"	"	134	=	"	"	2752

COMPARATIVE TABLE

"	"	158	=	"	"	1020	"	"	183 (FB)	=	"	"	1637
"	"	202	=	"	"	1284	"	"	199	=	"	"	1613
"	"	241 (SC)	=	"	"	1625	"	"	201	=	"	"	1504
"	"	262	=	"	"	1662	"	"	205	=	"	"	1470
"	"	266	=	"	"	1729	"	"	214	=	"	"	*93
"	"	280	=	"	"	2998	"	"	220	=	"	"	1445
"	"	282 (SC)	=	"	"	1403	"	"	236	=	"	"	*39
"	"	304	=	"	"	1211	"	"	253	=	"	"	2106
"	"	341	=	"	"	2977	"	"	261	=	"	"	*102
"	"	358	=	"	"	2377	"	"	268 (SC)	=	"	"	1623
"	"	371	=	"	"	379	"	"	290	=	"	"	*101
"	"	391	=	"	"	2712	"	"	306	=	"	"	*89
"	"	412	=	"	"	501	"	"	345	=	"	"	1859
"	"	421	=	"	"	1912	"	"	349	=	"	"	*76
2015 (2) JLJ		26	=	"	"	2387	"	"	368	=	"	"	1702
"	"	44	=	"	"	1642	"	"	391	=	"	"	1878
"	"	55	=	"	"	*1	"	"	411	=	"	"	1695
"	"	388 (SC)	=	"	"	2551	"	"	SN 2	=	"	"	926
"	"	398	=	"	"	2107	"	"	SN 15	=	"	"	948
"	"	433	=	"	"	1943	"	"	SN 20	=	"	"	2063
"	"	439	=	"	"	2274	2011 (III) MPJR	8	=	"	"	1226	
2015 (3) JLJ		76 (SC)	=	"	"	2293	"	"	12	=	"	"	1124
"	"	102 (SC)	=	"	"	2545	"	"	15 (SC)	=	"	"	1119
"	"	131 (SC)	=	"	"	3137	"	"	19	=	"	"	2020
"	"	177	=	"	"	2640	"	"	27	=	"	"	1513
"	"	181 (FB)	=	"	"	3141	"	"	40	=	"	"	606
2011 (I) MPJR		44	=	ILR (2011) MP *23			"	"	42	=	"	"	1988
"	"	57 (DB)	=	"	"	780	"	"	53	=	"	"	621
"	"	104	=	"	"	*47	"	"	59	=	"	"	2734
"	"	112	=	"	"	392	"	"	63	=	"	"	*125
"	"	114	=	"	"	284	"	"	100	=	"	"	2468
"	"	124	=	"	"	951	"	"	107	=	"	"	*112
"	"	138	=	"	"	1171	"	"	112	=	"	"	*111
"	"	148	=	"	"	1475	"	"	122	=	"	"	2277
"	"	152	=	"	"	*88	"	"	125	=	"	"	2591
"	"	165	=	"	"	*7	"	"	133	=	"	"	1947
"	"	210	=	"	"	819	"	"	138	=	"	"	2119
"	"	250	=	"	"	572	"	"	148	=	"	"	2811
"	"	265	=	"	"	714	"	"	156 (SC)	=	"	"	1433
"	"	269	=	"	"	1323	"	"	160	=	"	"	2410
"	"	272	=	"	"	*58	"	"	178 (SC)	=	"	"	*153
"	"	276	=	"	"	1085	"	"	251	=	"	"	*118
"	"	298	=	"	"	*36	"	"	258	=	"	"	2354
"	"	316	=	"	"	*45	"	"	281	=	"	"	1231
"	"	SN 10	=	"	"	969	"	"	286	=	"	"	2322
"	"	SN 11	=	"	"	*49	"	"	288	=	"	"	2753
2011 (II) MPJR		1 (SC)	=	"	"	*133	"	"	292	=	"	"	*140
"	"	35	=	"	"	*8	"	"	301 (SC)	=	"	"	2665
"	"	90	=	"	"	300	"	"	380	=	"	"	*35
"	"	135	=	"	"	1089	"	"	SN 7	=	"	"	*121
"	"	143	=	"	"	1867	"	"	SN 12	=	"	"	2743
"	"	155	=	"	"	1355	"	"	SN 13	=	"	"	2191
"	"	160	=	"	"	1387	"	"		=	"	"	

COMPARATIVE TABLE

2012 (I) MPJR	24	=	ILR (2012) MP 951	"	"	232	=	"	"	*26
"	"		1119	"	"	237	=	"	"	1451
"	"		1339	"	"	248 (SC)	=	"	"	*47
"	"		956	"	"	289	=	"	"	308
"	"		136	"	"	296	=	"	"	744
"	"		*30	"	"	303	=	"	"	785
"	"		519	"	"	319 (FB)	=	"	"	685
"	"		1262	"	"	324	=	"	"	702
"	"		811	"	"	330 (FB)	=	"	"	691
"	"		796	"	"	350	=	"	"	1233
"	"		*84	"	"	357	=	"	"	1125
"	"		*3	2012 (III) MPJR	1 (SC)	=	"	"	*83	
"	"		443	"	"	24	=	"	"	131
"	"		382	"	"	32 (SC)	=	"	"	*93
"	"		*5	"	"	56	=	"	"	1859
"	"		252	"	"	63	=	"	"	2113
"	"		*9	"	"	99	=	"	"	1629
"	"		*75	"	"	124	=	"	"	1381
"	"		840	"	"	134	=	"	"	*106
"	"		942	"	"	142	=	"	"	2108
"	"		632	"	"	147	=	"	"	1175
"	"		*1	"	"	152	=	"	"	1619
"	"		1935	"	"	157	=	"	"	*76
"	"		1081	"	"	163	=	"	"	2385
"	"		464	"	"	181	=	"	"	*105
"	"		710	"	"	190	=	"	"	1221
"	"		1014	"	"	195	=	"	"	30
2012 (II) MPJR	21	=	1466	"	"	212	=	"	"	1732
"	"		157	"	"	214	=	"	"	2170
"	"		968	"	"	220 (SC)	=	"	"	*114
"	"		654	"	"	287 (SC)	=	"	"	*103
"	"		446	"	"	318	=	"	"	*112
"	"		661	"	"	339	=	"	"	2128
"	"		453	"	"	SN 11	=	"	"	2927
"	"		458	2012 (IV) MPJR	1	=	"	"	774	
"	"		365	"	"	10	=	"	"	794
"	"		326	"	"	12	=	"	"	109
"	"		320	"	"	21	=	"	"	730
"	"		378	"	"	23	=	"	"	726
"	"		*17	"	"	31	=	"	"	1917
"	"		1780	"	"	51	=	"	"	*109
"	"		462	"	"	61	=	"	"	1888
"	"		305	"	"	70	=	"	"	*113
"	"		1282	"	"	78	=	"	"	160
"	"		1181	"	"	94	=	"	"	2901
"	"		1156	"	"	96	=	"	"	*96
"	"		1218	"	"	107	=	"	"	2632
"	"		*23	"	"	110	=	"	"	*56
"	"		1812	"	"	197 (SB)	=	"	"	2091
"	"		264	"	"	223	=	"	"	1493
"	"		522	"	"	246	=	"	"	1227
"	"		1186	"	"	257	=	"	"	1257
"	"		1447	"	"	261	=	"	"	1995

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"	"	275	=	"	"	2864	"	"	177	=	"	"	762
"	"	290	=	"	"	*118	"	"	184	=	"	"	1770
"	"	298	=	"	"	2847	"	"	203	=	"	"	*30
"	"	304	=	"	"	1758	"	"	217	=	"	"	*28
"	"	305	=	"	"	1656	"	"	237	=	"	"	2806
"	"	308	=	"	"	1743	"	"	243	=	"	"	2697
"	"	315	=	"	"	2638	"	"	265	=	"	"	1339
"	"	SN 1	=	"	"	2768	"	"	284	=	"	"	2386
"	"	SN 2	=	"	"	*25	"	"	289	=	"	"	2622
"	"	SN 5	=	"	"	2359	"	"	292	=	"	"	1422
"	"	SN 7	=	"	"	1973	"	"	SN 3	=	"	"	713
"	"	SN 10	=	"	"	2353	"	"	SN 4	=	"	"	1619
"	"	SN 11	=	"	"	1724	"	"	SN 5	=	"	"	2617
"	"	SN 13	=	"	"	2481	2013 (IV) MPJR		7	=	"	"	2670
2013 (I) MPJR		22	=	ILR (2013) MP 995			"	"	72	=	"	"	1971
"	"	55	=	"	"	2146	"	"	82	=	"	"	2464
"	"	218	=	"	"	138	"	"	123	=	"	"	2072
"	"	221	=	"	"	497	"	"	182	=	"	"	2320
"	"	233	=	"	"	877	"	"	197	=	"	"	2664
"	"	267	=	"	"	827	"	"	249	=	"	"	*18
"	"	275	=	"	"	*20	"	"	256	=	"	"	2904
"	"	280	=	"	"	837	"	"	283	=	"	"	2813
"	"	SN 5	=	"	"	1934	"	"	303	=	"	"	1685
2013 (II) MPJR		9	=	"	"	984	"	"	SN 15	=	"	"	*42
"	"	12	=	"	"	979	"	"	SN 17	=	"	"	1478
"	"	15	=	"	"	1394	"	"	SN 18	=	"	"	1656
"	"	50	=	"	"	80	2014 (I) MPJR		100	=	ILR (2014) MP 2728		
"	"	68	=	"	"	1512	"	"	110	=	"	"	73
"	"	81	=	"	"	1930	"	"	122	=	"	"	2792
"	"	89	=	"	"	961	"	"	131	=	"	"	1706
"	"	134	=	"	"	605	"	"	162	=	"	"	2722
"	"	140	=	"	"	820	"	"	196	=	"	"	2789
"	"	170	=	"	"	956	"	"	276	=	"	"	785
"	"	189	=	"	"	1574	"	"	315	=	"	"	24
"	"	205	=	"	"	967	"	"	SN 7	=	"	"	690
"	"	253	=	"	"	1332	"	"	SN 12	=	"	"	1128
"	"	259	=	"	"	2254	"	"	SN 24	=	"	"	993
"	"	281	=	"	"	1027	2014 (II) MPJR		65	=	"	"	2841
"	"	SN 1	=	"	"	628	"	"	135	=	"	"	26
"	"	SN 4	=	"	"	1982	"	"	138	=	"	"	455
"	"	SN 20	=	"	"	*19	"	"	169	=	"	"	1838
"	"	SN 21	=	"	"	696	"	"	SN 4	=	"	"	1916
"	"	SN 24	=	"	"	1589	"	"	SN 5	=	"	"	1923
"	"	SN 28	=	"	"	1569	2014 (III) MPJR		62	=	"	"	720
2013 (III) MPJR		1 (SC)	=	"	"	1245	"	"	72	=	"	"	75
"	"	19	=	"	"	946	"	"	92	=	"	"	1396
"	"	24	=	"	"	1870	"	"	127	=	"	"	2080
"	"	37	=	"	"	1883	"	"	146	=	"	"	1355
"	"	97	=	"	"	2395	"	"	172	=	"	"	2085
"	"	113	=	"	"	1304	"	"	178	=	"	"	2514
"	"	153	=	"	"	*32	2014 (IV) MPJR		46	=	"	"	2487
"	"	161	=	"	"	2366	"	"	49	=	"	"	877
"	"	170	=	"	"	*29	"	"	52	=	"	"	1293

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"	"	71	=	"	"	1135	"	"	46	=	"	"	379
"	"	75	=	"	"	1034	"	"	67	=	"	"	139
"	"	105	=	"	"	726	"	"	87	=	"	"	2977
"	"	154	=	"	"	2739	"	"	318	=	"	"	1772
"	"	SN 16	=	"	"	1483	"	"	356	=	"	"	*38
"	"	SN 21	=	"	"	547	"	"	SN 1	=	"	"	1704
2015 (I) MPJR		99	=	ILR 2015 MP 1284			2015 (III) MPJR		66 (SC)	=	"	"	2293
"	"	172 (SC)	=	"	"	807	"	"	78	=	"	"	518
"	"	194	=	"	"	376	"	"	106	=	"	"	2223
"	"	218 (SC)	=	"	"	2533	"	"	180	=	"	"	3275
"	"	284	=	"	"	*12	2015 (IV) MPJR		48 (SC)	=	"	"	1949
"	"	289	=	"	"	1165	"	"	81	=	"	"	2437
"	"	SN 8	=	"	"	908	"	"	217 (SC)	=	"	"	3137
"	"	SN 21	=	"	"	1495	"	"	219 (SC)	=	"	"	2551
"	"	SN 25	=	"	"	1600	"	"	275	=	"	"	3157
2015 (II) MPJR		34	=	"	"	185	"	"	SN 16	=	"	"	2556

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**FIVE YEARS' DIGEST OF
THE INDIAN LAW REPORTS
M.P. SERIES FROM 2011 to 2015**

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

A

AAGANWADI WORKER

– **Appointment** – Respondent No. 6 claimed appointment on the basis of select list prepared in the year 2007 which was already acted upon by appointing one candidate on 04.10.2007, who was subsequently removed on 05.05.2010 because of her absence – Authority initiated fresh selection process – Respondent No. 6 took part in selection and remained unsuccessful candidate – Held – Earlier candidate was appointed and joined pursuant to select list of 2007, against which appeal was filed by respondent No. 6 and the same was dismissed – Dismissal order was not called in question – Therefore, the list prepared in the year 2007 became obsolete and was not to be acted upon specially when respondent No. 6 took part in the fresh selection process and remained unsuccessful – Cannot claim benefit of appointment in such illegal manner – Petition allowed : *Arti Upadhyaya Vs. State of M.P., I.L.R. (2015) M.P. 321*

**ACADEMY OF ADMINISTRATION SERVICES (GAZETTED)
RECRUITMENT RULES, M.P. 1997**

– **Rule 15** – See – Shaskiya Sevak (Adhivarshiki Ayu) Adhinyam, M.P., 1967, Fundamental Rule 56 : *Pratibha Rajgopal (Dr.) Vs. State of M.P., I.L.R. (2011) M.P. 892*

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

SYNOPSIS

- | | |
|-------------------------|---|
| 1. Exemption | 2. Fixation and Enhancement of Standard Rent |
| 3. Standard Rent | |

1. Exemption

– **Section 3(2)** - Govt. after examining income and object of trust may exempt (from all or any of the provisions of the Act) any accommodation owned by any religious or charitable purposes etc. - The question involved is "Whether in each and every case a registered religious charitable public trust is obliged to prove that its income is being utilized in religious and charitable purpose of the trust ?" - Held - That such a trust is not obliged to prove : *Scindia Devasthan Registered Charitable Trust Vs. Praveen Kumar Nigam, I.L.R. (2013) M.P. 2887 (DB)*

2. Fixation and Enhancement of Standard Rent

– **Section 9** - Enhancement of Standard Rent - Section 7 of the Act, does not fix but only elaborates the meaning of "standard rent" and does not deprive the Rent Controlling Authority of the discretion, power and authority to determine a reasonable rent as standard rent of an accommodation - Standard rent once fixed can be increased on an application being filed by the landlord or tenant, as the case may be u/s 9 of the Act : *Santosh Kumar Vs. Purushottam Soni, I.L.R. (2013) M.P. 635*

– **Section 10** – Fixation of Standard Rent – Maintainability – Suit for eviction decreed against respondent on the ground of arrears of rent – In appeal both the parties agreed to payment of rent as directed by trial court – Application u/s 10 of Act, 1961 during the pendency of appeal is not maintainable before R.C.A. – Appeal allowed : *Kamal Kumar Bachani Vs. Dilip Shivhare, I.L.R. (2015) M.P. 2162*

– **Section 10(2) & 10(4)** - Reasonable Rent - Reasonable rent determined by the Rent Controlling Authority u/s 10 is not limited, fixed or confined to the meaning of the words 'standard rent' nor is it fixed for perpetuity - Can be sought to be increased as and when such a request is made in accordance with the provisions of the Act : *Santosh Kumar Vs. Purushottam Soni, I.L.R. (2013) M.P. 635*

– **Section 10(4)** – Execution of order fixing standard rent – Civil suit is only remedy to recover rent fixed by R.C.A. – Application under Section 10(4) of Act, 1961 do not empower the R.C.A to execute its order fixing standard rent – Application not maintainable : *Triveni Bai (Smt.) Vs. Smt. Vimla Devi, I.L.R. (2011) M.P. 1387*

3. Standard Rent

– **Section 7** - 'Standard Rent' - Meaning of 'standard rent' mentioned in Section 7(3) of the Act, is dependent upon the annual rent determined under the municipal assessment which is revised from time to time under the municipal laws : *Santosh Kumar Vs. Purushottam Soni, I.L.R. (2013) M.P. 635*

– **Section 7, 8, 9 & 10** - 'Standard Rent' - Is determined under the municipal assessment, which is not static or stagnant and is subject to periodical reassessment and enhancement : *Santosh Kumar Vs. Purushottam Soni, I.L.R. (2013) M.P. 635*

SYNOPSIS: Section 12

Suit for Eviction

– **Section 12** – Attornment of Tenancy – Plaintiff purchased the property and defendant was already in possession as a tenant – Notice was served upon defendant clearly mentioning that plaintiff has purchased the property – Defendant has admitted the title of plaintiff in his written statement – Appeal dismissed : *Buddhiprakash Sharma Vs. Sanjeev Jain, I.L.R. (2015) M.P. 998*

– **Section 12** – Decree for eviction – In the lack of proof of relationship as landlord and tenant, on the strength of the title, the decree for eviction could be passed in favour of landlord : *Sabir Mohd. Vs. Maganlal, I.L.R. (2011) M.P. 1243*

– **Section 12** – Destruction of suit premises – Decree of eviction passed against appellant – Suit house collapsed during the pendency of the appeal – House in question was leased out and not the land – Therefore, no cause of action survives with the collapsing of suit premises – Second Appeal dismissed : *Kishan Lal Vs. Abdul Wahid, I.L.R. (2015) M.P. *10*

– **Section 12** - Eviction - Question of title - Question of title cannot be decided in a suit for eviction - However, it may be gone into incidentally in such a suit for the purpose of deciding relationship of landlord and tenant : *Ramesh Chandra Vs. Kamal Kishore, I.L.R. (2011) M.P. *15*

– **Section 12** – Suit by co-owner – Suit for eviction can be filed by one of the co-owners for eviction on any ground – Not necessary that all joint owners should be joined as plaintiffs – Need of one of the co-owners can be looked into for eviction from suit premises : *Buddhiprakash Sharma Vs. Sanjeev Jain, I.L.R. (2015) M.P. 998*

– **Section 12** – Suit by Public Trust – Suit filed by the Secretary of Public Trust without joining the other trustees – Held – The suit was filed with the consent and approval of the co-trustees – There is nothing on record to indicate any dissent on the part of the trustee who has not signed the resolution – Mere absence of signature of one of the trustees out of ten would not render the suit unmaintainable : *Ramshankar Vs. Guru Singh Sabha, I.L.R. (2014) M.P. 1541*

– **Section 12** – Suit by Public Trust – Whether Plaintiff was required to plead and prove grounds enumerated u/s 12 of Accommodation Control Act, M.P. as it was not

automatically exempted on being a religious Public Trust – Held – No objection or pleadings regarding non utilization of the income for the purpose of the trust – Defendants did not raise any plea that the plaintiff is not entitled for the benefit of exemption notification – No legal infirmity in the impugned judgment and decree – Substantial questions as raised do not arise : *Ramshankar Vs. Guru Singh Sabha, I.L.R. (2014) M.P. 1541*

– **Section 12** - Suit for eviction - Maintainability - Father of appellants was owner of the suit premises which was purchased by respondent in auction through Court - Earlier a suit for eviction was filed against father of appellants who died during the pendency of the earlier suit - All eight legal heirs were substituted in earlier suit - In subsequent suit all the legal heirs were not made party, although they are living separately in the suit accommodation in different different portions - Suit was suffering from the defect of non-joinder of necessary party : *Madan Vs. Shantilal, I.L.R. (2011) M.P. *29*

– **Section 12** - Suit for eviction - Nature of defences available to tenant - Defences available to tenant are of twin in nature (i) the defence recognizes by common law and (ii) defences available under Act, 1961 - Defence of non-availability of landlord-tenant relationship and plaintiff is not the owner of the property is recognized by common law and on establishing the aforesaid his right cannot be taken away - However, in the case of second defence on raising the dispute under Section 13(3), the Court is required to decide it at an earlier stage and the tenant is bound to deposit the rent : *Subhash Jaiswal Vs. Triloki Nath Kakkad, I.L.R. (2013) M.P. *7*

– **Section 12** - Suit for eviction - Partition - Appellant inducted as tenant by father of respondent - Respondent/Plaintiff filed suit for eviction on the ground of Section 12(1)(a) & (f) with a claim that suit shop has fallen to his share in family partition - Held - It is always open to tenant to show that partition was not bona fide and was a sham transaction to overcome rigours of rent control laws : *Mohanlal Vs. Subhash, I.L.R. (2011) M.P. 159*

– **Section 12** - Suit for eviction - Partition - There is no right in the tenant to prevent the joint owners or co-lessors from partitioning the tenanted accommodation among themselves - It is the exclusive right of lessor that whether the tenanted premises shall be retained jointly by all the lessors or they would partition it among themselves - No objection can be raised by tenant particularly when from the very beginning the property was jointly owned by several persons : *Mohanlal Vs. Subhash, I.L.R. (2011) M.P. 159*

SYNOPSIS : Section 12 (1)(a)

- | | |
|---|--|
| 1. Arrears of Rent and Demand Notice | 2. Landlord - Tenant Relationship |
| 3. Premature Suit | 4. Protection against Eviction |
| 5. Substantial Question of Law | |

1. Arrears of Rent and Demand Notice

– **Section 12(1)(a)** – Arrears of rent – Appellant did not deposit the rent while it was known to him that he was the tenant in the disputed accommodation – Decree on the ground of arrears of rent cannot be said to be illegal : *Sabir Mohd. Vs. Maganlal, I.L.R. (2011) M.P. 1243*

– **Section 12(1)(a)** – Arrears of rent – As per lease deed the tenant had to pay 10% increased rent every after two years, w.e.f. 1st April, 1994 onwards – The period of the lease was for five years – No further renewal of the lease deed but the defendant continued in the shop as tenant as per said lease deed – Held – Term of the lease deed shall not cease its effect until changed or renewed : *Agrawal Medical Agencies (M/s.) Vs. Govind Prasad, I.L.R. (2012) M.P. 942*

– **Section 12(1)(a)** – Arrears of rent – Demand notice – Non service of notice on tenant before filing of the suit – Decree u/s 12(1)(a) could not have been passed – Decree u/s 12(1)(a) set aside : *Maksood Ahmad (Rui Wale) Vs. Smt. Sharifunnisha, I.L.R. (2015) M.P. 1325*

– **Section 12(1)(a)** - Arrears of rent - Tenant admitted that he is in arrears of rent for the last 3 years of filing suit for eviction - Tenant did not tender the arrears of rent even after the notice was sent - Ground of eviction made out : *Sharda Singhania (Smt.) Vs. Bharat Petroleum Corporation Ltd., I.L.R. (2012) M.P. 2780*

– **Section 12(1)(a)** - Arrears of rent - Tenant already tendered arrears of rent to the landlord which was accepted by him prior to the date of filing of the suit - Tenant not in arrears of rent on the date of filing of the suit - No decree u/s 12(1)(a) of the Act can be granted : *Madan Vs. Shantilal, I.L.R. (2011) M.P. *29*

– **Section 12(1)(a)**, Evidence Act (1 of 1872), Section 114, General Clauses Act (10 of 1897), Section 27 – Demand Notice – Service – Notice was returned back with the note of postman that despite information defendant has not received the notice – Defendant has not disputed the address, as given in the notice – Held – The service of the notice sent on the correct address by registered post may be presumed to be effective

service of the said notice – Trial Court erred in law in refusing the decree of eviction on account of non-service of demand notice : *Agrawal Medical Agencies (M/s.) Vs. Govind Prasad, I.L.R. (2012) M.P. 942*

2. Landlord - Tenant Relationship

– **Section 12(1)(a)** – Suit for eviction – Landlord-tenant relationship – Held – Respondents/Plaintiffs could not establish the relationship of landlord and tenant between them and the appellant, the provisions of Section 12 of the M.P. Accommodation Control Act would not be attracted at all – Tenancy suit was not maintainable – Decree of eviction cannot be sustained – Appeal allowed : *Raju Kushwaha Vs. Smt. Namita Gupta, I.L.R. (2015) M.P. *24*

– **Section 12(1)(a) & 12(3)** – Protection to tenant – Civil suit for eviction on the ground of arrears of rent was dismissed after extending the benefit of protection under Section 12(3) – Tenant again committed default in payment of rent – Second Civil suit filed for eviction on the ground of arrears of rent – Held – Benefit of protection under Section 12(3) of the Act can be extended only for once – Decree on the ground of arrears of rent was rightly granted by Trial Court : *Shri Pratap Raghav Ji Bhagwan Vs. Smt. Krishna, I.L.R. (2012) M.P. 507*

3. Premature Suit

– **Section 12(1)(a), (f) & (o)**, and Civil Procedure Code (5 of 1908), Order 7, Rule 11 - Suit for eviction filed before expiry of period of 2 months from the date of service of notice - Plaint to the extent of Section 12(1)(a) can be refused but relief can be granted under Section 12(1)(f) and (o) - Application for rejection of plaint was rightly rejected : *Reena Khatuja (Smt.) Vs. Murarilal Sharma, I.L.R. (2012) M.P. 2856*

4. Protection against Eviction

– **Section 12(3) & 13(1)** – Protection – Protection of Section 12(3) is available only when the provisions of Section 13(1) of the Act are complied with – In case of three consecutive defaults, the protection is automatically gone and the proceedings can be done under Section 13(6) or under Section 12(1)(a) of Act : *Shri Pratap Raghav Ji Bhagwan Vs. Smt. Krishna, I.L.R. (2012) M.P. 507*

– **Section 12(3), 13(1) & 12(1)(a)** - Arrears of rent - Suit was filed on the ground that defendant is in arrears of rent for the period from April-May, 1980 - Notice (Exhibit P/16) was served on defendant on 14.08.1980 - Suit filed for eviction on 04.03.1985 and summons were served on the defendant on 03.04.1985 - No material on record to show that defendant within two months from the date of receipt of summons deposited the arrears of rent - Defendant has also not complied with provisions of Section 13(1) of the

Act, he is not entitled to the benefit of Section 12(3) of the Act : *Saroj Lalwani (Smt.) Vs. Shri Kishan Lal, I.L.R. (2014) M.P. 197*

5. Substantial Question of Law

– **Section 12(1)(a) & 12(1)(e), Civil Procedure Code (5 of 1908), Section 100** – Substantial question of law – Decree of eviction passed u/s 12(1)(a) and 12(1)(e) – Admission of appeal – Appeal could not be admitted for final hearing even on establishing that decree on ground of Section 12(1)(a) of the Act is not sustainable because the decree has been passed on the ground of section 12(1)(e) of the Act also – Appeal dismissed : *Maksood Ahmad (Rui Wale) Vs. Smt. Sharifunnisha, I.L.R. (2015) M.P. 1325*

SYNOPSIS : Section 12 (1)(b)

- | | |
|-----------------------------|---------------------------------|
| 1. Framing of Issues | 2. Sub-Letting – Grounds |
|-----------------------------|---------------------------------|

1. Framing of Issues

– **Section 12(1)(b)**, Civil Procedure Code (5 of 1908), Section 100 - Sub-letting - No issue was framed relating sub-letting - Trial Court decreed the eviction suit on the ground of sub-letting - First Appellate Court affirmed it - Held - No issue was framed relating to sublet u/s 12(1)(b) of the Act but since the said ground was pleaded and the parties had understood the said ground and had adduced evidence in this regard, therefore, considering the same, the courts below have committed no error in passing the decree u/s 12(1)(b) of the Act : *Tejkaran Vs. Meeradevi, I.L.R. (2013) M.P. 2920*

2. Sub-Letting – Grounds

– **Section 12(1)(b)** – Sub-letting – Appellant no. 1 (Tenant) shifting his business – Possession handed over to appellant no. 2 – Held – Possession of appellant no. 2 neither authorized by erstwhile owner nor by the plaintiff (Landlord), so decree u/s 12(1)(b) of the Act also affirmed : *Saheed Khan (Since Dead) Through L.Rs. Vs. Shareef Hussain, I.L.R. (2015) M.P. 1794*

SYNOPSIS : Section 12 (1)(c)

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| 1. Denial of Title | 2. Principle of Estoppel |
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1. Denial of Title

– **Section 12(1)(c)** – Denial of title – Agreement to sell between erstwhile owner and appellant no. 1 (Tenant) – Subsequently, erstwhile owner sold the suit shop to the

plaintiff (Landlord) – Held – Mere execution of agreement to sell does not confer title on tenant – Judgment & decree of both the Courts below u/s 12(1)(c) of the Act affirmed – Appeal dismissed : *Saheed Khan (Since Dead) Through L.Rs. Vs. Shareef Hussain, I.L.R. (2015) M.P. 1794*

– **Section 12(1)(c)** - Denial of Title - Defendant never renounced his character as tenant and has nowhere setup title of the premises in him or in a third party and was bonafidely calling upon the plaintiff to prove his ownership without disowning his character as tenant - This act of tenant was not in any way injurious to landlord/plaintiff and he had not done any act which may likely to affect adversely and substantially to the interest of the plaintiff : *Dayal Das (Dead) Through LRs. Vs. Rajendra Prasad Gautam, I.L.R. (2012) M.P. *86*

– **Section 12(1)(c)** - Denial of title - In case of disclaimer merely denial of title by the defendant is not sufficient but the defendant ought to have set up title in other also - Grant of decree under Section 12(1)(c) of Act, 1961 cannot be upheld : *Subhash Jaiswal Vs. Triloki Nath Kakkad, I.L.R. (2013) M.P. *7*

– **Section 12(1)(c)** – Denial of title – In earlier litigation, it was held that defendant/respondent is tenant – Subsequently, defendant claims to have entered into an agreement to purchase same property with the brother of plaintiff – Defendant/tenant failed to prove such agreement – Decree was rightly granted u/s 12(1)(c) : *Sunil Kumar Vs. Dilip, I.L.R. (2015) M.P. 2965*

– **Section 12(1)(c)** – Denial of Title – Tenant/Appellant was inducted by Plaintiff/Respondent – Appellant was continuously paying rent to Respondent – In written statement, the appellant admitted that respondent is the owner, however, by way of amendment he challenged the title of the respondent by alleging that the Will/Gift deed on the basis of which the respondent is claiming his title is not genuine – As the appellant had denied the title of the respondent, therefore, the Appellate Court rightly granted decree under Section 12(1)(c) : *Rajendra Prasad Rajoriya Vs. Shivcharan Malviya (Dead) Through L.Rs. Smt. Vimla Bai, I.L.R. (2015) M.P. 3026*

2. Principle of Estoppel

– **Section 12(1)(c)** – Derivative title – Tenant not inducted by landlord who claims the derivative title – Principle of Estoppel would not apply against tenant : *Sunil Kumar Vs. Dilip, I.L.R. (2015) M.P. 2965*

– **Section 12(1)(c)**, Evidence Act, 1872, Section 116 – Challenge as to title of landlord – Defendant after admitting the relationship as tenant is estopped from challenging the title of the landlord : *Sabir Mohd. Vs. Maganlal, I.L.R. (2011) M.P. 1243*

– **Section 12(1)(c)** and Evidence Act (1 of 1872), Section 116 – Estoppel – In earlier suit of eviction between the parties, tenant-landlord relationship proved – Said finding was not challenged, merely because the suit was dismissed – Tenant would be bound by such findings and the principle of estoppel would be applicable against the tenant in subsequent suit – Tenant is estopped to deny the title of plaintiff : *Sunil Kumar Vs. Dilip, I.L.R. (2015) M.P. 2965*

SYNOPSIS : Section 12 (1)(e) & (f)

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| 1. Bonafide Requirement – Non-Residential Purpose. | 2. Bonafide Requirement – Residential Purpose. |
| 3. Burden of Proof. | |

1. Bonafide Requirement – Non-Residential Purpose.

– **Section 12(1)(f)** – Bonafide Need – Bonafide Requirement of a firm owned by son and wife of plaintiff – A landlord can claim eviction on the ground of bonafide need of commercial premises if the premises is required by him either for his own business or for the purpose of business by any of his major son or unmarried daughter or any other member of his family for whose benefit the premises is held : *Laxman Das Vs. Purshottam Das, I.L.R. (2012) M.P. 522*

– **Section 12(1)(f)** - Bonafide Need - It is not necessary to plead the nature of business - Not necessary to landlord to prove that he had money to invest or that he has experience to run the business - Appellant entitled for decree of eviction : *Sharda Singhania (Smt.) Vs. Bharat Petroleum Corporation Ltd., I.L.R. (2012) M.P. 2780*

– **Section 12(1)(f)** - Bonafide Requirement - Experience - Even in absence of any experience, the landlord and his family members may be entitled to get the decree on the ground of bonafide requirement for opening new business : *Lakhanlal Gupta Vs. Nemchand Jain, I.L.R. (2011) M.P. *27*

– **Section 12(1)(f)** - Bonafide Requirement - In order to obtain decree under Section 12(1)(f), the plaintiff is not only required to prove that he is landlord but also required to prove that he is owner - Plaintiff admitted that his name was never recorded in the revenue records from 1978 to 1996 and was recorded in the names of other persons - Tenant was also inducted by other persons in whose name the property was recorded - As the plaintiff is not found to be the owner of the suit property, therefore, it cannot be said that suit accommodation is needed by him bonafide for his own requirement - Appeal allowed : *Dayal Das (Dead) Through LRs. Vs. Rajendra Prasad Gautam, I.L.R. (2012) M.P. *86*

– **Section 12(1)(f)** – Bonafide Requirement – Plaintiff being owner has a right to run his Advocate's office in the suit premises as per his choice or preference or selection or convenience or favourite place – Cannot be left to be satisfied on the plea of availability and justifiability of alternate accommodation for establishing his office in his residence : *Buddhiprakash Sharma Vs. Sanjeev Jain, I.L.R. (2015) M.P. 998*

– **Section 12(1)(f)** - Bonafide Requirement - Plaintiff has specifically pleaded that she requires suit accommodation as his son who is unemployed wants to open a jewellery shop and has no alternative accommodation - Held - Nothing more is required to be pleaded as to bonafide need - Evidence led by Plaintiff is not in variance but in consonance with the pleadings - Appeal dismissed : *Uday Chand Jain Vs. Smt. Sharda Jain, I.L.R. (2013) M.P. 1142*

– **Section 12(1)(f)** - Bonafide Requirement - Respondent had given another shop to his daughter prior to his retirement who was running the same - Garage in possession of respondent not suitable for opening a shop - Respondent is in need of suit accommodation - Order of eviction rightly passed by R.C.A. - Revision dismissed : *Anil Kumar Singhai (Shri) Vs. Shri Vimal Chand Jain, I.L.R. (2013) M.P. 2471*

– **Section 12(1)(f)**, Civil Procedure Code, 1908, Section 100 - Second Appeal - Substantial question of law - Bonafide requirement - Bonafide requirement based on appreciation of evidence being findings of fact, does not give rise to any substantial question of law : *Lakhanlal Gupta Vs. Nemchand Jain, I.L.R. (2011) M.P. *27*

– **Section 12(1)(f)** – Ground for eviction – A landlord cannot be non-suited on the ground that he has failed to disclose a ground for eviction in notice : *Mohammad Ismail Vs. Sikhandar Azad, I.L.R. (2011) M.P. 992*

– **Section 12(1)(f)** - Inconsistency in legal notice and plaint - Prior notice of alleged necessity of accommodation is not requirement of law - Merely on account of some inconsistencies in notice and pleadings of plaint, the alleged need of landlord could not be discarded : *Lakhanlal Gupta Vs. Nemchand Jain, I.L.R. (2011) M.P. *27*

– **Section 12(1)(f)** - Right of eviction in respect of non-residential accommodation is not restricted to the landlord for his own business - There is a scope for a liberal interpretation of the phrase "his business" so as to include the business of spouse and closely dependent member of the family covered by Section 2(e) of the Act : *Badrilal (Shri) Vs. Smt. Sita Bai (Dead) Through L.Rs. Birdi Chand Joshi, I.L.R. (2011) M.P. 586 (FB)*

2. Bonafide Requirement – Residential Purpose.

– **Section 12(1)(e)** – Bonafide Requirement – Alternative Accommodation – Plaintiff/respondent has already disclosed that he has two houses one in which he is residing and another which has been let out to the appellant/tenant – Appellant has not clarified in his written statement or in his statement in Court with regard to the existence of any other accommodation apart from the two accommodations – Courts below have already recorded concurrent findings of fact in respect of bonafide requirement – No Substantial Question of Law arises for consideration – Appeal dismissed : *Rajendra Prasad Rajoriya Vs. Shivcharan Malviya (Dead) Through L.Rs. Smt. Vimla Bai, I.L.R. (2015) M.P. 3026*

– **Section 12(1)(e)** - Bonafide Requirement - Findings - Findings regarding bona fide requirement are concurrent findings of facts, which cannot be disturbed unless the findings recorded are perverse and based on no evidence : *Madan Vs. Shantilal, I.L.R. (2011) M.P. *29*

– **Section 12(1)(e)** - Bonafide requirement for residential purposes - Landlord claimed that he requires accommodation for tying 16 animals and for residence of servants - Held - Landlord has not mentioned number of members in the family, nor it is pleaded that how much milk is required by him on daily basis - Landlord already having 16 animals but it is not the case of landlord that animals are kept in a rented premises - If the landlord requires the accommodation for running dairy, then requirement is for commercial purposes and is not entitled for decree u/s 12(1)(e) as nature of suit accommodation is residential : *Madan Vs. Shantilal, I.L.R. (2011) M.P. *29*

– **Section 12(1)(e)** – Bonafide requirement for residential purpose – Relationship of landlord and tenant – Tenant not filing written statement and adducing any evidence – Pleadings and evidence of the landlord unrebutted – Trial Court ought to have passed decree u/s 12(1)(e) of the Act on the basis of unrebutted pleadings & evidence – Decree u/s 12(1)(e) of the Act of lower Appellate Court affirmed – Appeal by tenant dismissed : *Maksood Ahmad (Rui Wale) Vs. Smt. Sharifunnisha, I.L.R. (2015) M.P. 1325*

3. Burden of Proof

– **Section 12(1)(f)** – Alternative accommodation – Burden of proof – Plaintiff and his father stating that they do not have any alternative accommodation – The defendant has failed to prove that the plaintiff has any alternative accommodation – Held – The burden of proof shall be on the person who asserts the positive – Courts below erred in placing the burden of proof on the plaintiff and holding that he has no suitable alternative accommodation : *Mohammad Ismail Vs. Sikhandar Azad, I.L.R. (2011) M.P. 992*

SYNOPSIS : Section 12 (1)(h)**Estimate of Re-construction and Funds – Relevancy**

– **Section 12(1)(h) & 12(7)** - No pleading that plaintiff is having a plan or estimate of reconstruction and she is also having necessary funds with her - In absence of such a pleading and further by not proving those ingredients by any documentary evidence like filing of plans and estimates and the bank account etc., it can be held that learned two Courts below have grossly erred in passing the decree of eviction u/s 12(1)(h) of the Act - Appeal allowed : *Santosh Kumar Vs. Smt. Parwati Bai, I.L.R. (2011) M.P. 2818*

SYNOPSIS : Section 12 (1)(i)**1. Availability of Alternative Accommodation****2. Co-relation with Title****1. Availability of Alternative Accommodation**

– **Section 12(1)(i)** – Acquisition of accommodation by tenant – Title – Another suitable house acquired by tenant’s wife having no independent source of income – Tenant shifted to such house – Tenant failed to aver and prove that he was incapacitated on account of any factor from residing in such house recorded in his wife’s name as owner – Tenant loses protection from being evicted under Section 12(1)(i) : *Jagdish Babu Raijaada Vs. Sanval Das Gupta, I.L.R. (2011) M.P. *68*

2. Co-relation with Title

– **Section 12(1)(i)** – Bonafide Requirement – Acquisition of alternative accommodation by tenant – Emphasis is on acquisition of vacant possession of another house, which has no co-relation with title : *Jagdish Babu Raijaada Vs. Sanval Das Gupta, I.L.R. (2011) M.P. *68*

SYNOPSIS : Section 12 (1)(m)**1. Alteration of Suit Property****2. Grant of Time to Tenent****1. Alteration of Suit Property**

– **Section 12(1)(m)** - Alteration of suit property - No evidence that construction raised by appellat/tenant has materially altered the accommodation to the detriment of the landlord's interest and is likely to diminish the value substantially - Landlord not entitled for decree u/s 12(1)(m) : *Madan Vs. Shantilal, I.L.R. (2011) M.P. *29*

2. Grant of Time to Tenent

– **Section 12(1)(m) & 12(10)** - No time given to tenant to restore the accommodation to its original condition or pay landlord such amount of compensation - No decree u/s 12(1)(m) can be passed : *Madan Vs. Shantilal, I.L.R. (2011) M.P. *29*

- – **Section 12(4)** – Period of one year – Plaintiff purchased suit property on 13/09/2008 and filed suit on 05/01/2010 and eviction on the ground of bonafide requirement was added by amendment dated 17/03/2010 – Suit was filed beyond the statutory period of one year : *Buddhiprakash Sharma Vs. Sanjeev Jain, I.L.R. (2015) M.P. 998*

– **Section 12(4) & 12(1)(b), (c), (f)** – Eviction – Petitioner became absolute owner on 01.12.2006 by virtue of relinquishment deed – Suit was filed on 16.06.2007 – As the period of 1 year was not expired after becoming owner – Therefore, suit is barred u/s 12(4) of the Act – Held – Suit property was undivided joint Hindu Family property and because of relinquishment deed dated 01.12.2006 petitioner has become absolute owner – It is not the case that the petitioner has purchased the suit property on 01.12.2006, Section 12(4) is not attracted – Impugned order is set aside – Suit be decided on merits after recording the evidence : *Prem Kumar Vs. Smt. Saroj, I.L.R. (2014) M.P. 1257*

– **Section 12(11)** – Embargo under – Decree passed on the ground under Section 12(1)(o) as well as on the ground under Section 12(1)(a) of the Act – Court was not bound to take note of section 11 or section 12 of the Act for passing the appropriate direction in that regard while decreeing the suit under section 12(1)(o) of the Act : *Kanta Salaria (Smt.) Vs. Prakash Chandra, I.L.R. (2011) M.P. 1524*

SYNOPSIS : Section 13

1. Deposit of Rent

2. Non-deposit of Rent

3. Striking off Defence

1. Deposit of Rent

– **Section 13(2)** – Deposit of rent – Arrears of rent – Tenant wants to defend the case on such grounds also then in such situation, he is bound to deposit the rent as per provision of Section 13(1) of the Act, as directed in the impugned order : *Anil Kumar Gupta Vs. Shiv Charan Gupta, I.L.R. (2014) M.P. 2066*

– **Section 13(3)** – Dispute as to whom the rent is payable – Nature and stage of Enquiry – Should be decided framing specific issue alongwith other issues on pleadings,

after appreciation of material on record by judgment and decree : *Sanjay Kumar Vs. Prem Kumar, I.L.R. (2015) M.P. 2563*

– **Section 13(6)** – Sub-tenant – There is no privity of contract between the landlord and sub-tenant – There is no liability on sub-tenant to deposit the rent – Section 13(1) of Act does not include sub-tenant : *Saqib Khan Vs. Ravindra Suri, I.L.R. (2015) M.P. 1280*

2. Non-deposit of Rent

– **Section 13(6)** - Non deposit of Rent - Striking off Defence - Plaintiff had filed a suit for eviction on earlier occasion and a decree of arrears of rent was granted but decree of eviction was not granted - Defendant did not pay the arrears of rent within two months from the date of receipt of notice or within one month on filing the suit - Trial Court while deciding application under Section 13(6) of the Act, granted one month's time to deposit the arrears of rent - Defendant failed to do so - Trial Court rightly struck off the defence : *Subhash Jaiswal Vs. Triloki Nath Kakkad, I.L.R. (2013) M.P. *7*

– **Section 13(6)** – Pendency of the suit – Neither arrears of rent nor recurring monthly rent deposited by tenant – Defence to defend the case u/s 12(1)(e) of the Act liable to be struck off : *Maksood Ahmad (Rui Wale) Vs. Smt. Sharifunnisha, I.L.R. (2015) M.P. 1325*

3. Striking off Defence

– **Section 13(6)** - Striking off defence - Defendant is required to deposit arrears of rent and also recurring rent in accordance with Section 13(1), although he may have denied landlord tenant relationship - Failing in depositing the rent, the defence is liable to be struck off - Petition allowed : *Ramakant Ratner Vs. Gopal Prasad Sharma, I.L.R. (2013) M.P. 2128*

– **Section 13(6)** – Striking off defence – Petitioner who has challenged the relationship of landlord and tenant in the matter and claiming such possession under his title has a right to defend the suit of eviction under the general law but in view of such pleadings of the written statement, he is not entitled to defend the matter on the ground enumerated u/s 12(1)(a) to 12(1)(p) of the Act : *Anil Kumar Gupta Vs. Shiv Charan Gupta, I.L.R. (2014) M.P. 2066*

– **Section 13(6)** - Striking off defence - Trial Court rejected the application on the ground that tenant has denied himself to be a tenant rather he claims to be a licensee - Defence of the tenant cannot be considered while deciding the application - Trial Court committed patent error in rejecting application - Matter remitted back : *Chhotelal Patwa Vs. Manju Patwa, I.L.R. (2013) M.P. 1868*

• – **Section 15** – Notice Under – Notice does not mention that the applicants are required to appear and to obtain leave of the Rent Controlling Authority to contest the application for eviction on the ground and the default thereof within a period of fifteen days failing which the landlady would be entitled to order of eviction – The notice also does not mention that the applicants are required to move an application before the RCA which is duly supported by an affidavit – Held – The notice has been issued to the tenants in violation of the mandatory provisions of Second Schedule of the Act : *Satyanjay Tripathi Vs. Smt. Banarsi Devi, I.L.R. (2011) M.P. 1392*

– **Section 18(3)** – Right of Re-entry – Decree under Section 12(1)(h) of the Act, 1961 passed with condition of re-entry – Tenant vacated the premises in terms of decree and building was constructed by applicant – Tenant filed application under Section 18(3) of the Act, 1961 as he was not placed in possession – Application allowed by Executing Court – Held – Executing Court cannot go behind the terms of the decree – Tenant entitled to get possession of premises in reconstructed house from applicant – Revision dismissed : *Shri Pratap Raghavji Bhagwan Virajman Mandir Vs. Smt. Krishna, I.L.R. (2011) M.P. 1063*

SYNOPSIS : Section 23-A

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|---|---|
| 1. Application for leave to defend | 2. Bonafide Requirement – Residential / Non-residential purpose. |
| 3. Joint Tenancy | 4. Limited Scope of Landlord |
| 5. Miscellaneous | |

1. Application for leave to defend

– **Section 23-A, 23-C & 23-E(2)** – Eviction order passed on the ground that applicants have not obtained leave of the court to defend as required u/s 23-C of the Act and the objections raised in respect of the maintainability were already decided – Held – Since the applicants have never applied for grant of leave to defend in terms of Section 23-C of the Act they were not to be heard : *Madan Lal Vohra Vs. Smt. Nirmala Dubey, I.L.R. (2014) M.P. 2697*

– **Section 23-A, 23-C & 23-E(2)** – Record of the court was manipulated by inserting the application seeking leave to appeal – No evidence that such application was ever filed – Applicants also tried to mislead this court by placing reliance on such a manipulated document – Such a litigant is not entitled to any relief – Revision is

dismissed with cost of Rs. 10,000/- : *Madan Lal Vohra Vs. Smt. Nirmala Dubey, I.L.R. (2014) M.P. 2697*

2. Bonafide Requirement – Residential/Non-residential purpose.

– **Section 23** - Eviction - Bonafide Requirement - Landlady had sold one shop in the year 2006 - Application for eviction in respect of another shop filed in the year 2010 - Held - Landlady may explore the possibility for remaining life keeping herself busy - If after retirement she had sold one shop and after some time if she wants to get the other shop vacated for keeping her remaining life busy, her ocular evidence cannot be disbelieved - Finding of bonafide requirement appears to be just and reasonable and do not warrant interference : *Kamal Kumar Talreja Vs. Smt. Asha Bhatnagar, I.L.R. (2012) M.P. 3085*

– **Section 23-A** – Application for eviction – Suit premises was admittedly let out for non-residential purposes – Application for eviction on the ground of bonafide requirement for residential purposes not maintainable : *Rashid Ansari Vs. Smt. Surekha, I.L.R. (2014) M.P. *9*

– **Section 23-A** – Bonafide Requirement – RCA reached to the conclusion that after giving due opportunity of hearing case was fully proved that the non-applicant No. 2 bonafidely required the demise premises – Medical certificate of handicapness was also duly proved by the doctor – It cannot be said that eviction decree was illegally passed : *Poonam Kumar Duggal Vs. Indrajeet Singh Duggal, I.L.R. (2014) M.P. 1369*

– **Section 23-A** - Eviction - Bonafide Requirement - Purpose to which accommodation was let out may be vacated for the same purpose on proving bonafide requirement commensurate to purpose of tenancy Accommodation was let out for non-residential purposes - Application was filed seeking eviction on the ground of bonafide requirement for residential purposes - It is also not the case that the accommodation was let out for residential purposes and without his consent, the same is being used wholly or in part for non-residential purposes - Decree for eviction on the ground of bonafide requirement for residential purposes set aside - Landlord may file an application projecting bonafide need for non-residential purposes - Revision allowed : *Ashok Kumar Soni Vs. Kazi Mohammad Ateeque Rahman, I.L.R. (2013) M.P. 688*

– **Section 23-A(b)** - Eviction ordered on the ground of personal bona fide need of Dr. 'R' to open dispensary in the premises - After his death, such need completely eclipsed on account of his death, during the pendency of the present revision - None of the legal heirs came forward expressing bona fide need of any kind and no such application for amendment of pleadings in the application for eviction was submitted before High Court - Held - On account of this subsequent event, the order of eviction cannot be permitted to

be kept alive - Revision petition allowed : *Amritlal Vs. (Dr.) Ravishchandra Pandey (Deceased), I.L.R. (2011) M.P. *135*

3. Joint Tenancy

– **Section 23-A** – If there is a joint tenancy of a family and only one member of family is impleaded as party in the eviction proceedings, the said proceeding cannot be said to be bad in law : *Poonam Kumar Duggal Vs. Indrajeet Singh Duggal, I.L.R. (2014) M.P. 1369*

– **Section 23-A** – See – Civil Procedure Code, 1908, Order 9 Rule 9 : *Poonam Kumar Duggal Vs. Indrajeet Singh Duggal, I.L.R. (2014) M.P. 1369*

4. Limited scope of Landlord

– **Section 23-A & 23-J** – Application based on the bona fide requirement of landlord himself and any other person permitted under Clause (a) or (b) of Section 23-A – Death of landlord will not result into abatement of the proceedings and legal heirs substituted in place of the landlord may continue the proceedings before the Rent Controlling Authority – However, application for eviction on the ground of bona fide requirement of the landlord alone would come to an end on death of the landlord and substitution of the legal heirs may not be permitted : *Leelawatibai (Deceased) Through L.Rs. Mahendra Kumar Vs. Radhakishan (Deceased) Through L.Rs. Smt. Sajjanbai, I.L.R. (2011) M.P. 1068 (DB)*

Section, 23-A & 23-J - Bonafide Requirement - Landlady, a widow having no issue filed an application for eviction on the ground that she requires the suit premises to accommodate her brother so that he can look after her - As it was not the case that her brother requires the accommodation for his residential purposes, therefore, the condition of joint living do not arise - Revision dismissed : *Poonam Meena (Smt.) Vs. Smt. Meera Poddar, I.L.R. (2012) M.P. 1998*

– **Section 23-J** - Landlord - Respondent/Applicant retired from some private organization - Does not fall within the definition of Landlord - Application for eviction before R.C.A.. not maintainable - Respondent is at liberty to approach the Civil Court : *Ramji Sharma (Dr.) Vs. Lalji Sen, I.L.R. (2012) M.P. 2271*

– **Section 23-J** - Landlord - Retired employee of State Bank of Indore - State Bank of Indore is a statutory corporation and a banking Company - Central Govt. has a control over the State Bank of Indore - State Bank of Indore was incorporated by State Bank of Indore (Subsidiary banks) Act, 1959 - Respondent was landlord within the category of Section 23-J : *Anil Kumar Singhai (Shri) Vs. Shri Vimal Chand Jain, I.L.R. (2013) M.P. 2471*

– **Section 23-J(i), (ii)** - Retired employee of Municipal Corporation - Whether Landlord within the meaning of Section 23-J - (Majority View) - Municipal Corporation is an elected body and its object is not to carry any business but to administer a particular area from where its members are elected - Corporation cannot be said to be an association of a number of individuals for the purpose of carrying out any trade or business - Corporation is not a company owned or to be controlled by State Government - Respondent is neither a retired servant of any Government nor a retired servant of a company owned or controlled by the Central or the State Government - Retired employee of Municipal Corporation does not fall within the definition of Landlord under Section 23-J of the Act - Reference answered accordingly : *Gulab Bai (Smt.) Vs. Subhash Chandra, I.L.R. (2013) M.P. 1279 (FB)*

– **Section 23-J(ii)** - Landlord - Retired employee of Municipal Corporation is a landlord. Law laid down by the Single Bench in the case of Mohandas (1994(1) MPLJR 259) stands impliedly overruled in view of the observation of Division Bench (1995 MPLJ 21) : *Ghanshyam Vs. Subhash Chandra, I.L.R. (2011) M.P. 2586*

5. Miscellaneous

– **Section 23-B** – The Section of the Act is mandatory in nature : *Satyanjay Tripathi Vs. Smt. Banarsi Devi, I.L.R. (2011) M.P. 1392*

– **Section 23-E** – If the death of the landlord takes place after the eviction order is passed in his favour, the legal representatives of the landlord nevertheless may continue the revisional proceedings to defend the order of eviction : *Leelawatibai (Deceased) Through L.Rs. Mahendra Kumar Vs. Radhakishan (Deceased) Through L.Rs. Smt. Sajjanbai, I.L.R. (2011) M.P. 1068 (DB)*

– **Section 23-E** - Legality, Propriety and Correctness - Power of the Court is larger than the revisional jurisdiction under Section 115 of C.P.C. but may not be ascertainable at par to appellate jurisdiction - It is not permissible to High Court to come to a different finding unless such finding is unreasonable : *Kamal Kumar Talreja Vs. Smt. Asha Bhatnagar, I.L.R. (2012) M.P. 3085*

- – **Section 28** - Appointment of R.C.A. - Rent Controlling Authority can be appointed by the Collector, only after obtaining approval of the State Govt. - Order appointing R.C.A. by the Collector without obtaining approval from State Govt. set aside - Collector is at liberty to appoint R.C.A. as per the provisions of Section 28 of Act, 1961 : *Saurabh Kumar Jain Vs. State of M.P., I.L.R. (2012) M.P. 2638 (DB)*

– **Section 37(1), (2) & (3)** - Distinction between - Held - Section 37(1) & (2) requires the landlord to keep the accommodation in good & tenantable condition and if the landlord fails or neglects to make such repairs after due notice in writing, the tenant

may make those repairs and deduct the expenses or recover it from the landlord - On the other hand, Section 37(3) deals with those cases where the accommodation has become non habitable or unusable, the tenant may apply to the RCA for such repairs - Hence, Section 37(3) includes something more than tenatable repairs covered by Section 37(1) & (2) - Therefore, the civil court has to apply its mind with regard to applicability of Section 37(2) & (3) in facts and circumstances of the given case : *Sunil Verma Vs. Balkishan Garg, I.L.R. (2014) M.P. 712*

SYNOPSIS : Section 45

- 1. Jurisdiction of Civil Courts/R.C.A.**
- 2. Right to Choose Forum**

1. Jurisdiction of Civil Courts/R.C.A.

– **Section 45, 23-A, 23-J & 12(1)** – Specified Landlady – Eviction – On the ground of bonafide need – Rent Controlling Authority only has jurisdiction : *Afsar Ara (Smt.) Vs. Iqbal Sharif, I.L.R. (2015) M.P. 2955*

– **Section 45, 23-A, 23-J & 12(1)** – Suit for eviction in Civil Court – By specified landlord alongwith other landlords – On ground of bonafide need alongwith other grounds mentioned in Section 12(1) – Maintainable : *Afsar Ara (Smt.) Vs. Iqbal Sharif, I.L.R. (2015) M.P. 2955*

2. Right to Choose Forum

– **Section 45** – Jurisdiction & power – No specific power conferred on Rent Controlling Authority – Landlord has choice to choose the forum : *Afsar Ara (Smt.) Vs. Iqbal Sharif, I.L.R. (2015) M.P. 2955*

– **Section 45, 23-A, 23-J & 12(1)** – Suit for eviction by Specified landlady – Composite grounds which are not covered u/s 23-A, choice of litigant to choose the forum – Unless there is complete and specific bar created by law, right to choose the forum cannot be restricted : *Afsar Ara (Smt.) Vs. Iqbal Sharif, I.L.R. (2015) M.P. 2955*

ADHYAKSHA TATHA UPADHYAKSHA (VETAN TATHA BHATTA) **ADHINIYAM M.P., 1972 (27 OF 1972)**

– **Section 4** – Death of Speaker – Penalty/Compensation – Family members of Deceased Speaker were allowed to occupy the Bungalow as the authorities were of the view that there is no formal declaration that the Bungalow has ceased to be official residence of Speaker – Non-issuance of declaration would not extricate the allottee from

the rigours of Section 4(1) which postulates that Speaker and Deputy Speaker would be entitled to use of official quarters “throughout their term of office” and for a period of one month immediately thereafter – No more and no less : *Abhishaek @ Chintu Chouksey Vs. State of M.P., I.L.R. (2015) M.P. 958 (DB)*

– **Section 4** – Entitlement of Speaker to occupy official residence – Speaker or Deputy Speaker can remain in official residence “throughout their term of office” and for a period of one month immediately thereafter – Speaker died on 05.11.2013 and therefore, one month would commence from that date as he had ceased to be the Speaker : *Abhishaek @ Chintu Chouksey Vs. State of M.P., I.L.R. (2015) M.P. 958 (DB)*

ADMINISTRATION OF JUSTICE

– Access to justice should not be misused as license to file misconceived and frivolous petitions: *Manish Kumar Sharma Vs. Jagdish, I.L.R. (2015) M.P. 2951 (DB)*

– **Bald allegations of malafides against respondents** - For a Court to accept and act on those allegations, there has to be clear and clinching evidence of unblemished character - Mere ipse dixit of plaintiffs in this regard is insufficient: *Purshotam Vs. State of M.P., I.L.R. (2014) M.P. 150*

– **Sobriety is always the hallmark of judicial temperament** - Harsh language used by the trial court in some places in the judgment deprecated: *Purshotam Vs. State of M.P., I.L.R. (2014) M.P. 150*

ADMINISTRATIVE LAW

– **Discretion** - When the statute confers a discretion on the authority to take action in the prescribed manner, the authority has to exercise the discretion independently on its own - If an Authority exercises the discretion vested in it by law under dictation from or at the behest of the Superior Authority in a specific manner, the same would tantamount to non-exercise of discretionary power by the authority and such an action or decision cannot have any sanctity in law : *K.K. Singh Chouhan Vs. State of M.P., I.L.R. (2013) M.P. 820*

– **Proper Authority** - Once the discretionary element in the administrative action has been exercised by the proper authority itself, it is then immaterial as to who is entrusted to discharge the mechanical or non discretionary part of the function: *K.K. Arya Vs. M.P. Madhya Kshetra Vidyut Vitran Company Ltd., I.L.R. (2013) M.P. 780*

– **Reasoned order** – Reasons minimizes the chances of arbitrariness – Reason is heartbeat of every conclusion – Absence of reasons renders the order

indefensible/unsustainable: *R.S. Avtar Singh & Co. (M/s.) Vs. M/s. Vindiyachal Air Products Pvt. Ltd., I.L.R. (2011) M.P. *72*

ADMINISTRATIVE TRIBUNALS ACT (13 OF 1985)

– **Section 14** – See – Constitution – Article 226 : *Ramesh Pal Vs. Union of India, I.L.R. (2015) M.P. 890*

– **Section 19** – Abatement – Admission of original application – Respondent by filing original application before Tribunal had challenged the show cause notice as to why his services may not be terminated – Notice was issued however, there is no formal order of admitting the application – During the pendency of the application, services of the respondent were terminated – It was pleaded before Tribunal as services have been terminated therefore, the application has become infructuous – Tribunal held that as notices were issued after hearing both the parties therefore, impliedly the Original Application was admitted and in view of provision of Section 19(3) of the Act, the proceedings would not abate – Held – As per the provision of Section 19(3), the Tribunal has to pass a specific order admitting the application – As no formal order admitting Original Application was passed, the rejection of the application only on the ground that the application was already admitted is not correct – Matter remitted back to consider the objections of the Petitioner after hearing all the parties : *Union of India Vs. Sunil Kumar Choudhary, I.L.R. (2015) M.P. 3269 (DB)*

– **Fundamental Rule 56 Note 6** – Date of Birth – Transfer certificate contains date of birth – At the time of appointment date of birth recorded as 20.09.1954 which was accepted by the petitioners therefore, the same cannot be altered after 28 years of service – Deliberate attempt on the part of respondent to show incorrect date of birth for unfairly obtaining service benefits – Held – Petitioners are not debarred under Fundamental Rule 56 Note 6 in correcting date of birth – Petition allowed : *Union of India Vs. Bhaiya Lal Nai, I.L.R. (2012) M.P. 453 (DB)*

ADMISSION RULES AND GUIDING PRINCIPLES FOR ADMISSION TO GRADUATE AND UNDERGRADUATE COURSES

Admission Rules and Guiding Principles for admission to Graduate and Undergraduate Courses - Directions issued : *Purshottam Mahavidyalaya (Shri) Vs. State of M.P., I.L.R. (2013) M.P. 27 (DB)*

ADMISSION TO B.ED. CLASSES

– **Declaration of result** – Result of students admitted by unrecognized institutions shall not be declared – Result of students who were admitted without

qualifying the entrance examination shall not be declared – If the institution has not complied the requirements of completing the prescribed training, the result shall not be declared : *Adarsh Shiksha Mahavidyalaya Vs. Subhash Rahangdale, I.L.R. (2012) M.P. *19 (SC)*

– **Private Institutions** – Private institutions can not give admission de hors the list prepared on the basis of entrance examination conducted under the directions of the State Government : *Adarsh Shiksha Mahavidyalaya Vs. Subhash Rahangdale, I.L.R. (2012) M.P. *19 (SC)*

ADVERSE POSSESSION

– **After the death of owner, his Legal Representatives had become owner of plot** – Even if appellants continued in possession, then their possession was on behalf of all joint owners – No evidence of ouster of other joint owners – Plea of adverse possession not established : *Akbar Ali Vs. Asgar Ali, I.L.R. (2011) M.P. *64 (DB)*

– **Burden of Proof** – Plaintiff has to prove his case on the basis of his own pleadings and cannot take advantage of weakness of defendant – Person pleading adverse possession has no equities in his favour – It is for him to clearly plead and prove all facts necessary to establish his adverse possession – Further plaintiff has not rebutted the certified copies of Khasra filed by defendant by filing relevant documents – Appeal allowed : *Daulat Singh Vs. Devi Singh (Dead), I.L.R. (2011) M.P. *93*

– **Ingredients** – Unless the requisite ingredients of the adverse possession as per requirement of law are proved, mere on account of long possession of the property under some misconception, the person could not have been declared to be the Bhumiswami of disputed land holding that he has perfected the title of the property by adverse possession : *Shalig Ram Vs. Anant Ram, I.L.R. (2011) M.P. 1251*

– **One of the Plaintiff was aware of auction proceedings which took place 32 years prior to filing of suit** – Defendant was in possession of disputed property since 1954 – He reconstructed the house with approved map in 1962 – Plaintiffs themselves remained inactive for 32 years – Held – Process of acquisition of title by adverse possession springs into action essentially by default or inaction of owner – A person though having no right to enter into possession of property does so and continues in possession setting up title in himself and adversely to the title of owner – He acquires title not on his own but on account of default or inaction on the part of real owner which stretched over a period of 12 years results into extinguishing of title of real owner – Title or interest of plaintiffs stood extinguished due to their default or inaction for a period of

12 years – Defendants perfected their title by adverse possession : *Babu Lal Jain (Dead) Vs. Achal Kumar Bhatia, I.L.R. (2011) M.P. *66*

– **Period of – Pleading** – Party pleading adverse possession has to plead the actual possession but has also to plead the period and date from which he claims the possession – It has to prove that possession was continuous, exclusive and undisturbed to the knowledge that he is the real owner of the land – Also required to demonstrate hostile title and has to communicate his hostility to the real owner : *Ashok Kumar Vs. Krishna Chand, I.L.R. (2012) M.P. 985*

– **Proof of** – Plaintiff claimed that he is in open and hostile possession of land in dispute from the year 1972 but filed Khasra only of the year 1993-94 to 1997-98 – Bald statement of plaintiff and his witnesses cannot be stretched to the extent of strict proof of adverse possession – Defendant has filed certified copies of Khasra of the years 1970-71 to 1998-99 to show that the name of original plaintiff is nowhere mentioned – Plaintiff failed to prove his adverse possession – Appeal allowed : *Daulat Singh Vs. Devi Singh (Dead), I.L.R. (2011) M.P. *93*

– **There are sufficient pleadings in the written statement with regard to adverse possession** – Further the defendants have filed revenue records to show their possession – One of the Defendant's witnesses has admitted that plaintiff is possessing the suit property as bataidar – His possession would be for the defendants : *Ratan Lal Vs. Kishan Lal, I.L.R. (2012) M.P. 131*

ADVOCATE ACT (25 OF 1961)

– **Section 15** - See - State Bar Council of Madhya Pradesh Rules, 1962, Rules 121, 122-A : *Pratap Chandra Mehta Vs. State Bar Council of M.P., I.L.R. (2011) M.P. *153 (SC)*

– **Section 30**, Forest Act (16 of 1927) , Section 19 & 72 – Powers of Authorities – Right to represent through an Advocate in confiscation proceedings – Not permissible : *Kuldeep Sharma Vs. State of M.P., I.L.R. (2012) M.P. 907*

– **Section 30** – See – Constitution – Article 226 : *Digvijay Singh Vs. State of M.P., I.L.R. (2015) M.P. 1230 (DB)*

– **Section 30** – See – Forest Act, 1927, Section 52 : *Kuldeep Sharma Vs. State of M.P., I.L.R. (2012) M.P. 907*

– **Section 35** – See – Constitution – Article 226 : *Ram Krishna Kothari Vs. State Bar Council of M.P., I.L.R. (2014) M.P. 3095*

AGE OF SUPERANNUATION

– **Teachers in technical aided institutions** - State Govt. has accepted the AICTE Regulations prescribing the age of retirement for teachers as 65 years and issued the orders – Same is binding on technical institutions receiving grant-in-aid from the Govt : *Y.P. Singh (Prof.) Vs. State of M.P., I.L.R. (2012) M.P. 64*

AGRICULTURE (HORTICULTURE) NON-GAZETTED (NON-MINISTERIAL) SERVICE RECRUITMENT RULES (M.P.), 1987

– **Rule 11 & Civil Services (General Conditions of Service) (M.P.) Rules, 1961 – Rule 12(4) – Seniority** – Petitioners and respondent No. 3 were selected and the State Government issued the gradation list placing them at appropriate place observing the rules – Representation of various persons were also rejected as per the decision of the Committee formed by the State Government – Respondent No. 3 thereafter was made senior from the petitioner by Government ignoring the decision of committee– Held – Order, granting seniority to respondent No. 3, passed by respondents No. 1 and 2 is contrary to the provisions of the Rules which cannot be sustained in law – Order quashed : *Ramveer Singh Tomar Vs. State of M.P., I.L.R. (2012) M.P. 1134*

ALLAHABAD BANK OFFICER EMPLOYEES' (DISCIPLINE AND APPEAL) REGULATIONS, 1976

- **Regulation 6** - Examination of Delinquent Officer - Where the delinquent officer has not appeared as a witness, then the enquiry officer is required to record the statement of delinquent officer in respect of circumstances appearing against him for the purpose of enabling the delinquent officer to explain any circumstance appearing in evidence against him : *Ranjan Sarvate Vs. Allahabad Bank, I.L.R. (2012) M.P. *115*

- **Regulation 6** - Procedure for imposing Major Penalties - Defence Evidence - Regulations are mandatory in nature - Application filed by the petitioner to examine defence witnesses rejected by enquiry officer on the ground that the witnesses have no relation with case - Enquiry Officer was not free to decide whether such defence witnesses are materially important or not : *Ranjan Sarvate Vs. Allahabad Bank, I.L.R. (2012) M.P. *115*

ALL INDIA SERVICES (DEATH-CUM-RETIREMENT BENEFITS), RULES 1958

– **Rule 6 (c)** – Cognizance of offence u/s 120B of the IPC and 13(1)(d) read with 13(2) of the PC Act taken against the petitioner, a superannuated I.A.S. officer –

Petitioner challenged the prosecution as barred by limitation of four years, already expired before filing the charge-sheet –Held – The objection is already overruled in the light of decision of Apex Court and no period of limitation is specified under the Code or the PC Act for taking cognizance of any offence falling under the Act – Rejection of application based on Rules 6 was well-merited : *U.K. Samal Vs. State of M.P., I.L.R. (2011) M.P. *105 (DB)*

ALLOTMENT OF LAND TO LANDLESS PERSONS

Allotment of land to landless persons – Relief of allotment of land to landless persons/oustees cannot be granted : *Narmada Bachao Andolan Vs. State of M.P., I.L.R. (2011) M.P. *113 (SC)*

AMMONIUM NITRATE RULES, 2012

Rule 3 – See – Explosive Substances Act, 1908, Section 4 & 5 : *Sharad Kumar Agrawal Vs. State of M.P., I.L.R. (2015) M.P. 3102*

ANCIENT MONUMENTS AND ARCHAEOLOGICAL SITES AND REMAINS ACT (24 OF 1958)

– **Section 4**, Ancient Monuments and Archaeological Sites and Remains Act, M.P. (12 of 1964), Section 3 – Bade Baba Jain Temple – Entry 40 of concurrent list covers Archaeological sites and remains – Act, 1964 has received assent of the President – Provisions of Act, 1964 qua these Jain Temples would be applicable and monuments are not covered by 1958 Act : *Archaeological Survey of India Vs. State of M.P., I.L.R. (2015) M.P. 540 (SC)*

– **Section 4** - See - Ancient Monuments and Archaeological Sites and Remains Act, M.P. 1964, Section 3 : *Archaeological Survey of India Vs. State of M.P., I.L.R. (2012) M.P. *112 (DB)*

– **Section 38** - Appointment of Part Time Foreign Language Linguistic Guide - Fixation of 50% marks in written examination - Criteria fixed by expert body for the purpose of selection/appointment would not be interfered with until and unless mala fides are attributed : *Prakash Bhattacharya Vs. Indian Institute of Tourism & Travel Management, I.L.R. (2011) M.P. *45*

ANCIENT MONUMENTS AND ARCHAEOLOGICAL SITES AND REMAINS ACT, M.P. (12 OF 1964)

– **Section 3** – Ancient Monuments and Archaeological Sites and Remains Act (24 of 1958), Section 4 - Declaration in respect of monument - No notification issued by

Central Govt. declaring the said temple as ancient monument of national importance under 1958 Act - It would be governed by 1964 Act : *Archaeological Survey of India Vs. State of M.P., I.L.R. (2012) M.P. *112 (DB)*

– **Section 3** – See – Ancient Monuments and Archaeological Sites and Remains Act, 1958, Section 4 : *Archaeological Survey of India Vs. State of M.P., I.L.R. (2015) M.P. 540 (SC)*

– **Section 19** - Bade Baba temple declared as ancient monument under Section 3 of the Act - Though the said temple is not in existence, only idol of Bade Baba alone survives and the same is required to be protected and preserved - However, permission of State Govt. would be necessary for construction of temple : *Archaeological Survey of India Vs. State of M.P., I.L.R. (2012) M.P. *112 (DB)*

– **Section 19** – Construction without the permission of State Government – Trust wants to raise construction as per Jain Agamas – Temple is proposed to be constructed in accordance with Nagara style of architecture – Arguments of appellant that in order to keep the sanctity of ancient monument, the construction should have been on the same pattern of structure but which existed before demolition, has not been looked into by the High Court – State Government while deciding the application for permission to construct would specifically consider the aforesaid aspect as well – It would also be open to the Trust to press the argument that Jains are declared religious minority and therefore, Jain community enjoys religious freedom as a fundamental right – Appeals dismissed with aforesaid directions : *Archaeological Survey of India Vs. State of M.P., I.L.R. (2015) M.P. 540 (SC)*

APPOINTMENT

Appointment - Educational qualification - Acquisition of educational qualification after cut-off date could not be taken into consideration for the purpose of appointment/selection : *Prakash Bhattacharya Vs. Indian Institute of Tourism & Travel Management, I.L.R. (2011) M.P. *45*

ARBITRATION ACT (10 OF 1940)

– **Section 8** – Appointment of Arbitrator – Order of Court appointing sole arbitrator was challenged upto Supreme Court and the order of Court appointing sole arbitrator was upheld – As order appointing sole arbitrator has attained finality and binds parties, therefore, the appointment of sole arbitrator in place of Tribunal of arbitration consisting of three arbitrators cannot be challenged : *Jawahar Lal Nehru Krishi Vishwavidyalaya, Jabalpur Vs. J.H. Kotecha, I.L.R. (2015) M.P. 2998*

– **Section 29** & Interest Act, (14 of 1978), Section 3 – Pre Reference Interest – Where the agreement between the parties does not prohibit grant of interest, the arbitrator shall have power to grant interest – As award has been passed after coming into force of Act, 1978, therefore, Arbitrator had authority to award interest for pre-reference interest at 18% p.a. which has already been reduced to 10% by Addl. District Judge : *Jawahar Lal Nehru Krishi Vishwavidyalaya, Jabalpur Vs. J.H. Kotecha, I.L.R. (2015) M.P. 2998*

– **Section 30** – Opportunity of hearing – Proceedings before arbitrator commenced on 29.11.1998 – On 23.09.2000, the arbitrator proceeded ex parte and passed ex parte award – From scrutiny of order sheets of proceedings, it is evident that the appellant adopted all possible tactics to linger on the proceeding before the arbitrator and on several occasions neither any officer nor counsel for the appellant appeared before arbitrator – Therefore, action of arbitrator in closing the right of the appellant to adduce evidence by taking into account the time limit fixed by the Court for delivery of award, was justified : *Jawahar Lal Nehru Krishi Vishwavidyalaya, Jabalpur Vs. J.H. Kotecha, I.L.R. (2015) M.P. 2998*

– **Section 30 & 33** - Arbitral awards can be interfered only on limited grounds - The Court does not sit in appeal over the findings of the Arbitrator - It will interfere with an award if there is an error apparent on the face of the award or if there are apparent inconsistencies in the award or if the Arbitrator has misconducted himself or the proceedings : *B.D. Sharma Firm (M/s.) Vs. Western Coalfields Ltd., I.L.R. (2011) M.P. 2312 (SC)*

– **Section 30 & 39**, Arbitration and Conciliation Act (26 of 1996) – Award passed under the Arbitration Act, 1940 cannot be legally set-aside by invoking sub-section (3) of Section 31 of the Arbitration & Conciliation Act, 1996 : *Union of India Vs. Hari Ram Gupta, I.L.R. (2011) M.P. 951*

– **Section 34** – Scope of Judicial Review – Court can interfere with the award only on the grounds set out in Section 30 i.e. whereas an arbitrator has misconducted himself or the proceeding, where an award has been made after the issue of an order by the Court superseding the arbitration or after arbitration proceeding has become invalid and where an award has been improperly procured or is otherwise invalid – An award cannot be set aside merely on the ground that in the opinion of the Court award passed by the arbitrator would have been otherwise : *Jawahar Lal Nehru Krishi Vishwavidyalaya, Jabalpur Vs. J.H. Kotecha, I.L.R. (2015) M.P. 2998*

– **Section 39** – Appeal – New Ground – Raising a new ground in appeal for which no foundation was laid down in application for setting aside award is not

permissible : *Jawahar Lal Nehru Krishi Vishwavidyalaya, Jabalpur Vs. J.H. Kotecha, I.L.R. (2015) M.P. 2998*

– **Section 39**, Arbitration and Conciliation Act (26 of 1996), Section 31 – Rate of interest – As far as pre-reference period is concerned law permits its execution by agreement between the parties and for remaining period, the arbitrator is given power under Section 31 to pass an appropriate order – Reduction of interest @ 15% to 9% by the District Judge on the ground of Economic condition and reforms seems to be correct – There is nothing to show that the reduction of interest ordered is arbitrary and illegal decision rendered without any reason being given : *Machines India (M/s.) Vs. Chief Engineer, Jabalpur Zone, I.L.R. (2015) M.P. 1834 (DB)*

ARBITRATION AND CONCILIATION ACT (26 OF 1996)

- **Arbitration under an international agreement** - Rules and procedure to be followed in such a proceedings - Arbitration agreement provided for settlement of dispute by Arbitration at Singapore International Arbitration Centre - Held - After referring the matter to the arbitrator under Singapore International Arbitration Centre Rules (SIAC Rules) such rules being curial law, the arbitrator has to pass the award under such SIAC Rules and till passing of the award by the arbitrator the proceedings is to be conducted in accordance with such curial law - Any party aggrieved by any order of the arbitrator then according to their terms of agreement may resort and exhaust the remedy by virtue of Rule 32 of such SIAC Rules under the International Arbitration Act : *Yograj Infrastructure Ltd. Vs. Ssangyong Engineering & Constructions Co. Ltd., I.L.R. (2011) M.P. *20*

- **Jurisdiction of Indian Courts with regard to arbitration under an international agreement** - Arbitration agreement provided for settlement of dispute by Arbitration at Singapore International Arbitration Centre - Held - If there is a specific contract/provision between the parties stating that they will be governed by the law of some specific country then the law of such country shall be applicable to them - Where the parties have not chosen any specific enactment in that regard then law of such country where the arbitration proceedings is being conducted shall govern the parties : *Yograj Infrastructure Ltd. Vs. Ssangyong Engineering & Constructions Co. Ltd., I.L.R. (2011) M.P. *20*

– **Section 2(1)(e) & 11(12)(b)** - Court - If the subject matter of the arbitration would have been within the jurisdiction of the Principal Civil Court at Gwalior, the Chief Justice or his designate under whose local jurisdiction the Principal Civil Court is situated

will have jurisdiction : *Shivhare Road Lines (M/s.) Vs. M/s. HPCL and Mittal Energy Ltd., I.L.R. (2012) M.P. *92*

– **Section 2(2) & 42** - Parties agreeing that the arbitration proceedings, if any, would be governed by the SIAC Rules as the Curial law, which included Rule 32 - It was no longer available to the appellant to contend that the 'proper law' of the agreement would apply to the arbitration proceedings. Section 2(2) of the 1996 Act, in fact, indicates that Part-I would apply only in cases where the seat of arbitration is in India - Once the parties had specifically agreed that the arbitration proceedings would be conducted in accordance with the SIAC Rules, which includes Rule 32. Section 42 of the Act, the same, in our view was applicable at the pre-arbitral stage, when the Arbitrator had not also been appointed - Once the Arbitrator was appointed and the arbitral proceedings were commenced, the SIAC Rules became applicable shutting out the applicability of Section 42 and for that matter Part-I of the 1996 Act, including the right of appeal under Section 37 thereof : *Yograj Infrastructure Ltd. Vs. Ssangyong Engineering And Construction Co. Ltd., I.L.R. (2011) M.P. *145 (SC)*

– **Section 2(4) & 9**, Madhyastham Adhikaran Adhinyam, M.P. (29 of 1983), Section 17A, Civil Procedure Code (5 of 1908), Order 39 Rules 1 & 2 - Interim relief - As per agreement the appellant may take recourse as permissible under the Adhinyam, 1983 making a reference to the M.P. Arbitration Tribunal, Bhopal - Appellant cannot be permitted to jump upon for taking recourse of Section 9 of the Arbitration Act, 1996 for taking order of interim nature from the Civil Court - Trial Court committed no error in rejecting the application - Appeal dismissed : *Joint Venture of Envio Pure Aqua Systems (P) Ltd. Vs. Municipal Corporation, Gwalior, I.L.R. (2013) M.P. 477 (DB)*

– **Section 4, 11 & 34** – Arbitrator – As per Arbitration Clause Managing Director was the arbitrator – Court in exercise of power under Section 11 appointed Managing Director as Arbitrator – Managing Director in its turn delegated the powers to a retired officer who ultimately passed an award – Held – As per the arbitration clause and order of Court, Managing Director was required to perform his duties as Arbitrator – Neither the appellant nor the respondent had any authority to give consent expressly or impliedly to continue with the proceeding which was initiated by an Arbitrator who had no authority in law – Provisions of Section 4 have no application – Even otherwise, in case of patent lack of jurisdiction, the jurisdiction cannot be assumed by Arbitrator on the basis of acquiescence of parties – Award quashed – Managing Director directed to adjudicate the dispute between the parties : *M.P. State Agro Industries Development Corpn. Ltd. Vs. Suresh Gupta, I.L.R. (2015) M.P. 1502*

– **Section 7** – Arbitration Agreement – First Respondent filed Writ Petition against appellant and Zila Panchayat for outstanding amount of contract work – Writ

Petition was disposed of with a direction to release the admitted amount alongwith an observation that if the Writ Petitioner has already so applied, the matter shall be referred to an Arbitrator to resolve the dispute between the parties – On realizing, that there was no arbitration agreement, the appellants filed a Review Petition and in the Review Petition the said observation regarding referral of matter to Arbitrator was recalled – During intervening period between passing of the order of Writ Petition and order of recall in Review Petition, a joint meeting between the parties was convened and a Retired High Court Judge was appointed as Arbitrator – The Arbitrator so appointed over ruled the objection raised by the appellants regarding jurisdiction in light of the recall order passed in Review Petition and passed the award for Rs. 16,77,56,010/- – The appeal filed against said award was also dismissed by the District Judge – Held – The order passed in Writ Petition by which the matter was directed to be referred to an Arbitrator under the provisions of the Act of 1996 to resolve the dispute between the parties, was passed on the wrong notion that there exists a written arbitration or clause for reference of the dispute between the parties to an Arbitrator – Having recalled the said order in review petition, it cannot be said that the parties have entered into the agreement for arbitration so as to cover it under the term arbitration agreement – In the absence of any arbitration agreement between the parties, the whole proceedings of arbitration, the award passed by the Arbitrator and the order of learned District Judge upholding the award are liable to be set aside – Appeals allowed : *State of M.P. Vs. M/s. Dewas Udyog, I.L.R. (2012) M.P. *72 (DB)*

SYNOPSIS : Section 8

Jurisdiction of Civil Courts

– **Section 8**, Civil Procedure Code (5 of 1908), Order 7 Rule 11 – Suit was filed by respondents No. 1 & 2 alleging the validity of the agreement and prayed that the agreement be declared as null and void and not binding as the same has been obtained by playing the fraud – Application filed u/s 8 of the Act and under order 7 Rule 11 by the petitioner, praying dismissal of suit being barred under the provisions of Arbitration & Conciliation Act, was dismissed – Held – Since the declaration sought could only be granted by Civil Court and not by arbitrator, matter could not be referred to arbitrator : *Kutubuddin Agarbattiwala Vs. Smt. Ameena, I.L.R. (2014) M.P. 1286*

– **Section 8** - See - Civil Procedure Code, 1908, Order 7 Rule 11 : *Mukesh Singh Tomar Vs. Rakesh Sharma, I.L.R. (2012) M.P. 2859*

– **Section 8, 20 & 34**, Madhyastham Adhikaran Adhiniyam, M.P. (29 of 1983), Section 20 – Appointment of Arbitrator – Jurisdiction of Civil Court – During the pendency of application for appointment of arbitrator, Act 1983 came into force – Bar contained in Act 1983 with regard to Civil Court applies only from the date of

Constitution of Arbitration Tribunal i.e. 01.03.1985 – Reference which is pending prior to Constitution of Tribunal is saved by Section 20(2) of 1983 Act – As application for appointment of arbitrator was already pending therefore, District Judge had jurisdiction to appoint arbitrator : *Seth Mohanlal Hiralal (M/s.) Vs. State of M.P., I.L.R. (2015) M.P. 2745*

SYNOPSIS : Section 9

Interim Measure

– **Section 9** - Interim Measure - Appellant himself had rescinded the contract without any lawful cause - He could recover the alleged excess amount of tax/duty from Govt. Department - Appellant failed to make out prima facie case - Discretion exercised by A.D.J. in refusing to grant interim measure does not call for any interference : *Manoj Kumar Agrawal Vs. Nepa Ltd., I.L.R. (2012) M.P. *89*

– **Section 9** - Interim Measure - Court has power to grant interim measure even before actual commencement of arbitral proceedings : *Manoj Kumar Agrawal Vs. Nepa Ltd., I.L.R. (2012) M.P. *89*

– **Section 9** - Interim Measure - Limitation - Power to grant interim measure is not totally independent of well known principles governing supplemental proceedings contemplated under Chapter VI of C.P.C. : *Manoj Kumar Agrawal Vs. Nepa Ltd., I.L.R. (2012) M.P. *89*

– **Section 9** - Interim Measure - Petitioner filed criminal complaint alleging fraud on certain grounds - Order of Magistrate taking cognizance was set aside by High Court and criminal complaint was dismissed - Special Leave Petition was also dismissed - Application u/s 9 of Act, 1996 for restraining respondent from encashing Bank Guarantee - As the allegations of fraud have already been rejected while granting criminal complaint, the respondent cannot be restrained from encashing Bank Guarantee as there is no fraud or special equities - Appeal dismissed : *Yograj Infrs. Ltd. Vs. Ssang Yong Eng. & Constrn. Co. Ltd., I.L.R. (2012) M.P. 1797 (SC)*

– **Section 9** – The Court has no power to stay the arbitral proceeding or to entertain the question with regard to jurisdiction of the arbitral tribunal – All such challenges have to be made before the arbitral tribunal under the Act and the remedy of an aggrieved party is to challenge the award in accordance with Section 34 of the Act : *Union of India Vs. Amarlal Wadhvani, I.L.R. (2011) M.P. 1401*

SYNOPSIS : Section 11

- 1. Appointment of Arbitrator**
- 2. Territorial Jurisdiction**
- 3. Miscellaneous**

1. Appointment of Arbitrator

– **Section 10 & 11** - When an arbitration agreement makes a provision for appointment of named persons as arbitrator and when arbitration in accordance to the said provision is not possible due to any reason, the arbitration clause is not rendered redundant - In such cases, the matter has to be proceeded in accordance to the requirement of Section 11(6) and the arbitrator has to be appointed in accordance to the procedure contemplated therein : *National Council of Y.M.C. of India Vs. Sudhir Chandra Datt, I.L.R. (2012) M.P. 3076*

– **Section 10(1), (2) & 11** - Appointment of Arbitrators - Merely because the arbitration agreement contemplates appointment of two arbitrators i.e. even number of arbitrators, the arbitration agreement will not become invalid - The arbitration clause can still be given effect to : *National Council of Y.M.C. of India Vs. Sudhir Chandra Datt, I.L.R. (2012) M.P. 3076*

– **Section 11** - Appointment of Arbitrator - Arbitration Clause - Partnership firm was constituted and agreement of admission to partnership was executed which contained arbitration clause - Subsequently petitioner agreed to retire from the firm and MOU in that regard was executed - As certain conditions of MOU were not complied with therefore, notice to appoint arbitrator was issued - Respondent in reply pleaded that there is no arbitration clause in MOU and MOU was got executed under duress, coercion - Held - Arbitration clause is a collateral term of contract independent of and distinct from its substantial terms and it is treated to be an agreement independent of other terms of contract - Whether rights of parties under agreement were superseded by subsequent settlement agreement can itself be an arbitrable issue which can be examined by Arbitrator - Objection against appointment of arbitrator rejected : *Mahendra Singh Dahiya Vs. Dinesh Nagori, I.L.R. (2013) M.P. 2715*

– **Section 11** – Appointment of Arbitrator – Non-joinder of necessary party – In absence of subsequent purchaser, only those disputes can be considered by arbitrator which will not effect the rights of the subsequent purchaser : *Dhanlaxmi Solvex Pvt. Ltd. (M/s.) Vs. M/s. Ashta Industries Ltd., I.L.R. (2015) M.P. 471*

– **Section 11** – Appointment of Arbitrator – Specific Performance of Contract – Arbitrator can decide the question of specific performance of Contract : *Dhanlaxmi Solvex Pvt. Ltd. (M/s.) Vs. M/s. Ashta Industries Ltd., I.L.R. (2015) M.P. 471*

– **Section 11** - Arbitrator - Manipulation or forgery in agreement is disputed question and such objections are to be raised before the Arbitrator when proceedings are held : *Satyendra Shukla Vs. Smt. Manorama Raghuvanshi, I.L.R. (2012) M.P. 1629*

– **Section 11** – Contract – Appointment of Arbitrator – Petitioner’s request to appoint an arbitrator was turned down on the ground that the claim of the petitioner is for an amount which is more than 20% of the contract value – Held – Court may not be able to decide whether particular dispute can be referred to arbitration but can examine whether a particular dispute falls within the arbitration clause or not – The dispute raised by the petitioner falls beyond the purview of clauses 63 and 64 of the General Conditions of the Contract, as the same is for an amount of more than 20% of the contract value – Dispute cannot be referred to arbitrator : *Diamond Agencies (M/s.) Vs. Union of India, I.L.R. (2014) M.P. 1629*

– **Section 11** - Power to refer the parties to Arbitration - Intention of this provision is that neither the filing of any suit by any party to the arbitration agreement nor any application being made by the other party should obstruct or preclude a party from initiating any proceeding for appointment of an arbitrator or proceeding with the arbitration before the Arbitral Tribunal - Pendency of proceedings u/s 8 of the Act before Company Law Board cannot be an impediment for appointment of Arbitrator - Application allowed : *Gaurav Chaturvedi Vs. Mr. Girdhar Gopal Bajoriya, I.L.R. (2014) M.P. 819*

– **Section 11** – Respondent did not appoint arbitrator after termination of mandate of arbitration even after expiry of 30 days – Although the right of the respondent to appoint arbitrator stands waived – However, the Court while making appointment of an arbitrator shall bear in mind the requirement contained in arbitration clause for appointment of arbitrator – Arbitrator on behalf of respondent appointed : *Wig Brothers (India) Pvt. Ltd. Vs. Devi Shakuntala Thakral Charitable Foundation, I.L.R. (2015) M.P. 780*

– **Section 11, 14 & 15** - Where an arbitration agreement contemplates for appointment of named arbitrators and the arbitrators so appointed are unable to discharge their function then the power u/s 11(6) has to be invoked and it is the Chief Justice or the Judge designated by the Chief Justice, who is required to be taken action in the matter : *National Council of Y.M.C. of India Vs. Sudhir Chandra Datt, I.L.R. (2012) M.P. 3076*

– **Section 11 & 34** – Appointment of Arbitrator - Arbitrability of dispute – Chief Justice or his designate would not embark upon an examination of issue of arbitrability or appropriateness of adjudication by a private forum – If arbitrator wrongly holds that dispute is arbitrable, the aggrieved party will have to challenge the award by filing application under Section 34 of Act : *Dhanlaxmi Solvex Pvt. Ltd. (M/s.) Vs. M/s. Ashta Industries Ltd., I.L.R. (2015) M.P. 471*

– **Section 11(6)** – Appointment of Arbitrator – Applicant’s application to release the amount due to it denied on the ground that he has not resorted to the specified procedure of conciliation, hence are not admissible – Request made by the applicant to appoint an Arbitrator failed to evoke any response – Hence, this application – Held – From perusal of clause 25 of the agreement, recourse to conciliation is not mandatory – Contention of non-applicant that the dispute between the party has not arisen, cannot be accepted – As per clause 25(vi), dispute between the party shall be referred for adjudication through the arbitrator to be appointed by the Chief Engineer – Application allowed – Chief Engineer, B.S.N.L. is directed to appoint an Arbitrator within 30 days : *Dharmendra Singh (M/s.) Vs. Bharat Sanchar Nigam Ltd., I.L.R. (2014) M.P. 1961*

– **Section 11(6), Madhyastham Adhikaran Adhiniyam, M.P. (29 of 1983), Section 7** – Appointment of Arbitrator – Application u/s 11(6) of 1996 Act was filed seeking appointment of independent arbitrator – Held – As per Section 7 of the Madhyastham Adhikaran Adhiniyam party to the Works Contract is required to refer the dispute to the Madhyastham Adhikaran – Application filed u/s 11(6) of 1996 Act by the applicant is not maintainable : *P.D. Agrawal Infrastructure Ltd. Vs. M.P. Rural Road Development Authority, I.L.R. (2015) M.P. 1561*

– **Section 11(6)** – Procedure for appointment of Arbitrators – Held – When the procedure mentioned in the agreement agreed upon by the parties is not fulfilled by a party, application can be filed for appointment of Arbitrator – If the said procedure is not fulfilled, Section 11(6) needs to be invoked : *Anant Electricals (M/s.) Vs. Bharat Sanchar Nigam Limited, I.L.R. (2014) M.P. 2271*

2. Territorial Jurisdiction

– **Section 11** - Cause of Action - Jurisdiction - Cause of action is a bundle of facts which has relevance and nexus with the lis forming part of cause of action - Contract was accepted by way of correspondence by the applicant at Gwalior giving rise to a part of cause of action : *Shivhare Road Lines (M/s.) Vs. M/s. HPCL and Mittal Energy Ltd., I.L.R. (2012) M.P. *92*

– **Section 11** - Jurisdiction - Agreement provides that the jurisdiction will be to the Court of a State where the project is situated - No exclusion clause/words like Only, Alone and Exclusion - Part of cause of action has arisen at Gwalior - Gwalior Bench has jurisdiction to entertain application for appointment of arbitrator : *Shivhare Road Lines (M/s.) Vs. M/s. HPCL and Mittal Energy Ltd., I.L.R. (2012) M.P. *92*

– **Section 11** - Two applications before different Courts - If two applications/requests are made for appointment of arbitrator before two Benches, one which is filed at an earlier point of time before a Bench which has jurisdiction alone

would be maintainable : *Shivhare Road Lines (M/s.) Vs. M/s. HPCL and Mittal Energy Ltd., I.L.R. (2012) M.P. *92*

– **Section 11(6) & (8)** – Territorial Jurisdiction – Respondents are authorities of State of Chhattisgarh and every formalities of contract have been completed at Raipur – Offer of the applicant was accepted and the contract was made at Raipur – Breach of contract had also taken place at Raipur – No money was expressly or impliedly payable under the contract within the territorial jurisdiction of this Court – Hence matter is beyond the territorial jurisdiction of this Court – Application is dismissed : *Ajay Kumar Jain Vs. State of Chhattisgarh, I.L.R. (2015) M.P. 1061*

3. Miscellaneous

– **Section 11** – Named Arbitrator – If a party with open eyes, full knowledge and comprehension of said provision enters into a contract with Govt./statutory body containing an arbitration clause providing that one of its Secretaries/Directors would be the arbitrator, cannot subsequently turn around and say that he is not agreeable for settlement of dispute by named arbitrator : *State of M.P. Vs. Vayam Technologies Ltd., I.L.R. (2015) M.P. 629*

– **Section 11** – See – Madhyastham Adhikaran Adhiniyam, M.P., 1983, Section 2 : *Brajesh Sharma (Shri) Vs. Banco Construction, I.L.R. (2015) M.P. 3374*

– **Section 11(6)**, Contract Act (9 of 1872), Section 29 - Identification of property - In agreement to sell, the entire description of property is mentioned except the place for new khasra number was left blank - Identification and area of property can be made out by means of stipulations already contained in the agreement - Agreement not void : *Satyendra Shukla Vs. Smt. Manorama Raghuvanshi, I.L.R. (2012) M.P. 1629*

– **Section 11(6)** – Relevant clauses (of agreement) only indicate that the mechanism for resolution of dispute is in accordance to "Laws of India"– This is a vague and wide term and cannot be construed to mean as a reference for resolution of dispute by arbitration – In absence of arbitration clause being available u/s 7 of the Act, application u/s 11 of the act is not maintainable : *Goyolene Fibres (India) Private Ltd. (M/s) Vs. Madhya Pradesh State Electricity Board, I.L.R. (2011) M.P. 1755*

– **Section 11(6)** - Scope - In absence of an arbitration agreement, the application for appointment of an Arbitrator is not maintainable - Application dismissed : *GEI Industrial Systems Ltd. Vs. Bharat Heavy Electricals Ltd., I.L.R. (2011) M.P. 3192*

– **Section 11(6)** – See – Stamp Act, 1899, Article 5(d), Schedule I-A : *Alfa Constructions (M/s.) Vs. Vinod Kumar Thareja, I.L.R. (2015) M.P. 239*

- – **Section 12** - Change of Arbitrator - Bias - Legal History traced on "bias" - There is a shift from the earlier test of reasonable likelihood of bias to real danger of bias - Bias has to be gathered from the facts and circumstances of a particular case - No straight-jacket formula can be made for this purpose - Merely because the Arbitrator granted certain adjournments to the respondent would not lead to the conclusion that he is biased : *Shivhare Road Lines (M/s.) Vs. M/s. Gammon India Ltd., I.L.R. (2012) M.P. 1619*

- **Section 13(2) & 14(2)** – Petition against termination of the mandate of the Arbitrator by Court u/s 14(2) of the Act on the ground that arbitrator cannot be a judge in his own case – Held – Respondent had invoked the remedy u/s 13(2) of the Act therefore, in the facts of the case, it cannot be permitted to invoke Section 14(2) of the Act on the grounds enumerated u/s 12(3) of the Act and has to wait till an award is passed in view of Section 13(4) & 13(5) of the Act – Further the respondent not only approached the named arbitrator but also invoked the jurisdiction of named arbitrator – Order passed by Court below terminating the mandate of arbitrator on the ground that no one can be judge of his own cause is set-aside : *State of M.P. Vs. Vayam Technologies Ltd., I.L.R. (2015) M.P. 629*

- **Section 14** – Termination of Mandate of Arbitration – Three Arbitrators were appointed as per the arbitration agreement – Trial Court terminated the mandate of arbitrator appointed by respondent on the ground that arbitrator has expressed his unwillingness – Order of termination of mandate attained finality – Respondent cannot challenge the constitution of Arbitral Tribunal : *Wig Brothers (India) Pvt. Ltd. Vs. Devi Shakuntala Thakral Charitable Foundation, I.L.R. (2015) M.P. 780*

- **Section 19** – Requirement of Pre-deposit of 75% of award – Requirement of pre-deposit is introduced by legislature as a disincentive to prevent the dilatory tactics employed by buyers against whom small scale industry might have procured award – Application under Section 34 of Act, 1996 cannot be entertained by any Court unless the appellant has deposited 75% of amount in terms of award : *R.S. Avtar Singh & Co. (M/s.) Vs. M/s. Vindyalchal Air Products Pvt. Ltd., I.L.R. (2011) M.P. *72*

- **Section 31** – See – Arbitration Act, 1940, Section 39 : *Machines India (M/s.) Vs. Chief Engineer, Jabalpur Zone, I.L.R. (2015) M.P. 1834 (DB)*

SYNOPSIS : Section 34

- | | |
|---|------------------------|
| 1. Jurisdiction | 2. Limitation |
| 3. Recourse against Arbitral Award | 4. Res judicata |

1. Jurisdiction

- **Section 34** - Jurisdiction - Interim award passed by arbitrator in arbitration proceedings held in Singapore under Singapore International Arbitration Centre Rules -

Appellant can challenge the validity of interim award by making application before Courts in Singapore - Once the appellant has surrendered to SIAC Rules for arbitration proceedings, all issues including challenge to the validity of awards will have to be taken before that Court to whose jurisdiction the appellant surrendered - Courts of India have no jurisdiction : *Yograj Infrastructure Ltd. Vs. Ssangyong Engineering & Construction Co. Ltd.*, I.L.R. (2013) M.P. 1466 (DB)

– **Section 34 & 16(2) – Jurisdiction** – Objection with regard to the jurisdiction was not raised in defence statement – It was also not raised at any time before Tribunal – After suffering the Award and after 2 years of filing of petition u/s 34, objection was raised by amendment – Held – Section 16(2) provides that an objection to jurisdiction must be raised at the stage of submission of defence statement – Since the ground raised by amendment application is contrary to law – Amendment application should not have been allowed by High Court – Impugned order set-aside – Appeal allowed : *MSP Infrastructure Ltd. (M/s.) Vs. M.P. Road Development Corporation Ltd.*, I.L.R. (2015) M.P. 1395 (SC)

2. Limitation

– **Section 34**, Limitation Act (36 of 1963), Section 5 & 14 – Exclusion of period – Applicability of Section 5 – Applicant filed an application for appointment of arbitrator – Application was rejected on the ground that appointment of arbitrator is not necessary & applicant may challenge the award – Delay in filing objection u/s 34 of Act, 1996 can be condoned by excluding the period spent for prosecuting u/s 11 – Revision dismissed : *Commissioner, M.P. Housing Board Vs. M/s. Mohan Lal & Company*, I.L.R. (2015) M.P. 785

– **Section 34(3)**, Limitation Act (36 of 1963), Section 5 - Condonation of delay - Power of condonation of delay can be exercised upto the stipulated extended period of thirty days only - On elapse of specified prescribed period, Court cannot exercise the power of condonation even on having sufficient cause : *Union of India Vs. M/s. Naveen Kumar Contractors & Suppliers*, I.L.R. (2013) M.P. 672

– **Section 34(3)**, Limitation Act (36 of 1963), Section 5 - Condonation of delay - Provision of the Limitation Act, 1963 would be applicable until it is not expressly barred in the Arbitration and Conciliation Act - The exclusion of the period of limitation has been specified in sub-section (3) of Section 34 of the 1996 Act by the special enactment, therefore, after the period so prescribed under special enactment provision of Section 5 of the Limitation Act would not be applicable for that purpose : *Union of India Vs. M/s. Naveen Kumar Contractors & Suppliers*, I.L.R. (2013) M.P. 672

3. Recourse against Arbitral Award

– **Section 34**, Civil Procedure Code (5 of 1908), Section 115 – Maintainability of objection u/s 34 to Foreign Award – In terms of agreement dispute was referred to Arbitrator – Foreign award was passed – Respondent's application for enforcement of award was pending at Mumbai – Petitioner raised objection u/s 34 of Arbitration Act at Indore – Respondent filed application u/s 151 of C.P.C. challenging the maintainability on the ground that it was not covered by exclusion clause - 19 of the agreement which was dismissed – Respondent preferred a revision which was allowed holding that clause-19 do not permit filing of objection u/s 34 of Arbitration Act – Held – Nothing was shown how objection to the foreign award is maintainable before civil court, Indore when proceedings for enforcement were pending at Mumbai – Though the Revision was not maintainable against interlocutory order, however power under Article 227 of the constitution are wide enough – A patently wrong order has rightly been set-aside by allowing revision – Review petition is dismissed : *Bhatia International Ltd. Vs. Vitol S.A. Geneva, Switzerland, I.L.R. (2015) M.P. 397*

– **Section 34** – Issues – Section 34 has a limited scope – District Judge is not required to give finding on independent factual issues apart from ground mentioned in Section 34 – Not necessary to frame issues : *Ashok Vs. M/s. Sanghi Brothers (Indore) Ltd., I.L.R. (2014) M.P. 2080*

– **Section 34** – Objections – Scope of interference– If award is in conflict with public policy of India – Court would interfere with an award, if it is in violation of statute, interest of India, justice or morality, patent illegality, contravention of Act or terms of contract – Respondent's witness admitted that extra work of de-watering was done by appellant as an extra item – It was further held by Arbitrator that since the aforesaid amount was not included in award, therefore, the same was admittedly included by the Arbitrator as an extra item – Arbitrator had applied its mind – If two views are possible, view taken by Arbitrator would prevail – Trial court should not have disallowed the said item – Appeal allowed : *Seth Mohanlal Hiralal (M/s.) Vs. State of M.P., I.L.R. (2015) M.P. 2745*

– **Section 34** – Order passed by Trial Court does not contain reasons but merely conclusions – Appellant granted one opportunity to deposit 75% of the awarded amount before Trial Court within 30 days – Respondent would be at liberty to raise all objections : *R.S. Avtar Singh & Co. (M/s.) Vs. M/s. Vindyachal Air Products Pvt. Ltd., I.L.R. (2011) M.P. *72*

– **Section 34** - Permission to lead evidence - That non consideration of prayer to lead evidence amounts to procedural impropriety and runs contrary to principles of

natural justice - Matter remanded back to decide the application for permission to lead evidence : *State of M.P. Vs. M/s. Som Datt Builder Pvt. Ltd., I.L.R. (2014) M.P. 726*

– **Section 34** - Setting aside of Arbitral Award - Whether the court below can straightway fix the matter for final hearing without framing the issues and giving an opportunity to the party to lead the evidence - Held - That in the summary proceedings under Arbitration Act, the issues are not required to be framed : *State of M.P. Vs. M/s. Som Datt Builder Pvt. Ltd., I.L.R. (2014) M.P. 726*

– **Section 34 & 36** – Enforcement of award – During pendency of the proceedings under Section 34, no discretion is left with the Court to proceed on an application under Section 36 of the Act, if any, filed for enforcement of the award : *Banco Construction Co. (M/s.) Vs. Union of India, I.L.R. (2012) M.P. 840*

4. Res judicata

– **Section 34**, Civil Procedure Code (5 of 1908), Section 11 – Res judicata – Principle of res judicata attracts only when the matter directly and substantially in issue in the former suit between the same parties which has been heard and finally decided by such Court : *Banco Construction Co. (M/s.) Vs. Union of India, I.L.R. (2012) M.P. 840*

– **Section 37** - Appeal - Appellant submits that the provisions of M.P. Accommodation Control Act, 1961 would be applicable - Contention regarding applicability of Accommodation Control Act was neither raised before the Arbitrator, nor before the appellate court - Held - Appellant cannot be permitted to raise argument for the first time at appellate stage by way of amendment or by way of oral submission : *Bharti Infratel Ltd. Vs. Dr. Ram Gopal Tripathi, I.L.R. (2013) M.P. 2247*

– **Section 44 & 45** – Binding Contract – For a binding contract written agreement is not necessary but from the contemporaneous correspondence exchanged between the parties “consensus ad idem” should be clearly spelt out, it cannot be said that an agreement had come in existence – The correspondence between the parties also indicate that till 22.09.2008 the parties were at the negotiation stage and final terms were not arrived at between them : *British Marine PLC. London Vs. Agrawal Coal Corporation Pvt. Ltd., I.L.R. (2014) M.P. 1941 (DB)*

– **Section 44 & 45** – Collusion – It is not enough to state in general term that there was “collusion” – Said allegation made by the appellant lacks in material pleading to substantiate the plea of “collusion” – It cannot be held that the respondent No. 2 has colluded with the respondent No. 1 : *British Marine PLC. London Vs. Agrawal Coal Corporation Pvt. Ltd., I.L.R. (2014) M.P. 1941 (DB)*

– **Section 44, 45 & 50** – Reference of subject matter of suit filed by respondent No. 1 to arbitration – Held – Before referring the dispute for arbitration u/s 45 of the Act,

the judicial authority must examine the existence of arbitration agreement between the parties – Section 45 can be invoked only if it is found that such an arbitration agreement is not null and void, inoperative and incapable of being performed : *British Marine PLC. London Vs. Agrawal Coal Corporation Pvt. Ltd., I.L.R. (2014) M.P. 1941 (DB)*

– **Section 45** – Arbitration Clause – Seat of Arbitration – Based on seat of arbitration so also the nationality of parties, an arbitration is classified to be an ‘International Arbitration’ and the governing law is also determined on the basis of the seat of arbitration – Therefore, it is clear that based on the seat of arbitration, the question of permitting two Indian companies/parties to arbitrate out of India is permissible : *Sasan Power Ltd. Vs. North American Coal Corporation India Pvt. Ltd., I.L.R. (2015) M.P. 3328 (DB)*

ARBITRATION CLAUSE

Arbitration Clause - An arbitration clause is a collateral term in the contract which relates to resolution of disputes and not performance - Even if performance of contract comes to an end on account of repudiation, frustration or breach of contract, the arbitration clause would survive for the purpose of resolution of the disputes : *Shin-Etsu Chemical Co. Ltd. Vs. Vindhya Telelinks Ltd., I.L.R. (2011) M.P. *156*

ARITHMETICAL ERRORS

Arithmetical errors - Correctness regarding totaling up of the marks are arithmetical in nature - Objection that interpolation in marks was done to provide undue benefit to respondent No. 4, unsustainable : *Kamruddin Siddiqui Vs. Indian Oil Corporation, I.L.R. (2011) M.P. *41*

ARMED FORCES TRIBUNAL ACT (55 OF 2007)

– **Section 14**, Constitution, Article 226 - Jurisdiction of High Court - Petitioner apart from challenging the punishment of discharge from service has also questioned the constitutionality of various provisions of Air Force Act, 1950 - Air Force Act confers jurisdiction, powers and authority exercisable by all Courts except the Supreme Court or High Court on the Tribunal - There is no exclusion of jurisdiction of High Court - High Court has jurisdiction to entertain the petition : *Ravindra Nath Tripathi Vs. Union of India, I.L.R. (2013) M.P. 1553 (DB)*

ARMS ACT (54 OF 1959)

– **Section 13 & 14** – Application for grant of arms license rejected by licensing authority taking note of the fact that the petitioner has no danger from any group or

person – Held – Provisions contained u/s 13 (2A) read with Section 14(1)(b)(i)(3) provide that recording of reason in refusing to grant the license is not postulated – Licensing Authority being satisfied in a given facts that there is no threat from any group or person to the petitioner’s life or property was within his right to refuse the grant of license – No interference is warranted – Petition dismissed : *Umesh Yadav Vs. State of M.P., I.L.R. (2014) M.P. 1009*

– **Section 13, 14, & 15(3)**, Arms Rule 1962 – Rules 54 & 56 – Renewal of Arms license – Inordinate delay in filing application for renewal of license – Held – Renewal of license is ordinary incidence and the refusal must be accompanied by reasons recorded in writing – Provisions of Section 13 & 14 are applicable to renewal also – If prescribed authority was of view that application is delayed then he could have directed the petitioner to deposit late fee – Petition allowed : *Pradeep Kumar Jain Vs. State of M.P., I.L.R. (2014) M.P. *8*

– **Section 14** - Refusal of licenses - Licensing Authority can refuse to grant arms license to a person tried for serious criminal offences though acquitted by extending benefit of doubt : *Ram Kumar Sharma Vs. State of M.P., I.L.R. (2011) M.P. 2964 (DB)*

– **Section 17** - Revocation of license - Minor son of the licensee fired at a minor girl causing her death - Minor son of the petitioner was held guilty by the Juvenile Magistrate - License of the petitioner was revoked - Held - Petitioner was grossly negligent in keeping the firm arm - A person who could not keep such arms according to the terms and conditions of the license are not entitled to keep the arm - Order revoking arm license cannot be said to be contrary to law - Petition dismissed : *Baij Nath Rajak Vs. District Magistrate/Collector, Sidhi, I.L.R. (2013) M.P. 108*

– **Section 17(3)** - Cancellation of arms license - Petitioner's license cancelled on the suspicion that he being a close relative of a hard core criminal had been internally helping him - Held - Merely on the basis of suspicion raised by Superintendent of Police that the petitioner was internally helping a criminal which formed the basis for arriving at a conclusion by the District Magistrate that the security of the public peace or public safety has been put to peril - There is no cogent material to substantiate the aforesaid suspicion drawn by the Superintendent of Police and the District Magistrate - Order of cancellation of license quashed : *Jahangir Khan Vs. State of M.P., I.L.R. (2011) M.P. 78*

SYNOPSIS : Section 25

- 1. Seizure of Fire Arms – Witness/Proof**
- 2. Miscellaneous**

1. Seizure of Fire Arms– Witness/Proof

– **Section 25 & 27** - The attesting witness of memorandum and seizure supported the evidence of investigating officer - Katta and one live cartridge were seized from the possession of appellant No. 1 - In the forensic report, it was found that such deformed lead pellets were fired from the same unlicensed firearm - His conviction u/s 25(1) & 27(1) of Arms Act is justified and affirmed : *Rajendra Singh Vs. State of M.P., I.L.R. (2013) M.P. 2439 (DB)*

– **Section 25(1-B)(a)** – Independent witness not confirming the prosecution story as described by police – Armorer not confirming that the firearm was sealed and signed by seizing officer – Prosecution also failed to prove that the firearm examined by armorer is the same which was seized from the applicant – Benefit of doubt would go to the applicant – Applicant acquitted – Revision petition allowed : *Rafique Vs. State of M.P., I.L.R. (2011) M.P. 1079*

– **Section 25(1-B)(a)** - Seizure of Fire Arm - Evidence of Police Officers - Entry regarding information received from informer in relation with presence and involvement of accused in crime was neither produced nor proved - Not proved that the pistol and cartridges were properly sealed on spot and were put in proper and safe custody - Nothing on record that the seized articles were sent to District Magistrate in a sealed condition for obtaining sanction - Weapons also not produced before the Court for exhibition and proving the recovery - Recovery of weapons not proved beyond reasonable doubt - Appeal allowed : *Balli @ Daulat Singh Vs. State of M.P., I.L.R. (2013) M.P. 2012*

– **Section 25(1-B)(a)** – Seizure of fire Arms – Neither seized nor any sanction to prosecute under Arms Act was obtained from the District Magistrate – Conviction u/s 27 of the Arms Act cannot be sustained : *Gulzar Ahmad @ Gulzar Khan Vs. State of M.P., I.L.R. (2014) M.P. 2268 (DB)*

2. Miscellaneous

– **Section 25 & 4** - Mandatory requirement of Section 4 read with Section 25(1-B) of the Act not proved - Appellant/Accused is acquitted of the offence u/s 25 of the Arms Act : *Santosh Vs. State of M.P., I.L.R. (2013) M.P. 2693 (DB)*

– **Section 25 & 27** - See - Penal Code, 1860, Section 302, 201 & 120-B : *Pragya Singh Kushwaha @ Pragya Bharti @ Pappi Didi @ Swami Purna Chetnanand Giri Vs. Union of India, I.L.R. (2012) M.P. *91 (DB)*

– **Section 25(1-B)(a)** - Sentence - Lesser Sentence - Appellant has not served the minimum sentence - Not entitled for early release, even on the ground of parity, as the

sentence which he has undergone is lesser to minimum sentence as prescribed by Statute : *Balli @ Daulat Singh Vs. State of M.P., I.L.R. (2013) M.P. 2012*

– **Section 25(1-B)(a) & 27** - See - Penal Code, 1860, Section 307 : *Babuji @ Shyam Vs. State of M.P., I.L.R. (2011) M.P. 233*

SYNOPSIS : Section 39

Sanction for prosecution

– **Section 39** – Sanction for prosecution – Production of arms – Sanctioning authority is required to see that accused was found to be in possession of firearm, the date(s) on which he was found in possession without having valid license – Physical production of firearm/object before sanctioning authority does not appear to be necessary and authority was also not required to look into it – For grant of sanction under Section 39 of the Act, production of seized instrument/ firearm/arm/arms is/are not mandatory : *Gurudev Singh @ Goga Vs. State of M.P., I.L.R. (2011) M.P. 2053 (DB)*

– **Section 45(b)(ii)** – See – Income Tax Act, 1961, Section 132 : *Sunil Kapoor (Dr.) Vs. State of M.P., I.L.R. (2014) M.P. 1266*

ARMS RULES, 1962

– **Rule 54**, Constitution, Article 162, Seventh Schedule List I Entry V - License Fee for renewal of arms license - Only Parliament is empowered to legislate on the subject of Arms - Parliament has enacted Arms Act, 1959 and Rules - State Govt. has no power either to legislate or take executive action in respect of arms in general in respect of imposing or enhancing licence fee either for the initial grants or the renewals - Notification/Circular dated 10.06.2011 enhancing the renewal fee quashed : *Mahendra Bhatt Vs. State of M.P., I.L.R. (2012) M.P. 3021 (DB)*

– **Rules 54 & 56** – See – Arms Act, 1959, Section 13,14, & 15(3) : *Pradeep Kumar Jain Vs. State of M.P., I.L.R. (2014) M.P. *8*

ASSESSMENT OF QUANTUM OF COMPENSATION

Assessment of Quantum of Compensation - If the specific provisions are not available in the concerning enactment, then the court may take into consideration the provisions of some other enactment like Motor Vehicle Act and its interpretations for the assessment of Compensation : *M.P. State Electricity Board Vs. Girvan Dhakad, I.L.R. (2013) M.P. 868*

ASSOCIATION OF STUDY INSTITUTE REGULATION, 2008

– **Clause 11.1** – See –Makhanlal Chaturvedi Rashtriya Patrakarita Avam Sanchar Vishwavidyalaya Adhinyam, M.P., 1990, Section 5(xxxi) & 51 : *Makhanlal Chaturvedi Vishwavidyalaya Adhyayan Kendra Sangh Vs. State of M.P., I.L.R. (2012) M.P. 716 (DB)*

AYURVEDIC UNANI TATHA PRAKRITIC CHIKITSA VYAVASAI ADHINIYAM, M.P., 1970 (5 OF 1971)

- **Degree of Ayurved Ratna or Vaidya Visharad** - Registration - These degrees were recognized when the degree was obtained by petitioner and it was de-recognized later on - However, on the date when the application for registration was made, these degrees were already de-recognized and further in view of judgment passed by Apex Court that Degree and Diploma of Vaidya Visharad or Ayurved Ratna from Hindi Sahitya Sammelan Prayag, Allahabad was never recognized by the Parliamentary Act or by Central Council, therefore, they cannot be treated as eligible qualification to register any person as medical practitioner in Ayurved, the petitioner cannot be registered as medical practitioner in Ayurved : *Nizamuddin Ansari Vs. State of M.P., I.L.R. (2013) M.P. 2548*

B

BANK GUARANTEE

Bank Guarantee – Encashment of – The terms of bank guarantee are unequivocal and unconditional and recite that amount would be paid without demur or objection and shall be conclusive as regards the amount due and payable by reason of any breach of Contract – Held – Encashment of unconditional bank guarantee furnished by petitioner will not depend upon adjudication of dispute – Contract of bank guarantee is independent of main contract – MPRRDA is sole judge regarding question as to whether any breach of the terms of contract was occurred – Petition dismissed : *Biaora Infrastructure Pvt. Ltd., Indore (M/s.) Vs. State of M.P., I.L.R. (2011) M.P. 1141 (DB)*

Bank Guarantee – Interference by Court – In case of unconditional bank guarantee, the Court will not interfere unless there is fraud and irretrievable damages are involved in the case – Encashment of bank guarantee does not depend upon adjudication of disputes : *Biaora Infrastructure Pvt. Ltd., Indore (M/s.) Vs. State of M.P., I.L.R. (2011) M.P. 1141 (DB)*

Banking - Guarantee - Letter of Credit - A draft accompanying documents must be in strict accord with the letter of credit - If the documents presented comply with the terms of credit, the issuing bank must honour its obligation in accordance with the terms

of credit : *State Bank of India Vs. M/s. Emmsons International Ltd., I.L.R. (2011) M.P. 2939 (SC)*

BENAMI TRANSACTIONS (PROHIBITION) ACT, (45 OF 1988)

– **Section 3 & 4** - See -Stamp Act, 1899, Art. 55 : *Govind Sharan Vs. Har Govind, I.L.R. (2012) M.P. 1597*

– **Section 4** – Benami Transaction – Evidence available on record shows that both the parties were having very sweet and cordial relations, however, it can be inferred from surrounding circumstances that they were living together like husband and wife - Plaintiff admitted that entire consideration amount and cost of construction was borne by defendant although the sale deed was executed in his name – Defendant is in possession of the suit house since the time it was constructed – Defendant is the owner of the property : *Shanta Bai Vs. Pushkar Lal, I.L.R. (2012) M.P. *9*

– **Section 4** – Prohibition to held property benami – Guidelines to test benami transaction – discussed : *Shanta Bai Vs. Pushkar Lal, I.L.R. (2012) M.P. *9*

– **Section 4 (1)**, Civil Procedure Code (5 of 1908), Order 7 Rule 11 - Suit for declaration that as the property was purchased by him benami in the name of his mother therefore, he be declared as owner - If a suit is filed after coming into force of the act, claiming any right, title or interest on the basis of any benami transaction, whether it was done prior to coming into force of the act or after coming into force of the act, would be barred u/s 4(1) - Revision allowed - Application under order 7 rule 11 is allowed : *Anand Kumar Vs. Vijay Kumar, I.L.R. (2012) M.P. 3090*

– **Section 4 (1)** - Plea of Benami - Pleat allegation itself is evident that suit property was purchased benami - No evidence was required to be recorded for deciding the preliminary issue - The suit is not maintainable : *Mukesh Vs. Shantilal, I.L.R. (2011) M.P. 2893*

– **Section 4 (1)** - See -Civil Procedure Code, 1908 - Order 7 Rule 11, Order 7 Rule 11(d) : *Anand Kumar Vs. Vijay Kumar, I.L.R. (2012) M.P. 2554*

BHOPAL STATE LAND REVENUE ACT (4 OF 1932)

Section 2(15) - See - Land Revenue Code, M.P., 1959, Section 158(1)(c) : *Prithvivallabh Vs. Chandra Kishore Vyas, I.L.R. (2011) M.P. 997*

BHUMI VIKAS RULES, M.P. 2012

– **Rule 26(9)** – Licensing of Engineer – Competence of Architect – Distinction made between the scope of license to be granted to Civil Engineers and Architects is

discriminatory and hit by Article 14 of Constitution of India – Clause (C) of sub Rule (9) of Rule 26 struck down and further declared that sub rule (9) Clause (A) would apply *proprio vigore* to Engineers as in the case of Architects for grant of license : *Association of Civil Engineers of Madhya Pradesh (Bhopal Unit) Vs. State of M.P., I.L.R. (2014) M.P. 2085 (DB)*

– **Rule 61** – See – Constitution – Article 300-A : *Prem Narayan Patidar Vs. Municipal Corporation, Bhopal, I.L.R. (2015) M.P. 1223*

BOILERS ACT (5 OF 1923)

– **Section 14** - Inspection - Competent Authority - Competent Authority is required to have necessary qualification - Condition providing for inspection at the instance of third party not illegal : *M.S. Razawat Vs. State of M.P., I.L.R. (2011) M.P. 424 (DB)*

– **Section 34** - Exemption - Validity of notification dated 21.12.2001 challenged - State Government by notification exempted boilers whose heating surface area is less than 1000 Sq. meters from operation of provisions of clauses (a) & (b) of S. 6, Ss. 7 to 27 and S. 30 - Held - State Government has satisfied itself with regard to material design and construction of boilers and has also taken into account the need of rapid industrialization - Notification cannot be said to be in violation of S. 34(3) of Act - Petition dismissed : *M.S. Razawat Vs. State of M.P., I.L.R. (2011) M.P. 424 (DB)*

BOMBAY PUBLIC TRUSTS ACT (29 OF 1950)

– **Section 50** – Suit against Public Trust – Jurisdiction – Suit against Public Trust can be filed in Court within local limits of whose jurisdiction the whole or the part of the subject matter of Trust is situate – Appeal allowed : *Pushpa Berry (Smt.) Vs. Shri Mahila Grih Udyog Lijjat Papad, I.L.R. (2014) M.P. 1330*

BONAFIDE PURCHASERS

Bonafide Purchasers – Petitioner constructed a mall and sold several shops – Shopkeepers have no right over such piece of land if the shops have been constructed over Govt. land – If the shopkeepers feel that they are cheated by the builder then they are at liberty to take recourse to law : *Minal Builders (M/s.) Vs. State of M.P., I.L.R. (2011) M.P. 1886*

BUILDING AND OTHER CONSTRUCTION WORKERS'
(REGULATION OF EMPLOYMENT AND CONDITIONS OF
SERVICE) ACT (27 OF 1996)

– **Section 47** - Second complaint - Limitation - First complaint which was presented within the period of limitation was quashed by Supreme Court that Company of which petitioners no. 2 & 4 are officers have not been impleaded - Second Complaint - Held - Court takes cognizance of the offence and not the offender and therefore, the number of accused person or the legal status of anyone of them did not assume any significance - Complaint presented within the prescribed period of limitation - Offences allegedly committed by them and the co-accused named in the first complaint - Accordingly, none of the second complaints could be treated as barred by time - Petition dismissed : *NTPC Vs. State of M.P., I.L.R. (2012) M.P. 2880*

BUILDING AND OTHER CONSTRUCTION WORKERS'
WELFARE CESS ACT (28 OF 1996)

– **Section 3** – Building and Other Construction Workers' Welfare Cess Rules, 1998 – Rule 3 – Levy of Cess – Respondent No.3 proposed and awarded contracts for construction to the petitioners on TOTAL TURN-KEY BASIS –The contract broadly included the supply, transportation to work site, storage, insurance, erection, assembling, testing and commissioning of the lines and line equipments – The breakup of contract price was also provided for supply portion and for erection portion – Respondent No.3. deducted the Cess levied at source on the bill furnished by the petitioners – Petitioners challenging the deduction by referring the price clause of the contract and contending that they are not liable to pay Cess attributable for supply portion – Held – The cost of construction cannot be divided in parts into supply portion and erection portion – Even the cost for supply portion is incurred by the petitioners and cannot be separated from the total cost incurred – The Cess is on the total cost of construction – Respondent No. 3 is entitled to deduct one per cent Cess on the total contract price mentioned in the contract – Petitioners are liable to pay Cess even for supply portion – Petition dismissed : *G.V.P.R. Engineers Ltd. (M/s.) Vs. State of M.P., I.L.R. (2012) M.P. 1227 (DB)*

BUILDING AND OTHER CONSTRUCTION WORKERS'
WELFARE CESS RULES, 1998

– **Rule 3** – See – Building and Other Construction Workers' Welfare Cess Act, 1996, Section 3 : *G.V.P.R. Engineers Ltd. (M/s.) Vs. State of M.P., I.L.R. (2012) M.P. 1227 (DB)*

C

CANTONMENT ACT (2 OF 1924)

– **Section 181(3)(4)** – Decision on application – Application submitted by the petitioners were either to be granted or to be rejected on valid reasons as mentioned in sub-section (4) of Section 181 of 1924 Act – Applications/Notices of execution of building were to be considered only and only under the scheme of 1924 Act : *S.L. Seth Vs. Union of India, I.L.R. (2014) M.P. 948*

– **Section 181(3)(4)** – No objection certificate – Once no objection certificate was issued, no power was available with the Board to refer the matter to the next Higher Authority or anybody – Power u/s 181 of 1924 Act is required to be exercised before sanctioning the execution or re-execution of the building on the land, which is under the management of Military Estates Officer : *S.L. Seth Vs. Union of India, I.L.R. (2014) M.P. 948*

– **Section 181(3)(4)** – Refusal of building permission – Rejection of application was not on specific ground but on such grounds which were not available – Lease deed was granted for the residential purposes, permission was also sought for construction of residential building – Held – If the mutation of the land in dispute was accepted, there is no question for asking the petitioner to surrender the original lease deed and to obtain sub-lease deed separately – It was the responsibility of the authority to issue the sub-lease deed in favour of the petitioners : *S.L. Seth Vs. Union of India, I.L.R. (2014) M.P. 948*

CANTONMENT ACT (41 OF 2006)

– **Section 2, 10 & 28** – Resided – On conjoint reading of Section 28 and 2(zt), it is clear that the person should have had resided during the specified period in a “house” and has not abandoned all intention of occupying such house by himself or his family – House pre-supposes that it has been erected after taking due permission and recognized by appropriate Authority – Electoral Roll to be prepared consisting of persons who have resided in lawful houses to which house number has been allocated for a period of not less than six months immediately preceding the qualifying date : *Union of India Vs. Gopal Das Kabra, I.L.R. (2015) M.P. 2327 (DB)*

– **Section 66**, Municipal Corporation Act, M.P. (23 of 1956), Section 132(6)(d)(e)(o) - Power to impose tax - Entry Tax - Section 66 of Act, 2006 empowers Cantonment Board to impose any tax which under any enactment for the time being in force may be imposed in any municipality in the State - Cantonment Board imposed entry

tax when Clause (d) and (e) of Section 132(6) of Act, 1956 were in existence - Subsequent omission of Clause (d) and (e) of Section 132(6) of Act, 1956 would not amount to bar - Further, the cantonment Board can impose any tax as per provisions of Clause (o) of Section 132(6) of Act, 1956 - Board has power to levy Vehicle Entry Tax - Petition dismissed : *Mahakaushal Transport Sahkarita Maryadit Vs. Union of India, I.L.R. (2012) M.P. *79*

- **Section 70 & 76** - Special Resolution - Rental Value - Respondent issued notice to enhance rental value of the building - Petitioners filed objections - Objections have to be decided by the Board by passing orders thereon by Special Resolution - Recommendation of the Committee of the Board cannot be treated as a special resolution of the Board - Proceedings for recovery of property tax is bad : *St. Aloysius Senior Secondary School Jabalpur Vs. The Cantonment Board, Jabalpur, I.L.R. (2012) M.P. *33*

- **Section 93** - Appeal - Appeal can be filed only if any reasons are recorded in the register of assessment because reasons and findings alone constitute the grounds for challenge - Non-filing of appeal would not make petition not maintainable : *St. Aloysius Senior Secondary School Jabalpur Vs. The Cantonment Board, Jabalpur, I.L.R. (2012) M.P. *33*

- **Section 111(2)(b)** - Exemptions - Petitioner sought exemption from payment of property tax on the ground that the building is being used for educational purposes - Contention that petitioner is charging heavy fees cannot be accepted as there was no assessment as to how the fees is being charged and for what purposes - Board cannot be said to have acted fairly and properly in a reasonable manner : *St. Aloysius Senior Secondary School Jabalpur Vs. The Cantonment Board, Jabalpur, I.L.R. (2012) M.P. *33*

- **Section 258**, Cantonment Land Administration Rules 1937, Rule 3.1 - Cantonment Land - Army closed/obstructed alleged road adjoining defence land and land belonging to petitioners - Land in question comes within category of class A(1) defence land - Army authorities have absolute right to use the same - No case made out for grant of any relief - Writ petition dismissed : *Amar Singh Kwatra (Major) (Retd.) Vs. Union of India, I.L.R. (2015) M.P. 112*

CANTONMENT ELECTORAL RULES, 2007

- **Rules 10(3) & 28** - Preparation of Electoral Roll - Exclusion of encroacher from electoral roll - In earlier round of litigation, it was directed that Voter list should be prepared strictly in accordance with Rule 10 - As per Rule 10, Voter list is to be arranged according to house numbers - House numbers are not allotted to encroachers /unauthorized construction - Inclusion of names of encroachers in voter list is bad -

Respondents directed to prepare the voter list removing the names of encroachers and residents residing in illegal constructed house without house number given by Cantonment Board – Petition allowed : *Gopal Das Kabra Vs. Union of India, I.L.R. (2015) M.P. *35*

CANTONMENT LAND ADMINISTRATION RULES 1937

– **Rule 3.1** – See – Cantonments Act, 2006, Section 258 : *Amar Singh Kwatra (Major) (Retd.) Vs. Union of India, I.L.R. (2015) M.P. 112*

CASTE CERTIFICATE AND INVESTIGATION

- **Applicants obtained caste certificates by making declaration** - Police can investigate the matter as in the case of Ku. Madhuri Patil, it is nowhere prohibited by Hon'ble Supreme Court that no prosecution will be done if the guidelines are not followed - Petition dismissed : *Amit Kumar Meena Vs. State of M.P., I.L.R. (2014) M.P. 601*

- **Criminal Prosecution** - There is nothing in judgment passed by Hon'ble Supreme Court in the case of Madhuri Patil that without following the guidelines, no prosecution shall be done - If the guidelines are not followed, then still the prosecution may be initiated : *Amit Kumar Meena Vs. State of M.P., I.L.R. (2014) M.P. 601*

– **Cancellation** – State Level Committee granted opportunities to the petitioner – In evidence petitioner has stated that he belongs to Bhadbhunja caste which is a OBC – Petitioner has fraudulently obtained caste certificate that he belongs to Bhunja Caste – No malafides alleged against Committee – Caste Certificate rightly cancelled – Petition dismissed : *Satya Narayan Kaushal Vs. State Level Committee, I.L.R. (2015) M.P. 2415*

- **Examination of** - Validity of a caste certificate is to be examined by a High Power Screening Committee - No enquiry was got conducted from the High Power Screening Committee - Caste certificate issued in favor of petitioner was never cancelled - Termination of services of petitioner on the ground that description of the caste for the time being was not in the list is not justified : *Jitu Prasad Vs. Industrial Development Bank, I.L.R. (2013) M.P. 2338*

– **Issuance of** – Petitioner before submitting application for grant of Caste Certificate always projected himself as *General, Hindu, Sikh or Punjabi* - Petitioner or his father never faced deprivation, discrimination, atrocities or difficulties which are faced by a S.C. Candidate – Very purpose of grant of SC certificate is available to those who had a difficult start and upbringing in their lives because of belonging to SC

community – Petitioner never faced those deprivation – Not entitled for benefits : *Rajendra Singh Saluja Vs. State of M.P., I.L.R. (2012) M.P. *44*

– **Verification** – Vigilance Report – Caste Verification Committee can examine the correctness and genuineness of the report – Committee is not required to blindly follow the Vigilance Report : *Rajendra Singh Saluja Vs. State of M.P., I.L.R. (2012) M.P. *44*

- **Vigilance Officer's Report** - Value of - Directives contained in para 7 of decision of Apex Court in the case of Ku. Madhuri Patil that if report of Vigilance Officer is found in favor of candidate is to be believed and no further action is to be taken against the candidate is subject to the report having been prepared after strictly following the detailed procedure provided in Clause 5 - Failing which any favorable report can be termed as procured false or fraudulent : *Rajendra Singh Saluja Vs. State of M.P., I.L.R. (2012) M.P. *82 (DB)*

CASTE VERIFICATION COMMITTEE

– **Constitution thereof** – Allegation that a member who was required to be nominated by Chairman and who should be an expert in the field of SC was not there – Held – State produced communication dated 4.11.1999 showing that Director of S.T. research Institute was nominated a Member – No material produced to establish that said member is not competent to be so nominated – Decision dated 4.11.1999 also not challenged – Constitution of Committee upheld : *Rajendra Singh Saluja Vs. State of M.P., I.L.R. (2012) M.P. *44*

– **Findings** – Committee rejected the Vigilance Report which was based on oral evidence and based its finding basically on documentary evidence like School Admission Register, Transfer Certificate, Application submitted by father of petitioner for grant of APL/BPL Ration Card – All documents show that petitioner and his father always expressed their caste as Punjabi/Sikh/Hindu and never claimed them as S.C : *Rajendra Singh Saluja Vs. State of M.P., I.L.R. (2012) M.P. *44*

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

- **Bar of Jurisdiction of Civil Courts** - Respondents not a party to the ceiling proceedings - Civil suit for declaration that order passed by competent authority be declared null and void is maintainable and Civil Court had jurisdiction at the time of filing of the plaint : *State of M.P. Vs. Ramcharan, I.L.R. (2011) M.P. 2468*

– **Section 11(3)** - Notice to Creditor - Holder of land in her return had disclosed that the land in question has been mortgaged by her with the Bank - No Notice was

issued to Bank - Bank auctioned the land for recovery of dues which was purchased by petitioner - Words Creditors and all other persons interested in the land used in Section 11(3) cannot be ignored and are mandatory - As competent authority was aware that land has been mortgaged, therefore, should have invited and adjudicated the objections and thereafter the order must have been passed by settling the dispute of the Bank and by discharging the charge over the land which was declared to be surplus - As no notice was issued, proceedings under the Act are vitiated : *Bala Dubey (Smt.) Vs. State of M.P., I.L.R. (2013) M.P. 38*

- **Section 11(5)** - Period of limitation - Respondents not a party to the ceiling proceedings before the competent authority although were in possession of the property for the last 40 years - They had filed certain objections but were not accepted by competent authority - Period of filing suit within 3 months for filing suit as per the provisions of un-amended Act would not apply to the suit filed by the respondents - Suit filed by respondents within 3 years is within limitation : *State of M.P. Vs. Ramcharan, I.L.R. (2011) M.P. 2468*

CENTRAL BANK OF INDIA (OFFICERS) SERVICE REGULATIONS, 1979

- **Regulation 46**, Payment of Gratuity Act (39 of 1972), Section 4 – Payment of Gratuity Act being of superior status the provisions of Act of 1972 will have the overriding effect on the regulation : *Zonal Manager, Central Bank of India Vs. R.R. Das, I.L.R. (2015) M.P. 80*

CENTRAL CIVIL SERVICES (CLASSIFICATION, CONTROL AND APPEAL) RULES, 1965

- **Rules 3(C) & 14(2)** – See – Constitution – Article 226 : *Ramesh Pal Vs. Union of India, I.L.R. (2015) M.P. 890*

- **Rule 11(iii)** – Personal gain of a Government servant is not the condition precedent for effecting a recovery once it is proved that the loss is attributed to the negligence : *Union of India Vs. M.L. Khare, I.L.R. (2012) M.P. 45 (DB)*

- **Rule 16(1)(b)** – Minor Penalty – Dispensation of Departmental Enquiry – When allegations are factual in nature and are denied by the delinquent employee, departmental enquiry needs to be conducted in order to fulfill the requirement of principles of natural justice : *Bholeram Soni Vs. Union of India, I.L.R. (2015) M.P. 139 (DB)*

– **Rule 19** – Compulsory Retirement – Petitioner was convicted u/s 489 of IPC – He was dismissed from service on account of his conviction – Later on petitioner was acquitted by Appellate Court – Respondents converted the order of dismissal into compulsory retirement – No departmental enquiry was conducted and no reasons were assigned while passing the order of compulsory retirement – Order quashed – Petitioner directed to be reinstated – Pension already paid to petitioner shall be adjusted towards back wages and employer is entitled to recover other terminal dues paid to petitioner : *Madhvendra Vs. Secretary, Union of India, I.L.R. (2015) M.P. 1211*

CENTRAL CIVIL SERVICES (PENSION) RULES, 1972

– **Rule 3(q)** – Qualifying service – When there is no break in service, a non-duty period can not be excluded from counting the said period of suspension for the purpose of pension – Petition allowed : *Prakash Kumar Sahu Vs. Union of India, I.L.R. (2012) M.P. 326 (DB)*

- **Rule 33 & 34** - Petition is preferred by the petitioner on the ground that the O.A. filed by the respondent was wrongly allowed directing fixation of pay of the respondent in the higher pay scale and for payment of arrears and pensionary benefits based on such fixation - Held - Respondent officiated on a higher post and has discharged greater responsibilities than the substantive post of the respondent - Average emoluments of the respondent was to be fixed and only on the basis of the said average emoluments the pension of the respondent was required to be calculated : *Union of India Vs. Radhelal Goud, I.L.R. (2013) M.P. 1325 (DB)*

- **Rule 48** - See - Central Fundamental Rules - Rule 56(j) : *Ramjilal Burman Vs. Union of India, I.L.R. (2012) M.P. 1538 (DB)*

– **Rule 54(6)(iv)** - Major son suffering from disability - Family Pension - Respondent claimed family pension being 40% disabled - Held - Merely because a person may earn his livelihood even with physical limitation cannot be construed in the given case rendering the respondent ineligible for family pension : *Union of India Vs. Shri Baba Singh, I.L.R. (2012) M.P. 3012 (DB)*

– **Rule 69(1)(c)** – Payment of Gratuity – Preferment of a criminal revision or an appeal against an acquittal cannot be regarded as a continuance of the trial and cannot be treated to be pendency of judicial proceeding as the initial presumption of innocence gets re-enforced by the orders of acquittal : *Jawahar Lal Sahu Vs. Union of India, I.L.R. (2011) M.P. *54 (DB)*

**CENTRAL CIVIL SERVICES (TEMPORARY SERVICE) RULES,
1965**

– **Rule 5(1)** – See – Service Law : *Diwakar Prasad Tiwari Vs. Union of India, I.L.R. (2014) M.P. 1503*

– **Rule 5(1)** - Termination from service - False Declaration - Petitioner made false declaration at the time of his appointment that he was never arrested and prosecuted, kept under detention or bound down/fined, convicted by a Court of law - This declaration was made in the year 2008 - Record shows that a criminal case was registered against the appellant in the year 2005 which was pending on the date of making declaration - Defence of the appellant that he was not aware of the registration and pendency of criminal case not trustworthy under the facts and circumstances of the case - Termination of services proper - Appeal dismissed : *Dharamveer Vs. The Director General of Police, I.L.R. (2012) M.P. 2322 (DB)*

CENTRAL EXCISE ACT (1 OF 1944)

– **Section 11A(1)**, Central Excise Rules, 2002, Rule 25 – Levy of Excise Duty – Revenue has to establish that excisable goods were produced or manufactured by assessee concerned and it is necessary to establish that excisable goods was clandestinely removed – Respondents alleged that seized Gutkha was never manufactured by them and is duplicate – Held – Revenue failed to establish that seized Gutkha was manufactured by respondent – Excise duty cannot be levied merely on basis of assumption or presumption – Petition dismissed : *Union of India Vs. M/s. M.S.S. Foods Products Ltd., Indore, I.L.R. (2011) M.P. 959 (DB)*

– **Section 35 (F)** - See - Constitution - Article 227 : *Chouhan Construction (M/s.) Vs. Union of India, I.L.R. (2014) M.P. *1 (DB)*

– **Section 35-G** – Small Scale Industry – Exemption – 2 small scale industries owned by one person availed the benefit of exemption – Held – Both units have different entrances and end produce is different – However, Income Tax Account is in name of one unit – Administrative staff is one and expenses of both units are borne by unit no. 1 – Consolidated profit and loss account is prepared for both units – Income tax assessment was made jointly – Not entitled for exemption – Appeal dismissed : *Parag Fans & Coolings Vs. Commissioner, Customs, I.L.R. (2015) M.P. 1845 (DB)*

– **Section 35 H(1)** & Central Excise Rules, 1944, Rule 57-1 – Show Cause Notice – Issued by an unauthorized person – Superintendent could not issue the show cause notice in relation to the recovery of MODVAT credit after disallowing it and it was only the Assistant Collector or Collector who could issue the notice – Entire action

initiated is unsustainable, *void ab initio* and stands vitiated : *Bharat Heavy Electricals Ltd., Bhopal (M/s.) Vs. Commissioner, Customs & Central Excise, Bhopal, I.L.R. (2014) M.P. 3257 (DB)*

CENTRAL EXCISE RULES, 1944

– **Rule 57-1** – See – Central Excise Act, 1944, Section 35 H(1) : *Bharat Heavy Electricals Ltd., Bhopal (M/s.) Vs. Commissioner, Customs & Central Excise, Bhopal, I.L.R. (2014) M.P. 3257 (DB)*

CENTRAL EXCISE RULES, 1945

– **Rule 57-A & 57G(1)** – MODVAT Credit – Entitlement – Assessee entitled u/r 57-A – Merely because of the time frame fixed in making entries in Part II of RG-23-A and because of some error in making entry, benefit cannot be denied : *Bharat Heavy Electricals Ltd. (M/s.) Vs. C.E.C., Bhopal, I.L.R. (2015) M.P. 3089 (DB)*

– **Rule 57-A & 57-G(1)** – MODVAT Scheme – Receipt of input mentioned in Part-I of a single comprehensive RG-23 – Evidence of crystallization of right to MODVAT credit – On the basis of inconsistency in Part II – Right to credit accrued already cannot be denied : *Bharat Heavy Electricals Ltd. (M/s.) Vs. C.E.C., Bhopal, I.L.R. (2015) M.P. 3089 (DB)*

– **Rule 57-A & 57-G(1)** – MODVAT Scheme – Right to Credit – Accrued to the assessee – On the date of payment of tax on raw material or inputs and the right get crystallized to them on receiving the inputs in factory : *Bharat Heavy Electricals Ltd. (M/s.) Vs. C.E.C., Bhopal, I.L.R. (2015) M.P. 3089 (DB)*

– **Rule 57-A & 57-G(1)** – Ultravires – Notification issued u/r 57-G prescribing time limit for taking the credit – Right to avail credit conferred u/r 57-A and Rule 57-G provides the procedure – Thus, Central Govt. cannot curtail any right conferred by substantive provision of Rule 57-A – The notification is ultra vires : *Bharat Heavy Electricals Ltd. (M/s.) Vs. C.E.C., Bhopal, I.L.R. (2015) M.P. 3089 (DB)*

CENTRAL EXCISE RULES, 2002

– **Rule 25** – See – Central Excise Act, 1944, Section 11A(1) : *Union of India Vs. M/s. M.S.S. Foods Products Ltd., Indore, I.L.R. (2011) M.P. 959 (DB)*

CENTRAL EXCISE TARIFF ACT, 1985 (5 OF 1986)

– **Chapter 28** - Classification - PVC resin/HDPE Resin was classified by Commissioner as a Chemical Product and not chemical - No departmental or independent

expert opinion was sought to arrive the said findings - Matter remanded back to the authority to seek an opinion of expert in the field and in case no such departmental expert is available, the Commissioner may seek opinion of some independent expert in this regard - Petitions allowed : *Texmo Pipes & Products Ltd. (M/s.) Vs. Assistant Commissioner, I.L.R. (2013) M.P. 1349 (DB)*

CENTRAL FUNDAMENTAL RULES

– **Rule 56(j)** - Central Civil Services (Pension Rules) 1972 - Rule 48 - Compulsory Retirement - Petitioner was initially compulsorily retired under Rule 56(j) - As petitioner had not attained the age of 55 years, therefore, subsequently corrigendum was issued and petitioner was retired in public interest under Rule 48 of Rules, 1972 - Merely mentioning a wrong provision in order and subsequently amending the same referring correct rule would not vitiate the proceedings and consequential order : *Ramjilal Burman Vs. Union of India, I.L.R. (2012) M.P. 1538 (DB)*

– **Rule 56(j)** - Compulsory Retirement - Benefit of Assured Career Progression Scheme was granted on Seniority cum fitness basis - Revenue Committee found that petitioner remained absent from duty consistently even after warning - Also found in drunken condition during duty hours - As the merit consideration to extend the ACP Scheme was not the criteria, therefore, it cannot be said that the petitioner was not compulsorily retired in public interest : *Ramjilal Burman Vs. Union of India, I.L.R. (2012) M.P. 1538 (DB)*

CENTRAL MOTOR VEHICLES RULES, 1989

– **Rule 9(3)** - See - Motor Vehicles Act, 1988, Section 173 : *Oriental Insurance Company Ltd. Vs. Ravi Shankar, I.L.R. (2014) M.P. 147*

CENTRAL SALES TAX ACT (74 OF 1956)

– **Section 8(2)A** – See – Commercial Tax Act, M.P. 1994, Section 15, Entry 4 : *Maneesh Enterprises Vs. Commissioner of Commercial Tax, M.P., I.L.R. (2011) M.P. *55 (DB)*

CENTRAL UNIVERSITIES ACT (25 OF 2009)

– **Section 4(d)** - See - Service Law : *Dr. Harisingh Gour Vishwavidyalaya Vs. Surendra Saraf, I.L.R. (2013) M.P. 552 (DB)*

– **Section 6** – See – Vishwavidyalaya Adhinyam, M.P., 1973, Section 2 and 4 : *Ekta Shiksha Prasar Samiti, Chhatarpur Vs. Dr. Harisingh Gaur University, I.L.R. (2015) M.P. *6 (DB)*

CHARTERED ACCOUNTANTS ACT (38 OF 1949)

– **Section 28** - Sanction to prosecute - Prohibition is attracted when such person is sought to be prosecuted for contravention of provisions contained in Ss. 24, 24A, 25 or 26 - Prohibition is not attracted for any act or omission which constitutes offence under IPC : *Institute of Chartered Accountants of India Vs. Vimal Kumar Surana, I.L.R. (2011) M.P. 321 (SC)*

**CHIKITSIYA SHIKSHA SANSTHA (NIYANTRAN) ADHINIYAM,
M.P. (19 OF 1973)**

– **Section 2(b)** - Medicine - Electro Homeopathy - Words "any other medical qualification" includes medical qualification and system of medicine of Electro Homeopathy - Phrase "all other medicines, therapies or systems" is wide enough to take into its ambit Electro Homeopathy System of Medicine also : *Bhartiya Alternative Medical Foundation Vs. State of M.P., I.L.R. (2011) M.P. 84 (DB)*

**CHIKITSIYA SHIKSHA SANSTHA (NIYANTRAN) SANSHODHAN
ADHINIYAM, M.P. (15 OF 2006)**

– **Section 7-C & 8** - Use of word 'Doctor' - Provisions are not ultra vires : *Bhartiya Alternative Medical Foundation Vs. State of M.P., I.L.R. (2011) M.P. 84 (DB)*

CIRCULAR ISSUED BY COMMISSIONER, COMMERCIAL TAX

Circular issued by Commissioner, Commercial Tax was binding on the Authorities which are prescribed u/s 3 of the VAT Act - But the same was not binding on the Appellate Board : *Pepsico India Holdings Pvt. Ltd. Vs. State of M.P., I.L.R. (2014) M.P. 812 (DB)*

CIVIL COURT RULES (M.P.) 1961

– **Rule 105** – See – Representation of the People Act, 1951, Section 100(1)(d)(iii)(iv) : *Shriniwas Tiwari Vs. Rajkumar Urmalia, I.L.R. (2012) M.P. 464*

CIVIL PRACTICE

Civil Practice – Scope of interference by High Court in orders passed by the subordinate courts in exercise of jurisdiction vested in it by law – Right to cross examine witness is closed in a very speaking manner by the trial court in which the conduct of the petitioner is shown – Such order has been passed by the trial court under its vested discretionary jurisdiction – It is settled law that such orders passed by the subordinate courts under the vested discretionary jurisdictions of such courts, should not

be interfered at the stage of revision or writ petition under Article 227 : *Radha Bai (Smt.) Vs. Shankar Lal Kachhi, I.L.R. (2015) M.P. 2352*

CIVIL PROCEDURE CODE (5 OF 1908)

– **Section 2(2)** - Decree - Nullity - If a decree is of such a nature which cannot be cured by consent or waiver of the party, then such a decree which was nullity ab-initio can be considered even in execution proceedings : *M.P. Housing Board Vs. State of M.P., I.L.R. (2013) M.P. 2723*

– **Section 2(2) & Order 7 Rule 11** – Decree – Order passed under Order 7 Rule 11 amounts to decree – Revision not maintainable as the order is appealable u/s 96 of C.P.C. : *Rajesh Jaiswal Vs. Sanjay Sarvagi, I.L.R. (2014) M.P. 1639*

– **Section 2(11)** - See - Motor Vehicles Act, 1988, Section 166 : *Savita Devi (Smt.) Vs. Smt. Sukhwinder Kaur, I.L.R. (2011) M.P. 165*

SYNOPSIS : Section 9

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|---------------------------------------|-------------------------|
| 1. Decree without Jurisdiction | 2. Jurisdiction |
| 3. Suit for Declaration | 4. Miscellaneous |

1. Decree without Jurisdiction

– **Section 9** - Decree without jurisdiction - Land of respondent No.3 was already acquisitioned for respondent No. 1 & 2 for implementation of their schemes and it's compensation was also paid - Held - A civil suit for perpetual injunction by respondent No.3 or his transferee is not entertainable and a decree for perpetual injunction, if passed, shall not be binding against the respondent No.1 & 2, being ab initio void : *Mohd. Ashraf Vs. M.P. Housing Board, I.L.R. (2011) M.P. 182*

– **Section 9** - Decree without jurisdiction - Nullity - A decree passed by a Court without jurisdiction is a nullity - Its invalidity can be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral purposes : *Rukmani Bai Vs. State of M.P., I.L.R. (2011) M.P. *34*

2. Jurisdiction

– **Section 9**, Company Act (1 of 1956), Section 84(4) – Jurisdiction of Civil Court – Bag containing all the share certificates of the plaintiff along with transfer deeds were misplaced and lost – Suit filed by plaintiffs to declare that defendant should not transfer the share certificates to any other person and also to issue duplicate share certificates – Held – Civil Court is not having any jurisdiction to try such type of suit : *Kamalkant Goyal Vs. M/s. Lupin Laboratories Ltd., I.L.R. (2011) M.P. 2191*

– **Section 9** - Jurisdiction of Civil Court- Matrimonial dispute - Matters relating to matrimonial dispute or other matters of that nature are wholly within the cognizance of civil courts - There cannot, therefore, be any jurisdiction in the Masaajid Committee, functioning under the Muslim Personal Law for deciding such disputes - Counselling and mediation within reasonable limits are permissible - But in the garb of counselling and mediation, committee is not to take over the functions of a civil court and adjudicate matters relating to matrimonial dispute, including one relating to maintenance : *Mohd. Zahir Khan Koti Vs. Masaajid Committee, Bhopal, I.L.R. (2012) M.P. 2143 (DB)*

– **Section 9** – Jurisdiction – Since the correspondence has been done from Indore where registered office is located – Part of action has arisen at Indore – Therefore, Civil Court, Indore has jurisdiction : *British Marine PLC. London Vs. Agrawal Coal Corporation Pvt. Ltd., I.L.R. (2014) M.P. 1941 (DB)*

– **Section 9**, Land Acquisition Act, 1894, Section 4 & 6 - Maintainability of civil suit - Civil Court has no jurisdiction to go into the question of validity or legality of notification u/s 4 and declaration u/s 6 of the Act : *Mohd. Ashraf Vs. M.P. Housing Board, I.L.R. (2011) M.P. 182*

3. Suit for Declaration

– **Section 9**, Land Revenue Code, M.P. (20 of 1959), Section 257(2x) – Suit for declaration of Bhumiswami rights – Suit for declaration of Bhumiswami right and possession in respect of agricultural land is maintainable – Such suit not barred under Section 257 of M.P.L.R. Code : *Om Prakash Vs. Ashok Kumar, I.L.R. (2014) M.P. 2119*

– **Section 9**, Limitation Act (36 of 1963), Article 58 – Suit for declaration and injunction – Ceiling proceedings – Possession taken by the State in the year 1992 – Notification under section 10(1) of the Act of 1976 issued on 08/04/85 – Suit filed in the year 2009 – Limitation period – Three years – Suit barred by the time : *Madhu Janiyani Vs. State of M.P., I.L.R. (2015) M.P. 1316*

– **Section 9** – Suit for declaration – Appellant filed suit for declaration that the name of defendant no. 2 be obliterated from the debenture certificate issued in the name of defendant no. 2 as appellant had invested money for purchase of debentures – Plaintiff/appellant failed to prove her income/source of money – Preponderance of probabilities – Where findings are based upon critical evaluation of evidence, no illegality or perversity is found – Appeal dismissed : *Sheela Yadav (Smt.) Vs. Muthoot Finance, I.L.R. (2015) M.P. 3323*

– **Section 9 & 100**, Land Revenue Code, M.P. (20 of 1959), Section 115 – Second Appeal – Suit for declaration that suit property is private property and the deity of the temple on the suit land is Bhumiswami of the agricultural land – Defence of State was

that suit temple is a public temple and the name of the Collector has rightly been endorsed in revenue records as Vyavasthapak (Manager) – Held – No notice to the plaintiff nor any enquiry was made before endorsing the name of the Collector as Vyavasthapak – Recording the name of Collector as Vyavasthapak was bad in law – State’s Second Appeal was dismissed : *State of M.P. Vs. Shree Ranchor Teekam Mandir, I.L.R. (2014) M.P. 1315*

4. Miscellaneous

– **Section 9** – Civil Suit – Preponderance of Probability – In Civil cases, the preponderance of probability in the facts and circumstances of that particular case has a vital and important role in order to arrive a correct decision to the case : *Shanta Bai Vs. Pushkar Lal, I.L.R. (2012) M.P. *9*

– **Section 9** - See – Land Acquisition Act, 1894, Section 4 & 6 : *M.P. Housing Board Vs. State of M.P., I.L.R. (2013) M.P. 2723*

– **Section 9** – See – Land Revenue Code, M.P., 1959, Section 57(2),(3) : *State of M.P. Vs. Vijaya Bai, I.L.R. (2011) M.P. 3093*

– **Section 9** – See – Workmen’s Compensation Act, 1923, Section 3(5) & 19 : *Jairam Vs. Jaswant Singh alias Fakirchand, I.L.R. (2011) M.P. 2464*

– **Section 9** – Suit for compensation – Civil Suit claiming compensation for loss of 160 cotton bales alleged to be burnt was preferred by the appellant under two policies which were purchased from respondents – Held – Appellant has failed to prove that it actually owned the cotton bales for which it claimed insurance amount – No record to prove ownership was produced – No accounts that appellant purchased cotton bales was produced – Appellant has also not produced record of the seller to prove transaction – Infact number of bales for which claim was made, could not have been pressed or kept in the Ginning Factory – Appeal dismissed : *Navin Ginning Factory, Sendhwa (M/s.) Vs. New India Insurance Co. Ltd., I.L.R. (2013) M.P. 2154 (DB)*

– **Section 9** – Suit for recovery of possession – Co-owner – A Co-owner can file a suit for recovery of property from a person in wrongful possession and that such a suit is regarded as one on behalf of all the co-owners : *Manik Rao Vs. Ramesh, I.L.R. (2012) M.P. 1644*

SYNOPSIS : Section 10

Stay of Suit

– **Section 10** – Stay of suit – Filing of written statement is not sine qua non for deciding the application under Section 10 of C.P.C. – Trial Court directed to decide the application on merits : *Saqib Khan Vs. Ravindra Suri, I.L.R. (2015) M.P. 1280*

– **Section 10** – Stay of suit – Object – To prevent trying of two suits in respect of the same matter in issue : *Govind Prasad Vs. Sandeep Kumar, I.L.R. (2015) M.P. 1683*

– **Section 10** – Stay of Suit – Pendency of criminal case – A civil suit for recovery of loss sustained due to fraud played by respondent in respect of which criminal case is pending cannot be stayed : *Orient Vindyaas (M/s.) Vs. Sazzi Kuttppan, I.L.R. (2013) M.P. 105*

– **Section 10 read with Section 151** – Stay of Proceedings – Civil and Criminal Parallel Proceedings – Even if there is a possibility of conflicting decisions in civil and criminal courts, such an eventuality cannot be taken as a relevant consideration – As the respondents have already filed their written statement in civil suit and issues have been framed, therefore, there is no likelihood of any embarrassment – Civil Proceedings cannot be stayed merely because of pendency of criminal case : *Guru Granth Saheb Sthan Meerghat Vanaras Vs. Ved Prakash, I.L.R. (2013) M.P. 2503 (SC)*

– **Section 10 & Order 39 Rule 1 & 2** – Even when there is a stay of proceeding u/s 10, the trial Court will not be precluded from exercising its power under Order 39 Rule 1 & 2 : *Pushpa Berry (Smt.) Vs. Shri Mahila Grih Udyog Lijjat Papad, I.L.R. (2011) M.P. *14*

– **Section 10** – Matter in issue, directly and substantially – Means – The same must be necessary for the decision of previously instituted suit : *Govind Prasad Vs. Sandeep Kumar, I.L.R. (2015) M.P. 1683*

– **Section 10** – Matter in issue – Means – All the material disputed questions : *Govind Prasad Vs. Sandeep Kumar, I.L.R. (2015) M.P. 1683*

SYNOPSIS: Section 11 (Res judicata)

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| 1. Decision on Merits. | 2. Decree without Jurisdiction. |
| 3. Different Nature of Cause of Action | 4. Party to a Suit. |
| 5. Pleadings/Judgment of Earlier Suit. | 6. Second Appeal. |
| 7. Second Execution. | 8. Miscellaneous. |

1. Decision on Merits.

– **Section 11** - Res Judicata - 1st Claim Petition was dismissed as no evidence was led inspite of giving opportunities - Dismissal of claim petition does not operate as res judicata as the petition was neither substantially nor directly decided between the same parties and on same issues on merits : *Dinesh Kumar Vs. Sunil Kumar, I.L.R. (2013) M.P. *3*

– **Section 11** – Res-judicata – In first suit, the plaintiff failed to produce evidence and the suit was dismissed, drawing a decree – A second suit was then filed by the plaintiff impleading some other parties and on basis of subsequent sale deed – Upon service the defendant/petitioner opposed the suit with an objection regarding res-judicata – Held – The merit of the claim made in the first suit was never assessed – Suit was dismissed for default of appearance of the witnesses of the plaintiff – Mere drawing a decree will not satisfy the consideration of merit of the suit in the first instance – The first Civil Suit was not decided on merits – This itself will not attract the provisions of Section 11, as there was no merit dismissal : *Narayan Singh Vs. Babulal, I.L.R. (2012) M.P. 1404*

– **Section 11** - Res judicata - It is necessary that the matter should be finally heard and decided by a competent court : *Ram Prasad Vs. Rajendra Singh, I.L.R. (2013) M.P. 1685*

– **Section 11** – Res judicata – Once the Court at an earlier stage decided the matter in one way will not allow the parties to re-agitate the same at subsequent stage of the same proceeding – Petition dismissed : *Devendra Kumar Nayak Vs. Sudha Nayak (Smt.), I.L.R. (2015) M.P. 3176*

- **Section 11** – Res judicata – Question involved in the instant appeal were neither raised nor decided while deciding the S.A. No.567/1992 on 23.06.1993 – Therefore, the order dated 23.06.1993 does not have the effect of res judicata : *Prithvivallabh Vs. Chandra Kishore Vyas, I.L.R. (2011) M.P. 997*

2. Decree without Jurisdiction.

– **Section 11** – Res Judicata – Inherent lack of jurisdiction – Judgment and decree passed by a Court which lacks jurisdiction is a nullity and same would never operate as res-judicata : *Union of India Vs. M.P. State Electricity Board, I.L.R. (2011) M.P. 1378*

3. Different Nature of Cause of Action

– **Section 11** - Principle of Resjudicata - Section 11, CPC is based partly on the maxim of Roman jurisprudence, 'interest reipublicae ut sit finis litium' it concerns the State that there be an end to law suits and partly on the maxim 'Nemo debet bis vexari pro una et eadem causa' which would mean that no man should be vexed twice over the same cause - In the present case, cause of action and the nature of cause of action are quite distinct in both the suits, for this additional reason also Section 11 CPC would not be applicable : *Chanderbai (Smt.) Vs. State of M.P., I.L.R. (2011) M.P. 3099*

– **Section 11** – Res-judicata – In previous suit relief claimed was that of declaration and in subsequent suit relief claimed is partition although the parties are same and subject matter is same – As cause of action is different therefore subsequent suit is

not hit by Principle of Res-judicata – Petition dismissed : *Sabdal Singh Vs. Shivraj Singh Thakur, I.L.R. (2015) M.P. 2487*

– **Section 11** - Resjudicata - Issue in the earlier suit quite distinct to the issue in the present suit - Issues are not directly and substantially identical to each other - Bar of Resjudicata would not be applicable : *Chanderbai (Smt.) Vs. State of M.P., I.L.R. (2011) M.P. 3099*

4. Party to a Suit.

– **Section 11** – Resjudicata – Between Parties under whom they or any of them claim litigating under same title - Appellants challenged the judgment on the ground that they were not party in the suit which was filed by the respondent No.1 for declaration of title against their predecessor – Principles of Resjudicata is based on the principle that no man should be vexed twice over the same cause – As appellants are claiming through their predecessor, the judgment passed in former suit would operate as resjudicata : *Ditya (Deleted) Through L.Rs. Vs. Kidi, I.L.R. (2012) M.P. 956*

– **Section 11** – Res judicata – Ceiling proceedings under Urban Land (Ceiling and Regulation) Act, 1976 –Disputed land – Already declared as surplus on previous occasion by competent authority – Proceedings not challenged – It attained finality – Again return or objection to ceiling proceedings filed by original recorded Bhumi Swami – Barred by the principle of Res judicata – Section 11 – Code of Civil Procedure – Same issue between same party – Not entertainable : *Madhu Janiyani Vs. State of M.P., I.L.R. (2015) M.P. 1316*

– **Section 11 & Order 1 Rule 10** - Plaintiff purchased the property in dispute from the decree holder who was declared owner in a suit for declaration - Plaintiff has filed a suit for eviction against tenants - Judgment debtor of earlier suit files an application for impleadment on the ground that appeal against the decree passed is pending - Title of objector cannot be decided in the suit because the earlier decision would operate as res judicata - Even if the appeal is pending the decree would still operate as res judicata - Unless and until the decree is set aside, the petitioner cannot be said to be a necessary party : *Diwakar Rao Gurjar Vs. Smt. Shobna Mishra, I.L.R. (2012) M.P. 2645*

5. Pleadings/Judgment of Earlier Suit.

– **Section 11** – Principle of Res judicata – Merely filing the copies of pleading of earlier suit is not sufficient for considering the question of res judicata as well as Order 2 Rule 2 of the CPC – For considering the same some evidence must be adduced by the parties otherwise the court cannot compare the pleading – Revision dismissed : *Tulsiram Vs. Ramjan Khan, I.L.R. (2015) M.P. 3388*

– **Section 11** – Resjudicata — *Erroneous or wrong Judgment* – Court which decided the former suit was competent and having jurisdiction to decide the same – Erroneous or wrong judgment can always be challenged in superior court – Even a wrong judgment or judgment which is contrary to law is binding upon the party unless and until it is set aside in the appeal : *Ditya (Deleted) Through L.Rs. Vs. Kidi, I.L.R. (2012) M.P. 956*

6. Second Appeal.

– **Section 11 & 100** - Res judicata - Applicability - If validity of an order passed during proceeding in the suit is agitated by a party in a higher forum, then the order passed by the higher forum operates as res judicata when the matter again comes before the High Court by way of Second Appeal : *Collector, Jabalpur Vs. Smt. Chandrawati Saraf, I.L.R. (2014) M.P. 189*

7. Second Execution.

– **Section 11** - Res judicata - Maintainability of second execution - Decree holder filed application for execution of decree of possession - Warrant of possession was received back with some report of Revenue Inspector which was objected by decree holder - Court called report from Tahsildar - On the date fixed report of Tahsildar was not received and, in absence of decree holder, on the basis of disputed report Court recorded full and final satisfaction of decree - In revision, High Court granted liberty to file fresh application for execution - Second application challenged on the ground of res judicata - Held - Decree holder had objected to the report of Revenue Inspector - Executing Court could not have passed the final order on merits - If decree holder was absent, then execution could have been dismissed for want of prosecution - Further liberty to file another application for execution was granted by High Court - Subsequent application not barred by principle of res judicata : *Manrakhan Vs. Jayveer, I.L.R. (2011) M.P. 548*

8. Miscellaneous.

– **Section 11** – See – Arbitration and Conciliation Act, 1996, Section 34 : *Banco Construction Co. (M/s.) Vs. Union of India, I.L.R. (2012) M.P. 840*

– **Section 11** – See – Hindu Marriage Act, 1955, Section 24 & 26 : *Sona (Mrs.) Vs. Subhash, I.L.R. (2014) M.P. 2865*

SYNOPSIS: Section 15 to 20

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|-----------------------------|------------------------------------|
| 1. Over Valuation | 2. Territorial Jurisdiction |
| 3. Valuation of Suit | |

1. Over Valuation

– **Section 15** - Over valuation - Plaintiff pleaded that the petitioner/defendant is in arrears of rent for the last 13 years and valued the suit accordingly - As per Section 15 of C.P.C., every suit has to be instituted in the Court of lowest grade - Valuation has a direct nexus with the relief permissible in law - If the law permits that rent can be recovered only for last 3 years, there will absolutely no justification in valuing the suit on the basis of alleged unpaid rent of 13 years - Court below is directed to return the plaint with liberty to plaintiff to present the plaint before a Court of competent jurisdiction : *Kusuma Rathore (Smt.) Vs. Sharad Sharma, I.L.R. (2012) M.P. 2724*

2. Territorial Jurisdiction

– **Section 15 to 20**, Succession Act (39 of 1925), Section 371 & 372 – Jurisdiction of the Succession Court to grant certificate – Held – For conferring jurisdiction upon a succession court, claimant is required to satisfy the court that the deceased at the time of his death was residing permanently/ordinarily within the local jurisdiction of that court or the property of the deceased is situated within the local jurisdiction of that court and he at the time of his death had no fixed place of residence – Deceased was found to be resident of two places and having property at both the places – Both the court is having jurisdiction to grant succession certificate : *Jagmohan Tripathi Vs. Baba Annapurna Das Katthiya Baba, I.L.R. (2014) M.P. 2311*

– **Section 20**, Contract Act (9 of 1872), Section 28 - Territorial Jurisdiction - Satna and Jaipur Courts are having jurisdiction - Parties by agreement conferred territorial jurisdiction to Courts at Jaipur only - Court at Satna rightly returned the plaint for filing of the same before the Court of competent jurisdiction at Jaipur : *Manoj Kumar & Company Vs. General Manager Works, I.L.R. (2013) M.P. 407*

– **Section 20** - See - Contract Act, 1872, Section 28 : *Life Care International Vs. Mahindra & Mahindra Ltd., I.L.R. (2011) M.P. 175*

3. Valuation of Suit

– **Section 15 & Order 7, Rules 1 & 10** - Valuation of suit - Plaintiff filed suit for declaration of sale deeds as null and void on fixed court fee - Held - As the plaintiffs are not party to the sale deeds, therefore, suit on fixed court fee is maintainable - In such situation the plaintiffs were not bound to value the suit for the purpose of jurisdiction according to the market value of the property or the sale consideration of the document mentioned in the sale deed : *Baje Rao Vs. Gulab Rao, I.L.R. (2012) M.P. 2968*

• – **Section 23 & 24** - Transfer of case - Family court of Bhopal comes under the territorial jurisdiction of the Principal Seat at Jabalpur - Family Court at Gwalior comes

under the territorial jurisdiction of Bench of this court at Gwalior - Transfer petition could not be entertained at this Bench at Gwalior : *Shailey Madne (Smt.) Vs. Pankaj Kumar Madne, I.L.R. (2012) M.P. 2596*

– **Section 24** - Reasonable Apprehension - Orders of inferior Court are put to challenge before the Higher Courts as a matter of course and it is a part of game - Merely because an order of inferior court is set aside by the Superior Court and it is remitted back, and in turn, is posted before the same presiding judge, would not mean that the said judge will become biased or on remand would not be able to handle the matter dispassionately : *Narayan Acharya Vs. Kishanlal, I.L.R. (2012) M.P. *118*

– **Section 24** - Transfer of suit - Applicant seeking transfer of divorce petition from Satna to Umaria on the ground of apprehension and fear in her mind - No document placed on record to prove the allegation leveled against non-applicant - Held - Case cannot be transferred merely on the ground of apprehension specifically when applicant is a working women and is regularly going to attend the duty at her working place - Petition dismissed : *Pratibha Mishra (Smt.) Vs. Mukesh Mishra, I.L.R. (2011) M.P. 801*

– **Section 24** – Transfer of Suit – Convenience and Difficulties – In the matter of convenience and difficulties women requires more consideration in comparison to men - Wife having small child of 6 months – Child of 6 months cannot reside without her mother – She cannot be insisted to go and attend the case at Balaghat along with her child – Case transferred from Balaghat to Jabalpur : *Rajni Chile (Smt.) Vs. Shri Amit Chile, I.L.R. (2011) M.P. 2070*

– **Section 24** – Transfer of Suit – Wife residing at Jabalpur in a house of her parents along with her brother – Merely because her parents are residing at Narsingpur it cannot be held that her prayer for transfer of case to Jabalpur is not bonafide : *Rajni Chile (Smt.) Vs. Shri Amit Chile, I.L.R. (2011) M.P. 2070*

– **Section 24** – Transfer of the case – Matrimonial dispute between the applicant and the respondent – Applicant is residing with her parental family at Sagar – No competent male member is available to come with her to attend the case at Damoh and she is also under apprehension of some unhappy incident by the respondent at Damoh because he is a practicing lawyer of Damoh – She could not contest the matter properly at Damoh because no competent Advocate is available to accept her brief – Held – Distance between Sagar and Damoh is 200 Kms. and applicant can easily go by bus and can come back in evening – Trial court may direct the payment of travelling and other expenses by respondent – No material that she approached any competent lawyer and he refused to accept her brief – Apprehension that some unhappy incident may take place, the trial court on application of applicant may direct the police authorities to provide security if

her apprehension is found to be correct – Petition dismissed : *Archna Singh (Smt.) Vs. Dilip Singh, I.L.R. (2015) M.P. 793*

– **Section 24** - Transfer - Reasonable Apprehension - Suit was earlier dismissed under order 7 Rule 11 C.P.C. - First Appeal was allowed and the matter was remanded back - Application under order 39 Rule 1 and 2 C.P.C. filed by plaintiff allowed - Plaintiff thereafter participated in proceedings without any damour or objection - Merely because some applications filed by the plaintiff were rejected it cannot be presumed that the presiding judge is annoyed with the petitioner or he will not get justice from him - Application rejected : *Narayan Acharya Vs. Kishanlal, I.L.R. (2012) M.P. *118*

SYNOPSIS: Section 47

Questions to be determined by the Court Executing Decree

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| 1. Executable Decree | 2. Limitation |
| 3. Opportunity to Adduce Evidence | 4. Powers & Duties |
| 5. Question of Jurisdiction | 6. Question of Possession |
| 7. Miscellaneous | |

1. Executable Decree

– **Section 47** – Civil Practice – Execution – In the normal course no civil court passes any decree which could not be executed and once the executable decree is passed by the civil court, then contrary to the finding of the judgment on which the decree has been passed, the executing proceeding could not be thrown away unless such execution of such decree is barred by any provision of law : *Shanti Jaiswal (Smt.) Vs. Indralal, I.L.R. (2015) M.P. 1451*

2. Limitation

– **Section 47** – Application for execution – Limitation – Application for execution filed within 12 years from the date of decree passed by last Appellate Court is within limitation, as appeal is continuation of suit : *Manrakhan Vs. Jayveer, I.L.R. (2011) M.P. 548*

3. Opportunity to Adduce Evidence

– **Section 47** – Civil Practice – Procedure to be followed when scale of measurement of property is stated in the scale of hands – When the scale of measurement of property is stated in the scale of the hands, then measurement of the hands could be ascertained after extending an opportunity to the parties to adduce the evidence and by appreciating the same : *Shanti Jaiswal (Smt.) Vs. Indralal, I.L.R. (2015) M.P. 1451*

4. Powers & Duties

– **Section 47** – Powers and duties of executing court – Executing court has no right to go behind the decree – If there is any ambiguity in the decree with respect of the scale of measurement of the disputed land, the executing court is duty bound to ascertain the measurement of such land for which the decree was passed after calling the record of the original suit – Besides this, such court is also duty bound to hold an enquiry to ascertain the measurement of the disputed land as per procedure under Section 47 of CPC as such question is a question related to the execution of the decree – Executing court committed grave error in dismissing the execution proceeding without holding any enquiry under Section 47 of CPC – Case remitted to the executing court : *Shanti Jaiswal (Smt.) Vs. Indralal, I.L.R. (2015) M.P. 1451*

5. Question of Jurisdiction

– **Section 47** – Questions to be determined by Executing Court – Question of Jurisdiction – Suit for recovery of freight money barred by virtue of Section 13 & 15 of Railway Claims Tribunal Act, 1987 – Civil Court granting decree for it, is a nullity for want of inherent jurisdiction – Objection may be raised about inexecutability of decree on such ground under Section 47 of C.P.C. : *Union of India Vs. M.P. State Electricity Board, I.L.R. (2011) M.P. 1378*

6. Question of Possession.

– **Section 47** – Application filed by judgment debtor with averments that possession of disputed property was handed over to decree holder in 1995 and now another person is in possession – However, it does not appear from the proceeding of the Execution Court that at any point of time such decree was executed and possession of decretal property was made available to the decree holder – Held – Executing Court has not committed any error in dismissing the application of the applicant on such count : *Netlal Vs. Thagi Bai (Dead) Through L.R. Marotirao, I.L.R. (2011) M.P. 278*

7. Miscellaneous

– **Section 47** – Questions to be determined by Executing Court – The questions relating to the execution, discharge or satisfaction of the decree arising between the parties to the Suit are required to be determined in execution proceedings – Held – No question can be considered vis-à-vis party foreign to the suit : *Ganga Bai Vs. Subhash Chandra Mangal, I.L.R. (2014) M.P. 380*

– **Section 47** – Questions to be determined by Executing Court – Illegal or erroneous decree – An erroneous or illegal decree, which is not void cannot be objected in execution or collateral proceedings : *Union of India Vs. M.P. State Electricity Board, I.L.R. (2011) M.P. 1378*

– **Section 47 & Order 22 Rule 2** – Joint decree of Possession & injunction – Where the interest of the coparceners is undefined, indeterminate and cannot be specifically stated to be in respect of any one portion of the property, a decree cannot be given effect to before ascertaining the rights of the parties by an appropriate decree in a partition suit : *Hari Singh Vs. Sudhir Singh, I.L.R. (2013) M.P. 1478*

• – **Section 52** – Lis pendens – Petitioner had purchased the property during the pendency of revenue case – Petitioner does not have independent right or authority to challenge the impugned order between the Bhumiswamis – Petitioner is bound by the orders of revenue proceedings : *Prism Cement Ltd. Vs. Smt. Saroj Singh, I.L.R. (2013) M.P. *13*

– **Section 80 (2) & Order 6 Rule 17** – Amendment – For filing any suit against the State, statutory notice u/s 80 is the condition precedent – Neither the statutory notice was issued nor any such leave was obtained from the trial court to file the suit before expiry of statutory period of 60 days – Impugned order rejecting application for amendment is in consonance with the existing legal position – Petition is dismissed : *Laxman Singh Vs. Hukum Singh, I.L.R. (2015) M.P. 344*

– **Section 80 (2) & Order 6 Rule 17** – Amendment – Relief of perpetual injunction could be claimed only against those person against whom the cause of action is available on the date of filing the suit and not on the basis of any subsequent date : *Laxman Singh Vs. Hukum Singh, I.L.R. (2015) M.P. 344*

– **Section 89** – See – Court Fees Act, 1870, Section 35 & 16C : *Ramesh Chandra Vs. State of M.P., I.L.R. (2012) M.P. 320 (DB)*

SYNOPSIS: Section 96

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| 1. Appreciation of Evidence/Remand of case | 2. Compensation/Specific Provision and Guideline |
| 3. Issues/Findings of Trial Court | 4. Limitation/Condonation of Delay |
| 5. Second Application for Compensation under Land Acquisition Act | 6. Miscellaneous |

1. Appreciation of Evidence/Remand of case

– **Section 96** - Suit for possession of the agricultural lands and houses for damages and permanent injunction - One Mahant was the guru of plaintiff and selected the plaintiff as 'Patt' disciple and successor of him and after selection plaintiff started

managing the property - Mahant relinquished all his rights, interests and titles in favour of the plaintiff - Order of registration of Public Trust was not challenged within six months therefore, registration become final - Suit filed after 22 years, is barred by limitation - Held - Plaintiff is Sarvarakaar of the temple - Plaintiff managing the property - Property of the village Timarni (lands and houses) which are not entered in the register of Trust, this property can be said to be the personal property of Mahant - Plaintiff is only Sarvarakaar & Vyavasthapak, hence, managing the property - Trial Court committed illegality is not appreciating the evidence on record in its proper perspective and declaring the plaintiff owner of disputed property - Appeal allowed : *Radheshyam Vs. Omkardas, I.L.R. (2012) M.P. 3038*

– **Section 96** - Remand of Case - Appellants alleged that no notice of suit was served and they never appeared nor filed any written statement - Written Statement was not verified - Defendant no. 3 was minor but no guardian was appointed on his behalf by the Court - Remand of case proper : *Pop Singh Vs. Ram Singh, I.L.R. (2012) M.P. 3058*

2. Compensation/Specific Provision and Guideline

– **Section 96** - Death by Electrocutation - Deceased came in contact with loose and hanging live wire - Compensation - In order to decide the just and proper compensation or sum of damages, the court is bound to adopt the practical approach - If specific provision, rule, regulation or guideline is not available, the court may borrow the provision of some other enactment to assess the compensation amount : *Ramdevi (Smt.) Vs. Madhya Pradesh Vidyut Mandal, I.L.R. (2013) M.P. 1639*

- **Section 96** - Suit for compensation/damages - Deceased came into contact of live electric wire lying on the road - Held - Appellant/Electricity Board did not take appropriate steps to remove such live electric wire from the place of incident from the mid-night up to the time of incident i.e. 5.30 in the morning - Even if it is deemed that all precautionary measures were taken by the Board and inspite that due to some technical fault, on account of vis-major or act of God or the natural calamity, the alleged incident had happened, but on account of principle of "Strict Liability", appellant is liable to pay the compensation : *Junior Engineer MPSEB Vs. Kishan Lal, I.L.R. (2014) M.P. 135*

3. Issues/Findings of Trial Court

– **Section 96** - First Appeal - First appellate court while reversing the finding of the trial court must meet the reasonings on which the finding of the trial court is based : *Malti Bai (Smt.) Vs. Smt. Khilona Bahu, I.L.R. (2013) M.P. 2904*

– **Section 96** - First Appeal - Where the first appellate Court reverses the judgment of the Trial Court, it is required to consider all the issues of law and fact - As

High Court had not considered the issue No. 5, therefore, the judgment and decree of High Court is set aside and First Appeal is restored for re-hearing and fresh decision : *State Bank of India Vs. M/s. Emmsons International Ltd., I.L.R. (2011) M.P. 2939 (SC)*

4. Limitation/Condonation of Delay

– **Section 96**, Limitation Act (36 of 1963), Section 5 – Condonation of delay – Appeal against ex-parte decree filed after 10 years – Fact of filing application u/o 9 rule 13 and review suppressed in application for condonation of delay – Application dismissed with cost of Rs. 50,000/- which is recoverable from delinquent officer – Copy of order to be sent to Lokayukta and Chief Secretary for action : *Indore Municipal Corporation Vs. Mansukhlal, I.L.R. (2015) M.P. 993*

– **Section 96**, Land Acquisition Act (1 of 1894), Section 18 – Suit barred by limitation – Suit filed after 9 years of the decision given by the A.D.J. in an application filed u/s 18 of the Land Acquisition Act in a case pertaining to the land acquisition – Held – It was not that the predecessor in interest were not aware of the proceedings, rather it goes to show that the mother of the claimants herself not only filed objections, but even filed a reference which was dismissed on June 27, 2001 – As such, the trial court did find that the suit which is now filed by the appellants, who claim themselves to be the legal heirs of owner were prevented from filing such suit again after 9 years and dismissed the suit on the point of limitation – Appeal dismissed : *Shailesh Agnihotri Vs. Indore Development Authority, I.L.R. (2014) M.P. 1302 (DB)*

5. Second Application for Compensation under Land Acquisition Act

– **Section 96**, Land Acquisition Act (1 of 1894), Section 28-A – Redetermination of compensation – Second Application – Appellants filed application before Land Acquisition Officer for re-determination of compensation amount which was allowed and compensation was enhanced to Rs. 80,000/- per acre on the basis of judgment passed by reference Court in another case – In separate case arising out of same acquisition proceedings High Court in appeal awarded compensation @ Rs. 1 lacs per acre – Appellants filed second application for re-determination of compensation in the light of judgment of High Court – Second Application u/s 28-A not maintainable – Appeal dismissed : *Kodar Singh Vs. State of M.P., I.L.R. (2014) M.P. 3190*

6. Miscellaneous

– **Section 96 & Order 41 Rule 5** - Stay of Execution of Eviction Decree - Payment of mesne profits - Landlords are entitled for mesne profits from the date of eviction till the judgment in the appeal - The respondents themselves in application under Section 10 of the M.P. Accommodation Act, filed before RCA had claimed for fixation of

standard rent @ Rs. 20,000 per month - Appellant is directed to pay mesne profits at the rate of Rs. 20,000 per month in addition to the contractual rent w.e.f. date of decree : *Guru Nanak Timber Mart (M/s.) Vs. Anil Kumar Gulatee, I.L.R. (2013) M.P. 151*

– **Section 96(3)** - Compromise - Maintainability of appeal - Where validity of compromise itself is under challenge, the appeal is maintainable : *Arjun Singh Vs. Vardibai, I.L.R. (2011) M.P. 448*

SYNOPSIS: Section 100

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| 1. Concurrent Findings of Fact | 2. Finding of Fact |
| 3. Scope | 4. Substantial Question of Law |
| 5. Miscellaneous | |

1. Concurrent Findings of Fact

– **Section 100** – Second Appeal – Concurrent findings given by the Courts below on interpretation of Khasra entries – Being finding of fact cannot be interfered in Second Appeal : *Babu Singh Vs. Gorakh Singh, I.L.R. (2011) M.P. 1237*

– **Section 100** – Second Appeal – Concurrent findings of Courts below on the question of adverse possession based on appreciation of evidence holding the person like appellant is not in legal possession of the disputed property – Being findings of fact could not be interfered in Second Appeal : *Babu Singh Vs. Gorakh Singh, I.L.R. (2011) M.P. 1237*

– **Section 100** – Second Appeal – Concurrent finding of the courts below on the question of possession – Being finding of fact could not be interfered in second appeal – If there is lack of substantial question of law, such appeal liable to be dismissed at the stage of motion hearing : *Pahalwan Singh Vs. Swaroop @ Ramswaroop, I.L.R. (2013) M.P. *21*

– **Section 100** – Second Appeal – High Court cannot interfere with the concurrent finding of fact until or unless the same is perverse or contrary to material on record – High Court in exercise of power under Section 100 of the Code cannot re-appreciate evidence : *Ashish Kumar Vs. Smt. Rukmani Devi, I.L.R. (2012) M.P. 1275*

– **Section 100** – Second Appeal – Plaintiff having failed to establish that a vested right accrued in her favour – The concurrent finding of courts below based on cogent evidence on record cannot be interfered with : *Bhagwati (Smt.) Vs. M.P. Housing Board, I.L.R. (2014) M.P. 441*

– **Section 100** – Second Appeal – The Concurrent findings of the Courts below on the question of bonafide requirement being finding of fact, could not be interfered in Second Appeal – Appeal being devoid of any merit, liable to be dismissed at the stage of motion hearing : *Bhupendra Singh Vs. Shyam Babu Agarwal, I.L.R. (2013) M.P. 1934*

– **Section 100** – Substantial question of law – Concurrent findings on the question of possession – It is a finding of fact – Cannot be interfered under section 100 of CPC – No substantial question of law arises : *Madhu Janiyani Vs. State of M.P., I.L.R. (2015) M.P. 1316*

– **Section 100** – Substantial Question of Law – High Court cannot interfere with concurrent findings of facts until and unless the same are perverse or contrary to material on record : *Dev Prakash Gulati Vs. Nand Kumar, I.L.R. (2012) M.P. 495*

– **Section 100** – The concurrent findings of the Courts below based on available evidence on the question of possession of agricultural land being findings of fact, could not be interfered at the stage of Second Appeal : *Prabhudayal Vs. Bari Bai (Smt.), I.L.R. (2013) M.P. *24*

2. Finding of Fact

– **Section 100** – Finding of fact – Court cannot interfere with findings of fact until or unless same is perverse or contrary to material on record – In exercise of power u/s 100, High Court cannot re-appreciate evidence : *Collector, Jabalpur Vs. Smt. Chandrawati Saraf, I.L.R. (2014) M.P. 189*

– **Section 100** – Question of Fact – Courts should be slow in reversing the finding of fact – Finding of fact even if erroneous would not be disturbed unless the finding is shown to be perverse and based on surmises and conjectures : *Ashok Kumar Vs. Krishna Chand, I.L.R. (2012) M.P. 985*

– **Section 100** – Substantial question of law – Finding of fact recorded by two courts below that the suit land is being used as public way by the inhabitants of village – Finding of fact is arrived at by correct appreciation of evidence – Cannot be interfered in Second Appeal : *State of M.P. Vs. Smt. Keshar Bai, I.L.R. (2013) M.P. 2664*

– **Section 100** – Substantial Question of Law – If the Court fails to apply the statutory mandate to the question of bonafide need, the same ceases to be a finding of fact : *Sharda Singhania (Smt.) Vs. Bharat Petroleum Corporation Ltd., I.L.R. (2012) M.P. 2780*

3. Scope

– **Section 100**, Land Revenue Code, M.P. (20 of 1959), Section 168 & Rewa Registration Act, 1917, Section 21 – Second Appeal – Admittedly, the original plaintiff's

father and defendants No. 1 and 2's grandfather were in joint cultivating possession – Plaintiff has not set-up the case that suit lands were leased-out to the defendants – Held – Since the co-owner did not belong to category specified in Section 168(2) of the Code, provisions of Section 168 of the Code, have no application : *Mahesh Prasad Vs. Rambahadur, I.L.R. (2014) M.P. 1321*

– **Section 100** & Transfer of Property Act (4 of 1882), Section 58 – Sale deed or Mortgage deed – Document written for the purpose of executing mortgage – There was a condition that in case the loan amount is not paid by the plaintiff the mortgagee would be entitled to get a sale deed executed and the land given in the possession of the appellant – There is no evidence that the land was ever purchased by the appellant – Held – There is no perversity or illegality in recording the finding by Courts below that the respondent/plaintiff was the owner of suit land and the document Ex.P-1 was the document of mortgage and not of sale – Courts below have rightly decreed the suit – No interference is warranted – Appeal is dismissed : *Muhammad Ayoob Khan (Since Deceased) Through L.Rs. Samsunnisha (Smt.) Vs. Krishnapratap Singh, I.L.R. (2015) M.P. 1788*

– **Section 100** – Second Appeal – New Plea – Applicability of Article 43 of Limitation Act not at all has been pleaded by appellant in its written statement – This plea is having nexus with the facts, therefore, can not be raised for the first time at the stage of Second Appeal : *Oriental Fire & General Insurance Co. Ltd. Vs. Saifuddin, I.L.R. (2011) M.P. 2811*

– **Section 100, 115 & Order 47 Rules 1 & 7** – After passing of judgment and decree by the Appellate Court application for review was filed, it was rejected and decree passed by the lower Appellate Court was not interfered with in review – Held – The revision cannot be maintained and the only recourse is permissible u/s 100 of CPC : *Hameeda Begam (Smt.) Vs. Shri Pooran Chand Jain, I.L.R. (2013) M.P. 486*

4. Substantial Question of Law

– **Section 100**, Land Revenue Code, M.P. (20 of 1959), Section 158 (1)(b), Inaam Inquiry Rules, Rule 20 & Evidence Act (1 of 1872), Section 90 – Second Appeal – Land in question was given in “Inaam” to the ancestor of the second plaintiff by then Holkar State to offer “Pooja” on 24.12.1930 – As per direction of the State Government, name of Collector has been endorsed as Vyavasthapak (Manager) – Plaintiff claimed that he became the Bhoomiswami – Circular is applicable for Government temple and not for private temple – Hence, claimed that name of Collector as Manager be removed from revenue record – Held – Revenue records cannot be corrected without holding any inquiry and giving opportunity of hearing to the plaintiff – Since the suit land was given

in “Inaam”, plaintiff acquired Bhoomiswami right after coming into force of the Land Revenue Code u/s 158 (1)(b) of the Code – Thus, 1st question of law answered in favour of the plaintiff : *Murti Shri Pandharinath Mandir Vs. Collector, I.L.R. (2014) M.P. 1061*

– **Section 100** – Second Appeal – Land in question initially belonged to grandfather of plaintiff – It was not included in the partition proceedings and, therefore, the right of the respondents/plaintiffs in land in dispute to the extent of half share therein is undisputed – In view of provisions of Order VIII Rule 7 and Order XVI Rule 33 of the C.P.C., the Courts below have rightly decreed the suit filed by the respondents/plaintiffs to the extent of half share in land in dispute – No substantial question of law arises for adjudication : *Mahesh Kumar Vs. Himmat Singh, I.L.R. (2014) M.P. 3179*

– **Section 100** – Substantial question of law – Held – Both the courts below have recorded a comprehensive findings of fact upon due appreciation of evidence on record – No question of law much less substantial question of law arises warranting interference : *Rewaram Vs. Veerendra Kumar, I.L.R. (2015) M.P. 3315*

– **Section 100** – Substantial Question of Law – Question of law framed cannot be said to be a substantial question of law because in order to answer the said question, the entire plaint, written statement, evidence and documents will be required to be reconsidered – After considering the Substantial Question of law it cannot be said that any important piece of evidence which goes to the root of question was not considered or evaluated – As question framed is not a substantial question of law and no other substantial question of law arises in the appeal therefore, Second appeal is dismissed : *Roop Lal Vs. Ramesh Prasad, I.L.R. (2012) M.P. 486*

– **Section 100** – Lack of Substantial Question of Law - Such appeal liable to be dismissed at the stage of motion hearing : *Prabhudayal Vs. Bari Bai (Smt.), I.L.R. (2013) M.P. *24*

5. Miscellaneous

– **Section 100** – Second Appeal – Since there was no proof of any agreement of lease with respondent No.2, Civil Court was not right in granting a decree against respondent No. 2 in favour of the appellant : *Chandramoul Shukla Vs. Ramvishwas, I.L.R. (2014) M.P. 1339*

– **Section 100** – See – Accommodation Control Act, M.P., 1961, Section 12(1)(a) & 12(1)(e) : *Maksood Ahmad (Rui Wale) Vs. Smt. Sharifunnisha, I.L.R. (2015) M.P. 1325*

– **Section 100** - See - Accommodation Control Act, M.P., 1961, Section 12(1)(b) : *Tejkaran Vs. Meeradevi, I.L.R. (2013) M.P. 2920*

– **Section 100** - See - Accommodation Control Act, M.P., 1961, Section 12(1)(f) : *Lakhanlal Gupta Vs. Nemchand Jain, I.L.R. (2011) M.P. *27*

– **Section 100**, Specific Relief Act (47 of 1963), Section 34 – Declaration – Defendants had purchased the suit lands from the mother of the plaintiff – Therefore, they are bound by the act and representation of the guardian of the plaintiff and they are estopped from contending that the plaintiff has no right, title and interest in respect of the suit lands : *Vijay Bahadur Singh Vs. Rameshwar, I.L.R. (2014) M.P. 1879*

– **Section 100** – Suit for declaration and injunction decreed by the trial court – First appellate court reversed the finding – Assailed on the ground that the first appellate court re-appreciated the evidence beyond the limit which was not permissible – Held – Since plaintiff failed to prove sale deed according to the provisions of Section 62, 64 and 68 of the Evidence Act as well as possession over the suit property – Whereas evidence of the witnesses of defendant is more reliable – Appellate Court has rightly re-appreciated the evidence and did not cross its limit – Finding of facts arrived by first appellate court neither perverse nor illegal – Appeal is dismissed : *Lalita Bai (Smt.) Vs. Ajay Pal Singh, I.L.R. (2015) M.P. 406*

– **Section 100 & Order 12 Rule 2** - Second Appeal - Admission of documents is admission of contents of documents - Sale deeds (Exhibits P/1 & P/2) are registered documents - Defendant No. 1 has admitted her thumb impression on the sale deeds - The sale deeds also contain recital with regard to payment of consideration - Thus, the execution of the sale deeds is established beyond any iota of doubt : *Ramdevi Bai (Smt.) (Dead Through LRs.) Vs. Kanak Singh (Dead Through LRs.), I.L.R. (2014) M.P. 184*

• – **Section 105** – Validity of an order – Legislature has authorized the person aggrieved by the judgment of the Trial Court to set forth any error, defect or irregularity in any order, affecting the decision of the case, as a ground of objection in the appeal and therefore, the appellate Court ought to have taken into consideration the validity of the order by which application for amendment was rejected by Trial Court : *Shanta Bai Vs. Pushkar Lal, I.L.R. (2012) M.P. *9*

SYNOPSIS : Section 115

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|-------------------------|---------------------------|
| 1. Limitation | 2. Maintainability |
| 3. Restoration | 4. Scope |
| 5. Miscellaneous | |

1. Limitation

– **Section 115 & Order 7 Rule 11**, Limitation Act (36 of 1963), Article 20 – Limitation for filing the suit based on payment of money by cheque is three years from the date when the cheque is given – Admittedly in the present case, the said date was

15.05.2009 as set-forth in the plaint itself – Suit was filed on 23.08.2012 – Held – Suit is barred by limitation – No evidence was required to be recorded in terms of the law made in the Limitation Act – The postponement of the right to sue should be in writing – Revision allowed – Suit dismissed being barred by Limitation : *Neelam Kumar Bachani Vs. Bhishamlal, I.L.R. (2014) M.P. 1632*

– **Section 115 & Order 9 Rule 9**, Limitation Act (36 of 1963), Section 5 - If on the date, counsel of the party did not appear then instead to dismiss the suit or to proceed ex parte, it is the duty of the court to inform the party through summons by fixing the case on some future date - If party did not appear on that day then the court may pass order either for dismissal of the suit or to proceed ex parte - In such circumstances trial court ought to have allowed the application u/s 5 of Limitation Act and Order 9 Rule 9, C.P.C. - The appellate court has not committed any error in setting aside the order of the trial court and in allowing restoration of the suit : *Riyaj Khan Vs. Kasam Khan, I.L.R. (2013) M.P. *17*

2. Maintainability

– **Section 115** – Civil Revision – Maintainability – Ex-parte decree of perpetual injunction was passed against applicant – Application u/o 9 Rule 13 for setting aside ex-parte decree was rejected and Misc. Appeal against such order is pending – In the meanwhile executing Court passed an order of sending applicant to Civil Jail for having violated the perpetual injunction – Only remedy available to applicant is to file an application for stay in pending Misc. Appeal – Revision not maintainable : *Mohan Vs. Matadin, I.L.R. (2015) M.P. 3384*

– **Section 115** – Revision – Petitioner filed the petition under Article 227 against the order passed by the Executing Court whereby the objection of judgment-debtor was upheld – If aforesaid objection would have been dismissed, the execution proceedings would have been continued – Thus, civil revision is not the remedy : *Toran Singh Vs. Imrat Singh, I.L.R. (2012) M.P. 1233*

– **Section 115 & Order 9 Rule 13** – Civil Revision – Other Proceedings – There is no reason to restrict the meaning of “Proceedings” akin to the suit – Proceeding under Order 9 Rule 13 would be covered by expression “other proceedings” as used in proviso to Section 115(1) – Any interlocutory order passed in such proceedings, would not be amenable to Revisional jurisdiction – Revision does not lie against the order rejecting application filed under Section 45 of Evidence Act – Revision dismissed as not maintainable : *Kamar Mohammad Khan Vs. Nawab Mansoor Ali Khan Pataudi, I.L.R. (2015) M.P. 1877*

3. Restoration

– **Section 115** – Civil Revision – Restoration – Civil Revision dismissed due to non compliance of the peremptory order to file four different Civil Revisions – If any common order is passed by the subordinate court in identical cases of the different parties then such parties have a right to file common and joint proceeding before the superior court against such order and after making the payment of deficit court fees of three revisions by the applicant in the common the same ought to have been restored : *Jamila Bi Vs. Smt. Nazma Afzal, I.L.R. (2015) M.P. 3099*

– **Section 115** – Inherent power to restore – Applicant filed application for execution of decree – Applicant sought time to file certified copy of judgment and decree – Execution proceedings dismissed for want – Held – When execution proceedings were dismissed for default, it was not a date of hearing within meaning of O. 21 Rule 105 as proceedings were fixed only for filing certified copy – Dismissal of execution proceedings was in exercise of inherent power – Application for restoration has to be entertained by invoking inherent powers of Court – No time limit is prescribed – Revision allowed : *Gayaram Tamrakar Vs. Chandra Bhan Singh, I.L.R. (2011) M.P. 1551*

– **Section 115** – Restoration of proceedings – Party should not be penalized for the fault or negligence on the part of Counsel : *Gayaram Tamrakar Vs. Chandra Bhan Singh, I.L.R. (2011) M.P. 1551*

4. Scope

– **Section 115** – Civil Revision – Scope of interference – Intention of Legislation is to confer power on Trial Court to modify the decree as is discerned from the language of Section 28 of Specific Relief Act – Such power is not to be exercised by Revisional Court – Even if it is found that the Trial Court has acted beyond the jurisdiction, the Revisional Court is required to remit back the matter to the Trial Court afresh – Any modification in decree can be directed by the Trial Court and Trial Court only : *Murlidhar Pinjani Vs. Satyakam Tandon, I.L.R. (2015) M.P. 3395*

– **Section 115** – Civil Revision – Scope – Power u/s 115 of the Code though limited can be exercised if it is found that material irregularity of jurisdiction or law is committed by lower court : *Dayalu Vs. Mannulal Sahu, I.L.R. (2015) M.P. 250*

– **Section 115** - Admissibility of Promissory Note - If the requisite duty is paid on the document like promissory note, Such document could not be held to be inadmissible - So that duty may be either in the shape of embossed stamp or revenue ticket or stamp - Such findings of holding the document/promissory note inadmissible are liable to be set aside - Hence, the findings may be modified in revisional jurisdiction : *Bhagwati Devi (Smt.) Vs. Jameela Begam, I.L.R. (2013) M.P. 1193*

– **Section 115** – Revision against the order of rejection of an application under Order 7 Rule 11 of the CPC at the initial stage of trial – Held that the application under Order 7 Rule 11 of CPC cannot be decided at the initial stage of trial – It can only be adjudicated after the framing of the issues and if the issues were framed and any of them is not relating to the question then the same could not be adjudicated without recording the evidence : *Tulsiram Vs. Ramjan Khan, I.L.R. (2015) M.P. 3388*

– **Section 115 & 47** – Appointment of Commissioner – Executing Court rejected an application filed u/o 26 Rule 9 & 18 to demarcate the property holding that as area being neither mentioned in the agreement of sale nor in the judgment and decree therefore executing Court cannot go behind the decree – Held – Section 47 of CPC provides that all questions arising between the parties relating to the execution, discharge or satisfaction of the decree shall be determined by the executing Court and not by a separate suit – Therefore, on the basis of well described boundaries executing Court is well within its power to issue a Commission – Impugned order is set-aside – Revision is allowed : *Pooran Das Vs. Parmeshwar Das, I.L.R. (2015) M.P. 1068*

5. Miscellaneous

– **Section 115** and Muslim Women (Protection of Rights on Divorce) Act (25 of 1986), Section 3 – Family Court entertained and decided an application filed u/s 3 of the 1986 Act claiming Meher – Same was called in question on the ground of jurisdiction – Held – Family Court was not having the jurisdiction to entertain an application seeking ‘Meher’ under section 3 of the 1986 Act as the same is not included in the explanation appended to the provisions of Section 7 of the Family Court Act, 1984 – Revision is allowed : *Munna Khan @ Abid Vs. Shahena Bano, I.L.R. (2015) M.P. 1565*

– **Section 115** – Civil Suit – Suit for recovery of money was filed on the ground that wheat which was sold by applicant/defendant was taken back by applicant forcibly by stopping the tractor – F.I.R. in this regard was also made – Plaintiff however failed to place copy of F.I.R. on record – No independent evidence was produced – Lower appellate court failed to see the provisions of the Evidence Act – Respondent has to prove its case – He cannot be given benefit of the weakness of the applicant – Revision is allowed : *Dayalu Vs. Mannulal Sahu, I.L.R. (2015) M.P. 250*

– **Section 115** - Review Petition - Delay & laches - Prayer for modification of order passed on 28.09.2012 and for grant of liberty to the petitioner to raise objection afresh u/s 48 of Arbitration & Conciliation Act, 1996 - Held - Application filed by the petitioner is not bonafide - Award is of the year 2005 - Appellate order is of the year 2007 - In spite of lapse of more than 7 years respondent is not getting the fruits - Petition dismissed : *Narayan Trading Co. Vs. ABCOM Trading Pvt. Ltd., I.L.R. (2014) M.P. 395*

– **Section 115** – See – Arbitration and Conciliation Act, 1996, Section 34 : *Bhatia International Ltd. Vs. Vitol S.A. Geneva, Switzerland, I.L.R. (2015) M.P. 397*

– **Section 115** – See – Constitution – Article 227 : *Ramavtar Vs. Shivbhajan, I.L.R. (2015) M.P. 2560*

– **Section 115** – See – Land Acquisition Act, 1894, Section 30, 53 & 54 : *Surendra Kaur (Smt.) Vs. Satinder Singh Chhabra, I.L.R. (2015) M.P. 1867*

• – **Section 148-A** - Caveat - Original Caveator Dead - After the death of original caveator, the Counsel has no right to argue on merits : *Chandrika Prasad Vs. Indramani (dead) Through L.Rs., I.L.R. (2012) M.P. 2964*

– **Section 151** – Inherent powers – If the Court does not have a jurisdiction under an express provision it does not assume powers under Section 151 – Inherent powers of the Court cannot over ride the express provision of law : *Manisha Lalwani (Smt.) Vs. Dr. D.V. Paul, I.L.R. (2012) M.P. *60*

– **Section 151**, Krishi Upaj Mandi Adhiniyam, M.P. 1972 (24 of 1973), Section 67 – Permission to file suit before expiry of statutory period of notice - Appellant obtained necessary permissions to construct house over the land purchased by him by registered sale deed – Building material also collected at the site – Employees of Krishi Upaj Mandi restrained him from raising construction on the ground that building permission has been cancelled – Appellant filed a suit along with application under Section 151 of C.P.C. seeking leave of the Court to file suit before expiry of statutory period of 2 months as per Section 67 of Adhiniyam, 1967 – Held – A person cannot be left like orphan and to wait upto the expiry of statutory period indirectly permitting the Mandi Samiti to take law in their hands – A citizen cannot be left remediless – If looking to the urgency, the Court was not powerless and it could grant necessary permission to institute the suit and to pass necessary order granting temporary injunction – Appeal allowed – Trial Court directed to decide the suit on merits : *Rashik Hasan Vs. Nagar Nigam, Bhopal, I.L.R. (2012) M.P. *69*

– **Section 151, Order 39 Rules 1 & 2 & Order 43 Rules R(r)** - Interim Injunction - Appeal from order - Trial Court passing ad interim order directing maintaining status quo between the parties - The order is necessarily an order passed under Order 39 Rules 1 & 2 of the Code - The aggrieved party has a remedy under Order 43 Rules 1(r) of the Code to prefer an appeal - Writ Petition dismissed with a direction to return the certified copy of impugned order : *Ved Prakash Mukhariya Vs. Balmukund Sharma, I.L.R. (2011) M.P. 2410*

– **Section 151** - See - Evidence Act, 1872, Section 45 : *Amol Chavhan Vs. Smt. Jyoti Chavhan, I.L.R. (2011) M.P. 3076*

SYNOPSIS: Section 152

1. Correction in the decree 2. Scope

1. Correction in the decree

– **Section 151 & 152** – Correction in the decree – Mistake committed in the pleadings cannot be corrected in exercise of powers either u/s 151 or 152 CPC – Revision dismissed : *Muniya Bai Vs. Golman, I.L.R. (2015) M.P. *23*

– **Section 152** – Correction in decree - Applicant filed suit for specific performance of contract – In relief clause of plaint although area in words was rightly mentioned as “0.19” but in figures, it was wrongly mentioned as “0.10” – Area was rightly mentioned in entire plaint – Held – It was not necessary for Trial Court to take area only from figures but could have been ascertained from its description in words also – Trial Court should have allowed the application for correction of decree – Petition allowed : *Asha Prajapati (Smt.) Vs. Chhidamilal, I.L.R. (2015) M.P. *2*

– **Section 152 & 151** - Suit for partition - House numbers incorrectly mentioned in the preliminary decree and also in the final decree - Duty of the Court to rectify such mistake on having knowledge about the mistake by its own motion : *Rishabh Kumar Jain Vs. Gyanchand Jain, I.L.R. (2013) M.P. 2977*

2. Scope

– **Section 152** – Amendment of Judgment or Order – Right to make an application u/s 152 has to be confined to parties to the suit : *Arkey Investment Pvt. Ltd. Vs. Kausar Sultan alias Kosar Shafique, I.L.R. (2011) M.P. 2147*

- – **Order 1 Rule 3** – Necessary and proper party– Distinction between – A necessary party is one without whom no order can be made effectively – A proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding : *Jaideep Shah Vs. Mrs. Rashmi Shah @ Miss Rashmi Vyas, I.L.R. (2011) M.P. 1688*

SYNOPSIS : Order 1 Rule 10

1. Cause of Action 2. Eviction Suit

3. Necessary party

1. Cause of Action

– **Order 1 Rule 10** – Necessary party – On the date of filing the suit, no cause of action was stated in the plaint against the proposed defendant – Held – No averment

regarding any date or specific cause of action which is available to the petitioner against the proposed defendant, has been pleaded – In the lack of any cause of action against the proposed defendant, such person could not be said to be the necessary party to adjudicate the present suit : *Abdul Rajjak Vs. Smt. Archana, I.L.R. (2014) M.P. 2309*

– **Order 1 Rule 10** – Plaintiff is dominus litis – It is settled law that the plaintiff is the sole dominus litis of his litigation and has a right to implead a party according to his choice and contrary to his wish, he cannot be insisted either by any of the party of the suit or by the court unless there is any cause of action in the suit against such person to file the application under Order 1 Rule 10 of CPC to implead him/ her as party in the matter : *Vinti Solanki Vs. Anil Kumar, I.L.R. (2015) M.P. 2568*

– **Order 1 Rule 10** – Whether petitioner is a necessary party – Suit was filed for specific performance on the basis of agreement to sale, allegedly executed by respondent No. 2 in favour of respondent No. 1. – Nothing has been stated against the petitioner in the plaint and no relief is claimed against him – Petitioner is neither a necessary nor proper party and thus trial court has not committed any error in dismissing the application to implead the petitioner – However, in the peculiar facts of the case petitioner was extended liberty to file his separate suit against the respondents and other party on arising the occasion and on the basis of available cause of action : *Vinti Solanki Vs. Anil Kumar, I.L.R. (2015) M.P. 2568*

2. Eviction Suit

– **Order 1 Rule 10** – Eviction Suit – Respondent No.1 filed suit for eviction against respondent No.2 – Petitioners filed application for impleading her as a party on the strength of will claiming infact testator of will was the owner of the property in dispute – Held – Since petitioners are not parties to the suit finding given by the trial on the issue of title shall not be binding on the petitioners – In a suit between landlord and tenant presence of other persons are not required – Other party or the court cannot insist to plaintiff of a suit to implead any person as defendant or in some other manner in such suit – Petition is dismissed : *Saroj Garg (Smt.) Vs. Aparna Gupta, I.L.R. (2015) M.P. 64*

– **Order 1 Rule 10** - Impleadment of co-owner - Petitioner being a co-owner of property filed suit for eviction against respondents No. 1 to 3 - Co-owners were impleaded as defendants on their application - Held - Suit for eviction can be filed by any of the co-owners - Presence of all the owners is not necessary to adjudicate the suit - If after holding the trial on appreciation, it is found that the plaintiff/petitioner was not entitled to file the suit alone for eviction, then in that situation, the petitioner has to face the consequence of dismissal of suit - Therefore, presence of co-owners is not necessary -

Order permitting the co-owners to be impleaded as defendants set aside : *Jagdeesh Prasad Gupta Vs. Madanlal, I.L.R. (2012) M.P. 2971*

3. Necessary party

– **Order 1 Rule 10** – Necessary Party – Petitioners/plaintiffs herein have claimed declaratory decree against the respondents with respect of the disputed property stating themselves to be the co-owners with the proposed defendant who executed the alleged sale deed in favour of respondents No. 1 to 9 – Therefore, the said defendant is a necessary Party – So far the purchasers of the part of suit property from 1 to 9 is concerned, they shall be bound by the decree which would be passed in the suit by virtue of Section 52 of the Transfer of Property Act – In the present case since after execution of sale deed by respondents No. 1 to 9 in favour of the proposed defendants No. 1 & 2 the petitioners/plaintiffs want the decree of declaration against them also and thus the subsequent purchasers subject to the limitation of Section 52 of T.P. Act are also necessary parties : *Champa Rai (Smt.) Vs. Nafeesa Bi, I.L.R. (2015) M.P. 2854*

– **Order 1 Rule 10** – Addition of Party – Where the Court is of the opinion that by adding a party it would be in a better position to effectively and completely adjudicate the controversy involved in the suit, the concerned person should be impleaded as a party in the proceeding : *Jaideep Shah Vs. Mrs. Rashmi Shah @ Miss Rashmi Vyas, I.L.R. (2011) M.P. 1688*

– **Order 1 Rule 10** – Petitioners being sisters of deceased, born before coming in force the amended provisions of Section 6 of Hindu Succession Act, 1956 and their parent still being alive – Whether necessary party – Held – No – Suit filed for declaration and injunction by L.Rs. of deceased (one of the co-parcener) against the parents and brothers of deceased, then the petitioners who got birth prior to 2005 before coming in force the amended provisions of section 6 of the Act are neither necessary nor proper parties – The same could be adjudicated by passing the effective decree only in presence of respondents no. 1 and 2, the plaintiffs and the respondents no. 3 to 7 the defendants : *Shanti Bai Vs. Sushila Bai, I.L.R. (2015) M.P. 1679*

- – **Order 2 Rule 2** - Bar to sue - Present suit altogether on different cause of action from earlier suit - Matter in controversy which is directly and substantially in issue is also altogether different - Bar is not applicable : *Chanderbai (Smt.) Vs. State of M.P., I.L.R. (2011) M.P. 3099*

– **Order 2 Rule 2** – Civil Suit for injunction simplicitor was filed and injunction was granted – Plaintiffs could have sought relief of specific performance of contract in the first Suit – Subsequent suit is barred under Order 2 Rule 2 C.P.C : *Haribabu Vs. Himmat Singh, I.L.R. (2014) M.P. 3160 (DB)*

– **Order 2 Rule 2** – Second Counter Claim – Court had directed to remove defects in the first counter claim – First counter claim was withdrawn and second counter claim was filed – Held – In view of direction given by Court to remove defects, second counter claim has implied permission of Court – Res-judicata also does not apply : *Dataram Singh Vs. Brindawan Singh, I.L.R. (2014) M.P. 2348*

– **Order 2 Rule 2(2)** – Necessary Party – Amount with LIC and MPEB – Amount not disbursed to appellant – Officials of LIC and MPEB are necessary party : *Meera Bai (Smt.) Vs. Ramesh Guru, I.L.R. (2015) M.P. 1020*

– **Order 3 Rule 1** – By power of attorney – The plaintiff authorised her son to conduct the suit and to do all other acts which are necessary – Held – An attorney can appear as a witness as well : *Jagdish Prasad Vs. Smt. Meera Devi, I.L.R. (2011) M.P. 1259*

– **Order 3 Rule 1** – See – Evidence Act, 1872, Section 120 : *Rajni Tiwari (Smt.) Vs. Smt. Bhagyawati Bai, I.L.R. (2012) M.P. 730*

– **Order 3 Rule 1 & 2** - Power of Attorney Holder - Principal may assign to the agent authorizing for appearances and not for the acts done by the principal - Presence of Holder of Power of Attorney at the time of execution of agreement to sell is of no help, as the agreements were executed by the intended purchasers - Power of Attorney holder cannot appear as a witness on behalf of the principal for the act done by him : *Vinod Agrawal Vs. Bharat Kumar Lathi, I.L.R. (2012) M.P. *84*

– **Order 3 Rule 2** – Land Acquisition Act (1 of 1894) – Evidence of Parties – Where all the affairs of a party are completely managed, transacted and looked after by an attorney who happens to be a close family member, it may be possible to accept the evidence of such attorney-holder even with reference to certain facts which require to be proved by the plaintiff : *Fatechand Vs. The Land Acquisition & Rehabilitation Officer, I.L.R. (2011) M.P. 2020 (DB)*

– **Order 5 Rule 1** - Service of summons - Matrimonial Disputes - Held - Personal service of the spouse is necessary - Court is duty bound to see that the notice has been sent to the spouse at the place where she is living at the time of filing of petition or to the address mentioned in the petition - Service of summons not duly made - Ex parte decree passed due to non appearance of party - The order of trial Court of setting aside of such a decree is justified : *Rajiv Saxena Vs. Subha Saxena (Smt.), I.L.R. (2013) M.P. 2027*

– **Order 5 Rule 12** – Service of summons to the defendant – It is no where mentioned that if the summons/notice is addressed giving the location of residence, the same can only be served at the residence and not at any other place – Hence, service to

the petitioner at his shop is not illegal : *Manish Kumar Sharma Vs. Jagdish, I.L.R. (2015) M.P. 2951 (DB)*

– **Order 5 Rules 17 & 19** - Service of Summons - Defendant was not found at the given address - Wife of the defendant refused to accept the notice - Process server affixed the notice on the door - Process server neither filed any affidavit nor was examined - As the provisions of Order 5 Rules 17 & 19 were not followed therefore, ex parte decree granted against appellant set aside - Matter remanded back for adjudicating the matter afresh after giving due opportunity of hearing and recording of evidence - Appeal allowed : *Ram Kripal Vs. Veerbhadra, I.L.R. (2013) M.P. 424*

– **Order 6** - Pleadings - Construction - Even if the pleadings are loosely drafted the court should not scrutinize the same with such meticulous care so as to result in genuine claim being defeated on trivial grounds : *Sharda Singhania (Smt.) Vs. Bharat Petroleum Corporation Ltd., I.L.R. (2012) M.P. 2780*

– **Order 6 Rule 2** - Material facts and material particulars - Distinction - If material facts are omitted, party should not be allowed to raise - If material facts are pleaded and full particulars are not given, the Court may permit the points to be raised on the basis of evidence, unless opposite party is thereby materially prejudiced - First relate to question of jurisdiction and second to one of procedure : *Ramesh Chandra Vs. Kamal Kishore, I.L.R. (2011) M.P. *15*

– **Order 6 Rule 2** – Pleadings – Although, plaintiff had not used the word “Adverse Possession” in plaint but pleaded all necessary facts – Trial court also framed issue regarding adverse possession – Parties also led evidence on this issue – It cannot be said that there was no clear pleading of adverse possession : *Satnam Singh Vs. Hukum Singh, I.L.R. (2014) M.P. 1083*

– **Order 6 Rule 2** - Pleadings - Construction - Pleadings are loosely drafted and Courts should not scrutinize the pleading with such meticulous care so as to result in genuine claims being defeated on trivial grounds - Further pleadings has to be read as a whole to ascertain its true import and not to cull out a passage to read the same in isolation : *Uday Chand Jain Vs. Smt. Sharda Jain, I.L.R. (2013) M.P. 1142*

– **Order 6 Rule 2** – Pleadings – Requirement – Plead facta probanda not facta probantia : *Govind Prasad Vs. Sandeep Kumar, I.L.R. (2015) M.P. 1683*

– **Order 6 Rule 4** - Pleadings regarding property of Joint Hindu Family - Plaintiff claiming suit property to be of Joint Hindu Family - Not clarified in pleading as to how the property was acquired by the plaintiffs and his brother defendant - Plaintiffs are five brothers but out of them two brothers are not shown as the members of Joint

Hindu Family, and their shares are not defined in the suit property - It can be inferred that the entire plaintiff's case is based on baseless and bogus facts : *Gajanand Vs. Gordhan, I.L.R. (2013) M.P. 1422*

– **Order 6 Rule 4** – Pleadings – Suit for cancellation of Sale deed – Where it is pleaded by the plaintiff that sale deed was executed by way of security for the loan and was nominal in nature and was not intended to be acted upon, the Courts below have not committed any error in decreeing the suit filed by the plaintiff : *Kulwant Kaur (Smt.) Vs. Sukhraje, I.L.R. (2012) M.P. 146*

– **Order 6 Rule 5 & Order 11 Rule 16** - Better particulars - Plaintiff pleaded that agreement of resale was executed in favour of plaintiff - The fact that said agreement was taken back by defendant at the time of fresh agreement is a material particular - Defendant could have taken steps under Order 11 Rule 16 to produce it - He further could have submitted application seeking discovery on oath of said agreement - He could have submitted application under Order 6 Rule 5 for obtaining further and better particulars : *Ramesh Chandra Vs. Kamal Kishore, I.L.R. (2011) M.P. *15*

SYNOPSIS : Order 6 Rule 17

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| 1. Amendment in the
Plaint/Pleadings. | 2. Amendment in Written
Statement. |
| 3. Delayed Application for
Amendment. | 4. Limitation/Cause of Action. |
| 5. Jurisdiction. | 6. Miscellaneous. |

1. Amendment in the Plaint/Pleadings

– **Order 6 Rule 17** – Amendment of plaint – Delay – Petitioner sought to insert the word “temple” in the relief clause and at certain other places at stage of final arguments – The same cannot be allowed unless sufficient cause is shown at such a belated stage of the suit as the same was very well in the knowledge of the party on the date of filing of initial pleading : *Rajendra Dixit Vs. State of M.P., I.L.R. (2015) M.P. 1461*

– **Order 6 Rule 17** – Amendment of Plaint – Factors required to be borne in mind by the Court while dealing with application for amendment – Law discussed : *Pushpa Arora Vs. Dr. Smt. Anita Arora, I.L.R. (2012) M.P. 911*

– **Order 6 Rule 17** - Amendment - Name of husband of the petitioner in the civil suit was shown to be Omprakash - However, the plaintiff filed an application for amending the name of the husband of the petitioner as Ramkishan Saini on the ground

that plaintiff has subsequently come to know that petitioner is not legally wedded wife of Omprakash - Held - Status of a lady in society is paramount consideration, whether she is entitled for share in property being a widow or not, is secondary - Order of Trial Court allowing the application for amendment set aside - However, respondent No.1 shall be at liberty to lead evidence to prove that the petitioner is not a legally wedded wife of Omprakash : *Kanchan Bai (Smt.) Vs. Hemchandra, I.L.R. (2013) M.P. 2817*

– **Order 6 Rule 17** - Amendment of pleadings - Petitioner filed an application for amendment of plaint seeking prayer for possession and mesne profits on the ground that he has been dispossessed during the pendency of the suit - Trial Court ought to have allowed the amendment application - Application allowed - Petitioner directed to incorporate the amendment within 15 days - Defendant also permitted to file application for consequential amendment : *Subhash Chand Jain Vs. Natthu Singh, I.L.R. (2013) M.P. 296*

– **Order 6 Rule 17** – Application for amendment of plaint – Pleading by lawyer practicing in maffasil court – Not to be considered strictly – Nature of suit would not change on allowing amendment – Application allowed : *Ashok Diwan (Dr.) Vs. Smt. Shantibai, I.L.R. (2014) M.P. 993*

– **Order 6 Rule 17** – Proviso – Application for amendment of plaint – Amendment application cannot be allowed unless the application is filed with due diligence – No application for amendment can be allowed after commencement of trial : *Dashrath Vs. Deceased Raju Bai Through L.Hs., I.L.R. (2014) M.P. 2684*

– **Order 6 Rule 17** - Amendment of claim petition - Petitioner filed application for amending the train number - Any amendment application, to amend the pleadings as an additional approach or the different approach from the existing pleadings, should be allowed - Petition allowed : *Farukh Kha @ Jamaal Khan Vs. Union of India, I.L.R. (2013) M.P. 306*

– **Order 6 Rule 17** - Amendment of Pleadings - Held - After the commencement of trial and in absence of showing due diligence, amendment cannot be allowed : *Pratap Vs. Ganeshram, I.L.R. (2014) M.P. 384*

– **Order 6 Rule 17** - Amendment of Pleadings - Whenever any amendment is proposed by any of the parties in his pleadings, and if the same appears to be an additional or different approach of the existing pleading, then such pleading could not be disallowed or rejected : *Mohd. Yunus Vs. Nayeem Ahmed, I.L.R. (2012) M.P. 2682*

– **Order 6 Rule 17** - Proviso - Amendment of pleadings - Due diligence - Amendment based on subsequent event - No reply to amendment application was filed -

It cannot be held that it is not filed with due diligence : *Madhvi Sharma (Smt.) Vs. Pushpendra Sharma, I.L.R. (2013) M.P. 2823*

– **Order 6 Rule 17** – Amendment when not to be allowed – It is settled that no party can be permitted to amend the pleadings in consonance with the evidence which have come on record in the deposition of witnesses : *Rajendra Dixit Vs. State of M.P., I.L.R. (2015) M.P. 1461*

– **Order 6 Rule 17** - Incorporation of verdict of Supreme Court being sought through amendment has rightly been negated as no such pleading is warranted : *Bhagwati (Smt.) Vs. M.P. Housing Board, I.L.R. (2014) M.P. 441*

2. Amendment in Written Statement

– **Order 6 Rule 17** – Amendment in the written statement – Suit for eviction on the ground of bonafide need – Petitioner wants to plead information regarding acquisition of alternate accommodation during pendency of the case – Held – Rent Controlling Authority ought to have allowed the aforesaid application and after incorporating such amendment, opportunity to make consequential amendment should have been extended to the respondent – Such question should have been decided after recording evidence – Such procedure has not been adopted by the R.C.A. – Impugned order is perverse, same is hereby set aside : *Laxmi Cycle Vs. Subhu Kumar Jain, I.L.R. (2014) M.P. 3111*

– **Order 6 Rule 17** – Amendment in Written Statement – Trial Court allowed the application filed by the defendant to amend the written statement seeking to insert the pleadings that the plaintiff is having an alternate accommodation registered in the name of the mother-in-law of the petitioner no. 1 and mother of petitioner no. 2 – Held – It should be proved that the alternate accommodation is owned by the landlord/plaintiff – If it does not belong to the plaintiff/landlord, it cannot be treated to be alternate accommodation – The accommodation situated in the name of mother or mother-in-law, cannot be treated to be alternate accommodation under the provisions of section 12(1)(e) & (f) of the Act – Trial Court committed error in allowing the amendment application as the pleading sought to be inserted were not necessary or relevant as the proposed alternate accommodation does not belong to the plaintiffs – Amendment application dismissed : *Madhubala Jain (Smt.) Vs. Sardar Davinder Singh, I.L.R. (2015) M.P. 1455*

– **Order 6 Rule 17** – Amendment of Written Statement at appellate stage – Defendant has already pleaded in written statement that they are in possession without interruption since the date of purchase as owner – Application for amendment is only further elaboration of facts already pleaded and plaintiffs were aware of these facts – Application allowed : *Babu Lal Jain (Dead) Vs. Achal Kumar Bhatia, I.L.R. (2011) M.P.*

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– **Order 6 Rule 17** - Amendment of written statement - Defendant filed application seeking replacement of entire written statement on the ground that the same was filed by his counsel without his knowledge and pleadings are contrary to fact - Held - There is no allegation of fraud being committed on him - Each page of written statement bear signatures of petitioner - Petitioner cannot withdraw the admission which he had tendered in written statement by substituting such written statement with a fresh one - Petition dismissed : *Dilip Bharti Vs. Smt. Meera Bai, I.L.R. (2011) M.P. 406 (DB)*

– **Order 6 Rule 17** - Due diligence - Respondent/Plaintiff filed suit for declaration of sale deed as null & void - Petitioner filed application for amendment of written statement on the ground that it was erroneously left out in written statement - Held - It is incumbent upon the petitioners seeking amendment at post trial stage to explain the aspect of due diligence - Further, a real controversy test is to be satisfied - Trial Court rightly rejected the application : *J.P. Rewa Cement Vs. Smt. Krishna, I.L.R. (2012) M.P. *98*

3. Delayed Application for Amendment

– **Order 6 Rule 17** – Amendment – Application for amendment of plaint was filed when the defence evidence was going on – Allowing the application on payment of cost of Rs. 1000/- would not mitigate the circumstances – Delay not properly explained – Petition allowed – Amendment application rejected : *Jaywant Vs. Varsha, I.L.R. (2015) M.P. 2640*

– **Order 6 Rule 17** – Amendment – Delay – After closer of the plaintiff's evidence, defendant filed an application for amendment in the written statement – No explanation was offered for such delay – Held – The defendants have failed to satisfy that they could not file the application for amendment before the trial court despite due diligence at earlier point of time : *Sonu Dubey Vs. Shri Virendra Kumar Rai, I.L.R. (2015) M.P. 108*

– **Order 6 Rule 17** – Amendment in the plaint – Delay – Initially the impugned suit was filed by the petitioner in the year 1998 for declaration and other relief – Petitioner was dispossessed in the year 2002 – Till 2013 no application was filed to insert the relief of possession in the suit – Amendment application filed after much delay – Held – Trial Court rightly rejected the application as the same has been filed after long delay and specially after starting the process for recording the evidence : *Chedi Vs. Smt. Sona Bai, I.L.R. (2015) M.P. 1458*

– **Order 6 Rule 17** – Amendment at Appellate Stage – Application for amendment was filed after 28 years from the date of institution of the suit with a view to

fill up the lacunae – Same is impermissible in law – Possession claimed in the suit is barred by Limitation : *Vijay Bahadur Singh Vs. Rameshwar, I.L.R. (2014) M.P. 1879*

– **Order 6 Rule 17** – Belated amendment – No amendment which was apparently in the knowledge of the concerning party could be allowed after the process to record evidence is started : *Radha Bai (Smt.) Vs. Shankar Lal Kachhi, I.L.R. (2015) M.P. 2352*

4. Jurisdiction

– **Order 6 Rule 17** - Pecuniary Jurisdiction - Whenever any suit is found by any court not maintainable in the lack of pecuniary or territorial jurisdiction, then such Court has no option except to return the plaint to the plaintiff to file the same before the Court having such jurisdiction to entertain the same : *Mohd. Yunus Vs. Nayeem Ahmed, I.L.R. (2012) M.P. 2682*

5. Limitation/Cause of Action

– **Order 6 Rule 17** - Amendment - Limitation - Cause of action was available not only on the day of filing the suit but also on the date of filing the amendment application because to insert the prayer for declaration, the plaintiff was having the recurring cause of action : *Mohd. Yunus Vs. Nayeem Ahmed, I.L.R. (2012) M.P. 2682*

6. Miscellaneous.

– **Order 6 Rule 17** – Acceptance of cost, by reserving right to challenge would not preclude the petitioner to challenge the impugned order : *Sonu Dubey Vs. Shri Virendra Kumar Rai, I.L.R. (2015) M.P. 108*

– **Order 6 Rule 17** – Proviso to Rule 17 was incorporated in 2002 – Suit was filed in 1988 – Proviso to Rule 17 does not apply : *Ali Hussain (Died) by Legal Heirs Vs. Shabbir Hussain, I.L.R. (2014) M.P. 1020*

– **Order 6 Rule 17** – See – Constitution – Article 227 : *Iqbal Vs. Mahila Rasidan, I.L.R. (2014) M.P. 2064*

– **Order 6 Rule 17** – See – Constitution – Article 227 : *Mahendra Gupta Vs. Mohd. Yunus, I.L.R. (2014) M.P. 2284*

- – **Order 6 Rule 18** - Closing of Courts during summer vacation and sad demise of family member of petitioner may be a sufficient and good cause for extending the time to incorporate the amendment : *Ram Babu Vs. Shrikrishna, I.L.R. (2011) M.P. 671 (DB)*

– **Order 7 Rule 3 & Order 20 rule 9** - Description of Property - Sufficient to identify - Sufficient description of suit property was given in the plaint, therefore, a decree as per provisions of O. 29 Rule 9 can be passed in compliance of O. 7 Rule 3 : *Anand Alias Chhotelal Soni Vs. Mahavir Prasad Shukla, I.L.R. (2011) M.P. 3141*

– **Order 7 Rule 3 & 11** – Rejection of Plaintiff – Petitioner/defendant filed an application for rejection of plaintiff on the ground that the public drain which is the subject matter of the suit has not been adequately described in the plaintiff and mandatory provision of Order 7 Rule 3 has not been complied with – Trial Court after finding that the description of public drain is not proper, directed the plaintiff to incorporate clear averments in the plaintiff for complying with provisions of Order 7 Rule 3 C.P.C. – Held – It is the duty of the Court to pass a definite and executable decree, in order to attain aforementioned objective, Court may direct the plaintiff to furnish missing particulars with regard to identification of disputed immovable property – Failure to adequately comply with provision of Order 7 Rule 3 of C.P.C., must not, in all cases, lead to automatic rejection of plaintiff – Revision dismissed : *Saroj Vs. Inderchand Nahta, I.L.R. (2015) M.P. 1567*

– **Order 7 Rule 10** – Return of plaintiff – Respondent No.1/Plaintiff filed the suit for declaration of title, permanent injunction and possession – Issue was framed that whether plaintiff had properly valued the suit and has paid proper court fee – Trial court held the suit has not been valued properly and proper court fees has not been paid – It was further held that trial court has no jurisdiction – Trial court also held that plaintiff has failed to prove his title – Held – After having held that trial court had no jurisdiction, court should have returned the plaintiff – There was no need for court to decide the case on merits – Direction by the Appellate Court for returning the plaintiff is proper – Appeal dismissed : *Chandrakant Vs. Tikam Das, I.L.R. (2015) M.P. 181*

– **Order 7 Rule 10** – Territorial Jurisdiction – Marriage solemnized at New Delhi – Parties came to Bhopal to attend wedding reception – Thereafter they went to U.S.A. and stayed there – Petition for divorce filed at Bhopal – Respondent admitted that even today both the parties are residing at USA – Facts which confer jurisdiction on the Court has to be pleaded clearly and specifically – Plaintiff do not disclose that where the parties had last resided together – It cannot be inferred that parties had last resided together at Bhopal – Plaintiff directed to be returned for presentation of the same before Competent Jurisdiction : *Nitu Agrawal Vs. Shireesh Agrawal, I.L.R. (2012) M.P. 1129*

SYNOPSIS : Order 7 Rule 11

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|--------------------------------|---|
| 1. Bar of Suit or Claim | 2. Cause of Action |
| 3. Court Fees | 4. Maintainability of Suits/Jurisdiction |
| 5. Scope | |

1. Bar of Suit or Claim

- **Order 7 Rule 11 & Order 7 Rule 11(d)**, Benami Transactions (Prohibition) Act, (45 of 1988), Section 4 (1) - Bar of Suit or Claim - That the petitioner is real nephew of respondent no. 1 and out of love and affection he made purchases of land in the name of petitioner and sale consideration was paid by respondent no. 1 - All those purchased were benami - The bar is to file a suit or to make a claim and not that a particular transaction is benami or not - If suit is filed after coming into force of the Act, claiming any right title or interests on the basis of any benami transaction, whether it was done prior to coming in to force of the Act or after coming into force of the Act would be barred under the Sub-Sec (1) of Sec. 4 of the Act - Prohibition under the Act is squarely applicable and such a plaint was hit by order 7 rule 11 (d) of CPC - This being so, the court below was not right in rejecting the application of the petitioner - Revision allowed : *Anand Kumar Vs. Vijay Kumar, I.L.R. (2012) M.P. 2554*

2. Cause of Action

- **Order 7 Rule 11** - Cause of action - Election petition filed challenging the election on the ground of non-compliance of rules, and intermixing of postal ballot boxes - Held - Respondent already filed written statement - Cause of action in petition challenging election on the ground of corrupt practice cannot be equated with cause of action in the case in hand : *Kusum Singh Mahdele (Ms.) Vs. Shri Shrikant Dubey, I.L.R. (2011) M.P. *44*

3. Court Fees

- **Order 7 Rule 11** - Counter claim - Non payment of court fee - Counter claim dismissed for want of court fee inspite of several opportunities given by trial court - No application for extension of time also filed - Trial court was within its jurisdiction to pass such an order, cannot be interfered : *Rajesh Jaiswal Vs. Sanjay Sarvagi, I.L.R. (2014) M.P. 1639*

- **Order 7 Rule 11** - Opportunity to amend plaint - Held - Suit could not have been dismissed by the trial court unless the opportunity was extended to the appellants to amend their suit if necessary and to pay the court fees on proper valuation : *Shanti Devi (Smt.) Vs. Balchand, I.L.R. (2014) M.P. 175 (DB)*

- **Order 7 Rule 11** - Valuation - For the purpose of valuation of the suit and payment of Court fee, only the averments of the plaint could be considered and the objections and averments of the written statement are not relevant to decide such question : *Chedi Vs. Smt. Sona Bai, I.L.R. (2015) M.P. 1458*

4. Maintainability of Suits/Jurisdiction

– **Order 7 Rule 11**, Arbitration and Conciliation Act (26 of 1996), Section 8 - Jurisdiction of Civil Court - Suit for enforcement of partnership-deed was filed - Suit is maintainable as the subject matter of the suit is capable of adjudication by the Civil Court only - Arbitration clause has no application : *Mukesh Singh Tomar Vs. Rakesh Sharma, I.L.R. (2012) M.P. 2859*

– **Order 7 Rule 11**, Cooperative Societies Act, M.P. 1960 (17 of 1961), Section 82 – Maintainability of suit – Society filed a suit that sale deed executed by defendant no. 1/member of society to defendant no. 2 who is not the member of society without the permission of society be declared as null and void – Act of sale of plot by defendant no. 1 in favour of defendant no. 2 cannot be said to be touching the business of society – Civil suit maintainable : *Kedarnath Neekhra Vs. Suprabhat Grih Nirman Sahkari Sanstha Maryadit, Shivpuri, I.L.R. (2015) M.P. 3392*

– **Order 7 Rule 11**, Partnership Act (9 of 1932), Section 69 - Rejection of Suit - Suit of plaintiff is for enforcement of a right arising out of the contract of partnership and not independent of it - Plaintiff nowhere pleaded that the firm is already dissolved - Partnership firm between the plaintiff and defendant is still running even as per plaintiff averments - Held - The suit of the plaintiff is not covered by any of the exceptions provided in Section 69 of the Act - Suit is liable to be rejected : *Ashish Verma Vs. Neeraj Vyas, I.L.R. (2011) M.P. 2305*

– **Order 7 Rule 11** and Wakf Act (43 of 1995), Section 83(1)(2) & 85 – Wakf property – Maintainability of suit – Appellant filed suit seeking declaration that he is a tenant of defendant – Wakf Board has already held that the plaintiff/appellant is not a tenant and is an encroacher and has also passed the order for vacating premises – Appeal filed by appellant also dismissed by Tribunal – Held – Wakf Act has been enacted for better administration and supervision of Wakf properties – Tribunal is a Civil Court and has all powers of Civil Court – Bar created by Section 85 applies – Civil Suit not maintainable : *Kallu Khan Vs. Wakf Intajamiya Committee, I.L.R. (2015) M.P. *7*

5. Scope

– **Order 7 Rule 11** - Effect - Application under Order 7 Rule 11 raising objection with regard to valuation was earlier rejected - Subsequently issue with regard to valuation of property was framed - On the basis of statement of plaintiff itself issues with regard to valuation was decided against plaintiff - Held - Finding on application under Order 7 Rule 11 is not binding on the Trial Court at the time of passing of final judgment : *Shakuntla Butani (Smt.) Vs. Smt. Poonam Butani, I.L.R. (2012) M.P. 2113*

– **Order 7 Rule 11** - Grounds on which the suit may be dismissed - Held - Could not have been decided by the trial court at the preliminary stage before the settlement of issues and recording of the evidence : *Shanti Devi (Smt.) Vs. Balchand, I.L.R. (2014) M.P. 175 (DB)*

– **Order 7 Rule 11**, Municipalities Act, M.P. (37 of 1961), Section 20 & 22 – Election Petition – Application of provisions of C.P.C. – Provisions of C.P.C. are applicable to election petition – Application under Order 7 Rule 11 C.P.C. maintainable : *Amit Kumar Sharma Vs. Madanlal, I.L.R. (2011) M.P. 1363*

– **Order 7 Rule 11** - Rejection of Complaint - Scope of scrutiny - Is confined only to the averments made in the complaint - Question relating to the validity of the documents should not be determined at this stage of deciding an application : *Rajabhaiya Gupta Vs. Kamla Bai, I.L.R. (2012) M.P. 1656*

– **Order 7 Rule 11** – Rejection of complaint – Relevant facts which need to be looked into for deciding an application are the averments made in the complaint : *Kedarnath Neekhra Vs. Suprabhat Grih Nirman Sahkari Sanstha Maryadit, Shivpuri, I.L.R. (2015) M.P. 3392*

– **Order 7 Rule 11**, Representation of the People Act (43 of 1951), Section 83, 86, 87 & 123 - Election Petition - Material Facts and particulars of corrupt practices - In absence of averment that respondent did incur the expenditure of hiring vehicles for specified number of days or that he had authorized his election agent for hiring such vehicles or that he had authorized any other person for hiring such vehicles to whom he has undertaken to reimburse the amount, it must be held that material facts in relation to an allegation of corrupt practice are lacking - Mere assertion that returned candidate was guilty of corrupt practice in as much as he had not maintained/furnished true and correct accounts of expenditure incurred or authorized would not satisfy the requirements of pleadings in an election petition based on corrupt practice : *Doman Singh Nagpure Vs. Pradeep Jaiswal, I.L.R. (2011) M.P. 2793*

– **Order 7 Rule 11** - See - Accommodation Control Act, M.P., 1961, Section 12(1)(a), (f) & (o) : *Reena Khatuja (Smt.) Vs. Murarilal Sharma, I.L.R. (2012) M.P. 2856*

– **Order 7 Rule 11** – See – Arbitration and Conciliation Act, 1996, Section 8 : *Kutubuddin Agarbattiwala Vs. Smt. Ameena, I.L.R. (2014) M.P. 1286*

– **Order 7 Rule 11** - See - Benami Transactions (Prohibition) Act, 1988, Section 4 (1) : *Anand Kumar Vs. Vijay Kumar, I.L.R. (2012) M.P. 3090*

– **Order 7 Rule 11** – See – Coal Bearing Areas (Acquisition and Development) Act, 1957, Section 14(8), 20 : *Sulochani (Smt.) Vs. Smt. Jiwaraniya, I.L.R. (2012) M.P. 972*

– **Order 7 Rule 11** – See – Municipalities Act, M.P. 1961, Section 26 & 22 (a) (d)(i) : *Aziz Khan Vs. Akram Hussain, I.L.R. (2012) M.P. 1391*

– **Order 7 Rule 11** – See – Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993, Section 107 & 108 : *Shanta Bai (Smt.) Vs. Kundlik, I.L.R. (2014) M.P. 1117*

– **Order 7 Rule 11** - See - Representation of the People Act, 1951, Section 77, 86, 87 & 123(6) : *Chandrabhan Singh Choudhary Vs. Kamal Nath, I.L.R. (2012) M.P. 2750*

– **Order 7 Rule 11** – See – Representation of the People Act, 1951, Section 80 & 81 : *Krishna Kumar Gupta Vs. Rajendra Shukla, I.L.R. (2015) M.P. 152*

– **Order 7 Rule 11** – See – Representation of the People Act, 1951, Section 82 : *Ram Khelawan Patel Vs. Dr. Rajendra Kumar Singh, I.L.R. (2015) M.P. 749*

– **Order 7 Rule 11** – See – Representation of the People Act, 1951, Section 83(1) & 123(4) : *Paras Vs. Chaitanya Kashyap, I.L.R. (2015) M.P. 2712*

– **Order 7 Rule 11** – See – Representation of the People Act, 1951, Section 86, 81(3) & 87(1) : *Rahul Singh Lodhi Vs. Smt. Chanda Devi, I.L.R. (2015) M.P. 143*

• – **Order 7 Rule 14** – Additional documents – Earlier the application under Order 11 Rule 14 of CPC was dismissed on merits by holding that the documents are being filed at very belated stage – At subsequent stage application under Order 7 Rule 14 of the CPC for taking same document on record is not maintainable – Once the trial Court has passed the order on merits have no authority to reconsider the matter contrary to the earlier order : *Devendra Kumar Nayak Vs. Sudha Nayak (Smt.), I.L.R. (2015) M.P. 3176*

– **Order 7 Rule 14** – Scope – If the document which desires to be taken on record was very well in the knowledge of the party since long but same not filed on earliest opportunity then the same could not be permitted to file on subsequent stage : *Devendra Kumar Nayak Vs. Sudha Nayak (Smt.), I.L.R. (2015) M.P. 3176*

– **Order 8 Rule 1** - Written statement - Case fixed for filing of written statement - Defendant absent upto 4 p.m. when ex parte proceedings were drawn - Later on defendant filing written statement and counter claim on the same day - Trial Court was justified in taking the same on record - Insertion of a sentence in order sheet about closure of defendant's right to submit written statement without initials of presiding judge is inconsequential : *Gulzarilal jain Vs. Ravikant Shirke, I.L.R. (2011) M.P. *24 (DB)*

– **Order 8 Rule 1** – Written Statement – Extension of Time – Object is to expedite the hearing and not to scuttle the same – Provision is a part of procedural law and directory in nature – Permission cannot be granted as a matter of routine – Order extending time to file written statement set aside – Petition allowed : *Bismilla Bee Vs. Arjuman Aara, I.L.R. (2014) M.P. 2341*

– **Order 8 Rules 3 & 5**, Evidence Act (1 of 1872), Section 18 - Implied or deemed admission - Vague or evasive reply in written statement - Pleadings made in the plaint can get converted into evidence only when it passes test of proof - Mere alleging a fact in the plaint with absence of denial in the written statement with regard to the fact, cannot by itself entitle the plaintiffs to decree by deemed admission : *Hari Singh Vs. Vikram Singh, I.L.R. (2013) M.P. 1654*

– **Order 8 Rule 6(A)** – Counter claim by defendant – At the stage of closure of defence evidence, counter claim is not permissible : *Ali Hussain (Died) by Legal Heirs Vs. Shabbir Hussain, I.L.R. (2014) M.P. 1020*

– **Order 8 Rule 6A** - Counter claim - Defendant filing counter claim for eviction against plaintiff as well as against co-defendant - Such counter claim is maintainable - Counter claim solely against co-defendant is not maintainable : *Gulzarilal Jain Vs. Ravikant Shirke, I.L.R. (2011) M.P. *24 (DB)*

– **Order 8 Rule 6-C** – Maintainability of counter claim – Mere on account of withdrawal of the counter claim by one of the defendant and on filing the application by plaintiff for withdrawal of the suit, counter claim of the other defendant could not be excluded from consideration, the same could be proceeded and adjudicated on merits against the plaintiff even after withdrawal of the suit – No perversity in the order passed by the trial court – Petition dismissed : *Lalla Kumhar Vs. Dhaniram Kumhar, I.L.R. (2014) M.P. 3108*

– **Order 8 Rule 10** – Closure of right to file written statement after expiry of 90 days from the service of notice – Subsequently before recording of ex-parte evidence petitioner moved an application for condoning the delay with written statement praying that W.S. may be taken on record – Which was also dismissed – Held – Matrimonial dispute between husband and wife is very sensitive, same should be decided on merits and should not be thrown away on technical grounds seriously affecting the rights of the parties – Petition is allowed subject to payment of cost of Rs. 5,000/- which shall be condition precedent for taking the W.S. on record : *Rupali Badkatte Vs. Sachin Bakshi, I.L.R. (2015) M.P. 863*

– **Order 8 Rule 10** – Closure of right to file written statement – Petitioner pleads that court should have pronounced the judgment after closing the right to file written

statement – Trial Court directed the plaintiff to lead evidence as it would be appropriate to grant opportunity to defendant to cross-examine the witnesses – Held – Undoubtedly right has accrued in favour of plaintiff but defendant should not be left remedy less – Petition dismissed : *Tukaram Vs. Fulsingh, I.L.R. (2015) M.P. 2422*

– **Order 8 Rule 10** - Written statement - Even if the defendant fails to file the written statement, the Court should proceed cautiously and exercise its discretion in a just manner - Burden of proof would remain on plaintiff and his mere assertion in plaintiff affidavit would not be sufficient to discharge the burden : *Chandrabhan Singh Vs. Ganpat Singh, I.L.R. (2012) M.P. 1917*

– **Order 9 Rule 1** - Pleadings - Object is to enable the adversary to know the case of other party - In order to have fair trial, it is imperative that party should state the essential material facts - Detailed pleadings about the property in respect of which the person is either claiming possession or title must be made : *Chandrabhan Singh Vs. Ganpat Singh, I.L.R. (2012) M.P. 1917*

– **Order 9 Rule 5 & Order 5 Rule 20** – Appellants despite service report to the effect that the respondent Nos. 2 & 4 are not residing at the given address and despite granting time, not supplied correct address – Though fresh steps were taken but not at the correct address – Held – Paying process fee alone without supplying the correct address cannot be considered as compliance of the provision – However, final opportunity is given to the appellant to file correct address or in alternative file application under Order 5 Rule 20 for substituted service, subject to payment of cost of Rs. 5,000/- : *Ashok Kumar Gupta Vs. United Commercial Bank, I.L.R. (2015) M.P. 2742*

– **Order 9 Rule 6** - No instructions - Ex-parte - If the advocate pleads no instruction on behalf of the party who is not present - It is the duty of the Court to issue notice to the said party - Claims Tribunal has committed error to proceed ex-parte against Insurance Company - Insurance Company deserves an opportunity of cross-examination and to adduce evidence to prove their defence : *Mamta Bai Patidar (Smt.) Vs. Ismail Khan, I.L.R. (2013) M.P. 2850*

– **Order 9 Rule 6** - Proceeding Ex parte - Court before proceeding ex parte against a defendant, must cautiously see the process and the report of service of the summons and should not formally use the words that the defendant was served, but was absent. The Court shall always be justified by recording cogent reasons in proceeding ex parte provided it is convinced that the defendant despite lawful service of summons and knowledge of the pendency of the proceedings had chosen to remain absent before proceeding ex parte, the Court must advert itself and follow the legal requirements

regarding service of summons as provided under Order V of CPC : *Brijendra Singh Bhadauria Vs. Usha Singh Alias Deepa (Smt.)*, I.L.R. (2011) M.P. *136 (DB)

– **Order 9 Rules 8 & 9 & Order 17 Rules 2 & 3** - Restoration of Proceeding - If a decision is rendered (whether on merits or otherwise) in absence of plaintiff or petitioner, he has a right to apply for restoration of the case, provided of course that the litigant is able to establish that there was sufficient cause for non-appearance when the case was called on for hearing - This right is not curtailed only because the Court or the Tribunal has examined the merits of the matter : *Narendra Kumar Rathor Vs. State of M.P.*, I.L.R. (2011) M.P. 2322 (DB)

– **Order 9 Rule 9**, Accommodation Control Act, M.P. (41 of 1961), Section 23-A – Restoration of application for eviction – Original non-applicant died during pendency and his legal heirs were brought on record – Defendants claimed that one of them namely Indrajeet is in possession of shop – Notice of application under Order 9 Rule 9 CPC to Indrajeet issued – Non-issuance of notice to other respondents is immaterial as no prejudice was going to cause to them – No need to grant any opportunity to other legal heirs : *Poonam Kumar Duggal Vs. Indrajeet Singh Duggal*, I.L.R. (2014) M.P. 1369

– **Order 9 Rule 9** - Restoration of Civil Suit - A party is bound to prove a fact which is pleaded by it before the Court - In order to prove sufficient cause as pleaded in the application, none has appeared in the witness box - In the lack of any such evidence on merely on the basis of pleadings in the application, the relief as prayed in the application would not have been granted by the Trial Court - Petition dismissed : *Bina Marry David Vs. Lilli Dayal*, I.L.R. (2012) M.P. 2657

– **Order 9 Rule 9** - Restoration of suit - Appellants slept over the matter for a period of three years - Lapse on their part does not entitle them to seek remedy under Order 9 Rule 9 : *Rama Shankar Vs. Balak Das*, I.L.R. (2013) M.P. 2183

– **Order 9 Rule 9** - Restoration of suit - Suit dismissed due to gross-negligence of next friend of minor - Suit liable to be restored : *Harishankar Arora Vs. Smt. Vedbati*, I.L.R. (2011) M.P. *25

– **Order 9 Rule 9** – See – Constitution – Article 227 : *PRL Projects & Infrastructure Ltd. Vs. State of M.P.*, I.L.R. (2014) M.P. *17

– **Order 9 Rule 9 & Order 17 Rule 3** – Restoration of Civil Suit – Maintainability – Application under Order 17 Rule 1 C.P.C. was dismissed and the suit was dismissed under Order 17 Rule 3 although the Evidence was not recorded and Plaintiff and his witnesses were absent – As suit was dismissed under Rule 17 Rule 3, the only remedy lies to the applicants to file an appeal against the said order – Although the

Trial Court had no power to proceed under Order 17 Rule 3 and acted erroneously in doing so, but application under Order 9 Rule 9 was not maintainable and only remedy available is to file an appeal – Revision dismissed : *Har Prasad Vs. Maniram, I.L.R. (2015) M.P. 3067*

SYNOPSIS : Order 9 Rule 13

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|-------------------------------------|---------------------------|
| 1. Limitation | 2. Maintainability |
| 3. Notice/Service of Summons | |

1. Limitation

– **Order 9 Rule 13**, Limitation Act (36 of 1963), Section 5 – Setting aside ex-parte decree – Application under Order 9 Rule 13 filed after 10 years and 6 months on the ground that the Collector was not served – Although the defendant was served and was also represented by Government Pleader – On various dates, he sought time to file reply to I.A. and written statement – No application u/s 5 of Limitation Act was filed – Held – Application filed under Order 9 Rule 13 was quite vague – Reason assigned is concocted and is ex facie false – Trial Court acted illegally with material, irregularity in exercise of its jurisdiction while allowing the application – Discretion should be exercised in favour of a party who comes with clean hands – Revision succeeds – Impugned order is set-aside : *Ramesh Chandra Jain Vs. State of M.P., I.L.R. (2014) M.P. 1360*

– **Order 9 Rule 13** – Setting aside ex-parte decree – Written statement was filed by defendant beyond the period of 90 days – Rent was deposited within time and defence was struck off – Adjourment was taken for cross examination of Plaintiff – Thereafter the defendant was proceeded ex-parte and decree was passed – Application for setting aside ex-parte decree was filed after 30 days – No application for condonation of delay was filed – Only reason assigned in the application was the time required for obtaining certified copy of decree – Provisions of Section 12 of Limitation Act does not apply to proceedings under Order 9 Rule 13 – Conduct of respondent in original suit in adopting the delaying tactics does not entitle him for condonation of delay - Order of appellate Court setting aside ex-parte decree set aside : *Shri Jagat Guru Shankrachariya Swami Swaroopanand Saraswati Vs. Siddhu Engineering Works, I.L.R. (2012) M.P. 562*

2. Maintainability

– **Order 9 Rule 13**, Municipal Corporation Act, M.P. 1956, Section 441-F(2) - Application for setting aside ex parte decree and revision under Act, 1956 simultaneously filed - Application for setting aside ex parte decree withdrawn without liberty to raise such grounds in other pending proceedings - Such grounds cannot be allowed to be raised in revision : *Pushkar Singh Tomar Vs. K.P. Sharma, I.L.R. (2011) M.P. *46*

– **Order 9 Rule 13 read with Section 151** - Application filed under would not become infructuous on the ground that the plaintiff/appellant had re-married after passing of the ex parte decree for divorce : *Brijendra Singh Bhadauria Vs. Usha Singh Alias Deepa (Smt.)*, I.L.R. (2011) M.P. *136 (DB)

3. Notice/Service of Summons

– **Order 9 Rule 13 Proviso** - Applicability of Proviso - If the plaintiff satisfies the Court that summons was in fact served in accordance with law but certain directive provision was not observed, only in such a case, the Court may on being satisfied that the defendant had sufficient time to approach the Court on the date of hearing, can refuse to set aside the ex parte decree : *Brijendra Singh Bhadauria Vs. Usha Singh Alias Deepa (Smt.)*, I.L.R. (2011) M.P. *136 (DB)

– **Order 9 Rule 13** - Setting aside of ex parte decree - Show cause notice was issued on the application filed by the respondent No. 2 under Order 39 rule 1 & 2 CPC on which Court proceeded ex parte against respondent No. 1 - No copy of the plaint was pasted alongwith summons - Process server, who served notice by affixture admitted that he did not record the statement or to obtain signature of the witnesses in whose presence summons were served by affixture - Held - The second proviso to Rule 13 of Order IX not applicable - No satisfaction can be drawn that respondent No. 1 had notice of the date of hearing and had sufficient time to appear and answer the claim of respondent No.2 : *Parvati Bai (Smt.) Vs. Mohd. Sharif*, I.L.R. (2011) M.P. 2888

– **Order 9 Rule 13** – Setting aside of ex-parte divorce decree – No attempt was made to effect the service by general mode – Endorsement as to refusal of envelope was not signed or initialed by the postman whereas the earlier endorsement indicating that the addressee was expected to come back from Hatta after 3 days did bear his signature – On 09.08.1997, observing that the envelope was not received back served or unserved, trial Judge directed issuance of fresh summons by registered post and fixed 09.09.1997 as the next of hearing but no follow up action was taken – On 09.09.1997, the Presiding Judge was on leave and it was the Reader, who adjourned the case to 15.09.1997 – Held – Impugned order allowing respondent's application for setting aside ex parte divorce decree, does not suffer from any error of jurisdiction : *Purshottam Choubey Vs. Smt. Gayatri Bai*, I.L.R. (2012) M.P. 1399

– **Order 9 Rule 13** - Absence of counsel - Counsel did not appear on one date - Before proceeding ex parte against applicant, a fresh notice of hearing by fixing a date was required to be given : *Pushkar Singh Tomar Vs. K.P. Sharma*, I.L.R. (2011) M.P. *46

– **Order 9 Rule 13** - See - Workmen Compensation Rules, 1924 - Rule 41 : *Kehar Singh Vs. Durjan Singh Gond*, I.L.R. (2012) M.P. 1625

– **Order 11 Rule 2 & Order 41 Rule 23** - Principles of Res-Judicata - Earlier suit for permanent injunction dismissed - Subsequent suit was filed for declaration and possession - Held - Subsequent suit is not barred by principles of Res-Judicata - No error has been committed by appellate court in allowing the appeal and setting aside the order passed by trial court, in remanding the case : *Rajendra Singh Vs. Kaloo Singh, I.L.R. (2014) M.P. 421*

– **Order 11 Rule 12** – Discovery of Documents – Any party to a suit may without filing an affidavit can apply to the Court for an order directing any other party to suit to make discovery on oath of document which are or have been in possession or power relating to any matter in question therein : *Kishore Kumar Vs. Mohd. Hussain, I.L.R. (2011) M.P. 1487 (DB)*

– **Order 11 Rule 12** – Discovery of Documents – Plaintiff filed suit for eviction under Section 12(1)(a) & (f) of M.P. Accommodation Control Act, 1961 – Defendant filed application for discovery of lease agreements executed by plaintiff in respect of other shops – Held – Onus is on plaintiff to prove bonafide requirement – Defendant failed to establish that an irretrievable defence which may crop up in his favour if documents are not produced is prejudiced – Since primary onus lies on plaintiff therefore, trial court rightly rejected the application : *Kishore Kumar Vs. Mohd. Hussain, I.L.R. (2011) M.P. 1487 (DB)*

– **Order 11 Rule 12** - Every document which will throw any light on the case is a document relating to a matter in dispute in the proceedings, though it might not be admissible in evidence : *Narendra Gole Vs. Ram Krishna Sharma, I.L.R. (2011) M.P. 682 (DB)*

– **Order 11 Rule 21** – Scope of exercise of powers – Provision is not available when only production of documents is directed and not produced – Non production at the most would lead the Court to draw an adverse inference – The defence can not be struck in case the defendant fails to produce the document : *Manisha Lalwani (Smt.) Vs. Dr. D.V. Paul, I.L.R. (2012) M.P. *60*

– **Order 13 Rule 10** – See – Representation of the People Act, 1951, Section 100(1)(d)(iii)(iv) : *Shrinivas Tiwari Vs. Rajkumar Urmalia, I.L.R. (2012) M.P. 464*

– **Order 14 Rule 1** - Additional Issue - Additional Issue with regard to non-availability of alternative accommodation was framed and plaintiff was given opportunity to lead evidence - Held - Whenever during pendency of the suit, any additional issue is framed and if such issue is related to factual matrix of the matter, then the Court is bound to extend the opportunity to both the parties to adduce evidence in that regard - Petition dismissed : *Narendra Kumar Rathi Vs. Ravindra Modi, I.L.R. (2012) M.P. 2648*

– **Order 14 Rule 1** - Framing of issues - Suit merely for perpetual injunction - Plaintiff asserted his own title as well as possession - Defendant in written statement denied plaintiff's title as well as possession - It was obligatory on the part of trial Judge to raise specific issue whether the plaintiff is in exclusive possession of the disputed property on the date of institution of the suit - Without raising such an issue, the suit instituted by the plaintiff for perpetual injunction on the basis of his possession cannot be legally decided - Judgment of Courts below granting decree for perpetual injunction in the absence of such issue stand vitiated : *Municipal Council, Jaora Vs. Chand Khan, I.L.R. (2011) M.P. 2493*

– **Order 14 Rule 1 & 2** - Issues, framed under Order 14 Rule 1 & 2 or any of them could not be decided on merits unless the evidence of the parties is necessary and needed, then such issue could neither be treated to be a preliminary issue nor could be decided in such manner : *Shanti Devi (Smt.) Vs. Balchand, I.L.R. (2014) M.P. 175 (DB)*

– **Order 14 Rule 2** – See – Motor Vehicles Act, 1988, Section 166 : *Sushma Singh (Smt.) Vs. Ram Shiromani Tiwari, I.L.R. (2015) M.P. 3361*

– **Order 14 Rule 5** - Issues already framed by trial Court cover the proposed issues - Trial Court did not commit any error in rejecting the application : *Khamir Singh Vs. Radheshyam Bansal, I.L.R. (2011) M.P. 387 (DB)*

– **Order 16 Rule 1 & 2** - Summons to witnesses - Provision of order 16 Rule 1 and 2 is a part of procedural law to achieve justice - Procedure cannot be so stringent unless Statute defines it in that manner - Use of word shall without any intention to close the right if the act is not done within a stipulated time and without there being any penal consequences, it cannot be held that the provision is mandatory - However, it is open for the Courts to examine the conduct of the person who is filing such application whether it is filed with bonafides or with a view to delay the proceedings or with some other oblique manner : *Raghuraj Singh Vs. Kedar Singh, I.L.R. (2012) M.P. 2692*

– **Order 16 Rule 7-A** – Summoning and attendance of witnesses – Closure of plaintiff's right to examine its witness – Held – Whenever any summons is issued to the witnesses and if the same is not received back either served or unserved then the Court is always bound to take appropriate steps to secure presence of such witnesses by issuing the fresh summons on the correct address of the witnesses or with any other appropriate order – Summons issued to the witnesses was not received back either served or unserved – Impugned order being perverse is hereby set-aside : *Adarsh Grah Nirman Sahakari Samiti Vs. Sushil Kumar, I.L.R. (2015) M.P. 866*

– **Order 16 Rule 14**, Representation of the People Act (43 of 1951), Section 87 - Summoning of returning officer as a Court witness - Prayer for summoning returning

officer as a Court witness was made by the respondent before closure of his evidence - Respondent can substantiate his pleadings by examining Returning Officer - No reasonably satisfactory explanation has been given for not summoning the Officer as his own witness - No compelling reason to summon Returning Officer as a Court witness - Application rejected : *Rajesh Kumar Vs. Devendra Singh, I.L.R. (2012) M.P. 2457*

– **Order 17 Rule 3** - Failure to adduce evidence - Opportunities were given to tenant to lead evidence but he did not do so therefore, Trial Court closed his right to lead evidence - Revisional Court granted him a week's time as prayed by him, to lead evidence - Said opportunity was not availed by tenant - Trial Court had rightly closed the right : *Subhash Jaiswal Vs. Triloki Nath Kakkad, I.L.R. (2013) M.P. *7*

– **Order 17 Rule 4** - Documentary Evidence - Certain documents were filed along with affidavit filed under Order 18 Rule 4 and were exhibited - Cross Examination was deferred - Objection with regard to admissibility of documents was filed after six months but before the beginning of cross examination - Held - As there was no progress in the matter and merely on the basis that objection was raised at the time when the affidavit was filed by petitioner, it cannot be said that respondents lost their right to raise objection about the admissibility of the document - Further no order was passed by the Court relating to admissibility of the documents when the documents were filed along with affidavit - Trial Court did not commit any mistake in entertaining the application : *Mahindra & Mahindra Financial Services Ltd. (M/s.) Vs. M/s. Life Care Logistic Solutions, I.L.R. (2012) M.P. 2135*

– **Order 18 Rule 3** – Stage of filing application – Plaintiff after conclusion of his evidence filed application reserving his right to lead evidence in rebuttal of issues regarding counter claim after the evidence of defendant – Application has to be filed before commencement of evidence by other party – Trial Court erred in dismissing the application – Application allowed : *Mahesh Vs. Harisingh, I.L.R. (2015) M.P. 638*

– **Order 18 Rule 4** - Affidavit - Affidavit prepared by counsel and the witness merely signing it - It can be inferred that statement produced on behalf of witness is not his actual statement : *Pradumn Singh Vs. Shiv Raj Singh, I.L.R. (2014) M.P. 424*

– **Order 18 Rule 4** - Recording of Evidence - Discretion of court to record evidence by way of affidavit or by way of examination-in-chief is limited to the cases where summons have been issued under Order 16 Rule 1 of the Code - Further held, the conjoint reading of Order 16 Rule 1-A and Order 18 Rule 4(1) makes it mandatory for the court below to record examination-in-chief in the form of affidavit and it need not be recorded in the shape of examination-in-chief by directing the witness to enter the witness box : *Sagar Singh Yadav Vs. Sudama Singh Yadav, I.L.R. (2014) M.P. 100*

– **Order 18 Rule 4 & 13** - See - Municipal Corporation Act, M.P., 1956, Section 441-C : *Pushkar Singh Tomar Vs. K.P. Sharma, I.L.R. (2011) M.P. *46*

– **Order 18 Rule 4 (1)** - Examination of witnesses on commission - Commissioner was appointed for examination of witnesses - As the Petitioner had failed to keep the witnesses present before the Commissioner, his right to lead evidence was closed - Order of Trial Court was set aside by High Court by giving last opportunity to keep his witnesses present on payment of cost - Petitioner again failed to keep the witnesses present before the Commissioner therefore his right to lead further evidence was closed - Held - Order 18 Rule 4(1) was introduced with a view to reducing consumption of judicial hours in the process of recording of oral evidence - However, in cases of serious disputes, the Court, as far as possible, may prefer to itself record the cross-examination of material witnesses and the prayer for recording evidence by Commissioner may be declined by Court - Order appointing Commissioner is also liable to be set aside as well as the order closing the right to lead evidence is also set aside - Trial Court directed to record itself the cross examination and re-examination of witnesses - Petition allowed : *Babu Lal Vs. Tarachand, I.L.R. (2013) M.P. 1065*

– **Order 18 Rule 4 (2)** – See –Representation of the People Act, 1951, Section 87 : *Himmat Kothari Vs. Parasmal Saklecha, I.L.R. (2011) M.P. 948*

– **Order 20 Rule 11** – Payment by Installments – Executing Court on application of judgment debtors fixed four monthly installments of Rs. 50,000/- each and last installment of Rs. 40,000/- – Order challenged by judgment debtor on the ground of inability to pay installment, so fixed by Executing Court – Held – In absence of providing minimum factual foundation relating to inability to satisfy the decretal amount, no enquiry needs to be ordered – No fault can be found in the order of the court below who in its discretion has fixed the instalments : *Rambeti Jain (Smt.) Vs. Smt. Meena Devi Tomar, I.L.R. (2014) M.P. 3020*

– **Order 20 Rule 12** – Mesne Profit – Plaintiff is bereft of any pleadings in respect of mesne profit – Appellants are not entitled to any mesne profit : *Sudha Verma (Smt.) Vs. Radhavallabh Sharma, I.L.R. (2012) M.P. 519*

– **Order 21** - Calculation of interest - While calculating the interest, the Executing Court rightly considered the conduct of the applicants in denying the payment of compensation and long legal battle - Order of Executing Court proper : *State of M.P. Vs. Ram Pyare Dubey, I.L.R. (2012) M.P. 2564*

– **Order 21** - Power of Executing Court - If a decree is specifically drawn, the Executing Court cannot travel beyond the decree : *State of M.P. Vs. Ram Pyare Dubey, I.L.R. (2012) M.P. 2564*

– **Order 21** - Power of Executing Court to calculate interest - High Court while granting decree did not grant any specific compensation but declared that the respondent would be entitled to compensation for the land held in his favour - As decree contains no specific amount, therefore, it has to be calculated and ascertained by Executing Court : *State of M.P. Vs. Ram Pyare Dubey, I.L.R. (2012) M.P. 2564*

– **Order 21 Rule 16** – Application for execution – Decree for eviction was passed against the petitioner – During the pendency of the Second Appeal, the decree holder transferred the suit premises – Application for execution of decree filed by original decree holder – Held – It is the decree holder who has sought execution of the decree – In absence of any statutory prohibition, he cannot be prevented from executing the same merely because the suit property has been transferred by registered sale deed : *Mahesh Rawat Vs. Raj Kumari, I.L.R. (2015) M.P. *11*

– **Order 21 Rule 29** - Stay of Execution Proceedings - Exparte decree was passed against petitioner - Application for setting aside exparte decree rejected - Appeal also dismissed - Suit for setting aside exparte decree pending - No interim order passed in such suit - Held - Unless and until the execution proceedings are stayed by any competent court or by any interlocutory injunction, executing court cannot go beyond the decree and cannot stay the execution - Petition dismissed : *Chandrika Prasad Vs. Indramani (dead) Through L.Rs., I.L.R. (2012) M.P. 2964*

– **Order 21 Rule 32 (1)(5) read with explanation** – Execution of Decree – Decree for declaration and permanent injunction was passed – No prayer or decree was made for possession – The said decree was sought to be executed under aforesaid provision – Court below declined it – Held – The trial Court in judgment gave specific finding that allotment was made in petitioner’s favour and he is in possession with further direction that his possession be not disturbed – This order attained finality till High Court – If contrary to this, possession is disturbed, it is the duty of the Court to set the wrong right and not allow the perpetuation of the wrong doing : *Toran Singh Vs. Imrat Singh, I.L.R. (2012) M.P. 1233*

– **Order 21 Rule 32 (1)(5) read with explanation** – Execution of Decree – Even a decree of permanent prohibitory injunction needs to be enforced as per the said explanation – If the judgment-debtor had gained possession on the decree holder’s property by violating decree, said judgment-debtor needs to be expelled by the executing Court by exercising powers under Order 21 Rule 32 or by exercising inherent powers under Section 151 of C.P.C. – Law Commission Report pursuant to which Explanation was inserted is taken note of : *Toran Singh Vs. Imrat Singh, I.L.R. (2012) M.P. 1233*

– **Order 21 Rule 84 & 85** - Deposit of auction money - Auction purchaser is required to deposit 25% of the auction money immediately and rest of the amount within 15 days - Auction purchaser failed to deposit the remaining amount within 15 days - Sale is liable to be set aside : *Mukesh Maheshwari Vs. The United Western Bank Ltd., I.L.R. (2012) M.P. 2558*

– **Order 21 Rules 84 & 85** – Purchase Money – Rules 84 & 85 leave no discretion of power to Court to extend time or to condone any delay in depositing the purchase money – Fact that the decree holder has pleaded no objection to the prayer for extension of time to deposit the remaining amount of purchase money also does not assume any significance : *Alok Badal Vs. State Bank of Indore, I.L.R. (2012) M.P. 1044*

– **Order 21 Rule 97** – Objection to Execution of Decree – Recording of Evidence – While deciding objection detailed enquiry is not required – Court may decide the objection on the basis of averments and documents on record – Executing Court while exercising discretion has rejected the application for recording evidence – Any order passed by Executing Court in exercise of discretionary jurisdiction could not be interfered under Article 227 of Constitution of India – No error committed by Executing Court – Petition dismissed : *Jamuna Prasad Vs. Balkishan, I.L.R. (2015) M.P. 2363*

– **Order 21 Rule 97, Order 7 Rule 11** – Respondents filed application under Order 21 Rule 97 in execution proceedings – Application under Order 7 Rule 11 is not maintainable as application under Order 21 Rule 97 is not a plaint though may be decided likely to be a suit : *Kanta (Smt.) Vs. Arvind Tare, I.L.R. (2011) M.P. *70*

– **Order 22** – Legal Representatives – Original plaintiff died during the pendency of civil suit and his legal heirs were brought on record – Defendant filed appeal against decree but ‘A’ one of the L.R. was not made party – ‘A’ also filed appeal against part dismissal of suit – Held – As ‘A’ had also filed cross appeal and other legal representatives were on record, first appeal and second appeal filed by defendant was maintainable and had not abated : *Gajendra Rao Vs. Murti Shri Ganpati Ji Maharaj, I.L.R. (2012) M.P. *4*

– **Order 22 Rule 4** – Legal Representatives – Plaintiff filed suit for specific performance of Contract – Application for bringing Legal Representatives of sole defendant on record was filed belatedly and without any application for condonation of delay – Trial Court allowed the application – Held – Filing of application for condonation of delay is mandatory – Ignorance of legal consequence without something more would not be sufficient to condone a huge delay – As application for condonation of delay was not filed Trial Court committed error in allowing the application for bringing Legal

Representatives on record – Petition allowed : *Kalpna Pandey (Smt.) Vs. Bheekam Prasad, I.L.R. (2015) M.P. 364*

– **Order 22 Rule 4(4)** - Execution of Decree - Defendant was proceeded exparte who died subsequently - His Legal Representatives were also not brought on record - The decree would not become otiose or unexecutable on the ground that it has been passed against dead person - As defendant No. 8 was proceeded exparte in the suit and there is an exparte decree against him which is executable, therefore, the Executing Court rightly rejected the objections of judgment debtor : *Prakash Dhimar Vs. Kamal Kumar, I.L.R. (2012) M.P. 2927*

– **Order 22 Rule 4, 9** - Substitution of Legal Heirs - Appellants were aware of the death of respondents as necessary applications were filed in revenue cases - Delay of 16,14 and 1 year in filing application for substitution of their L.Rs. and setting aside abatement can not be condoned - Applications dismissed consequently, appeal is also dismissed : *Lolar (Smt.) Vs. Gulab Singh, I.L.R. (2012) M.P. 1638*

– **Order 22, Rule 9** – Limitation Act (36 of 1963), Section 5 – Condonation of Delay – First Appeal – Joint property sale deed executed on 15/02/69 – Setting aside the abatement – Delay of 12 years - Held – Death of respondents not brought on record in time – Condonation of delay and the application for setting aside the abatement are dismissed : *Misriya (Since dead) Through L.Rs. Vs. Kishandas (Since dead), I.L.R. (2012) M.P. 744*

– **Order 22 Rule 10** - If the interest is assigned of the subject matter of the suit, the assignee may apply to be impleaded as a party even at an appellate stage : *Pushpa Devi Vs. Harvilas, I.L.R. (2013) M.P. 2680*

– **Order 23, Rule (1)(3)** - See - Motor Vehicles Act, 1988, Section 163(a) : *Baijanti (Smt.) Vs. Laxmi Prasad Kanoujia, I.L.R. (2013) M.P. 2934*

– **Order 23 Rule 1(4)** - Suit filed by plaintiff for declaration of title/share and injunction, was withdrawn in Lok Adalat without seeking permission for filing a suit - Subsequent suit shall be precluded on the same cause of action : *Ram Prasad Vs. Rajendra Singh, I.L.R. (2013) M.P. 1685*

– **Order 23 Rule 3** – Compromise of Suit – Scope – Property which is not the subject matter of the suit but related to the parties to the suit, for that property also compromise may be arrived at in the court and a compromise decree can be passed, if it is arrived at by a lawful agreement : *Jeevan Lal Rathore Vs. Deepchand, I.L.R. (2014) M.P. 3263*

– **Order 23 Rule 3** - Compromise - Where it is alleged by one party and denied by other party about compromise, the Court has to decide the question, but for that no adjournment should be granted, unless the Court for reasons to be recorded, thinks fit to grant such adjournment : *Arjun Singh Vs. Vardibai, I.L.R. (2011) M.P. 448*

– **Order 23 Rule 3-A** - If a person is not a party to the decree and the decree is void, then certainly a suit is maintainable and the bar of Order 23 Rule 3-A would not be applicable in that case : *Santosh Kumar Vs. Hachchu, I.L.R. (2011) M.P. *17*

– **Order 26 Rule 1** - Examination on Commission - Respondent No.1 is an elected Mayor attending her duties and all functions even after angioplasty surgery was carried out near about 2 years back - It cannot be said that she is not in a position to record her deposition before the Court - Order directing her examination on Commission not sustainable - Petition allowed : *Alka Jain (Smt.) Vs. Smt. Nirmala Pathak, I.L.R. (2013) M.P. 333*

SYNOPSIS: Order 26 Rule 9

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| <p>1. Subject where Commissioner may be appointed.</p> | <p>2. Subject where Commissioner may not be appointed.</p> |
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1. Subject where Commissioner may be appointed.

Civil Procedure Code (5 of 1908) – Order 26 Rule 9 – Appointment of Commissioner – Application for appointment of Commissioner was rejected by trial court – Another application was filed before Appellate Court hearing appeal against the judgment and decree – Held – Appellate Court ought to have heard the appeal first on merits and thereafter on the application and then decide the application first and subject to outcome of such application, the judgment on merits be delivered by the Appellate Court but such process has not been adopted by the Appellate Court – Impugned order being perverse is not sustainable and deserves to be set aside : *Dharam Das Rai Vs. Chief Municipal Officer, I.L.R. (2014) M.P. 1794*

– **Order 26 Rule 9** - Appointment of Commissioner - Dispute as to encroachment of land - Petitioner making application in trial Court to appoint Commissioner for investigation on spot - Such application should be allowed : *Nirmala Khare (Smt.) Vs. Surendra Pathak, I.L.R. (2013) M.P. 2794*

– **Order 26 Rule 9** – Appointment of Commissioner – No agreed map available before the trial Court to resolve the dispute between the parties – Controversy should be resolved by issuing commission : *Kamal Singh Vs. Roop Singh (since dead) Through L.Rs., I.L.R. (2011) M.P. 1731*

2. Subject where Commissioner may not be appointed.

– **Order 26 Rule 9** – Appointment of Commissioner for demarcation – Demarcation report carried out by revenue officer already on record – While passing the impugned order Trial Court has considered all probable aspects – Order is passed under the vested discretionary jurisdiction – Same could not be interfered with – Every concerning party is bound to prove his case on his own legs – He has no right to use the procedure of the Court as an agency to collect the evidence as demarcation report by revenue authority is already on record – No perversity and illegality in the order – Petition is dismissed : *Kamlesh Jain (Smt.) Vs. Smt. Kusum Bai, I.L.R. (2015) M.P. *9*

– **Order 26 Rule 9** – Appointment of Commissioner to ascertain who is in possession – Held – Suit is at the initial stage – Evidence is yet to be recorded – No party can be permitted to use the procedure of the court to collect the evidence in support of his case – No interference is required – Petition dismissed : *Ghasiram Dehariya Vs. Anakhil Dehariya, I.L.R. (2014) M.P. 3114*

– **Order 26 Rule 9** - Commission cannot be issued to ascertain actual possession over disputed property - Evidence cannot be collected by issuance of commission - Issue has to be decided by the Court itself on the basis of evidence : *Ramanuj Kushwaha Vs. Brijbhan Kushwaha, I.L.R. (2013) M.P. 2525*

– **Order 26 Rule 9** – Issuance of Commission – Stage of consideration – At the interlocutory stage – No party could be permitted to use the court process to collect evidence as agency – Evidence yet to be recorded : *Ramavtar Vs. Shivbhajan, I.L.R. (2015) M.P. 2560*

– **Order 26 Rule 9** – Issuance of Commission, to ascertain actual possession – Such prayer could be considered at the stage of appreciation of evidence and not prior to that : *Ramavtar Vs. Shivbhajan, I.L.R. (2015) M.P. 2560*

• – **Order 29 Rule 1** - See -Transfer of Property Act, 1882, Section 106 : *Dena Bank Vs. Municipal Corporation, Burhanpur, I.L.R. (2011) M.P. 466*

– **Order 32** - Appointment of Next Friend - Held - Enquiry is required to ascertain the unsoundness of mind before deciding application - Further held that, Presiding Officer of trial court is not equipped with the knowledge or experience in the medical field therefore it was not proper for the trial court to step into the shoes of medical expert to assess the unsoundness of mind of the defendant : *Narendra Kumar Hariyani Vs. Sanjay Goyal, I.L.R. (2014) M.P. 73*

– **Order 32 Rule 3** - Next friend - Court is guardian of minor and is obliged to take care of minor's interest - Next friend remaining persistently absent - Court not to

dismiss the suit in default, but may appoint another next friend to protect minor's interest : *Harishankar Arora Vs. Smt. Vedbati, I.L.R. (2011) M.P. *25*

SYNOPSIS : Order 39 Rule 1 & 2

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| 1. Anti Suit Injunction | 2. Bank Guarantee |
| 3. Breach of Contract | 4. Contract terminated due to inability |
| 5. Coparcener Property Share | 6. Illegal Possession |
| 7. Temporary Injunction may be granted | 8. Temporary Injunction may not be granted |
| 9. Time not Essence of Contract | 10. Trade Mark |
| 11. Miscellaneous | |

1. Anti Suit Injunction

– **Order 39 Rule 1 & 2** – The plea raised by the appellant that anti suit injunction cannot be granted and reliance has been placed upon 2003 (4) SCC 341, wherein Supreme Court has culled out the principles but nothing has been pointed out to show that said principles are violated : *British Marine PLC. London Vs. Agrawal Coal Corporation Pvt. Ltd., I.L.R. (2014) M.P. 1941 (DB)*

2. Bank Guarantee

– **Order 39 Rule 1 & 2** – Encashment of Bank Guarantee – Bank Guarantee was for mobilization of advance with a view to secure the said amount – Bank guarantee has been encashed for non-performance of contract – Trial Court rightly restrained defendants from invocation and encashment of Bank Guarantee – Trial Court was also right in directing the defendants to deposit the amount as the bank guarantee was encashed after receiving the notice of the suit : *Devi Shakuntala Thakral Vs. WIG Brothers (India) Pvt. Ltd., I.L.R. (2012) M.P. *3*

– **Order 39 Rule 1 & 2** – Encashment of Bank Guarantee – In case of unconditional bank guarantees, interference by the Court is warranted only when there is established fraud and irretrievable damage to the promise – Bank guarantee cannot be encashed if it is conditional and for inconsistent purpose : *Devi Shakuntala Thakral Vs. WIG Brothers (India) Pvt. Ltd., I.L.R. (2012) M.P. *3*

– **Order 39 Rule 1 & 2** – Grant of Injunction – Appellant has entered into an agreement with respondent No.1 – Pursuant to the agreement they have also executed two Bank Guarantees amounting to Rs. 96 lacs – There was outstanding of Rs. 184 lacs

against the appellant which was not disputed – Appellant has also offered a payment schedule to respondent No. 1 – Bank Guarantees are certainly less than the admitted amount – Held – The Bank Guarantee is an independent contract between the Bank and respondent No. 1 – It is unconditional irrevocable one – The balance of convenience is in fact in encashment of the Bank Guarantees – There is no jurisdictional error nor the order suffers from any patent illegality – No interference is warranted – Bank is directed to encash the Bank Guarantees forthwith : *Singh Cold Storage Pvt. Ltd., Ujjain Vs. Parle Biscuits Pvt. Ltd., Mumbai, I.L.R. (2014) M.P. 3033*

3. Breach of Contract

– **Order 39 Rule 1**, Specific Relief Act (47 of 1963), Section 41 & 42 – Temporary Injunction – Prima facie case – Petitioner and respondent firm entered into an agreement for development of land and construction of flats/houses – On the ground that in breach of agreement, petitioner is selling various plots covered in the agreement, respondent filed a suit for permanent injunction and declaration – Temporary injunction was also sought for to injunct petitioner from alienating the plots indicated in the agreement – Held – Plaintiff is not claiming specific performance of the agreement, but is only claiming injunction – Suit itself being not maintainable, the question of existence of prima facie case does not arise – Prayer for injunction is unsustainable : *Ajay Narang Vs. M/s. Ram Enterprizes, I.L.R. (2011) M.P. 2162*

4. Contract terminated due to inability

– **Order 39 Rule 1 & 2** – Temporary injunction – Prima facie case – Appellant was awarded contract for the amount of Rs. 2.44 Crores – Contract was terminated due to inability of the appellant to supply the material – Respondents already forfeited the security amount of Rs. 14.42 lakhs and also threatened to recover some more amount from other contracts – Held – No show cause notice was issued prior to deducting the amount – Respondents have unilaterally determined recoverable amount and forfeited security amount – Claim of respondents not admitted by appellant – Dispute yet to be decided by Court – There is a prima facie case in favour of appellant : *Sayed Akhtar Ali (M/s.) Vs. General Manager, Western Railway, I.L.R. (2015) M.P. *15*

5. Coparcener Property Share

– **Order 39 Rule 1 & 2 and Hindu Succession Act (30 of 1956), Section 22** – Share – Temporary Injunction – When share of each of the coparcener is clear and ascertainable and share is determined, it ceases to be a coparcenary property – If the share is not ascertainable and identifiable, temporary injunction was rightly granted : *Kamla Bai Vs. Nathuram Sharma, I.L.R. (2015) M.P. 883*

6. Illegal Possession

– **Order 39 Rule 1 & 2** - Illegal Possession - Only legal possession can be protected by issuing ad-interim injunction - In lack of any legal right, the party is not entitled to get any favorable order in his favor : *Keshari Prasad Vs. Sub-Divisional Officer, I.L.R. (2013) M.P. 2344*

– **Order 39 Rule 1 & 2** - Irreparable Loss - Person in illegal possession - Can be dispossessed in accordance with law by the authorities - Petitioners cannot be said to suffer irreparable loss : *Keshari Prasad Vs. Sub-Divisional Officer, I.L.R. (2013) M.P. 2344*

7. Temporary Injunction may be granted

– **Order 39 Rule 1 & 2** – Temporary injunction – Balance of Convenience – Respondents have already forfeited security amount of Rs. 14.42 lakhs – Some other works are also going on between the parties – Respondents can recover the amount after proper adjudication – Balance of convenience is in favour of appellant : *Sayed Akhtar Ali (M/s.) Vs. General Manager, Western Railway, I.L.R. (2015) M.P. *15*

– **Order 39 Rule 1 & 2** - Temporary Injunction against Plaintiff - Plaintiff was granted license to run saw mill for a period of 11 months - Petitioner was only given the permission to use the machine and not the premises - As the possession of the property in question remained with the defendant, the temporary injunction order which restrains the plaintiff/petitioner from causing any interference cannot be faulted with : *Rajesh Gupta Vs. Smt. Urvashi Marwaha, I.L.R. (2012) M.P. 2359*

– **Order 39 Rule 1 & 2** - Temporary Injunction - Held - Suit for partition filed wherein all the coparceners /plaintiffs sought share in the Joint Hindu Family Property and sought possession - Temporary injunction may be granted against the respondent/defendant not to alienate the property i.e. the subject matter of the partition during pendency of the suit : *Kanchan Singh Vs. Daulat Singh (Since Deceased), Balwant Singh, I.L.R. (2014) M.P. 392*

– **Order 39 Rule 1 & 2** – Temporary injunction – Irreparable loss – Security amount already forfeited – If respondents recovered some more money from other works contract, it would certainly affect the business of appellant – Appellant would suffer irreparable loss – Temporary injunction granted – Respondents restrained from recovering any amount from the running bills of appellants from other works contract or from security/earnest money deposited or performance guarantee given by appellant in other works contract : *Sayed Akhtar Ali (M/s.) Vs. General Manager, Western Railway, I.L.R. (2015) M.P. *15*

– **Order 39 Rule 1 & 2** – Temporary Injunction – Plaintiff and Defendants claiming title over the disputed property on the basis of Wills in their favour – Circumstances surrounding execution of each one of the Wills are sufficient to raise a reasonable suspicion as to its genuineness – Facts of case clearly establishes existence of a substantial question to be investigated and consequent necessity to preserve status quo – Order of temporary injunction restraining appellant from alienating the property rightly granted – Appeal dismissed : *Jagdish Singh Alias Jagdish Pratap Singh Vs. Mohan Lal Agrawal, I.L.R. (2012) M.P. 982*

– **Order 39 Rule 1 & 2** – Temporary Injunction – Temporary Injunction granted in a suit ceases its effect after the dismissal of the suit – Appellate Court is required to pass an order of injunction applying the same principle – After remand by Appellate Court, order of revival of injunction must be passed during the pendency of the suit otherwise, on dismissal of suit, the said order ceases its effect : *State of M.P. Vs. Dinesh Singh, I.L.R. (2012) M.P. 136*

– **Order 39 Rule 1 & 2** - Temporary injunction - The grant of temporary injunction is discretionary relief and discretion is to be exercised in favour of plaintiff, if he comes with clean hands and with fair conduct : *SKOL Breweries Ltd. Vs. Som Distilleries Ltd. & Breweries Ltd., I.L.R. (2013) M.P. 1589*

8. Temporary Injunction may not be granted

– **Order 39 Rule 1 & 2** and Specific Relief Act (47 of 1963), Section 41(b) – Injunction cannot be granted to restrain any person from instituting or prosecuting any proceeding in a court not subordinate to that from which the injunction is sought : *Ram Narayan Vs. Arvind, I.L.R. (2014) M.P. 3201*

– **Order 39 Rule 1 & 2** – Temporary Injunction – Estate of husband – Appellant is daughter from first wife of deceased and respondent No.1 is legally married wife of deceased – Appellant filed suit for declaration on the basis of will to get retrial benefits and payments from the office of her late father – It was pleaded that respondent No.1 had deserted her father during his life time – Held – Undisputedly, respondent No. 1 was never divorced – She has a right of maintenance and charge is always on the property of deceased – After the death of her husband, amount of retrial benefits became his estate – She has equal right and share in retrial benefits – Application for temporary injunction rightly rejected : *Neha Singh (Ku.) Vs. Smt. Asha Singh, I.L.R. (2011) M.P. 2009*

– **Order 39 Rule 1 & 2** – Temporary Injunction – A prima facie case made out and the ingredients of irreparable loss and balance of convenience were also existing in favour of the plaintiff – But the intervening public interest (construction of an Air Port on the suit property), is likely to be hampered, if the temporary injunction is granted – The

plaintiff was not entitled to grant of any temporary injunction : *State of M.P. Vs. Shri Govind Gaushala Datia, I.L.R. (2012) M.P. 1125*

– **Order 39 Rule 1 & 2** - Temporary injunction against alienation of Hindu Undivided Family Property - Suit property which is recorded jointly in the name of plaintiff and defendants No.1 & 2, for the purpose of deciding the application of temporary injunction, shall be deemed to be the property of HUF : *Dharmdev Singh Rajput Vs. Kavindra Singh, I.L.R. (2011) M.P. 676 (DB)*

– **Order 39, Rule 1 & 2** - Suit for declaration of Bhumiswami right & injunction - Pure finding of fact by courts below that plaintiff is not in possession of the suit property - Finding based upon correct appreciation of the pleadings and evidence, both oral and documentary - Plaintiff being not in possession of the suit property, not entitled for a decree of injunction : *Yashraj Datta (dead) Through LR. Vs. Bherulal, I.L.R. (2013) M.P. 2660*

– **Order 39 Rule 1 & 2**, Land Revenue Code, M.P. (20 of 1959), Section 2(I) – Land – One of the plaintiffs sold his undivided 1/3rd share to defendants – Well constructed in Kh. No. 1224 – Claim of plaintiffs that well was not sold and no consideration amount was received – Held - Land means portion of earth's surface whether or not under water– 1/3rd share in Kh. No. 1224 was sold and well was not excluded in the sale deed, therefore, 1/3rd share in well also stood transferred to the purchaser – Temporary injunction rightly refused – Petition dismissed : *Raju Vs. Awadesh, I.L.R. (2011) M.P. 1480 (DB)*

– **Order 39 Rule 1 & 2** - Temporary Injunction - Prima facie case, balance of Convenience and irreparable loss - Petitioner claimed that the suit property was given by the original owner to their father by a document - However, the said document is neither properly stamped nor registered - Nothing on record that how the name of mother of the petitioners was mutated after the death of her husband - Petitioners failed to prima facie establish their title over the land in dispute - No prima facie case, or balance of convenience is found in favor of petitioners : *Keshari Prasad Vs. Sub-Divisional Officer, I.L.R. (2013) M.P. 2344*

– **Order 39 Rule 1 & 2** - Temporary injunction - Irreparable Injury - The plaintiffs can be compensated by way of damages and by keeping this important aspect in mind the legislature has enacted Section 22(2) of the Designs Act, wherein it is enacted that the suit can be filed for grant of damages and therefore it cannot be said that the plaintiff will suffer irreparable injury : *SKOL Breweries Ltd. Vs. Som Distilleries Ltd. & Breweries Ltd., I.L.R. (2013) M.P. 1589*

– **Order 39 Rule 1 & 2** – Temporary injunction – Petition against rejection of application filed u/o 39 Rule 1 and 2 by both the Courts below – Held – Since plaintiff has failed to establish prima-facie that she is in settled possession of the suit property, Injunction application has rightly been rejected : *Geeta Dubey (Smt.) Vs. Saroj Suhane, I.L.R. (2015) M.P. 872*

– **Order 39 Rule 1 & 2** - Temporary injunction - Trust was already registered under Society Registrarian Adhinyam, M.P., 1973 - Some persons passed resolution for registration of trust under Public Trust Act and got the same registered under Public Trust Act - In the order of registration, trust did not disclose any movable or immovable properties - As provision of Public Trust Act do not apply to an already registered body under Adhinyam 1973 and as properties were under the control and management of old trust no temporary injunction can be granted - Appeal dismissed : *Arvind Jain Vs. State of M.P., I.L.R. (2014) M.P. 455*

9. Time not Essence of Contract

– **Order 39 Rule 1 & 2**, Contract Act, 1872, Section 55 - Suit for specific performance of agreement of sale of land - Entire consideration amount received by defendant - Agreement nowhere records the specific time within which sale deed was to be executed - Suit filed within limitation of refusal of performance of contract - Held - Time was not essence of contract - Plaintiff being in possession and plea of limitation being raised, the status quo as was existing on the date of institution of suit ought to have been ordered by trial Court - Order rejecting application under Order 39 Rule 1 & 2 set aside - Appeal allowed : *Saroj Gautam (Smt.) Vs. Laxmi Prasad, I.L.R. (2011) M.P. *18*

10. Trade Mark

– **Order 39 Rule 1 & 2** - Temporary injunction restraining appellant using trade mark - Appellant has not independent right to use trade mark which is owned by respondent - Use of trade mark is permissive - Order of trial Court justified - Appeal dismissed : *Pushpa Berry (Smt.) Vs. Shri Mahila Grih Udyog Lijjat Papad, I.L.R. (2011) M.P. *14*

– **Order 39 Rule 1 & 2**, Designs Act (2 of 1911), Section 22, Trade Marks Act (47 of 1999), Section 134 & 135 - Requirements of granting injunction - Prima facie case - Plaintiff by an interim injunction undoubtedly seeks to interfere with the rights of the defendants before the plaintiff's right is finally established, therefore very strong prima facie case in respect of his rights should be asserted and it should so exist in favour of the plaintiff : *SKOL Breweries Ltd. Vs. Som Distilleries Ltd. & Breweries Ltd., I.L.R. (2013) M.P. 1589*

11. Miscellaneous

– **Order 39 Rule 1 & 2** - See - Arbitration and Conciliation Act, 1996, Section 2(4) & 9 : *Joint Venture of Envio Pure Aqua Systems (P) Ltd. Vs. Municipal Corporation, Gwalior, I.L.R. (2013) M.P. 477 (DB)*

– **Order 39 Rule 1 & 2** - See - Constitution, Article 227 : *Keshari Prasad Vs. Sub-Divisional Officer, I.L.R. (2013) M.P. 2344*

– **Order 39, Rule 1 & 2** - See - Limitation Act, 1963, Section 3 & Article 65 : *Collector, Jabalpur Vs. Smt. Chandrawati Saraf, I.L.R. (2014) M.P. 189*

– **Order 39 Rule 1 & 2** – See – Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, Section 2(0) : *Madhu Vs. State of M.P., I.L.R. (2012) M.P. *5*

– **Order 39 Rule 1 & 2** – See – Specific Relief Act, 1963, Section 12 : *Pushmala (Smt.) Vs. Mahendra Singh, I.L.R. (2011) M.P. 2016*

• – **Order 39 Rule 1,2,3 & Order 43 Rule (1)(r)** - Ex parte Injunction - Appeal - Order 39 Rule 3 is a method and prescribes a methodology and procedure for granting exparte Injunction - It is not an independent provision - It is part and parcel of Order 39 - It can't be divorced from the nature of power given under Rule 1 and 2 - Therefore such an order is appealable under Order 43 Rule (1)(r) - Hence petition under Art.227 is not maintainable : *Radheshyam Rathi Vs. Rotary Club, I.L.R. (2013) M.P. 1569*

– **Order 39 Rule 2 & Order 7 Rule 3** - Appellants/Plaintiffs filed suit for declaration and permanent injunction - Trial Court found that the sale-deed was valid but found that plaintiffs were unable to prove their possession over the suit property and also could not prove its location as claimed by them - Material on record, in all probability, tends to support defendant's contention that the suit property is a Government land and plaintiffs were trying to grab it under the cover of the alleged sale-deed - Judgment and decree passed by the lower court affirmed : *Purshotam Vs. State of M.P., I.L.R. (2014) M.P. 150*

– **Order 39 Rule 2A** – Breach of Injunction – Suit was dismissed by order dated 6-1-1992 refusing leave to entertain the suit for granting interim injunction under Section 80(2) - Revisional Court passed an interim order and subsequently disposed off revision with liberty to file regular suit with further observation that the interim order passed by revisional court shall continue to remain in force till application for temporary injunction is decided by Trial Court - Suit filed by plaintiff was dismissed by order dated 11-2-1992 – Appellate Court allowed the appeal and remanded the case back to decide the suit afresh by order dated 25-3-1992 – Appellate Court did not pass any order of revival of

injunction which was ceased on dismissal of suit – Trial Court granted temporary injunction on 14-10-1998 whereas the wall was demolished on 10-6-1997 – As no injunction was on force on 10-6-1997 therefore, appellants no. 2 to 5 have not committed breach of injunction : *State of M.P. Vs. Dinesh Singh, I.L.R. (2012) M.P. 136*

– **Order 39 Rule 2 A** – Court granting Injunction – Court granting injunction means the Court which is trying the suit in which the injunction is granted and which has the jurisdiction to grant an injunction : *Sadhana Tripathi (Smt.) Vs. Banarsi Devi, I.L.R. (2012) M.P. 1041*

– **Order 39 Rule 2-A** – Punishment – Trial court imposed fine of Rs. 5,000/-after having found that respondents have violated the temporary injunction order – Held – Either the property can be attached or a person can be sent to jail or both – There is no provision for imposition of fine only – Order set-aside only to the extent of punishment and remanded back to consider the question of punishment in the light of provision of Order 39 Rule 2-A and judgment of Apex Court after giving opportunity of hearing to the respondents : *Gendalal Vs. Chagganlal, I.L.R. (2015) M.P. 2168*

– **Order 39 Rule 7 & Order 26 Rule 9** – Inspection – Petitioner sought appointment of an Advocate/employee of Court to determine the actual position of property in dispute – Held – Order 39 Rule 7 has been made for the purpose of keeping on record the existing condition of property so that if same is subjected to any change later on, it can be made known to the Court – Purpose of issuance of Commissioner u/o 26 Rule 9 is for collecting facts which in due course may be used as evidence – As petitioner was seeking investigation and not inspection, his application was rightly rejected – Petition dismissed : *Balram Mahajan Vs. Praveen Kumar, I.L.R. (2015) M.P. 902*

– **Order 40** – Appointment of Receiver – Respondent No.1 who is a party to the suit for rendition of accounts appointed as receiver – Property in possession of respondents – Court is well equipped with ample amount of jurisdiction to exercise its penal powers to make good the loss caused by the Receiver due to failure to discharge his duties or gross negligence – No allegation of negligence, misconduct or failure to discharge duties against respondent No.1 – Apprehension in the mind of plaintiffs about failure of new Receiver to discharge his duties is understandable but is not enough to compel the Court to direct for change of Receiver – Receiver has been appointed only for furnishing the necessary accounts to the Auditor to enable him to submit his report to the Court for passing the final decree – Interfering with the appointment of respondent No.1 as receiver at this stage will further delay the proceedings in civil suit which is pending since more than 35 years – Appeal dismissed : *Prithvi Raj Sarin Vs. Ramesh Kumar Sachdeva, I.L.R. (2012) M.P. *30*

– **Order 40 Rule 1** – Appointment of receiver – Appointment of the receiver can not be made to affect the rights inter se of the parties – The object of the appointment of a receiver is to secure and preserve the property in controversy as it stands : *Shivnarayan Mahant Vs. Registrar, Public Trust, I.L.R. (2012) M.P. *70*

– **Order 40 Rule 1** – Appointment of receiver – Pending judicial determination of the rights of the parties for preservation of the subject matter of the litigation, the power so embodied may be exercised by appointing a receiver when it appears to be just and convenient for doing so – Merely showing adverse and conflicting claims to property, without showing any emergency or danger or loss demanding immediate action without having clear picture from doubt the discretion should not be exercised : *Shivnarayan Mahant Vs. Registrar, Public Trust, I.L.R. (2012) M.P. *70*

– **Order 40 Rule 1** – Neither the principle of law of exercising judicial discretion in the matter of appointment of receiver has been observed by the trial Court, nor the direction so issued has not been complied with by the Registrar, Public Trust – Possession was taken over of the property for which no direction was issued by the Court – Impugned order set aside : *Shivnarayan Mahant Vs. Registrar, Public Trust, I.L.R. (2012) M.P. *70*

– **Order 41** – Judgment in appeal – First appellate Court being the final Court of facts, must record its finding only after deciding the issues of law and facts – The appellate Court is under an obligation to give its reason in support of its conclusion : *Mohammad Ismail Vs. Sikhandar Azad, I.L.R. (2011) M.P. 992*

– **Order 41 Rule 3-A**, Limitation Act (36 of 1963), Section 5 – Condonation of delay in filing appeal – Application on ground that the appellants were rustic village people and were having no knowledge of the fate of the civil suit in which they were the defendants – It was contended in the application that the appellant could know about the passing of the judgment and decree in the civil suit only when the proceedings were initiated against them in the Revenue Court – Appellate Court has not accepted such a plea of the appellants on the ground that they were being represented by the Counsel and if they have not verified the fact about the suit from their counsel, it could not be treated to be sufficient explanation of delay – Held – Appeal should not be dismissed merely on technical ground of delay – In a tribal District, a lenient view was possible : *Salikram Vs. Keshav, I.L.R. (2012) M.P. 157*

– **Order 41 Rule 3-A** - See - Limitation Act, 1963, Section 5 : *Pop Singh Vs. Ram Singh, I.L.R. (2012) M.P. 3058*

– **Order 41 Rule 5** - First appellate Court while allowing the application, directed the appellant to deposit mesne profit at the rate of Rs.7000/- p.m. - Held - While

exercising power under Order 41 Rule 5, the appellate Court did not err in imposing the condition as there is overwhelming material placed on record that the suit shop would fetch more than the rent of Rs.7000/- p.m. if it is let out today - Petition dismissed : *Shabbar Hussain Vs. Ramdayal, I.L.R. (2011) M.P. *35 (DB)*

– **Order 41 Rule 5** - Stay by Appellate Court - Held - Appellate Court is not bound to grant an order of stay merely because an appeal has been preferred - Petitioner who comes to the court for seeking stay must do equity for seeking equity - Appellate Court has jurisdiction to impose such terms which may compensate decree holder : *Bhupendra Kant Bhardwaj Vs. Rameshchandra Goyal, I.L.R. (2014) M.P. 481*

– **Order 41 Rule 11** - Dismissal of Appeal without notice to respondent - Appellate Court is required to consider the correctness of the judgment and decree challenged before it - Lower Appellate Court had considered all the objections after summoning and examining the record of the Trial Court - Findings were tested and thereafter first appellate court after marshalling the evidence came to a conclusion that there was no error of law or facts committed by trial court in passing the judgment and decree - Appeal dismissed : *Anand Alias Chhotelal Soni Vs. Mahavir Prasad Shukla, I.L.R. (2011) M.P. 3141*

– **Order 41 Rule 22** – Cross-objection – Delay – Cross-objection filed after a delay of six years from the date of notice – Notice was served after a period of six years by the Tribunal on Respondent No. 3 – Held – Appellants could not be penalised because it was not a fault on part of the appellants : *Krishna Tiwari (Smt.) Vs. Ram Kumar, I.L.R. (2015) M.P. 977*

– **Order 41 Rule 22** - Cross objection - Respondent/defendant in an appeal, without filing cross objection can attack an adverse finding upon which a decree in part has been passed for the purposes of sustaining the decree - Filing of cross objection is purely optional and not mandatory - However, respondents in their replies to the memo of appeal supported the order of the Trial Court - They neither assailed the findings recorded by Trial Court nor raised any grievance before appellate Court - In absence of any grievance made by respondents, the petitioner could not be put to a disadvantageous position - Remand of case by Appellate Court not proper : *Shin-Etsu Chemical Co. Ltd. Vs. Vindhya Telelinks Ltd., I.L.R. (2011) M.P. *156*

– **Order 41 Rule 22** - Cross-objection - Two vehicles collided with each other resulting in death of owner, driver and occupant of Car - Insurance Company of car was exonerated - Cross-objection by Insurance Company of another vehicle against exoneration of Insurance Company of another vehicle maintainable, as it is impossible to

implead owner of car as he had also died : *Anjali Bhatiya (Smt.) Vs. Rajkumar, I.L.R. (2013) M.P. 2645*

– **Order 41 Rule 22** - See - Limitation Act, 1963, Article 54 & Section 15 : *Madina Begam (Smt.) Vs. Shiv Murti Prasad Pandey, I.L.R. (2013) M.P. 2169 (DB)*

– **Order 41 Rule 23** – Remand – Held – First Appellate Court ordering remand of the case for fresh decision instead of deciding it on merit is an erroneous exercise of jurisdiction – Decree is not sustainable in the eye of law – Appeal allowed : *Murari Lal Vs. Ram Kumar Ojha, I.L.R. (2014) M.P. 2162*

– **Order 41 Rule 23** – Remand of Case – Necessary Party – Plaintiff filed suit for declaration, partition and possession without joining two Sisters as party – Held – Necessary party is that in whose absence effective decree could not be passed – Provisions of Hindu Succession Act are applicable – Sisters of appellants are necessary party as in their absence no effective decree could be passed – Suit rightly remanded back : *Girja Shankar Vs. Smt. Shanti Bai, I.L.R. (2011) M.P. 1516*

– **Order 41 Rule 23-A** and Transfer of Property Act (4 of 1882), Section 44 – Transfer of undivided share by coparcener – Respondent filed the suit for declaration of title, partition and mesne profits – Suit was decreed – Objection was filed before executing Court that appellants have purchased a part of disputed land from a coparcener – Appellate Court remanded the matter to ascertain the title of decree holder in respect of 1/2 share by collecting evidence – Held – Transferee from a co-owner would not be in a better position than the co-owner and does not have any right to exclusive possession – Appellate Court rightly remanded the case back – Appeal dismissed : *Tilak Education Research & Development Society Vs. Smt. Phoolwati, I.L.R. (2015) M.P. 1801*

– **Order 41 Rule 23-A** – Remand in other cases – Held – If the first appellate court intended to remand the case to the trial court, it was required to first reverse the findings of the trial court on issues and thereafter upon conclusion that retrial was necessary, the said jurisdiction could have been invoked – Further held that by choosing to remand the case without reversing the findings of the trial court, the First Appellate Court has committed patent error of law – Impugned judgment set aside : *Shiv Dayal Vs. Meena Bai, I.L.R. (2014) M.P. 2174*

– **Order 41 Rule 23-A** - Remand in other cases - The appellate court may remand the suit to the trial court even though such suit has been disposed of on merits and the decree is reversed in appeal and the appellate court considers that retrial is necessary - Held - If the finding of the appellate court in remanding the case for fresh trial is not in consonance with the provisions of law, liable to be set aside : *Pushpa Devi Vs. Harvilas, I.L.R. (2013) M.P. 2680*

– **Order 41 Rule 27** – Additional Evidence at appellate stage – Plea of Adverse Possession – Appellants purchased the suit property from a person whose name was recorded in revenue records – Revenue Entries were challenged by the respondents alleging that the property belongs to their predecessor and the name of seller and appellants were wrongly recorded – Correction of revenue record in favour of predecessor of respondents was affirmed by Board of Revenue and writ petition was withdrawn – Appellants pleaded that the seller had perfected his title by adverse possession – Held - Plea of adverse possession could be raised only by those, who were claiming such perfection of title – Those persons were also not made party nor have come forward claiming such rights – Plea was not raised in appropriate manner in plaint – Appellants were also required to demonstrate from which date it became hostile, within the meaning of bringing it in the notice of original owner – When the original owner came to know about the recording of names of predecessor-in-title of appellants, he filed the revenue case for correction of revenue entries – Application under O. 41 Rule 27 C.P.C. was rightly rejected by First Appellate Court : *Dev Prakash Gulati Vs. Nand Kumar, I.L.R. (2012) M.P. 495*

– **Order 41 Rule 27** - Additional Evidence - Photocopy of Certificate of Municipality, certifying that in the Municipal Register house is in dilapidated condition, the ownership of 'S' has been entered - Held - Application can not be accepted on the ground that the document which is filed is the photocopy of some certificate and that certificate itself is not a primary evidence : *Rashid Khan Vs. State of M.P., I.L.R. (2011) M.P. 2801*

- **Order 41 Rule 27** - Examination of signatures of Executant - There is no evidence that will is a forged document - At the stage of Appeal, prayer for getting the signatures examined by handwriting expert can not be allowed : *Asharfi Devi (Smt.) Vs. Hari Prasad, I.L.R. (2011) M.P. *121*

– **Order 41 Rule 27** - Plaintiff having failed to establish that despite the exercise of due diligence such evidence was not within his knowledge or he could not after the due diligence, produce the same at the time of decree appealed was passed - Application has rightly been rejected : *Bhagwati (Smt.) Vs. M.P. Housing Board, I.L.R. (2014) M.P. 441*

– **Order 41 Rule 33** - Power of appellate court - No such plea of adverse possession was raised before the trial court nor any declaration for ownership was sought and the suit was merely for permanent injunction - Plaintiff solely sought permanent injunction for restraining defendants from dispossessing the plaintiff from the suit property - Trial court dismissed the suit by holding that plaintiff has failed to prove his possession over the suit property and also failed to prove that the defendants were

attempting to dispossess him - First appellate court proceeded to decide the case on the assumption that the suit was for declaration of ownership of plaintiff/appellant based upon adverse possession - Held - The first appellate court has misdirected itself by rejecting the appeal of the plaintiff on the ground not germane to the issue involved in the case - Second appeal allowed with direction to the first appellate court to decide the appeal afresh on merits : *Kailash Vs. Babulal, I.L.R. (2013) M.P. 1669*

– **Order 43 Rule 1, Order 39 Rule 1 & 2** – Balance of convenience – Merely construction is done by plaintiff in accordance with sanction, it cannot be said that the land is going to be destroyed and damaged – Hence, balance of convenience lies in favour of the plaintiff : *Lokendra Jain Vs. Bandiviya Samachar Patra, I.L.R. (2014) M.P. 1346*

– **Order 43 Rule 1, Order 39 Rule 1 & 2** – Irreparable loss – Even if building is constructed, the appellant can be compensated in terms of money – No illegality committed by court below in granting temporary injunction – Appeal dismissed : *Lokendra Jain Vs. Bandiviya Samachar Patra, I.L.R. (2014) M.P. 1346*

– **Order 43 Rule 1, Order 39 Rule 1 & 2** – Prima facie case – Was in favour of respondent No. 1/plaintiff as he was having the lease deed in his favour – Physical possession is materially important and undisputedly appellant/defendant is not in physical possession of the land in suit – Hence, unless a counter claim is made by the defendant, no prayer for grant of temporary injunction can be entertained : *Lokendra Jain Vs. Bandiviya Samachar Patra, I.L.R. (2014) M.P. 1346*

– **Order 43 Rule 1(u)** - Appeal - Appeal under order 43 Rule 1(u) can only be heard on the grounds a second appeal is to be heard under Section 100 of C.P.C. : *Pop Singh Vs. Ram Singh, I.L.R. (2012) M.P. 3058*

– **Order 47** – Review – If judgment is passed against statute, or against binding precedent, or in excess of the jurisdiction, review lies : *Bhatia International Ltd. Vs. Vitol S.A. Geneva, Switzerland, I.L.R. (2015) M.P. 397*

SYNOPSIS: Order 47 Rule 1

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| 1. Condition Precedent for Review | 2. Review – when not permissible |
| 3. Review – when permissible | |

1. Condition Precedent for Review

– **Order 47 Rule 1** - Review Petition - It is condition precedent that no Superior Court should have been moved for self, same relief before filing Review Petition under

Order 47 Rule 1(a), C.P.C. - Courts directed to obtain affidavit to the effect that no appeal has been filed against the order challenged in review : *Maniram Soni Vs. Kanhaiya Lal, I.L.R. (2013) M.P. 2936*

2. Review – when not permissible

– **Order 47 Rule 1** – Review – Decree for eviction was passed against applicant – In First Appeal, while granting interim order, applicant was directed to pay the monthly rent @ Rs. 5692 per month as directed by Trial Court – Held – Applicant is required to pay the monthly rent strictly in accordance with the provisions of Section 13 of M.P. Accommodation Control Act, 1961 – Impugned order does not suffer from any error apparent on the face of record nor any jurisdictional infirmity – Review application dismissed : *Satya Pal Anand Vs. Bal Neketan Nyas, I.L.R. (2015) M.P. 2462 (DB)*

– **Order 47 Rule 1** – Review – In the guise of review, rehearing is not permissible – In order to seek review it has to be demonstrated that order suffers from error apparent on the face of record – The Court while deciding review application cannot sit on appeal over the judgment or decree passed by it – Application rejected : *Satya Pal Anand Vs. Bal Neketan Nyas, I.L.R. (2015) M.P. 2456 (DB)*

– **Order 47 Rule 1** - Review - It is not permissible for an erroneous decision to be 'reheard and corrected' : *Union of India Vs. Uday Pal, I.L.R. (2013) M.P. 378*

– **Order 47 Rule 1** – Review – Maintainability – Applicant already submitted undertaking before the Executing Court – By giving such undertaking the statutory remedy of appeal, revision or review is not scuttled or foreclosed : *Mohd. Shafi Vs. Abdul Wahid (Deceased) Through L.Rs., I.L.R. (2012) M.P. *43 (DB)*

3. Review – when permissible

– **Order 47 Rule 1** – Concession by Advocate – Decree of eviction was passed on concessional statement made by Counsel for respondent therein/applicant that he admits the grounds of eviction – Counsel filing affidavit denying the fact of making such concession – Respondents did not file any affidavit to controvert the affidavit of the Counsel for applicant – Further when the applicant was claiming title over the land in dispute from the very beginning of the case, there was no occasion for him to make such concession : *Mohd. Shafi Vs. Abdul Wahid (Deceased) Through L.Rs., I.L.R. (2012) M.P. *43 (DB)*

– **Order 47 Rule 1** – Concession – Concession on the point of law is not binding and it is open to withdraw it by filing a review application – If the Counsel has made any concession without going through the record, the Court should take care to verify the

record before accepting the concession made by Counsel : *Mohd. Shafi Vs. Abdul Wahid (Deceased) Through L.Rs., I.L.R. (2012) M.P. *43 (DB)*

– **Order 47 Rule 1 – Review – Scope** – Review is maintainable if it is necessitated on account of some mistake or any other sufficient reason and words Sufficient reasons are wide enough to include misconception of fact or law by a Court or even an Advocate : *Mohd. Shafi Vs. Abdul Wahid (Deceased) Through L.Rs., I.L.R. (2012) M.P. *43 (DB)*

– **Order 47 Rule 1 – Review – Rent Controlling Authority** reviewed its order holding that the partition deed is insufficiently stamped – There is a distinction between erroneous decision and an error apparent on record – Erroneous decision can be corrected by higher forum and latter can only be corrected by exercise of review jurisdiction – Even if the earlier order passed by RCA was erroneous, setting at naught the same would be beyond the scope of review jurisdiction – Revision allowed : *Chandralata Gupta Vs. Umesh Kumar Sinhal, I.L.R. (2012) M.P. 1037*

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

SYNOPSIS

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| 1. Departmental Enquiry | 2. Deemed Suspension |
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1. Departmental Enquiry

– **Rule 2(d), 14** – Disciplinary Authority – Petitioner working as Sub-Inspector – DIG is the disciplinary authority – Issuance of charge sheet and appointment of Enquiry officer by Superintendent of Police who is subordinate to disciplinary authority is without authority – Proceeding initiated by unauthorized person would be illegal and entire subsequent action taken also vitiated : *Dal Chand Ahirwar Vs. State of M.P., I.L.R. (2012) M.P. 902*

– **Rule 9** – Departmental Enquiry – Withholding of material – If the material evidence is available to prove the charges or to rebut the allegations in defence but the same is not deliberately produced, this fact will go against the disciplinary authority and it has to be held that the enquiry was not properly held : *Shyam Sharma (Dr.) Vs. State of M.P., I.L.R. (2015) M.P. 2014*

– **Rule 15(3)** - Imposing the punishment - Order imposing the punishment of reversion not containing any reason - Held - Where disciplinary authority has agreed with the finding of the enquiry officer, the provisions of Rule 15(3) are not attracted - Order passed by the disciplinary authority can not be said to be violative of Article 15(3) of the Rules : *S.B. Bhargava Vs. State of M.P., I.L.R. (2011) M.P. 2425 (DB)*

– **Rule 15** - If the finding recorded by enquiry officer was duly approved by the disciplinary authority, it cannot be said that the charge was not proved : *Sanand Singh Shrinet Vs. State of M.P., I.L.R. (2013) M.P. 2410*

– **Rule 16** – Show Cause Notice – Show Cause Notice issued to the respondent pointing out irregularities which were alleged to have been committed – No separate Charge sheet is required to be issued if the authority proposes to proceed under Rule 16 – Show Cause Notice containing charges would amount to charge sheet : *State of M.P. Vs. N.S. Chouhan, I.L.R. (2015) M.P. 309 (DB)*

2. Deemed Suspension

– **Rule 9(4)** - Deemed Suspension - If an order of penalty is quashed or set aside by a decision of a Court of law and the disciplinary authority thereafter proposes to take further proceeding, the Government servant concerned shall be deemed to have been placed under suspension from the date of the original order of imposition of penalty and shall continue to remain under suspension until further orders : *Shyam Manohar Asthana Vs. State of M.P., I.L.R. (2013) M.P. 2800*

– **Doctrine of Relation Back** – Punishment imposed by Disciplinary Authority is substituted/modified by Appellate Authority – Substituted punishment will relate back to

the date of original punishment : *Vishwa Nath Laharia Vs. State of M.P., I.L.R. (2012) M.P. 934*

3. Effect – Non Supply of Documents

– **Rule 14** - See - Service Law : *Sanand Singh Shrinet Vs. State of M.P., I.L.R. (2013) M.P. 2410*

4. Effect – Non Supply of Enquiry Report

– **Rule 9(4) & Rule 32** – Non-supply of inquiry report and non-issuance of show cause notice before termination – Held – Apparently neither the enquiry report was supplied to the petitioner nor show cause notice was issued to him prior to issuance of impugned order – There is also non-compliance of Rule 32 of the Civil Services Rules – Order of punishment and appellate order is quashed – Petitioner is reinstated – Matter is remitted back to the disciplinary authority to proceed further by strictly following the procedure prescribed : *Yogiraj Sharma (Dr.) Vs. State of M.P., I.L.R. (2015) M.P. 741*

– **Rule-13** – Competence to issue a charge-sheet and to impose a penalty of removal from service by respondent no. 5 who was incharge Chief Medical & Health Officer – Held – Officers who have been given the current charge can not exercise statutory powers – As there was no delegation of powers in favour of respondent no. 5 to initiate D.E. against petitioner and respondent no. 5 has also included himself as a witness proves that he was having certain bias against the petitioner – Therefore, charge-sheet and inquiry is bad in law – Impugned orders are quashed – Petitioner be reinstated with all consequential benefits – However respondents can initiate D.E. afresh in accordance with law : *K.K. Gupta Vs. State of M.P., I.L.R. (2015) M.P. 845*

– **Rule 14 & 15** – Non Supply of Enquiry Report – Matter remitted back to the disciplinary authority from the stage of supply of enquiry report for proceeding further in accordance with Rules, 1966 – Disciplinary Authority while taking final decision in the matter shall also take a decision regarding entitlement of petitioner to consequential benefits if so – Writ petition disposed off : *Yogiraj Sharma (Dr.) Vs. State of M.P., I.L.R. (2015) M.P. 2644*

5. Enquiry Report

– **Rule 14(23)** – Enquiry Report – Enquiry officer merely reproducing the evidence of the parties and concluded that after going through the evidence and material that has come on record, the allegations levelled in the charge sheet is proved – No reason given by enquiry officer either for accepting evidence of department or for rejection or discarding the defence of Petitioner – Enquiry officer is under Statute duty bound to

record reason for his finding – Order passed by enquiry officer shows non-application of mind and on basis of such enquiry report, no action can be taken against the delinquent employee and any action taken on such report is unsustainable : *Swami Prasad Yadav Vs. State of M.P., I.L.R. (2011) M.P. *77*

6. Major Penalty

- **Rule 14** - Major Penalty - Withholding of increment with cumulative effect - Withholding of increment with cumulative effect amounts to major penalty - Cannot be sustained in absence of a detailed enquiry in terms of Rule 14 : *Baby John Vs. State of M.P., I.L.R. (2013) M.P. 785*

- **Rule 14** - Penalties - Compulsory Retirement - Petitioner compulsorily retired on demand of illegal gratification, making illegal recovery from villagers and misappropriation of Govt. fund - Officers who conducted fact finding enquiry were examined in Departmental Enquiry however, villagers who were examined during fact finding enquiry were neither summoned as witnesses nor were examined by enquiry officer - There is no evidence direct or indirect whatsoever to the effect that the petitioner personally demanded any money or illegal gratification from any of villagers/complainants - Rule 14 provides that disciplinary authority should prove and establish the charges against the petitioner in departmental enquiry and not to record a finding on the basis of a fact finding/preliminary enquiry - Making fact finding inquiry as basis for recording finding against petitioner is apparently in derogation of and contrary to the procedure prescribed by rule 14 - Petition allowed : *Umakant Dwivedi Vs. State of M.P., I.L.R. (2011) M.P. *158*

7. Minor Penalty

- **Rule 10** - See - Service Law : *State of M.P. Vs. Shailendra, I.L.R. (2011) M.P. 2315 (DB)*

- **Rules 10, 12 & 14(21)** – Competence to issue charge-sheet by Divisional Commissioner – Petitioner working as class-I officer – Charge-sheet issued by Divisional Commissioner – Held – In view of order passed by Governor in exercise of powers under Rule 12, Governor has authorised Divisional Commissioner to impose any of minor penalty – In view of provision of Rule 14(21) Divisional Commissioner is competent authority to issue charge-sheet : *Savita Yadav (Dr.) (Ms.) Vs. State of M.P., I.L.R. (2015) M.P. 944*

- **Rules 14 & 16** - Dies non - Minor Penalty - Absence of 188 days declared dies non - Period of dies non will not permanently effect the pay of the petitioner, cannot be termed as major penalty - Show cause notice as contemplated under Rule 16 is sufficient

compliance - No interference called for - Petition dismissed : *Vinod Kumar Jharia Vs. State of M.P., I.L.R. (2013) M.P. 593*

– **Rule 16** – Minor Penalty – Before imposing Minor Penalty, the disciplinary authority has to take representation of delinquent officer and after referring to the same findings on each misconduct or misbehavior is to be recorded and then can impose punishment – Disciplinary authority has not considered the defence raised by the respondent while imposing minor punishment – Order of punishment quashed : *State of M.P. Vs. N.S. Chouhan, I.L.R. (2015) M.P. 309 (DB)*

– **Rule 16(1) (a), 16 (1)(d), Rule 10(4) & Rule 14** - Minor Penalty - Stoppage of increment without cumulative effect - Rule specifically contemplates that on an explanation and defence submitted by the delinquent employee, there has to be a finding with regard to each imputation/misconduct - The disciplinary authority is required to consider the allegations of imputation misconduct, evaluate it in the backdrop of the explanation or defence of the employee - The competent authority has not discharged its function properly, as there is no recording of finding with regard to each misconduct - In a casual order explanation was rejected without any reason and without application of mind - Petition allowed : *Rajaram Ratnakar Vs. State of M.P., I.L.R. (2012) M.P. 2407*

8. Overriding Effect

– **Rules 29(1) & 31** - Non obstante clause in Rule 29(1) will have overriding effect over the provisions of Rule 31 and except for in cases falling under Rule 11, nothing in the Rule 31 will apply to a proceeding under Rule 29 : *Rajesh Henry Vs. State of M.P., I.L.R. (2011) M.P. 96*

9. Power of Appellate Authority

– **Rule 27** - Confers power on the appellate authority to examine whether an order of penalty is issued in accordance to the provisions of the Rules or not - Hence, such part of the order of appellate authority is not required to be interfered with : *Sanand Singh Shrinet Vs. State of M.P., I.L.R. (2013) M.P. 2410*

10. Procedure for Departmental Enquiry

– **Rule 13** – See – Service Law : *N.K. Pandey Vs. State of M.P., I.L.R. (2011) M.P. 2168*

– **Rules 14 to 18 & G.A.D. Circular, clause 17** - Dispensation of Departmental enquiry - Appellant being remote relative of deceased was given compassionate appointment - Affidavit filed by mother of the deceased in her favour - Respondent after verifying each and every aspect relying upon clause 17 of G.A.D. circular appointed her -

She put in more than 6 years service - Later on her services were terminated on the ground that the affidavit of mother of deceased was forged - No departmental enquiry was conducted - Held - Preliminary enquiry is for the satisfaction of the department - Nothing on record to show that Disciplinary Authority had satisfied himself and had arrived at a decision for dispensing of the inquiry and decision is based on objective facts - Petitioner was appointed after due verification - No evidence that petitioner committed any misconduct during her service period - Impugned order which is based on preliminary enquiry report not sustainable - Respondents to reinstate with all consequential benefits - Free to proceed in the matter in accordance with law : *Rakhi Shukla (Smt.) Vs. State of M.P., I.L.R. (2014) M.P. 664 (DB)*

– **Rule 14(11)** – Exparte Departmental Enquiry – Absence of one day – Employee participated in departmental enquiry but remained absent on one day – Enquiry Officer proceeded exparte on that date – Impermissible as per principles of natural justice – Enquiry officer is bound to adjourn the enquiry on the date of absence of delinquent employee to a later date : *Bhawani Shankar Singhal Vs. State of M.P., I.L.R. (2012) M.P. *55*

– **Rule 19(ii)**, Constitution - Article 309 - Dispensation of Departmental Enquiry - Reasonably Practical - Decision that it is not reasonably practical to hold departmental enquiry should be based on material which goes that an actual threat or situation is existing which contemplates holding of departmental inquiry impracticable : *Pramod Tiwari Vs. Chancellor, JNKVV, I.L.R. (2013) M.P. 80*

- **Rule 19(ii)** - Dispensation of Departmental Enquiry - The allegation that the witnesses are not coming forward and enquiry officers are hesitant in conducting enquiry cannot be relied as in the preliminary enquiry the witnesses were examined and the Petitioners had not caused any hindrance in the matter- The allegation that during the process of strike the petitioners created a situation resulting in breach of law and order cannot be relied as there is no report to the police or local authorities in this regard - There is no complaint or communication made by any other officer or employee of University that the work of the University has been hampered or adversely affected due to the so-called agitation and strike by petitioners and employees Union - Communications by enquiry officers regarding threat appears to be procured documents as there is no other document which shows that any of the witnesses or Enquiry Officers have made any complaint to the University authorities giving the particulars of the threat extended, the period when the threat was extended and the manner in which it was extended - Merely on the basis of the letters given by three enquiry officers indicating that they cannot conduct enquiry, the inquiry cannot be dispensed with - Petitioners have put in more than 20 years of service and there is no material available on record against

them to show that they have acted in a manner which can be termed as unbecoming of any employee - Order of termination quashed - Petitioners are directed to be re-instated with all consequential benefits - However, the respondents are free to proceed in the matter by conducting proper departmental enquiry : *Pramod Tiwari Vs. Chancellor, JNKVV, I.L.R. (2013) M.P. 80*

– **Rule 20** – Departmental Enquiry – Appellant whose parent department is Forest Department was sent on deputation to Rajya Van Vikas Nigam in the year 1988 which is an independent autonomous corporation – He was repatriated back to the parent department where he joined after 06.11.1989 – On 08.05.1990, he was charge sheeted by M.D. of the borrowing Corporation – Held – Rule 20 provides for provisions regarding officers lent to another department – Action by borrowing department can be taken under Rule 20 only when an employee is on deputation – After the employee is repatriated back to parent department, borrowing department cannot initiate departmental proceedings – Borrowing department may transmit the documents to parent department and may recommend for taking action – Punishment imposed is set aside – Borrowing department may recommend parent department to take action : *B.L. Satyarthi Vs. State of M.P., I.L.R. (2015) M.P. 26 (DB)*

11. Procedure for imposing Penalties

– **Rule 14** – See – Service Law : *Toofan Singh Vs. M.P. State Civil Supplies, I.L.R. (2015) M.P. 1729*

– **Rule 14 & 15** – Procedure for imposing Penalties – Charge sheet containing charges, statement of imputation of misconduct, list of documents and list of witnesses was supplied to petitioner – Petitioner was afforded an opportunity of inspection of documents – Supply of documents at the stage of written statement of defence is not required under Rule 14(4) – Petitioner never raised the plea of vagueness of charges in the departmental enquiry – Documents sought by petitioner were supplied to him – No question any prejudice on account of non-supply of documents arise – It is also clear from enquiry report that Enquiry Officer has assessed the evidence in respect of each article of charge and has recorded a finding after considering the defence of the petitioner – Departmental Enquiry has been conducted in accordance with Rules : *Yogiraj Sharma (Dr.) Vs. State of M.P., I.L.R. (2015) M.P. 2644*

12. Review

Rule 9 – Punishment – Judicial Review – Penalty can be interfered by Courts if it is shockingly disproportionate to alleged misconduct : *Shyam Sharma (Dr.) Vs. State of M.P., I.L.R. (2015) M.P. 2014*

– **Rules 29(1) & 31** - Review - The competent authority exercising power under Rule 29 has to take a decision for reviewing the matter within a period of six months from the date of passing of the order proposed to be reviewed and thereafter the proceedings for review can continue till finalization - The action for review taken after six months could be unsustainable - Particularly where no plausible explanation or justification is given for the delay warranting its relaxation or condonation : *Rajesh Henry Vs. State of M.P., I.L.R. (2011) M.P. 96*

13. Revocation of Suspension

– **Rule 6** – Revocation of suspension due to non issuance of charge sheet within stipulated period – Rule 9(5) Proviso applies only in cases where a Govt. servant is suspended on account of pendency of a disciplinary proceeding or in contemplation thereof – Proviso to Rule 9(5) will have no applicability to cases where a Govt. servant is placed under suspension under Rule 1(b) which provides for suspension on account of involvement in criminal offence – As appellant was placed under suspension on account of his conviction – Suspension cannot stand revoked only because charges and documents have not been issued to him within 45 days or 90 days : *Vikram Patel Vs. M.P. State Electricity Board, I.L.R. (2011) M.P. 1661 (DB)*

– **Rule 9** – Revocation of suspension and transfer – Composite order – If the authority is competent to revoke suspension as also to transfer the employee, it is open to such Authority to pass a composite order – Whether a transfer order can withstand the test of judicial scrutiny, will be an independent issue to be decided on settled legal principles : *Asif Mohd. Khan Vs. State of M.P., I.L.R. (2015) M.P. 3141 (FB)*

14. Right of Governor to withhold or withdraw Pension

– **Rule 9** – Right of Governor to withhold or withdraw Pension – Governor may impose a penalty of withholding or withdrawing the pension or part thereof if case of misconduct is proved which is of such a nature that a penalty of dismissal could be imposed on Government Servant – Not only charges are to be levelled in such manner indicating such a grave misconduct but a finding is also to be recorded that such a grave misconduct is found proved so that the power of withdrawing or withholding the pension of a retired Government servant may be exercised : *Shyam Sharma (Dr.) Vs. State of M.P., I.L.R. (2015) M.P. 2014*

15. Suspension – Competent Authority

– **Rule 9** – Suspension – Competent Authority – Petitioner working as class-I officer – Collector cannot place her under suspension as neither he is appointing authority

nor disciplinary authority – Subsequent approval by Commissioner cannot validate the order of suspension as Commissioner is not the appointing authority – Order of suspension quashed : *Savita Yadav (Dr.) (Ms.) Vs. State of M.P., I.L.R. (2015) M.P. 944*

– **Rule 9(1)** – Suspension – Competent Authority – Petitioner posted as C.E.O., Janpad Panchayat – Placed under suspension by Divisional Commissioner – Held – Divisional Commissioner has been delegated powers to suspend Class I and II Government Officer – Divisional Commissioner is competent to suspend C.E.O : *V.K. Sharma Vs. State of M.P., I.L.R. (2011) M.P. 2131*

– **Rule 9(1) & 9(1)(a)** – Suspension – Competence of Divisional Commissioner to place Class-I Gazetted Officer under suspension – Held – It is within the competence of Divisional Commissioner to impose minor penalties on Class-I and Class-II Gazetted Officer and also to place them under suspension – Power of the same has been delegated to him by notification dated 13.08.1977 and 02.08.1999 : *Bhupal Singh Vs. State of M.P., I.L.R. (2014) M.P. 2069*

16. Suspension Order

– **Rule 9** - See - Municipal Corporation Act, M.P., 1956, Section 52, 53 & 420 : *K.K. Singh Chouhan Vs. State of M.P., I.L.R. (2013) M.P. 820*

– **Rule 9** – Suspension – Sufficient reasons disclosed in the suspension order – Mere non mention of “in contemplation of enquiry” will not vitiate the suspension order : *Bhupal Singh Vs. State of M.P., I.L.R. (2014) M.P. 2069*

– **Rule 9(1)** – See – Service Law : *A.P. Singh Gaharwar Vs. State of M.P., I.L.R. (2012) M.P. *51 (DB)*

– **Rule 10(i) to (iv) & Rule 12(2)(a) & (b)** – Suspension Order – Challenged on the ground of competency of Commissioner despite there being a delegation of power under Rule 12(2)(a) & (b) – Held – As per notification except Director all Class I Government Servant posted under the control of Commissioner and since the petitioner does not hold the post of Director, Commissioner being a disciplinary authority is empowered to place the petitioner under suspension : *K.K. Tamrakar Vs. State of M.P., I.L.R. (2015) M.P. 2874*

17. Unauthorized Absence

– **Rule 10** – Dismissal from service – Unauthorized absence – Original Petitioner was a police constable – He was dismissed from service on the charge of unauthorized absence and non-improvement in his conduct inspite of punishment imposed upon him in that respect – Original Petitioner being a member of disciplined force ought to have

obeyed the directions of superior officers by submitting his joining – In absence of evidence justifying abnormal overstay any interference would have serious impact on discipline which has to be observed strictly by a member of uniformed and disciplined force : *Shanti Tiwari Vs. State of M.P., I.L.R. (2011) M.P. 1657 (DB)*

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

– **Rule 9** - See -Police (Gazetted) Services Recruitment Rules, M.P. 1987, Rule 6(2) : *Mahendra Singh Sikarwar Vs. State of M.P., I.L.R. (2012) M.P. 2736 (DB)*

– **Rule 12(4)** – See – Agriculture (Horticulture) Non-Gazetted (Non-Ministerial) Service recruitment Rules, M.P. 1987, Rule 11 : *Ramveer Singh Tomar Vs. State of M.P., I.L.R. (2012) M.P. 1134*

CIVIL SERVICES (MEDICAL ATTENDANCE) RULES, M.P. 1958

– **Rule 4** – Medical Reimbursement – Capping – Circular dated 15/20-3-2001 puts a capping on maximum amount to be disbursed towards medical reimbursement – Circular is contrary to Rule 4 and will not be applicable as the same leads to supplanting of Rule 4 – Petitioner entitled for reimbursement of entire medical expenses : *Mukesh Tiwari Vs. State of M.P., I.L.R. (2012) M.P. 937*

– **Rule 8** – Permission – Treatment of mother of petitioner who is a cancer patient – Permission not obtained – Held – Not possible to obtain prior permission – Rule 8 not mentioning about permission in advance – De Facto permission can be granted – Medical expenses to be reimbursed : *Prashant Singh Baghel Vs. State of M.P., I.L.R. (2015) M.P. 857*

– **Rule 10,11**, Kalyan Nidhi Niyam, M.P. 1997 – Reimbursement of medical expenses of mother of petitioner – Petitioner, a Govt. servant – Mother, a retired Govt. employee and receiving pension – Petitioner governed by the Medical Attendance Rules – 1997 Rules are specific rules for retired Govt. employees regarding Medical facilities – Held – Petitioner entitled for reimbursement of medical expenses of his mother who is dependent on petitioner – No specific bar is there in the Niyam of 1997 regarding applicability of Medical Attendance Rules, 1958 – Unless applicability of the Rules of 1958 is barred under the Rules of 1997, Rules of 1958 will be applicable – Petition allowed – Medical expenses to be reimbursed within two months : *Prashant Singh Baghel Vs. State of M.P., I.L.R. (2015) M.P. 857*

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

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| 1. Compulsory Retirement | 2. Counting of Service |
| 3. Effect – Departmental Enquiry after Retirement. | 4. Interest on Retiral Dues |
| 5. Release of Pension | 6. Settlement of Retiral Dues |
| 7. Stoppage of Pension after Conviction | 8. Voluntary Retirement |
| 9. Withholding of Pension | |

1. Compulsory Retirement

– **Rule 42(1)(b)**, District and Sessions Judges (Death-cum-Retirement Benefits) Rules, M.P. 1964, Rule 1-A & Higher Judicial Service (Recruitment and Conditions of Service) Rules, M.P. 1994, Rule 14 – Compulsory retirement – Administrative Committee made recommendation that ‘suitable to continue in service’ – Held – Full Court is the final authority and the decision of Full Court will prevail over the recommendation of Administrative Committee : *Shailendra Singh Nahar Vs. State of M.P., I.L.R. (2015) M.P. 1754 (DB)*

– **Rule 42(1)(b)**, District and Sessions Judges (Death-cum-Retirement Benefits) Rules, M.P. 1964, Rule 1-A and Higher Judicial Service (Recruitment and Conditions of Service) Rules, M.P. 1994, Rule 14 – Compulsory retirement – Petitioner – Additional District and Sessions Judge – Grant of selection grade – Previous adverse entries “Integrity Doubtful” – Held – After considering entire service record, even if judicial officer was awarded selection grade that would not wipe the previous adverse entries – Petition dismissed : *Shailendra Singh Nahar Vs. State of M.P., I.L.R. (2015) M.P. 1754 (DB)*

– **Rule 42(1)(b)** – Fundamental Rule – Rule 56(2-A) – Compulsory Retirement – Over-all service performance of the petitioner rated as ‘average worker’ and finally, when a complaint is received against him with regard to his integrity, the impugned action is taken – Petitioner is also rated as an ‘average worker’, – Adverse communications to petitioner throughout his service record – Petitioner was reverted on one occasion and on two occasions his promotions were deferred because of certain adverse material against him – Finally, there was complaint with regard to integrity – Held – It is a case where a Judicial Officer, holding the post of ADJ, is compulsorily retired on the basis of his entire service record and in the absence of any malafide or arbitrariness being established from

the material available on record, no interference is warranted : *Shankar Prasad Gupta Vs. State of M.P., I.L.R. (2012) M.P. 876 (DB)*

2. Counting of Service

– **Rules 3(p) & 42** – Qualifying service – Petitioner was initially appointed on adhoc basis and was regularly appointed on the post of Asstt. Professor – Application for voluntary retirement was accepted by including the period of adhoc service – Subsequently the qualifying service for pension was reduced and period of adhoc service was reduced – Petition filed by petitioner was allowed and period of adhoc service was directed to be counted – However in Writ Appeal, Division Bench granted liberty to respondents to decide the application for voluntary retirement afresh and in case if it is not decided within 90 days the directions of Single Judge should be given effect to – Decision was not taken within 90 days – Order passed in earlier Writ Petition had attained finality and should have been implemented – Further as per rules, 1976, a period of 5 years can be added for computing pension – State directed to evolve a policy to extend the period of qualifying service – Petition allowed : *R.B. Dubey (Dr.) Vs. State of M.P., I.L.R. (2015) M.P. 1179*

– **Rule 13(2)** - See - Service Law : *Vichitra Singh Hoda Vs. State of M.P., I.L.R. (2013) M.P. 2068 (DB)*

– **Rules 25 & 27** – Counting of past service – Petitioner was removed from service on 17.09.1980 – Later on he was directed to be reinstated on 29.10.1988 – Pension of Petitioner should be computed from the date of his initial appointment as his case would be governed by Rules 25 and 27(1)(d) – Petition allowed with costs : *Bhikarilal Kahar Vs. State of M.P., I.L.R. (2011) M.P. 1484*

– **Rules 42 & 79** – Period of Service – Petitioner had not completed 20 years of service, therefore, she was not found entitled for pension – Case of the petitioner was recommended by authorities to condone short fall of 21 days in view of Rule 79 to avoid undue hardship – Held – Since concerned department recommended the case in favour of petitioner after recording the reasons, that rules are causing undue hardship – There was no justification on the part of Finance Department in not giving the concurrence without assigning any reason – Respondents directed to do the needful so that petitioner can get pension : *Sujata Bhargava (Dr.) (Smt.) Vs. State of M.P., I.L.R. (2014) M.P. 1525*

3. Effect – Departmental Enquiry after Retirement.

– **Rule 9** – Continuance of Departmental enquiry – Enquiry initiated against an employee after his retirement not concluded within 2 years of its inception – Can continue even after expiry of two years – Governor is competent to pass final order

regarding pension of a retired employee upon consideration of report of enquiry submitted before him after conclusion of enquiry (Matter referred to Larger Bench) : *State of M.P. Vs. Puran Lal Nihar, I.L.R. (2011) M.P. *118 (DB)*

– **Rule 9** – Non-conclusion of departmental enquiry within 2 years of its initiation – If the disciplinary enquiry is initiated against an employee after his retirement, it would not automatically come to an end in case the enquiry is not concluded within two years of its inception : *State of M.P. Vs. Puran Lal Nahir, I.L.R. (2012) M.P. 691 (FB)*

– **Rule 9** – Powers of Governor – Governor is not precluded from passing final order in relation to payment of pension to a Govt. employee against whom disciplinary proceeding is initiated after his retirement and is not concluded within two years from its inception : *State of M.P. Vs. Puran Lal Nahir, I.L.R. (2012) M.P. 691 (FB)*

– **Rule 9(2)** – Report to Governor – If a departmental enquiry was initiated by an authority subordinate to Governor, a report regarding finding has to be submitted to Governor : *R.K. Jain Vs. State of M.P., I.L.R. (2015) M.P. 3204*

4. Interest on Retiral Dues

– **Rule 9(6)** – Interest on retiral dues – Entitlement – Delay in making payment of retiral dues – Lodging of complaint against the petitioner in the office of the Lokayukt – Case against petitioner was closed – Mere recording of a complaint against the petitioner and starting an investigation by the Economic Offences Bureau or Lokayukta was not constitution of a criminal proceedings against the petitioner in terms of the definition of judicial proceedings indicated in Rule 9(6) of the Rules aforesaid – There was unauthorized delay in making the payment of retiral dues to the petitioner – Petitioner entitled to interest @ 8% on amount of retiral dues : *Aditya Mishra Vs. State of M.P., I.L.R. (2014) M.P. 1756*

5. Release of Pension

– **Rule 9** – Recovery – Penalty of deduction of 10% of the amount from the pension of the petitioner – No show cause notice was issued to the petitioner – Second enquiry on the same charge which could not be proved during first enquiry is not permissible – In first enquiry, charges are not found to be proved against the petitioner – As no financial loss caused to Bank, punishment imposed is too harsh and disproportionate – Order quashed – Respondents directed to release pension : *G.D. Purohit Vs. State of M.P., I.L.R. (2015) M.P. 2607*

– **Rule 9** – Release of withheld Pension – Disciplinary proceedings initiated against a govt. employee after his retirement not concluded within 2 years of its inception

– Employee entitled to release of entire withheld pension : *State of M.P. Vs. Puran Lal Nihar, I.L.R. (2011) M.P. *118 (DB)*

6. Settlement of Retiral Dues

– **Rule 47(11)(c)** - Petitioner has assailed order dated 03.09.2012 passed by D.E.O. Jabalpur whereby he has been declined of the settlement of retiral dues of his wife, on the ground that he is facing prosecution u/s 306 of IPC on the basis of dying declaration given by his wife - Held - Conduct of the petitioner in abetting his wife to commit suicide, who was the government servant, leading to his criminal prosecution, being not a good conduct has rightly been adjudged in declining his claim for settlement of family pension : *Amar Chand Verma Vs. State of M.P., I.L.R. (2013) M.P. 589*

7. Stoppage of Pension after Conviction

– **Rule 64(1)(b)** - Final Order - Appellant was facing criminal trial and attained the age of superannuation during the pendency of the trial - Provisional pension was paid - However, after the conviction the provisional pension was stopped - Words Final Order Passed by Competent Authority does not relate to final authority in respect of payment of pension but it relates in respect of the departmental or judicial proceedings - Stoppage of provisional pension after conviction proper - Appeal dismissed : *Vaidhyanath Shukla Vs. State of M.P., I.L.R. (2012) M.P. 2916 (DB)*

8. Voluntary Retirement

– **Rule 42** - Notice of Voluntary Retirement - Withdrawal from - Petitioner working in the establishment of District & Sessions Judge, on 28.03.2002 submitted an application for voluntary retirement w.e.f. 31.07.2002 - District & Sessions Judge, accepted this application for voluntary retirement and passed the order on 11.04.2002 - Petitioner, later on 24.05.2002, made the application for granting him permission to withdraw his notice/application for voluntary retirement which was rejected - Appeal was also dismissed vide order dated 01.07.2003 - Held - Petitioner was precluded to withdraw his application/notice for voluntary retirement, once it was accepted by the competent authority - Nothing wrong committed by the respondents in passing the impugned order - Writ petition dismissed : *Upendra Arvindekar Vs. State of M.P., I.L.R. (2011) M.P. *144*

– **Rule 42** - See - Service Law : *S.S. Nafde (Dr.) Vs. State of M.P., I.L.R. (2013) M.P. 572*

9. Withholding of Pension

– **Rule 9(1)** – Consultation with Public Service Commission – Nothing on record that Public Service Commission was consulted before imposition of penalty of withholding of 10% of pension : *R.K. Jain Vs. State of M.P., I.L.R. (2015) M.P. 3204*

– **Rules 9, 64 & 65** – Withholding of pension – A definite finding is required to be recorded with regard to gravity of misconduct and ultimate result of such misconduct, whether it would have been resulted in dismissal from service, had Govt. servant remained in service – Then only penalty can be imposed : *R.K. Jain Vs. State of M.P., I.L.R. (2015) M.P. 3204*

CIVIL SERVICES

– **Promotion** – Petitioner was appointed on the post of Sub-Inspector in general category – Later on, petitioner came to know that “Chhatttri” caste is in Scheduled Tribe – Since the petitioner is under the category of Schedule Tribe, the benefit for which a candidate of Schedule Tribe is entitled, be given to the petitioner at the time of promotion – Held – Respondents were directed that if found that the petitioner is entitled for the benefit on the basis of a candidate of Schedule Tribe, then the same be given to the petitioner as well : *Ashok Rangshahi Vs. State of M.P., I.L.R. (2014) M.P. 1751*

CIVIL SERVICES (SPECIAL PROVISION FOR APPOINTMENT OF WOMEN), M.P. RULES, 1997

– **Rule 3**, Lok Seva (Anusuchit Jatiyon, Anusuchit Jan Jatiyon Aur Anya Pichhade Vargon Ke Liye Arakshan) Adhiniyam, M.P. (21 of 1994), Section 4(4) – Grievance of the petitioner is that, instead of accommodating the petitioner (though O.B.C.) in General Category, the candidates below the rank of petitioner and receiving less marks than the petitioner are being selected in General Category – Held – Out of 564 posts of Homeopathy Medical Officer, 265 posts are reserved for women candidates of all categories i.e. horizontal reservation – Therefore, candidates of one category even if obtain higher marks than that of General Category cannot seek migration to General Category posts – Respondents cannot be directed to adjust the petitioner against General Category seat : *Sunita Thakre (Dr.) Vs. State of M.P., I.L.R. (2014) M.P. 1831*

COAL BEARING AREAS (ACQUISITION AND DEVELOPMENT) ACT (20 OF 1957)

– **Section 14(8), 20**, Civil Procedure Code (5 of 1908), Order 7 Rule 11 – Powers of Tribunal – All Powers of Civil Court under C.P.C. are not exercisable by Tribunal – Tribunal does not possess power under Order 7 Rule 11 C.P.C. – Tribunal can not reject the claim at threshold on any of the grounds mentioned therein or dismiss a case for default of appearance of a party : *Sulochani (Smt.) Vs. Smt. Jiwaraniya, I.L.R. (2012) M.P. 972*

**COAL MINES PROVIDENT FUND & MISCELLANEOUS
PROVISIONS ACT (46 OF 1948)**

– **Section 3** – See – Succession Act, 1925, Section 373, 384 : *Regional Commissioner Vs. Bhuria Bai, I.L.R. (2015) M.P. 2777*

**COAL MINES PROVIDENT FUND, COAL MINES FAMILY
PENSION & COAL MINES DEPOSIT LINKED INSURANCE
SCHEME 1948**

– **Clause 64** – See – Succession Act, 1925, Section 373, 384 : *Regional Commissioner Vs. Bhuria Bai, I.L.R. (2015) M.P. 2777*

COMMERCIAL BID

- **Principles of fair play and opportunity of hearing** - Even in a contractual matter, an instrumentality of State must follow the principles of fair play and give an opportunity of hearing to the person whose rights would be affected by the decision in which such instrumentality has more than one option : *ORG Informatics Ltd. Vs. M.P.S.E. Development Corporation Ltd., I.L.R. (2011) M.P. 2327 (DB)*

- **Withdrawal of Bid** - Withdrawal from a consortium of a material member, without whose presence in the consortium the consortium could not have qualified all or any of the stages of the bids evaluation, the same should be treated as withdrawal of the bid by the concerned consortium : *ORG Informatics Ltd. Vs. M.P.S.E. Development Corporation Ltd., I.L.R. (2011) M.P. 2327 (DB)*

COMMERCIAL TAX ACT, M.P. 1994 (5 OF 1995)

– **Section 2(u)** - Sale price - Transit fee - Transit fee for transit of forest produce is in the form of regulatory measure and same is required to be paid along with royalty in advance - Transit fee forms part of sale price - It has been rightly included in the turnover by assessing officer - Petition dismissed : *Northern Coal Fields Ltd. Vs. Addl. Commissioner, Commercial Tax, Jabalpur, I.L.R. (2011) M.P. *31 (DB)*

– **Section 9 & 9B** - Section 9B is not a part & parcel of Section 9, but is a separate Section applicable to the separate class of dealers covered by it : *Ghanshyamdas & Co. (M/s.) Vs. Commissioner of Commercial Tax, M.P., I.L.R. (2011) M.P. *6 (DB)*

– **Section 9, 10A & 19(1)(a)** – Surcharge – Surcharge payable u/s 10A is nothing but a tax payable under the Act – It is only one way of enhancement of the tax – Once the petitioner is permitted composition of tax u/s 19(1)(a), then no liability to pay any

surcharge u/s 10A would arise – Impugned orders are quashed – Petition allowed : *Narmada Transmission Pvt. Ltd. (M/s.) Vs. State of M.P., I.L.R. (2015) M.P. 736 (DB)*

– **Section 15, Entry 4**, Central Sales Tax Act, 1956, Section 8(2)A – Hessian Cloth – Hessian Cloth is a variety of cloth covered under Entry 4 and amended entry 4-(1) of Schedule 1 and is exempted from payment of tax : *Maneesh Enterprises Vs. Commissioner of Commercial Tax, M.P., I.L.R. (2011) M.P. *55 (DB)*

– **Section 17(1)** – Notification – Notification dated 22.06.1998 reducing rate of tax on Hessian cloth stood impliedly repealed by amendment in Entry 4 of Schedule I w.e.f. 01.04.1999 : *Maneesh Enterprises Vs. Commissioner of Commercial Tax, M.P., I.L.R. (2011) M.P. *55 (DB)*

– **Section 17 & 43** - See - Entry Tax Act, M.P., 1976, Section 2(d)(f), 3, 7 & 14 : *Kalyani Minerals Pvt. Ltd. (M/s.) Vs. Additional Commissioner of Commercial Tax, I.L.R. (2011) M.P. 2381 (DB)*

– **Section 22** – Exemption – modus operandi – Whether facility of exemption can be availed in respect of such quantum of goods which is in excess of 100% of original installed capacity – Held – Commercial Deptt. itself has taken a view that in case of expansion of unit the base production capacity and expanded capacity has to be taken into consideration – Order Cancelling registration of certificate quashed : *Jaideep Glass Works Pvt. Ltd. (M/s.) Vs. Commissioner of Commercial Tax, Indore, I.L.R. (2011) M.P. 1158 (DB)*

– **Section 28(1)** – Penalty –Petitioner was found liable for payment of the tax, which was earlier deposited and refunded to him – No penalty could have been imposed on the petitioner – The order relating to the imposition of penalty quashed : *Bhanu Pratap Singh Vs. State of M.P., I.L.R. (2011) M.P. 1513 (DB)*

– **Section 61** – Second Appeal – Imposition of Penalty – During the pendency of the Second Appeal against assessment order, the Assessing Authority cannot levy penalty : *Lakhani Foot Care Ltd. Vs. State of M.P., I.L.R. (2015) M.P. 906 (DB)*

– **Section 69(2)** – Penalty – Penalty was imposed by Assessing officer on the ground that the assessee furnished incorrect return of the sales tax, evaded the tax – Held – No finding was recorded that there was deliberate concealment of sale or the assesseees were guilty of contumacious or dishonest conduct, or acted in conscious disregard of its obligation – Order imposing penalty can not be sustained : *Shri Ram Traders (M/s.) Vs. The Divisional Dy. Commissioner, I.L.R. (2012) M.P. 104 (DB)*

– **Section 69(3)** – Penalty – Petitioner filed his return and calculated the tax but paid less than 80% of the tax – Non-deposit of tax made him defaulter within the

definition of Section 69, so as to call the return filed by him as a false return – Section 26 & 69 deals with different situations – However, penalty is reduced from 5 times to 3 times : *Hindustan Lever Ltd. (M/s.) Vs. Assistant Commissioner, Commercial Tax, I.L.R. (2014) M.P. 1715 (DB)*

– **Entry 4 Schedule I, Entry 4 of Part IV of Schedule II** – Doubt or Rival Entries – In case of doubt or rival entries, the Entry which is beneficial to tax payer must be adopted – Even if Assessing Authority had found that Hessian cloth was covered under two entries, then Assessing Authority should have assessed it in the entry covering all variety of cloth because it is specific entry covering Hessian cloth and is the entry beneficial to Assessee : *Maneesh Enterprises Vs. Commissioner of Commercial Tax, M.P., I.L.R. (2011) M.P. *55 (DB)*

– **Entry 11 of Part IV of Schedule II** – Drugs and Medicines excluding those specified elsewhere – Dermicool Powder – Dermicool powder is described as prickly heat powder is commonly understood to be of used in treating prickly problem and not as an ordinary talcum powder – It must be held to be a medicine taxable under Entry 11 and not a medicinal preparation of a cosmetic : *Popular Sales (M/s.) Vs. State of M.P., I.L.R. (2012) M.P. 733 (DB)*

– **Entry 20(ii) of Part IV of Schedule II**, Sthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhinyam, M.P. 1976, Entry 14 of Schedule II - Whether GRD Powder and GRD Bix falls within expression non-alcoholic drink and beverage - Expression Beverage in common understood means any liquid other than water, which may be consumed neat or after dilution - GRD Powder and GRD Bix are not in liquid form - Can not be said to fall with the relevant entries of 1994 Act and 1976 Act : *Cadila Health Care Ltd. Vs. Additional Commissioner, Commercial Tax, I.L.R. (2011) M.P. 2394 (DB)*

– **Entry 41 of Part III of Schedule II** – Toilet articles including medicinal preparation thereof – Borosoft natural and Borosoft Cream would be taxable under Entry 41 : *Popular Sales (M/s.) Vs. State of M.P., I.L.R. (2012) M.P. 733 (DB)*

– **Entry 49 of Schedule II** - Mobile handsets are covered under entry 49 of Schedule II of the Act and excisable to levy for entry tax at the rate of 1% and the Commissioner u/s 70 of the M.P. VAT Act 2002, has power to make an order determining the rate of tax : *Drive India Dot Co. Ltd. (M/s.) Vs. State of M.P., I.L.R. (2011) M.P. 2978 (DB)*

– **Item 89 of Schedule I** – Whether PVC pipes used in pumping set can be held as accessories of the pumps, and if so, whether they are exempted from payment of Commercial Tax – Held – PVC pipes are an essential part of the pumping set and can never be considered as an accessory – Therefore, the same are taxable :

Annapurna Industries (M/s.) Vs. Deputy Commissioner, Commercial Taxes, Indore, I.L.R. (2015) M.P. 600 (DB)

COMMISSION FOR PROTECTION OF CHILD RIGHT ACT, 2005
(4 OF 2006)

- **Section 13, 25** - Offences to be Tried by Sessions Court - Act, 2005 does not oust the provisions of Section 4 of Cr.P.C. - Only those cases of serious nature in which Government or the authority concerned proceeds for prosecution on the recommendation of Commission can be tried by the Specified Sessions Court : *In Reference Vs. Vinod, I.L.R. (2012) M.P. *97 (DB)*

- **Section 25** - Child - Age - For the purposes of the Act, Child would be a person who has not attained the age of 18 years : *In Reference Vs. Vinod, I.L.R. (2012) M.P. *97 (DB)*

- **Section 25** - Committal - Children's Court constituted under Section 25 cannot directly take cognizance - It can take cognizance only if the case has been committed to it by Magistrate : *In Reference Vs. Vinod, I.L.R. (2012) M.P. *97 (DB)*

- **Section 25**, Criminal Procedure Code, 1973 (2 of 1974), Section 223 - Joint Trial - Where the victim is child and others are adult, there can be a joint trial : *In Reference Vs. Vinod, I.L.R. (2012) M.P. *97 (DB)*

COMPANIES ACT (1 OF 1956)

- **Section 84(4)** - See - Civil Procedure Code, 1908, Section 9 : *Kamalkant Goyal Vs. M/s. Lupin Laboratories Ltd., I.L.R. (2011) M.P. 2191*

- **Section 284 & 398** - Company petition for declaration of resolutions as illegal - Company Petition is filed seeking declaration that impugned Board Meeting and resolutions passed at meeting are non-existent, fictitious, illegal, void - Held - Company Law Board alone has jurisdiction to entertain the application u/s 398 - Jurisdiction of High Court is ousted - Company Petition not maintainable : *Sanil P. Sahu Vs. M/s. Vishwa Organics Pvt. Ltd., I.L.R. (2013) M.P. *42*

- **Section 291 & 292** - Vicarious liability of Directors & Managers - In view of complexity of facts it is not possible for complainant to know the role of each Director and Manager - As investigation is in progress, then the Director or Manager can prove his innocence before the Police : *Kewin B. Ajit Vs. State of M.P., I.L.R. (2012) M.P. 661*

- **Section 433** - Winding up - Maturity date of bond not extended, restructuring of bond not done - Almost two years have passed after the maturity date and nothing concrete has been proposed by Company - Debt is unsecured debt and default has

already triggered – Respondent has already expressed inability to honour the liability and redeem the bond – Company’s only defence that it is commercially solvent does not constitute a stand alone for setting aside a notice under Section 434 (1)(a) – Undisputed debt has to be paid and in absence of any genuine and substantial ground for refusal to pay, it should not be able to avoid the statutory demand – Refusal to pay is not the result of any bonafide inability to pay – Fit case for admission of the winding up petition : *Citibank N.A. London Branch Vs. M/s. Plethico Pharmaceuticals Ltd., I.L.R. (2015) M.P. *4*

– **Section 433 & 434** – Winding up – Application for winding up of the company – Respondent had apparently neglected to pay the sum and the deeming provision of Section 434 (1)(a) is attracted and it can be held that the respondent company is unable to pay its debt – Petitioner cannot be denied the order of winding up of the respondent company by directing it to avail alternate remedy – Petition admitted : *Bell Finvest (India) Ltd. (M/s.), Mumbai Vs. M/s. M.P. Proteins Pvt. Ltd., Mandasaur, I.L.R. (2015) M.P. 1854*

– **Section 433(e)** - Winding up of a Company - A procedure for winding up cannot be used as a substitute for proceeding with recovery of a debt in accordance to the common law - Winding up petition is not a legally approved means for recovery of certain dues nor is it be used to pressurize, coerce or enforce payment of a debt, which is bonafidely disputed by the respondent company - A winding up petition cannot be used as a substitute for a civil suit - If the company petition for winding up is filed with oblique motive and only to put pressure on the respondent company, the same should be dismissed : *Illume-Tech Solutions & Services Vs. Netlink Software Group Pvt. Ltd., I.L.R. (2012) M.P. 3029*

– **Section 433(e)** – Winding up – Unable to pay the debt – Whether ground under Section 433(e) of the Act – No averment nor any document of commercially insolvent – Bonafide dispute – Absence of reconciliation of the accounts – Amount due not crystalized – Held – No case for winding up of respondent Company made out as there is bonafide dispute, amount due not crystalized and no insolvency condition exist – Company Petition dismissed : *Alpha Packaging Ltd. (M/s.) Vs. M/s. Som Distelleries Ltd., I.L.R. (2015) M.P. 1498*

– **Section 433(e) & 434** - Winding up under - Initiating an action for winding up is a discretionary power -- Before exercising the said power, it is required to be proved from the material available on record that - (a) there is a debt; and, (b) that the respondent company is unable to pay the said debt - Even if these two conditions are satisfied, still the Court should be satisfied that a winding up order has to be passed - The company against whom the proceeding is prayed to be initiated should be shown to be

commercially insolvent, its assets and liabilities are to be such that a reasonable apprehension can be made that it is insufficient to meet the existing liabilities : *Illume-Tech Solutions & Services Vs. Netlink Software Group Pvt. Ltd., I.L.R. (2012) M.P. 3029*

– **Section 439 (1)(b)** – Applications for winding up – Locus Standi – Petitioner trustee being a creditor is also entitled to file the petition for winding up the Company : *Citibank N.A. London Branch Vs. M/s. Plethico Pharmaceuticals Ltd., I.L.R. (2015) M.P. *4*

– **Section 446(2)** – Civil Suit – Competency of Civil Court – Liquidation proceedings pending – Jurisdiction of Civil Court vis-a-vis Company Judge is not ousted by the provisions of Companies Act – State of M.P. in another Civil suit sought for declaration and recovery of possession against official liquidator which was dismissed on the ground of non-maintainability in absence of leave of the Company Court – Said order has attained finality – Declaration to the effect that property in dispute belongs to company under liquidation has attained finality – Dismissal of application for permission u/s 446(2) of the Act does not suffer from any perversity or illegality or arbitrariness – Appeal dismissed : *Satya Narayan Vs. M/s. Jiyajeerao Cotton Mills Ltd., I.L.R. (2015) M.P. 243 (DB)*

COMPANIES (AMENDMENT) ACT, (31 OF 1988)

– **Section 68** - Transitional Provision - Restoration of Company Petition - Company Petition filed prior to coming into force of Amendment Act, 1988 however was dismissed in default for non-prosecution vide Court's order dated 07.09.2005 - Held - Expression disposed off contained in Section 68 necessarily implies that a petition was required to be disposed of by adjudicating the rival contentions of the parties on merits - It is first principle that the Court which had dismissed the petition in default for non-prosecution alone is competent to deal with its restoration - Company Petition was rightly restored by Company Judge : *Bhaskar Publication & Allied Industries Pvt. Ltd. Vs. Smt. Kishori Devi Agrawal, I.L.R. (2011) M.P. *149 (DB)*

COMPANY COURT RULES, 1959

– **Rules 272 & 273** – Auction purchaser is entitled for execution of sale deed of property in favour of its nominee : *Korba Metals & Conductors Pvt. Ltd. (M/s.) Vs. B.I.F.R., I.L.R. (2011) M.P. 969 (DB)*

COMPENSATION AND EXEMPLARY COST

Mental Agony - Although there is no tangible loss, still the petitioner is entitled for compensation for mental agony - No amount of monetary compensation can

indemnify the mental & psychological damage incurred : *Pooja Agrawal (Ku.) Vs. Board of Secondary Education M.P., I.L.R. (2013) M.P. 609*

COMPETITIVE EXAMINATION

- **Model Answer** - Correct answer - A question may have more than one correct answer and the candidate will have to select the one which is more correct out of the alternative answers : *Ankit Khare Vs. The High Court of M.P., I.L.R. (2012) M.P. 2372 (DB)*

- **Model Answer** - One question carries two correct answers - Candidates who have marked "C" as correct answer would not get one mark although he is entitled to one mark as his answer to the question is correct - Respondents direct to take out the answer books of candidates who have failed to secure cut-off marks by one mark and shall examine whether their answer to question is "C". If the said candidate has given correct answer then he should be awarded one mark and the result of preliminary examination be re-tabulated : *Ankit Khare Vs. The High Court of M.P., I.L.R. (2012) M.P. 2372 (DB)*

CONDUCT OF ELECTION RULES, 1961

- **Rule 54-A** - Counting of Postal Votes - 305 votes were declared invalid on the ground of non-attestation or improper attestation of votes and due to non-availability of declaration - Counting agents were also apprised of the reasons and no objections were raised by them - Rejection of votes was in accordance with Rule 54-A(4) of Rules 1961 : *Shriniwas Tiwari Vs. Rajkumar Urmalia, I.L.R. (2014) M.P. 113*

- **Rule 56-A** - Counting and Recounting of Votes - Election Petitioner was defeated by a margin of 309 votes - Even if the 305 votes who according to petitioners were not included in counting were cast in favor of petitioner, the result of election would remain unaffected - Further none of the respondents has come forward to file recrimination - It is not permissible to Court to permit a party to seek a roving inquiry - Party must plead material facts and adduce evidence to substantiate the same - Petitioner must not only give the figures of the votes which according to him were improperly accepted or rejected, but the basis of allegation must be disclosed - Serial number of ballot papers must be set out, names of counting agent, number of counting tables, names of counting supervisor, round number, details of objection, if any, made to the counting staff, details of notes, if any, kept by counting agent and basis of information must be disclosed - No averment that counting agent ever challenged the correctness of contents of Part II of form 17-C before returning officer - Allegations appear to be false and baseless : *Shriniwas Tiwari Vs. Rajkumar Urmalia, I.L.R. (2014) M.P. 113*

– **Rule 63(1) & (2)** – See – Representation of the People Act, 1951, Section 80, 81 & 100(1)(d)(iv) : *Arjun Kakodiya Vs. Kamal Marskole, I.L.R. (2015) M.P. 2699*

– **Rule 89** - Objection as to correctness of account - Rule 89 provides complete procedure for raising objection on the correctness of account - As the Petitioner had not raised any objection before the Election Commission, the accounts cannot be challenged in the election petition : *Chandrabhan Singh Choudhary Vs. Kamal Nath, I.L.R. (2012) M.P. 2750*

– **Rule 90** - See - Representation of the People Act, 1951, Section 77, 86, 87 & 123(6) : *Chandrabhan Singh Choudhary Vs. Kamal Nath, I.L.R. (2012) M.P. 2750*

CONSTITUTION

- **Election Petition** - Mandate of the Public should not be disturbed in a routine manner - Interference will hamper democratic process - Election can only be disturbed only when allegations are proved to the hilt : *Geeta Bai (Smt.) Vs. The Sub Divisional Officer, I.L.R. (2013) M.P. 2579*

– **Public Interest Litigation** – Basic Amenities – Where the local authorities are not serious to provide basic amenities to the inhabitants of the locality, directions for taking immediate steps for providing basic amenities like Nala, Road, Electricity, Sewer line issued – Petition disposed off : *Dinesh Singh Bhadoriya Vs. State of M.P., I.L.R. (2014) M.P. 1291 (DB)*

- **Article 12** - Industrial Development Bank - Whether State - 51% of Board of Directors of Bank are Central Govt. officials - Control over the bank is to be supervised by the Reserve Bank of India - Respondent bank is also recognized as other public sector bank by R.B.I. - Bank is required to discharge various functions which are entrusted to other Nationalized banks - Respondent bank is discharging the public function as well though it is a Commercial Bank - It is a State - Writ Petition maintainable : *Jitu Prasad Vs. Industrial Development Bank, I.L.R. (2013) M.P. 2338*

– **Article 12** - State - Judicial review - S.E.C.L. is an instrumentality of State - Action of State and its instrumentality must conform to rule of law and must be informed by reasons - Actions are subject to judicial review on touchstone of relevance, reasonableness, fair play, natural justice, equality and non-discrimination - Unfettered discretion is a sworn enemy of Constitutional Guarantee against discrimination : *Rashtriya Colliery Majdoor Congress Vs. South Eastern Coalfields Ltd., I.L.R. (2011) M.P. 364 (DB)*

– **Article 12 & 226** – Maintainability – Private person – Held – Learned Single Judge, without recording any finding that whether the appellant Director and the Private

Limited Company in question were discharging any public duty or failed to discharge any public duty and they are amenable to the Writ jurisdiction, issued the directions to the individual and to a Private Limited Company – Same cannot be sustained – Writ petitions are restored for being decided by learned Single Judge afresh : *Ritesh Kumar Ajmera Vs. Smt. Manisha Parihar, I.L.R. (2015) M.P. 835 (DB)*

- **Article 12 & 226** - State - M.P. Board of Secondary Education, an instrumentality of state - A statutory body - Hence State : *Pooja Agrawal (Ku.) Vs. Board of Secondary Education M.P., I.L.R. (2013) M.P. 609*

- **Article 12 & 226** - 'State' or any 'other authority' - Burden of proof - Held - Whenever it is submitted that a body is 'State' or its 'instrumentality' or an 'authority', the burden is on the petitioner to establish it by placing adequate material that the said body falls within the ambit of Article 12 - In absence of basic material, no definite opinion can be formed by the Court in this regard : *Rotary Club Birla Nagar Vs. Rotary International Through General Secretary, I.L.R. (2013) M.P. 1913*

- **Article 12, 226 & 227** - State - Petitioner has raised a dispute before the Election Tribunal and calls in question the elections held to the M.P. Branch of the Indian Medical Association on the ground of irregularities and illegalities - Now petitioner sought a direction to the Election Tribunal to decide the election dispute raised by him in accordance with the by-laws of the association - Held - Indian Medical Association is not a state or other authority within the meaning of Article 12 of the Constitution - Therefore, it is not amenable to the writ jurisdiction of this Court - Election Tribunal constituted under the Article and Memorandum of the Association is neither a statutory Tribunal nor a quasi judicial authority discharging any functions which can be controlled by this Court - It is nothing but a creation of certain individuals for the purpose of deciding their interse dispute : *A.K. Dubey (Dr.) Vs. Indian Medical Association, I.L.R. (2014) M.P. 75*

SYNOPSIS: Article 14

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| 1. Allotment | 2. Discrimination |
| 3. Law of Equality | 4. Reasonable Classification |
| 5. Right to Education | 6. Service Matter |
| 7. Time Barred Applications | |

1. Allotment

- **Article 14** - Allotment of Land - Allotment of land to bodies/organisations/institutions on political considerations or by way of favouritism and/or nepotism or with a view to nurture the vote bank for future is constitutionally

impermissible : *Akhil Bhartiya Upbhokta Congress Vs. State of M.P., I.L.R. (2011) M.P. *133 (SC)*

- **Article 14** - Allotment of Petrol Pump Dealership - Promissory Estoppel and Legitimate Expectation - Oil companies decided to set up Company Owned Company Operated Outlets (COCO) - Scheme formulated on 08.10.2002 provided that first COCO outlets would be offered to landlord provided he was found suitable - Petitioner applied for grant of dealership under the landlord category - He was selected for the same - However, Scheme dated 08.10.2002 was suspended and new concept of COCO outlets to be run by Maintenance and Handling Contractors was introduced - Held - Scheme dated 08.10.2002 cannot be co-related with new concept dated 06.09.2003 unless the appellants can establish that they had entered into the lease agreements with Oil Companies upon the understanding that once earlier policy is restored, the land owners would be given the option of having the COCO units converted into regular retail outlet - Land owners who had entered into lease agreement after the suspension of policy dated 08.10.2002 cannot now claim any right on the basis of earlier policy in absence of any letter of intent - If any damage has been suffered by land owners then remedy lies elsewhere - Doctrine of promissory estoppels and legitimate expectation cannot be made applicable - Appeal dismissed : *Mohd. Jamal Vs. Union of India, I.L.R. (2013) M.P. 2757 (SC)*

- **Article 14 & 32** - Allotment of retail outlet - Application of petitioner was not properly considered as the owners of the land had given their affidavits that they will put their land at the disposal of the petitioner if the retail outlet dealership is granted to him - Non-assessment of availability of land not proper - Respondents directed to reassess the availability of land offered by Petitioner for the purposes of establishing retail outlet and assign him marks under this head - If petitioner found eligible, the respondents will grant retail outlet : *Mithlesh Bais Vs. Indian Oil Corporation, I.L.R. (2012) M.P. *27*

2. Discrimination

- **Article 14** - Discrimination - Unequals cannot claim equality - Discrimination means an unjust, an unfair action in favor of one and against another - It involves an element of intentional and purposeful differentiation and further an element of unfavourable bias, an unfavourable classification - Discrimination must be conscious and not accidental that arises from oversight which the State is ready to rectify - However, when discrimination is glaring, the State cannot take recourse to inadvertence in its action resulting in discrimination : *Narmada Bachao Andolan Vs. State of M.P., I.L.R. (2011) M.P. *113 (SC)*

- **Article 14 & 16** - Compassionate appointment - Challenge is made to the denial of compassionate appointment to married daughter - Petitioner also prayed for

quashment of clause 2.2 of the policy as it discriminates between sons and married daughters – Held – Policy of compassionate appointment cannot be said to be violative of Article 14 and 16 of the Constitution only because it provides certain classes of dependents for appointment on compassionate ground : *Shilpi Mishra (Smt.) Vs. State of M.P., I.L.R. (2015) M.P. 1463*

– **Article 14 & 16** - Discrimination - Petitioners/employees of FCI were governed by Central Dearness Allowance Pattern - Payment of gratuity to CDA employees is as per the provisions of Payment of Gratuity Act whereas to employees of Industrial Dearness Allowance are governed by recommendations of pay commission - Employees under CDA pattern can not claim benefit of gratuity limit of 10 lacs from 01.01.2006 as employees under IDA pattern have got as the employees of CDA pattern are governed by the provisions of Payment of Gratuity Act and the employees under CDA Pattern are class apart from IDA pattern - There was an opportunity to the petitioners to opt for IDA pattern, but the same was not availed - Now they can not turn around and say that they are treated differently than the IDA pattern employees - Petition dismissed : *A.K. Thakur Vs. Food Corporation of India, I.L.R. (2011) M.P. *146*

3. Law of Equality

- **Article 14** - Doctrine of Equality - Applies to all who are equally placed - Even among persons who are found guilty : *Rajendra Yadav Vs. State of M.P., I.L.R. (2013) M.P. 533 (SC)*

– **Article 14** – Negative Equality – Illegality can not be perpetuated under the garb of equal opportunity – A wrong order/decision in favour of any particular party does not entitle any other party to claim the benefits on the basis of wrong decision : *Rakesh Vs. State of M.P., I.L.R. (2011) M.P. 1901*

- **Article 14** - Right to equality - Article 14 guarantees to every citizen the right of equality before the law but it does not forbid different treatment of unequals : *Rupendra Kumar Bhatt Vs. State of M.P., I.L.R. (2013) M.P. 130*

– **Article 14 & 16** - Policy Decision – Policy decision has to pass the test of Article 14 & 16 of Constitution – If decision is deviating from normal and salutary rule of selection based on merit and is subversive of doctrine of equality, it cannot be allowed to remain stand and it should be free from vice of arbitrariness : *Jaiprakash Batham Vs. State of M.P., I.L.R. (2011) M.P. 1867*

– **Article 14 & 226** - Equality before law - Prima facie evidence for filing charge-sheet is available against the petitioner - He can not be exonerated or his prosecution be quashed merely on the ground that because of some supervening

circumstances another accused could not be proceeded against similarly. In view of the peculiar facts and circumstances of the case, it can not be held that the petitioner has been discriminated or denied equality before the law : *Ajoy Acharya Vs. State Bureau of Investigation, Bhopal, I.L.R. (2011) M.P. 2762 (DB)*

4. Reasonable Classification

– **Article 14** – Article 14 of the Constitution of India forbids class legislation but does not forbid reasonable classification – The classification in order to be reasonable must be founded on intelligible differentia and that differentia must have rational relation to the object sought to be achieved : *Sai Kripa Gramin Prathmik Sahakari Upbhokta Bhandar Maryadit, Nainpur Vs. State of M.P., I.L.R. (2012) M.P. 109 (DB)*

– **Article 14 & 16** - Right of equality - Forbids class legislation but does not forbid reasonable classification - Classification in order to be reasonable must be founded on intelligible differentia and that differentia must have rational relation to the object sought to be achieved - Object of Article 14 & 16 is to ensure equality to all those who are similarly situated : *Satyendra Pratap Singh Vs. State of M.P., I.L.R. (2011) M.P. 400 (DB)*

5. Right to Education

- **Article 14 & 21**, Maharshi Mahesh Yogi Vedic Vishwavidyalaya Adhiniyam (37 of 1995) - Validity of - Section 4(1), proviso to the Section 4 and to Section 9(2) of the 1995 Act by the Amendment Act 5 of 2000 - State legislature wanted to restrict the scope of study in the appellant University, to Vedic instructions alone - Held - Right to education is a fundamental right - By virtue of the amendment introduced an embargo has been clearly created in one's right to seek education - It would amount to an infringement - Therefore, it is a clear violation of Article 14 & 16 of the Constitution - Amendment introduced and also the insertion of proviso to Section 4(1) has to be held ultra vires : *Maharshi Mahesh Yogi Vedic Vishwavidyalaya Vs. State of M.P., I.L.R. (2014) M.P. 617 (SC)*

- **Article 14 & 41** - Right to Education - Article 41 obliges the State to make effective provisions for securing right to education - It is supplement to the Article 14 and therefore, is enforceable under Article 32 of the Constitution of India : *Purshottam Mahavidyalaya (Shri) Vs. State of M.P., I.L.R. (2013) M.P. 27 (DB)*

6. Service Matter

- **Article 14** - Appointment of Chancellor with the approval of State Government - Even after the amendment, management had the power of recommendation of a person of eminence and renowned scholar for the appointment of Chancellor - Said amendment

does not in any way offend Article 14 of the Constitution, nor does it affect the autonomy of the appellant University : *Maharshi Mahesh Yogi Vedic Vishwavidyalaya Vs. State of M.P., I.L.R. (2014) M.P. 617 (SC)*

– **Article 14 & 16** – Benefit already granted – Rule which seeks to reverse from an anterior date a benefit which has been granted or availed of i.e., promotion or pay scale is violative of Article 14 and 16 of Constitution of India : *Vidik Seva Karmik Sangh Vs. State of M.P., I.L.R. (2011) M.P. *91 (DB)*

– **Article 14 & 16** – Negation of Chance of Promotion – Chances of promotion are not conditions of Service, but negation of even the chance of promotion certainly amounts to variation in the conditions of service – It amounts to infractions of Article 14 & 16 of Constitution of India : *Panchraj Tiwari Vs. M.P. State Electricity Board, I.L.R. (2015) M.P. 281 (SC)*

– **Article 14 & 16** - Pick and Choose - Petitioners appointed to work in IREP whereas other employees were appointed to the services of Urja Vikas Nigam and were subsequently asked posted to work in IREP - Retention of employees appointed into the service of Nigam - Held - It cannot be said that the respondents have adopted the policy of pick and choose : *Vijay Kumar Bajpayee Vs. M.P. Urja Vikas Nigam Ltd., I.L.R. (2011) M.P. *51*

– **Article 14 & 16** – Termination – Petitioner’s candidature for appointment was rejected due to not having teaching experience of 10 years although she was having experience of 9 years 6 months and 20 days – She was appointed in terms of order passed by Hon’ble High Court provisionally – Subsequently as petition was dismissed W.A. was preferred but without awaiting the order of Division Bench, she was terminated – Held – Since she has been found eligible for appointment on possessing the alternative qualification by the Selection Committee of PSC, therefore, after recommendation of PSC, she was appointed by the State Government subject to final outcome of W.P. which though was dismissed but W.A. was allowed – Therefore, termination of the petitioner during the pendency of W.A. is unsustainable – Hence, quashed : *Ankita Bohare (Dr.) (Mrs.) Vs. M.P. Public Service Commission, I.L.R. (2015) M.P. 379*

– **Article 14 & 16** – W.P.No. 6294/2011 – Petitioner participated in the selection process and not found place in the merit list – In absence of any allegation of bias and malice against the Selection Committee, interference in the facts is not warranted, same is dismissed – Intervention application filed in W.P.No. 4086/2011 is also dismissed : *Ankita Bohare (Dr.) (Mrs.) Vs. M.P. Public Service Commission, I.L.R. (2015) M.P. 379*

– **Article 14 & 39(d)** – Equal Work for Equal Pay – Guruji and Adhyapak – Petitioners who were appointed as Guruji could not establish that their method of

recruitment, nature of work, quantum of work, quality of work, nature of responsibility, place of work etc. identical to that of Adhyapak – Wholesome equality could not be established by Petitioners : *Gopal Chawala Vs. State of M.P., I.L.R. (2012) M.P. 424*

7. Time Barred Applications

– **Article 14 & 16** – Intervention applications – Intervenors who are wait list candidates have filed applications after the lapse of more than 1½ years on expiry of the validity period – They have also not filed petition seeking appointment – Intervention is merit less – They are not entitled to any relief : *Ankita Bohare (Dr.) (Mrs.) Vs. M.P. Public Service Commission, I.L.R. (2015) M.P. 379*

– **Article 14 & 16** – Interpretation of Statute – If a statute prescribes a mode of doing an act in particular manner that has to be done in that manner alone – Other modes of its performance are forbidden : *Ram Kumar Baishander Vs. State of M.P., I.L.R. (2012) M.P. *65*

• – **Article 14 & 243-X(b)**, Municipal Corporation Act, M.P. (23 of 1956), Section 133 – Collection of Tax – Delegation of power to Municipal Corporations subject to limitations and conditions – Article 243-X was incorporated to empower the Municipal Corporation to levy such taxes which was originally levied by State Govt. so as to make them independent units of self governance – Section 133(1) of Act, 1956 was thereafter amended and provision was incorporated for the purpose of empowering the Municipal Corporations to impose any Tax or Fee – However, imposition of tax is by resolution of Municipal Corporation and is subject to control of the State Government – Discretion is given to Municipal Corporation in the matter of fixation of tax and selection of minimum or maximum as may be required, and merely because the minimum or maximum rate of tax has not been fixed, the provision cannot be termed as unconstitutional : *Hoarding Advertisement People Welfare Association Vs. State of M.P., I.L.R. (2015) M.P. 2611 (DB)*

- **Article 15 & 16** - Reservation - Vertical reservation is only a reservation under Article 16(4) of the Constitution of India and horizontal (Special) reservation is under Article 16(1) or Article 15(3) of the Constitution of India - While reservations made on social basis are not to be changed, the horizontal reservation are compartmentwise and in such circumstances, if the Rules permit, the vacancies available in horizontal reservation are to be filled in by similar category candidates : *Aditya Tiwari Vs. State of M.P., I.L.R. (2013) M.P. *41*

– **Article 16** – Equality of Opportunity – Petitioner appeared in final year examination of LL.B. however, result was not declared on the last date of submission of form for the post of Asstt. District Public Prosecution Officer – He was not given

provisional admission as he was not possessing requisite educational qualification – Held- Article 16 does not prohibit the State from prescribing requisite educational or eligibility qualifications while making appointments – Article 16 permits to prescribe reasonable and necessary eligibility qualifications – Petitioner was not having requisite qualification and therefore did not belong to same class of persons who possessed necessary qualifications – Petitioner cannot claim equality or similar treatment along with them – Petition dismissed : *Amit Sahni Vs. M.P. Public Service Commission, I.L.R. (2011) M.P. 1464 (DB)*

– **Article 16** – Filling up of vacancy which was not advertised – 7 posts of Deputy Director advertised – Appellant placed at serial No. 1 in waiting list – Appellant prayed for direction to fill up 8th post which was never advertised – Held – Post which was not subject matter of advertisement cannot be filled up from the waiting list as the same would be denial and deprivation of constitutional rights enshrined under Article 14 & 16 of Constitution of India : *Arvind Shrotri Vs. State of M.P., I.L.R. (2011) M.P. 1124 (DB)*

– **Article 16** – Higher Pay Scale – Scheme for – Employee who had completed 9 years of service on same post without promotion – Denial to petitioner on ground of adverse entries recorded against him in his ACR – Industrial Court in its order stated that there was no reason to record adverse entries against petitioner – Said order was affirmed by High Court – Denial not proper – Direction given to respondent to consider case of petitioner for grant of benefit of higher pay scale : *Abid Hassan Vs. M.P. State Electricity Board, I.L.R. (2014) M.P. *15*

– **Article 16** - Reservation - If there is only one post, the same could not be reserved for a reserved candidate : *Hari Charan Soni Vs. State of M.P., I.L.R. (2011) M.P. *8*

– **Article 16** – See – Educational Service (School Branch) Recruitment and Promotion Rules, M.P. 1982, Rule 11-B : *Gazetted Headmasters Pradeshik Sangh, Madhya Pradesh Vs. State of M.P., I.L.R. (2015) M.P. 2888 (DB)*

- **Article 16(4-B)**, Lok Seva (Anusuchit Jatiyon, Anusuchit Jan Jatiyon Aur Anya Pichhade Vargon Ke Liye Arakshan) Adhiniyam, M.P. 1994, Section 4 - Carry forward Vacancies - Held - The conjoint reading of both the provisions clearly states that the carried forward vacancies shall not form part of the vacancies of a later recruitment year nor it shall be counted to work out the percentage of reservation : *Shekhar Singh Chauhan (Dr.) Vs. State of M.P., I.L.R. (2013) M.P. 2806*

SYNOPSIS : Article 19

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| <p>1. Freedom of Speech and Expression</p> | <p>2. Freedom of Trade and Business</p> |
| <p>3. Miscellaneous</p> | |

1. Freedom of Speech and Expression

– **Article 19(1)(a) & (g)** – Freedom of Speech and to Assembly – Bundh/Strike – There may be a voluntary call to support (Bundh/Strike) but since it has an element of force it would not fall under Article 19(1)(a) &(g) : *Nagrik Upbhokta Margdarshan Manch Vs. State of M.P., I.L.R. (2012) M.P. 446 (DB)*

– **Article 19(1)(g)** – Freedom of speech and expression – Journalist reporting against corruption or misdeeds of public servants – Order passed against Journalist under M.P. Rajya Suraksha Adhiniyam based on petty cases – Impliedly means that attempt is made by administration to silence the voice of Journalist – Infringement of fundamental rights – Order passed by District Magistrate and of Commissioner quashed with cost of Rs. 10,000/- : *Anoop Saxena Vs. The Secretary, Ministry of Home Affairs, Bhopal, I.L.R. (2015) M.P. 1704*

2. Freedom of Trade and Business

- **Article 19** - Cancellation of registration as contractor - Respondents has not only cancelled the registration of petitioner as contractor but also black listed it for all times to come - Held - Petitioner has a fundamental right to do business - It is a common knowledge that contractors do engage sub-contractors for carrying out the work by reposing trust - And if the sub-contractor taking advantage of the trust reposed, plays fraud with the contractor as in the present case, the latter cannot be prohibited to do business forever - That action taken by the respondents against the petitioner is wholly disproportionate for the lapse on its part : *S.K. Jain (M/s.) Vs. State of M.P., I.L.R. (2014) M.P. 69 (DB)*

- **Article 19(1)(g)** - Fundamental Right to practice any profession or to carry on any occupation, trade or business - Petitioner was working as Constable in Police Department -Transport Department decided to recruit constables by open selection through Professional Examination Board - Petitioner participated in selection process and was declared successful - Police Department refused to issue NOC - Held - The word occupation includes an employment - The said right can be curtailed only as per Article 19(6) - No other condition which is not in consonance with "reasonable restrictions" can take away the fundamental right of a citizen to opt for any other profession or occupation

- Order refusing NOC quashed : *Manoj Singh Tomar Vs. State of M.P., I.L.R. (2013) M.P. 2366*

– **Article 19(1)(g)**, Petroleum Act (30 of 1934), Section 3 & Petroleum Rules, 2002, Rules 144 & 149 – Establishment of retail outlets by the Oil Company – NOC have been granted by various concerned department – Denial of NOC by NHAI based upon the guidelines – Held – Guidelines framed by the Indian Road Congress are not mandatory they have no statutory force – Therefore, a retail outlet can be established within the distance of 1000 meter of the existing fuel station – So, far as the toll plaza is concerned same is not in existence – Denial of establishment of retail outlets and denial of NOC to Indian Oil Corporation Ltd. amounting to violation of Fundamental Rights guaranteed under Article 19(1)(g) of the Constitution – Impugned order is set-aside : *Saroj Bhatia (Smt.) Vs. Indian Oil Corporation Ltd., I.L.R. (2015) M.P. 98*

3. Miscellaneous

– **Article 19** – Constitutionality of subordinate legislation is open to challenge on the ground that it is unconstitutional or violative of fundamental rights or ultra vires powers conferred by statutory provisions or totally unreasonable or arbitrary or is contrary to statutory provisions : *Shaheed Khan Vs. State of M.P., I.L.R. (2011) M.P. *117 (DB)*

- **Article 19** - National Flag - Flying National Flag is a fundamental right under Article 19 of Constitution of India : *Valmik Sakargayen Vs. State of M.P., I.L.R. (2012) M.P. 1536 (DB)*

– **Article 19(1)(a), 21 & 51A(g)** – Noise pollution – Authorities are under obligation to ensure strict compliance of restrictions prescribed for noise levels : *Rajendra Kumar Verma Vs. State of M.P., I.L.R. (2015) M.P. 1284 (DB)*

• – **Article 20(2)** – Double Jeopardy – Offence u/s 138 of Negotiable Instruments Act is altogether different from the offence punishable u/s 420 of IPC – Ingredient of both the offences are different, hence conviction in both offences separately is not prohibited under Article 20(2) : *Alok Vs. Praveen Kumar, I.L.R. (2014) M.P. 1112*

– **Article 20(2)** - See - Criminal Procedure Code, 1973, Section 300 : *Institute of Chartered Accountants of India Vs. Vimal Kumar Surana, I.L.R. (2011) M.P. 321 (SC)*

- **Article 20(3)** - Direction given by Family Court for medical examination of defendant regarding alleged impotency - Article 20(3) has no application as said Article gives protection to accused in criminal case and deals with criminal matters - In divorce case, husband can not be equated with an accused : *Amol Chavhan Vs. Smt. Jyoti Chavhan, I.L.R. (2011) M.P. 3076*

SYNOPSIS: Article 21

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| 1. Handcuffing of Prisoners | 2. Medical Treatment to Prisoners |
| 3. Right to Live with Dignity | 4. Right to Livelihood |
| 5. Speedy / Fair Trial | 6. Miscellaneous |

1. Handcuffing of Prisoners

– **Article 21** - Handcuffing of prisoners - Permission has to be obtained from concerned Magistrate before putting fetters or handcuffs to convict or undertrial prisoners - When person is arrested without warrant, the concerned police officer may handcuff him till taking to police station and thereafter to Magistrate if it is necessary to do so - After production before Magistrate, handcuff can be used only after obtaining orders from the Magistrate : *Mukesh Vs. State of M.P., I.L.R. (2011) M.P. *11 (DB)*

2. Medical Treatment to Prisoners

– **Article 21** - Medical Treatment to Prisoners – Availability of police force – Guidelines - Prisoners are sent to jail under the orders of the Court – Whenever any prisoner requires medical aid outside the jail, and force is demanded, a copy of the requisition should also be sent to Sessions Judge – If R.I. fails to provide force within 24 hours of requisition, he shall report to the Sessions Judge as to why he is unable to provide force – Sessions Judge shall supervise such cases and shall ensure that force is provided by R.I. – Jail authorities shall also prepare and send a statement every month to Sessions Judge that in how many cases force was not provided and could not send the prisoners to proper hospital : *Sukesh Vs. State of M.P., I.L.R. (2011) M.P. 2063*

3. Right to Live with Dignity

- **Article 21** - Right to live with Dignity - Freezing of bank account of the petitioner due to nonpayment of loan by his parents - Petitioner is neither borrower nor guarantor and not even a signatory of loan documents - Held - The action of the bank is without authority of law and violative of right to life : *Thakur Lal Dhakad Vs. State Bank of India, I.L.R. (2013) M.P. 1574*

- **Article 21 & 23** - Right to Life - Article 21 includes the right of women to live and to be treated with decency and proper dignity - Article 23 prohibits traffic in human beings and forced labour, selling and purchasing of woman is strictly prohibited : *Kunwar Singh Vs. State of M.P., I.L.R. (2013) M.P. *5*

4. Right to Livelihood

– **Article 21** - Blacklisting a Contractor - Is serious action as after blacklisting, he would not be able to take part in submitting tenders in future, which directly hits his right to life including right of meaningful livelihood enshrined under Article 21 : *Industrial Security Association Vs. State of M.P., I.L.R. (2011) M.P. 392 (DB)*

– **Article 21** - Life - Basic amenities in residential colony - Word 'life' has much wider meaning which includes right to livelihood, better standard of living, hygienic conditions in workplace and leisure - Non-providing of basic amenities in residential colony by concerned authority or agency would be violative of Article 21 : *Mohd. Nanhe Vs. State of M.P., I.L.R. (2011) M.P. 693 (DB)*

– **Article 21** - Livelihood - Petitioners were carrying on their small business by putting gumtis on the site where the huge complex has been constructed - State is under obligation as well as constitutionally bound to rehabilitate them as they were carrying on their business in the said compound before the construction of the complex - If kiosks in said complex are not allotted to the vendors then they may be provided suitable alternative place where they can earn their livelihood : *Thela Gumti Footpath Vyapari Seva Samiti Vs. State of M.P., I.L.R. (2011) M.P. *132*

– **Article 21 & 300-A** – Constitutional Right – The fundamental right of a farmer to cultivation is a part of right to livelihood – However, in case of land acquisition, the plea of deprivation of right to livelihood under Article 21 is unsustainable – Article 300-A is not only a Constitutional right but also a human right : *Narmada Bachao Andolan Vs. State of M.P., I.L.R. (2011) M.P. *113 (SC)*

5. Speedy / Fair Trial

– **Article 21**, Criminal Procedure Code, 1973 (2 of 1974), Section 309 – Speedy trial – Fair, just and reasonable procedure is implicit in Article 21 – This right comprehends all stages viz investigation, trial, inquiry, appeal, revision and retrial : *Shri Mahila Grih Udyog Lijjat Papad, Jabalpur Vs. State of M.P., I.L.R. (2014) M.P. 1641*

– **Article 21** – Fair Trial – Charge sheet filed before the Sessions Court – Trial is not vitiated unless and until it has caused prejudice to the accused : *Mohd. Juned Vs. State of M.P., I.L.R. (2015) M.P. 484*

– **Article 21 & 22**, Criminal Procedure Code, 1973 (2 of 1974), Section 439 – Bail on the ground of delay – Delay in trial on failure of prosecution to produce prosecution witnesses despite passage of time about six months – Breaches the fundamental right of liberty who has to suffer prolonged incarceration – Delay in trial

without any fault on the part of the applicant entitles him to bail : *Roopa @ Ramroop Vs. State of M.P., I.L.R. (2012) M.P. 657*

6. Miscellaneous

– **Article 21** – Meaningful living – House – M.P. Housing Board did not construct the house in accordance with specifications and also did not affix the fixtures as per specifications – Housing Board directed to pay compensation of Rs. 5,00,000/-, Rs. 25,000/- by way of cost and Rs. 5,000/- towards counsel fee : *Shakuntala Bhadouria Vs. M.P. Griha Nirman Mandal, I.L.R. (2014) M.P. 1706 (DB)*

– **Article 21** – Personal Liberty – Not only takes within its fold enforcement of the rights of an accused but also the rights of the victim : *Ramswarup Vs. State of M.P., I.L.R. (2011) M.P. 1133 (DB)*

- **Article 21** - Reasonable Restriction - If restraints are to be put or such restraining power is exercised, germane reasons are required to be given : *Preetam Sahu Vs. State of M.P., I.L.R. (2012) M.P. 1560*

– **Article 21** - See - National Security Act, 1980, Section 3(2) & (5) : *Islamuddin @ Chhotiya Vs. State of M.P., I.L.R. (2014) M.P. *3 (DB)*

- **Article 21 & 22(5)** - See - National Security Act, 1980, Section 3(2), 8 & 14(1)(a) : *Golu @ Anand Vs. State of M.P., I.L.R. (2013) M.P. 2795 (DB)*

- **Article 21 & 226** - Writ Petition - In-house dispute of election amongst the members/office bearers of private club - Held - Writ petition is not maintainable : *Rotary Club Birla Nagar Vs. Rotary International Through General Secretary, I.L.R. (2013) M.P. 1913*

– **Article 21-A**, Right of Children to Free and Compulsory Education Act, (35 of 2009), Section 12(1)(c) – Proviso – Right of education to all children of the age of 6 to 14 years – Admission of 25% of the strength of children in pre-school classes for free & compulsory education to weaker section – Held – It is obligatory to give such admissions as the Court has duty to enforce not only fundamental rights but also to enforce legal rights : *The Daly College, Indore Vs. State of M.P., I.L.R. (2015) M.P. 2387*

• – **Article 22(5)** – See – National Security Act, 1980, Section 8 & 14 : *Bhaiya @ Bhaiyalal @ Arvind Vs. State of M.P., I.L.R. (2014) M.P. 1730 (DB)*

- **Article 22(5) & 19** - See - National Security Act, 1980, Section 3(2) : *Deepak Purohit Vs. State of M.P., I.L.R. (2013) M.P. 1561 (DB)*

– **Article 23** – Beggar – Atleast minimum wages to an employee working in an establishment should be paid as a fundamental right of the employee and anything done

to deprive an employee of this right would be nothing but an act amounting to beggar : *Home Guard Sainik Evam Parivar Kalyan Sangh Vs. State of M.P., I.L.R. (2012) M.P. 382*

– **Article 23 & 43** – Honorarium – Honorarium is not Salary – However, whatever emoluments in the name of honorarium is being paid to Gurujis is used by them for the purpose of keeping their body and soul together – Various notifications show that wager payable to unskilled employee in private and Government employment is much higher than the honorarium paid to Guruji – Respondents directed to reconsider the amount of honorarium which is being paid to Guruji : *Gopal Chawala Vs. State of M.P., I.L.R. (2012) M.P. 424*

– **Article 28(1)** – Religious Instruction – Geeta Sar – Religious instruction has a restricted meaning and conveys that teachings of customs, ways of worship, practice and rituals can not be allowed in educational institutions – Gita is a book on Indian Philosophy and not a book on Indian Religion – Petition dismissed : *Catholic Bishop's Council Vs. State of M.P., I.L.R. (2012) M.P. 725 (DB)*

- **Article 32** - Bhopal Gas Tragedy - BMHRC - Audit of Accounts - Accounts of BMHRC and allied departments shall be audited by the Principal Auditor General (Audit), Madhya Pradesh : *Bhopal Gas Peedith Mahila Udyog Sangathan Vs. Union of India, I.L.R. (2012) M.P. *116 (SC)*

- **Article 32** - Bhopal Gas Tragedy - Monitoring Committee - State Govt. directed to provide proper infrastructure to the committees in the independent office space - Monitoring Committee would hear the complaints and can even call for the records and make its recommendations to the Govt. for taking appropriate steps - If no action is taken inspite of reminder, the Committee would be well within its jurisdiction to approach the High Court for appropriate directions - Monitoring Committee shall have no penal jurisdiction - Suggestions of Monitoring Committee shall be primarily recommendatory and reformative in nature - Empowered Monitoring Committee shall have complete jurisdiction to oversee the proper functioning of the BMHRC and other Govt. hospitals dealing with gas victims - Jurisdiction shall be limited to the problems relateable to the gas victims and/or the problems arising directly from the incident or problems allied thereto - Committee shall not have any jurisdiction over the private Hospitals, nursing homes and clinics at Bhopal - Union as well as State Govt. directed to render all assistance, financial or otherwise, to ensure that there is no impediment in carrying on of the research work by the specialized institutions - Monitoring Committee must operationalize medical surveillance, computerization of medical information, publication of health books etc. : *Bhopal Gas Peedith Mahila Udyog Sangathan Vs. Union of India, I.L.R. (2012) M.P. *116 (SC)*

- **Article 32** - Bhopal Gas Tragedy - Toxic materials/waste - Huge toxic materials/waste is still lying and its existence is hazardous to health - Union of India and State of M.P. are directed to take immediate steps for disposal of toxic waste in and around the factory on the recommendations of the Empowered Monitoring Committee, Advisory Committee and NIREH within six months : *Bhopal Gas Peedith Mahila Udyog Sangathan Vs. Union of India, I.L.R. (2012) M.P. *116 (SC)*

- **Article 32 & 226** - Bhopal Gas Tragedy - Writ petition pending before Supreme Court is transferred to High Court for better and effective control : *Bhopal Gas Peedith Mahila Udyog Sangathan Vs. Union of India, I.L.R. (2012) M.P. *116 (SC)*

- **Article 39 A**, Legal Services Authorities Act (39 of 1987), Section 12 - Free Legal Aid in appeals - Neither the Constitution nor the Legal Services Authorities Act makes any distinction between a trial and an appeal for the purposes of providing free legal aid to an accused or a person in custody - High Court was under an obligation to enquire from accused/appellant, whether he required legal assistance and if he did, it should have been provided to him at State expense : *Rajoo @ Ramakant Vs. State of M.P., I.L.R. (2012) M.P. 2085 (SC)*

- **Article 77(3) & 166(3)** - Rules of Business - Functions or duties which are vested in a State Govt by a Statute may be allocated to ministers by Rules of Business framed under Article 166(3) - Decision of any minister or officer under the Rules of Business is the decision of the President or the Governor and these Articles do not provide for delegation - Decisions made and action taken by minister or officer under the Rules of Business can not be treated as exercise of delegated power in real sense but are deemed to be the actions of the President or Governor and that are taken or done by them on the aid and advice of the Council of Ministers - Rules of Business operate even when a statute does not authorize sub-delegation : *Narmada Bachao Andolan Vs. State of M.P., I.L.R. (2011) M.P. *141 (SC)*

- **Article 136**, Criminal Procedure Code, 1973 (2 of 1974), Section 216, 227 & 228 - Alteration of Charges during trial - Supreme Court discharged the accused persons for offences punishable under Section 304 (Part II), 324, 326, 429 of I.P.C. on the basis of material produced by prosecution at the stage of framing of charges - Held - Order was passed at the stage of framing of charges - It did not remove from the Code Section 323, 216, 386, 397, 399 & 401 etc. or denuded a competent Court of the powers under these provisions - It is wrong to assume that the order of Apex Court is a fetter against the proper exercise of powers by a Court of competent jurisdiction under relevant provisions of Code - Mistake committed by Magistrate can be corrected by Revisional court - Curative petition dismissed : *C.B.I. Vs. Keshub Mahindra, I.L.R. (2011) M.P. 1798 (SC)*

- **Article 141** - Binding effect of the Precedents - Once the matter is considered by the Apex Court and the validity of the same was upheld, it must be presumed that all grounds which could validly be raised were raised and considered by the court - Decision would be binding - Every new discovery or argumentative novelty cannot undo a binding precedent - Further held, law declared by the Apex Court can only be substituted or clarified or reconsidered by the Apex Court alone and not by this court on the doctrine of per-incuriam and sub-silentio which are in the nature of exceptions to the rule of precedent in relation to the law declared under this article : *Scindia Devasthan Registered Charitable Trust Vs. Praveen Kumar Nigam, I.L.R. (2013) M.P. 2887 (DB)*

- **Article 142 & 226** - Powers of High Court - Supreme Court in exercise of powers under Article 142 of Constitution of India while holding that "Koshti" is not a part of "Halba" Tribe, moulded the relief by permitting the beneficiaries to retain the benefits of the degree - Powers under Article 142 of Constitution of India are not available to High Court - Benefit of directions issued by Supreme Court cannot be extended to the Petitioner : *Urmila Koshti (Smt.) Vs. Secretary, M.P. State Electricity Board, Jabalpur, I.L.R. (2013) M.P. 1022*

- **Article 162, Seventh Schedule List I Entry V** - See - Arms Rules, 1962, Rule 54 : *Mahendra Bhatt Vs. State of M.P., I.L.R. (2012) M.P. 3021 (DB)*

- **Article 166** - Conduct of Govt. Business - Provisions of Article 166 are only directory and not mandatory in character - Council of Ministers is permitted to delegate the power to amend its decision to a Committee of Ministers consisting of the Ministers-in-charge of the Departments concerned and the Chief Minister - Delegation of power is permissible and Rules of Business are directory : *Narmada Bachao Andolan Vs. State of M.P., I.L.R. (2011) M.P. *141 (SC)*

- **Article 166** - Rules of business - Decision to grant higher AGP was taken by Cabinet of Ministers - Impugned order withdrawing higher AGP was not placed before Cabinet of Ministers - Order is a nullity : *Ramlala Shukla (Dr.) Vs. State of M.P., I.L.R. (2015) M.P. 1415*

- **Article 215** - Contempt - Applicant while making a prayer for expeditious disposal not apprising the Court of earlier order staying the proceedings - Such suppression may amount to contempt of Court - Contempt Petition dismissed with an exemplary cost of Rs.5000/- : *Arun Kumar Vs. S.K. Shrivastava, I.L.R. (2011) M.P. 444*

- **Article 215** - Contempt - Further proceedings before Trial Court stayed in civil revision filed by applicant - Applicant made prayer for speedy disposal of suit in another pending civil revision - Direction for early disposal preferably within six months given - Suit decided by Trial Court accordingly - Applicant did not bring the order of stay into

notice of Court - Trial Court not found to have deliberately violated the earlier stay order - No contempt is made out : *Arun Kumar Vs. S.K. Shrivastava, I.L.R. (2011) M.P. 444*

- **Article 215** - Contempt of Court - Directions were issued to allot students against vacant seats in the respective institutions for admission in B.Ed. course - Review petition filed by State dismissed - S.L.P. filed before Supreme Court also dismissed - After dismissal of review petitions time was sought for compliance of the order - Non-allotment of seats on the ground of another order passed by Principal bench - Principal bench had not decided the matter on merits but had directed to decide the representations - It is crystal clear that directions issued have not been complied with - Contempt is made out - Respondent is directed to remain present for hearing on the question of punishment : *Gunmala Shanti Foundation Trust's (Smt.) Vs. V.S. Niranjana, I.L.R. (2013) M.P. 141 (DB)*

- **Article 215**, Contempt of Courts Act (70 of 1971), Section 20 - Contempt of High Court - Limitation - Period of one year as mentioned in Section 20 of Act, 1971 cannot be made applicable to a case of Contempt of High Court - Article 215 gives a supreme position to the High Courts compared to the lower Courts : *Sanman Singh Vs. Sumer Singh, I.L.R. (2012) M.P. 2768 (DB)*

SYNOPSIS: Article 226

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1. Allotment

- **Article 226** - Allotment of LPG Distributorship - Rejection - Opportunity of hearing - Held - Misstatement/misrepresentation by the candidate with regard to his marital status in the application form - No right is created - Hence, no question of opportunity of hearing arises to reject the candidature - Further held the candidature and the eligibility of the petitioner is to be tested on the anvil of the eligibility conditions laid down in the brochure : *Jitendra Sharma Vs. Bharat Petroleum Corporation Ltd., I.L.R. (2014) M.P. 108*

- **Article 226** - Allotment of shops - Promissory Estoppel - Petitioners were carrying on their small business on the land which was used for constructing huge complex - Petitioners relied upon pamphlet and invitation card to contend that there was promissory estoppel to allot shops to them - Held - There is nothing in pamphlet and invitation card which could have triggered the principle of promissory estoppel - Petitioner not entitled for the relief they have claimed : *Thela Gumti Footpath Vyapari Seva Samiti Vs. State of M.P., I.L.R. (2011) M.P. *132*

- **Article 226** - Distributorship of LPG - Selection - Challenge as to - Respondent No. 4 challenged the selection on the ground that appellant was not eligible for consideration for allotment of LPG Distributorship on the date of application as he did not have the title of the land mentioned by him in his allotment application - Held - Appellant undisputedly acquired an enforceable right in respect of the land and, therefore, it can not be said that he was ineligible for his consideration for allotment of LPG Distributorship in terms of the advertisement : *Jinendra Kumar Jain Vs. Union of India, I.L.R. (2011) M.P. *122 (DB)*

- **Article 226** - Fixation of Price of Land - Allotment or Registration - Self Financing Schemes - Drawal of Lottery - Applicant is required to pay 10% of the price at the time of allotment and remaining in installments which are already fixed - Nothing is required by the Board thereafter - Process of Registration is in fact a process of allotment - Collector's guidelines to determine the price of land as existing at the time of registration may properly be taken into consideration to determine price of land - To use Collector's guidelines as existing on the date of handing over of possession as such is to allow the Board to earn profit, which is contrary to the concept of Self Financing Scheme : *M.P. Housing & Infrastructure Development Board Vs. Dr. Sudha Jain, I.L.R. (2014) M.P. 2012 (DB)*

2. Alternative Remedy

- **Article 226** - Alternative and efficacious remedy - Petitioner has challenged the disciplinary proceedings and dismissal from service - Petitioner has efficacious and

alternative remedy of raising dispute u/s 2(A) of Industrial Disputes Act - Petition disposed off with liberty to take recourse of remedy available under Industrial Disputes Act : *Kamlesh Sharma Vs. Divisional Manager, I.L.R. (2011) M.P. 703*

– **Article 226** - Alternative Remedy - Bar - Alternative remedy is not an absolute bar and it is a self imposed restriction - Once the High Court entertains the writ petition and hears the same on merits, the petition thereafter can not be rejected on the ground that statutory remedy is not availed off : *Ramkishore Tiwari Vs. State of M.P., I.L.R. (2011) M.P. *130 (DB)*

– **Article 226** – Alternative Remedy – Despite availability of alternative remedy the petition can be entertained – It is a matter of policy/discretion and is not of a compulsion depends upon the circumstances of each case – One such ingredient for entertaining the petition is violation of principle of natural justice : *Shantimal Bhandari Vs. State of M.P., I.L.R. (2014) M.P. 2841*

- **Article 226** - Alternative Remedy - Exhaustion of alternative remedy is not a rule of law but is a rule of policy, convenience and discretion - It is not a compulsion but discretion : *Central Homeopathic & Biochemic Association, Gwalior Vs. State of M.P., I.L.R. (2013) M.P. 837*

- **Article 226** - Alternative Remedy - High Court may exercise power in atleast three contingencies (i) Where the writ petition seeks enforcement of any of Fundamental Rules (ii) Where there is failure of principles of natural justice (iii) Where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged : *Bansal Infratech Synergies India Ltd. Vs. State of M.P., I.L.R. (2013) M.P. 293 (DB)*

– **Article 226** – Alternative Remedy – Notices issued about 1-1/2 years back and interim order granted – Reply, rejoinder and various applications filed – Alternative remedy would not operate as a bar where the writ petition seeks enforcement of any of fundamental rights, where there is violation of principles of natural justice or where the order is wholly without jurisdiction or the vires of an Act is challenged : *Virendra Kumar Maheshwari (Dr.) Vs. State of M.P., I.L.R. (2012) M.P. *50*

- **Article 226**, Municipal Corporation Act, M.P. (23 of 1956), Section 149 - Alternative Remedy - Availability of alternative remedy to file appeal does not take away the jurisdiction of High Court - It is a matter of discretion of the High Court to interfere or not to interfere : *Satna Diocesan Society Vs. The Municipal Corporation, Rewa, I.L.R. (2013) M.P. 367*

– **Article 226** – Writ Jurisdiction – Alternative remedy – Objection can be sustained only when the impugned order/notice was passed in accordance with the

provisions of law – If any impugned order is not passed in accordance with the provisions of law, then it is not necessary for the party to avail the alternative efficacious remedy but he can very well approach this court under this Article : *Srinath Awas Vikas Pvt. Ltd., Gwalior Vs. State of M.P., I.L.R. (2014) M.P. 1293 (DB)*

– **Article 226** – Writ Petition – Alternative Remedy — Appellant asserted that no notice under Section 13(2) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002 was issued whereas counsel for the respondent-Bank has stated that notice under Section 13(2) of the Act was served by affixture and panchnama was prepared – The question whether under Section 13(2) of the Act was served on the appellant or not, is a disputed question of fact which can not be adjudicated in a writ petition – All the grounds with regard to procedural irregularity in taking the measures under Section 13(4) of the Act can very well be agitated and adjudicated in the appeal preferred under Section 17 of the Act – Writ petition on the ground of availability of alternative remedy, can be dismissed – Writ appeal dismissed : *Basant Kumar Jain Vs. State Bank of India, I.L.R. (2012) M.P. 25 (DB)*

– **Article 226** - Writ Petition - Alternative Remedy - Challenge of termination order being on the basis of non-compliance of the Rules of 1999 - Alternative remedy will not bar the writ petition : *Dinesh Pawar Vs. State of M.P., I.L.R. (2011) M.P. 2337*

- **Article 226** - Writ Petition - Alternative remedy - Court will consider whether the petition should not be entertained due to existence of an alternative remedy and depending upon the facts of each case and the nature of violation : *Anand Kumar Dubey Vs. Jabalpur Co-operative Milk Producers Union Ltd., I.L.R. (2013) M.P. 538 (FB)*

– **Article 226** - Writ Petition - Alternative Remedy - Disciplinary authority passed the impugned order and inflicted the punishment - This order is admittedly appealable under Rule 23 of M.P. C.S. (CCA) Rules, 1966 - Held - The Rules are complete code and provide in house redressal of grievance - It can not be said that efficacious remedy is not available to the petitioner - No interference is warranted : *Brijmohan Singh Vs. State of M.P., I.L.R. (2011) M.P. 2753*

– **Article 226** – Writ Petition – Alternate Remedy – The bar of alternative remedy is a self imposed restriction and it is not a fit case to direct the writ petitioners to avail the alternate remedy, specially when they have raised jurisdictional issues, alleged violation of principles of natural justice and have also given reasons as to why the alternate remedy is not effective and efficacious : *Madhya Pradesh Cricket Association Vs. Shri B.S. Solanki, I.L.R. (2014) M.P. 1820*

- **Article 226 & 227** - Alternative Remedy - For invoking jurisdiction under Article 226 & 227, the alternate remedy is not absolute bar : *Pan Steels Pvt. Ltd. Vs. M.P. State Electricity Board, I.L.R. (2013) M.P. 1822*

- **Article 226 & 227**, Motor Yan Karadhan Adhinyam, M.P. 1991, Section 16(3) & 16(4) – Writ Petition – Motor vehicle seized u/s 16(3) of the Adhinyam – Appropriate remedy for petitioner is to approach the authority concerned by filing an application alongwith all relevant documents – Petitioner can not be permitted to by pass the statutory procedure and directly approached this Court under Article 226 & 227 : *Shailendra Kumar Motwani Vs. State of M.P., I.L.R. (2011) M.P. 2153*

3. Commercial Tax

- **Article 226** – Recovery of the arrears of commercial tax – Petitioner’s application for registration for grant of benefits under the scheme was rejected on the grounds (a) that it is not a new industry; and (b) that there are dues of commercial tax on the earlier unit which has been purchased by the petitioner – Held – The intention of the scheme is not to deny the benefits to the genuine new industrial undertakings – That the literal construction of the clauses of negative list as has been tried to make by the respondents would result in defeating the very purpose of the scheme – The respondents in place of taking into consideration that the petitioner is a bonafide auction purchaser of the erstwhile unit and had nothing to do with the earlier unit or its dues have attempted to bring the petitioner in the negative list merely because the petitioner has established its unit by purchasing the earlier unit – Such an approach of the respondents is contrary to the spirit of the scheme and as such cannot be allowed to sustain : *Bhagwan Motors Pvt. Ltd. (M/s.) Vs. Madhya Pradesh Trade & Investment Facilitation Corporation Ltd., I.L.R. (2014) M.P. 2509 (DB)*

4. Cost/Compensation

- **Article 226** - Writ Petition - Cost of litigation - Petitioner applying for permission of construction, which was refused on account of non-issuance of certificate of completion of development work - Municipal Corporation, though having ample remedial power chooses to remain inactive doing nothing except blaming the colonizer society - Held - The respondent Corporation has thus exposed itself to the liability of bearing the cost of this avoidable litigation - Rs. 15,000/- quantified as cost : *Ramkatori Goyal (Smt.) Vs. Municipal Corporation, I.L.R. (2013) M.P. 2513 (DB)*

- **Article 226** - Writ for Exemplary Cost & Compensation - The basic question is whether for every infraction of public duty by public officer, the respondents are bound to give compensation ? - Held - It would not be correct to assume that every minor infraction of public duty by public officer would commend the court to grant the

compensation - Further before exemplary damages can be awarded, it must be shown that some fundamental right under Article 21 has been infringed by arbitrary or capricious action on the part of public authorities/functionaries - The present petitioner has not established the aforesaid aspect and has filed this petition after three years - Not entitled to compensation & cost : *Samiksha Gupta Vs. Board of Secondary Education, M.P., I.L.R. (2014) M.P. 105*

- **Article 226, 300A & 19**, Urban Infrastructure Development Scheme for Small and Medium Towns (UIDSSMT), Land Acquisition Act (1 of 1894), Section 4 - Respondents encroached upon the land of petitioner for construction of Stop Dam - During pendency of petition, notification under Section 4 of the Act, 1894 for acquisition of land issued - Held - Property rights of petitioners were grossly violated - Plan for construction of Stop Dam was neither published nor exhibited to the people who were going to be effected - Subsequent notification issued is also vague - However, in view of Public Interest involved instead of directing to demolish the construction, respondents are directed to pay compensation at market price on the date of notification within 2 months - Rs. 50,000/- as damages be also paid - Petition allowed : *Avinash Pathak Vs. State of M.P., I.L.R. (2012) M.P. *75*

5. Court Fees

- **Article 226**, Court Fees Act (7 of 1870), Section 17 - Payment of Court Fees on Petition - Where more than one person have joined in one petition and are seeking relief on distinct and separate causes of action, then each of the petitioner is required to make payment of separate court fees : *Rakesh Gautam Vs. State of M.P., I.L.R. (2011) M.P. 2734 (DB)*

6. Delay and Laches

- **Article 226** - Delay & laches - Petitioner came to know about the promotion of the respondent No.5 in the year 2006 - He submitted an application dated 11.08.2006 to the Municipal Council for supply of certain documents - Thereafter he filed the present petition - The petition could not be dismissed on the ground of delay and laches : *Hari Charan Soni Vs. State of M.P., I.L.R. (2011) M.P. *8*

- **Article 226** - Delay and laches - The delay may not defeat the claim for relief unless the position of the other side is so altered which cannot be retracted on account of lapse of time or inaction on the other party - However, the question of delay has to be examined in the facts of each case : *N.K. Jain Vs. State of M.P., I.L.R. (2013) M.P. 2360*

- **Article 226** - Delay - Claim of Petitioner rejected in the year 2010 - Petitioner approached the court thereafter - Prior to rejection of her claim she was not having any

cause of action – There is no delay or laches : *Keshar Bai (Smt.) Vs. Western Coalfields Ltd., I.L.R. (2015) M.P. 328*

- **Article 226** - Writ Petition - Delay in filing - Delay cannot be a ground for non-payment of retiral dues : *Bhaskar Ramchandra Joshi Vs. State of M.P., I.L.R. (2013) M.P. 1907*

- **Article 226** - Writ Petition - Delay in filing - Respondents continuously recommended the case of the petitioner for release of the amount in question which gave bona fide impression to the petitioner that his grievances will be redressal departmentally - Petitioner cannot be termed as sleeping litigant or a fence sitter - Cannot be thrown on the ground of delay and laches : *Bhaskar Ramchandra Joshi Vs. State of M.P., I.L.R. (2013) M.P. 1907*

– **Article 226** - Writ petition - Justifiable excuse for delay in filing - Filing of a review and its pendency would be a justifiable excuse for delay, provided such review is permissible under the relevant service rules - A review application filed without any legal provision can not provide an excuse for delay or laches : *Munni Shrivastava (Ku.) Vs. State of M.P., I.L.R. (2011) M.P. 2326 (DB)*

7. Distinction between Article 226 and 227

– **Article 226 & 227** - Distinction - Powers under Article 226 and 227 are distinct, separate and operate in different fields - High Court under Article 226 quashes or annuls an order or proceedings but in exercise of power under Article 227 High Court apart from annulling the proceeding, can also substitute the impugned order by order which the inferior Tribunal should have made - However power should be exercised sparingly only to keep the subordinate Courts and Tribunals within the bounds of their authority and to see that they obey the law : *Shin-Etsu Chemical Co. Ltd. Vs. Vindhya Telelinks Ltd., I.L.R. (2011) M.P. *156*

- **Article 226 & 227** - Remedy under - Petition being filed against the order of the Tribunal and its subordinate Courts constituted under the Societies Act could be entertained under the superintendence of power of this Court enumerated under Article 227 only and not under Article 226 : *Satya Pal Anand Vs. The Punjabi Housing Cooperative Society Ltd., I.L.R. (2011) M.P. 2983 (DB)*

8. Equitable Relief

– **Article 226** - Writ Petition - Petitioner-Company has not placed all the facts before the Court rather it has concealed material facts in order to camouflage its activities - Prima-facie, the petitioner-company has played fraud with the Court - The petitioner-company is not entitled to any relief under Article 226 of the Constitution, which is a

discretionary and equitable relief : *P.A.C.L. India Ltd. Vs. State of M.P., I.L.R. (2011) M.P. *125 (DB)*

– **Article 226** – Writ Petition – Petitioners sought relief by making false averments in the Writ Petition – Act of petitioner is not fair – Petitioner not coming with clean hands, are not entitled to any relief – Petition dismissed by imposing cost of Rs. 25,000/- – Writ petition dismissed : *Pragati Petrol Pump (M/s.) Vs. Indian Oil Corporation, I.L.R. (2014) M.P. 1270*

– **Article 226** - Conduct of Litigant - Writ remedy is an equitable one - Court certainly bear in mind the conduct of the party who invokes the jurisdiction of the High Court - Litigant must come with clean hands, clean heart, clean mind and clean objective - He should disclose all facts without suppressing anything - Litigant cannot be allowed to play hide and seek - Suppression of fact is not an advocacy - It is jugglery, manipulation, manoeuvring or misrepresentation - In case of suppression of facts, Court can refuse to proceed further with the examination of the case - Such a litigant requires to be dealt with for Contempt of Court for abusing the process of Court - Litigation in the Court of law is not a game of chess - Petition dismissed - Notice issued to Petitioner as to why proceedings for contempt of Court be not initiated against him : *Rajendra Singh Rawat Vs. State of M.P., I.L.R. (2012) M.P. 2660*

- **Article 226** - Suppression of facts - Petitioners have not come to this Court with clean hands - So, on account of suppression of material facts petition deserves to be dismissed : *Satkar Caterers (M/s.) Vs. Union of India, I.L.R. (2013) M.P. 2123 (DB)*

9. Escalation of Price

– **Article 226** – Escalation of price of flat – Additional demand over and above the cost of flat declared in broucher made by Housing Board from allottees – Part of additional demand struck down by Writ Court in writ petition without any reason in the order – Order of Writ Court challenged by Housing Board as well as allottees – Writ Court did not give any reason in support of its conclusion – Matter remanded back to Writ Court : *C.M. Vyas Vs. M.P. Housing Board, I.L.R. (2011) M.P. 1838 (DB)*

– **Article 226** – Escalation of price of house – Petitioner booked a MIG house with M.P. Housing Board under self financing scheme – Payments are made as per schedule – Increase in plinth area, cost enhanced (first time) – Again due to construction of retention wall cost enhanced (second time) – Again further enhancement – Held – Price escalation in present case does not suffer from arbitrary action – No material brought on record to doubt the assessment in respect of cost enhancement – Petition dismissed : *Sandipika Sharma Vs. M.P. Housing Board, I.L.R. (2012) M.P. *49*

10. Estoppel

- **Article 226**, Finance Code Bill (M.P.), Rule 84 and Evidence Act (1 of 1872), Section 115 - Correction of date of birth in service record - Initially date of birth was recorded on the basis of Higher Secondary Mark Sheet in 1986 - No clerical error - Never objected up to 2009 - No step for modification - Now on the basis of duplicate certificate of Primary School the change in date of birth could not be permitted under existing rule - Principle of estoppels under Section 115 of Evidence Act also do not support to petitioner - Petition dismissed : *Chintaman Masulkar Vs. State of M.P., I.L.R. (2012) M.P. 2353*

- **Article 226 & 227** - Promissory estoppel - Legality, Validity & Propriety of Govt. Orders - Promissory Estoppels against the Government - Cannot be pressed into service against Government, when Government is fulfilling public duty as per the public policy - Government is always at liberty to examine the record with accuracy and precision and ensure that public / Govt. land is not misused or enjoyed by anybody without there being any entitlement : *Mukesh Singh Chaturvedi Vs. State of M.P., I.L.R. (2013) M.P. 1339*

11. Examination

- **Article 226** – Examination – Question and Answer – Judicial Review of incorrect questions and wrong answers – Held – Limited to the extent of seeing whether any reasonable body of men well-versed in the particular subject would regard it as correct : *Alok Gupta Vs. M.P. Professional Examination Board, I.L.R. (2012) M.P. *11*

- **Article 226** – Impact of questions – Effect of discrepancy in framing questions and answers has similar impact on all the candidates, no interference is warranted : *Alok Gupta Vs. M.P. Professional Examination Board, I.L.R. (2012) M.P. *11*

- **Article 226** – Questions – Discrepancy in framing of questions – Held – Writ Court, in absence of any malice against experts, can not sit as an Appellate Authority to examine the same unless the questions and answers selected by the experts are proved to be wrong : *Alok Gupta Vs. M.P. Professional Examination Board, I.L.R. (2012) M.P. *11*

- **Article 226** – Revaluation of Answer Sheets – Petitioner must averr that what was the material on which the petitioner answered the question, what was the answer given by the petitioner and how the petitioner says that the answer books are not evaluated properly : *Dheeraj Pandey Vs. State of M.P., I.L.R. (2014) M.P. 1027 (DB)*

- **Article 226, 14 & 16** - Extension of time for depositing documents - Petitioner a successful candidate of State Services Examination 2010 could not submit requisite documents before the Competent Authority by the cut-off date of 21.05.2013 as he failed to note the result of the main examination on internet on 27.04.2013 - Petitioner or any

candidate has no indefensible, constitutional or statutory right to claim relaxation of the date only for himself in absence of any justifiable reason - Relaxation as prayed by the petitioner to accept his document beyond cut-off date would offend Article 14 & 16 of the Constitution - Prayer of the petitioner rejected : *Somdutt Dixit Vs. M.P.P.S.C., I.L.R. (2014) M.P. 319*

12. Habeas Corpus

- **Article 226** – Habeas Corpus – Age of girl – Petitioner claims to have married with Corpus – Corpus also expressing her will to live with her husband/petitioner – Under Muslim law, a girl is competent to enter into a marriage contract if she has attained puberty – Under Muslim Law puberty is presumed on completion of the age of 15 years – As corpus is above the age of 15 years, she is competent to enter into a marriage contract – Corpus permitted to live with petitioner : *Rashid Khan Vs. State of M.P., I.L.R. (2015) M.P. 879*

- **Article 226** - Habeas Corpus - Date of Birth - Date of birth recorded in school register cannot be relied upon in absence of any material that on what basis such entry was recorded - Ossification test shows that the corpus is major - She is free to decide that with whom she wants to live : *Dilip Singh Gurjar Vs. State of M.P., I.L.R. (2013) M.P. 1521 (DB)*

- **Article 226** – Habeas Corpus – Illegal detention of petitioner’s husband – In the Inquiry report by State Government there is specific finding about her husband been kept forcibly under illegal detention – Held – More than 1 ½ year has elapsed no report has been submitted – Slow pace of investigation by the Special Task Force has started creating doubt on its credibility – Complete investigation fairly and submit report as early as possible but not later than three months from today – Petition allowed with costs of Rs.1,000/- payable to petitioner by the State Government : *Neetu Bai (Smt.) Vs. State of M.P., I.L.R. (2012) M.P. 719 (DB)*

- **Article 226** - Habeas Corpus Petition - Minor girl is adamant and not willing to go with parents - Court considering the fact that on earlier occasion also she left the parents without information, girl child is directed to be sent to Nari Niketan with further direction to provide her counselling once in a week upto four weeks - Matter posted for further review after four weeks : *Manohar Jatav Vs. State of M.P., I.L.R. (2012) M.P. 1900*

- **Article 226** - Writ of Habeas Corpus - After arrest of the forest officials they were produced before the Chief Judicial Magistrate, who sent them to the judicial custody - Their detention cannot be said to be illegal, warranting interference and to issue writ in

the nature of Habeas Corpus : *Yogesh @ Yogendra Vs. State of M.P., I.L.R. (2013) M.P. 299 (DB)*

13. Investigation by C.B.I./STF

– **Article 226** – Investigation by C.B.I. – Brother of petitioner taken away by ATS Mumbai in connection with investigation of Malegoan Bomb Blast Case – ATS Mumbai also admitted that brother of petitioner was taken by them to Mumbai – Brother of Petitioner missing and did not return back - However, ATS Mumbai alleged that he was released for bringing his I.D. proof – No co-operation is being extended by ATS Mumbai to the local police for search of missing person inspite of various directions – Held – Fit case for handing over the investigation regarding disappearance of brother of petitioner to CBI : *Ramswarup Vs. State of M.P., I.L.R. (2011) M.P. 1133 (DB)*

– **Article 226** – Investigation by C.B.I. – Minor girl alleged to have been kidnapped by forest officials – In Habeas Corpus Petition, High Court initially found that investigation by Police is not proper – However, subsequently relying on statements of forest officials and ignoring the statements of eye witnesses, report was filed by police stating that she was not kidnapped – Habeas Corpus petition was accordingly dismissed – Considering the facts and circumstances, investigation handed over to C.B.I : *Alsia Pardhi Vs. State of M.P., I.L.R. (2014) M.P. 1979 (SC)*

– **Article 226** – Transfer of investigation to CBI – Maintainability of Writ Petition – No further communication, representation, Public Interest Litigation, application or writ petition can be filed or will be entertained by Court concerning investigation of PMT VYAPAM examination scam criminal cases assigned to STF unless routed through SIT : *Digvijay Singh Vs. State of M.P., I.L.R. (2015) M.P. 1230 (DB)*

– **Article 226** – Transfer of Investigation to CBI – Merely because of immense amount of public interest, public outcry and public demand, investigation cannot be transferred to CBI : *Awadhesh Prasad Shukla Vs. State of M.P., I.L.R. (2014) M.P. 2884 (DB)*

– **Article 226** – Transfer of investigation to CBI – Special Investigation Team constituted consisting of a former High Court Judge as Chairman and former IPS not below the rank of A.D.G. Police and former IT professionals – SIT shall supervise the investigation of all criminal cases concerning PMT-VYAPAM – SIT can issue instructions to Head of STF – Any information or representation regarding investigation entrusted to STF shall be submitted to the Chairman SIT who after due scrutiny may take necessary follow up action including issue of instructions of Head of STF – All logistic support to SIT shall be provided by the State – None of the officials of STF who are investigating PMT VYAPAM case shall be transferred or shall be entrusted with any

other additional work – The entire material whether it is in favour of accused or against prosecution be made part of charge-sheet unless the confidentiality and privilege is claimed in respect of any confidential document – STF shall record the statement of every petitioner who is interested in getting their statements recorded – STF to keep close watch on print and electronic media : *Digvijay Singh Vs. State of M.P., I.L.R. (2015) M.P. 1230 (DB)*

– **Article 226** – VYAPAM Scam – Investigation transferred by State Govt. to STF headed by ADGP – Merely because STF is one of the wing of State Government, does not mean that it will not carry out investigation independently and impartially or will act on the instructions of the Higher Authorities – After analysis of material produced, the STF is proceeding in right direction and without any bias – However the option of monitoring investigation done by STF by the Court is adopted – Petition disposed off : *Awadhesh Prasad Shukla Vs. State of M.P., I.L.R. (2014) M.P. 2884 (DB)*

– **Article 226** – Education – Professional Examination Board (Vyapam) conducting examination in 2012 for Selection of Junior Supply Officers and Inspectors (Weights and Measures) – Petitioners were appointed on those posts – Irregularities were committed in that examination – Vyapam cancelling the results of candidates, leading to filing of the present writ petitions – Held – VYAPAM did not set up any enquiry Committee of its own – VYAPAM had not independently inquired into the factual aspects, abdication of duty by VYAPAM – It is wrong to say that inquiry by VYAPAM would be empty formality – The impugned common order dated 13.06.2014 quashed and VYAPAM granted liberty to commence independent inquiry on the basis of information received from the investigating agency (S.T.F.) : *Shishuvendra Singh Tomar Vs. State of M.P., I.L.R. (2015) M.P. 2579 (DB)*

14. Judicial Review

– **Article 226** – Contract – Judicial Review – High Court in exercise of power under Article 226 would not normally grant the relief of specific performance of contract : *Sri Ram Builders Vs. State of M.P., I.L.R. (2015) M.P. 1 (SC)*

– **Article 226** - Contract - Judicial Review - Terms of invitation are not open to judicial scrutiny because invitation to tender is in the realm of contract - Authority inviting tender can fix its own terms of invitation to tender - Court can examine the decision making process and interfere only if it is found to have vitiated by malafide and arbitrariness - Authority is the best judge to prescribe the terms and conditions of tender and Courts can not say that whether the conditions prescribed in the tender under consideration were better than one prescribed in earlier tender invitations : *L.M.P. Precision Engineering Co. Pvt. Ltd. Vs. Union of India, I.L.R. (2011) M.P. 2347 (DB)*

– **Article 226** – Departmental Enquiry – Judicial Review – Charge sheet issued against Petitioner on the allegation that while working as District and Sessions Judge he had granted anticipatory bail to several persons by falsely recording the undertaking given by the Investigating Officer – Writ Petition is not maintainable against a charge sheet as issuance of same does not give rise to a cause of action on account of fact that it does not adversely affect the rights of a party except in cases where the charge sheet has been issued by an authority not competent to do so – Correctness or veracity of charges cannot be looked into in writ proceedings – Charge sheet cannot be quashed at the initial stage on merits – There is no allegation that charge sheet has been issued by an incompetent authority – Petitioner would be at liberty to raise all these objections and grounds in the departmental enquiry that is pending against him – Petition dismissed : *Jagdish Baheti Vs. High Court of M.P., I.L.R. (2015) M.P. 2075 (DB)*

– **Article 226** – Departmental Enquiry – Judicial Review – Scope – Court is not constituted as a Court of Appeal under Article 226 of Constitution – Court concerned to determine whether the enquiry is held by a competent authority and whether rules of Natural Justice are not violated – Whether there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that delinquent officer is guilty – High Court can not review the evidence and to arrive at an independent finding – If the decision of authority is vitiated by considerations extraneous to the evidence and merits case, or if conclusion made by authority, is wholly arbitrary or capricious and no reasonable person could have arrived at such a conclusion, only then interference is permissible : *Yogiraj Sharma (Dr.) Vs. State of M.P., I.L.R. (2015) M.P. 2644*

– **Article 226** - Distributorship of LPG - Assessment process - Three members committee made their independent assessment of all the eligible candidates who appeared for interview and found appellant to be the best suitable person for allotting LPG Distributorship - Held - Awarding of marks under various sub-heads was exclusively within the domain of the selection Board - Exclusion of marks under the orders of the Court is outside the scope of judicial review : *Jinendra Kumar Jain Vs. Union of India, I.L.R. (2011) M.P. *122 (DB)*

– **Article 226** - Judicial review - In a matter of punishment awarded by disciplinary authority, the scope of judicial review is limited and unless and until it is borne out that the punishment is shockingly disproportionate, the same cannot be interfered with while exercising writ jurisdiction under Article 226 - The scope is still more narrower in intra-court appeal : *Ramswaroop Vs. State of M.P., I.L.R. (2011) M.P. 351 (DB)*

- **Article 226** - Judicial Review - Petitioner appointed as Asstt. Project Officer in ICDS Project which was subsequently taken over by Women and Child Development Department by orders of the State Govt. - Petitioner was still considered to be the project employee - Where an order of State Authority is found to be illegal or arbitrary, unreasonable or irrational, the same is open to judicial review - However, the High Court will not proceed to substitute its own decision as it would amount to exercise of power of authority itself - Petition disposed off with direction to consider the claim of petitioner for absorption - Petition disposed of : *Sanjeev Kumar Jain Vs. State of M.P., I.L.R. (2013) M.P. 1015*

- **Article 226** – Recommendations of Selection Committee – Malafides – Scope of Judicial Review – Merely because there was some delay in communication of decision would not prove malafide or malice in law – Judicial Review is limited only to the decision making process and does not extend the merits of the decision taken : *Bharat Petroleum Corporation Ltd. Vs. Laxman Chouhan, I.L.R. (2015) M.P. 571 (DB)*

15. Jurisdiction

- **Article 226**, Criminal Procedure Code, 1973 (2 of 1974), Section 482 - Quashing of investigation - F.I.R. discloses the prima facie commission of offence - Investigation is still on its way - It is statutory function of the police and superintendence thereof is vested in State Govt. - Not a fit case requiring interference with the investigation either under writ jurisdiction or under Section 482 of Cr.P.C. : *Meena Mehra (Smt.) Vs. The Lokayukt Organization, I.L.R. (2011) M.P. 3019 (DB)*

- **Article 226** – Disputed question of fact – Whether writ jurisdiction under Article 226 can be invoked – Held – No : *Ram Swaroop Chaturvedi Vs. State of M.P., I.L.R. (2015) M.P. 2921 (DB)*

- **Article 226**, Electricity Act (36 of 2003), Section 135 – Theft of electricity – Whether the issue relating to theft of electricity can be assailed in writ jurisdiction – Held – The writ court has no jurisdiction to pass any writ and the remedy lies somewhere else : *Patidar Stone Crusher (M/s.) Vs. M.P. Vidyut Vitaran Company Ltd., I.L.R. (2015) M.P. *18*

- **Article 226**, Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Section 9, 9A & 74-A and Narcotic Drugs and Psychotropic Substances (Madhya Pradesh) Rules, 1985, Rule 37-M, proviso of clause (c) – Petitioner's license of poppy straw is over and not renewed – State Government issued order to destroy the remaining stock – Quantity of remaining stock is unreasonably large – No case of interference – Petition dismissed : *Mansingh Rajpoot Vs. State of M.P., I.L.R. (2015) M.P. *12*

– **Article 226** - It is not permissible to invoke jurisdiction under Article 226, bypassing the machinery designated for determination of the election dispute : *Sukhendra Singh Vs. State of M.P., I.L.R. (2011) M.P. 687 (DB)*

- **Article 226** - Jurisdiction - A writ court exercising limited jurisdiction in a petition under Article 226 of the Constitution cannot enter into the allegations levelled against the petitioners on merits and exonerate them by holding that the petitioners were only exercising their right to freedom available to them : *Samir Banerji Vs. State Bank of India, I.L.R. (2013) M.P. 114*

– **Article 226** - Jurisdiction - Court exercising jurisdiction in a petition interferes with in such (service) matter only if constitutional provisions are found to be breached, rights statutory in nature taken away or action impugned is found to be in contravention of statutory rules or regulations : *Subhash Kumar Dwivedi Vs. State of M.P., I.L.R. (2011) M.P. 441*

– **Article 226** - Onwership of temple - Cannot be adjudicated in a summary proceedings under Article 226 : *Archaeological Survey of India Vs. State of M.P., I.L.R. (2012) M.P. *112 (DB)*

– **Article 226** - Power and Jurisdiction - Despite availability of alternate remedy, the High Court can exercise its powers and jurisdiction under Article 226 - However, there is a self imposed restraint on the High Court while deciding regarding exercise of such powers - The writ petition can be entertained if it is shown that there is something more in a case, something which would show that it would be a case of palpable injustice to the writ petitioner if he is forced to adopt the remedies provided by the statute : *Brijmohan Singh Vs. State of M.P., I.L.R. (2011) M.P. 2753*

– **Article 226**, Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (54 of 2002), Section 17 & 36 – Point of Limitation – In view of availability of statutory remedy (u/s 17 of the SARFAESI Act), the High Court shall not invoke its writ jurisdiction : *Kasturi Devi Jain (Smt.) Vs. Union Bank of India, I.L.R. (2011) M.P. *111*

- **Article 226** - See - Armed Forces Tribunal Act, 2007, Section 14 : *Ravindra Nath Tripathi Vs. Union of India, I.L.R. (2013) M.P. 1553 (DB)*

- **Article 226** - Writ Jurisdiction - Cannot be exercised on flimsy and technical grounds which have not been substantiated : *Rathi Sugar Pvt. Ltd. Vs. Union of India, I.L.R. (2014) M.P. 699 (DB)*

– **Article 226** – Writ Jurisdiction – Held – Highly disputed questions of fact cannot be adjudicated in a writ petition : *Hotel Adityaz Ltd. Vs. Madhya Pradesh Kshetra Vidyut Vitran Co. Ltd., I.L.R. (2014) M.P. 2353*

– **Article 226** - Writ Petition - Jurisdiction - Concurrent findings recorded by the Estate officer and the District Judge, showing that the premise is a 'public premise', and the petitioner an 'unauthorized occupant' - Interference into the matter by the High Court is not warranted. Concurrent findings recorded by the authorities can be interfered with by the Court exercising limited jurisdiction available under Article 226 of the Constitution only if it is found that the findings are perverse, without jurisdiction or there is an error apparent on the face of the record : *Ramcharan Vs. Airport Authority of India, I.L.R. (2011) M.P. 2770*

16. Locus Standi

– **Article 226** – Challenge to Master Plan – Locus Standi - Appellant did not raise any objection to Master Plan for Indore notified on 21.03.1975 and draft Indore Development Plan 2021 notified on 07.07.2006 – Appellant does not have locus to question the Master Plan – Further Indore Development Plan was finally notified after the judgment of High Court and legality thereof has not been questioned before Supreme Court – Appeal dismissed : *Madan Parmaliya Vs. State of M.P., I.L.R. (2011) M.P. 1621 (SC)*

- **Article 226** - Disciplinary Action - Locus Standi - Show Cause Notice issued to the officers of the petitioner as to why disciplinary action may not be taken against them - Municipal Council has no locus standi to challenge the said show cause notice : *Municipal Council Vs. State of M.P., I.L.R. (2014) M.P. 43*

17. Maintainability of Writ Petition

– **Article 226**, Criminal Procedure Code, 1973 (2 of 1974), Section 156(3) & 200 – Maintainability of Writ – Writ Petition filed for a direction to lodge FIR – In view of remedy available u/s 156(3) and 200 of Cr.P.C., power u/A 226 of Constitution of India could not be invoked – Petition dismissed with liberty to approach appropriate forum : *Shoukat Saeed Vs. State of M.P., I.L.R. (2015) M.P. 2359*

– **Article 226** - Election Process - Maintainability of writ petition - Where there is material on record to demonstrate that the entire election process is sham and it has no sanctity in the eye of law the entire election process stands vitiated - Writ Petition maintainable : *Ramkishore Tiwari Vs. State of M.P., I.L.R. (2011) M.P. *130 (DB)*

– **Article 226** - Fraud - Allegations of fraud can not be adjudicated by High Court in Writ Petition - Same could be adjudicated by Civil Court under common Law after

recording evidence and on appreciation of the same : *Satya Pal Anand Vs. State of M.P.*, I.L.R. (2011) M.P. 2401 (DB)

– **Article 226** – Maintainability of petition – Alternative Remedy – If a substantial legal question for interpretation is involved, Writ Court can directly interfere – As far as grant of benefit of rebate of input tax is concerned, is to be decided on admitted facts for which no dispute or enquiry into factual aspects of matter is called for – Petition maintainable : *Commercial Engineers & Body Building Company Ltd. (M/s.) Vs. Divisional Dy. Commissioner*, I.L.R. (2015) M.P. 2668 (DB)

– **Article 226** - Maintainability of Petition - Respondent No. 4 was appointed as Anganwadi Worker whose appointment order was challenged by Petitioner - Appeal was allowed and the petitioner was appointed as Anganwadi Worker- However, her appointment was cancelled in view of order passed in revision by Commissioner and respondent No. 4 was permitted to continue to work on the post of Anganwadi Worker - Petitioner challenged the order of the Revisional Court in the writ petition - Meanwhile respondent No. 4 died and intervener was appointed as Anganwadi Worker - Held - If appointment of respondent No. 4 is found to be illegal then the result would be that petitioner would continue on her post of Anganwadi Worker - Merely because appointment of intervener was not challenged would not make the petition infructuous as intervener had stepped in the shoes of respondent No.4 - Petition can not be thrown over board : *Upma Singh (Smt.) Vs. The Commissioner, Rewa*, I.L.R. (2011) M.P. 2283

– **Article 226** – Maintainability of Writ Petition against Judicial Orders – Writ Petition filed against the order by which application under Order 21 Rule 97 of CPC has been rejected – Appeal would lie under Order 21 Rule 103 – When other statutory remedies are available to the petitioner for redressal of his grievance, judicial orders passed by Civil Court are not amenable to writ jurisdiction under Article 226 of Constitution : *Satya Pal Anand Vs. Bal Neketan Nyas, Bhopal*, I.L.R. (2015) M.P. 1772 (DB)

– **Article 226** – Maintainability of writ – Termination of Lease – Lease granted in favour of petitioners was cancelled on the ground of violation of terms of lease – Involves disputed questions of fact – Writ Petition challenging the order of cancellation of lease not maintainable as questions relate to the civil rights of the parties : *Sajni Bajaj (Smt.) (Dr.) Vs. Indore Development Authority*, I.L.R. (2012) M.P. *16 (DB)

- **Article 226** - Municipalities Act, M.P. (37 of 1961), Section 312 - Maintainability of Writ Petition - Writ Petition filed through President of Municipal Council is not maintainable - This defect is also not curable : *Municipal Council Vs. State of M.P.*, I.L.R. (2014) M.P. 43

– **Article 226** – Petitioner is seeking direction to the respondents to cut-short the Schedule of Panchayat Election so that it can be completed within the shortest duration – He has directly approached the court without making representation to the authority competent to decide the same – Held – As the petitioner has directly filed the petition without approaching the Competent Authority by making a clear, plain and unambiguous demand – Petition dismissed : *Ranchodlal Vs. State of M.P., I.L.R. (2014) M.P. 2840 (DB)*

– **Article 226**, Sexual Harassment of Women at workplace (Prevention, Prohibition & Redressal) Act, 2013 (14 of 2013), Section 11, Central Civil Services (Classification, Control and Appeal) Rules, 1965, Rules 3(C) & 14(2) and Administrative Tribunals Act (13 of 1985), Section 14 – Maintainability of writ petition – Petitioner has challenged the enquiry report of Internal Complaints Committee – Section 11 of Act 2013 makes it clear that where respondent is an employee and Internal Committee proceeds to make enquiry into the complaint, it will be an enquiry in accordance with provisions of Service Rules – In view of Section 14 of Act 1985, Central Administrative Tribunal has jurisdiction to entertain – W.P. not maintainable : *Ramesh Pal Vs. Union of India, I.L.R. (2015) M.P. 890*

– **Article 226** – Writ Petition – Issuance of Caste Certificate in favour of respondent, challenged – Held – Unless the petitioner establishes any of his legal right or even a fundamental right infringed because of the issuance of Caste Certificate in favour of respondent he can not as a matter of right maintain a challenge in a petition under Article 226 – The petitioner then would be a mere busy body : *Sarvesh Vs. State of M.P., I.L.R. (2011) M.P. 2160*

- **Article 226** - Writ Petition - Maintainability - A writ petition would be maintainable against a body which is 'State' within the meaning of Article 12 of the Constitution even if the alleged breach is of a legal right, whether conferred by statute or otherwise : *Anand Kumar Dubey Vs. Jabalpur Co-operative Milk Producers Union Ltd., I.L.R. (2013) M.P. 538 (FB)*

– **Article 226 & 227** – Maintainability – Petitioner challenged validity of recommendations of State Govt. in favour of respondent No. 3 without assailing order executing mining lease in his favour by State Govt. – W.P. cannot be held to be not maintainable in absence of challenge to consequential order passed by State Govt. in granting lease to respondent No. 3 : *Ultratech Cement Ltd. Vs. State of M.P., I.L.R. (2015) M.P. 123 (DB)*

– **Article 226, 324 & 329 (b)** – Rejection of nomination paper – Maintainability of writ petition – The term ‘election’ may be taken to embrace the whole procedure which consists of several stages and embraces many steps, whereby an “elected member” is

returned, whether or not it be found necessary to take poll – It is not used in narrow sense – Since the election is in process, the only remedy available to the petitioner is to file election petition : *Mathias Vs. State of M.P., I.L.R. (2014) M.P. 1522*

18. Mandamus

– **Article 226** – Mandamus – High Court can issue writ against private body or person, but only for enforcement of public duty – Directions issued to private company without considering that whether private company is amenable to writ jurisdiction or not – Impugned order set aside – Petitions restored for decision afresh by the Single Bench : *Phoenix Devecons Pvt. Ltd. Vs. Smt. Manisha Parihar, I.L.R. (2015) M.P. 1409 (DB)*

– **Article 226** – Recommendations of Human Rights Commission – Court can not issue Mandamus for implementing the recommendations of the State Human Rights Commission – However, the findings recorded by Human Rights Commission can be considered unless it is shown to be perverse or opposed to some principle of law or facts : *Home Guard Sainik Evam Parivar Kalyan Sangh Vs. State of M.P., I.L.R. (2012) M.P. 382*

– **Article 226** – Revaluation of Answer Sheets – In absence of any statutory rules and regulations, revaluation of answer sheets and issuance of Mandamus is not permissible – However, if the material available prima facie demonstrates that a case of gross negligence or irregularity in evaluation of answer sheets is made out, a Writ of Mandamus can always be issued : *Dheeraj Pandey Vs. State of M.P., I.L.R. (2014) M.P. 1027 (DB)*

– **Article 226** – Writ of Mandamus – In the matter of appointment to a technical post, it is the Expert Body which has the final say – Interference with the recommendations of such a body can be made by a Court exercising writ jurisdiction only if statutory provisions are shown to be violated or malafides or bias of the members of the Committee established : *Jyoti Mittal (Smt.) Vs. Maulana Azad National Institute of Technology, Bhopal, I.L.R. (2011) M.P. 1695*

19. Natural Justice

– **Article 226** – Audi Alteram Partem – High Court merely held that the provisions of the Act and Regulation are mandatory and recognition to an institution can be granted only if the mandatory provisions are fulfilled – Distinction between grant, refusal and withdrawal of recognition also highlighted by High Court – Any person aggrieved by refusal or withdrawal of recognition has remedy of appeal – Directions given by High Court are of general application and do not target any particular institution

– Principles of Natural Justice does not apply : *Adarsh Shiksha Mahavidyalaya Vs. Subhash Rahangdale, I.L.R. (2012) M.P. *19 (SC)*

– **Article 226** – Caste Certificate – Verification – SDO conducted enquiry and declared that caste certificate was not issued by any competent authority – However no opportunity was given to petitioner before doing enquiry – Held – Verification of a caste of the petitioner or verification of the caste certificate has to be done through High Power Screening Committee as per the dictum of Apex Court in “Kumari Madhuri Patil” case – Consequently, show cause notice quashed – Respondents directed to refer the matter to High Power Screening Committee and thereafter to act accordingly : *Basant Kumar Burman Vs. M.P. State Electricity Board, I.L.R. (2015) M.P. 867*

– **Article 226** – Contract – Blacklisting and forfeiture of earnest money – Tender of petitioner was found lowest and work order was issued – Petitioner thereafter expressed his inability to execute work due to hike in price – Mayor-in-council passed resolution and forfeited the earnest money and also black-listed the petitioner – Held – Show cause notice of 30 days as per clause 3 of terms and conditions of tender is mandatory – No show cause notice was issued before black listing the petitioner – Order of black listing quashed : *Om Aadesh Enterprises Vs. Indore Municipal Corporation, I.L.R. (2015) M.P. *17*

- **Article 226** - Natural Justice - Applications for eligibility of Ist year students were rejected on the ground of delayed receipt of the same - No allegation that students were given admission after cut-off date - Why delay could not be condoned, reasons should have been mentioned - Speaking order is the part of natural justice - Matter remitted : *College of Science & Technology Vs. Board of Secondary Education, I.L.R. (2013) M.P. 2617 (DB)*

– **Article 226** - Relief under - When may not be given - Prima facie assessment regarding finding of fraud made by Board of Revenue, without conducting any proper enquiry into the matter and without giving proper opportunity to the petitioner to give their say in the matter - High Court does not deem it appropriate to overlook the aspect and grant relief to the petitioner - Instead, interest of justice requires that the allegations of fraud, if any exercised in seeking allocation of patta or mutation etc., should be inquired into and then only action taken : *Chandrika Prasad Sahu Vs. State of M.P., I.L.R. (2011) M.P. 2780*

- **Article 226** - This court can entertain a petition when it challenges vires of any act, rules etc. or when the order is contrary to natural justice or when such an order is passed by the authority who has no jurisdiction - In such cases the plea of Alternative

remedy may be rejected : *Pratap Wahini Samaj Kalyan Sansthan Vs. State of M.P., I.L.R. (2013) M.P. *16*

– **Article 226** – Writ – Availability of alternative remedy – Held – Petition can be entertained if the order suffers from violation of principles of natural justice, passed by incompetent authority – Further held, this is a matter of discretion and not of compulsion : *Lata Agrawal (Smt.) Vs. Indian Oil Corporation, I.L.R. (2014) M.P. 2096*

– **Article 226** - Writ Petition - Challenging blacklisting a Contractor - Before taking a drastic and harsh action of blacklisting a Contractor, an opportunity of hearing should have been provided, and having not done so, he is entitled to relief : *Industrial Security Association Vs. State of M.P., I.L.R. (2011) M.P. 392 (DB)*

– **Article 226** – Writ Petition – Whether Infructuous – Central Government referred the negative recommendation submitted by M.C.I. back for reconsideration of Scheme of yearly renewal – M.C.I. again submitted negative recommendation – Central Govt. during the pendency of the petition issued communication mentioning “Central Government has decided to accept the same – It does not state that Central Government has accepted the said recommendations of M.C.I. – Recommendations of M.C.I. can be accepted only after giving opportunity of hearing to petitioner due to submission of fresh recommendation – Second recommendation made by M.C.I. is also under challenge – Petition cannot be said to have become infructuous : *RKDF Medical College Hospital and Research Centre Vs. Union of India, I.L.R. (2015) M.P. 2107 (DB)*

– **Article 226 & 14** – Contractual matter – Tender – While disposing of public property State must give equal opportunity to all concerned and endeavour to fetch the best available price in public interest : *Anand Chouksey Vs. State of M.P., I.L.R. (2014) M.P. 1777 (DB)*

- **Article 226 & 227** - Cancellation of Caste Certificate - "Bhuniya" Caste is notified Scheduled Tribe in State of M.P. - High Level Caste Verification Committee constituted on a complaint - Caste Certificate cancelled - Held - Report of S.P. was not in consonance and accordance with requirement of judgment 'Madhuri Patil' - Can not be binding on committee - Proceedings are quasi judicial in nature - Impugned order is based on conclusion which is without any reason - Principle of Natural Justice not followed - Impugned order quashed and set aside - Matter remanded to C.V. Committee again for fresh disposal : *Gokul Prasad Vs. State Level Committee, I.L.R. (2012) M.P. 1527*

- **Article 226 & 227** - Natural Justice - If the respondent/Government has permitted the petitioners to obtain appropriate Nazul NOC and submit it before the department - Such an action of the Government is in consonance with the principles of

Natural justice, equity and fair play : *Mukesh Singh Chaturvedi Vs. State of M.P., I.L.R. (2013) M.P. 1339*

20. Necessary party

– **Article 226** – Non-joinder of 22 applicants, who besides respondent No. 3, had not been granted lease – Held – Non-joinder of those 22 person is of no consequence : *Ultratech Cement Ltd. Vs. State of M.P., I.L.R. (2015) M.P. 123 (DB)*

– **Article 226** – Writ Petition – Necessary Party – Allegation of malafide against appointing authority – Held – Concerned authority against whom malafides are levelled is a necessary party by name in the proceedings : *Ram Swaroop Pandre Vs. State of M.P., I.L.R. (2015) M.P. 2850 (DB)*

21. Policy Matter

– **Article 226** – Policy Decision – Judicial Review – A Court cannot strike down a policy decision taken by Govt. merely because it feels that another decision would have been fairer or more scientific or logical or wiser unless the policy is contrary to statutory or constitutional provisions or arbitrary or irrational or an abuse of power – Govt. has the power and competence to change the policy on the basis of ground realities : *Narmada Bachao Andolan Vs. State of M.P., I.L.R. (2011) M.P. *113 (SC)*

– **Article 226** - Policy matter - Judicial review - If policy is irrational, arbitrary or perverse, interference can be made by Court in exercise of powers of judicial review : *Rashtriya Colliery Majdoor Congress Vs. South Eastern Coalfields Ltd., I.L.R. (2011) M.P. 364 (DB)*

– **Article 226** – Policy Matter – Judicial Review – Where a policy is contrary to law or is in violation of the provisions of Constitution, or is arbitrary or irrational, Courts must perform their constitutional duties by striking it down : *State of M.P. Vs. Mala Banerjee, I.L.R. (2015) M.P. 1642 (SC)*

– **Article 226**, Policy of Rehabilitation dt. 21.09.1972 – Benefit to the families who have suffered depredation at the hands of dacoits – The policy is extended as succour to the family who are facing mental, physical and financial hardship on account of depredation – It cannot be used as a perennial source of employment for all the subsequent generations to come – Further held, grandson of the person who was not directly affected by depredation caused by the dacoits, cannot be permitted to claim rehabilitation : *Avinash Upmanyu Vs. State of M.P., I.L.R. (2014) M.P. 946 (DB)*

22. Public Interest Litigation

– **Article 226** – Public Interest Litigation – Alternative Remedy – Oustees to approach GRA for redressal of their grievances and if any person is further aggrieved of

the directions issued by GRA he could have approached the High Court after full fledged adjudication of factual issues by GRA : *Narmada Bachao Andolan Vs. State of M.P.*, I.L.R. (2011) M.P. *113 (SC)

– **Article 226** – Public Interest Litigation – Costs – Petitioner espoused a good cause – The State is directed to pay a cost of Rs. 20,000/- to the petitioner : *Mahesh Bharadwaj Vs. State of M.P.*, I.L.R. (2011) M.P. *95 (DB)

– **Article 226** – Public Interest Litigation – Courts before entertaining PIL must feel satisfied that the petitioner has genuinely come forward to espouse public cause and his litigious venture is not guided by any ulterior motive or is not a publicity gimmick – Respondent had highlighted the irregularities committed by Western Regional Committee of NCTE in granting recognition to private institutions – No allegation that Respondents had filed the writ petition to settle score with any institution or with some ulterior motive – High Court rightly entertained the petition as PIL : *Adarsh Shiksha Mahavidyalaya Vs. Subhash Rahangdale*, I.L.R. (2012) M.P. *19 (SC)

– **Article 226** – Public Interest Litigation – Delay and Laches – Construction of Dam started in Oct. 2002 and was completed in Oct. 2006 – No objection was ever raised by appellant – Petition filed for restraining State from closing the sluice gates contending that resettlement and rehabilitation was not complete – Held – For redressal of grievance regarding implementation of R & R policy, the oustees ought to have approached the GRA – High Court ought not to have examined any issue other than relating to rehabilitation : *Narmada Bachao Andolan Vs. State of M.P.*, I.L.R. (2011) M.P. *113 (SC)

– **Article 226** - Public Interest Litigation - Maintainability - Direction prayed for to take suitable action against the Tahsildar for alleged various financial irregularities - Held - The allegations made by the petitioner required to be enquired into in the appropriate forum by detailed enquiry and the petitioner has remedy, at first instance, to agitate his grievance under the provisions of the M.P. Lokayukt and Up-Lokayukt Adhiniyam, 1981 - In such a case, the Public Interest Litigation should not be entertained - Petition dismissed : *Kanhaiyalal Vishwakarma Vs. State of M.P.*, I.L.R. (2011) M.P. 124 (DB)

– **Article 226** – Public Interest Litigation – Petitioner did not give the particulars of social work done by him – Petitioner even did not aver that he was a social worker – High Court wrongly entertained the writ petition as P.I.L : *Madan Parmaliya Vs. State of M.P.*, I.L.R. (2011) M.P. 1621 (SC)

– **Article 226** – Public Interest Litigation – Petition filed by the petitioner against the notification issued u/s 48(1) of the Land Acquisition Act, 1894, releasing the land from acquisition with malafide intention and on wrong assumption of the fact – Petitioner

is a public spirited person and a conspiracy created by the land owner's with the connivance of the authorities in order to grab the Government land – The petition is to be treated as Public Interest Litigation and it is a genuine Public Interest Litigation : *Mahesh Bharadwaj Vs. State of M.P., I.L.R. (2011) M.P. *95 (DB)*

– **Article 226** – Public Interest Litigation – Pleadings – A party has to plead its case and produce/adduce sufficient evidence to substantiate the averments made in the petition and in case the pleadings are not complete the Court is under no obligation to entertain the petition : *Narmada Bachao Andolan Vs. State of M.P., I.L.R. (2011) M.P. *113 (SC)*

- **Article 226** - Public Interest Litigation - Rampant use of Proscribed material for preparing National Flag - Contravention of provisions of Emblems and Names (Prevention of Improper Use) act, 1950 or Prevention of Insult to National Honour Act, 1971 may constitute an offence and machinery can be set in motion by taking appropriate steps in that direction - PIL based on vague allegations and inchoate right does not call for any ubiquitous action and direction : *Valmik Sakargayen Vs. State of M.P., I.L.R. (2012) M.P. 1536 (DB)*

– **Article 226** – Bundh/Strike – Compensation – State free to quantify the damage and call upon the callers to compensate in case it finds that public property has been damaged – Individuals also at liberty to recover compensation in accordance with law : *Nagrik Upbhokta Margdarshan Manch Vs. State of M.P., I.L.R. (2012) M.P. 446 (DB)*

– **Article 226** – Bundh/Strike – State directed to take steps to prevent the coercion or the force applied by callers : *Nagrik Upbhokta Margdarshan Manch Vs. State of M.P., I.L.R. (2012) M.P. 446 (DB)*

23. Review

– **Article 226** – Review – Decision on merits for other question – Not necessary – When other questions stood waived and limited prayer was made : *Sanjay Mourya @ S.K. Mourya Vs. Union of India, I.L.R. (2015) M.P. 1138 (DB)*

- **Article 226** - Review - Order was obtained by respondent No.1 under the Micro Small and Medium Enterprises Development Act, 2006 on the basis of a forged order by which he succeeded by letting the Council to believe that he has been penalized to the tune of Rs. 36,32,508/- and is entitled to recover the same from applicant with interest as it was the applicant who did not submit the form C - Whereas in fact only a penalty of Rs. 500/- was imposed on the respondent No. 1 by the Commercial Tax Department - The order of the Council is set aside as well as the order of the High Court is recalled -

Application allowed : *Sterlite Technologies Ltd. Vs. Dhar Industries, I.L.R. (2013) M.P. 1381*

- **Article 226** - Review - Scope - Power to review an order passed in writ petition under Article 226 of Constitution of India is not confined to examine as to error on the face of record but it would be within the jurisdiction to examine the case in its entirety when a review is sought on the ground of fraud being committed : *Sterlite Technologies Ltd. Vs. Dhar Industries, I.L.R. (2013) M.P. 1381*

- **Article 226**, Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhinyam, M.P. 2005 (14 of 2006), Section 2(1) - Writ Appeal - Maintainability of - Order passed or direction issued in a review petition which was not contained in the order under review - Would amount to a fresh writ order or direction under Article 226 and would therefore be amenable to a writ appeal : *Mohd. Imran Siddique Vs. State of M.P., I.L.R. (2011) M.P. 2699 (DB)*

24. Service Matter

- **Article 226** – Assessment by DPC – High Court cannot sit in appeal over the assessment made by DPC – If assessment made by DPC is perverse or not based on record or proper record has not been considered by DPC, it is open to High Court to remit the matter back to DPC for recommendation but it cannot assess the merit on its own : *H.S. Sidhu Vs. Devendra Bapna, I.L.R. (2015) M.P. 2819 (SC)*

- **Article 226** – Judicial officer – Removal from service – A Judicial Officer is required to maintain a very high standard of devotion to duty and if it is found that a judicial officer has time and again shown utter disregard to settled principles and norms of justice in discharging his duty, a decision taken to remove such a judicial officer can not be interfered with by this Court until and unless the material available on record shows non-application of mind and violation or breach of statutory and constitutional provisions : *J.K. Verma Vs. State of M.P., I.L.R. (2011) M.P. 1965 (DB)*

- **Article 226** – Non-payment of salary – Payment – Petitioner was initially appointed as ad-hoc Assistant Professor – Subsequently he was recognized as regular Asstt. Professor – Order was withdrawn subsequently – Consequently, he was not paid salary for three years – Petition was allowed and order withdrawing the recognition as regular Asstt. Professor was quashed and it was directed to pay all benefits – Held – Although earlier order is silent about interest but at the same time it was not denied – As petitioner was denied of the amount, claim of petitioner for interest in lieu of wrongful non-payment of amount cannot be denied – Respondents directed to pay interest @ 9% p.a : *Subhash Tiwari Vs. State of M.P., I.L.R. (2015) M.P. 3202*

– **Article 226** - Observation made in Review Petition -When may be modified - Order/Observation may result in person junior to the appellant being asked to officiate against the higher posts and the present appellant will stand excluded because of the said observation - Order may be modified : *Mohd. Imran Siddique Vs. State of M.P., I.L.R. (2011) M.P. 2699 (DB)*

- **Article 226**, Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993 (1 of 1994), Section 69 & 70 - Appointment of Panchayat Karmi - No advertisement was issued inviting applications for appointment of Panchayat Karmi - Secretary was not authorized to issue notice in this regard - Further no notice was placed on the notice board of the Janpad Panchayat - Public at large was not informed about such an intention of filling the post of Panchayat Karmi - Process was not initiated in appropriate manner and improperly the resolution was passed for making appointment of Panchayat Karmi - Resolution quashed in exercise of powers under Article 226 of Constitution of India : *Raj Kumar Kushwaha Vs. State of M.P., I.L.R. (2013) M.P. 53*

– **Article 226**, Payment of Wages Act, 1936, Section 9(2) & 15 - Writ Petition - Challenging the orders proposing to make recovery of salary for the period, employees of the petitioners' union remained on strike and a further proposal to recover 8 days salary - Held - Petitioners have a efficacious statutory remedy available - No case is made out for interference - That apart enquiry into certain factual aspects of the matter are to be determined and Labour Court can deal in the matter more properly - Petition dismissed : *Hind Khadan Mazdoor Federation Vs. Coal India Ltd., I.L.R. (2011) M.P. 147*

– **Article 226** – Repatriation – Petitioner sent on deputation for a period of three years – Repatriated to parent department within 8 months on the ground that misconduct was committed by some other employees which were sent on deputation – Order of repatriation quashed : *Yogendra Kumar Singh Vs. Madhya Pradesh Rajya Sahakari Bank, Maryadit, I.L.R. (2011) M.P. 1678*

- **Article 226** - Service Law - Age of retirement of contingent employees and daily workers in various departments of State of M.P. - Orders of retiring the contingency paid employees and daily rated workers on attaining them age of 60 or on completion of 30 years of service prior to age of 62 years - Challenged - Disposed with directions : *Ashan Lal Lilhare Vs. State of M.P., I.L.R. (2012) M.P. *85*

– **Article 226** - Vires of G.O.P. dated 07.06.2008 (new policy of promotion) challenged on ground that the same is discriminatory, arbitrary and violative of Article 14 - Held - Policy introduced with the object of betterment of the force and to promote energetic persons who can deal with in the difficult law and order situations on the field. The aforesaid classification has been made by taking into account the factor of physical

efficiency, ability and nature of duties. Thus, the classification cannot be said arbitrary or unreasonable : *Satyendra Pratap Singh Vs. State of M.P., I.L.R. (2011) M.P. 400 (DB)*

– **Article 226** - Writ Petition - Findings of D.P.C. is based on inadmissible, irrelevant or insignificant material/fact - This can very well be a ground to interfere in Article 226 proceedings : *Virendra Kumar Swarnkar Vs. Madhya Pradesh State Agricultural Marketing Board, I.L.R. (2011) M.P. 2743*

– **Article 226**, Penal Code (45 of 1860), Section 420, 467, 468, 471, 120-B & 34 and Prevention of Corruption Act (49 of 1988), Section 13(1)(d) read with Section 13(2) – Grant of sanction for prosecution – Recommendation of the department is not binding against the sanctioning authority – The sanctioning authority can consider the matter after taking into consideration the entire available record including the recommendation given by the department – Recommendation given by the department cannot be the ground to quash the impugned sanction order : *Avinash Dubey Vs. State of M.P., I.L.R. (2014) M.P. 2507 (DB)*

– **Article 226** - See - Service Law : *R.R. Nihare Vs. State of M.P., I.L.R. (2011) M.P. 111 (DB)*

– **Article 226** – See – Service Law : *Rajendra Jain Vs. State Bar Council of M.P., I.L.R. (2012) M.P. 1196*

25. Service Matter–Transfer

– **Article 226** – Transfer – Petitioner has assailed his transfer order as well as transfer order of respondent no. 3 who has been transferred in his place – Held – As provided vide policy dated 05.07.2005 and Circular of State Government dated 19.12.1994, since petitioner has completed 6 months tenure at his present place of posting he has rightly been transferred, however, in view of transfer policy, observation made by Gwalior Bench and registration of criminal case against respondent no. 3 his field posting is nothing but a colourful exercise of power – Same can never be termed as administrative exigencies or in public interest – Undue favour has been extended to him – Therefore, only transfer of respondent no. 3 from Bhopal to Sendhwa is quashed with certain directions : *Kishore Singh Baghel Vs. State of M.P., I.L.R. (2015) M.P. 908*

– **Article 226** – Transfer – Review – Interim order was passed on the statement of petitioner that he will proceed on transfer after completion of academic session of his child – Petition was dismissed as respondent had deferred the order till end of academic session – Review sought on merits – Held – Having taken advantage of interim order without demur, not open to make grievance : *Sanjay Mourya @ S.K. Mourya Vs. Union of India, I.L.R. (2015) M.P. 1138 (DB)*

– **Article 226** – Transfer – Stay till representation is decided – Representation filed by employee does not create any right in his favour to remain at a same place from where he has been transferred – He must join at transferred place, even if he has to pursue remedy of representation – It is not for court to sit over the subjective satisfaction or dictate to concerned authority, being purely administrative matter – Court must eschew from issuing interim direction : *Mridul Kumar Sharma Vs. State of M.P., I.L.R. (2015) M.P. 2556 (DB)*

– **Article 226** – See – Service Law : *Mukesh Rana (Subedar Major) Vs. Union of India, I.L.R. (2011) M.P. *96*

26. Territorial Jurisdiction

– **Article 226**, Criminal Procedure Code, 1973 (2 of 1974), Section 160 – Summon – Territorial jurisdiction – Summon issued to witness at Indore by Crime Branch Mumbai under Section 160 of Criminal Procedure Code, 1973 – Held – Petitioner cannot be called as he is not residing within Mumbai jurisdiction – Respondent no. 2 is free to visit Indore & record statement – Summons quashed – Petition allowed : *Manish Vs. State of M.P., I.L.R. (2015) M.P. 2377*

– **Article 226** - Territorial jurisdiction - Cause of action - Letter issued by General Manager from Bilaspur, S.E.C.L. challenged - Check-off facility is not available only at headquarter level - It is prevalent at various unit sub areas - Collieries of respondent No.1 also situated within State of M.P. - Part of cause of action has arisen within territorial jurisdiction of Court - High Court of M.P. has territorial jurisdiction to adjudicate the controversy : *Rashtriya Colliery Majdoor Congress Vs. South Eastern Coalfields Ltd., I.L.R. (2011) M.P. 364 (DB)*

- **Article 226** - Territorial Jurisdiction - Petitioner was posted in Maharashtra - Departmental Enquiry was conducted in Maharashtra - Orders of Appellate and Revisional Authorities were served in State of Maharashtra - No part of cause of action arose within the State of Madhya Pradesh - Petitioner/Service holder cannot clothe the Court with jurisdiction because of his residence : *R.P. Tiwari Vs. The Senior Commandant, I.L.R. (2013) M.P. *25*

– **Article 226** – Writ Petition – Territorial Jurisdiction – Petitioner's case arisen from District of Ujjain – As per Presidential Notification, District of Ujjain falls within the territorial jurisdiction of Indore Bench – Cannot be entertained at main seat (At Jabalpur) until and unless a specific permission is sought from Hon'ble the Chief Justice : *Rashtra Bharti Shiksha Mahavidyalay Vs. National Council for Teacher Education, I.L.R. (2011) M.P. 2119 (DB)*

– **Article 226 & 227** – Territorial Jurisdiction – Respondent No. 3 has raised objection with regard to territorial jurisdiction of M.P. High Court – Land in question over which mining rights are being claimed is situated within territorial jurisdiction of M.P. High Court at Jabalpur – Similarly, order has been passed by State Govt. within territorial jurisdiction of M.P. High Court at Jabalpur – Thus, part of cause of action has arisen within territorial jurisdiction of M.P. High Court at Jabalpur : *Ultratech Cement Ltd. Vs. State of M.P., I.L.R. (2015) M.P. 123 (DB)*

27. Writ of Certiorari

– **Article 226** - Writ of certiorari - Non impleadment of necessary Party - Challenge made of an order passed by the Additional Commissioner, exercising power of an appellate authority under the Panchayats (Appeal and Revision) Rules, M.P. 1995 - The appeal before the Additional Commissioner was filed by 238 appellants and without impleading these 238 appellants who have been appointed in pursuance to the order passed - The writ petition is not maintainable : *Chakresh Kumar Jain Vs. State of M.P., I.L.R. (2011) M.P. 2453*

– **Article 226 & 227**, Uchcha Nyayalaya (Khand Nyayapeeth Ko Appeal) Adhiniyam, M.P. 2005 (14 of 2006), Section 2(1) - Writ petition under Article 226 as well as 227 seeking the writ of certiorari for quashing of the order passed by Board of Revenue and a declaration that the auction of agricultural land by Tahsildar is illegal & invalid - Held - The order passed by the learned Single Judge is in exercise of powers under Article 226 and an appeal against the said order is maintainable : *Sadhna Chourasia (Smt.) Vs. Punjab National Bank, I.L.R. (2011) M.P. 61 (DB)*

28. Writ of Prohibition

- **Article 226** - Writ of Prohibition - Termination of contract - Show Cause Notice - Petitioner can put forward his case by submitting a reply to the impugned show cause notice and that may be considered appropriately - Contract document providing for dispute redressal system and further provision of appeal against the decision of the competent authority of the respondents by way of arbitration - Held - No ground to invoke writ jurisdiction so as to quash the show cause notice : *Bansal Infratech Synergies India Ltd. Vs. State of M.P., I.L.R. (2013) M.P. 293 (DB)*

29. Writ of Quo Warranto

– **Article 226** - Writ of quo warranto - Can be issued by the Court when a person in a public office has been appointed in violation of statutory provisions - Availability of an alternative remedy is not a bar : *Virendra Tyagi Vs. State of M.P., I.L.R. (2011) M.P. 117*

– **Article 226** – Writ of quo warranto – Respondent no. 1 was appointed on daily wages and subsequently his services were regularized – Order of regularization of services was quashed by High Court therefore, the respondent no. 1 was deemed to be daily wage employee – Thereafter, the respondent no. 1 was appointed on the post of Sub-Engineer on regular basis, on the recommendations of the Chief Minister without following the selection process as specified in M.P. Municipalities Act or recruitment Rules – Procedure to be followed for making appointments on civil post, is that, it is not only a matter of moment for administration but for affording equal and fair opportunity to aspiring candidates for being considered for appointment – Appointment of respondent no. 1 quashed – Directions issued for initiating action against those who were instrumental to the illegal appointment of respondent no. 1 – Chief Secretary also directed to enquire into whether any employee has been or was appointed on regular basis without following selection process prescribed in relevant rules and to proceed against all such persons – Chief Secretary must then initiate necessary proposal for revocation of illegal appointments – Petition allowed : *Mansukhlal Saraf Vs. Arun Kumar Tiwari, I.L.R. (2015) M.P. 3235 (DB)*

- **Article 226** - Writ of quo warranto - Writ of quo-warranto can be filed even at the instance of a busybody questioning the appointment in public office : *Ganesh Singh Rawat Vs. State of M.P., I.L.R. (2012) M.P. *76*

30. Miscellaneous

– **Article 226** - Writ Petition - Return filed by State - State cannot take whatever stand they want to take on the same set of rules and on same facts at different points of time : *Shyam Narayan Sharma Vs. State of M.P., I.L.R. (2011) M.P. *36 (DB)*

– **Article 226** – Writ Petition seeking direction for expediting disposal – Normally the tribunal should be at liberty to manage its own Board and such application seeking expediting disposal should be moved and examined at that level : *Ramswaroop Mongaria Vs. Presiding Officer, Labour Court, I.L.R. (2011) M.P. 2159 (DB)*

– **Article 226** - Writ Petition - Transfer fee - Petitioner purchased a plot from previous owner and on 27.03.2008 made an application for transfer - On 21.05.2008, Rs. 600/- as lease rent were also deposited - Before consideration of petitioner's application the transfer fee was enhanced from 1% to 3% vide circular dated 06.05.2008 - Held - Increased transfer fee in force at the time of consideration of transfer application, would be payable : *Pushpa Jajodia (Smt.) Vs. M.P. Housing Board, Bhopal, I.L.R. (2011) M.P. 2333*

- **Article 226** - Writ for seeking protection of the police from the offenders - Held - Police authorities are duty bound to protect life, liberty, and dignity of all citizens

especially complainant / eye witnesses of incident - Prosecution obliged not only to protect the life of such a eye witness but also to provide protection to all members of the family of such witness - Further held, police is custodian of law and order and is constitutionally obliged to instill a sense of security in the heart and mind of every common man - When prosecution is threatened the entire investigative agency is under threat : *Mala Devi (Smt.) Vs. State of M.P., I.L.R. (2014) M.P. 375*

– **Article 226**, Urban Land (Ceiling and Regulation) Act, (33 of 1976), Section 5(1)(3), 6, 9 & 10(1)(3)(4) – Transfer of Land – Transfer of excess land through sale deed after draft statement and notification is void ab initio and does not create any right – Any such transfer shall be deemed to be null and void – Petition dismissed : *M.P. Samdariya Vs. State of M.P., I.L.R. (2012) M.P. 70*

– **Article 226** - Validity of Rule - Challenge as to validity of rule can be entertained only where it is found that it suffers from legal infirmity, being wholly beyond the scope of rule making power, or being inconsistent with any provision of Parent Act or amounts to infraction of any provision of Constitution : *Pooja Mathur (Dr.) Vs. State of M.P., I.L.R. (2011) M.P. 410 (DB)*

– **Article 226** - Vires - Challenged as to a provision - Held - In absence of any foundation in the pleadings with regard to the provision, vires of the provision cannot be examined : *All India Bank Officers' Association Vs. State Bank of India, I.L.R. (2011) M.P. *22 (DB)*

– **Article 226** – Possession – Indore Development Authority can not dispossess the petitioners after canceling the lease deed without following due procedure of law – There is no question for IDA to resort to an extra judicial method of taking possession and possession has to be taken only in accordance with law : *Sajni Bajaj (Smt.) (Dr.) Vs. Indore Development Authority, I.L.R. (2012) M.P. *16 (DB)*

– **Article 226** – Precedence – Judgment of Co-ordinate Bench – A Bench should ordinarily follow the decision of a Co-ordinate Bench or else should forward the matter to the Chief Justice for constituting a Larger Bench in case the reasoning and conclusion of the Co-ordinate Bench is not acceptable : *State of M.P. Vs. Mala Banerjee, I.L.R. (2015) M.P. 1642 (SC)*

– **Article 226** – Handing over of possession of flats to allottees – Additional demand raised by Housing Board – Matter sub-judice before High Court – Allottees ready to give undertaking to meet the additional demand if any, subject to final order of Court – Housing Board is legally obliged to handover possession of flats to the allottees : *C.M. Vyas Vs. M.P. Housing Board, I.L.R. (2011) M.P. 1838 (DB)*

– **Article 226** – Grant of dealership of retail out let – Selection of respondent No. 3 for grant of dealership and application of petitioner was rejected – HELD – Petitioners of their own have claimed the benefit of FDRS and knowing fully well that they were required to produce original FDR'S at the time of evaluation but failed to produce the same before competent committee of the respondent corporation – It can not be said respondent committed any wrong – Writ Petition dismissed : *Meena Singh (Smt.) Vs. The Indian Oil Corporation Ltd., I.L.R. (2012) M.P. *61*

- **Article 226** - Enforcement of Contract - UDA is a public undertaking and discharging public function and is a State within the meaning of Article 12 - Admittedly an agreement was entered into between the parties - Respondent without any justifiable reason denied the compliance of agreement - Action of UDA can be termed as arbitrary and unfair -UDA directed to comply with the conditions of agreement entered by it with petitioner : *Ambesh Grih Nirman Sahakari Sanstha Maryadit, Ujjain Vs. Ujjain Development Authority, Ujjain, I.L.R. (2012) M.P. 2347 (DB)*

- **Article 226** - Environment - Construction near Narmada River - Master Plan of Jabalpur shall be given effect strictly - Detailed survey is to be made in respect of structures which are permissible under the master plan - Any construction raised after 01.10.2008 shall be dealt with strictly in accordance with master plan and any illegal constructions should be dealt with strictly in accordance with law after giving due opportunity of hearing to the parties before removing the structure - All measures for prevention of water pollution in river Narmada by merging sewage or drainage water shall continue by respondents : *Satish Kumar Verma Vs. State of M.P., I.L.R. (2014) M.P. 86 (DB)*

– **Article 226** – Establishment of Medical College – N.O.C. and consent of affiliation issued by University bearing same outward Number – M.C.I. sent negative recommendation on the aforesaid ground – Subsequently, as Medical Science University was established, the petitioner approached for grant of affiliation – Trust also deposited Rs. 50,30,000/- as affiliation fee – As Code of Conduct was in force in State of M.P., the University could not issue consent for affiliation – Subsequently, consent of affiliation was issued by Medical University on 25.04.2015 – However, in meeting dated 29.04.2015 Executive Committee of Medical Council gave negative recommendation as submission of document was not within time – Held – Discrepancies in two letters issued by R.D.V.V. which was competent to issue those letters ought to have been ignored – Petitioner had submitted the consent of affiliation from Medical University before the meeting of Executive Committee and Union of India had also wrote to M.C.I. to process the recommendation in the light of consent – M.C.I. directed to take final decision before

commencement of admission process for academic year 2015-16 – Petition allowed : *Gyanjeet Sewa Mission Trust Vs. Union of India, I.L.R. (2015) M.P. 2088 (DB)*

– **Article 226** – Exemption – Industrial Policy of the State of M.P. – Capital Investment – State Level Committee refused to grant benefit of exemption to the petitioner under Notification No. 43 dated 06.06.1995 in respect of Capital investment made by the petitioner during the period from 01.04.1992 to 31.03.1994 despite conversion of its unit into an exporting unit and there being nothing in the notification to fix such cut-off date – Held – No dispute that the unit of the petitioner has been qualified by a 100% exporting unit within time framed, which has been permitted by the notification, they are entitled to claim benefit of fixed Capital assets as prayed for by the petitioner – Order of the State Appellate Forum is modified to the extent that the petitioner shall be entitled to the benefit of exemption towards fixed Capital assets to the tune of Rs. 232.41/- lacs as claimed by them and to that extent, the order of the State Appellate Forum stands modified : *Krishna Oil Extraction Ltd. (M/s.) Vs. State Appellate Forum, I.L.R. (2014) M.P. 2848 (DB)*

– **Article 226** – Custodial death – Son of Petitioner was tried for offence punishable under Section 302 I.P.C. and was on bail – Son of Petitioner was convicted – He consumed poison immediately after pronouncement of judgment and died subsequently – Held – Petitioner’s son consumed poison before preparation of jail warrant – Respondents cannot be saddled with stigma of custodial death as accused was not taken over by police persons physically and police was not having possidendi : *Kaliram Vs. State of M.P., I.L.R. (2011) M.P. 1475*

– **Article 226** - Constitutional Validity - Grounds - Legislative Enactment can be struck down on two grounds - (i) That appropriate legislature does not have competency to make law (ii) That it take away or abridge any of the fundamental rights or any other constitutional provisions : *State of M.P. Vs. Rakesh Kohli, I.L.R. (2012) M.P. *83 (SC)*

– **Article 226**, Advocate Act, (25 of 1961), Section 35 – Professional misconduct – Petitioner was suspended from practicing as an advocate for a period of five year – Bar council of India reduced the period of suspension from 5 years to one year – Petitioner preferred an appeal before the Apex Court, and finally the appeal was allowed by the Apex Court and the period of suspension was reduced from one year to 6 months – It is alleged that since the order passed by the Apex Court was not communicated to the petitioner, the petitioner continued to practice – Held – Petitioner has stated on affidavit that petitioner is not practicing since 15.10.2011 – It is further stated that petitioner did not practice till the date of filing of petition which was filed on 24.04.2012 – Thus, the petitioner did not practice for six months – There is no evidence in rebuttal – No counter affidavit has been filed by the respondent – There is no reason to disbelieve the statement

of petitioner which is on affidavit – In view of this subsequent notification dated 21.01.2012 and also show cause notice dated 03.10.2011 issued by respondent stands quashed – It is clarified that now the petitioner is entitled to practice as suspension period of six months was over long back – Petition disposed of : *Ram Krishna Kothari Vs. State Bar Council of M.P., I.L.R. (2014) M.P. 3095*

– **Article 226**, Advocate Act (25 of 1961), Section 30 – Common Advocate – One Lawyer appearing for all the wings of State namely, State Government, Home Department, STF and VYAPAM – There is no conflict of interest among the four wings – Appearance of common Advocate in no way affects the merits of investigation done by STF or its impartiality and independence – Performance of Advocate in the Court is also proper – Merely because one law officer is appearing would not necessarily lead to a presumption that he would share the vital information pertaining to investigation of cases to persons from other department – Objection rejected : *Digvijay Singh Vs. State of M.P., I.L.R. (2015) M.P. 1230 (DB)*

– **Article 226** - See - Hindu Minority and Guardianship Act, 1956, Section 6(c) : *Manohar Jatav Vs. State of M.P., I.L.R. (2012) M.P. 1900*

– **Article 226** – See – Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, Section 13(2), 13(4) & 17 : *Dhar Textile Mills Ltd. Vs. Canara Bank, I.L.R. (2011) M.P. 826 (DB)*

– **Article 226** – See – Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, Section 13(2), 13(4) & 17 : *Velocity Ltd. (M/s.) Vs. State Bank of India, I.L.R. (2011) M.P. 839 (DB)*

– **Article 226** - See - Municipal Corporation Act, M.P., 1956, Section 441-F : *Lata Mishra (Ms.) Vs. District Election Officer, Rewa, I.L.R. (2013) M.P. 1808 (DB)*

- **Article 226** - See - Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993, Section 36(1)(a) : *Ram Kumar Vs. State of M.P., I.L.R. (2013) M.P. 1578*

- **Article 226** - Similar writ petitions involving similar questions pending - Single Judge proceeded to dispose of the petition in disregard of pendency of other companion matters - It cannot be countenanced - Matter remanded back for analogous hearing with companion writ petitions : *Gulab Makode Vs. State of M.P., I.L.R. (2014) M.P. 11 (DB)*

– **Article 226**, State Bank of India Act, 1955, Section 35(1) & 35(2) - Petition challenging acquisition of State Bank of Indore by State Bank of India - Held - Procedure u/s 35(1) & 35(2) of State Bank of India Act, 1955 has been followed - Acquisition order u/s 35(2) of the Act, 1955 has been issued by Central Government and majority of share holders, officers, employees of State Bank of Indore have not agitated any grievance

before Grievance Redressal Forum - Petition dismissed : *All India Bank Officers' Association Vs. State Bank of India, I.L.R. (2011) M.P. *22 (DB)*

– **Article 226** – Termination of Dealership of retail outlet – Sample drawn from outlet, petitioner failed RON Test – HELD – Only because there was a failure to successfully pass the RON Test, the dealership of the petitioner should not have been terminated – Petitioner should have been offered an opportunity to improve – Writ Petition Allowed : *Royale Highway Services (M/s.) Vs. Hindustan Petroleum Corporation Ltd., I.L.R. (2012) M.P. *48*

- **Article 226** - Quarry Lease - Non-operation of - Petitioner who was granted quarry lease was not permitted to operate in view of the interim order passed by High Court - Writ Petition was dismissed later on, however, during this period the quarry lease granted in favour of petitioner expired - Petitioner was deprived without his fault to operate the sand quarry for full period - When the Petitioner was wrongfully disallowed to operate the mining lease for full lease period and the lease has remained un-operated and no third party right is created, he must be allowed to operate the mining for the full period of lease subject to adjustment for the period for which he has already operated - Petition allowed : *Ravi Shankar Naik Vs. State of M.P., I.L.R. (2013) M.P. 111 (DB)*

– **Article 226** - Reasons given that why State has not considered to give recognition to such system of medicine (Electro Homeopathy) - Court cannot compel State Government to legislate to recognize particular system of medicine : *Bhartiya Alternative Medical Foundation Vs. State of M.P., I.L.R. (2011) M.P. 84 (DB)*

– **Article 226** – Recommendations of Selection Committee – Tied Up Volumes – Affidavits of residents of close vicinity cannot be considered for assessment with regard to tied up volume to which the capability to generate business : *Bharat Petroleum Corporation Ltd. Vs. Laxman Chouhan, I.L.R. (2015) M.P. 571 (DB)*

– **Article 226** – Writ Petition by Association – For enforcement of the rights of the members of the Association – Can be filed by the Association acting through its office bearer or member only when the Association can satisfy the Court that if an adverse decision is given in that petition, all the members of that Association or "Body of Individuals" will be bound by the decision : *Prabhat Vs. Barkatulla University, Bhopal, I.L.R. (2011) M.P. 1692 (DB)*

– **Article 226 & 227** – Orders of Collector & Commissioner erroneous procedurally – High Court to see advancement of Justice and not to pick any error of law through academic angle : *Omprakash Meena Vs. State of M.P., I.L.R. (2015) M.P. 1142 (DB)*

– **Article 226 & 227**, Petroleum Act (30 of 1934), Section 20 and Motor Spirit and High Speed Diesel (Regulation of supply, distribution and preventions of Mal practices) Order 2005, Clause 8 - Retesting of sample - During inspection samples of High speed diesel taken in prescribed manner - Same sample kept with the dealer/agency - Application of the petitioner for retesting of sample by another agency rejected - Held - If prayer is made for retesting of sample kept in custody of dealer, it is obligatory to grant such permission - Respondent directed to send the sample for retesting : *Shobha Y. Ingole (Smt.) Vs. Hindustan Petroleum Corporation Ltd., I.L.R. (2012) M.P. 1827*

SYNOPSIS: Article 227

- | | |
|--------------------------------------|--|
| 1. Award passed by Lok Adalat | 2. Maintainability of Writ Petition |
| 3. Power of Superintendence | 4. Scope of Interference |
| 5. Miscellaneous | |

1. Award passed by Lok Adalat

- **Article 227** - Writ Petition - Award passed by Lok Adalat - On the basis of compromise arrived at between the parties, an award was passed by Lok Adalat - Petitioner later learnt that land allotted to petitioner under the award belongs to other persons who are not parties to the proceedings and the lands allotted to the petitioner under the award have already been sold by respondents vide registered sale-deeds - Held - Consent to settlement, was obtained from the petitioner by playing fraud - Or even otherwise, parties to the agreement were under mistake as to a matter of fact essential the agreement, which renders the agreement void -Award passed by Lok Adalat can not be sustained in the eye of law - Award quashed : *Jagdish Prasad Vs. Sangamlal, I.L.R. (2011) M.P. 3071*

- **Article 227** - Writ Petition - Validity of award passed by Lok Adalat - Award passed by the Lok Adalat is akin to a compromise decree, its validity can be challenged by a party in a writ petition on the ground that the same has been obtained by playing fraud : *Jagdish Prasad Vs. Sangamlal, I.L.R. (2011) M.P. 3071*

2. Maintainability of Writ Petition

- **Article 227** - Maintainability of writ petition - Petitioner/Regional Provident Fund Commissioner has filed the writ petition challenging the order of Provident Fund Appellate Tribunal - Section 7L(4) of EPF Act, 1952 provides that order made by a Tribunal finally disposing of an appeal shall not be questioned in any Court of law - If the EPF organization wants to challenge the order of the Tribunal, authorization for

presenting officer as well as the Legal Practitioners must be by way of notification by Central Govt., to present a writ petition - In absence of any such notification, writ petition challenging the order of Tribunal is not maintainable - Petition dismissed : *Regional Commissioner Vs. Maheshwari Nursing Home, I.L.R. (2013) M.P. 316 (DB)*

- **Article 227** – Writ – Maintainability – Alternative remedy of appeal available – Violation of principle of natural justice – Availability of alternative remedy is no bar – Writ is maintainable : *Chandrakanta Bai Vs. State of M.P., I.L.R. (2015) M.P. 1657 (DB)*

3. Power of Superintendence

- **Article 227** - Power of Superintendence - Held - Interference can be made if the impugned order is without authority of law and it suffers from any manifest procedural impropriety or illegality : *Pratap Vs. Ganeshram, I.L.R. (2014) M.P. 384*

- **Article 227** - Power of Superintendence - Held - Interference can be made if the impugned order is without authority of law and it suffers from any manifest procedural impropriety or illegality - Interference is made to ensure that courts below act within the bounds of their authority - It cannot be made in a routine manner on drop of hat : *Ganga Bai Vs. Subhash Chandra Mangal, I.L.R. (2014) M.P. 380*

- **Article 227** – Power of Superintendence – Held – The basic purpose of exercising the said jurisdiction is to keep the courts below within the bounds of their authority – Interference can be made sparingly for the said purpose and not for correcting error of facts and law in a routine manner : *Dataram Singh Vs. Brindawan Singh, I.L.R. (2014) M.P. 2348*

- **Article 227** - Power of Superintendence - When to be exercised - Held, if the order suffers from any jurisdictional error or manifest procedural irregularity or impropriety or it is pregnant with any palpable perversity - Interference can be made sparingly in rare cases when such ingredients are fulfilled - It cannot be made as a matter of routine on a drop of hat : *Gwalior Development Authority Vs. Dushyant Sharma, I.L.R. (2013) M.P. 1582*

- **Article 227**, Central Excise Act (1 of 1944), Section 35 (F) - Exemption from depositing amount for filing appeal - Appellate Authority partly allowed the application - Power of Superintendence - The question involved is "whether a petition can be entertained under Article 227 against the Interlocutory Order?" - Held - That an interlocutory order passed by appellate authority under its vested discretionary jurisdiction could not be interfered under superintending or revisional jurisdiction of the High Court - Further held, petition devoid of any merits deserves to be dismissed at the stage of motion hearing : *Chouhan Construction (M/s.) Vs. Union of India, I.L.R. (2014) M.P. *1 (DB)*

– **Article 227**, Hindu Marriage Act (25 of 1955), Section 24 – Interim maintenance – Power of Superintendence – Where the interlocutory order stood merged in the final order passed by the court below and that final order is upheld by this court – No justification for interference : *Jagdish Singh Sankhwar Vs. Archana, I.L.R. (2014) M.P. 2338*

4. Scope of Interference

– **Article 227** – Scope of interference limited – No patent illegality nor any jurisdictional error in order of Board of Revenue – Petition dismissed : *Sushila Raje Holkar (Sushri) Vs. State of M.P., I.L.R. (2015) M.P. 1475*

– **Article 227** – Scope of interference of High Court in the order passed by the trial court under its vested discretionary jurisdiction – Impugned order passed by the trial court under its vested discretionary jurisdiction – It is settled law that such orders passed by the sub-ordinate courts under the vested discretionary jurisdiction of such courts, should not be interfered at the stage of revision or writ petition under Article 227 : *Gajadhar Prasad Vs. Smt. Shakuntala Mishra, I.L.R. (2015) M.P. 2859*

– **Article 227** – Scope of interference – Trial Court directed petitioner to pay ad valorem court fee on the suit – Impugned order was passed by the trial court under the vested discretionary jurisdiction and does not appear illegal, irregular or against the propriety of law, cannot be interfered at this stage – However, in the interest of justice in the available circumstances, petitioner is extended further period of 30 days to take steps to amend and modify the valuation and to pay court fee : *Harish Patel Vs. Sanjay Kumar, I.L.R. (2015) M.P. 1676*

– **Article 227** – Trial Court imposed cost of Rs. 3,000/- for adjournment – Interference by High Court – Lower Court order within its jurisdiction – High Court should not interfere : *V.S. Jiamini (Dr.) Vs. Vinod Kumar Singh, I.L.R. (2014) M.P. *16*

- **Article 227** - Interference by High Court - Trial Court closed the right of petitioner to adduce evidence by speaking order - Held - Order passed by Sub-ordinate Court is under its vested jurisdiction and no jurisdictional error is committed by such Court then the same could not be interfered under the revisional jurisdiction of this Court : *Lakhan Lal Vs. Durga Prasad, I.L.R. (2013) M.P. 2600*

– **Article 227**, Civil Procedure Code (5 of 1908), Section 115 – Scope of Interference – Orders passed under the vested discretionary jurisdiction could not be interfered in writ or revisional jurisdiction : *Ramavtar Vs. Shivbhajan, I.L.R. (2015) M.P. 2560*

5. Miscellaneous

- **Article 227** - See - Sick Industrial Companies (Special Provisions) Act, 1985, Section 13(3) : *M.P. Madhya Kshetra Vidyut Vitaran Company Ltd. Vs. The Appellate Authority, I.L.R. (2014) M.P. 36 (DB)*

- **Article 227** - See - Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhinyam, M.P. 2005, Under Clause 2(1) : *Subhash Gupta Vs. The Managing Director, I.L.R. (2014) M.P. 26 (DB)*

- **Article 227** – Power under Article 227 can be exercised where the order suffers from flagrant abuse of fundamental principles of law and justice – This Court can not act as an appellate Court and reappraise the evidence – Petition is dismissed : *Geeta Dubey (Smt.) Vs. Saroj Suhane, I.L.R. (2015) M.P. 872*

- **Article 227** – Punishment – Judicial Review – Disproportionate – If major penalty imposed on an employee is disproportionate to the charges levelled against him, Court can look in the penalty and interfere in the order of penalty – It cannot be said that in any circumstances, interference in the order of penalty was not justified however, it would not be justified to remit back the matter now to the disciplinary authority for imposing any punishment to respondent No.1 – It is directed that on reinstatement respondent No. 1 would get 75% of back wages and all other consequential benefit – Amount already paid would be adjusted from the amount payable : *Union of India Vs. Ashok Kumar Tiwari, I.L.R. (2014) M.P. 2290*

- **Article 227**, Payment of Gratuity Act (39 of 1972), Section 4(6) - Withholding of Gratuity - Gratuity may be withheld or forfeited when an employee is punished for misconduct - Mere allegations of pendency of enquiry will not give any power to the employer to withhold the gratuity : *General Manager Vs. Deendayal Gaud, I.L.R. (2013) M.P. 584*

- **Article 227**, Van Upaj Vyapar (Viniyaman) Adhinyam, M.P. (9 of 1969), Section 15(6) – Confiscation of vehicle owing to its involvement in Commission of forest offence – Held – Under Section 15(6) of the Act burden is cast upon the owner of the vehicle to prove that his vehicle was being used for commission of forest offences without his knowledge and not with his connivance – Owner has lodged F.I.R. against driver, he has aided and helped the Forest Officials in recovering the accused person – Court rightly released the vehicle – Writ by State dismissed : *State of M.P. Vs. Ankit Rathore, I.L.R. (2014) M.P. 1015*

- **Article 227** - Application of the petitioner was not considered by the the Dy. Registrar in accordance with law and the prescribed procedure and the settled

propositions of the law - The Joint Registrar of Cooperative Society or the Tribunal had no option except to set aside the order passed by the Dy. Registrar and send back the matter again to trial Court to decide the application afresh in accordance with prescribed procedure - Impugned order is not found faulted - Petition dismissed : *Satya Pal Anand Vs. The Punjabi Housing Cooperative Society Ltd., I.L.R. (2011) M.P. 2983 (DB)*

- **Article 227** - Bhopal Gas Tragedy - Compensation - Petitioner's husband was a resident of a Gas affected area - From the statement of Doctor, it is clear that he was suffering with breathing problem, burning sensation in the eyes and various other connected ailments, which was of a permanent nature and continued till his death - Victim suffered permanent disablement because of inhaling of the Gas and would now be entitled to lumpsum compensation of Rs. 5.00 lacs - Petition allowed : *Sushila Bai Vs. Union of India, I.L.R. (2014) M.P. 695 (DB)*

- **Article 227** - Caste Certificate - Father of the petitioner migrated from Rajasthan - Petitioner belongs to "Dhanuk" caste which is declared as S.C. in Rajasthan as well as in Madhya Pradesh - Petitioner born in Madhya Pradesh and completed her studies in Madhya Pradesh - Petitioner had not migrated from Rajasthan - Caste certificate was rightly issued as notification pertaining to migration would not apply to petitioner - Order of High Level Committee set aside - Petition allowed : *Vandna Dhakad Vs. State of M.P., I.L.R. (2015) M.P. 898 (DB)*

- **Article 227**, Civil Procedure Code (5 of 1908), Order 6 Rule 17 - Amendment - Suit is pending under an order of remand passed by the appellate court with certain directions - On the same subject matter application under Order 6 Rule 17 was filed before appellate court which was dismissed - Held - Since the suit is being tried under an order of remand passed by the appellate court to decide the matter afresh in accordance with the directions, trial Court did not have any authority to consider any application or circumstance contrary to the direction - The order of dismissal of application under Order 6 Rule 17, by the appellate court is having binding effect as res-judicata : *Iqbal Vs. Mahila Rasidan, I.L.R. (2014) M.P. 2064*

- **Article 227**, Civil Procedure Code (5 of 1908), Order 6 Rule 17 - Suit for eviction was filed by the respondent/plaintiff - After recording the evidence of the parties, application seeking amendment in the written statement - Nothing has been explained as to why such a pleading could not be raised at the relevant time - Held - Petitioner who was aware of all such happenings has deliberately not made any pleading in the written statement and virtually has admitted that he was the sole tenant in the suit premises - Withdrawal of admission made earlier by petitioner, which would cause prejudice to the case of plaintiff by way of amendment, cannot be permitted - Petition dismissed : *Mahendra Gupta Vs. Mohd. Yunus, I.L.R. (2014) M.P. 2284*

– **Article 227**, Civil Procedure Code (5 of 1908), Order 9 Rule 9 – Plaintiff's suit dismissed in default – He brought another suit on same prayer – Order 9 Rule 9, C.P.C. attracted – Second suit barred : *PRL Projects & Infrastructure Ltd. Vs. State of M.P.*, I.L.R. (2014) M.P. *17

– **Article 227**, Civil Procedure Code (5 of 1908), Order 39 Rule 1 & 2 - Writ Petition - In exercise of power under Article 227, the approach of the Courts below which is based on factual matrix and documents available on record cannot be interfered unless some material circumstances are pointed out by the parties to show that they had legal possession over the property and the same was not considered by the Courts below : *Keshari Prasad Vs. Sub-Divisional Officer*, I.L.R. (2013) M.P. 2344

– **Article 227** – During the course of final argument, the court directed plaintiffs/respondents to supply some better particulars – Although neither party has requested the trial court to call any better particulars – Held – Plaintiffs are sole *dominus litus* of their litigation and without their request, they could not be insisted by the court to amend the pleadings or to supply better particulars – There was no occasion with the trial court to call the better particulars at the stage of final hearing – Petition is allowed : *Akbar Khan Vs. Smt. Krishna Devi (Dead) Through L.Rs.*, I.L.R. (2015) M.P. 342

– **Article 227 (2)(b)** – See – High Court Superintendence Rules (M.P.), 1998 – Entry 9 & 10 of Schedule : *Union of India Vs. Registrar General, High Court of M.P., Jabalpur*, I.L.R. (2012) M.P. 837 (FB)

- – **Article 233 & 234** – Recruitment – Evaluation – Process of normalization – Considering the fact that near about 3000 candidates had appeared and answer sheets were evaluated by Several District Judges, the process of normalization was rightly adopted : *Mahinder Kumar Vs. High Court of M.P. through Registrar General*, I.L.R. (2014) M.P. 881 (SC)

- **Article 235** - Control Over Subordinate Courts - "Control" would include premature or compulsory retirement of Judges of the District Courts and of subordinate Courts : *R.C. Chandel Vs. High Court of M.P.*, I.L.R. (2012) M.P. *103 (SC)

– **Article 243**, Municipalities Act, M.P. (37 of 1961), Section 19 & 3(7) – Councillors – President of Municipality – Is not Councillor – May be representative of the entire municipal area : *Sangeeta Bansal (Smt.) Vs. State of M.P.*, I.L.R. (2015) M.P. 3217

– **Article 243 F**, Panchayat Nirvachan Niyam, M.P. 1995, Rule 35(2) - Date of Birth - Date of scrutiny - Qualification or disqualification of a candidate has to be seen on

the date of scrutiny of nomination papers : *Basanti Bai (Smt.) Vs. Smt. Premwati Bai, I.L.R. (2012) M.P. 2416*

– **Article 243Q**, Municipal Corporation Act, M.P. (23 of 1956), Section 405 and Municipalities Act, M.P. (37 of 1961), Section 5-A – Consideration of objection by Governor – Whether he has to act on aid or advise of Council of Ministers or has to exercise discretion on his own – Held – It is for Governor to consider the objections as he deem fit – Final decision to accept or reject objections must be that of Governor – However, he is not precluded from requisitioning aid and advise of Council of Ministers – Review petition dismissed : *State of M.P. through Secretary, Urban Administration & Development Deptt. Vs. Abhinesh Mahore, I.L.R. (2015) M.P. 754 (DB)*

– **Article 243W, 12th Schedule - Entry 17** - Nagar Panchayat - Nagar Panchayat is a unit of self-government which is a sovereign body having both constitutional and statutory status - Article 243Q, 243W and Entry 17 confers considerable powers on Nagar Panchayat to carry out various schemes for economic development and social justice : *Nagar Panchayat, Kurwai Vs. Mahesh Kumar Singhal, I.L.R. (2013) M.P. 2291 (SC)*

– **Article 244(1)**, Land Revenue Code, M.P. (20 of 1959), Section 165(6-a) - Validity - Validity of Public notification issued by the Governor to amend Revenue Code 1959 challenged - Petitioner's contention is that Section 165 (6-a) of the Code can have no application to the transactions between non-tribal and non-tribal and Fifth Schedule of Article 244(1) can be invoked by the Governor only in respect of transaction between tribal and non-tribal - Held - Governor was competent to issue the subject notification in respect of any transaction or transfer of land in Schedule Area be it between tribal and non tribal or non-tribal and non tribal - Restriction u/s 165(6-a) is in respect of transfer of interest in the land in Scheduled Area to a person not belonging to aboriginal tribe - Transfer of interest in any land not belonging to aboriginal tribe can be effectuated only with the prior permission of the Collector : *Sudhakar Vs. State of M.P., I.L.R. (2014) M.P. 720 (DB)*

– **Article 246**, Entries 53 & 56 of List II of Schedule VII, Municipal Corporation Act, M.P. (23 of 1956), Section 5, 132 & 433 - Terminal Tax on transmission of Electricity - Respondent No.1 levied terminal tax on the transmission of electricity outside the Corporation Limit - Power of State Govt. in the present context is derived from Entry 56 of List II of Schedule VII - It makes no reference to transmission of electricity - Electricity can not be said to be carried by road or inland water-ways - Demand notice for payment of such terminal tax illegal - Terminal tax if any deposited by Petitioner is liable to be immediately refunded @ 6% interest per annum : *NTPC Ltd., Sidhi Vs. The Commissioner, Municipal Corporation, I.L.R. (2012) M.P. 1567 (DB)*

– **Article 265**, Municipalities Act, M.P. (37 of 1961), Section 133 - Claim for refund of Terminal Tax - Petitioners passed on the burden of Tax on to the consumers - They are not entitled to any unjust enrichment by way of refund : *Mohan Chopada Vs. State of M.P., I.L.R. (2012) M.P. 2930*

– **Article 265** – Sthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhinyam, M.P. (52 of 1976), Section 3 – Entry Tax – Rate of Tax – By notification dated 1-5-1997 which remained in force till 30-9-1997, rate of entry tax was reduced to 1% – However, as per proviso, the dealers who had already paid the tax at the higher rate were not entitled to refund of the same – Article 265 provides that no tax shall be levied or collected except by authority of law – Proviso providing for non-refund of tax paid at higher rate is unconstitutional being violative of Article 14 and 265 of Constitution of India – Appeal allowed : *Vikram Cement Vs. State of M.P., I.L.R. (2015) M.P. 1647 (SC)*

– **Article 296** - Monument without owner - Property would vest in the State Govt. : *Archaeological Survey of India Vs. State of M.P., I.L.R. (2012) M.P. *112 (DB)*

– **Article 300-A**, Municipal Corporation Act, M.P. (23 of 1956), Section 305 & 306 and Bhumi Vikas Niyam, M.P. 2012, Rule 61 – Power to regulate line of buildings – Demolition of buildings without initiating acquisition proceedings and without payment of compensation – Petitioners not ready and willing to surrender their lands in favour of Corporation therefore, reliance placed by respondents on Rule 61 of Rules 2012 is misplaced – Corporation cannot be permitted to take possession of properties of petitioner unilaterally – Power of Eminent Domain can be exercised only after payment of compensation – Corporation cannot be permitted to take possession without acquiring the property and payment of compensation – Petition allowed : *Prem Narayan Patidar Vs. Municipal Corporation, Bhopal, I.L.R. (2015) M.P. 1223*

– **Article 309** – Appointment – Right of a wait listed candidate – Post of Rozgar Sahayak fallen vacant due to resignation given by a person appointed on merit basis – Petitioner is seeking appointment on the ground that he was placed in the waiting list – Held – Wait list candidate has no vested right to be appointed – He can only claim appointment when a selected candidate does not join and that too during the operative period of waiting list – Petition is dismissed : *Brajesh Kumar Pandey Vs. State of M.P., I.L.R. (2015) M.P. 2574*

– **Article 311** - Equivalency of two posts - Not to be judged by sole fact of equal pay but many factors other than pay will have to be taken into consideration like (i) nature and duties of a post, (ii) responsibilities and powers exercised by officer holding post, (iii) extent of territorial or other charge held or responsibilities discharged, (iv)

minimum qualification prescribed for recruitment, (v) Salary : *Shyam Narayan Sharma Vs. State of M.P., I.L.R. (2011) M.P. *36 (DB)*

– **Article 311** - Executive policy - When executive power of Union of India is not trammled by any statute or rule is wide, and pursuant to its power, it can make executive policy : *Shyam Narayan Sharma Vs. State of M.P., I.L.R. (2011) M.P. *36 (DB)*

– **Article 311** - Merger of two departments - Merger is essentially a policy decision : *Shyam Narayan Sharma Vs. State of M.P., I.L.R. (2011) M.P. *36 (DB)*

- **Article 311** - Opportunity of Hearing - Examination of witnesses - Principles of Natural Justice require that all the witnesses in the departmental enquiry shall be examined in the presence of delinquent who shall be given an opportunity to cross-examine them : *Umakant Dwivedi Vs. State of M.P., I.L.R. (2011) M.P. *158*

– **Article 311** - Policy decision - Questions relating to constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria for promotion pertain to the field of policy which is exclusive discretion and jurisdiction of State Government : *Shyam Narayan Sharma Vs. State of M.P., I.L.R. (2011) M.P. *36 (DB)*

– **Article 311** - See - Education Service (School Branch) Recruitment and Promotion Rules, M.P. 1982 : *Shyam Narayan Sharma Vs. State of M.P., I.L.R. (2011) M.P. *36 (DB)*

– **Article 329**, Representation of the People Act (43 of 1951), Sub-clause (6) of Section 1 of Section 100 – Bar to interference by courts in electoral matters – If the Form has wrongly been rejected or accepted then, it is the ground for filing Election Petition – No relief can be granted in the petition : *Suresh Chandra Bhandari Vs. Commissioner, Election Commission of India, I.L.R. (2014) M.P. 2076*

- **Article 341** - Caste Certificate - Respondent applied for issuance of caste certificate - Contending that 'Mogia' caste has been included as a Scheduled Tribe as per the presidential notification issued under Constitution (Schedule Tribe) Order 1950 - Held - 'Mogia' community is a Scheduled Tribe as per Presidential Order - Once it has been established that the respondent is a member of 'Mogia' community and is a resident of Madhya Pradesh, he has to be treated as a Scheduled Tribe and not as a Scheduled Caste : *State of M.P. Vs. Dule Singh Solanki, I.L.R. (2014) M.P. 13 (DB)*

- **Article 341 & 342** - Caste Certificate - Migration of persons - Father of petitioners belongs to Chamar caste and was resident of U.P. - Petitioners were born and brought up in Madhya Pradesh - Chamar caste is notified as S.C. in U.P. as well as in

M.P. - Petitioners not entitled to enjoy same privilege and benefits of State of Uttar Pradesh - Cancellation of their caste certificate by High Power State Level Committee proper - However, a limited relief of protection of their professional degrees is granted - Petition disposed off. : *Hansraj Singh Vs. State of M.P., I.L.R. (2012) M.P. 3001*

– **Article 342** – Majhi – In view of the provision of Article 342 of the Constitution of India ‘Majhi’ is now declared to be Scheduled Tribe within the whole of the State : *Dhanraj Singh Pusam Vs. State of M.P., I.L.R. (2014) M.P. 1761*

CONSTITUTIONAL LAW

- **Order of an absolute Ruler** - No distinction can be made between an executive order or a legislative command issued by him : *Panchan Mochiyen Ratlam Vs. Santosh Kumar, I.L.R. (2012) M.P. 1735*

CONSUMER PROTECTION ACT (68 OF 1986)

– **Section 2(b)(c)(d)(q)(o)** – Consumer – Respondent approached Consumer Forum for execution of lease deed in respect of allotted land – Neither council is a service provider nor plot owner is a consumer under the Act – Complaint before Consumer Forum not maintainable – Petition allowed : *Nagar Palika Parishad Vs. Rajesh Kumar Saini, I.L.R. (2012) M.P. *7 (DB)*

– **Section 12** - Complaint - Jurisdiction of District Forum - Maintainability of complaint before District Consumer Forum challenged on the ground of lack of territorial jurisdiction - Held - Petitioner has remedy of filing objection before the District Consumer Forum and have remedy of filing appeal in case objection is rejected - In view of availability of efficacious alternative remedy, petition is disposed off with liberty to approach the appropriate forum : *R.K.D.F. Institution of Science & Technology Vs. Pavan Pratap Singh, I.L.R. (2012) M.P. 2697 (DB)*

– **Section 16(2) & 30(2)**, Consumer Protection Rules (M.P.), 1987, Rule 6(1) - Petitioner was appointed as Chairman, M.P. State Consumer Disputes Redressal Commission with a condition that petitioner shall draw the salary payable to a Judge of High Court minus pension payable to him - Held - Rule 6 of Rule 1987 provides that the President of the State Commission shall receive the salary of a Judge of the High Court, if he has been appointed on whole time basis - It is well settled in law that if an administrative order is issued in contravention of statutory provision, the same has no sanctity in law - Condition of adjusting pension quashed being contrary to Rule 6(1) - Petition allowed : *N.K. Jain Vs. State of M.P., I.L.R. (2013) M.P. 2360*

CONSUMER PROTECTION RULES (M.P.), 1987

– **Rule 6(1)** - See - Consumer Protection Act, 1986, Section 16(2) & 30(2) : *N.K. Jain Vs. State of M.P., I.L.R. (2013) M.P. 2360*

CONTEMPT OF COURTS ACT (70 OF 1971)

Territorial Jurisdiction – Whether Contempt petition can be filed at Gwalior bench alleging non compliance of the orders passed by the Principal Seat at Jabalpur? – Held – Territorial jurisdiction of the principal seat at Jabalpur and benches at Indore and Gwalior has already been assigned – Hence, Contempt petition arising out of the order passed by the principal seat can be filed only at principal bench – Contempt proceedings cannot be initiated on mere asking without factual foundation of jurisdictional nature – Constitutional power is conferred upon High Court to ensure majesty of law on the touchstone of rule of law as no one is above the rule of law : *Shashkiya Mahavidhyalaya Shikshak Sangh, Madhya Pradesh Vs. Shri V.S. Sampat, I.L.R. (2014) M.P. 1034*

– **Section 2** - Unconditional Apology - When cannot be granted - Apology is not a weapon of defence to purge the guilt of the contemners - It must be sought at the earliest opportunity - Apology at a belated stage to escape punishment of the Court is not acceptable - In absence of element of real remorse and regret on the part of contemners, unconditional apology cannot be accepted : *State of M.P. Vs. Sonu Parashar, I.L.R. (2014) M.P. 733*

– **Section 2(c)** - Criminal Contempt - Fabrication or manufacture of document like Medical Certificate by the Doctor - Held - To interfere or attempt to interfere in due course of judicial proceedings amounts to criminal contempt : *State of M.P. Vs. Sonu Parashar, I.L.R. (2014) M.P. 733*

– **Section 2(c)** – Criminal contempt – Lady judicial officer was on duty to preside over special bench of Lok Adalat at Central Jail, Bhopal – While she was coming back from Central Jail to District Court her car was stopped by contemnor and misbehaved with her – Held – Holding of Lok Adalat and continuance of its proceedings are part of judicial proceedings – Contemnor caused obstruction and interference in the judicial proceedings by stopping the vehicle of lady judicial officer in an unwanted fashion and thereby committed criminal contempt – Apology tendered by contemnor not liable to be accepted and sentenced to undergo simple imprisonment for fifteen days – However, as major penalty of withholding of two increments with cumulative effect has been imposed by department and only 2-3 years are left for his retirement therefore, sentence of imprisonment imposed is kept in abeyance and is released on probation of good conduct

for a period of three years : *In Reference Vs. Veer Bhan Singh, I.L.R. (2011) M.P. 1573 (DB)*

– **Section 2(c)** – Criminal Contempt – Respondent No.1 in custody threw night soil on the dias of judge – It nullifies the stand of constables that they had searched and checked the respondent No.1 – They deserve warning for being careful in future : *In Reference Vs. Ajay @ Guddu, I.L.R. (2011) M.P. 2229 (DB)*

– **Section 2(c)** – Criminal Contempt – Respondent No.1 threw faecal matter on the dias of judicial officer in the course of judicial proceedings – Act of respondent No.1 comes within the purview of criminal contempt – Sentenced to undergo simple imprisonment for one month : *In Reference Vs. Ajay @ Guddu, I.L.R. (2011) M.P. 2229 (DB)*

– **Section 2 (c) (ii)** – Criminal Contempt – Advocate filed repeat application for grant of bail before High Court – Suppressing the fact of pendency of bail application before High Court, filed another application before Trial Court – Such act may come within the purview of criminal contempt : *Satish Lodhi Vs. State of M.P., I.L.R. (2012) M.P. 632*

– **Section 2(c) (ii)** – Criminal Contempt – Advocate suppressed the rejection of bail application by Hon'ble Court and mentioned that application before High Court has been fixed on 26.11.2010 – Said Advocate insisted the Judge to hear the case on the same day without applying for urgent hearing and filing an affidavit for verification to said facts – Bail granted by Trial Court on the ground which was factually incorrect – Such act of Advocate may come within the purview of Criminal Contempt : *Satish Lodhi Vs. State of M.P., I.L.R. (2012) M.P. 632*

– **Section 2(c)(ii)** – Criminal Contempt – False affidavit – Affidavit filed in support of the incorrect averments made in bail application – Application for grant of bail before Trial Court was filed by suppressing material facts with regard to the dismissal of earlier bail applications by High Court – Such act may fall within the purview of Criminal Contempt : *Satish Lodhi Vs. State of M.P., I.L.R. (2012) M.P. 632*

– **Section 2(c) (ii)** - Criminal Contempt – False Affidavit – False affidavit filed along with bail application – swearing of false affidavit in judicial proceedings not only has the tendency of causing obstruction in the due course of judicial proceedings but has also the tendency to impede, obstruct and interfere with the administration of justice – Any such attempt to impede or undermine or obstruct the free flow of the unsoiled stream of justice by resorting to filing of false affidavit amounts to criminal contempt of Court and liable to be dealt with in accordance with law : *Satish Lodhi Vs. State of M.P., I.L.R. (2012) M.P. 632*

– **Section 12** – Contemnors have filled up the entire 150 seats available for the year 2011-12, without sharing of MBBS seats between the respondent private Medical College and the State Government, violating the orders of court dated 27.05.2009 and 27.01.2011 – Held – Once there is an order in force binding on the parties, they cannot violate or ignore that order, taking shelter under a statutory provision – If any modification of the order is warranted parties should have approached the court and sought for clarification or modification of the order – Parties cannot get away merely by tendering an unconditional and unqualified apology after enjoying the fruits of their illegality – Contemnors are directed to pay Rs. 50 Lakhs : *State of M.P. Vs. Suresh Narayan Vijayvargiya, I.L.R. (2014) M.P. 3077 (SC)*

– **Section 12(1)** – Contempt of Court – False statement in affidavit given in course of justice – Father of noticee (applicant) obtained temporary bail by submitting applications containing false declaration that no bail application was decided by the Supreme Court – Noticee in respect of two such applications submitted supporting affidavits – Noticee came forward with an explanation that the affidavits were submitted under a bona fide belief – Held – False statement in affidavits was made deliberately and consciously and it certainly amounted to Contempt of Court – Noticee is held guilty of contempt and directed to pay Rs. 20,000/- as penalty and exemplary costs : *Shamsher Bahadur Singh @ Nirmal Singh Vs. State of M.P., I.L.R. (2011) M.P. 1115*

– **Section 20** - See - Constitution, Article 215 : *Sanman Singh Vs. Sumer Singh, I.L.R. (2012) M.P. 2768 (DB)*

CONTRACT

- **Auction** - Single Bidder - Petitioner being the sole bidder do not acquire any vested right for allotment of plots in absence of any acceptance - No direction can be issued to the respondents to accept the bid : *Sanjay Agrawal Vs. M.P. Housing & Infrastructure, I.L.R. (2012) M.P. 2731*

- **Auction** - Single Bidder - Rejection of Bid - Petitioner was the single bidder and his bid was slightly higher than the offset price - In respect of other plots where several persons had applied, offer of more than double the offset price were received - There is a sufficient material to reject the single offer of the petitioner : *Sanjay Agrawal Vs. M.P. Housing & Infrastructure, I.L.R. (2012) M.P. 2731*

- **Cancellation of** - Tender document contains the clause which empowers the respondent to reject any or every tender without assigning any reason whatsoever - Respondent has right to cancel the tender : *Confidence Petroleum India Ltd. (M/s.) Vs. Hindustan Petroleum Corporation Ltd., I.L.R. (2012) M.P. 1867 (DB)*

- **Cancellation of** - Unworkable offer - Judicial Review - Tender was floated to seek bottling assistance from private bottler - In view of the development and commissioning of double head GD/PT which was commissioned at Indore LPG plant, it was noticed that increased bottling capacity of Indore LPG plant would meet the requirement under the tender in question - The tender had become unworkable - Decision to hold the tender as unworkable is a policy decision based upon facts and figures emerged due to subsequent development - In absence of any arbitrary exercise of power, such decision can not be interfered with by the Court - Petition dismissed : *Confidence Petroleum India Ltd. (M/s.) Vs. Hindustan Petroleum Corporation Ltd., I.L.R. (2012) M.P. 1867 (DB)*

- **Encashment of Bank Guarantee** – Petitioner alleges that respondents are not adhering to the conditions of the contract and not releasing the payment, are playing fraud, by getting bank guarantee encashed – Held – Mere non-release of the amount claimed to be due and on the other hand encashing the Bank Guarantee will not amount to be a ‘fraud’ – Petitioner having furnished unconditional Bank Guarantee as performance security, the invocation of Bank Guarantee cannot be said to be illegal : *Advantage Equi Fund Private Ltd. Co. (M/s.) Vs. M.P. Rural Road Development Authority, I.L.R. (2014) M.P. 1495 (DB)*

- **Grant of Dealership** – Agreement provided that candidate must have at least amount of Rs. 15 lacs in Scheduled Bank – Petitioner was having sufficient amount in post office and in different banks, details of which were already disclosed – Termination of agency on the ground of non-availability of amount in “Scheduled” Bank improper – Petition allowed : *Lata Agrawal (Smt.) Vs. Indian Oil Corporation, I.L.R. (2014) M.P. 2096*

- **Judicial Review** - Error in bid document and price bid - Nature of error in bid document is also material to be considered - Merely the fact that price bid was lesser could not be a ground to accept the tender in violation of the conditions : *Gajendra Vs. State of M.P., I.L.R. (2011) M.P. 375 (DB)*

- **Judicial Review** - Negligent mistakes - Negligent mistakes in bid documents cannot be permitted to be corrected on basis of equity - Where facts indicate that (i) it was not beyond the control of bidder to correct the error before the submission of bid (ii) that he was not vigilant (iii) that he did not seek to make corrections at the earliest opportunity - It is not within the scope of judicial review : *Gajendra Vs. State of M.P., I.L.R. (2011) M.P. 375 (DB)*

- **Judicial Review** - Parameters of judicial interference in contractual matters - Explained : *Gajendra Vs. State of M.P., I.L.R. (2011) M.P. 375 (DB)*

- **Judicial Review** - Scope - Remedy of judicial review against contractual powers of the Government - Not permissible unless the case of arbitrariness or favoritism by the authority is established : *Satkar Caterers (M/s.) Vs. Union of India, I.L.R. (2013) M.P. 2123 (DB)*

- **Mistake in Bid Document** - Whether can be corrected - Bidders were required to keep Part I of tender document containing their eligibility in one envelop and financial bid in another envelop - Petitioner kept both the documents in the envelop meant for keeping financial bid - Petitioner moved an application informing that tender form Part I is kept in tender form II - Collector, Excise rejected the application and financial bid of petitioner was not opened - Held - There is secrecy as to financial bid - Envelop containing financial bid cannot be opened at the stage of qualification round - It was a fatal error - Financial bid of the petitioner cannot be considered - Petition dismissed : *Gajendra Vs. State of M.P., I.L.R. (2011) M.P. 375 (DB)*

- **Refund of Earnest Money** - Petitioner deposited earnest money as per the terms of the tender - It was agreed that the earnest money would be forfeited in the event of withdrawing the offer - Tender was received on 12.08.2012 and validity period of offer was 120 days i.e. up to 11.12.2012 - Offer was accepted only on 27.12.2012 after the expiry of validity period - Petitioner in reply informed that he is not interested in work therefore, his earnest money be refunded - Held - Respondents were under an obligation to accept the tender before the expiry of the validity period of offer - Offer lapsed it could no longer have been accepted - Earnest money is directed to be refunded alongwith 6% interest per annum : *Ashok Kumar Jain Vs. State of M.P., I.L.R. (2014) M.P. 371 (DB)*

- **Rejection of Bid** - Owing to non-attestation - Petition challenging acceptance of single offer for grant of licence to sell country and foreign liquor - Since the petitioner had not made an attestation in the documents annexed in Part-I of his bid as required under clauses 16.14 & 20, treated the same to be incomplete Part-II bid was not opened, although the same was on higher side - Held - Clause 16.14 and 20 of the notice inviting tender are not the essential condition but are collateral ones, as the consequence of non-compliance thereof is not provided - Same should have been got corrected and the bid of the petitioner which is higher, should be opened in the interest of revenue - District Committee is directed to get attestation of documents and to accept the bid of the petitioner : *Rajendra Rai Vs. State of M.P., I.L.R. (2014) M.P. 1531*

- **Reserved Price** - Non-disclosure - Elaborate mechanism for fixation of upset price which takes into account the sale rate during last five years, sale rate in the preceding year and upset price in preceding year and market trend - Upset price so fixed are approved by the Chairman prior to invitation of tenders - There is no unfairness in not disclosing the reserve price because when reserve price is disclosed, bidders often form

cartels and bid at or around the disclosed price, though the market price is much higher - Non-disclosure of reserve price proper - Appeal dismissed : *Aman Traders Vs. State of M.P., I.L.R. (2013) M.P. 1294 (DB)*

- **Sale of Flat by Housing Board** - Escalation of price - If Housing Board wishes to increase the price of the flats of the plots sold by them, it can be done only if the increase can be justified and is based on actual escalation calculated on the basis of the data disclosed and available with them - Petitioners directed to make representation and the Board shall decide the matter in accordance with dictums of Hon'ble Supreme Court after hearing the parties - Petition disposed off : *Varsha Sanghi (Dr.) Vs. State of M.P., I.L.R. (2012) M.P. 2995*

- **Suspension of Commercial Relations** - Decision to suspend future business relation, without affording any opportunity of hearing is not sustainable, being void ab initio - Petition allowed : *Maytas Infra Ltd. Vs. M.P.S.E.B., I.L.R. (2011) M.P. 939 (DB)*

- **Tender** - Single bid - Second respondent floated tender for two options i.e. for operation, maintenance and management of ware-housing and for setting up the manufacturing facilities - In the NIT itself, it was provided that if eligible and sufficient bids are not received for the first option, then the NIT would be considered for the second option - In the alternative, entire tenders be quashed and second respondent was obliged to invite fresh tender for the first option - Only one bid was received for the first option - Second respondent awarded the tender for the first option - Held - Award of tender to single bidder cannot be upheld - Respondent to consider floating fresh tender if at all they are interested to go ahead with award of tender for first option - In the alternative, they are free to consider the tender for the second option in terms of the NIT : *Elixir Impex Pvt. Ltd. Vs. State of M.P., I.L.R. (2013) M.P. 2530 (DB)*

- **Whether Bank which had issued guarantee is necessary party** - Bank issuing a guarantee is not concerned with the underlying contract between the parties to the contract - The duty of the bank under the performance guarantee is created by the documents itself - Bank can not be termed as necessary party to the dispute - Dispute is not tripartite and hence arbitration clause would apply : *Shin-Etsu Chemical Co. Ltd. Vs. Vindhya Telelinks Ltd., I.L.R. (2011) M.P. *156*

CONTRACT ACT (9 OF 1872)

- **Section 5** - Proposal - Proposal can be revoked at any time before the communication of its acceptance is complete against the proposer : *Onkar Yadav (M/s.) Vs. State of M.P., I.L.R. (2013) M.P. 771 (DB)*

– **Section 7** - Acceptance - Notice Inviting Tender - There was no condition in NIT requiring a successful bidder to deposit any performance security - Since the respondent has imposed such a condition at the stage of acceptance of tender and before the execution of the agreement, therefore, such an acceptance cannot be held to be unconditional acceptance of tender - No concluded contract had come into existence - Forfeiture of Earnest Money for want of deposit of 12% P.A. bad in law : *Onkar Yadav (M/s.) Vs. State of M.P., I.L.R. (2013) M.P. 771 (DB)*

– **Section 7** - Acceptance - Unqualified and absolute - Acceptance must be based or founded on 3 components - Certainty, commitment and communication - If there is variance between the offer and acceptance even in respect of any material term, acceptance cannot be said to be absolute and unqualified and the same will not result in formation of a legal contract : *Onkar Yadav (M/s.) Vs. State of M.P., I.L.R. (2013) M.P. 771 (DB)*

– **Section 16** - Contract - Undue influence - Respondents alleged that contract was null and void on account of undue influence - Respondents alleged that since the petitioner is the only supplier of Preform and therefore there was inequality of bargaining power as the respondents had made large investment were solely dependent upon petition for supply of Preform - Held - Contract in question is a commercial contract - Contract was acted upon between the parties and the respondents had received 18 shipments - Respondents having entered into contract and having derived benefit under agreement can not be permitted to approbate or reprobate - Respondents are stopped from denying the validity or the binding effect of the Contract : *Shin-Etsu Chemical Co. Ltd. Vs. Vindhya Telelinks Ltd., I.L.R. (2011) M.P. *156*

– **Section 23** - Opposed to public policy - Any contract prohibited by enactment is also against public policy : *Ispat Khadan Janta Mazdoor Union Vs. The Director, Steel Authority of India Ltd., I.L.R. (2011) M.P. *9 (DB)*

– **Section 23 & 28** – Contracts opposed to public policy – When a dispute arises where both the parties are Indian, and if the contract has the effect of compelling them to resort to arbitration by foreign arbitrators and thereby impliedly excluding the remedy available to them under the ordinary law of India, the same is not opposed to public policy : *Sasan Power Ltd. Vs. North American Coal Corporation India Pvt. Ltd., I.L.R. (2015) M.P. 3328 (DB)*

– **Section 24** – Void Contract – If Considerations and objects are unlawful in part and further if object is unlawful, the agreement is void – Agreement that transferor company shall bear, pay, discharge or otherwise secure to pay all liabilities earlier to the date of agreement runs contrary to Section 77 of M.P.I.R. Act – Such agreement is not

lawful and void : *Chamunda Standard Mills, Balgarh, Dewas Vs. Ravindra, I.L.R. (2011) M.P. 1459 (DB)*

– **Section 25** - Consideration - Proof of - Consideration for the purpose of mortgage - May be even the money advanced in past - Past liability on the mortgagor would serve the purpose of consideration, which is permissible under law : *Rama Sharma (Sushri) Vs. Tajbi @ Badbi (Smt.), I.L.R. (2011) M.P. 2830*

– **Section 25**, Limitation Act (36 of 1963), Section 18 - Document executed after expiry of limitation - Loan amount taken against 12 Hundis between 03.10.1992 to 25.02.1993 - On 10.07.1999 the lonee executed a document acknowledging the non-payment of Hundis which comes to Rs. 62,116/- and also agreed to pay the amount of debt by clearing payment of each Hundi on monthly basis - Held - Though the debt was barred by law of limitation on the date when the document was executed, however, by this document appellant promised to pay the amount on account of debt which is a fresh contract, therefore, the Court below committed no error in decreeing the suit : *Sardar Surendra Singh Bedi Vs. Dhannalal, I.L.R. (2011) M.P. 2824*

– **Section 28**, Civil Procedure Code, 1908, Section 20 - Ouster of jurisdiction - Head Office of respondent situated at Bombay and Branch Office at Indore - Agreement entered into between parties at Bombay and contract was to be performed at Indore - Agreement containing clause that "agreement shall be subject to jurisdiction of Court at Bombay" - Ouster of jurisdiction of Court at Indore - Held - Intention to exclude Court's jurisdiction should be reflected in clear, unambiguous, explicit and specific terms - Import of use of words 'only', 'alone', 'exclusive' in exclusion clause would reflect the intention to exclude the jurisdiction - There was no ouster clause in the agreement such as words 'alone', 'only', 'exclusive' is not used - Court at Indore has jurisdiction - Appeal allowed : *Life Care International Vs. Mahindra & Mahindra Ltd., I.L.R. (2011) M.P. 175*

– **Section 28**, Criminal Procedure Code, 1973 (2 of 1974), Section 125 & 127 – Order granting maintenance was set-aside by revisional court on the ground that lump-sum maintenance was granted by Lok-Adalat under an agreement entered into between the parties – Held – As per Section 28 of the Contract Act the condition that the applicant could not ask for further maintenance was violative to the provision of Section 127 of the Cr.P.C. – Therefore, that portion of the contract was void : *Leela Bai Vs. Ganpati, I.L.R. (2015) M.P. 501*

– **Section 28** - See - Civil Procedure Code, 1908, Section 20 : *Manoj Kumar & Company Vs. General Manager Works, I.L.R. (2013) M.P. 407*

– **Section 29** - See - Arbitration and Conciliation Act, 1996, Section 11(6) : *Satyendra Shukla Vs. Smt. Manorama Raghuvanshi, I.L.R. (2012) M.P. 1629*

– **Section 29** - Uncertainty of agreement - Land which was to be sold by defendant has been incorrectly described and is uncertain - The said agreement is void ab initio - Void document cannot be specifically enforced in a suit for specific performance of contract : *Kashi Ram Vs. Mitthu Lal, I.L.R. (2013) M.P. 410*

– **Section 55** - Lease of Land - Giving an option for renewal of a lease of land is considered to be of the essence of Contract and therefore, if the tenant wishes to claim the privilege, he must do so strictly within the time limited for the purpose - A tenant not having exercised the option of renewal within the time limited by the Clause is not entitled to a renewal : *Sharda Singhania (Smt.) Vs. Bharat Petroleum Corporation Ltd., I.L.R. (2012) M.P. 2780*

– **Section 55** - See - Civil Procedure Code, 1908, Order 39 Rule 1 & 2 : *Saroj Gautam (Smt.) Vs. Laxmi Prasad, I.L.R. (2011) M.P. *18*

– **Section 56** - Agreement to do impossible Act - Section 56 do not apply as far as lease is concerned because in a lease the mutual rights and obligations of lessor and lessee are settled subject to a contract to contrary by clause (e) to Section 108 of Transfer of Property Act : *Shankar Prasad Vs. State of M.P., I.L.R. (2013) M.P. 2146*

– **Section 124 & 125**, Limitation Act (36 of 1963), Article 27 & 113 - Cause of Action and Limitation - Respondent No.1 is a forest contractor - Govt. of M.P. directed him to furnish bank guarantee of Rs. 20,000 for due performance of the forest contract - Respondent No.1 deposited with plaintiff/bank a margin money of Rs. 3,000 by way of Fixed Deposit and appellant agreed to insure the rest of the guarantee amount that in case Govt. invokes the guarantee, appellant will reimburse the said amount to the extent of amount of policy - On account of default committed by defendant No.1, Govt. of M.P. invoked the guarantee - Plaintiff/bank paid the entire amount of claim to Govt. on 31.8.1978 - Appellant pleaded that policy was valid only upto 31.12.1971 and suit was filed on 06.10.1979 and therefore is time barred - Held - Under a contract of indemnity, cause of action would arise only when the damage is suffered by plaintiff and if a suit is brought before actual loss, it will be a premature suit - Thus, the cause of action arose only on 30.08.1978 when the plaintiff/bank paid the amount to the Govt. - Suit filed on 06.10.1979 within limitation - Appellant also jointly and severally liable to pay decretal amount : *Oriental Fire & General Insurance Co. Ltd. Vs. Saifuddin, I.L.R. (2011) M.P. 2811*

– **Section 171** – Banker’s lien – Plaintiff/respondents having joint bank account and locker along with their son who was employee of the bank – Plaintiffs prohibited by bank from operating their bank account and locker as their Son alleged to have committed embezzlement and his services were terminated and matter was reported to

police – Held – No suit for recovery of amount filed by Bank – Nothing on record to show that what happened in criminal case even after 20 years of embezzlement – Plaintiffs are 82 and 83 years of age – Trial Court rightly passed the decree permitting them to operate the bank account and locker – Appeal dismissed : *Oriental Bank of Commerce Vs. Shripad Vishnu Pant Naik, I.L.R. (2011) M.P. 1519*

– **Section 217, 218 & 221** - Liability of Agent - Payment made by the debtor to the agent of the Principal absolves the debtor from the liability of payment to the Principal and the agent alone is liable and responsible to his Principal : *Zakiuddin Vs. Rajendra Kumar, I.L.R. (2012) M.P. 2466*

CONTRACT LABOUR (REGULATION AND ABOLITION) ACT **(37 OF 1970)**

– **Section 10** - Prohibition notification - Agreements entered into between Management and Union to the effect that industry shall not employ labour through contractors or engage contractor's labour in jobs of permanent and perennial nature - Whether binding on contract labours as they were not party to agreement - Held - Contract labours were not supposed to be party to such agreement - Mandate of agreement binding on management is not to engage workers on contract basis in jobs of permanent and perennial nature : *Ispat Khadan Janta Mazdoor Union Vs. The Director, Steel Authority of India Ltd., I.L.R. (2011) M.P. *9 (DB)*

– **Section 10** - Regularization of services of contract labour - In spite of notification, management continued to employ contract labour - Engineers/Mines Manager having full power to issue instructions during progress of work for proper and adequate execution of works - Management having full control over contract labour - Contract between Management and Contractors was sham and bogus considering the functioning of mines and there was no justification to continue with contract labour after 17.3.1993 - Contract labours are to be treated as employees of principal employer - Workers who were in employment from 1993 till 1996 directed to be reinstated without back wages : *Ispat Khadan Janta Mazdoor Union Vs. The Director, Steel Authority of India Ltd., I.L.R. (2011) M.P. *9 (DB)*

– **Section 10** - Regularization of services of contract labour - Relationship of employer and employee - To ascertain relationship, multiple factors are required to be taken into consideration - Control, interrogation, power to select & dismiss, to pay remuneration, deduct insurance contributions, organize work, supply tools & material, mutual obligations between them are relevant factors : *Ispat Khadan Janta Mazdoor Union Vs. The Director, Steel Authority of India Ltd., I.L.R. (2011) M.P. *9 (DB)*

– **Section 23, 24 & 25** - Penalties and offences by Companies - Aforesaid provisions cannot be said to be exhaustive of the remedies available : *Ispat Khadan Janta Mazdoor Union Vs. The Director, Steel Authority of India Ltd., I.L.R. (2011) M.P. *9 (DB)*

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

– **Section 3 & 66** - Where the State Government has specified any officer to assist the Registrar in exercise of the powers u/s 3, the Registrar in such case need not have to further exercise his powers u/s 66(1) of the Act except to transfer the dispute to the officer specified : *Sayeed Ahmad Vs. State of M.P., I.L.R. (2011) M.P. 2701*

– **Section 8 & 64** - Election of respondent as Chairman challenged by filing P.I.L. - Held - Writ petition which has been styled as P.I.L., cannot be entertained, as it involves the disputed question of facts - Petitioner is having alternative efficacious remedy by raising dispute before the Registrar u/s 64 of the Co-operative Societies Act : *Bhageela Kol Vs. State of M.P., I.L.R. (2014) M.P. 690 (DB)*

– **Section 19-C(1-A) & Section 64** – Resolution passed by the committee can be challenged in appeal – A dispute u/s 64 or an appeal under sub-section (1-A) of Section 19-C shall be maintainable before the Deputy Registrar : *Ahsan-ur-Rehman Vs. The M.P. State Co-Operative Tribunal, I.L.R. (2011) M.P. 886 (DB)*

– **Section 49 (7-AA), 53 & 57** – Completion of term of Board of Directors – The term of office of outgoing Board of Directors was expired on 27.05.2014 – Election to install newly elected Board was not conducted within the specified time and the same was extended beyond 27.05.2014 by virtue of notification dated 07.07.2012 and 24.01.2013 issued by the competent authority u/s 49(7-AA) – Held – The provision contained under section 49(7-AA) was deleted by amending Act of 2013 – The State Government could not have exercised any power with reference to the said provision after 05.02.2013 – Therefore, notifications will have no application : *Ankur Trivedi Vs. State of M.P., I.L.R. (2015) M.P. 1204 (DB)*

– **Section 53** – Registrar, Co-operatives can exercise the powers conferred u/s 53 of the Act of 1960 as amended, for supersession of the existing Board of Directors in accordance with law by giving opportunity to all concerned – Existing Board should be superseded by replacing other person(s) and State Co-operative Election Authority shall forthwith commence the process of conducting the election for installation of new Board of Directors within two weeks : *Ankur Trivedi Vs. State of M.P., I.L.R. (2015) M.P. 1204 (DB)*

– **Section 53** - Registrar/Joint Registrar - When an authority vested with the power purports to act on its own but in substance the power is exercised by external

guidance or pressure, it would amount to non-exercise of power, statutorily vested - Authorities have to form an opinion and that must be based on some objective criteria, which has nexus with final decision - Authority shall not act with pre-conceived notion and shall not speak his masters's voice - Registrar and Joint Registrar are bound to follow the Judicial precedents : *State of M.P. Vs. Sanjay Nagayach, I.L.R. (2013) M.P. 1245 (SC)*

– **Section 53** - Supersession of Board of Directors - Board of Directors were superseded in violation of provisions of Section 53 - As per the report of NABARD and RBI the charges levelled against the Board of Directors do not provide strong ground to supersede the Board - Board of Directors could have continued till 15.10.2012 however, the same was superseded on 30.9.2011 - The period during which the Board of Directors remained under supersession be excluded in computing the period of five year - Joint Registrar directed to put Board of Directors back in office so as to complete the period during which they were out of office : *State of M.P. Vs. Sanjay Nagayach, I.L.R. (2013) M.P. 1245 (SC)*

– **Section 53** - Supersession of Board of Directors - Directions issued : *State of M.P. Vs. Sanjay Nagayach, I.L.R. (2013) M.P. 1245 (SC)*

– **Section 53** - Supersession of Board of Directors - Some of the charges against Board of Directors were relating to the period of the previous committee for which the subsequent committee could not be held responsible : *State of M.P. Vs. Sanjay Nagayach, I.L.R. (2013) M.P. 1245 (SC)*

– **Section 53(1), Proviso 2** - Supersession of Board of Directors - Consultation with R.B.I. - Consultation with R.B.I. has to be effective consultation - For effective consultation, the copy of show cause notice with other relevant materials including the copy of reply filed by the Bank to the various charges and allegations levelled against them should also be made available to R.B.I. - R.B.I. should be told of the action the Joint Registrar is intending to take : *State of M.P. Vs. Sanjay Nagayach, I.L.R. (2013) M.P. 1245 (SC)*

– **Section 55(2)** – See – Penal Code, 1860, Section 409 & 467 : *District Co-operative Central Bank Isagarh, District Guna (M.P.) Vs. Leeladhan, I.L.R. (2012) M.P. 593*

– **Section 55(2)** - Withdrawal of resignation - Respondent was allowed to withdraw his resignation which was to take effect from 01.04.1977 and was taken back in service vide order dated 20.09.1979 treating him in service w.e.f. 01.04.1977 but without paying him salary for the period 01.04.1977 to 20.09.1979 for the period he did not work - Order does not reflect that the respondent has been given a fresh appointment - In absence of any such mention, the respondent's past services since 1966 cannot be said to

be washed away depriving him all consequential benefits arising out of it on attaining the age of superannuation : *Jila Sahkari Kendriya Bank Maryadit, Mandsaur Vs. Aleemuddin Ansari, I.L.R. (2014) M.P. 316 (DB)*

– **Section 55(2), 66 & 78(2)** - Appeal - Dy. Registrar was nominated by Registrar in exercise of power under Section 66 to exercise all powers and jurisdiction on behalf of Registrar - Dy. Registrar has to be treated as Registrar when his order is put to challenge in Appeal - Appeal would not lie to the Joint Registrar or Registrar but the Tribunal : *M.P. Co-operative Workers Federation Vs. M.P. Co-operative Tribunal, I.L.R. (2012) M.P. 2975 (DB)*

– **Section 64** – Dispute – Business Transaction/Business Transactions – Whether a dispute arising out of contract for sale and purchase of immovable property owned by respondents is amenable to adjudication under Section 64 – There was a single transaction whereunder the respondents had agreed to sell to society a parcel of land for use by Society – As respondents were not in the business of selling land as a commercial or business activity, it would not be a “business transaction” leave alone “business transactions” – Dispute was not maintainable : *Bhanushali Housing Cooperative Society Ltd. Vs. Mangilal, I.L.R. (2015) M.P. 2293 (SC)*

– **Section 64** - Dispute - Petitioner is involved in procurement and trade of different minor forest produce - Forest produce was got insured with Insurance Company - Petitioner suffered a loss as there was an incident of fire in the godown - Dispute raised by petitioner against the Insurance Company for non-payment of complete claim - Claim was dismissed as not maintainable - Held - Business is a word of wide import - Petitioner is involved in the procurement and trade of different minor forest produce with an object to provide monetary benefits to tribals through primary co-operative societies - Forest produce was stored in furtherance of this object - Transaction of insurance was definitely in furtherance of the business of petitioner to prevent loss - Dispute falls under Section 64(1) (c) of the Act - Matter remanded back to decide the same on merits : *M.P. Rajya Laghu Vanopaj (Business and Development) Sahakari Sangh Mydt., Bhopal Vs. The New India Insurance Co. Ltd., I.L.R. (2012) M.P. 2747 (DB)*

– **Section 64** – Dispute Touching Business – Dispute arising out of the purchase of the land owned by respondents is a dispute touching the business of Society : *Bhanushali Housing Cooperative Society Ltd. Vs. Mangilal, I.L.R. (2015) M.P. 2293 (SC)*

– **Section 64 & 51-B** - See - Criminal Procedure Code, 1973, Section 482 : *Arunlata Deria (Smt.) Vs. State of M.P., I.L.R. (2014) M.P. 273*

– **Section 67**, Civil Procedure Code (5 of 1908), Order 40 - Appointment of Receiver - Pendency of any litigation before any forum prescribed under the Cooperative

Societies Act, the party has a right to approach such court with the application for appointment of the Receiver - But such application could be considered and adjudicated by such court keeping in view the scheme provided under Section 67 of the Societies Act and under Order 40 of the CPC and the settled propositions of law in that regard : *Satya Pal Anand Vs. The Punjabi Housing Cooperative Society Ltd., I.L.R. (2011) M.P. 2983 (DB)*

– **Section 72, 74 & 76**, Criminal Procedure Code, 1973 (2 of 1974), Section 5 - Cancellation of Plot - Maintainability of Complaint - Complainant was allotted plot by the society, however, the allotment was cancelled as he had not deposited the maintenance charges, Bhoo Bhatk and further did not complete the registration process - Complainant did not remove deficiencies inspite of repeated notices issued to him - Held - Dispute regarding allotment or cancellation of plot is punishable under Section 72 & 74 of Act and cognizance can be taken only on a sanction given by Registrar under Section 76 - Provisions of Cr.P.C. not applicable : *Avdhesh Raghuvanshi Vs. State of M.P., I.L.R. (2013) M.P. 1227*

– **Section 77**, Co-Operative Tribunal – Constitution – A former Judge as Chairman or Ex-District Judge – One of two members has to be person not below rank of Joint Registrar and other person connected with Co-operative movement or advocate – Provision is not unconstitutional : *Satya Pal Anand Vs. State of M.P., I.L.R. (2015) M.P. 288 (SC)*

– **Section 77(3)(b)**, Co-operative Tribunal – Appointment of Chairman and Members – To be through Public Service Commission in consultation with High Court : *Satya Pal Anand Vs. State of M.P., I.L.R. (2015) M.P. 288 (SC)*

– **Section 78(1) & 78(2)** – First appellate order passed by the Deputy Registrar – Second appeal would lie to the Tribunal u/s 78(2) of the Act – Appeal before the Joint Registrar was not maintainable : *Ahsan-ur-Rehman Vs. The M.P. State Co-Operative Tribunal, I.L.R. (2011) M.P. 886 (DB)*

– **Section 80-A** – See – Sahakari Bhoomi Vikas Bank Adhinyam, M.P. 1966, Section 14(1)(4) & 21 : *Munshilal Rathore Vs. Zila Sahakari Bhumi Vikas Bank, I.L.R. (2011) M.P. 1693 (DB)*

– **Section 82** – See – Civil Procedure Code, 1908, Order 7 Rule 11 : *Kedarnath Neekhra Vs. Suprabhat Grih Nirman Sahkari Sanstha Maryadit, Shivpuri, I.L.R. (2015) M.P. 3392*

– **Section 94** - Notice of Institution of Suit - Held - Mandatory provision - Lack of Notice - Civil Court has no authority or jurisdiction to entertain the suit : *Saphik alias Sahid Khan Vs. Nandlal Arora, I.L.R. (2013) M.P. 2832 (DB)*

COSTS

- **Costs is intended to achieve the goal of acting as a deterrent to vexatious, frivolous and speculative litigations by the parties** - In the fact situation of the present case a costs of Rs. 30,000/- is imposed to give a message that Courts are not asylum for frivolous litigations : *Leelawati (Smt.) Vs. Kanhaiyalal, I.L.R. (2011) M.P. *140*

COURT FEES ACT (7 OF 1870)

SYNOPSIS

- | | |
|---------------------------------|--------------------------------|
| 1. Ad valorem Court Fees | 2. Consequential Relief |
| 3. Fixed Court Fees | 4. Refund of Court Fee |
| 5. Miscellaneous | |

1. Ad valorem Court Fees

– **Section 7 (iv)(c)** – Plaintiff filed suit that the sale deed is not binding on him – Transaction is voidable – Plaintiff is required to pay ad valorem court fee upon it : *Jeevan Lal Rathore Vs. Deepchand, I.L.R. (2014) M.P. 3263*

– **Section 7** - Ad valorem Court Fees - When appeal is preferred between 02.04.2008 to 09.01.2013 ad-valorem court fee of 10% - On the enhanced amount is payable and when the appeal is preferred on or after 09.01.2013 court fee of 2.5% subject to a maximum of Rs. 1,00,000/- would have been charged : *Manju (Smt.) Vs. Mohd. Jamil, I.L.R. (2014) M.P. 437*

– **Section 7** - See - Motor Vehicles Act, 1988, Section 173 : *Manju (Smt.) Vs. Mohd. Jamil, I.L.R. (2014) M.P. 437*

– **Section 7(iv)(c)** - Ad valorem Court fees - Where the executant of the sale deed wants it to be annulled, he has to seek cancellation of that deed for which ad valorem court fee on the consideration stated in the sale deed is payable : *Ambika Prasad Vs. Shri Ramshiromani @ Chandrika Prasad Dwivedi, I.L.R. (2011) M.P. 154 (DB)*

– **Section 7(iv) (c) & (d), Article 17 of Schedule II, Suits Valuation Act (7 of 1887) Section 8** – Proper valuation and Court Fee – Plaintiff himself put valuation in respect of property by which he sought relief of mandatory injunction – Held – Plaintiff

was required to make payment of ad-valorem Court fee : *A.K. Ghosh Vs. Dhruv Kumar Haryani, I.L.R. (2011) M.P. 2141 (DB)*

– **Section 7(vi-a)(a)(b)** - Advalorem Court Fee - Court fees is payable on the basis of market value on the date of presentation of plaint : *Shakuntla Butani (Smt.) Vs. Smt. Poonam Butani, I.L.R. (2012) M.P. 2113*

– **Section 7(iv)(c),(v)** – Ad valorem Court Fee – Consequential relief – Suit for declaration that the suit property is joint Hindu family property and further declaration that if any alienation has taken place, the same may be declared as not binding – Second part of relief is consequential relief and not in sequence as it cannot be granted unless first relief is granted – Petitioner rightly directed to pay ad valorem court fee – Petition dismissed : *Sudha Jaiswal (Smt.) Vs. Sunil Jaiswal, I.L.R. (2015) M.P. 2371*

2. Consequential Relief

– **Section 7(iv) (c)** – Consequential Relief – Plaintiff claiming declaration that the land encroached by the defendants is of the ownership of plaintiff alongwith mandatory injunction to remove the wall constructed by the defendants – The relief of mandatory injunction is not an independent, but is a consequential to the relief of declaration : *A.K. Ghosh Vs. Dhruv Kumar Haryani, I.L.R. (2011) M.P. 2141 (DB)*

– **Section 7(iv)(c),(v)** – Valuation and court fee payable – Consequential relief – Consequential relief means some relief which would follow directly from declaration given, the valuation of which is not capable of being definitely ascertained and which is not specifically provided for anywhere in Act and cannot be claimed independently of a declaration as a substantive relief : *Sudha Jaiswal (Smt.) Vs. Sunil Jaiswal, I.L.R. (2015) M.P. 2371*

3. Fixed Court Fees

– **Section 7** – Payment of Court Fees – Fixed Court Fees or Ad valorem Court Fee – Held – The Court fees payable on plaint is to be decided on the basis of allegations made in the plaint and substantive relief sought – The question as to whether the suit valued by the plaintiff, is correctly arrived at or not, is of no consequence to the court at that stage – Pleadings in the suit have to be understood in entirety to draw the nexus of the ultimate relief sought for in the plaint – Mere on assumption being drawn, the plaint will not alleged to come in the way while the court examines and reaches the conclusions as regards the substantive relief – Further held, where a document which is misrepresentation of fraud as regard its character as well as its contents is a void document – Hence, plaintiff is required to pay fix court fees and not the ad valorem court fees : *Saya Jeet Vs. Balle Singh, I.L.R. (2014) M.P. 2106*

– **Section 7(iv)(c)** – Fixed Court fee – Declaration – Non-executant seeking declaration of sale deed as null & void and same is not binding on him, he is only required to pay the fixed court fee – If executant to the sale deed seeks cancellation of sale deed, he is required to pay ad valorem court fee : *Baijnath Singh Vs. Jagdish, I.L.R. (2015) M.P. 1012*

– **Section 7(iv)(c)** - Fixed Court Fee - Petitioner not a party to the sale deed - Allegation of the petitioner in the plaint is that the sale deed is void to the extent of his share - Held - The Court below was not correct in holding that the petitioner is liable to pay ad valorem Court fee - Impugned order stands set aside : *Harinarayan Vs. Gulabchandra, I.L.R. (2011) M.P. 2377*

– **Section 7(iv)(c)** – See – Suits Valuation Act, 1887, Section 8 : *Manoj Kushwah Vs. Chhotelal, I.L.R. (2015) M.P. 3063*

– **Section 7(iv)(c)** - See - Suits Valuation Act, 1887, Section 8 : *Santosh Kumar Chopra Vs. State of M.P., I.L.R. (2012) M.P. 1852*

4. Refund of Court Fee

– **Section 13**, Civil Procedure Code (5 of 1908), Order 41 rule 23 – Refund of Court-fee – Where a decision is found to be erroneous and the matter is remanded back to the Reference Court for a fresh decision, the appellant become entitled for refund of the court-fee : *Fatehchand Vs. The Land Acquisition & Rehabilitation Officer, I.L.R. (2011) M.P. 2020 (DB)*

5. Miscellaneous

- **Amendment** - Amendment to the Court Fees Act (Act No.4 of 1976) w.e.f. 01.03.1976 was introduced to clarify that even in cases where possession of a part of the land separately assessed to land revenue was claimed, court fees payable on such claim will be proportionately worked out for such part of the land : *Narayanprasad Vs. Jagdish, I.L.R. (2011) M.P. 792*

– **Section 7(v) & 7(vi)** - When a co-owner files a suit for partition and separate possession, on the ground that he is out of possession, there is no difference between such a suit and a suit for possession based on title : *Narayanprasad Vs. Jagdish, I.L.R. (2011) M.P. 792*

– **Section 17** - See - Constitution, Article 226 : *Rakesh Gautam Vs. State of M.P., I.L.R. (2011) M.P. 2734 (DB)*

– **Section 35** – Manner of conducting enquiry – Anywhere in the statute where the word enquiry is used, the court is not always bound to call the report of any authority and appreciate the evidence in the light of such report – If on the basis of evidence

adduced by the parties, the case could be decided, then there is no need to call the report of any authority either for assessing the annual income or the assets of the concerning plaintiff : *Kamlesh Vs. Tara Devi, I.L.R. (2015) M.P. 2565*

– **Section 35** – Notification of 1984 (as amended on 14-02-2011) of State Government – When the benefit of the same can be extended – To extend the benefit of the said notification to the plaintiff, enquiry is needed – No procedure of enquiry is provided in the notification – In such premises, trial court has a discretion to inquire into the matter according to its own way and decide the same in the judicial manner : *Kamlesh Vs. Tara Devi, I.L.R. (2015) M.P. 2565*

– **Section 35** – Suit for possession – Claimed exemption from payment of Court Fees under notification dated 01.04.1983, being a member of weaker section of society – Whether separate application under Order 33 Rule 1 of C.P.C. is required to be filed – Held – Since the respondent was not seeking permission to sue as an indigent person but was claiming benefit of exemption granted under notification dated 01.04.1983, he is required to make such a declaration in the plaint – There is no provision in the Court Fees Act for making a separate application – Court is required to conduct a limited enquiry to conclude as to whether the said exemption is admissible to the plaintiff or not : *Mohd. Sadik Vs. Khursheed Ahmed, I.L.R. (2015) M.P. 35*

– **Section 35 & 16C**, Civil Procedure Code (5 of 1908), Section 89 and Legal Services Authorities Act (39 of 1987), Section 21 & 89 – First Appeal – Matter settled in Lok Adalat – Refund of Court fees ordered – Registry deducted 10% of Court fees under the notification dated 24.03.2003 issued by Law Department – Held – State is not empowered to deduct any amount from Court fee payable – No amendment was made by State legislature – Assent of president not obtained – Notification dated 24.03.2003 quashed – State is directed to refund full amount of the court fee for matters settled in Lok adalat – Petition allowed : *Ramesh Chandra Vs. State of M.P., I.L.R. (2012) M.P. 320 (DB)*

COURT FEE (M.P. AMENDMENT) ACT, 2008

- **Schedule II, Article 11(a)(i)** - Ad valorem Court Fee - Discrimination - Payment of Ad valorem Court Fee on appeal for enhancement of compensation - Position of appellants seeking enhancement of compensation is different from that of Insurance Company and Owner - Insurance Company can challenge the award on limited grounds - Owner and Insurance Company are liable to pay at least Rs. 25,000 along with memo of appeal - Owner and Insurance Company are saddled with liability of pay compensation whereas in case of claimant, compensation is awarded by Tribunal - Provision not

discriminatory - Petition dismissed : *Ashok Kumar Vs. State of M.P., I.L.R. (2011) M.P. 3084 (DB)*

- **Schedule II, Article 11(a)(i)** - Date of Operation - Right to file appeal vests in the suit or on the date when an action is initiated - Such right is Substantive Right can not be taken away by an enactment which is not retrospective unless it says so expressly - Fixed Court Fee is payable on claims filed before 02.04.2008 - Ad valorem Court Fee would be payable on claims filed on or after 02.04.2008 : *Ashok Kumar Vs. State of M.P., I.L.R. (2011) M.P. 3084 (DB)*

- **Schedule II, Article 11(a)(i)** - Enhancement of Court Fee - Purpose - Reason for increase in expenditure on Court is implementation of recommendation made by Justice Shetty Commission - Held - Need has arisen for amendment in Court Fees Act : *Ashok Kumar Vs. State of M.P., I.L.R. (2011) M.P. 3084 (DB)*

- **Schedule II, Article 11(a)(i)** - Upper limit of Court Fee - Absence of - Issue of absence of limit of Court Fee does not arise in the present case - Issue left to be dealt with in an appropriate case : *Ashok Kumar Vs. State of M.P., I.L.R. (2011) M.P. 3084 (DB)*

COURT FEE (M.P. AMENDMENT) ACT, 2012 (3 OF 2013)

- **Section 3** - Court Fee on appeals arising out of Motor Accident Claim - Court fee on motor accident appeal which arises out of motor accident claim filed after 2nd of April 2008 shall be payable only @ 2.5% on the enhanced amount : *Ram Gopal Vs. Haneef Khan, I.L.R. (2013) M.P. 1645*

CRIMINAL COURTS AND COURT MARTIAL (ADJUSTMENT OF JURISDICTION) RULES, 1978

- **Rules 3 & 4** Criminal Procedure Code, 1973 (2 of 1974), Section 475 - Written Notice to Commanding Officer - Commanding Officer forming opinion that applicant should be tried by ordinary criminal Court - Such opinion was formed after the filing of the charge sheet before ordinary Criminal Court - Notice by ordinary Criminal Court would have been superfluous - There was no conflict of jurisdiction of Criminal Court and the Army Court - Conduct of military authorities in handing over the investigation to C.B.I. and also permitting it to prosecute the applicant before an ordinary Criminal Court was clear indication of exercise of option by them - Application dismissed : *R.S. Yadav (Lt. Col.) Vs. State of M.P., I.L.R. (2011) M.P. *73 (DB)*

CRIMINAL JURISPRUDENCE

- **Cardinal principles** - (i) Prosecution must prove its case beyond reasonable doubt, (ii) Prosecution cannot take advantage of weakness of defence case, (iii) Whenever two sets of evidence or two inferences are possible, evidence or inference in

favour of accused has to be acted upon : *Prahlad Vs. State of M.P., I.L.R. (2011) M.P. 489 (DB)*

CRIMINAL PRACTICE

- **Conviction - Evidence** - Appellant could not have been convicted on the same set of evidence that formed the basis of acquittal of other co-accused : *Gulab Rao Nagle Vs. State of M.P., I.L.R. (2014) M.P. 547 (DB)*

CRIMINAL PROCEDURE CODE, 1973 (2 OF 1974)

- **First Schedule**, Penal Code (45 of 1860), Section 408, 420, 467, 468 & 471 - Whether Triable by Court of Sessions or Magistrate - Offence under Section 408, 420, 467, 468 & 471 of I.P.C. was registered against appellant on 18.05.2007 - Amendment in first schedule of Cr.P.C. making the offences triable by Court of Sessions received assent of President on 22.02.2008 - Charge sheet was filed subsequently - Case is triable by Court of Sessions as no case was pending before the Magistrate on the date the amendment Act came into force : *Ramesh Kumar Soni Vs. State of M.P., I.L.R. (2013) M.P. 741 (SC)*

- **Section 4, 5 & 438/439** - See - Recognised Examination Act, M.P., 1937, Section 4 : *Bal Kumar Kaushik Vs. State of M.P., I.L.R. (2014) M.P. 1673 (DB)*

- **Section 5** - See - Co-operative Societies Act, M.P. 1960, Section 72, 74 & 76 : *Avdhesh Raghuvanshi Vs. State of M.P., I.L.R. (2013) M.P. 1227*

- **Section 24** - Special Prosecutor - Court granted permission to two counsels to assist Public Prosecutor - Complainant cannot seek mandamus that his private counsels be appointed as Special Public Prosecutor : *Manoj Mishra Vs. State of M.P., I.L.R. (2015) M.P. 96*

- **Section 41** - Power of Police Officer to arrest - Notification No. F-16/266/License/96/B(1)(two) dated 11.06.96 issued by the Home Department deferring cognizance by the police till the enquiry directed by the Collector - Is just and reasonable - It does not override the powers of the police officers conferred under Section 41 of the Cr.P.C. on them : *Yogesh @ Yogendra Vs. State of M.P., I.L.R. (2013) M.P. 299 (DB)*

- **Section 41 & 41B** - Crime No. 18/2013 - Formal arrest made on 06/11/2014 - Crime No. 17/2013 - Formal arrest not made - Held - Investigating agency can take a different stand on the basis of material collected, in two crimes on the factum of need to arrest the suspect : *Sudhir Sharma Vs. State of M.P., I.L.R. (2015) M.P. 1600 (DB)*

– **Section 46** – Arrest by C.B.I. – Applicant already in police custody – C.B.I. has power of arrest, if upon investigation incriminating material has been found by it against applicant – In case of arrest and/or filing of supplementary charge sheet against applicant, bail granted to applicant on the basis of the charge sheet filed by police would cease to operate and applicant would be required to file fresh application : *Tejnarayan Shukla Vs. State of M.P., I.L.R. (2011) M.P. 1104*

– **Section 85** – Release of property of proclaimed person – When the petitioner has assigned sufficient reason for his absence, application under Section 85 should have been allowed by the Court below : *Krishnapal Singh Vs. State of M.P., I.L.R. (2015) M.P. 3422*

– **Section 87**, Negotiable Instruments Act (26 of 1881), Section 138 – Issuance of Arrest Warrant – Case under Section 138 Negotiable Instruments Act is decided summarily – Magistrate satisfied that accused is absconding the process of Court – Service is not possible in ordinary course – Magistrate have power to compel presence of accused by issuance of arrest warrant under Section 87 – Impugned order set aside – Petition allowed : *Madhu Gupta (Smt.) Vs. Veer K. Shrivastava, I.L.R. (2012) M.P. 1097*

– **Section 91** - Locus Standi - One of the witness filed an application for production of statements of witnesses recorded during investigation but not filed along with charge sheet - As witness was not a complainant therefore, he has no right to participate independently in criminal trial - However, when the investigating agency itself while submitting charge sheet keeps mum and adopts method of pick and choose, Court is bound to consider the relevancy of the documents - Courts exist for dispensation of justice and not for its denial for technical reasons : *Babburaja Vs. State of M.P., I.L.R. (2013) M.P. 1770*

– **Section 91** – Private Complainant against accused person u/s 406, 420, 467, 468, 471 & 120B of IPC for preparing false and forged balance sheet – Application was filed by the complainant to summon record from accused No. 1 Yeshwant Club which was objected on the ground that Yeshwant Club is an accused and record can not be summoned from the accused – Held – Yeshwant Club is a registered society and it is managed by elected body – At present Paramjit Singh Chabra is the Chairman of Yeshwant Club and who is not an accused before the trial Court – Hence, production of the record in the Court from Yeshwant Club, does not amount to be the witness against himself – Therefore, the record can be summoned from the applicant Yeshwant Club – Application was rightly allowed by the trial Court – There is no illegality in the order impugned : *Yeshwant Club Thro' Manjeet @ Toni Sachdeva Vs. State of M.P., I.L.R. (2011) M.P. 1781*

– **Section 91** - Production of documents - Previous statements - Stage - Language of Section 91 of Cr.P.C. is wider than the language of Section 172, 161 & 162 of Cr.P.C. - If the Court comes to conclusion that production of document is necessary or desirable, then the Court is entitled to summon the document under Section 91 of Cr.P.C. - Case Diary is maintained under Section 172 of Cr.P.C. and it is a document contemplated under Section 91 - If Court comes to conclusion that production of such a document is necessary or desirable, then the Court is entitled to summon the document for the purpose of using the statements made in the diary for contradicting a witness - There is no embargo for the Court to summon the documents at earlier point of time, if the Court trying the case considers that production of such documents are necessary and desirable for the purpose of trial - Order framing charge quashed - Prosecution directed to produce the previous statements and thereafter Court is directed to proceed with the matter in accordance with law : *Shriram Sharma Vs. State of M.P., I.L.R. (2012) M.P. 2027*

– **Section 91** - Summons to produce documents - Statements of some of the witnesses recorded during investigation were not filed along with charge sheet - Prosecutors are expected to act independently without affecting the investigation - If some evidence is collected during investigation and is relevant for the purposes of trial, enquiry or other proceedings before Court, and if investigating agency purposefully does not like to disclose the same, it is the duty of prosecution to make a request to bring all other evidence collected but not produced before Court for fair justice : *Babburaja Vs. State of M.P., I.L.R. (2013) M.P. 1770*

– **Section 91, 161 & 208** - Summons to produce documents - FIR recorded and statements of some witnesses were recorded by A.S.I. - At subsequent stage of investigation supplementary statements (of these witnesses) were recorded by I.O. and have been filed (with charge-sheet) - Statements recorded at earlier stage were not submitted by the I.O. at the time of filing of charge sheet before the Court - Held - Investigation agency is duty bound to furnish the statements recorded after lodging FIR and after launching investigation before the trial Court and is also bound to supply the copies of those statements recorded on earlier stage to the accused - Revision allowed : *Ramprasad Vs. State of M.P., I.L.R. (2011) M.P. 2596*

– **Section 91 & 482** - Additional documents - High Court in exercise of power u/s 482 can consider material produced on behalf of accused to arrive at a decision whether the charge as framed could be maintained or not : *Dev Vrat Mishra Vs. State of M.P., I.L.R. (2011) M.P. *23 (DB)*

– **Section 111** - Order by Executive Magistrate - Nature - Proceedings are judicial proceedings and Executive Magistrate performs judicial function : *Suresh Kumar Sharma Vs. Durgalal Vijay, I.L.R. (2011) M.P. 628 (DB)*

SYNOPSIS: Section 125

- | | |
|--------------------------------|---------------------------------|
| 1. Adultry | 2. Amount of Maintenance |
| 3. Divorced Muslim Wife | 4. Interim Maintenance |
| 5. Legitimacy of Child | 6. Miscellaneous |

1. Adultery

– **Section 125** – Maintenance – Decree of divorce passed against wife on the ground that she is living in adulterous life – Wife is not entitled for maintenance allowance : *Raj Kumar Dubey @ Raju Vs. Smt. Rekha Dubey @ Gothai Bai, I.L.R. (2012) M.P. 794*

– **Section 125** – Maintenance – False allegation – Husband failed to prove that wife is living an adulterous life – Sufficient ground for wife to live separately : *Manoj Kapadia (Dr.) Vs. Smt. Manisha Kapadia, I.L.R. (2015) M.P. 2239*

2. Amount of Maintenance

– **Section 125** – Maintenance amount – Wife filed marks-sheet and transfer certificate of her son in which name of the present petitioner was mentioned as father of child – Her name was mentioned as wife – This document relate to the year 1997 – It is admitted that applicant has second wife – Maintenance rightly granted : *Nahar Singh Vs. Jhinki Bai, I.L.R. (2015) M.P. 1884*

– **Section 125** - Maintenance - Enhancement - Revision - Husband is healthy and able bodied person and is in a position to earn money - Held - He cannot escape from his liability to maintain his wife and son on account of his income at lower side - Maintenance amount enhanced from such quantum to Rs. 1800/- p.m. for applicant No. 1 and Rs. 800/- p.m. for applicant No.2 : *Shila Bai (Smt.) Vs. Ashok Kumar Patel, I.L.R. (2014) M.P. 832*

– **Section 125** – Reasonable sum of Maintenance – If the husband like the respondent is healthy and able bodied person then, on account of less income, he can not escape from his liability to pay the reasonable sum of maintenance to his wife and children – Maintenance awarded by the trial Court enhanced from Rs. 600/- per month to Rs. 1500/- per month for wife and from Rs. 200/- per month to 900/- per month for child : *Pushpa Thakur (Smt.) Vs. Bhagwandas Bhavedi, I.L.R. (2012) M.P. 277*

– **Section 125** - Maintenance - Wife is entitled to maintain a standard of living, which is neither luxurious nor penurious and also to lead a decent life yet, at par with the dignity of her husband : *Anil Kumar Jain Vs. Smt. Shilpa Jain, I.L.R. (2013) M.P. 2734*

3. Divorced Muslim Wife

– **Section 125** – Divorced Muslim Woman – Entitlement of maintenance during post iddat period – Divorced Muslim woman is entitled to get maintenance as long as she does not remarry – As applicant has not remarried, she is entitled to get maintenance – Order of trial court restored : *Azma Sultan Vs. Ausaf Ahmad Khan, I.L.R. (2015) M.P. 2803*

– **Section 125** – Expiration of the period of iddat – Wife's right to maintenance does not cease to operate and she is entitled to claim maintenance - The petition for monthly maintenance by the divorced wife after divorce till her remarriage against her husband and the petition for monthly maintenance for minor children against their father is maintainable : *Asif Saied Vs. Smt. S.M. Unnissan Rana, I.L.R. (2011) M.P. 2233*

– **Section 125 to 128**, Muslim Women (Protection of Rights on Divorce) Act (25 of 1986), Section 3 – Applicability of Provision – Law discussed : *Qureshia Bi Vs. Abdul Hameed, I.L.R. (2014) M.P. 2466*

– **Section 125 to 128**, Muslim Women (Protection of Rights on Divorce) Act (25 of 1986), Section 3 – On an application filed u/s 125, Cr.P.C. maintenance Rs. 125/- was awarded to the applicant wife on 15.10.1985 – Applicant filed an application u/s 127 of Cr.P.C. on 12.01.2007 for alteration of the allowance, which was held as not maintainable by courts below – Held – Since wife is residing separately with a justifiable cause from her husband, looking to the status of the husband who is now living with the second wife and earning more than Rs. 10,000/- per month – Rs. 2,000/- as amount of maintenance would be payable from the date of the order passed by the trial court – Petition stands allowed : *Qureshia Bi Vs. Abdul Hameed, I.L.R. (2014) M.P. 2466*

4. Interim Maintenance

– **Section 125** – Interim Maintenance – Family Court allowing the application filed by the respondent/mother granted interim maintenance to the tune of Rs. 4,500/- per month in her favour – Held – Looking to the relationship as well as social and economic status of parties, Judge of the Family Court has come to a right conclusion and has also affixed a reasonable amount for interim maintenance – No interference – Revision dismissed : *Radhe Shyam Mourya Vs. Smt. Dashmat Devi, I.L.R. (2015) M.P. 2795*

– **Section 125 & 127** – Payment of Maintenance amount – Petitioner was directed to pay interim maintenance – Application for alteration of interim maintenance amount on the ground of delay tactics being adopted by wife filed by husband is pending – Held – Unless the interim order of maintenance passed earlier is amended/alterd or maintained same will be enforceable – Petitioner bound to pay interim maintenance

amount – Revision is dismissed with direction to dispose of the petition of petitioner within two months from date of order : *Ajay Sharma Vs. Smt. Archana Sharma, I.L.R. (2012) M.P. 272*

5. Legitimacy of Child

– **Section 125** – Legitimate child – Artificial insemination – Child who is born as a result of artificial insemination is a legitimate child – Though husband is not a biological father, but he is liable for child's support because he willfully consented for artificial insemination which implied a promise to support – Child is also entitled for maintenance : *Manoj Kapadia (Dr.) Vs. Smt. Manisha Kapadia, I.L.R. (2015) M.P. 2239*

– **Section 125** – See – Evidence Act, 1872, Section 112 : *Lallu Lal Patel Vs. Smt. Anar Kali @ Tannu Bai Yadav, I.L.R. (2011) M.P. 1605*

6. Miscellaneous

– **Section 125**, Evidence Act (1 of 1872), Section 45 – Medical Examination – Applicant took a defence that wife is having character of Hermaphroditism (Ubhaylingata) and prayed for her karyotype medical test – Held – Person can not be insisted contrary to her wish to examine herself for any medical examination – Such direction would be violative of Article 21 of Constitution – Revision dismissed : *Pushpendra Singh Thakur Vs. Smt. Mamta Thakur, I.L.R. (2012) M.P. 292*

– **Section 125** - Maintenance - Compromise Deed - If the wife wants to get the compromise deed complied with, she can proceed by any legal procedure to get the compliance of compromise deed - However, she is not entitled for maintenance amount under Section 125 of Cr.P.C. : *Tarachand Vishwakarma Vs. Smt. Pushpa Devi Vishwakarma, I.L.R. (2013) M.P. 956*

– **Section 125** - Maintenance - Legally wedded wife - Respondent was already married and without obtaining divorce from first husband she claims to have married the applicant - Second marriage during the subsistence of first marriage is no marriage in the eye of law - Period of live-in-relation has no concern in the present case : *Tarachand Vishwakarma Vs. Smt. Pushpa Devi Vishwakarma, I.L.R. (2013) M.P. 956*

– **Section 125** – Maintenance – Proceedings u/s 125 Cr.P.C. are quasi criminal and quasi civil – Principles of appreciation of evidence as in civil cases are applied – No pleadings in the application regarding second marriage – Certificate regarding second wife not proved by signatories – Document should be properly proved before any interference on it – Document produced at cross-examination and applicant was not given opportunity to rebut – Held – Matter remanded back to trial court to give opportunity to

respondent for incorporating amendment in application and to adduce evidence : *Aashiq Khan Vs. Anisa Bai @ Annabee, I.L.R. (2015) M.P. 2784*

– **Section 125** – Marriage expenses – Marital obligations on the part of husband to incur expenses upon marriage of his daughter cannot be translated into a legally enforceable liability taking recourse to Section 125 of Cr.P.C. – Plain reading of provision cannot be stretched to include within its ambit, a lump-sum granted towards estimated expenditure on marriage of his daughter – Order of Court below set aside : *Bhaiyalal Vs. Subhadra Bai (Smt.), I.L.R. (2015) M.P. 3430*

– **Section 125** – Pension – Can charge be created – Maintenance order in favour of legitimate children born out of divorced wife – No – The pension become the estate or property of pensioner which could be inherited by her heirs and not by differently related : *Mamta Sharma (Smt.) Vs. State of M.P., I.L.R. (2015) M.P. 1441*

– **Section 125 & 127** – Maintenance – Since the agreement took place contrary to the statutory provision contained u/s 127 of the Cr.P.C., applicant can file application seeking maintenance – Impugned order suffers from illegality and perversity therefore same is set-aside and order passed by Trial court is restored : *Leela Bai Vs. Ganpati, I.L.R. (2015) M.P. 501*

– **Section 125 & 127** – See –Contract Act, 1872, Section 28 : *Leela Bai Vs. Ganpati, I.L.R. (2015) M.P. 501*

- – **Section 126(1) Clause(b)** – Territorial Jurisdiction – Mother can file application for maintenance u/s 125 of the new Criminal Procedure Code in the district where she resides : *Radhe Shyam Mourya Vs. Smt. Dashmat Devi, I.L.R. (2015) M.P. 2795*

– **Section 127** - Enhancement of maintenance amount - Husband is working in bank and is getting Rs. 29,746 /- per month after all deductions - Keeping in view the market position and price index of the food, cloths, medicine, cosmetics and other necessary things the maintenance amount is enhanced from 1300 to 3000 for wife and from 700 to 2500 for the child - Revision allowed : *Kanija Begum Vs. Niyaz Mohammad Ansari, I.L.R. (2014) M.P. 844*

– **Section 133** – While exercising power so contemplated under Section 133 of Cr.P.C., the District Magistrate is bound to record a finding that the act so alleged falls within the purview of public nuisance caused by performing the business and its removal is necessary : *Virendra Kumar Maheshwari (Dr.) Vs. State of M.P., I.L.R. (2012) M.P. *50*

– **Section 133 & 138** – Public Nuisance – Procedure as per Section 138 of Cr.P.C. is required to be followed even for passing preliminary order – A show cause

notice was issued to petitioner mentioning the grounds for closure of Nursing Home – However, no evidence was recorded by the Magistrate to prove the allegations so leveled against the petitioner affording opportunity of cross examination on prosecution witnesses and to lead evidence in defence – Preliminary as well as final order were passed without following the procedure laid down in Section 138 of Cr.P.C. – Petition allowed : *Virendra Kumar Maheshwari (Dr.) Vs. State of M.P., I.L.R. (2012) M.P. *50*

– **Section 144** - Prohibitory Order - Magistrate passed an order u/s 144, Cr.P.C. on 4th May, 2011 prohibiting the business of the petitioner-company - The order was valid for a period of two months - During pendency of the petition another order was passed by the District Magistrate dated 1st July 2011, prohibiting the business of the company-petitioner - No material on record to show that any request was made by the District Magistrate or other authority to the State Government to extend the period of the order - State Government has not accorded approval to the District Magistrate for extending the period of the order passed earlier - Held - Second order passed on 1st July 2011 u/s 144, Cr.P.C. by the District Magistrate is beyond his power and authority : *P.A.C.L. India Ltd. Vs. State of M.P., I.L.R. (2011) M.P. *125 (DB)*

– **Section 144** -Prohibitory Order - When can be issued - Petitioner-company, in the business of accepting deposits from the investors, it may be using the amount in real estate business and various activities - Company though receiving huge deposits from customers and investing the amount in certain activities, but deliberately concealing from the Court, District administration and Police authorities - Amount invested in purchasing of land is a drop in ocean in comparison to the amount collected by the Company - On asking by District and Police authorities, the company has not furnished the vital information as to how much money it had collected and how much land it had purchased - Petitioner-company would have created serious disturbances of grave character in the society -- Held - There is no illegality or irregularity in passing the order u/s 144, Cr.P.C. prohibiting the business of the petitioner-company : *P.A.C.L. India Ltd. Vs. State of M.P., I.L.R. (2011) M.P. *125 (DB)*

– **Section 145** - Civil Suit - Proceedings under Section 145 of Cr.P.C. during the pendency of the civil suit is not without jurisdiction - The order passed under Section 145 is one of interim nature and would vanish with an ultimate decree to be passed by a Court of competent jurisdiction - Final order in 145 proceedings is one of interim nature and stands on analogous footing with the interim injunction issued in a suit : *Raghunath Singh Vs. Pragobai, I.L.R. (2012) M.P. 2285*

– **Section 145** – Dispute as to immovable property – Parties have already gone before the Civil Court to resolve their dispute and they are in a position to get the appropriate order from the Civil Court like interim injunction or some other order –

Proceedings initiated under Section 145 of Cr.P.C. could not be permitted to be continued and same deserves to be dropped with a direction to the parties to approach the Civil Court with appropriate proceeding : *Ramesh Das Tyagi Vs. Babulal, I.L.R. (2012) M.P. 1045*

– **Section 145** - Dispute regarding land or water is likely to cause breach of peace - It merely recites the circumstances under which a presumption of possession may be made in favour of the dispossessed party - If the Magistrate decides the question as to which of the party was in possession on the relevant date, then it is not necessary to see whether or not any of the parties had been dispossessed within two months next before the date of the preliminary order : *Ram Charan Vs. Yogendra Singh (Minor), I.L.R. (2013) M.P. 1238*

– **Section 145** – Dispute relating to possession of immovable property – The order passed by the SDM remains valid till the Civil Court decides the matter with respect to the title of the property – Merely because an order is passed u/s 145 and appellants were found in possession, it would not prove that the appellants were in adverse possession : *Maharaj Singh Vs. Mahant Singh Chaturvedi, I.L.R. (2015) M.P. 2730*

– **Section 145** – Possession of Supurdgidar - Possession of Supurdgidar in proceedings under Section 145 shall be deemed to be of the person for whom he is possessing the attached property : *Indrakali (Smt.) Vs. Ravi Bhan Prasad, I.L.R. (2012) M.P. 471*

– **Section 145** – Proper opportunity – Applicant was not given proper opportunity to adduce evidence as dates were preponed – Matter remanded back to the Court of Sub-Divisional Magistrate – Applicant should be given an opportunity to adduce oral and documentary evidence alongwith respondent – After recording the statements of the both the parties, fresh order should be passed : *Ludiram Vs. Anil Rao, I.L.R. (2015) M.P. 2807*

– **Section 145** – See – Specific Relief Act, 1963, Section 34 & 38 : *Ganga Bai Vs. Devi Singh, I.L.R. (2012) M.P. 490*

– **Section 145 & 146(1)** - Order of attachment – Order of attachment passed on the ground of emergency without drawing order under Section 145(1) not sustainable – Magistrate is required to apply his mind separately with regard to existence of emergency and should pass an order with great circumspection under Section 146(1) of Cr.P.C. – Order of attachment passed without passing a preliminary order bad : *Santosh Jain (Smt.) Vs. Salim Khan, I.L.R. (2011) M.P. *103*

– **Section 145(4)** - Possession - A final order in such proceedings initiated during the pendency of the civil suit can be passed by the Magistrate after following the due

procedure contemplated under Section 145(4) of Cr.P.C. - Matter remanded back : *Raghunath Singh Vs. Pragobai, I.L.R. (2012) M.P. 2285*

– **Section 146(1)** – Relief of possession – Where attachment has been made under Section 146(1), it is not necessary for unsuccessful party to seek relief of possession from Court – Mere adjudication of rights would suffice in as much as attached property is held custodia legis : *Santosh Jain (Smt.) Vs. Salim Khan, I.L.R. (2011) M.P. *103*

– **Section 146(1) & 397** – Nature of order – Order of attachment is not interlocutory in nature – Revision is maintainable : *Santosh Jain (Smt.) Vs. Salim Khan, I.L.R. (2011) M.P. *103*

SYNOPSIS : Section 154

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|-------------------------------|---------------------------------------|
| 1. Ante-timed FIR | 2. Dehati Nalishi |
| 3. Delay in F.I.R. | 4. Delay in F.I.R. – Explained |
| 5. Omissions in F.I.R. | 6. Preliminary Enquiry |
| 7. Purpose | 8. Miscellaneous |

1. Ante-timed FIR

– **Section 154** - Ante-timed FIR - Evidence shows that police reached at 10:30 p.m. whereas Dehati Nalishi was written at 9:30 p.m. - FIR was registered at 7:00 a.m. - No reason of delay in lodging the FIR explained - Held - Dehati Nalishi appears to be ante- timed - Possibility of concoction arises - Corroboration cannot be expected from Dehati Nalishi : *Ramadhar @ Pappan Khamparia Vs. State of M.P., I.L.R. (2011) M.P. *32*

– **Section 154** - Ante timed FIR - Scriber of FIR and other witnesses stated that police had reached the spot at 9 AM and thereafter, Dehati Nalishi was written - However, time mentioned in Dehati Nalishi is 7 PM - No explanation given in this regard - FIR ante timed : *Samarjeet Singh Vs. State of M.P., I.L.R. (2012) M.P. 2203 (DB)*

– **Section 154** - F.I.R. - Ante timed/Ante dated - F.I.R. lodged at 3 P.M. was written on page carrying no. 49 whereas the F.I.R. lodged at 5:30 was written on page carrying no. 27 - As per the evidence of witnesses, F.I.R. could not be lodged within 15 minutes of the incident, whereas the F.I.R. shows that it was lodged within 15 minutes - Author of F.I.R. also denied having lodged F.I.R., also expressed ignorance about incident which took place in the afternoon although the said fact is also mentioned in the F.I.R. - Author of F.I.R. has also stated that he reached the police station for the first time

at 11 P.M. - Circumstances establishes that F.I.R. written at 5:30 is ante timed : *Sanjay Vs. State of M.P., I.L.R. (2012) M.P. *104*

2. Dehati Nalishi

– **Section 154** - Dehati Nalishi - Dehati Nalishi is FIR but to maintain its authenticity it is required to be proved that (i) there should be no manipulation of time, and (ii) it should not be registered after any enquiry : *Ramadhhar @ Pappan Khamparia Vs. State of M.P., I.L.R. (2011) M.P. *32*

– **Section 154** - FIR - Scriber of FIR says that he had lodged the report on the spot which was written in the form of Dehati Nalishi - Other witness says that he along with scriber of FIR went to Police Station and FIR was lodged there - This discrepancy is not minor : *Samarjeet Singh Vs. State of M.P., I.L.R. (2012) M.P. 2203 (DB)*

3. Delay in F.I.R.

– **Section 154**, Lokayukt Evam Up-Lokayukt Adhiniyam, M.P. 1981 - Limitation - FIR registered after expiry of 5 years from the date of offence - S.P.E. is not powerless to register the FIR and proceed with investigation - Lokayukt or Up-Lokayukt are not debarred to refer the matter to S.P.E. for verification merely because of the lapse of 5 years from the date of offence : *Dev Vrat Mishra Vs. State of M.P., I.L.R. (2011) M.P. *23 (DB)*

– **Section 154 & 157**- Delay - Delay of 15 hours in registration of FIR coupled with non sending of report of the crime to the Magistrate - May create serious doubt on the fair and impartial investigation of the case : *Amar Singh Vs. State of M.P., I.L.R. (2011) M.P. *134 (DB)*

4. Delay in F.I.R. – Explained

– **Section 154** – Delay in F.I.R. – F.I.R. lodged within 3 hours of incident – Outpost 12 kms. away from place of incident – F.I.R. was lodged promptly : *Rajeev Lochan Singh Vs. State of M.P., I.L.R. (2014) M.P. 3231 (DB)*

– **Section 154** – Delay –Police station situated at a distance of 11 Kms – FIR lodged after 2 hours & 45 minutes – F.I.R. can not be said to be delayed – However, complainant had opportunity to consult with other which is apparent from the evidence – It can not be said that true account of incident was mentioned in F.I.R : *Buddhu Pal Vs. State of M.P., I.L.R. (2012) M.P. 774 (DB)*

– **Section 154** - F.I.R. - Delay - Prosecutrix informed the Patel about the incident from where she was taken by her aunt - Mother of prosecutrix was called on the next day - Matter was referred to the Sarpanch of the gram panchayats - As sarpanch did not take

any action, F.I.R. was lodged - Delay in lodging F.I.R. has been explained : *Vinod @ Arvind Vs. State of M.P., I.L.R. (2012) M.P. 2827*

5. Omissions in F.I.R.

– **Section 154** – First Information Report – Is the important check regarding the truthfulness of the informant/complainant – The complainant adopted the method of pick and choose during the trial and stated only against four accused. He cleverly omitted the names of 12 other accused persons mentioned in the FIR. His explanation also not found satisfactory – It would be unsafe to leave the fate of the four accused in the hands of a person who adopted method of pick and choose : *Babbu @ Babulal Vs. State of M.P., I.L.R. (2011) M.P. *65 (DB)*

– **Section 154** - F.I.R. - Omissions in F.I.R. - Minor omissions can not be held to be material as they were merely details which could not essentially be expected from a witness to have been mentioned in the F.I.R. - F.I.R. can not be expected to be an encyclopedia - When a witness speaks in Court, he is bound to speak some more about the occurrence than what he stated to police - Such improvements can not be held sufficient for branding a witness liar : *Vijay @ Chandra Vijay Gupta Vs. State of M.P., I.L.R. (2012) M.P. 1681 (DB)*

– **Section 154 & 227** - Non-mentioning of name in F.I.R. - Non-mentioning of name in F.I.R. is no ground to reject the outcome of the investigation : *State of M.P. Vs. Deepak Surana, I.L.R. (2011) M.P. *157 (DB)*

6. Preliminary Enquiry

– **Section 154** – Preliminary Enquiry – Scope of Preliminary Enquiry preceding lodging FIR would be limited to ascertain whether any cognizable offence has been committed or not – Word Information under Section 154 has not been qualified by any adjective meaning thereby that information preceding a process not fully in conformity with relevant legal provisions can also form basis of F.I.R : *Rajesh Rajora (Dr.) Vs. State of M.P., I.L.R. (2011) M.P. *115 (DB)*

– **Section 154** – Preliminary Enquiry – Scope of Preliminary Enquiry preceding lodging FIR would be limited to ascertain whether any cognizable offence has been committed or not – Word Information under Section 154 has not been qualified by any adjective meaning thereby that information preceding a process not fully in conformity with relevant legal provisions can also form basis of F.I.R : *Rajesh Rajora (Dr.) Vs. State of M.P., I.L.R. (2011) M.P. 2255 (DB)*

– **Section 154** – See – Lokayukt Evam Up-Lokayukt Adhiniyam, M.P., 1981, Section 10 & 12 : *Rajesh Rajora (Dr.) Vs. State of M.P., I.L.R. (2011) M.P. 2255 (DB)*

– **Section 154** – See – Lokayukt Evam Up-Lokayukt Adhiniyam, M.P., 1981, Section 10 & 12 : *Rajesh Rajora (Dr.) Vs. State of M.P., I.L.R. (2011) M.P. *115 (DB)*

7. Purpose

– **Section 154** – F.I.R. – F.I.R. can not be treated as a part of substantive evidence : *Chalaniya Dheemar Vs. State of M.P., I.L.R. (2012) M.P. 189*

8. Miscellaneous

– **Section 154** - Complaint to Inspector General of Police - If the complaint is given to higher officer and F.I.R. is registered on their direction, it cannot be said that the complainants or higher officers have flouted the provisions of Cr.P.C. : *Shailabh Jain Vs. State of M.P., I.L.R. (2013) M.P. 2747*

– **Section 154** – F.I.R. – If any specific offence is made out from the documents annexed with F.I.R., then still Court can see that whether any prima facie offence is made out or not, although there may not be specified pleadings in that regards : *Kewin B. Ajit Vs. State of M.P., I.L.R. (2012) M.P. 661*

– **Section 154** - F.I.R. - Rejection of - Rejection of FIR would not detract the testimony of eye-witnesses which will have to be assessed on its own merits : *Chhedilal Vs. State of M.P., I.L.R. (2012) M.P. 2257 (DB)*

– **Section 154** – Investigation – Even if mandatory procedure for directing investigation under Section 156(3) is violated, it would not by itself be sufficient to vitiate the entire proceedings of investigation – An invalid investigation into a cognizable offence would not nullify the cognizance or trial based thereon : *Sandeep Jaiswal Vs. Mithilesh Jain, I.L.R. (2011) M.P. 1787 (DB)*

– **Section 154** – See – Evidence Act 1872, Section 3 : *Vrijlal Ghosi Vs. State of M.P., I.L.R. (2012) M.P. 1351 (DB)*

– **Section 154** – See – Evidence Act 1872, Section 25 : *Premdas Ahirwar Vs. State of M.P., I.L.R. (2012) M.P. 1381 (DB)*

– **Section 154 & 156(3)** – Defence Evidence – Where any crime is committed then the prosecution evidence is the preliminary evidence which can be looked into – However, documents submitted in defence may be considered up to the extent they are unimpeachable and relevant with FIR – However, Court should not adopt the approach to further investigate the matter to conclude as to whether any offence as alleged in FIR is made out or not : *Kewin B. Ajit Vs. State of M.P., I.L.R. (2012) M.P. 661*

- – **Section 156(3)** - Investigation of offence - Locus standi - Special Judge directed S.P.E. to file a report after enquiry on an application of complainant - Another

application filed by applicant who was stranger to the earlier proceedings requesting that S.P.E. to conclude the investigation within reasonable time - Held - Criminal proceedings have already been set in motion - Applicant was stranger to said proceedings - Cannot be allowed to intervene by filing an application u/s 156(3) : *Kishore Samrite Vs. Shivraj Singh Chauhan, I.L.R. (2011) M.P. 284 (DB)*

– **Section 156(3)** - Investigation - Power conferred under Section 156(3) of Cr.P.C. on Judicial Magistrate is to be exercised with due caution - Before doing so he has to apply his mind to know whether allegations in complaint, prima facie, make out a case - Dispute between the complainant and petitioner is regarding settlement of account which is a civil dispute - Magistrate was not justified in referring the matter without assigning any reason and without considering the complaint - Order passed by JMFC and F.I.R. registered in pursuance of order of Magistrate quashed : *Ajay Goenka (Dr.) Vs. State of M.P., I.L.R. (2013) M.P. 1759*

– **Section 156(3)** - Magistrate/Special Judge in exercise of jurisdiction u/s 156(3), can monitor the investigation and issue direction for proper investigation : *Kishore Samrite Vs. Shivraj Singh Chauhan, I.L.R. (2011) M.P. 284 (DB)*

– **Section 156(3)** – Order u/s 156(3) was issued 3 years back and charge-sheet has also been filed – Order u/s 156(3) of Cr.P.C. cannot be challenged after three years : *Sheikh Ismail Vs. State of M.P., I.L.R. (2015) M.P. 789*

– **Section 156(3)** – Powers of Magistrate to order for investigation – Magistrate is not debarred from sending the complaint disclosing offences exclusively triable by Court of Sessions for police investigation under Section 156(3) of Cr.P.C. at pre cognizance stage : *Devesh Gupta Vs. Smt. Sudha Shrivastava, I.L.R. (2011) M.P. 1422*

– **Section 156(3)** – Power to direct for investigation u/s 156(3) – Guidelines for the exercise of power u/s 156(3) issued : *Ramyash Tiwari Vs. State of M.P., I.L.R. (2014) M.P. 1404*

– **Section 156(3)**, Prevention of Corruption Act, 1988, Section 5(1) – Special Judge – A.S.J. acts as a Magistrate for the purpose of taking cognizance of offences – Once cognizance was taken, Court was not competent to order investigation under Section 156(3) although could have directed investigation under Section 202(2) of Cr.P.C. : *Sandeep Jaiswal Vs. Mithilesh Jain, I.L.R. (2011) M.P. 1787 (DB)*

– **Section 156(3)** - Reasons - Magistrate cannot act as a Post office - Before passing an order he has to apply his mind and satisfy himself that allegations prima facie point to commission of offence : *Laxminarayan @ Billa Vs. Rajkumar, I.L.R. (2013) M.P. 2046*

– **Section 156(3)** - Review - Magistrate initially rejected the application filed u/s 156(3) and directed to examine witnesses - Subsequently, the Magistrate directed the S.H.O. to investigate the matter get the documents examined by a Handwriting Expert and thereafter to submit the report - Order amounts to review of earlier order which can not be done : *Laxminarayan @ Billa Vs. Rajkumar, I.L.R. (2013) M.P. 2046*

– **Section 156(3)** - See - Prevention of Corruption Act, 1988, Section 13(1)(d) : *Ramesh Vs. State of M.P., I.L.R. (2011) M.P. *48 (DB)*

– **Section 156(3)** - The Complaint must disclose the material ingredients of cognizable offence - If there is flavour of civil nature, the same cannot be agitated in the form of criminal proceeding - The magistrate cannot act merely as a post office and he is bound to apply his mind before ordering investigation u/s 156(3) : *Balwant Singh Tomar @ Balwanta Vs. Tigmanshu Dhulia, I.L.R. (2013) M.P. 967*

– **Section 156(3)** – Triable by Court of Sessions – Magistrate has power u/s 156(3) to issue direction for registration of F.I.R. and investigation : *Sheikh Ismail Vs. State of M.P., I.L.R. (2015) M.P. 789*

– **Section 156(3), 154 & 202** – Investigation by police – Though the investigating officer was not expected to ascertain as to whether the direction for investigation was given under Section 156(3) or 202(2) of Cr.P.C., yet he was not debarred from exercising general power of investigation – Investigating officer has every authority to record F.I.R. and register a case : *Sandeep Jaiswal Vs. Mithilesh Jain, I.L.R. (2011) M.P. 1787 (DB)*

– **Section 156(3) & 200** – See – Constitution – Article 226 : *Shoukat Saeed Vs. State of M.P., I.L.R. (2015) M.P. 2359*

– **Section 156(3), 200 & 202** – Magistrate rejected the application filed u/s 156(3) but was duty bound to proceed further u/s 200 to 203 read with Section 190 of Cr.P.C. – After recording evidence court is to consider the evidence and proceed further – Matter remitted back : *Abhinav Chakradhar Vs. State of M.P., I.L.R. (2014) M.P. 1664*

– **Section 156(3) & 482** - On date of incident a F.I.R. was lodged by respondent No.2 in police station and the same was registered under section 294, 324, 506-B/34 I.P.C. - Later on respondents No.1 & 2 filed a complaint under Section 307, 326, 294 & 506(B) of I.P.C. and Section 3(1)(x) of Scheduled Case and Scheduled Tribe (Prevention of Atrocities) Act regarding same incident - Complaint/application (filed by the respondents No.1 & 2) was ordered to be sent to the concerned Police Station for lodging of the FIR on the basis of the complaint and submit a report after conducting the investigation in the matter - Held - Impugned order to register the alleged second FIR on

the basis of complaint application is contrary to law - Petition allowed : *Surendra Sharma Vs. Ramcharan Lal Jatav, I.L.R. (2013) M.P. 1787*

– **Section 156(3) & 482** - See - Dowry Prohibition Act, 1961, Section 7 : *Haji Sayyad Vs. State of M.P., I.L.R. (2012) M.P. 2610*

– **Section 157** – Copy to Magistrate – Object of sending copy to Magistrate is to check ante-dating and timing of F.I.R. – Concocted copy of Rojnamchasanha filed in Court as there is no such entry in original Rojnamchasanha – Dispatch register is also manipulated – No register of inward of counter of F.I.R. maintained by Court – Prosecution has failed to prove prompt sending of counter of F.I.R. to Magistrate – Appeal allowed : *Vikram Singh Vs. State of M.P., I.L.R. (2012) M.P. *40 (DB)*

– **Section 157** - Delay in dispatching the copy of F.I.R to the Magistrate may create a suspicion about the F.I.R. being ante-timed or ante-dated - Explanation for such delay necessary - However, if Court convinced about truthfulness of the prosecution then aforesaid delay will not be detrimental to the prosecution : *Rattiram Vs. State of M.P., I.L.R. (2014) M.P. 607 (SC)*

– **Section 157** – See – Penal Code 1860, Section 302 : *Mangu Singh Vs. State of M.P., I.L.R. (2012) M.P. *6 (DB)*

– **Section 157** – See – Penal Code, 1860, Section 302 : *Ramu Vs. State of M.P., I.L.R. (2015) M.P. 3045 (DB)*

– **Section 157** - See - Penal Code, 1860, Section 302/149 : *Rattiram Vs. State of M.P., I.L.R. (2014) M.P. 607 (SC)*

– **Section 160** – See – Constitution – Article 226 : *Manish Vs. State of M.P., I.L.R. (2015) M.P. 2377*

– **Section 161** - Delay in recording of - Explanation thereof - Plausible explanation has been given by I.O. with regard to delay in recording of evidence of P.W. 8 and P.W. 11 - Names of P.W. 8 and P.W. 11 mentioned in FIR which was lodged immediately after incident - Evidence of P.W. 8 and P.W. 11 are reliable : *Somu Vs. State of M.P., I.L.R. (2011) M.P. *37 (DB)*

– **Section 161** - Delay in recording of - Statement of witness recorded after more than a month - Witness failed to account for - No reliance can be placed : *Somu Vs. State of M.P., I.L.R. (2011) M.P. *37 (DB)*

– **Section 161**, Evidence Act (1 of 1872), Section 32 - Dying Declaration - Statement of deceased recorded by police officer under Section 161 of Cr.P.C. as to the cause of his death and also about the circumstances of the transaction which resulted in

his death, amounts to be a dying declaration : *Suresh Vs. State of M.P., I.L.R. (2013) M.P. 1177 (DB)*

– **Section 161** – See – Evidence Act, 1872, Section 3 : *Chaitu Singh Gond Vs. State of M.P., I.L.R. (2015) M.P. 1343 (DB)*

– **Section 161** - See - Evidence Act, 1872, Section 3 : *Ramesh Vs. State of M.P., I.L.R. (2011) M.P. 2565 (DB)*

– **Section 161** – Spot Map – Spot map comes in the category of statement under Section 161 of Cr.P.C. – Such cannot be proved as a substantive piece of evidence – This document should be considered for the purpose of contradiction and omission : *Ashok Prajapati Vs. State of M.P., I.L.R. (2015) M.P. 1352 (DB)*

– **Section 161 & 162**, Evidence Act, (1 of 1872), Section 3 - Statement read over to witness before examination in chief - Witness admitted that statement recorded under Section 161 was read over to him by Advocate before entering into witness box - Testimony of witness becomes valueless : *Rajesh Kumar Goswami Vs. State of M.P., I.L.R. (2011) M.P. 2837 (DB)*

– **Section 164** – Statement of a witness cannot be discarded simply because their statements were recorded by the Magistrate under Section 164 : *Ramdas Kachhi Vs. State of M.P., I.L.R. (2012) M.P. 207 (DB)*

– **Section 165** - Duty of Court - It is duty of Court to find out the truth from falsehood : *Somu Vs. State of M.P., I.L.R. (2011) M.P. *37 (DB)*

– **Section 167(2)**, Dakaiti Aur Vyapharan Prabhavit Ksheshtra Adhinyam, M.P. (36 of 1981), Section 11/13 – Bail – Challan not filed within 90 days of arrest of applicant – Proviso to Section 5 of Act, would apply only to those accused who has been in judicial custody for a specified offence as defined in Act – Merely by arresting the applicant under Section 11/13 of Act, the rights of the applicant as provided under Section 167(2) of Code can not be curtailed – Applicant granted bail : *Sunil Vs. State of M.P., I.L.R. (2012) M.P. 610*

– **Section 167(2)** – Period of Police Remand – Whether period of 15 days should be reckoned from the date of surrender or from the date when accused was produced by police before Court for police remand – Held – Respondent surrendered before the High Court on 18.06.2015 and was sent to Judicial Custody – Application under Section 439 of Cr.P.C. was rejected on 29.06.2015 and police took custody of respondent on 30.06.2015 and produced him before designated Court – Designated Court limited the period of police remand till 03.07.2015 as otherwise, period of 15 days would exceed – Period of 15 days would start from the date when the respondent was taken in custody by police

and produced before Designated Court and not from the date of surrender – Application allowed : *State of M.P. Vs. Vipin Goyal, I.L.R. (2015) M.P. 2274 (DB)*

– **Section 167(2) & 482** - Filing of Charge sheet during pendency of application for statutory bail does not affect the right of the accused to Bail u/s 167(2) - The orders of both the courts below set aside - Petition allowed : *Bazeer Khan Alias Lalla Khan Vs. State of M.P., I.L.R. (2013) M.P. 979*

– **Section 167(2), Proviso (a)(ii)** – Petitioner was arrested on 18.02.2013 – Challan was filed on 22.04.2013 – Prior to filing challan accused filed application u/s 167(2) seeking benefit of the statutory bail – Trial court extended the benefit – Order was set aside by Revisional Court – Held – After exercising the right by moving the application seeking statutory bail, if the challan is filed later, it would not affect the indefeasible right accrues to the applicants to release them on bail – Even if the charge sheet is filed prior to passing the order on such application – Impugned order is set aside : *Babu Lal Vs. State of M.P., I.L.R. (2014) M.P. 2481*

– **Section 172** - Police Case Diary - Entry recorded by police in case diary and other documents could not be held to be a proof of fact as an evidence : *Suresh Kumar Sharma Vs. Durgalal Vijay, I.L.R. (2011) M.P. 628 (DB)*

– **Section 173** – Charge Sheet – Defect or illegality in investigation, however serious, has no direct bearing on the jurisdiction of the Court to take cognizance : *Murlidhar Agarwal Vs. State of M.P., I.L.R. (2011) M.P. *98 (DB)*

– **Section 173(2)(ii) & 190** – Final Report – Notice to Complainant – Police filed Khatma report after giving notice to complainant – Court upon objection filed by complainant recorded statements of witnesses and took cognizance – No fault with the order passed by trial Magistrate : *Shyam Babu Agrawal Vs. State of M.P., I.L.R. (2014) M.P. 2756*

– **Section 173(8)** - Further Investigation - Concerned Minister issuing a communication regarding reinvestigation - Held - Said communication does not lead to the conclusion that the investigation is bad in law or suffers from any infirmity - No case is made out for issuance of direction for reinvestigation : *Mohan Mandelia Vs. State of M.P., I.L.R. (2013) M.P. 2826*

– **Section 173(8)** – Further investigation – Police filed Khatma report for third time after conducting further investigations thrice under the orders of the Special Judge – Special Judge refused to accept the report and directed for further investigation and for obtaining sanction for prosecution – Held – Special Judge could not have directed for further investigation for third time – It amounts to sheer abuse of process of law resulting

into vexatious proceedings and harassment of appellant – Appeal allowed : *Vasanti Dubey Vs. State of M.P., I.L.R. (2012) M.P. *38 (SC)*

– **Section 173(8)** - Further Investigation - Prosecution producing further evidence after filing of report u/s 173(2) of the Code before the Magistrate - Held - It is a statutory duty of the Investigating Officer to submit further report on the basis of further evidence produced in the Court : *Mohan Mandelia Vs. State of M.P., I.L.R. (2013) M.P. 2826*

– **Section 173(8)** - See - Prevention of Corruption Act, 1988, Section 13(1)(d) : *State of M.P. Vs. D.K. Rokde, I.L.R. (2011) M.P. *19 (DB)*

– **Section 173(8)** - See - Prevention of Corruption Act, 1988, Section 13(1)(d) & 19 : *Arun Kumar Aggarwal Vs. State of M.P., I.L.R. (2011) M.P. 2951 (SC)*

– **Section 173(8), 190 & 200** – Final Report – On filing of Khatma Report, Magistrate can either take cognizance of the matter, or enquire himself under Section 200 or accept the report, or direct for further investigation – Magistrate can not direct the police to file charge sheet : *Vasanti Dubey Vs. State of M.P., I.L.R. (2012) M.P. *38 (SC)*

– **Section 174** - Preparation of Panchnama of dead body - Brother who was present at the time of preparation of Panchnama of dead body did not inform the police about harassment to his sister - Appellant entitled for benefit of doubt : *Sarjoo Vs. State of M.P., I.L.R. (2012) M.P. 2806*

– **Section 177**, Negotiable Instruments Act, 1881, Section 138 - Jurisdiction - Cheque handed over to complainant at Gwalior - Gwalior Court has jurisdiction : *Mohan Mandelia Vs. State of M.P., I.L.R. (2011) M.P. 562*

– **Section 177** - See - Penal Code, 1860, Section 498-A : *Amitesh Tyagi Vs. State of M.P., I.L.R. (2014) M.P. 280*

– **Section 177** - Territorial Jurisdiction - Explosives were despatched from Dholpur under the license of M/s Ganesh Explosives, Sagar - Magazine was transferred to Rajgarh under the deed of partnership - Charge sheet filed at Sagar - Held - The present case is one of conspiracies to commit offences including punishable under Explosives Act - One of the passes are said to have been issued by the applicant within the territorial jurisdiction of Sagar Court - Merely because the consignment did not reach the destination was of no consequence - Sagar Court has territorial jurisdiction : *Alakh Kumar @ Alakh Das Gupta Vs. State of M.P., I.L.R. (2012) M.P. 3113*

– **Section 177 & 482**, Penal Code (45 of 1860), Section 498-A, 204 & 506/34 and Dowry Prohibition Act (28 of 1961), Section 3 & 4 – Quashing of proceedings – Jurisdiction – Complaint filed u/s 498-A, 204 & 506/34 I.P.C. and u/s 3 & 4, Dowry Prohibition Act, 1961 against husband and his relations by the wife at Damoh where she

came to stay after leaving her husband's house – All the offences alleged to have taken place at Jabalpur – Said offences not continuing one – No part of cause of action arose at Damoh – Held – Magistrate at Damoh has no jurisdiction to deal with the matter – Proceedings quashed – Complainant given liberty to file complaint in appropriate court : *Jayesh Tiwari Vs. State of M.P., I.L.R. (2014) M.P. 1652*

– **Section 178** – Jurisdiction of Court – Charge sheet filed before C.J.M., Gwalior returned back for producing the same before C.J.M. Indore – Held – Offences initially begun at Indore and were continued in Bhind – Courts in Gwalior would also have the jurisdiction – Return of charge sheet by Magistrate was wrong – Trial Court directed to proceed in the matter : *Ravindra Singh Vs. State of M.P., I.L.R. (2011) M.P. 2059*

– **Section 179 & 188**, Penal Code, 1860, Section 500 - Offence committed outside India - Sanction - Section 179 of Cr.P.C. empowers a Court to try an offence either at a place where the offence is committed or the consequences ensued - Defamatory statement given at Dubai - Complaint filed at Indore - Held - On the allegations in the complaint, the act or omissions were committed in India : *Rasiklal Manikchand Vs. Kishore Wadhwani, I.L.R. (2011) M.P. *16*

– **Section 181**, Penal Code (45 of 1860). Section 406 - Place of Trial - Marriage took place at Dindori - Merely because in the notice sent for return of articles, the applicants have been called upon to return the articles at his residence would not raise cause of action at Bhopal - Bhopal Court has no territorial jurisdiction - Complaint quashed with liberty to file a complaint before the Court of competent jurisdiction : *Sandeep Sahu Vs. Vijay Sahu, I.L.R. (2012) M.P. 2307*

– **Section 182** - See - Penal Code, 1860, Section 494 : *Santosh Vs. State of M.P., I.L.R. (2013) M.P. 2990*

– **Section 188** – Offence committed outside of India – Offences alleged to have been committed outside India – Can not be inquired into or tried in India except with previous sanction of Central Government : *Mahesh Kumar Dhawan Vs. State of M.P., I.L.R. (2012) M.P. *13*

– **Section 188** - Sanction of Central Government - It is not necessary that sanction of Central Government should be obtained before taking cognizance - It may be obtained before the trial begins : *Rasiklal Manikchand Vs. Kishore Wadhwani, I.L.R. (2011) M.P. *16*

– **Section 190**, Negotiable Instruments Act, 1881, Section 138 - Jurisdiction of cognizance - Cheque issued by another person purporting himself to be the proprietor of the firm and the applicant has produced prima facie evidence before the Court to show

that he had nothing to do with the business of firm who had issued the cheque in question to the complainant - The essential ingredients of Section 138 are not satisfied against the applicant and case u/s 138 cannot proceed - Order (taking cognizance) set aside : *Akhilesh Saraf (Dr.) Vs. Smt. Usha Tiwari, I.L.R. (2011) M.P. 572*

– **Section 190** - Powers of Magistrate - Issuance of Process - Once a process is issued against some accused, on the next date, Magistrate can issue process to some other person against whom there is some material on record, but his name is not included as accused in the charge sheet : *Ajay Singh Vs. State of M.P., I.L.R. (2012) M.P. 2310*

– **Section 190** - Special Court - Charge sheet before the Special Court - Special Court must be held to be a Court of Original Criminal Jurisdiction and for all purposes, the Special Judge should be treated as Magistrate entitled to take cognizance of an offence if the police report is to the effect that no case is made out against the accused - Since the cognizance of the offence is taken by the Special Court under Section 190 of Cr.P.C., therefore, it can proceed against the persons who were not arraigned as accused in the Charge sheet : *Gopal Ji Singh Vs. State of M.P., I.L.R. (2012) M.P. 3122*

– **Section 194**, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (33 of 1989), Section 3(1)(x) – Cognizance of offence by Court of Session – Charge sheet filed directly before Special Court – Objection relating to non-compliance of Section 193 of Code, which eventually resulted in directly entertaining and taking cognizance by Special Judge under Act, 1989 does not vitiate the trial and conviction can not be set aside and there can not be a direction of retrial in as much as no failure of justice or no prejudice caused to the accused : *Rattiram Vs. State of M.P., I.L.R. (2012) M.P. *47 (SC)*

– **Section 195** – Complaint filed by Dy. Director of IT (Investigation) Bhopal – Statement taken by ITO's – Held – Statement taken by ITO's shall be deemed to be a civil Court under Section 136 of IT Act – No case for interference under Section 482 is made out – Petition dismissed : *Babita Lila Vs. Union of India, I.L.R. (2012) M.P. 649*

– **Section 195**, Penal Code (45 of 1860), Section 188 - Cognizance - Cognizance can only be taken on the complaint in writing of the Addl. Chief Secretary to State Govt. or of some other public servant to whom he is administratively subordinate - Complaint does not include police report : *Ajay Singh Vs. State of M.P., I.L.R. (2012) M.P. 2310*

– **Section 195 & 340** – Press and Registration of Books Act, (25 of 1867), Section 8-B – Jurisdiction under – A Magistrate while discharging his function under part II of the PRB Act which is executive in nature has no power to take cognizance of offence under Section 195 and entertain an application under Section 340 of Cr.P.C. in a

course of proceedings under Section 8-B of P.R.B. Act : *Ajay Jha Vs. Late Shri Bisambhar Dayal Agrawal, I.L.R. (2012) M.P. 1208*

– **Section 195(1)** - Prosecution for contempt of lawful Authority - For offence u/s 188 of IPC, complaint should be filed by the Public Servant directly to the Magistrate and not to the Police - Court cannot take cognizance on the police report : *Prashant Chauhan Vs. State of M.P., I.L.R. (2014) M.P. 873*

– **Section 195(1)(b)(ii)** - Document produced or given in evidence - Held - Forgery has been committed before filing the document in the Civil Court and Section 195(1)(b)(ii) of Cr.P.C. would be attracted only when the offences enumerated in the said provision have been committed with respect to a document, after it has been produced or given in evidence in a proceeding in any Court i.e. during the time when the document was in custodia legis - Petition allowed - The orders passed by the Courts below is hereby set aside and trial Magistrate is directed to proceed further according to law : *Bhagwan Das Vs. Chhotelal, I.L.R. (2013) M.P. 2286*

– **Section 195(1)(b)(ii)** – Offence committed before filing the documents in Court – Quashing of the prosecution of the accused will not be proper on the ground that the procedure contemplated in Section 195(1)(b)(ii) of Cr.P.C. was not followed : *Jagannath Singh Vs. State of M.P., I.L.R. (2011) M.P. 1768*

– **Section 195(3)** - Court - Officers of the Income Tax Department and authorities constituted under M.P. Trade Tax Act, 1995 do not fall within the ambit of term Court : *Institute of Chartered Accountants of India Vs. Vimal Kumar Surana, I.L.R. (2011) M.P. 321 (SC)*

– **Section 197** – Petitioner at the time of commission of the alleged offence of criminal conspiracy, was employed in connection with the affairs of the Corporation, that was a juridical person having a distinct legal entity. In such a situation, sanction of the State Government for prosecution of the petitioner for the offence was not at all necessary : *U.K. Samal Vs. State of M.P., I.L.R. (2011) M.P. *105 (DB)*

– **Section 197** – Previous sanction for prosecution of public servant and cognizance – Held – That no court shall take cognizance of offence alleged to have been committed by public servant while acting or purporting to act in discharge of his official duty except with the previous sanction as provided u/s 197 – Further held, the bar on the exercise of power of court to take cognizance of any offence is absolute and complete : *R.K. Kartikeya Vs. Rahul Jain, I.L.R. (2014) M.P. 2487 (DB)*

– **Section 197** - Sanction - Applicants are Chief Workshop Manager and Dy. Chief Workshop Manager in factory of Coach Rehabilitation Workshop - Contract was

given for removal of A.C. Sheets - One labourer fell down and died - Held - Applicants are employees of Central Government, therefore, they are public servant - It was necessary for the Factory Inspector to get sanction u/s 197 of the Cr.P.C. from the Central Government before launching prosecution against the applicants : *S.K. Prasad Vs. State of M.P., I.L.R. (2013) M.P. 2480*

– **Section 197** - Sanction for prosecution - Appellant was charged for offence punishable under Section 409 of I.P.C. - Provision of Section 197 has no application when a public servant is prosecuted for such offence : *Ram Babu Sharma Vs. State of M.P., I.L.R. (2011) M.P. *129*

– **Section 197** – See – Prevention of Corruption Act, 1988, Section 19 : *Om Prakash Verma Vs. State of M.P., I.L.R. (2014) M.P. 1753 (DB)*

– **Section 197** – See – Prevention of Corruption Act, 1988, Section 19(1) : *Special Police Establishment Vs. Vinod Chandra Semwal, I.L.R. (2011) M.P. 2240 (DB)*

– **Section 197 & 482**, Penal Code (45 of 1860), Section 304-A - Sanction - Applicant who is a doctor was attending the complainant in the course of her official duties - Therefore, she is a public servant - Sanction would be required u/s 197 of Cr.P.C : *Kusum (Dr.) Vs. Smt. Prabhavati, I.L.R. (2014) M.P. 851*

– **Section 197(2)**, Forest Act (16 of 1927), Section 74 - Cognizance - Provisions are having its application when the cognizance is to be taken by the Court and it has no application in the case where the cognizance is to be taken by the police : *Yogesh @ Yogendra Vs. State of M.P., I.L.R. (2013) M.P. 299 (DB)*

– **Section 200** - Complaint by Company - Authorization - A company can be represented by an employee or even by non-employee authorized and empowered to represent either by resolution or by a power of attorney - Merely because complaint is signed and presented by a person who is neither authorized nor is empowered under Articles of Association is no ground to quash the complaint since the defect is curable : *Arun Kumar Singhania Vs. State of M.P., I.L.R. (2013) M.P. 506*

– **Section 200** – Complaint – Delay in lodging of – Delay in filing the complaint throws a great deal of doubt on the prosecution story – Delay would be insignificant only when there is no motive for false implication or where the complainant has been able to offer a plausible explanation for it – Mere statement that police did not take action can hardly be taken to have explained the delay in making complaint : *Rajesh Dubey Vs. State of M.P., I.L.R. (2011) M.P. 1097 (DB)*

– **Section 200** - Complaint - Delay - The fact of replacement of forged partnership in connivance with the appellant or any other officer of the office of District

Excise Office came to the knowledge in the year 2007 - Complaint filed on 21.01.2008 - No delay in filing the complaint : *Vinod Raghuvanshi Vs. Ajay Arora, I.L.R. (2013) M.P. 2298 (SC)*

– **Section 200** – Defence Evidence before framing of Charge in complaint case – In case instituted otherwise than on police report, the accused persons can not be permitted to lead evidence before framing of charge : *Mahesh Mishra Vs. Munish Gupta, I.L.R. (2012) M.P. 833*

– **Section 200 & 202** - Statement of complainant - Statements of witnesses recorded prior to the statement of complainant - It is mere irregularity and not illegality - Not a ground to quash or hold the proceedings void ab initio : *Mohan Mandelia Vs. State of M.P., I.L.R. (2011) M.P. 562*

– **Section 202** - Enquiry - Status of persons arrayed as accused - Whenever Magistrate accepts the complaint and starts inquiry, it means he has considered the complaint and decided to proceed - At this stage it cannot be said that person who has been mentioned in complaint as accused acquires the status of accused : *Mohan Mandelia Vs. State of M.P., I.L.R. (2011) M.P. 562*

– **Section 202** - Examination of witnesses - Examination of all the witnesses cited in the complaint is not a condition precedent for taking cognizance and issue of process : *Rasiklal Manikchand Vs. Kishore Wadhvani, I.L.R. (2011) M.P. *16*

– **Section 202 & 208** - Examination of witnesses during trial - Only those witnesses who have been examined before the Trial Court at the time of taking cognizance can only be examined in Sessions Court and no other witness can be permitted to be examined even remaining complainant : *Sonal K. Ameen (Mrs.) Vs. Dr. Mrs. Neena V. Patel, I.L.R. (2012) M.P. 1743*

– **Section 202(2)** - Examination of witnesses - The examination of all the witnesses cited in the complaint by the complainant is not a condition precedent for taking cognizance by the magistrate - Complainant can examine those witnesses who are material to make out a prima facie case against the accused persons - Hence complainant is not bound to examine all the witnesses named in the complaint : *Mukhidevi Vs. State of M.P., I.L.R. (2013) M.P. 710*

– **Section 203, 197(3) & 482** –Inherent powers of High Court – Direction to issue process – Complaint filed impleading 7 persons as accused – The Magistrate proceeded to ascertain whether sufficient grounds for initiating action against the respondents for all the offences, existed – The question was answered in the negative for the reasons as recorded in order sheet – Addl. Sessions Judge affirmed the order of

Magistrate – The scope of interference under Section 482 of the Code, with a revisional order is limited in view of the rider placed by sub-Section (3) of Section 397 of the Code – Held – High Court may correct any mistake committed by the revisional Court only where, on examination of the record, it finds that there is grave miscarriage of justice or abuse of the process of the Court or the required statutory procedure has not been complied with or there is failure of justice – No such case is made out – Petition dismissed : *Annu @ Anil Vs. Rajesh, I.L.R. (2012) M.P. 1460*

– **Section 204** – Issuance of Process – Quashment – Order issuing process can be quashed, firstly, where absolutely no case is made out from the complaint or statement of complainant – Secondly, where the allegations in complaint are patently absurd and inherently improbable, thirdly, the discretion exercised by Magistrate in issuing process is capricious and arbitrary having based either on no evidence or on materials which are wholly irrelevant or inadmissible : *Madhusudan Tiwari Vs. Shyam Sunder, I.L.R. (2015) M.P. 1379*

– **Section 204** – Issuance of Process – Sufficient ground – Sufficient ground means prima facie case is made out against person accused and does not mean sufficient ground for purpose of conviction – Magistrate can take into consideration inherent improbabilities appearing on the face of the complaint or in the evidence led by the complainant in support of allegations – However, there is a thin line of demarcation between probability of conviction and establishment of prima facie case against accused : *Madhusudan Tiwari Vs. Shyam Sunder, I.L.R. (2015) M.P. 1379*

– **Section 204, 252 & 482** - Issue of summons in summons case - Remedy - Once the plea of accused u/s 252 is recorded, same cannot be reviewed or reconsidered by Magistrate - Petition u/s 482 of Cr.P.C. challenging substance of accusation is maintainable : *Rasiklal Manikchand Vs. Kishore Wadhwani, I.L.R. (2011) M.P. *16*

– **Section 207 & 482** – Supply of image copy of electronic documents pending trial – When the prosecution itself has not relied on such articles or implements then mere on the request or the whims of the applicant contrary to the provisions of Section 173(5) and Section 207 of the Code, the prosecution agency could not have been directed to supply the mirror copy, image copy or any such type of documents, which is not the part of the charge sheet and its record – No interference could be drawn in the matter by invoking the inherent power of this court enumerated u/s 482 of Cr.P.C. – Petition dismissed : *Guman Singh Vs. State of M.P., I.L.R. (2014) M.P. 3059 (DB)*

– **Section 211** - Framing of Charges - Documents produced by accused - Documents placed on record by accused cannot be taken into consideration to examine the sustainability of charges - Charges should be framed only on the basis of documents

filed along with charge sheet : *Basant Kumar Rawat Vs. State of M.P., I.L.R. (2013) M.P. 950*

– **Section 211** - Framing of Charges - If the Court is satisfied that evidence produced only gives rise to suspicion as distinguished from grave suspicion he can discharge the accused - While framing charges, the broad test to be applied is that whether the materials on record, if unrebutted, makes a conviction reasonably possible, then charge should be framed : *Basant Kumar Rawat Vs. State of M.P., I.L.R. (2013) M.P. 950*

– **Section 211**, Penal Code (45 of 1860), Section 467 & 468 - Framing of charge - Applicant is alleged to have involved himself in conspiracy with main accused in fabricating and forging mark sheet and facilitated the main accused to appear in the counselling - Prima facie evidence that the applicant had signed the mark sheet as Principal of School - Revision dismissed : *Basant Kumar Rawat Vs. State of M.P., I.L.R. (2013) M.P. 950*

– **Section 211 & 240** – Framing of Charge – Framing of Charge is an important step in the process of trial as it informs the accused of the exact provision of law which the accused violated by describing the allegations in a precise and concise manner – If charge is in-accurately framed, then serious adverse consequences may ensue to either the prosecution or the accused who are unable to initiate conduct and conclude the trial in absence of the defined parameter of the exact offence/offences for which the trial is being held : *Rakesh Kumar Dhingra Vs. M.P. Pollution Control Board, I.L.R. (2012) M.P. 1493*

– **Section 212(2), 219(1) & 220(1)** – Respondent/Complainant filed complaint u/s 138 of the Negotiable Instruments Act alleging that 6 cheques issued by the present petitioner on various dates in the year 2006, were dishonoured and the accused failed to repay the loan, despite statutory notice – Application filed on behalf of accused u/s 219 stating that the Court can only try three offences of the same kind within one year, was rejected by the trial Court – There is no infirmity in the order : *Mukesh Birthare Vs. Deepak Sharma, I.L.R. (2011) M.P. 1777*

– **Section 216** - Alteration of Charge - The Court is empowered to alter or add to any charge at any stage before the judgment is pronounced - The Section is comprehensive and includes not only the correction of an error in framing the charge but will also include non-framing of a charge - Hence, even though the charges for offences under sections are made at initial stages, the Court has jurisdiction or power to alter that charge and frame a new charge as it has the power to correct the omission : *Kastoorchand Vs. State of M.P., I.L.R. (2011) M.P. *123*

– **Section 216** – Alteration of Charge – Trial Judge on the basis of medical as well as oral evidence altered the charge from 325/149 to 326/149 – Trial Judge can alter the charge at any stage – Alteration of charge at the end of trial proper – Revision dismissed : *Harveer Singh Vs. State of M.P., I.L.R. (2012) M.P. 604*

– **Section 216**, Penal Code (45 of 1860), Section 505(2)(1) – Alteration of charge – Objectionable literatures and pamphlets were found in possession of applicant – However, to prima facie make out a case u/s 505(2)(1), there should be publication and circulation – No permission was granted u/s 196 of Cr.P.C. for offence u/s 505(2)(1)– Prima facie offence u/s 505(2)(1) of I.P.C. not made out – Order altering the charge set aside : *Abdul Rashid Vs. State of M.P., I.L.R. (2015) M.P. 3127*

– **Section 216** – Power of Court to add or alter the charges – There is no evidence at all for framing of charge u/s 302 or 302/34 – Trial Court has framed the charges mechanically under the direction of Supreme Court in Rajbeer’s case – Trial Court is directed to continue the trial on the basis of charge u/s 498-A and 304-B IPC – Revision allowed : *Ramchandra Singh Vs. State of M.P., I.L.R. (2015) M.P. 3416*

– **Section 216, 227 & 228** – See – Constitution – Article 136 : *C.B.I. Vs. Keshub Mahindra, I.L.R. (2011) M.P. 1798 (SC)*

– **Section 217** – Amendment of Charges – Further Evidence - Accused persons were being tried for offence punishable under Section 376 of I.P.C. – Prosecutrix was examined and thereafter the charge was amended to Section 376(2)(g) of I.P.C. – Held- It was obligatory on the part of the Trial Court to give an opportunity to the prosecution and also to the defence to lead such further evidence as they deem proper on the amended charge – Non-grant of such opportunity to the prosecution by the trial Court amounted to manifest error of law and procedure – Matter remanded back to the Trial Court permitting the prosecution to lead such further evidence as it may consider necessary with an equal opportunity to the accused person to further cross examine the witnesses : *Anita Kushwah Vs. State of M.P., I.L.R. (2012) M.P. 268 (DB)*

– **Section 221** – See – Penal Code, 1860, Section 306 : *Arun Vs. State of M.P., I.L.R. (2015) M.P. 1825*

– **Section 222** - Offence proved included in offence charged - Held - At the time of appreciation of evidence the trial court or appellate court comes to the conclusion that the accused have committed the offence of same cognate in which lesser punishment is provided and the charge of major section is framed then without modifying the existing charge, the accused could be convicted for the lesser punishment - Further held, if the charge is framed by ignoring the material circumstances of the FIR and charge sheet u/s 173 then at any subsequent stage of the case or even in appeal if it is found that charges

are not correctly framed then the impugned judgment liable to be set aside and the matter be remanded back for framing correct charges and trial afresh : *Shankar Dhobi Vs. State of M.P., I.L.R. (2014) M.P. 509 (DB)*

– **Section 222**, Penal Code (45 of 1860), Section 307 – Complainant after taking meal was taking rest in Police Station – Applicants with Katarna, Ballam, Sticks, due to earlier enmities in furtherance of common object started violence – Held – Unless any injury falls under any category of either part of Section 300 of IPC, no charge under Section 307 can be framed – In MLC and X ray report no injury was found to be sufficient to cause death in ordinary course of nature – Offence under Section 307 not made out – Section 332, IPC minor offence hence offence under Section 333/149 made out – Revision allowed in part : *Roop Singh Vs. State of M.P., I.L.R. (2012) M.P. 1048*

– **Section 222**, Penal Code (45 of 1860), Section 307 & 326 – Framing of Charge – If any injury falls under any category of the either part of Section 300 of IPC, charge under Section 307 can be framed – In MLC report and X ray report fracture in Occipital region found – The occipital region is vital part of the body, any fracture sustained in such part is sufficient to cause death in ordinary course of the nature – If victim survives then charge of Section 307 of IPC ought to have been framed – Trial Court directed to frame charge under Section 307 of IPC : *Ram Krishan Vs. Prabhu Baiga, I.L.R. (2012) M.P. *45*

– **Section 222** – See – Penal Code, 1860, Section 307 & 325 : *Achhelal Choudhary Vs. State of M.P., I.L.R. (2012) M.P. *18*

– **Section 222**- See - Penal Code, 1860, Section 323 & 376 : *Laalu @ Balmukund Sharma Vs. State of M.P., I.L.R. (2012) M.P. 2526*

– **Section 222** – See – Penal Code, 1860, Section 459, 323, 324, 326 & 325 : *Suresh Kumar Soni Vs. State of M.P., I.L.R. (2015) M.P. 1531*

– **Section 223** - See - Commission for Protection of Child Right Act, 2005, Section 25 : *In Reference Vs. Vinod, I.L.R. (2012) M.P. *97 (DB)*

– **Section 226 & 227**, Penal Code (45 of 1860), Section 306 – Abetment to commit suicide – Deceased in suicide note alleged that his pay was not being paid and has been denied promotion although his juniours have been promoted - Contents of suicide note also corroborated by witness ‘C’ - merely because applicant has taken over charge of Head Master only one month before the death of deceased would not be a good ground to discharge - Revision dismissed : *Naval Kishore Sharma Vs. State of M.P., I.L.R. (2012) M.P. 1444*

– **Section 227** - Framing of Charges - Even a strong suspicion leading to presumption as to possibility as against certainty makes out a case for framing of charge - Trial judge is required to record reasons only if he decides to discharge the accused : *State of M.P. Vs. Deepak Surana, I.L.R. (2011) M.P. *157 (DB)*

– **Section 227** - Framing of Charge - Murder - Applicants provided neat liquor to deceased in connection with their illegal bet - Deceased died due to consuming of neat liquor - Ethyl Alcohol was found in lungs etc. - Ethyl Alcohol some time is one of poisonous substance - If same is taken by any one or administered by other in more quantity, then it is sufficient to cause death in ordinary course of nature - Ethyl Alcohol was made available by applicants and also instigated him to drink the same to fulfill some illegal bet - It was known to applicants that deceased could have died in ordinary course of nature - Charge under Section 302 is made out - Revision dismissed : *Mangal Singh Vs. State of M.P., I.L.R. (2013) M.P. *36*

– **Section 227**, Penal Code (45 of 1860), Section 307 - Framing of charge - Unless the prima facie evidence showing the ingredients of first part of Section 300 of IPC are not found from the charge sheet, the charge of the Section 307 could not be framed - Revision allowed : *Kanhaiya Lal Vs. State of M.P., I.L.R. (2011) M.P. 2601*

– **Section 227**, Penal Code (45 of 1860), Section 307 or 325 – Attempt to murder or Grievous hurt – The complainant’s husband gave money to applicant for providing hut – As no hut was given therefore the complainant and her husband were beaten as they were demanding their money back – Held – Doctor has opined that nature of injuries are simple – No injury sufficient to cause death in ordinary course of nature found – No charge under Section 307 can be framed – Trial Court directed to frame charge under Section 325 & 323 of I.P.C. : *Gulab Vs. State of M.P., I.L.R. (2012) M.P. 1055*

– **Section 227** - Production of material by accused - Materials/documents furnished by the accused could not have been considered at the stage of framing of charge : *State of M.P. Vs. Deepak Surana, I.L.R. (2011) M.P. *157 (DB)*

– **Section 227** – See – Penal Code 1860, Section 307 : *Indar Singh Vs. State of M.P., I.L.R. (2012) M.P. 1451*

– **Section 227** – See – Penal Code, 1860, Section 406, 409 & 420 : *Daulat Singh Vishwakarma Vs. State of M.P., I.L.R. (2014) M.P. 1123*

– **Section 227 & 228** - Framing of Charge & discharge - It is for the trial Court to consider the material on record with the object that if it is not rebutted, then whether the accused can be convicted for a particular offence or not - If the accused is convicted for

that offence the charge for that offence shall be framed : *Prem Sharma @ Shiv Prasad Mishra Vs. Shiv Prakash Mishra, I.L.R. (2013) M.P. 2029*

– **Section 227 & 228** - Framing of Charge - Applicant and co-accused took out victim out of the car and assaulted by using iron rod and wooden stick - Injured suffered 12 injuries including fracture - The nature of the injury is immaterial for framing charge u/s 307 of I.P.C. - Held - Intention must be gathered not only from the injuries but also from other materials on record like statement of the witnesses and the weapon of offence : *Chetan Raghuvanshi Vs. State of M.P., I.L.R. (2014) M.P. 576*

– **Section 227 & 228** – Framing of charge – If prima-facie case is made out charge has to be framed –Not necessary to appreciate evidence at the stage of framing charge – Revision dismissed : *Saba Vs. C.B.I., Bhopal, I.L.R. (2014) M.P. *18*

– **Section 227 & 228** - Framing of Charges - It is for the trial court to consider the material available on record with the object that if it is not rebutted, then whether the accused can be convicted or not - If there is strong suspicion which leads the Court to think that there is ground for presuming that accused has committed an offence charge can be framed : *Gayatri (Smt.) Vs. State of M.P., I.L.R. (2014) M.P. 227*

– **Section 227 & 228**, Evidence Act (1 of 1872), Section 27 – Disclosure Statement – Implication of accused solely on the disclosure statement of co-accused recorded under Section 27 of Act, 1872 is unsustainable : *Raghu Thakur Vs. State of M.P., I.L.R. (2012) M.P. 1447*

– **Section 227 & 228** - Framing of Charge - Judge is required to record reasons only if he decides to discharge the accused - Mere strong suspicion leading to presumption as to possibility as against certainty about commission of crime makes out a case for framing of charge : *Ashok Kumar Jain Vs. Central Bureau of Investigation, I.L.R. (2011) M.P. 2629 (DB)*

– **Section 227 & 228** – Framing of Charge – Two accused persons stated that the applicant was accompanying them when they had killed the deceased – No active role attributed to the applicant – Nothing recovered at her behest – No prima facie case made out – Applicant entitled for discharge : *Sumanlata Vs. State of M.P., I.L.R. (2012) M.P. *36*

– **Section 227 & 228** – Framing of Charges – Veracity of witnesses can not be considered at the time of framing charges – However, evidence produced should be considered to evaluate that the charges relating to that crime may be framed or not : *Anil alias Noni Panda Vs. State of M.P., I.L.R. (2012) M.P. 1081*

– **Section 227 & 228**, Penal Code (45 of 1860), Section 306 - Framing of Charge - Whenever the deceased visited the market either to go school or for some other purpose, she was always subjected to harassment/humiliation and torture with funny acts by the applicant - Due to such activities and behaviour of the applicant she felt herself insulted in family as well in the community and pursuant to such instigation, she proceeded to commit suicide and committed the same - In such premises, only one inference could be drawn that she was instigated to commit suicide by the applicant - Prime-facie ingredients of abetment to commit suicide is available in the charge-sheet - Trial Court committed no error in framing the alleged charge : *Sachin Tamrakar Vs. State of M.P., I.L.R. (2011) M.P. 2909*

– **Section 227 & 228**, Penal Code (45 of 1860), Section 307 or 323 – Attempt to commit murder – Injured was beaten and blows by rod were given on head, thigh & left leg – No bony injury has found – Held – From evidence on record, it is clear that injured was not beaten with intention to cause his death – Section 300 of IPC is also applicable to consider the scope of 307 – Keeping in view the injuries sustained by victims charge is altered to 323, 341 and 294 IPC – Revision partly allowed : *Ramnath @ Rammu Gond Vs. State of M.P., I.L.R. (2012) M.P. 587*

– **Section 227 & 228** – See – Penal Code, 1860, Section 300, 307 & 323 : *Chhotelal Vs. State of M.P., I.L.R. (2012) M.P. 581*

– **Section 227 & 228** - See - Penal Code, 1860, Section 306, 302 & 498A : *Dhapubai (Smt.) Vs. State of M.P., I.L.R. (2013) M.P. 2987*

– **Section 227 & 228** – See – Penal Code, 1860, Section 307 : *Umesh Singh Vs. State of M.P., I.L.R. (2015) M.P. 2490*

– **Section 227 & 228** - See - Penal Code, 1860, Section 498-A & 323 : *Tarendra Vs. State of M.P., I.L.R. (2013) M.P. 2476*

– **Section 227 & 228** - See - Prevention of Corruption Act, 1947, Section 5(1)(d)/5(2) : *Ramnarayan Vs. State of M.P., I.L.R. (2011) M.P. 2537 (DB)*

– **Section 227 & 228** - See - Prevention of Corruption Act, 1988, Section 13(1)(d) : *State of M.P. Vs. D.K. Rokde, I.L.R. (2011) M.P. *19 (DB)*

– **Section 227 & 228** - Summons to produce documents - Stage of framing charge - Documents sought could not be a foundation for discharge from alleged offence - Such documents may be of good defence at appropriate stage of trial and trial Court may consider the same on producing and proving the same - Prior to that no findings could be given to discharge the applicant : *Amritlal Ahirwal Vs. State of M.P., I.L.R. (2014) M.P. 838*

– **Section 228** – Framing of Charge – Held – That once the court decides to frame the charge u/s 228 there is no question of discharging him at a later stage by exercising the power u/s 227 – Further held, once charge has been framed, the trial has to proceed accordingly and it cannot be put to back gear for discharging u/s 227 : *Naveen Gupta Vs. State of M.P., I.L.R. (2014) M.P. 2701*

– **Section 228** – Framing of charges – Held that, at the time of framing of charge the material and quality of evidence cannot be gone into – All that has to be looked into is whether there was existence of prima facie case : *Raghuvveer Vs. State of M.P., I.L.R. (2015) M.P. 1573*

– **Section 228** – Penal Code (45 of 1860), Section 120-B, 420, 468 & 471 – Framing of charge under – Petitioner an advocate, who was required to conduct a search and submit a report as to authenticity of the documents and status of the property, furnished a legal scrutiny report – On basis of it the loan was advanced by Finance Company – The scrutiny report ultimately was found to be false and it was found that the no such flat was in existence – Borrower did not pay the loan amount that remained outstanding as an irrecoverable debt in the absence of a valid security – The trial Judge did not commit any error in framing the charges : *Ballabhdas Jain Vs. State of M.P., I.L.R. (2011) M.P. *67 (DB)*

– **Section 228**, Penal Code (45 of 1860), Section 120-B, 420, 468 & 471 – Framing of charge under – Petitioner an advocate, who was required to conduct a search and submit a report as to authenticity of the documents and status of the property, furnished a legal scrutiny report – On basis of it the loan was advanced by Finance Company – The scrutiny report ultimately was found to be false and it was found that the said flat had already been sold to another person – Borrower did not pay the loan amount that remained outstanding as an irrecoverable debt in the absence of a valid security – The trial Judge did not commit any error in framing the charges : *Rajesh Maindiretta Vs. Central Bureau of Investigation, I.L.R. (2011) M.P. *74 (DB)*

– **Section 228**, Penal Code (45 of 1860), Section 120-B, 420, 468 & 471 – Framing of charge under – Petitioner an advocate, who was required to conduct a search and submit a report as to authenticity of the documents and status of the property, furnished a legal scrutiny report – On basis of it the loan was advanced by Finance Company – The scrutiny report ultimately was found to be false and it was found that the said flat had already been sold to another person – Borrower did not pay the loan amount that remained outstanding as an irrecoverable debt in the absence of a valid security – The trial Judge did not commit any error in framing the charges : *Harish Chand Kohli Vs. Central Bureau of Investigation, I.L.R. (2011) M.P. 1568 (DB)*

– **Section 228** – See – Penal Code, 1860, Section 302 : *Sunita Bai Vs. State of M.P., I.L.R. (2015) M.P. 1083*

– **Section 228** – See – Penal Code, 1860, Section 304-B & 302/34 : *Rani (Smt.) Vs. State of M.P., I.L.R. (2014) M.P. 3055*

– **Section 228** - See - Penal Code, 1860, Section 306 : *Bhagbai Vs. State of M.P., I.L.R. (2011) M.P. 3231*

– **Section 228** – See – Penal Code, 1860, Section 467 & 468 : *Sheikh Ismail Vs. State of M.P., I.L.R. (2015) M.P. 789*

– **Section 233(3)** - Summoning of Prosecution witness as defence witness - If the prosecution witness is called as a defence witness then, his statement shall continue which was recorded in the deposition sheet, where his prosecution evidence was completed - His statement shall be started as a defence witness from the end of his previous statement : *Pappu @ Chandra Pravesh Tiwari Vs. State of M.P., I.L.R. (2013) M.P. 1208*

– **Section 233(3) & 311** - Summoning of witness in defence - Two prosecution witnesses were examined and cross examined - Application under Section 311 for recall of those witnesses rejected - Application filed under Section 233(3) of Cr.P.C. without disclosing as to what defence, the applicant wants to establish - Application was rightly rejected as the same was not bonafide and was made with a view to frustrate the order rejecting application under Section 311 of Cr.P.C. : *Pappu @ Chandra Pravesh Tiwari Vs. State of M.P., I.L.R. (2013) M.P. 1208*

– **Section 240**, Prevention of Corruption Act (49 of 1988), Section 13(1)(e) – Framing of Charge – At the time of framing of charge, it is only to be ascertained that whether there is a prima-facie case available against the accused or not – The date of registered sale deed, date of sanction and the date of repayment of loan within short period amounts to suspicion and ground for prosecution : *Ajit Jain Vs. State of M.P., I.L.R. (2015) M.P. 2810 (DB)*

– **Section 245** - Framing of Charge - In a case registered on a private complaint, Judicial Magistrate is bound to consider the evidence recorded by him and come to conclusion that if such evidence, if unrebutted, would warrant the conviction of accused - Otherwise, trial Magistrate has to discharge the accused - Matter of consideration of evidence can not be deferred till conclusion of trial : *Sarvesh Arora Vs. State of M.P., I.L.R. (2012) M.P. 2080*

– **Section 245(2)** - Discharge - Magistrate has discretion to discharge the accused at any stage previous to recording of any evidence for prosecution - Formation of opinion

before issuance of process in a warrant case does not preclude the Magistrate from exercising this discretion judicially if there are adequate reasons for doing so : *Duncans Industries Ltd. Vs. Jai Ramdas Panjwani, I.L.R. (2013) M.P. 1483*

– **Section 251** - Summons Case - It is impermissible for Magistrate to reconsider his decision to issue process in absence of any specific provision to recall such order : *Duncans Industries Ltd. Vs. Jai Ramdas Panjwani, I.L.R. (2013) M.P. 1483*

– **Section 251** - Summons Trial - Held - There is no provision to consider the defence at the time when particulars of the offence are stated to the accused u/s 251 of the code : *Dharmendra Singh Bhadouriya Vs. Rohit Goyal, I.L.R. (2014) M.P. 598*

– **Section 273** – Evidence to be taken in presence of accused – Evidence recorded in trial of co-accused cannot be utilized in trial of absconding accused who subsequently appeared before Court and is facing trial before that court and that evidence whatever may be cannot be accepted against absconding accused : *Jitendra Goyal Vs. State of M.P., I.L.R. (2011) M.P. 1610*

– **Section 293** – Reports of certain Government scientific experts - Report authored by another person and only forwarded by Director of Finger Print Bureau – Report could not be used in evidence as there was nothing on record to show that notice was given to the appellants under Section 294 to admit document or they had admitted the correctness of the report : *Murlidhar Agarwal Vs. State of M.P., I.L.R. (2011) M.P. *98 (DB)*

– **Section 294** – Admission of document by Counsel – Certificate of document regarding period of admission of injured in hospital not proved by any witness – Said document was exhibited on the admission of the counsel for the appellant – No inference can be drawn on the admission of the counsel for the appellant – Indeed such document is inadmissible : *Shivraj Sahu Vs. State of M.P., I.L.R. (2012) M.P. *71*

– **Section 294** – No formal proof of certain documents – Applicant was not permitted to produce the aforesaid document photographs in cross-examination of said material witnesses of the case – Held – Wherever the opponent has declined to avail himself of the opportunity to put his essential and material case in cross-examination, it must follow that he believed that the testimony given could not be disputed at all – It is wrong to think that this is merely a technical Rule of evidence – It is a rule of essential justice, it serves to prevent surprise at trial and mis-carriage of justice – Impugned order is held to be perverse and deserves to be set aside – Revision allowed : *Madhav Sharma Vs. State of M.P., I.L.R. (2014) M.P. 1120*

– **Section 300**, Constitution, Article 20(2) - Double jeopardy - Person who is said to have contravened provisions of Ss. 24, 24A, 25, 26 of Chartered Accountants Act, 1949 can also be prosecuted for an offence defined under IPC : *Institute of Chartered Accountants of India Vs. Vimal Kumar Surana, I.L.R. (2011) M.P. 321 (SC)*

– **Section 300** – Double Jeopardy – Applicant being tried for offence punishable under Section 13(1)(e) of P.C. Act – Charge sheet also issued by Army to applicant for the same offence – However, order of G.O.C. reveals that he had taken a decision not to initiate any action against the applicant on this charge in view of the pendency of investigation by C.B.I. – Principle of double jeopardy does not apply : *R.S. Yadav (Lt. Col.) Vs. State of M.P., I.L.R. (2011) M.P. *73 (DB)*

– **Section 300** – See – Prevention of Corruption Act, 1988, Section 13(1)(d)(e) : *B.K. Sahoo (Dr.) Vs. Central Bureau of Investigation, I.L.R. (2012) M.P. 1077 (DB)*

– **Section 302** – Permission to conduct prosecution – There is no provision for bringing on record the legal representative of a party in a criminal proceeding but as the penal offence is committed by a person unless from the nature of it is personal to the complainant is an offence against the society and has to be prosecuted – Section 302 authorizes the Magistrate to permit any person to conduct the prosecution on behalf of the complainant : *Virendra Narayan Mishra Vs. Ashok, I.L.R. (2015) M.P. 1586*

– **Section 303** – Right of accused to be defended – Counsel for the accused prayed for deferring the cross- examination of witnesses on the ground that another Counsel would cross examine them – Neither the another Counsel present nor his vakalatnama filed – further more those witnesses were not eye-witnesses and one of them had turned hostile – On the next day, the counsel refused to appear and accused expressed his inability to appoint a counsel – Court appointed Counsel for accused – Accused never expressed his no-confidence in Counsel – Even appellant could not demonstrate that counsel appointed by Court was not senior or competent or was incapable of handling the case – It cannot be said that appellant was not given sufficient opportunity to be defended by a pleader of his choice : *In Reference Vs. Santosh Kumar Singh, I.L.R. (2011) M.P. 1581 (DB)*

– **Section 306 & 307** - Grant of Pardon - Recording of statement of approver - Pardon was granted by Trial Court after framing of Charge - Provisions of Section 306 would apply when the pardon is granted at committal stage - After the commitment, the pardon has to be granted by the Trial Court subject to the conditions specified in Section 306(1) of Cr.P.C. - Section 307 does not contemplate recording of any statement of approver : *In Reference Vs. Rahul Rajak, I.L.R. (2012) M.P. 2034 (DB)*

– **Section 307** - Approver - Corroboration - There must be some additional evidence rendering it probable that the story of the accomplice is true and that is reasonably safe to act upon it - Independent evidence must not only make it safe to believe that the crime was committed but must in some way reasonably connect or tend to connect the accused with it by confirming in some material particular the testimony of accomplice or complainant that accused has committed the crime - Corroboration must come from independent sources and ordinarily the testimony of one accomplice would not be sufficient to corroborate that of another - Corroboration need not be direct evidence that the accused committed the crime : *In Reference Vs. Rahul Rajak, I.L.R. (2012) M.P. 2034 (DB)*

– **Section 307**, Evidence Act (1 of 1872), Section 27 - Disclosure Statement of approver - Disclosure statement made under Section 27 of Evidence Act could be treated as a previous statement - Omission of certain facts in disclosure statement would not render the evidence of approver unreliable because the purpose for which this statement was recorded was the recovery of mobile set : *In Reference Vs. Rahul Rajak, I.L.R. (2012) M.P. 2034 (DB)*

– **Section 309** – See – Constitution, Article 21 : *Shri Mahila Grih Udyog Lijjat Papad, Jabalpur Vs. State of M.P., I.L.R. (2014) M.P. 1641*

– **Section 311** - Application for recalling of three prosecution witnesses for cross-examination - Held - Denial of an opportunity to recall the witnesses for cross-examination would amount to condemning the appellant without giving him the opportunity to challenge the correctness of the version and the credibility of the witnesses - Denial of an opportunity to do so will result in a serious miscarriage of justice : *Prakash Vs. State of M.P., I.L.R. (2014) M.P. 246*

– **Section 311** – Recalling of Prosecution Witness – Held – Once the witness is examined as a prosecution witness, he cannot be recalled merely because he filed an affidavit : *Gariba @ Naresh @ Ramnaresh Vs. State of M.P., I.L.R. (2014) M.P. 1135*

– **Section 311** – Recall of witness – Accused filed application for recalling some witnesses for further cross-examination as applicant had not cross-examined them on some points – Held – Object underlying 311 Cr.P.C. is that there may not be failure of justice on account of mistake of either party – The determinative factor is whether it is essential to just decision of the case – Grant of fairest opportunity to accused to prove his innocence is the object of every fair trial – Discovery of truth is the essential purpose of any trial – Merely because mistake was committed, should not result in the accused suffering a penalty totally disproportionate to the gravity of error committed by his

lawyer – Application for recall of witnesses allowed : *Jaidev Vs. State of M.P., I.L.R. (2015) M.P. 3084*

– **Section 311** – Recall of Witness – Doctor who conducted postmortem was examined at earlier stage – He was sought to be recalled in the light of subsequent evidence which has come on record – Held – Accused should be extended the ample opportunity to defend his case and such right should not be curtailed on account of minor technical grounds and specially in those cases in which capital punishment has been provided under the law – Applicants facing trial of Section 302 of IPC in which the maximum punishment till death is provided – Doctor directed to be recalled – Revision allowed : *Deepak Raikwar Vs. State of M.P., I.L.R. (2012) M.P. 285*

– **Section 311** – Recall of witness – Petitioner in order to prove his defence wishes to re-call and cross-examine prosecution witness whose examination on subsequently discovered document is essential to the just decision of the case – It is well settled that where some beneficial to the defence has come to light, it is just and necessary to permit the accused to cross-examine the prosecution witness only on the limited aspect of the case and not beyond that – Application for recalling witness allowed : *Ramhet Sharma Vs. State of M.P., I.L.R. (2011) M.P. 2273*

– **Section 311** - Recall of witness - Prosecution, gave up witnesses and closed the evidence - Final arguments heard and case closed for judgment - Witnesses, given up by prosecution, summoned by the Court - Held - Trial Judge ought to have assigned cogent reasons so as to justify his observations that evidence of each one of the witnesses who were given up by prosecution was material to just decision of the case by highlighting respective role - Order summoning witnesses set aside - However, Trial Court may call these witnesses only after passing speaking order : *P.L. Usrete Vs. State of M.P., I.L.R. (2011) M.P. 803 (DB)*

– **Section 311** - See - Prevention of Corruption Act, 1988, Section 13(1)(d) : *State of M.P. Through S.P.E., (Lokayukta), Bhopal Vs. T.D. (Thakur Das) Patel, I.L.R. (2011) M.P. 774 (DB)*

– **Section 311 & 482** - Recall & re-examination of witness - Witness was examined and cross examined fully - Such witness cannot be recalled and re-examined to deny the evidence already given - Any affidavit filed by witness in this regard cannot be constituted as legal evidence : *Udai Singh Vs. State of M.P., I.L.R. (2013) M.P. *14*

– **Section 313** – Accused Statement – If circumstances appearing against the accused of a particular nature or otherwise, were not put to the appellant in his statement under Section 313, then they must be completely excluded from consideration, because

accused did not have any chance to explain them : *Ashok Prajapati Vs. State of M.P., I.L.R. (2015) M.P. 1352 (DB)*

– **Section 313** – Examination – Presence of appellant and seizure of Katta shown as doubtful – In contra all eye witnesses supporting presence of appellant on spot – Seizure cannot be doubted – Also examination under Section 313 nowhere pleaded that appellant was not present on the spot nor involved in the incident – Appeals dismissed : *Ramvilas Vs. State of M.P., I.L.R. (2015) M.P. 3137 (SC)*

– **Section 313(1)(b)** - Examination of Accused - Exemption of accused from his examination in a summons case - Trial Court decided the question of exemption from personal appearance at the stage of statement u/s 313, Cr.P.C. without particularly referring to proviso to Section 313(1)(b) - Held - Since there is no discussion at all in the impugned order in terms of the proviso, the impugned order is liable to set-aside - Matter remitted back : *Surendra Sanghvi Vs. State of M.P., I.L.R. (2012) M.P. *95*

– **Section 315 & 317** – To produce defence evidence – Accused was permitted to appear as a defence witness u/s 315 of Cr.P.C. – His examination in chief was recorded and cross examination was deferred – On next day, he could not appear due to ill health and application u/s 317 was allowed and case was adjourned – On adjourned date the trial court closed the right of accused – Held – There is no reason on record for refusal to produce defence evidence particularly cross examination of applicant – To deny a litigant an opportunity is against criminal justice delivery system – Every party has right to be allowed sufficient opportunity to put up his case as well as his defence – Order of trial court set aside : *Mahendra Kumar Patel Vs. Sindh Hardware Store, I.L.R. (2015) M.P. 3133*

– **Section 319** – Additional Accused – No charge sheet was filed against the applicant and the I.O. kept the investigation pending against the applicant, although his name finds place in F.I.R. and statements – On the basis of defence, the evidence given by injured witness cannot be brushed aside – No right had accrued to the I.O. to reserve investigation for a particular person/accused – Charge sheet has to be filed for the entire case and not for any particular person/individuals – I.O. has given undue shelter to applicant while filing charge sheet – As the I.O. kept the investigation pending against the applicant and applicant is not ready to appear before the Trial Court, arrest warrant could be issued directly – Revision dismissed : *Rajendra Alias Raje Vs. State of M.P., I.L.R. (2015) M.P. 2232*

– **Section 319** - Additional Accused - Victim alleged that he was assaulted by the applicants however, in his statement u/s 164 of Cr.P.C. victim did not state anything against applicants - Victim again submitted an affidavit stating that due to illness he had

named the applicants - Victim also did not inform the Doctor about the names of the assailants - Although victim in his Court evidence stated against the applicants but all other eye witnesses have also not supported the victim - Trial Court committed an error in admitting the applicants as an accused - Revision allowed : *Naresh Kumar Suryavanshi Vs. State of M.P., I.L.R. (2014) M.P. 251*

– **Section 319** - Addition of accused - No Proposed accused can be added in absence of convincing evidence - There are lot of contradictions in the statements of witnesses - Same set of witnesses were not believed by the Trial Court for making companions of applicant as accused - There is no cogent evidence against the applicant and in case if he is added then, the prosecution case against present accused persons would be damaged - Order passed by Trial Court under Section 319 set aside : *Sunny Gaur Vs. State of M.P., I.L.R. (2013) M.P. 1199*

– **Section 319** - First application u/s 319 of Cr.P.C. was rejected at the time of filing of charge sheet and before recording of evidence - As 1st application u/s 319 of Cr.P.C. was not maintainable therefore, 2nd application after the recording of evidence was maintainable : *Kashi Prasad Pandey Vs. State of M.P., I.L.R. (2014) M.P. 567*

– **Section 319** - Power to proceed against other person appearing to be guilty - Court has ample power to take cognizance and to proceed against other person appearing to be guilty of offence if sufficient evidence appears during the trial indicating his involvement in the offence - It is incumbent that the Court must arrive at its satisfaction in this behalf - If the trial Court is satisfied and has exercised judicious discretion then no interference is called for u/s 397 & 401, Cr.P.C. : *Jagdish Narayan Bhardwaj Vs. State of M.P., I.L.R. (2013) M.P. 705*

– **Section 319** – Power to proceed against other person – Appears from evidence – While considering the application u/s 319 of the Code, sufficient evidence means the evidence by which charges of that offence can be framed against that stranger, who is to be made an accused : *Bhagwan Singh @ Naga Vs. State of M.P., I.L.R. (2011) M.P. 2249*

– **Section 319** – Power to summon additional accused – Held – Court should not pass order u/s 319 of Cr.P.C. unless a higher standard of evidence for the purpose of forming an opinion to summon a person is available – In extraordinary case such jurisdiction be invoked sparingly – No prima facie evidence against the applicants – No sufficient and cogent reason has been assigned for summoning the applicant, impugned order is not sustainable, same is set aside : *Rajendra Singh Vs. State of M.P., I.L.R. (2014) M.P. 2709*

– **Section 319** - Simultaneous Trial - Investigating agency during investigation found that Security Guards had opened fire, although it was mentioned in F.I.R. that

initially the applicant opened fire and thereafter other office bearers of the factory opened fire - Scriber of the F.I.R. did not support the F.I.R. during trial - Case of Security Guards is diagonally opposite to the case of applicant - If it is presumed that the firing was done by applicant and his companions then the case of prosecution against the security guards would go away and trial would not proceed against them because two contradictory cases cannot be tried simultaneously - Addition of applicant as accused bad : *Sunny Gaur Vs. State of M.P., I.L.R. (2013) M.P. 1199*

– **Section 319** – Summoning of additional accused – Addition of additional accused is warranted only when there is reasonable prospect of case ending in his conviction – Order cannot be passed because first informant or one of witnesses seeks to implicate other persons : *Virendra Singh Vs. State of M.P., I.L.R. (2015) M.P. 1073*

– **Section 319** – Summoning of Additional Accused – During investigation it was found that respondent no. 2 was not present on spot and was present in ATM booth – CD produced by IO also proves the presence of respondent no. 2 in ATM booth – Nothing in evidence of PW-1 that absence of respondent no. 2 on the spot was deliberately shown by IO – Application rightly rejected : *Virendra Singh Vs. State of M.P., I.L.R. (2015) M.P. 1073*

– **Section 319** - Summoning of Additional Accused - No charge sheet was filed against respondents No. 2 to 4 although there was sufficient material against them - On the basis of depositions of the eye-witnesses as well as the injured witnesses, prima facie ingredients of the offence are made out - Respondents No. 2 to 4 are directed to be implicated as co-accused with existing accused : *Kashi Prasad Pandey Vs. State of M.P., I.L.R. (2014) M.P. 567*

– **Section 319** – Summoning of additional accused – Sessions Court can issue summons on the basis of records transmitted to him as a result of the committal order passed by Magistrate : *Jashvant Rathore Vs. State of M.P., I.L.R. (2015) M.P. 257*

– **Section 320** - Application for compromise - Application for compromise filed after the pronouncement of judgment - Application is not maintainable as the Court is no more seisin over the case : *O.T.G. Global Finance Ltd. Company Vs. Mohan Mandelia, I.L.R. (2011) M.P. *152*

– **Section 320** – Compromise – Complainant has filed compromise application during the pendency of appeal which was duly verified – Application for compromise accepted in respect of appellants No. 2 to 4 who have been convicted under Section 325/34 – Application in respect of appellant No.1 rejected – However, the sentence is reduced to the period already undergone and fine amount is enhanced to a sum of Rs. 10000 from Rs. 1000/- : *Ashok Vs. State of M.P., I.L.R. (2015) M.P. 2475*

– **Section 320**, Penal Code (45 of 1860), Section 498-A – Compounding – Order of conviction can not be quashed in exercise of power under Section 482 – However, factum of compromise can be taken into account while determining the quantum of sentences : *Chanda Bai (Smt.) Vs. State of M.P., I.L.R. (2012) M.P. 1469*

– **Section 320** – See – Penal Code 1860, Section 307 : *Anil Kumar Vs. State of M.P., I.L.R. (2012) M.P. *52*

– **Section 320** - See - Penal Code, 1860, Section 326 : *Sambha @ Shyam Rao Pawar Vs. State of M.P., I.L.R. (2012) M.P. 2002*

– **Section 320** - See - Penal Code, 1860, Section 354 & 294 : *State of M.P. Vs. Bahadul Singh, I.L.R. (2012) M.P. 2194*

– **Section 320(2)**, Penal Code (45 of 1860), Section 341, 294 & 324 and Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (33 of 1989), Section 3(i)(x) – Compounding – Complainant filed an application u/s 320(2) of the Cr.P.C. seeking permission to compound the aforesaid offences, which has been partly allowed and on the basis of compromise, the applicant has been acquitted to the charge u/s 341, 294 of the I.P.C. but the aforesaid application has been dismissed with respect to the offence u/s 324 of the IPC read with Section 3(i)(x) of the SC/ST (Prevention of Atrocities) Act on the ground that both the offences are not compoundable – Held – Amendment Act, 2005 has been made enforceable vide notification dated 30.12.2009 issued by Ministry of Home Affairs Notification No. S.O. 3313(E), dated the 30.12.2009 – It means before 31.12.2009, the offence punishable u/s 324 of the IPC was compoundable : *Shamsher Bahadur Singh Chandel @ Golend Singh Vs. State of M.P., I.L.R. (2014) M.P. 1393*

– **Section 320(2)** – See – Negotiable Instruments Act, 1881, Section 147 : *O.T.G. Global Finance Ltd. Vs. Mohan Mandelia, I.L.R. (2012) M.P. *29*

– **Section 321** – Locus Standi – Complainant or any other person has locus standi to oppose withdrawal of a case : *Pushpa Dharwal (Ku.) Vs. State of M.P., I.L.R. (2015) M.P. 2260*

– **Section 321** – Withdrawal from prosecution – Counter case – Application for withdrawal from prosecution of one party allowed – Held – In trial of cross cases, it is imperative on the part of trial court to reach to the conclusion that out of two parties who was the aggressor in the incident and thereafter dispose the cases on merit – Compelling one of the two parties to face trial and give benefit to another party while withdrawing the cases pending against him can not be said to be in public interest – Criminal case restored

– Analogous trial of both cases ordered : *Brijpal Singh Vs. Pramod Kumar, I.L.R. (2012) M.P. 1092*

– **Section 321** – Withdrawal from Prosecution – Cross case pending – Case was not listed – Application u/s 34 was entertained without hearing complainant – Compelling one of parties to face trial and giving benefit to other by withdrawing the case ought not to be allowed – Order granting permission to withdraw from prosecution set aside – P.P. may file fresh application u/s 321 and court is free to decide the same after giving opportunity to complainant – Application allowed : *Pushpa Dharwal (Ku.) Vs. State of M.P., I.L.R. (2015) M.P. 2260*

– **Section 321** – Withdrawal from Prosecution – Functions of Court – Court performs supervisory and not adjudicatory function – Consent by Court is discretionary – Court must consider that (i) Whether withdrawal of prosecution would advance the cause of justice (ii) Whether case is likely to end in an acquittal (iii) whether continuance would only cause severe harassment to accused (iv) Whether withdraw is likely to resolve dispute (v) Whether grounds are valid (vi) Whether implication is bonafide or is collusive : *Pushpa Dharwal (Ku.) Vs. State of M.P., I.L.R. (2015) M.P. 2260*

– **Section 321** – Withdrawal from Prosecution – Functions of Public Prosecutor – Withdrawal from prosecution is an executive function of Public Prosecutor and ultimate decision to withdraw is his power and must be exercised by Public Prosecutor and none else – Govt. may suggest to Public Prosecutor to withdraw a particular case and nobody can compel Public Prosecutor to withdraw : *Pushpa Dharwal (Ku.) Vs. State of M.P., I.L.R. (2015) M.P. 2260*

– **Section 321** – Withdrawal from Prosecution – Law discussed : *Pushpa Dharwal (Ku.) Vs. State of M.P., I.L.R. (2015) M.P. 2260*

– **Section 321 & 482** – Withdrawal of criminal case – On the application filed by prosecution agency, trial Court permitted the withdrawal of criminal case – Revisional Court observed that the applicant and non-applicant are real brother and civil case is pending between them and found that no irregularity was committed by learned Magistrate – Held – There is nothing on record to show that learned Magistrate exercised the jurisdiction erroneously – In the instant case civil litigation is already pending – Question of ownership and possession can only be decided by the civil court – No case is made out for interfering in the order : *Dongar Singh Rathore Vs. State of M.P., I.L.R. (2015) M.P. 277*

– **Section 323** – Committal – Cross cases arising out of the same incident – One trial has commenced before the Court of Judicial Magistrate and another trial after committal has commenced before the Sessions Court – Held – It would be desirable for

the trial Magistrate to commit the case pending before him to the Court of Sessions to be tried by the same court alongwith cross case – However, the judgments shall be delivered separately on merits of each case by the Court : *Avneesh Vs. State of M.P., I.L.R. (2012) M.P. 1466*

– **Section 340** – False evidence – Enquiry – Before preferring complaint, neither enquiry was made by ASJ nor any opportunity of hearing was given – Further also, facts mentioned in FIR, in 161 statement and in Court evidence are same – No case could be made out – Petition allowed – Proceedings quashed : *Shyam Kumar Vs. State of M.P., I.L.R. (2015) M.P. 1099*

– **Section 340** – Procedure in cases mentioned in Section 195 – Applicant filed a civil suit and filed interpolated documents – After dismissal of his application under Order 39 Rule 1 & 2, C.P.C., he filed Misc. Appeal – Two applications were filed u/s 340 of Cr.P.C. before the Trial Court as well as Appellate Court – Appellate Court rejected the application on the ground that enquiry is being done by the Trial Court – Subsequently, Civil Suit was dismissed in default however, the application filed u/s 340 of Cr.P.C. remained unconsidered – Trial Court directed to complete the enquiry and to proceed depending upon the outcome of the enquiry : *Anil Kumar Chouhan @ Anil Singh Chouhan Vs. State of M.P., I.L.R. (2015) M.P. 3105*

– **Section 340 & 344** – Distinction – Section 344 applies to judicial proceedings only whereas section 340 applies to proceedings other than judicial proceedings also : *Shyam Kumar Vs. State of M.P., I.L.R. (2015) M.P. 1099*

– **Section 341 & 482** – Alternative remedy – Section 482 confers separate and independent power – Powers u/s 482 cannot be cribbed or hedged in by provisions of section 341(2) – Petition u/s 482 Cr.P.C. maintainable : *Shyam Kumar Vs. State of M.P., I.L.R. (2015) M.P. 1099*

– **Section 353** - Judgment - Accused were facing trial and were not on bail - Sessions Judge heard the final arguments and fixed the case for delivery of judgment - No judgment was passed or was found on record, but an unsigned order-sheet was written that the accused persons have been acquitted and there release warrant be prepared - Release warrant was signed by Sessions Judge - Held - Criminal Court of original jurisdiction cannot pronounce the operative part of the judgment and thereafter proceed to write the judgment - Presiding Officer is required to deliver either the whole of the judgment or has to deliver in Court by writing or dictating the judgment or a previously written judgment can be pronounced by reading out the whole or operative part of judgment - Sessions Judge committed manifest illegality by acting in violation of mandate of Section 353 & 354 of Cr.P.C. - Signing of release warrant in absence of any

judgment of acquittal had led to miscarriage of justice - Release warrants quashed - Sessions Judge directed to comply with the provisions of Section 353 and 354 of Cr.P.C. : *In Reference, I.L.R. (2012) M.P. 2280*

– **Section 354** - Content of judgment - Each decision should be based on points for determination and reasons for that decision : *State of M.P. Vs. Vishnoo Prasad, I.L.R. (2011) M.P. 787*

– **Section 357** - See - Penal Code, 1860, Section 304 Part-II & 323 : *Vinay Singh Vs. State of M.P., I.L.R. (2012) M.P. 2473*

– **Section 360 & 361** – Probation – If a person fulfills the requirement of the section, the competent Court is under a legal and mandatory obligation to consider his case in the touch stone of the provisions for the purpose of granting him benefit of probation : *Balbeer Singh Vs. State of M.P., I.L.R. (2012) M.P. 1068*

– **Section 360 & 361** – Probation – No material on record which shows that petitioner was previously convicted – The age of petitioner is above 21 years – Held – Petitioner was eligible for consideration by the Court for the purpose of grant of benefit of probation : *Balbeer Singh Vs. State of M.P., I.L.R. (2012) M.P. 1068*

– **Section 372 & 378(4)** – Appeal against acquittal – Complaint case – The only remedy available to the applicant/complainant of complaint case is to prefer appeal against the judgment of acquittal before High Court u/s 378(4) of the Code, as the Section 372 nowhere specifies that victim also includes complainant of complaint case – Revision dismissed : *Dharmveer Singh Tomar Vs. Ramraj Singh Tomar, I.L.R. (2011) M.P. 1085*

– **Section 374** - Appeal from Convictions - Misappreciation of Evidence - There is no evidence on record to establish that the deceased was ever provoked or encouraged or persuaded or compelled by the appellant/ accused to commit suicide - Act of commission of suicide was not the consequence of any of acts allegedly committed by the accused - Ingredients of Section 306 have not been established - Hence, conviction recorded by the trial court cannot be maintained : *Shrikrishna Vs. State of M.P., I.L.R. (2013) M.P. *19*

– **Section 374**, Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Section 8/19 & 26 – Appellant was having the license to grow opium – Land was being cultivated by co-accused on lease – Co-accused admitted that opium was kept in his house – However, appellant failed to inform the official – Held – Since there is clear admission by co-accused that opium was kept in his house after weighment – Appellant was responsible for breach of conditions of license which is punishable u/s 26 of the Act – Conviction of the appellant was altered to u/s 26 instead of Section 8/19 of the N.D.P.S.

Act and sentenced to 3 years R.I. with fine of Rs. 30,000/- : *Raju Vs. Central Bureau of Narcotics, I.L.R. (2014) M.P. 1102*

– **Section 376** – See – Forest Act 1927, Section 33(1)(d) : *State of M.P. Vs. Nand Kishore, I.L.R. (2012) M.P. 1296*

– **Section 378** – Appeal against acquittal – Appellate Court can interfere with order of acquittal only in an exceptional case where there are compelling circumstances to interfere and the judgment under appeal is found to be perverse : *State of M.P. Vs. Kamal, I.L.R. (2014) M.P. 2415 (DB)*

– **Section 378** - Appeal against acquittal - Appellate Court for compelling reasons should not hesitate to reverse a judgment of acquittal, if the findings so recorded by the Court below are found to be perverse and if the Court's entire approach with respect to dealing with evidence is found to be patently illegal, leading to miscarriage of justice or if its judgment is unreasonable and is based on erroneous understanding of law : *State of M.P. Vs. Dal Singh, I.L.R. (2013) M.P. 1265 (SC)*

– **Section 378** – Appeal against acquittal – Judgment of acquittal should not be disturbed unless the conclusions drawn on the basis of evidence brought on record are found to be grossly unreasonable or manifestly perverse or palpably unsustainable : *Rajendra Singh Vs. State of M.P., I.L.R. (2014) M.P. 2247 (DB)*

– **Section 378** - Appeal against acquittal - Powers of Appellate Court - Law Discussed : *State of M.P. Vs. Ravikumar Singh Malhotra, I.L.R. (2013) M.P. 442 (DB)*

– **Section 378** – Power of Appellate Court – Law discussed : *Ramdas Kachhi Vs. State of M.P., I.L.R. (2012) M.P. 207 (DB)*

– **Section 386** – Powers of Appellate Court – Remand – Trial Court did not consider the evidence as well as the exhibited documents – Held – Appellate Court rightly remitted the case back for deciding afresh after re-appreciation of evidence – Revision dismissed : *Preetam Chouksey Vs. State of M.P., I.L.R. (2012) M.P. 790*

– **Section 386** - Powers of Appellate Court - Trial Court on unjustified reasonings on the face value of the evidence which is extremely credible and on account of perversity has acquitted the respondents - The judgment of acquittal cannot be allowed to remain stand : *State of M.P. Vs. Suresh Singh, I.L.R. (2011) M.P. *49 (DB)*

– **Section 386** - Retrial - Appellant was tried along with other accused persons - Co-accused persons were acquitted by Trial Court and appellant was convicted - No appeal against the acquittal of other co-accused persons - Appellate Court directed for re-trial and remanded the matter - Re-trial would mean denovo trial - There can not be any

splitting of trial - Order of re-trial set aside - Appellate Court directed to decide the appeal on merits : *Chakrapani Pandey Vs. State of M.P., I.L.R. (2012) M.P. 2008*

– **Section 389** – Suspension of Sentence – Government servant sentenced by ACJM for offence u/s 409 of IPC to 4 years RI and fine of Rs. 3,36,705/- – Appellate Court suspended sentence of Jail but prayer for suspension of fine amount has been dismissed – Held – Order of appellate court modified to the extent that on depositing of Rs. 1,68,352/-, recovery of remaining fine shall remain stayed : *Dallu Vs. State of M.P., I.L.R. (2015) M.P. 2801*

– **Section 391** - Additional Evidence - Document and recording of evidence of one witness is essential for digging out the truth - One chance to petitioner/accused ought to be given subject to cost to be given to the complainant - Petition allowed : *Achal Sepaha (Dr.) Vs. State of M.P., I.L.R. (2012) M.P. 2005*

– **Section 391** - Further/Additional Evidence - Appellate Court remanded the case back to the trial Court with a direction to provide an opportunity to prosecution for exhibiting and proving the report of examination of seized liquor by the Excise Department and decide the case on merits afresh - Held - The Section nowhere authorises the appellate Court to set aside the conviction and remand the whole case back to the trial Judge for the sole purpose of examining a particular witness and then deciding the matter afresh after recording his evidence. The section is not intended to remedy the negligence or laches of the prosecution : *Ramu Vs. State of M.P., I.L.R. (2011) M.P. 2901*

– **Section 391 & 401** - Judicial Magistrate First Class, convicted the accused u/s 138 of the Negotiable Instruments Act and sentenced to suffer imprisonment with fine - Petitioner/accused preferred an appeal against the judgment of conviction and sentence - During pendency of the appeal, an application u/s 391 of Cr.P.C. was filed by the petitioner for taking two documents as additional evidence - The application was allowed and by keeping the appeal pending for decision by the impugned order, the matter was remanded back to the Trial Court for recording the additional evidence of the parties - Held - No infirmity and illegality in the impugned order that may call for any interference in exercise of the revisional jurisdiction : *Sharif Kha Vs. Gajanand, I.L.R. (2013) M.P. 1755*

– **Section 391 & 482** - Additional Evidence - The whole scheme of this section suggests that like civil cases an application for taking additional evidence on record should be considered and disposed of after hearing the criminal appeal on merits - Such application should not be decided in isolation i.e. Without hearing the appeal on merits - If so, there may be cases of failure of justice : *Pramod Gupta Vs. State of M.P., I.L.R. (2013) M.P. 984*

– **Section 397**, Penal Code (45 of 1860), Section 498-A & 306 – Revisional Jurisdiction of High Court – Order discharging the In-laws except Sister-in-law was set aside by High Court – In discharging the accused the Session Judge is necessarily to have come to conclusion that on a perusal of the material before the court there was no likelihood of a conviction and not even a prima facie case had been disclosed – There can be no gainsaying that no case possibly be made out u/s 306, 498-A, after the marriage has crossed the 7 years period – Merely a presumption is removed : *Sherish Hardenia Vs. State of M.P., I.L.R. (2014) M.P. 1694 (SC)*

– **Section 397** – Power of Session Court to call and examine the record – Revisional Court has jurisdiction to reverse the findings of the lower trial court and give its own finding – Revisional powers are to be read and construed together and not in isolated water tight compartment – Section 398 & 399 of Code would have to be read together as one integral whole – It would be immaterial to investigate as to which specific provision has been actually invoked by it : *Raghuveer Singh Vs. Bhoori Bai, I.L.R. (2014) M.P. 1128*

– **Section 397** – See – Penal Code, 1860, Section 420, 467, 468 & 471 : *Fayyaj Ahmad Vs. State of M.P., I.L.R. (2015) M.P. 3425*

– **Section 397, 91 & 227** - Documents in defence - Whether any document which the accused may rely in support of his defence could be looked into at the stage of framing of charge or not - Held - No right is conferred on the accused to produce document to prove his defence at the stage of framing of charge - Under Section 227 of Cr.P.C. only the record produced in terms of Section 173 of the code is relevant - Accused cannot invoke Section 91 to show his innocence - At this stage Court exercises a limited jurisdiction and only have to see that whether prima facie case has been made out or not : *Balu Singh Sisodia Vs. State of M.P., I.L.R. (2014) M.P. 579 (DB)*

– **Section 397 & 401** – Applicants were tried for offence u/s 498-A, read with 34 of I.P.C. – They were convicted for the same – In appeal learned Sessions Judge acquitted them from the charge punishable u/s 498-A of IPC, but convicted them for offence punishable u/s 323 & 354 of I.P.C respectively – Held – Where two offences involve two different elements and different question of facts one offence cannot be said to be the minor to the other and the conviction cannot be passed in the absence of specific charge – Minor offence essentially be a cognate offence of the major offence – Applicants were deprived of from their right of natural justice to defend – Ingredients of Section 354 & 498-A of IPC are entirely different to each other – There is no similarity, correlation, cognation or commonness between these two sections – Revision is allowed, applicants are acquitted : *Prakash Sahu Vs. State of M.P., I.L.R. (2014) M.P. 3293*

– **Section 397 & 401** - Criminal Revision - Locus Standi - Offence under Section 420, 467, 468 & 471, IPC was registered on the basis of the complaint lodged by the complainant against the accused - Accused was discharged by the order of the trial Court - The complainant has locus standi or right to file the revision petition against the same : *Prem Sharma @ Shiv Prasad Mishra Vs. Shiv Prakash Mishra, I.L.R. (2013) M.P. 2029*

– **Section 397 & 401** – Entitlement on account of age – Age of respondent No. 3 is mentioned as 16 years in the main application therefore Family Court is directed to decide the issue of entitlement after giving fair opportunity to both the parties regarding age of respondent No. 3 : *Rayees Khan Vs. Smt. Jahida Bi, I.L.R. (2014) M.P. 3049*

– **Section 397 & 401** – Expenses incurred towards treatment – Civilian of Bhopal city who are affected from Gas Tragedy are getting appropriate medical facility and compensation so if he is expending huge amount on his own treatment is not justified – Family court has awarded a reasonable amount – Revision dismissed : *Rayees Khan Vs. Smt. Jahida Bi, I.L.R. (2014) M.P. 3049*

– **Section 397 & 401** – Grant of Interim maintenance u/s 125, Cr.P.C. – Award from the date of application – Order granting interim maintenance challenged on the ground that respondent No.3 being major is not entitle for the same and it should not have been awarded from the date of application – Applicant being Bhopal Gas affected person incurred huge amount on his own treatment – Held – Applicant divorced respondent No.1 and also turned out his children, neglected to maintain them and married with another woman – Reply to application was filed after lapse of more than 10 months – He adopted delaying tactics – Sufficient ground for awarding maintenance from the date of application : *Rayees Khan Vs. Smt. Jahida Bi, I.L.R. (2014) M.P. 3049*

– **Section 397 & 401**, High Court Rules, M.P. 2008, Rule 48 – Declaration as to custody – Unless Criminal Revision contains declaration that convicted person is in custody or has surrendered after conviction, criminal revision is not tenable : *Deepak Sahu Vs. State of M.P., I.L.R. (2012) M.P. 1441*

– **Section 397 & 401**, Limitation Act (36 of 1963), Section 5 – Condonation of delay – Criminal appeal against conviction was dismissed after dismissing application for condonation of delay – Delay was of only six days and the ground on which the delay was caused was also sufficiently explained by medical certificate and supported by his own affidavit – If the petitioner/ accused is able to establish that he has a prima facie case for acquittal in appeal, the appeal ought not to be thrown out on the technical grounds – It is always better to dispose of the case on merits rather than to dismiss the same on technical grounds – No hardship would be caused to the State if an application is allowed and an opportunity is given to the accused/petitioner who is undergoing sentence to put-

forth his case before the higher court for re-appreciation of evidence – Delay of six days in filing the criminal appeal is condoned – Revision allowed : *Arjun Namdeo Vs. State of M.P., I.L.R. (2015) M.P. 476*

– **Section 397 & 401** – Rejection of application for returning original warehouse's receipt – Held – Original warehouse's receipt seized in connection of the impugned offence have been sent to authorized expert for its examination – Report is still awaited – Discretion to return the same lies only with such court which is not possible at this stage – However, the applicant shall be at liberty to file application after receiving the expert report, same shall be considered in accordance with law – Revision dismissed : *Santosh Kumar Vs. C.B.I., I.L.R. (2014) M.P. 3047 (DB)*

– **Section 397, 401 & 399** – Exercise of Revisional Jurisdiction – On the basis of material available on record, Revisional Court is not supposed to exercise revisional jurisdiction while setting aside the order of the trial court, which is based upon well considered reasoning supported by the material available on record – Therefore, Revisional Court exceeded the jurisdiction – Impugned order is set-aside : *Gyanesh Vs. Central Bureau of Investigation, I.L.R. (2014) M.P. 3274*

– **Section 397, 401 & 399**, Penal Code (45 of 1860), Section 100 & 103 and Evidence Act (1 of 1872), Section 105 – Right of Private Defence – The benefit of general exception u/s 100 and 103 of I.P.C. may be available to the accused on discharging the burden in the court and not before the prosecution agency – The said occasion is not available to the prosecution agency including CBI : *Gyanesh Vs. Central Bureau of Investigation, I.L.R. (2014) M.P. 3274*

– **Section 397, 401, 407 & 408** – Maintainability of Revision – Application filed under Section 408 for transfer of case rejected – No revision lies against the order – Applicant has remedy of filing application under Section 407 of Cr.P.C. for transfer – Revision dismissed : *Anita Sharma (Smt.) Vs. State of M.P., I.L.R. (2012) M.P. 608*

– **Section 397, 401 & 482** – Inherent Powers – Maintainability – Revision filed against judgment of conviction under Section 138 of Negotiable Instruments Act dismissed – Subsequently application under Section 482 of Cr.P.C. contending compromise between the parties – Held – In all cases where petitioners are able to satisfy the Court that there are special circumstances, subsequent application invoking inherent powers can not be thrown away on the technical arguments as to its sustainability : *O.T.G. Global Finance Ltd. Vs. Mohan Mandelia, I.L.R. (2012) M.P. *29*

– **Section 397 & 451** – See – Forest Act, 1927, Section 52-C : *Ramniwas Vs. Game Range Chambal Sanctuary, Morena, I.L.R. (2012) M.P. 811*

– **Section 397(3) & 482** - Inherent Powers - In view of rider placed by Section 397(3), the scope is limited - Court may correct any mistake committed by the revisional Court only where, on examination of the record, it finds that there is grave miscarriage of justice or abuse of the process of the Court or the required statutory procedure has not been complied with or there is failure of justice : *Ram Sewak Patidar Vs. Narayan Singh Patidar, I.L.R. (2012) M.P. 2876*

– **Section 407** – Transfer of criminal case – Applicants were arrested for the offence u/s 457, 380, I.P.C. – They sought transfer of case from Sagar to Jabalpur – They stated that the complainant is a practicing advocate under the jurisdiction of Sessions Court, Sagar – He is pressurizing and giving threats to the advocates of Sagar not to appear in the case of the applicants – Applicants have no faith or believe upon their counsel or any counsel of Sagar – Held – Not clarified in the petition, names of the advocates of other districts to whom the relatives of the applicants contacted and they refused to defend the applicants – It is also not a case in which the Bar Association of the District, Sagar had passed any resolution that any member advocate of the Bar Association will not to argue or defend the case of the applicants – No substantial ground made out for transfer of case from Sagar to Jabalpur – Hence, the application is rejected on its merit : *Neelesh Vs. State of M.P., I.L.R. (2014) M.P. 1675*

– **Section 427** – Concurrent running of sentences – Applicant convicted under Section 138 of Negotiable Instruments Act in seven different complaint cases – Complaint cases were filed by different complainants – Sentence cannot be directed to run concurrently as in the trial court there was different acts of accused on different complaints – Application dismissed : *Rekha Mishra (Ku.) Vs. State of M.P., I.L.R. (2011) M.P. 1607*

– **Section 427** - Condition Precedent - At the time of passing the second conviction against same accused, he must be undergoing a sentence (of previous case) - Only then the Court can pass a direction to make the subsequent sentence concurrent - Application dismissed : *Aziz Khan Pathan Vs. State of M.P., I.L.R. (2012) M.P. 2064*

– **Section 427** – Subsequent sentence to run concurrently with previous – Applicant convicted under Section 138 Negotiable Instruments Act, 1881 in five different cases – Criminal liability arises from different transactions – Applicant not entitled for benefit – Revision dismissed : *Inayat Vs. Adarsh Vyapari Sakh Sahkarita Myd., I.L.R. (2015) M.P. 3427*

– **Section 427 & 482** - Sentence to run concurrent with previous sentence - When may be directed - Inherent powers - While deciding both the cases and appeal, such a prayer was not made before the Courts - In a petition u/s 482 read with 427, Cr.P.C.,

sentence can not be directed to run concurrently : *Aziz Khan Pathan Vs. State of M.P., I.L.R. (2012) M.P. 2064*

– **Section 427(2) & 482** – Sentence to run concurrently – Prayer for making sentences to run concurrently has to be made before Trial Court or before Appellate Court
 – No such prayer made – Application under Section 482 Cr.P.C. not maintainable : *Ramcharan Vs. State of M.P., I.L.R. (2011) M.P. 1418*

– **Section 437, 438 & 439** – Bail – Power conferred u/s 438 is not ordinarily resorted to like the power u/s 439 & 437 of Cr.P.C. : *Praveen Dubey Vs. Ravishankar, I.L.R. (2015) M.P. 518*

– **Section 437(6)** - Bail - Seven bail applications of the applicant already rejected - Trial not concluded within sixty days - Held - Applicant not entitled for bail in view of later part of Section 437(6) as on earlier occasions looking to the seriousness of offence and availability of sufficient prima facie circumstances, his bail applications were rejected - Prima facie circumstances available showing that by practicing fraud and fabricating documents applicant has misappropriated huge amount of Rs.25,05,793 - Bail application rejected as benefit of provision of Section 437(6) cannot be granted : *Sunil Saxena Vs. State of M.P., I.L.R. (2011) M.P. 816*

SYNOPSIS : Section 438

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| 1. Limited Period/Duration | 2. Maintainability of Anticipatory Bail |
| 3. Parameters and Principles to Grant Bail | 4. Miscellaneous |

1. Limited Period/Duration

– **Section 438** - Anticipatory Bail - Duration - Anticipatory bail may be granted for a limited period : *Chain Raja (Smt.) Vs. State of M.P., I.L.R. (2013) M.P. 724*

– **Section 438** - Anticipatory bail - Limited Period - Life of the order passed under Section 438 of Cr.P.C. cannot be curtailed - It is not proper to impose any condition to grant of anticipatory bail : *Harnam Singh Vs. State of M.P., I.L.R. (2012) M.P. *96*

– **Section 438** – Duration of Anticipatory Bail – Anticipatory bail granted to applicant shall remain in force till end of trial – It is duty of Court before whom challan is filed that applicant should be enlarged on bail with such terms and conditions mentioned for compliance of Arresting Authority, even if there is no specific direction in the bail order : *Gajra Devi Vs. State of M.P., I.L.R. (2011) M.P. 1616*

2. Maintainability of Anticipatory Bail

– **Section 438**, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (33 of 1989), Section 18 - Maintainability of Anticipatory Bail - If the Litmus test is satisfied i.e. the offence is prima facie not made out anticipatory bail can be granted - The objection regarding maintainability of anticipatory bail in the teeth of Section 18 of the Act overruled : *Ummed Singh Vs. State of M.P., I.L.R. (2013) M.P. 1214*

– **Section 438** – Application for anticipatory bail directly to High Court – Whether maintainable - Application under Section 438 should have been filed at the first instance before Sessions Court and thereafter in case necessity arises, the applicants should approach the High Court – Application disposed off with liberty to approach Sessions Court : *Priya Agrawal @ Shubhlata Agrawal (Smt.) Vs. State of M.P., I.L.R. (2012) M.P. 803*

3. Parameters and Principles to Grant Bail

– **Section 438** – Anticipatory bail – Parameters and principles to grant bail under section 438 and 439 are different – However grant of bail u/s 439 Cr.P.C. to co-accused would not lead to accept material change in the circumstances to other co-accused persons – Hence it does not make a ground to allow repeat bail application u/s 438 Cr.P.C. – Held – Petition allowed – Bail granted to non-applicant No. 1 and 2 on repeat bail application by impugned order, set aside : *Praveen Dubey Vs. Ravishankar, I.L.R. (2015) M.P. 518*

– **Section 438 & 439** – Bail Application – Directly before High Court – Approaching High Court without first approaching Sessions Court/Trial Court is permissible – However, entertainment of bail applications directly filed in High Court is permissible subject to the applicant's satisfying existence of special extraordinary convincing reasons : *Chhote Khan Vs. State of M.P., I.L.R. (2012) M.P. 1095*

4. Miscellaneous

– **Section 438** - Anticipatory Bail - Applicant issued cheques without verifying the signatures of the authorized person - Although applicant is aged about 59 years and is suffering from heart ailment but since it is the case in which custodial interrogation is required - Applicant not entitled for anticipatory bail : *B.K. Mehra Vs. C.B.I., I.L.R. (2012) M.P. 2068*

– **Section 438** – Anticipatory Bail – Juvenile – Application for grant of anticipatory bail preferred by juvenile cannot be entertained by the High Court or the Sessions Court by applying the provisions u/s 6(2) of Juvenile Justice (*Care and*

Protection of Children) Act, 2000 : Satendra Sharma Vs. State of M.P., I.L.R. (2014) M.P. 2749

– **Section 438** – Anticipatory Bail – Last Seen Together – Provision of anticipatory bail was recommended to curb the tendency of false implication on the basis of rivalry for the purpose of disgracing the person by getting them detained in jail for some days – Applicant was seen for the last time in the company of deceased – Facts do not fall in the exceptional category – Application dismissed : *Laxman Gurjar Vs. State of M.P., I.L.R. (2012) M.P. 806*

– **Section 438** - Anticipatory Bail - The Court may examine the FIR or Complaint on its face value at this stage : *Ummed Singh Vs. State of M.P., I.L.R. (2013) M.P. 1214*

– **Section 438** – Appeal against grant of anticipatory bail by High Court – Arrest warrants issued to accused returned unserved – They were not traceable – Therefore, proclamation u/s 82 of Cr.P.C. was issued against them – Held – Since, the accused are facing prosecution u/s 302 and 120-B read with Section 34 who have been declared as absconders and have not cooperated with the investigation, they should not be granted anticipatory bail – Order passed by High Court and subsequent order of C.J.M. are set aside : *State of M.P. Vs. Pradeep Sharma, I.L.R. (2014) M.P. 1687 (SC)*

– **Section 438** – Conditions – Reasonable – Word “any condition” used in the provision has to be interpreted as a reasonable condition – Condition of depositing Rs. 50 lakh in fixed deposit, is unreasonable, harsh and erroneous and defeat the very purpose of grant of anticipatory bail – Same would result in denial of liberty – Condition of depositing Rs. 50 lakh is set-aside : *Pawan Kumar Dhimaan Vs. State of M.P., I.L.R. (2014) M.P. 1667*

– **Section 438** - No straitjacket formula can be fixed for not granting of anticipatory bail - Provisions of S. 438 are to be applied by balancing between the rights of the applicant and investigation of the police : *Harshita @ Harshlata Vs. State of M.P., I.L.R. (2011) M.P. 819*

– **Section 438 & 439**, Penal Code (45 of 1860), Section 306 & 34 – Anticipatory bail – Special power of High Court or court of session regarding bail – Grant of subsequent anticipatory bail by the Additional Sessions Judge was beyond her competence after rejection of the application of the accused person by the High Court as there was no substantial change in the facts and circumstances – Such power exercised by A.S.J. amounts to abuse of powers of the court, which cannot be sustained in law : *Praveen Dubey Vs. Ravishankar, I.L.R. (2015) M.P. 518*

SYNOPSIS : Section 439

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| 1. Conditions for Granting Bail | 2. Delay in Trial |
| 3. Non Entitlement | 4. Regular Bail – Competent Court |
| 5. Repeat Bail | 6. Miscellaneous |

1. Conditions for Granting Bail

– **Section 439** – Conditions for granting bail – Held – While granting bail the Courts will keep in mind the need for liberal interpretation in areas of social justice, individual freedom and indigent's rights, and the accused can be released on his own bond, with or without sureties – When sureties should be demanded and what sum should be insisted on are dependent on variables – Condition imposed by ASJ for two local sureties through Rin Pustika in which previously no bail was furnished is modified : *Omkar Vs. State of M.P., I.L.R. (2015) M.P. 803*

– **Section 439** – Conditions – Grant or non-grant of bail – Court not to decline grant of bail, unless exceptional circumstances, like offence punishable with death or imprisonment for life : *Sudhir Sharma Vs. State of M.P., I.L.R. (2015) M.P. 1600 (DB)*

– **Section 439** – Grant of bail – Factors to be taken into consideration – Law discussed : *Tejnarayan Shukla Vs. State of M.P., I.L.R. (2011) M.P. 1104*

2. Delay in Trial

– **Section 439** – Bail – Admissions in Medical Colleges were given by corrupt means – Offence has potential of undermining the trust of people in the integrity of medical profession – If undeserving candidates are admitted to medical courses by corrupt means, not only the society will be deprived of the best brains treating the patients, patients will be faced with undeserving and corrupt persons treating them – Bail cannot be granted – However, as applicant is in jail for more than 1 year and there is no substantial progress in trial, it is directed that in case trial is not completed within one year, the applicant shall be entitled to apply for bail afresh to the High Court : *Vinod Bhandari (Dr.) Vs. State of M.P., I.L.R. (2015) M.P. 1625 (SC)*

– **Section 439** – See – Constitution, Article 21, 22 : *Roopa @ Ramroop Vs. State of M.P., I.L.R. (2012) M.P. 657*

3. Non Entitlement

– **Section 439**, Penal Code (45 of 1860), Section 420, 467, 468, 471 & 120-B, Information Technology Act, 2000 (21 of 2000), Section 65 & 66 and Recognised Examinations Act, M.P. (10 of 1937) (also referred to as 'Manyataprapt Pariksha

Adhiniyam, M.P. 1937'), Section 3-D(1), 2 & 4 – Bail – VYAPAM examination scam – Applicant, a racketeer – Serious offence punishable with life imprisonment – Charge-sheet not filed – Applicant resourceful person – Shortly statement u/s 164 of Cr.P.C. of co-accused to be recorded – Held – Looking to complexity of investigation, multiple players involved – Applicant cannot be released on bail until filing of charge-sheet – Petition dismissed : *Sudhir Sharma Vs. State of M.P., I.L.R. (2015) M.P. 1600 (DB)*

– **Section 439**, Penal Code (45 of 1860), Section 420, 467, 468, 471 & 120-B, Information Technology Act (21 of 2000), Section 65 & 66 and Recognised Examinations Act, M.P. (10 of 1937) (also referred to as 'Manyataprapt Pariksha Adhiniyam, M.P. 1937'), Section 3-D(1), 2 & 4 – Applicant, a racketeer – Helped candidates passed Constable Recruitment Examination 2012 – Memorandum statement of co-accused – Seriousness of offence – Term of sentence – Charge-sheet filed on 15th October, 2014 – Further investigation still going on – Supplementary charge-sheet to be filed in 1st Week of January, 2015 – Potential to influence investigation of the crime – Held – Applicant cannot be released on bail until filing of supplementary charge-sheet – Petition dismissed : *Sudhir Sharma Vs. State of M.P., I.L.R. (2015) M.P. 1600 (DB)*

– **Section 439**, Recognised Examinations Act, M.P. (10 of 1937), Section 3(D), 1, 2 & 5 (also referred to as 'Manyataprapt Pariksha Adhiniyam, M.P. 1937') and Penal Code (45 of 1860), Section 409, 420 & 120-B – Bail – Applicant alleged to have acted as middleman to facilitate candidate who had appeared in examination conducted by VYAPAM for Pre P.G. Medical course – Apprehension that I.O. will be biased based on vague and unsubstantiated plea which cannot be accepted – Further the applicant has refused to accept the offer of STF of interrogation of applicant under the supervision of STF chief – While deciding anticipatory bail it has already been decided that custodial interrogation is necessary – Although applicant has rejected the offer, even then STF Chief is directed to supervise the interrogation session – Application rejected : *Vipin Goel Vs. State of M.P., I.L.R. (2015) M.P. 1916 (DB)*

4. Regular Bail – Competent Court

– **Section 439** - Bail - High Court expressly given the direction that respondent shall surrender before the Competent Court and shall apply for regular bail and the same shall be considered - It was the bounden duty of A.S.J. to consider, whether the respondent was entitled for the benefit of bail or not : *Anshu Raghuvanshi Vs. Ranjit Singh, I.L.R. (2013) M.P. 2485*

5. Repeat Bail

– **Section 439** – Grant of bail – Earlier rejection of bail is not conclusive adjudication as prior rejection is no bar to consideration of subsequent bail application –

Court will not be within its competence to bar consideration of a subsequent bail application which may be necessitated on account of subsequent events and developments – Circumstances may change and a person earlier found not entitled to be released on bail, may subsequently become so entitled due to those changed circumstances – Repeat bail application allowed : *Tikku @ Pushpesh Khare Vs. State of M.P., I.L.R. (2015) M.P. 800*

– **Section 439** – Grant of bail on repeat application – After rejection of bail by High Court, the subordinate Court should not oblige to entertain and grant the bail – If it is so, it affects the judicial discipline : *Satish Lodhi Vs. State of M.P., I.L.R. (2012) M.P. 632*

– **Section 439** – Grant of bail – Second Application – On the ground that the offence is not made out against the present applicants – Prosecution witnesses have turned hostile and a compromise had been worked out between the parties – Held – The allegation and the offence involved are very grave in nature – It is a crime against society and is not a matter to be left for the parties to compromise and settle – Application is dismissed : *Shiva Vs. State of M.P., I.L.R. (2014) M.P. 1976*

– **Section 439** – Successive bail applications – Duty of Public Prosecutor – When a bail application is filed, a liberty to object or controvert the facts is available to the prosecutor – It is his duty to bring into the knowledge of the Court that the bail application filed by the accused person has been rejected by High Court and can not be entertained by Subordinate Court : *Satish Lodhi Vs. State of M.P., I.L.R. (2012) M.P. 632*

6. Miscellaneous

– **Section 439** – Arrest by C.B.I. – Applicant arrested by police for offence u/s 302 and filed charge sheet – Further investigation by C.B.I. pending – On considering the material available in the case diary, applicant granted bail – However, the bail order shall remain in abeyance for two weeks – C.B.I. at liberty to make arrest of applicant although he is in police custody, in case if C.B.I. is in possession of incriminating material against applicant : *Tejnarayan Shukla Vs. State of M.P., I.L.R. (2011) M.P. 1104*

– **Section 439** – Bail – Applicant was enlarged on bail vide order dated 23.08.2006 and that order was not at all cancelled by the Court – Held – Such order shall remain in force till the end of the trial – The trial Court has no option except to enlarge the applicant on bail again, if he furnishes the fresh bail bond and surety bond in compliance to that order – However, the trial Court is free to recover any sum from the previous bail bond and surety bond due to bail jump done by the applicant : *Amgod alias Khimla Nayak Vs. State of M.P., I.L.R. (2011) M.P. 3257*

– **Section 439 & 167** – Formal arrest of accused – Filing of charge-sheet – Bail – Held – For the purpose of Section 167 of Cr.P.C., the statutory period for filing of charge-sheet would commence from the date of formal arrest : *Sudhir Sharma Vs. State of M.P., I.L.R. (2015) M.P. 1600 (DB)*

- – **Section 439 & 439(2)** - Bail order - Order giving benefit of bail, passed ignoring the relevant material, indicating prima facie involvement of the accused - Order is wholly against the well recognized principles of granting bail - It is legally infirm and vulnerable leading to miscarriage of justice : *Anshu Raghuvanshi Vs. Ranjit Singh, I.L.R. (2013) M.P. 2485*

– **Section 439(2)** – Cancellation of anticipatory bail – Sought on the ground that the offence punishable u/s 368 of I.P.C. is made out against the accused who helped the other co-accused persons for abducting the minor prosecutrix and has also provided shelter – Held – Since nothing has been pointed out to indicate any adversity regarding subsequent misconduct of the accused – There is also no violation of terms of order granting anticipatory bail – Cancellation of anticipatory bail is not justified – Application is dismissed : *Ashok Singh Vs. State of M.P., I.L.R. (2015) M.P. 532*

– **Section 439(2)** – Cancellation of bail – Accused committed murder of complainant after his release on bail – Accused misused the bail – Bail liable to be cancelled – Accused directed to surrender : *Vikash Raghuvanshi Vs. State of M.P., I.L.R. (2015) M.P. 268*

– **Section 439(2)** - Cancellation of Bail - ASJ, while granting bail, misread the order of High Court, ignored relevant material and did not consider the well recognized principles underlying the power to grant bail - Also there is prima facie material that after releasing on bail, respondent No.1 gave threatening to the widow of the deceased and her children and obstructed the course of justice - Bail granted by learned ASJ to respondent No.1 is cancelled : *Anshu Raghuvanshi Vs. Ranjit Singh, I.L.R. (2013) M.P. 2485*

– **Section 439(2)** – Cancellation of bail – Bail obtained by accused persons from Trial Court after suppressing material fact and submitting false affidavit with regard to rejection of their bail applications by High Court – Such hoodwinking can not be permitted – Bail granted by the Trial Court is cancelled : *Satish Lodhi Vs. State of M.P., I.L.R. (2012) M.P. 632*

– **Section 439(2)** – Cancellation of bail – Bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during trial : *Shaheed Khan Vs. Jaleel Khan, I.L.R. (2012) M.P. 809*

– **Section 439(2)** - Cancellation of Bail - Concept of setting aside the unjustified, illegal or perverse order is totally different from the concept of cancelling the bail on the ground that the noticee has misconducted himself or because of some new facts requiring such cancellation : *In Reference Vs. Vijay Kesharwani, I.L.R. (2011) M.P. 307*

– **Section 439(2)** – Cancellation of bail – Locus Standi – Any member of public whether he belongs to any particular profession or otherwise can move High Court to remind it of the need to exercise its power *suo motu* : *Vikash Raghuvanshi Vs. State of M.P., I.L.R. (2015) M.P. 268*

– **Section 439(2)** – Cancellation of Bail – The applicant first of all should approach before the Court of Additional Sessions Judge which granted the anticipatory bail and obtain the appropriate orders from that Court – He should approach the High Court thereafter : *Sanjay Awasthi Vs. Vijay Jain, I.L.R. (2011) M.P. 1618*

– **Section 439(2)** - Cancellation of Bail - Where ignoring material and evidence on record a perverse order granting bail is passed in a serious crime of this nature involving commercial quantity of contraband - Such an order would be against principles of law - Interest of justice would also require that such a perverse order be set aside and bail be cancelled : *In Reference Vs. Vijay Kesharwani, I.L.R. (2011) M.P. 307*

– **Section 438, 439 & 439(2)** – Cancellation of Bail – Power conferred u/s 439(2) can be used against a person who has been released u/s 438 : *Praveen Dubey Vs. Ravishankar, I.L.R. (2015) M.P. 518*

SYNOPSIS: Section 451 & 457

- 1. Not Released**
- 3. Miscellaneous**

- 2. Released**

1. Not Released

– **Section 451 & 457** – Supurdaginama – Property has been seized not only under Wild Life Protection Act but also under Indian Forest Act and there is a specific bar of jurisdiction of the courts u/s 52-C of the Indian Forest Act – Held – No jurisdiction to release the disputed vehicle on supurdaginama to the applicant : *Biresh Kumar Singh Vs. State of M.P., I.L.R. (2014) M.P. 1384*

– **Section 451 & 457** - See - Motoryan Karadhan Adhinyam, M.P., 1991, Section 16(3) : *Padmesh Goutam Vs. State of M.P., I.L.R. (2013) M.P. 2510 (DB)*

– **Section 451 & 457** – See – Motor Yan Karadhan Adhinyam, M.P. 1991, Section 16(3), 16(4) & 16(5) : *Shailendra Kumar Motwani Vs. State of M.P., I.L.R. (2011) M.P. 2153*

– **Section 457** - Application for release of tractor seized for commission of forest offence - There are several cases against applicant including beating up of Government Officer while they were performing Government duties - Held - Liberal approach for release of vehicle involved in serious offences should not be adopted - There is possibility of the petitioner again using the vehicle for commission of forest offence - Same should not normally be returned till the culmination of the proceedings - Application being merit less is dismissed : *Vikramaditya Singh Vs. State of M.P., I.L.R. (2014) M.P. 867*

– **Section 457** – See – Mineral (Prevention of Illegal Mining, Transportation and Storage) Rules, M.P. 2006, Rule 18 : *Ruaab Ahmed Vs. State of M.P., I.L.R. (2015) M.P. 796*

2. Released

– **Section 451** - See - Govansh Vadh Pratishedh Adhiniyam, M.P., 2004, Section 11(5) : *Mohd. Islam Vs. State of M.P., I.L.R. (2013) M.P. 2265*

– **Section 451 & 457**, Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, (57 of 1994), Section 30 – Application of ad-interim custody of Sonography machine, seized under Act 1994 – Held – On undertaking that machine would not be used in violation of provisions and rules of Act, 1994 – On supurdnama of Rs. 5,00,000/- and prior intimation to Collector/appropriate authority – Machine may be handed over : *Charal Singh (Dr.) Vs. Dr. Sanjay Goyal, I.L.R. (2015) M.P. 1597*

– **Section 451 & 457** – A Magistrate is competent to grant interim release of the vehicle seized by the authorities in a criminal case booked under the M.P. Excise Act or Wild Life (Protection) Act, 1972 : *Dilip Vs. State of M.P., I.L.R. (2011) M.P. 2085*

– **Section 457** - Supurdagi of Tractor - Applicant purchased the tractor after making payment of 5,60,000 to the dealer - Tractor was sent for addition of some equipment and was stationed in front of the showroom where it was seized in minor offences - Proprietor of show room admitted the minor offence and took possession of the tractor and sold it to respondent No. 2 for a consideration of Rs. 3,90,000/-- As subsequent owner is also an accused on the report lodged by the applicant, therefore, the order of Sessions Court releasing the tractor on Supurdagi in favor of respondent No.2 set aside - Tractor directed to be released on supurdagi in favor of applicant on furnishing supurdaginama in a sum of Rs. 5 lacs : *Harikishan Vs. State of M.P., I.L.R. (2012) M.P. 2076*

3. Miscellaneous

– **Section 451 & 457** - Supurdnama - Conditions therefore - Condition of deposit of value of seized silver worth Rs. 1,40,00,000 imposed while directing supurdnama to Income Tax Authorities - Held - Income Tax Authority is a Statutory Authority under Income Tax Act which is responsible to its higher authorities/tribunals and Courts of law having jurisdiction - Conditions imposed by Magistrate superfluous and redundant - Application allowed : *Income Tax Officer Vs. State of M.P., I.L.R. (2011) M.P. 2919*

– **Section 451 & 482** – Custody and disposal of property pending trial – Applicants sought interim custody of the vehicles used for an offence registered u/s 4, 5, 6 & 9 of the M.P. Govansh Vadh Pratishedh Adhinyam, 2004 and Section 11-D of the Prevention of Cruelty to Animals Act, 1960 while transporting the alleged cattle, cow-progeny and beef – Held – Application u/s 451 of the Cr.P.C. filed by any person aggrieved, seeking interim custody of the vehicle, cow progeny and beef can be entertained by the criminal courts during the pendency of confiscation proceedings : *Raees Vs. State of M.P., I.L.R. (2014) M.P. 1192*

- – **Section 454** – Supurdaginama of vehicle – 200 bottles of Rex Cough Syrup were being transported in an unregistered vehicle – Vehicle was purchased on 22.10.14 and was insured – Vehicle was yet to be registered in the name of the applicant but he is title holder thereof – If a vehicle is seized in connection with criminal case, it should be returned and should not be allowed to rot in unprotected condition – Court shall call a report from Police Station regarding engine and chasis numbers and if they match, the vehicle shall be released in interim custody on condition : *Harshvardhan Pandey Vs. State of M.P., I.L.R. (2015) M.P. 1902*

– **Section 468** - Limitation - Offence triable u/s 5 & 6 of Vinirdishta Bhrastha Acharan Nivaran Adhinyam, M.P., 1982 alongwith Section 409 of I.P.C. - In such case, the provisions of Section 468(3) of Cr.P.C. would apply and the limitation would be counted according to the punishment of offence punishable u/s 409 of I.P.C. : *S.D. Mishra Vs. State of M.P., I.L.R. (2013) M.P. 713*

– **Section 468** - See - Penal Code, 1860, Section 498-A : *Amitesh Tyagi Vs. State of M.P., I.L.R. (2014) M.P. 280*

– **Section 468** – See – Prevention of Corruption Act, 1988, Section 13(1)(d), 13(2) : *U.K. Samal Vs. The Lokayukt Organization, I.L.R. (2011) M.P. 1702 (DB)*

– **Section 468 & 470** - In computing the period of limitation, time during which accused is prosecuted in good faith in a Court which from defect the jurisdiction is unable to entertain it is to be excluded : *Bharat Singh Vs. State of M.P., I.L.R. (2011) M.P. 294*

SYNOPSIS: Section 482

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| 1. Abuse of Process of Law/Court | 2. Jurisdiction |
| 3. Locus Standi | 4. Maintainability |
| 5. Natural Justice | 6. Quashment of Charge/Charge-sheet |
| 7. Quashment of Complaint | 8. Quashment of FIR |
| 9. Quashment of Proceedings | 10. Scope |
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1. Abuse of Process of Law/Court

– **Section 482** - Inherent powers of Court - Applicants were charge sheeted for the offence u/ss. 387, 507, 115 & 120-B of IPC and Ss. 25 & 27 of Arms Act on the grounds that (1) Applicants could have a motive against complainant because he had published article in his magazine highlighting the corruption done by applicant, (2) A memorandum u/s 27 of Evidence Act given by co-accused without any other incriminating piece of evidence, and (3) Confessional statement said to have been made to police - Held - There is absolutely no legal evidence against the applicants and the continuation of the criminal proceeding against the applicants would be the abuse of process of Court - Petition allowed : *Ashok Nanda Vs. State of M.P., I.L.R. (2011) M.P. 300*

– **Section 482** - Inherent Powers of the High Court - Are to be exercised ex debito justitiae to prevent abuse of the process of the Court but not to stifle a legitimate prosecution, when the issue involved, whether the factual or legal, can not be decided without sufficient material : *Anurag Soni Vs. Rakesh Vishwakarma, I.L.R. (2012) M.P. 2070*

– **Section 482** – Inherent Power – Quashing of F.I.R. – Complaint filed by Rival Trade Union that accused who are member of another Union are illegally collecting funds although its registration has already been cancelled – Held – Order cancelling registration already set aside by Labour Court which has attained finality – Criminal prosecution cannot be permitted to be used as a weapon of harassment – Complaint is lodged with ulterior motive to pressurize petitioner – The procedure for registration of Trade Union and its cancellation is prescribed in the Trade Unions Act – Correctness of the same can be examined only by the competent authority – Police authorities have no competence to give opinion on this aspect – If prosecution is permitted to be continued it will be an abuse of process of law – Petition is allowed : *R.P. Singh Vs. State of M.P., I.L.R. (2014) M.P. 2728*

– **Section 482**, Penal Code (45 of 1860), Section 498-A and Dowry Prohibition Act (28 of 1961), Section 3 & 4 - Complainant/respondent No. 2 lodged an FIR on 11.03.2006 at police station Bina against the petitioners alongwith her husband with allegation that her father gave sufficient dowry at the time of her marriage but she was continuously being harassed by petitioners for getting the less dowry from her father - It is undisputed on record that respondent No. 2 is living separately since one year as mentioned by herself in the FIR - It is also undisputed that she is having three children - No specific allegation that when demand was made, when she was beaten, by whom, no specific year, month, date or time was mentioned - Further the report was lodged on 11.03.2006, just after the filing of the divorce petition against the respondent No. 2 and date of appearance on the aforesaid case i.e. 10.03.2006 - Held - No prima facie case made out against these petitioners, near relatives of husband of respondent No. 2 and permitting to continue such criminal proceeding against them would be abuse of process of law - Prosecution against the petitioners is liable to be quashed : *Dashrath P. Bundela Vs. State of M.P., I.L.R. (2011) M.P. 2923*

– **Section 482**, Penal Code (45 of 1860), Section 498-A, 294, 506, 34 and Dowry Prohibition Act (28 of 1961), Section 3 & 4 – Inherent jurisdiction – Quashing FIR – Quashment on the ground of compromise – Held – Settlement arrived at between the parties in form of marital settlement agreement (Annex. A/2) is a sensible step that will benefit the parties, give quietus to the controversy and rehabilitate and normalize the relationship between them – In light of compromise between the parties for offences related to matrimonial disputes chances of recording of conviction against the petitioners are totally bleak and the entire exercise of trial is destined to be exercise of futility – The continuation of criminal proceedings would tantamount to abuse of process of law : *Jitendra Singh Vs. State of M.P., I.L.R. (2014) M.P. 1451*

– **Section 482** - Quashing of criminal case - Allegations so absurd that no reasonable man would accept the same - Prima facie have no ring of truth and appear to have been made with a view to harass the petitioners - Continuance of the criminal trial against the petitioners would be sheer abuse of process of law : *Kallu Khan Vs. State of M.P., I.L.R. (2013) M.P. 2038*

2. Jurisdiction

– **Section 482**, Essential Commodities Act, (10 of 1955), Section 6E - Bar of Court to release vehicle -Section 6E Bars jurisdiction of courts in releasing the vehicles/commodity in certain cases but do not take away the power of High Court under inherent jurisdiction - High Court has jurisdiction to pass an order to release the commodity or seized vehicle : *Parsadilal Vs. State of M.P., I.L.R. (2012) M.P. 1780*

– **Section 482** Penal Code (45 of 1860), Section 406, 420, 461, 471 & 120-B – Jurisdiction of Criminal Court – There is a dispute regarding the lease of the dairy farm to the respondent no. 2 – It is purely a dispute of civil nature and for this purpose the jurisdiction vested in a criminal Court cannot be invoked to settle a dispute which is purely of civil nature – Proceedings quashed : *Subodh Kumar Gupta Vs. Smt. Alpna Gupta, I.L.R. (2015) M.P. 2494*

– **Section 482** – Inherent jurisdiction – Application u/s 482 against not taking the cognizance by Magistrate against respondents No. 2 & 3 for want of sanction u/s 197 of Cr.P.C. as they are the Government servants – Held – Revision against order refusing to take cognizance rejected by revisional court – Petition u/s 482 is maintainable – However, power has to be exercised only in a case where there is grave miscarriage of justice or abuse of the process of the court or where the required statutory procedure has not been complied with or where there is failure of justice or that the order passed requires correction : *Jaiprakash Narayan Mishra Vs. Devendra Kumar Mishra, I.L.R. (2014) M.P. 1648*

– **Section 482** - Respondent wife filed a complaint u/s 406 of I.P.C. on account of non-return of streedhan on 29th August 2008 - Petitioner moved an application u/s 468 of Cr.P.C. alleging that the complaint was beyond limitation - Held - No stage prior to filing of the complaint before JMFC, Indore, the respondent ever made demand for the returning of dowry articles - In the FIR lodged in the year 2004, streedhan was not demanded - Even if the date of divorce decree dated 6th May 2007 is taken into consideration, filing of complaint before the Indore Court was within limitation, which was dismissed on the ground of jurisdiction - Present proceeding filed before JMFC, Dewas would provide limitation to the respondent u/s 470 & 473 of Cr.P.C. and would itself save the limitation u/s 468 of Cr.P.C : *Prakash Sahu Vs. Kavita, I.L.R. (2014) M.P. 257*

– **Section 482** - See - Constitution, Article 226 : *Meena Mehra (Smt.) Vs. The Lokayukt Organization, I.L.R. (2011) M.P. 3019 (DB)*

3. Locus Standi

– **Section 482** - Exercise of inherent power - Locus standi - Special Judge passed an order u/s 156(3) to investigate into allegations made against the applicants - Held - Applicants have locus standi to challenge the order as order has been passed which would affect them : *Ramesh Vs. State of M.P., I.L.R. (2011) M.P. *48 (DB)*

4. Maintainability

– **Section 482** - Inherent Powers of High Court - Criminal revision preferred against order passed by conservator of forest under section 12 (3) of M.P. Kashtha Chiran

(Viniyaman) Adhinyam - It ought to have been entertained and decided as a Civil Appeal - It would not be legally permissible to interfere, under the inherent powers, as the order to be deemed to have been passed by an Additional District Judge - Petition dismissed as not maintainable with liberty to file writ petition under article 227 of Constitution of India : *State of M.P. Vs. Aditya Narayan Shukla, I.L.R. (2012) M.P. 2872*

– **Section 482** – Inherent power – Powers u/s 482 can be exercised only when some error of law or illegality is found to be committed by courts below : *Rajendra Agrawal Vs. Smt. Suman Agrawal, I.L.R. (2014) M.P. 1432*

5. Natural Justice

– **Section 482** – Expunction of Adverse remarks – Trial Court after recording the evidence of prosecution witnesses and before recording the statements of accused persons under Section 313 of Cr.P.C. directed the investigating agency to further investigate the matter and also directed the authorities to initiate departmental enquiry against the applicants – Held – Court below should not have passed the order of further investigation after taking cognizance by framing charges as the impartiality of the Court will erode and such act of Court will amount to usurping the role of prosecutor – Further the Court should have passed the Judgment pointing out lapses if any – Trial Court has passed the impugned order in gross violation of established procedure – Further no opportunity of hearing was given to the applicants before passing the order – The Court also cannot direct for holding a Departmental Enquiry – Order set aside : *Kamal David Vs. State of M.P., I.L.R. (2015) M.P. 2523*

6. Quashment of Charge/Charge-sheet

– **Section 482** – Quashing of Charge – Charge can be quashed only under exceptional circumstances when the same has been framed on vexatious and frivolous ground : *Ajit Jain Vs. State of M.P., I.L.R. (2015) M.P. 2810 (DB)*

– **Section 482** - Quashing of charge-sheet - On a police report of petitioner regarding murder of petitioner's father by opponents, the police lodged the report but after investigation filed charge sheet against petitioners for murder of their father - Petitioners sought quashment of charge-sheet on ground of investigation being not fair, not impartial and in violation of natural justice - Held - After due investigation the charge sheet has been filed against the petitioners and inquiry was also held by the superior police officer on the complaint of brother of the petitioners - The evidence collected during investigation is to be tested by the trial court - Quashing of proceedings by cutting short normal process of criminal trial would be improper - Petition dismissed : *Roop Singh Vs. State of M.P., I.L.R. (2013) M.P. *39*

– **Section 482** – Quashing of charges – No eyewitness has stated against applicant – Only witness stating against applicant is not an eye witness but a hearsay witness – Held – Facing a trial is a tedious and expensive ordeal – When evidence collected by investigating agency is very weak, there is no point in sending a person to such tedious and expensive ordeal where he is likely to be acquitted – Order framing charge quashed : *Ram Babu Vs. State of M.P., I.L.R. (2011) M.P. *61*

– **Section 482** – See – Penal Code, 1860, Section 420, 120-B & 411 : *Rabia Ahmed Khan (Smt.) Vs. State of M.P., I.L.R. (2014) M.P. 1388*

7. Quashment of Complaint

– **Section 482**, Pre-conception and Pre-natal diagnostic Techniques (Prohibition of Sex Selection), Adhiniyam, (57 of 1994), Section 28 – Quashing of complaint – Whether Additional Collectors, who filed the private complaints are authorized to file it as per Section 28 of the Adhiniyam, or they have been notified as appropriate authority – Held – Appointment of appropriate authority or officer authorized shall be as per the provisions of the Adhiniyam by the Central or the State Government – The order of nomination passed by the District Magistrate cannot be termed the order of appointment of appropriate authority or the officers authorized for the purpose of Section 17(2)(3)(b) and for the purpose of Section 28(1)(a) of the PC & PNDT Adhiniyam – Private complaints filed by Additional Collectors are not filed by the appropriate authority or the officer authorized – Complaint is not maintainable : *Manvinder Singh Gill (Dr.) Vs. State of M.P., I.L.R. (2014) M.P. 1176*

– **Section 482** - Quashing of complaint - Complaint filed by respondent No.2 is just a counter blast of the proceeding started by petitioners - Omnibus allegations made not only against husband, father-in-law, and mother-in-law, but also against sister-in-law who is residing in Singapur - Allegations regarding demand of dowry and harassment prima facie have no ring of truth and appear to have been made with a view to harass the petitioners - The allegations appear to be inherently improbable, absurd and malicious, levelled with a view to harass the petitioners - Held - Continuance of the criminal trial against the petitioners would be sheer abuse of process of law - Petition allowed and criminal proceedings pending before the JMFC quashed : *Mahesh Mathur (Dr.) Vs. State of M.P., I.L.R. (2013) M.P. 2050*

– **Section 482** - Quashing of Complaint - Possibility of discharge would not be sufficient to prevent an accused to approach High Court to have the proceedings quashed against him : *Namrata Chopra (Mrs.) Vs. Mr. Ashfaq Ahmad Qureshi, I.L.R. (2012) M.P. 1766*

– **Section 482** – See – Penal Code, 1860, Section 420, 467, 468 : *Usha Ajay Singh (Smt.) Vs. Shri J.L. Mishra, I.L.R. (2015) M.P. 260*

– **Section 482** – See – Prevention of Food Adulteration Act, 1954, Section 13 (2) : *Shri Mahila Grih Udyog Lijjat Papad, Jabalpur Vs. State of M.P., I.L.R. (2014) M.P. 1641*

8. Quashment of FIR

– **Section 482** - Additional documents - Quashing of FIR and investigation - Charge sheet yet to be filed - Documents filed by accused cannot be considered : *Dev Vrat Mishra Vs. State of M.P., I.L.R. (2011) M.P. *23 (DB)*

– **Section 482**, Cooperative Societies Act, M.P. 1960 (17 of 1961), Section 64 & 51-B - Quashing F.I.R. - Allegation against applicant and other co-accused that they were involved in preparing the forged document and they made loss to the Co-operative Society - Held - Offence committed in relation to administration of Co-operative Societies, there is no bar under the Co-operative Societies Act for resort to provisions of general criminal law - No case is made out for exercising the extraordinary jurisdiction u/s 482 of Cr.P.C : *Arunlata Deria (Smt.) Vs. State of M.P., I.L.R. (2014) M.P. 273*

– **Section 482** – For quashment of F.I.R. – Cognizance taken by Magistrate on the letter issued by District Magistrate for offence u/s 188 of IPC – Held – Without complaint cognizance could not be taken – F.I.R. and proceedings before Magistrate quashed – Applicant discharged u/s 188, IPC. : *Ashok Agrawal Vs. State of M.P., I.L.R. (2015) M.P. 3130*

– **Section 482** – Inherent jurisdiction – Quashing FIR and observations/adverse remarks – Remarks made by trial court against applicant – Such remarks ensuing serious consequences on future career of applicant – He should be given opportunity of being heard in the matter in respect of the proposed remarks or strictures – Such opportunity is basic requirement, for otherwise offending remarks would be in violation of the principles of natural justice – F.I.R. and observations/adverse remarks quashed : *Girish Kumar Jain Vs. State of M.P., I.L.R. (2014) M.P. 2275 (DB)*

– **Section 482** - Inherent Powers - Entire dispute seems to be civil in nature and do not prima facie constitute any offence and trial court has not assigned any reason that on what basis an order under section 156 (3) was being passed - Held - Such an order of trial court/Magistrate and the FIR registered liable to be quashed : *Manoj Jain Vs. State of M.P., I.L.R. (2014) M.P. 277*

– **Section 482**, Penal Code (45 of 1860), Section 420, 406, 409, 467 & 468 – Quashing of F.I.R. – In enquiry it was found that Gram Panchayat fraudulently registered attendance of four dead persons in muster roll – Applicant was posted as Sub-Engineer –

Only allegation against him is that he issued completion certificate – Duties of the applicant are in regard to technical advise and supervision of work and not to verify the muster roll – No allegation that any money was entrusted to applicant which he has misappropriated or has committed any forgery – F.I.R. liable to be quashed qua the applicant : *Aditya Singh Sengar Vs. State of M.P., I.L.R. (2015) M.P. *1*

– **Section 482**, Prevention of Corruption Act (49 of 1988), Section 13(1)(d) – Quashing of F.I.R. – Recitals of F.I.R. do disclose offences, yet investigating agency not able to collect any cogent evidence during considerable period of nearly one year – Mere fact that allegations levelled against applicant have not been found to be substantiated so far, would not afford a ground to quash the F.I.R. or a part thereof – However, continuance of investigation against applicant deserves interference under inherent powers – Recitals of F.I.R. so far as they are related to applicant shall not be acted upon – However, Investigating agency not precluded from carrying out further investigation into offences and whereupon such investigation, evidence, oral or documentary is collected against applicant, agency shall be free to take action against applicant : *Ashok Nanda Vs. State of M.P., I.L.R. (2011) M.P. 1412 (DB)*

– **Section 482** - Quashing of F.I.R. - No cogent material collected against the applicant although three years have passed - I.O. has merely stated that the applicant in collaboration with the Revenue Officials is trying to evade the Stamp Duty and got the sale deed executed - This statement of I.O. is without any cogent material on record - I.O. is merely prolonging the investigation - F.I.R. and investigation quashed so far as it relates to applicant : *Sanjeev Saxena Vs. State of M.P., I.L.R. (2013) M.P. 261 (DB)*

– **Section 482** – Inherent Powers – Law discussed : *Ajay Sharma Vs. State of M.P., I.L.R. (2011) M.P. 2076 (DB)*

– **Section 482** - See - Excise Act, M.P., 1915, Section 34(1)(2) & 47(A) : *Suresh Upadhyay Vs. State of M.P., I.L.R. (2014) M.P. 871*

- **Section 482** – See – Excise Act, M.P., 1915, Section 34(2) : *Rajveer Singh Vs. State of M.P., I.L.R. (2015) M.P. 1589*

9. Quashment of Proceedings

– **Section 482** – Inherent Powers – Exercise of the inherent power to quash the proceeding instituted on complaint is called for only where the complaint does not disclose any offence or is frivolous, vexatious or oppressive – While considering whether allegations in the complaint and the initial deposition and the documents relied upon by the complainant prima facie establish the offence alleged, the Court is not bound to accept allegations which are even opposed to common sense and broad probabilities : *LML Limited Vs. Shri Kailash Narain Rai, I.L.R. (2012) M.P. 1471*

– **Section 482** - Inherent Powers - Prima facie offence is not made out as the evidence produced by respondent No.2/Complainant do not disclose the commission of any offence and make out a case against the petitioners - Criminal proceeding is manifestly attended with mala fide and is maliciously instituted with an ulterior motive for wreaking vengeance and with a view to spite the petitioners due to private and personal grudge - Proceedings quashed : *Krashan Kumar Agrawal Vs. State of M.P.*, I.L.R. (2013) M.P. 523

– **Section 482** – Inherent Power – Quashing of FIR and Criminal Proceedings – Petitioner was not named in the FIR – Implicated as an accused on the basis of statements of other u/s 27 Evidence Act – Petition allowed to the extent that proceedings initiated against the applicant are quashed : *Banwari Singh Gurjar Vs. State of M.P.*, I.L.R. (2014) M.P. 3064

– **Section 482** - Inherent Powers - Quashing of FIR and Order passed by Magistrate under section 156(3) of the code directing for the registration of FIR - Held - If no cogent reasons assigned by the Magistrate as to why he intends to proceed under chapter XII instead of chapter XV of the code - Such order discloses non application of mind by the Magistrate - Order liable to be quashed : *Preeti (Smt.) Vs. State of M.P.*, I.L.R. (2013) M.P. 2741

– **Section 482**, Penal Code (45 of 1860), Section 316 – Quashment of proceedings – Inherent jurisdiction – No evidence available on record which may establish that abortion took place on account of injuries sustained by the injured who as per the medical evidence was carrying pregnancy of 2-3 months – Order set-aside – Remit back the case to the Magistrate to pass appropriate order regarding framing of other charges except u/s 316 of I.P.C. : *Jyoti (Smt.) Vs. State of M.P.*, I.L.R. (2014) M.P. 1971

– **Section 482**, Penal Code (45 of 1860), Section 394, 420, 467, 468, 471 & 506B - Repossession of financed vehicle - Complainant did not repay some of the instalments - Repossession of vehicle was taken after due service of corresponding notice - Complaint was filed only to harass the petitioner who is the manager of the finance company - Proceedings quashed : *Santosh Gaharwar Vs. State of M.P.*, I.L.R. (2012) M.P. 2300

– **Section 482**, Penal Code (45 of 1860), Section 420 – Cheating – Respondent no. 1 & 2 entered into an agreement to sell the land in question and received Rs. 50 lacs by way of advance – Respondent no. 1 & 2 took permission from Municipal Corporation to construct a Club House showing land in question as open land and to be used for parking purposes – After the complaint was filed, the land in question was sold to another person – Held – As number of disputed questions of fact are there, High Court was not

right in quashing the proceedings – Trial Court directed to proceed : *Ashfaq Ahmed Quereshi Vs. Namrata Chopra, I.L.R. (2015) M.P. 537 (SC)*

– **Section 482**, Penal Code (45 of 1860) Section 498-A – Quashment – The settlement arrived at between the parties in form of compromise petition filed before the appellate court and submission made before High Court is a sensible step that will benefit the parties will give quietus to the controversy and rehabilitate and normalize the relationship between them – The continuation of criminal proceedings would tantamount to abuse of process of law – Criminal proceeding is hereby quashed : *Naveen Vs. State of M.P., I.L.R. (2014) M.P. 3310*

– **Section 482**, Penal Code (45 of 1860) Section 498-A, 34 and Dowry Prohibition Act (28 of 1961), Section 3 & 4 - Inherent powers of High Court - Allegations made in FIR, against petitioner nos. 1 and 2, inherently improbable - Proceedings are instituted with an ulterior motive for wreaking vengeance on them - Their prosecution is an abuse of the process of Court - Proceedings so far as they relate to petitioner nos. 1 & 2, quashed : *Kamal Nayan Singh Vs. State of M.P., I.L.R. (2012) M.P. 2894*

– **Section 482**, Penal Code (45 of 1860), Section 498A & 506 - Quashing of proceeding - Earlier in the year 2001 report was lodged by complainant against applicants but due to compromise, complainant turned hostile and applicants were acquitted - Subsequently, petition u/s 13 of the Hindu Marriage Act was filed by husband - Thereafter F.I.R. against applicants was lodged - Held - Under the circumstances, it cannot be said that the F.I.R. was lodged after instituting divorce petition as a counter blast - F.I.R. was not lodged during 2006 to 2007 because complainant was of the view that a compromise may take place in future looking to the past conduct of the applicants - No interference is warranted : *Gulab Singh Vs. State of M.P., I.L.R. (2014) M.P. 849*

– **Section 482**, Protection of Women from Domestic Violence Act (43 of 2005), Section 12 - Inherent Powers - On taking the allegations made against the petitioners in the application at their face value and accepting in their entirety, no justification for initiation of action against them would be made out in view of the admitted fact that during the relevant period, they are residing separately from the respondent - Matter falls under the category attracting interference under inherent power - Proceedings quashed : *Ram Singh Aazad Vs. Smt. Maya Singh, I.L.R. (2012) M.P. 2072*

– **Section 482** – Quashing of FIR and investigation – Kidnapping – Respondent No. 2 herself filed affidavit and stated that she voluntarily came and accompanied accused – After attaining maturity they got married – Marriage certificate produced – They also blessed with a son – They are leading happy family life – Held – No fruitful purpose would be served in any case if the charge sheet is filed – To protect the life of the

parties the impugned FIR and its entire investigation proceedings is quashed : *Deshraj Vs. State of M.P., I.L.R. (2014) M.P. 1436*

– **Section 482** - Quashing of proceedings - Where there is sufficient evidence against the accused, which may establish the charge, the proceedings cannot be quashed : *Rasiklal Manikchand Vs. Kishore Wadhvani, I.L.R. (2011) M.P. *16*

– **Section 482** - Quashment of Criminal Proceedings - While considering the case for quashing of criminal proceedings the Court should not kill a still born child and appropriate prosecution should not be stifled unless there are compelling circumstances to do so - An investigation should not be shut out at the threshold if the allegations have some substance - In order to quash the investigation, the Court must apply the test whether the uncontroverted allegations as made prima facie establish the offence - Court should not embark upon an inquiry whether the allegations are likely to be established by evidence or not nor the Court should judge the probability, reliability or genuineness of the allegations made therein : *Vinod Raghuvanshi Vs. Ajay Arora, I.L.R. (2013) M.P. 2298 (SC)*

– **Section 482** – Quashment of Proceedings – Applicant facing trial however, except the final report and F.I.R. no other document is available with Trial Court – Documents are also not available with prosecution – Charge sheet was filed in the year 1981 – Applicant aged about 67 years – As there is no material against the applicant to connect with the offence, proceedings are quashed : *Randhir Singh Vs. State of M.P., I.L.R. (2015) M.P. 514*

– **Section 482 & 154** - Two FIRs have got been registered arising out of one common incident by two different complainants - Prosecution story and place of occurrence is same - Witnesses are common in both cases - Held - Second FIR and entire subsequent criminal proceeding pending before the Court quashed : *Lakhan Giri Vs. State of M.P., I.L.R. (2011) M.P. 808*

– **Section 482 & 200**, Penal Code (45 of 1860), Section 420 - Complaint filed on the basis of affidavit for prosecution under Section 420 - Process issued without examining the complainant - Held - Examination of complainant under Section 200 is mandatory - Petition allowed with the direction to Magistrate to proceed further in the complaint by examining the complainant and the witnesses - Process issued quashed : *Indu Kabra (Smt.) Vs. Elixir Infrastructure, I.L.R. (2012) M.P. 1758*

– **Section 482** - See - Penal Code, 1860, Section 306 : *Vinod Tripathi Vs. State of M.P., I.L.R. (2013) M.P. 738*

– **Section 482** - See - Penal Code, 1860, Section 363 & 366 : *Pawan Kumar Vs. State of M.P., I.L.R. (2012) M.P. 2297*

– **Section 482** – See – Penal Code, 1860, Section 406, 420 : *M.L. Gaur Vs. State of M.P., I.L.R. (2014) M.P. 1455*

– **Section 482** – See – Penal Code, 1860, Section 420, 467, 406, 468 & 471/34 : *Umang Choudhary Vs. State of M.P., I.L.R. (2015) M.P. 2285*

– **Section 482** - See - Penal Code, 1860, Section 500 : *Rakesh Agrawal Vs. B.S. Jaggi, I.L.R. (2012) M.P. 3105*

10. Scope

– **Section 482** - Inherent powers - Question involved is whether inherent powers can be invoked when trial and evidence has started before the trial court - Held - Such power can be exercised not only at the threshold of the criminal proceedings but also at an advance stage of the trial in the interest of justice : *Ravikant Dubey Vs. State of M.P., I.L.R. (2014) M.P. 858*

– **Section 482** – Interim Custody – High Court in exercise of power under Section 482 can not direct for interim release of a seized vehicle /property under the M.P. Amendment Act : *Ramniwas Vs. Game Range Chambal Sanctuary, Morena, I.L.R. (2012) M.P. 811*

– **Section 482**, Negotiable Instruments Act (26 of 1881), Section 138 and General Clauses Act (10 of 1897), Section 27 – Service of notice – Notice regarding demand of sum of the cheque sent by complainant within prescribed period at the correct address of the applicant and concerning official of the post office has placed the same for its delivery at the correct address of the applicant – At this stage contrary to the aforesaid provision of presumption no inference could be drawn in the matter by invoking the inherent power of this court enumerated u/s 482 of Cr.P.C. – Petition dismissed : *Dhanraj Vs. Ashok Kumar, I.L.R. (2014) M.P. 1172*

– **Section 482**, Negotiable Instruments Act (26 of 1881), Section 138 – Notice – Cheques were dishonoured but notice was given after dishonour of cheques for third time – Held – Even after dishonouring the first cheque for three times and second cheque for two times, if the demand notice was given first time from the last date of dishonouring such cheques in the month of July, 2003 then there is no ground to hold that the demand/statutory notice with respect of aforesaid earlier two cheques which was given by the respondent to the applicant in the month of July, 2003 was beyond the prescribed period provided under the provision of Negotiable Instruments Act : *Mohd. Aasim Vs. Anil Kumar Saraf, I.L.R. (2014) M.P. 2718*

– **Section 482**, Protection of Women from Domestic Violence Act (43 of 2005), Section 12, 19, 20 & 22 - The claim of wife for alternative accommodation under the Act can only be made against the husband and not against the in-laws or other relatives - Wife

is entitled to a right of residence in a shared house in which husband has a share - The High Court is required to exercise its inherent power sparingly, carefully and cautiously to do real and substantial justice : *Meenakshi Jatav (Smt.) Vs. Dr. Smt. Seema Sehar, I.L.R. (2013) M.P. 729*

– **Section 482** – Quashing of Charge – Applicant and sister of respondent, who is a practicing lawyer are husband and wife – Applicant’s wife filed an application u/s 127 of Cr.P.C. for enhancement of amount of maintenance – Applicant filed a transfer application contending that respondent and his sister publicly claiming with proud that the decision will be in their favour, because they regularly visit the house of Judicial Magistrate and therefore the applicant apprehends that he will not get justice from that court – Case was transferred to another Court – However, on the basis of above written label complaint was filed by respondent and Magistrate framed the charge u/s 500 of IPC against the applicant – Held – On the basis of available record and the fact that the publication of written ‘words’ are duly proved, prima-facie commission of offence punishable u/s 500 of IPC is made out – There is no material to show that the allegations are mala fide, frivolous or vexatious – No interference is warranted – Petition is dismissed : *Sadhe Prasad Vs. Santosh Kumar, I.L.R. (2014) M.P. 3313*

– **Section 482** - Quashing of FIR - Evidence recorded during trial cannot be considered - Only facts mentioned in FIR and other material available on record produced alongwith charge-sheet would be looked into for this purpose : *Ravikant Dubey Vs. State of M.P., I.L.R. (2014) M.P. 858*

– **Section 482** – Scope – Petition for setting aside cognizance of offence taken by Magistrate on the basis of complaint – Held – Truck loaded with explosives moved to different destinations but from that it cannot be said that the acts and omissions which constitute the offence are the same – Same offence, would mean that acts and omissions which constitute the offence are one and the same – Except the allegation that explosives were loaded at Dholpur, the mode and manner in which the offence was committed at different places are not the same – The provision of Section 186, Cr.P.C. is not attracted in the facts of the present case – High Court erred in passing the impugned order – Order passed by the High Court is to be set aside : *State of Rajasthan Vs. Bhagwan Das Agrawal, I.L.R. (2014) M.P. 3067 (SC)*

– **Section 482** - Whether the criminal proceedings may continue or not, if the civil proceedings are pending - Held - The criminal prosecution can not be thwarted at the initial stage merely because the civil proceeding is pending - The act which has civil profile, can not be allowed to denude of its criminal out fit : *Gopika Prasad Tiwari Vs. Rajman Mishra, I.L.R. (2014) M.P. 594*

– **Section 482 & 125** – Maintenance – Earlier application filed u/s 125, Cr.P.C. was dismissed – Whether subsequent application is maintainable by mentioning some change in circumstances – Held – The said fact could not be disbelieved at the initial stage before recording and appreciation of evidence : *Kamlesh Kumar Patel Vs. Smt. Madhulata, I.L.R. (2014) M.P. 1445*

– **Section 482, 397, 301 & 311** - Application by victim for producing new witness under Section 311 allowed by trial Court - Held - Provision under Section 311 entitles a judge holding trial to record evidence even of a person who is present in Court and even to recall a witness who was summoned earlier at the instance of the prosecution or the defence or of his own, if the examination of such witness is necessary to meet the ends of justice - Section 301 has no bar over section 311 - No interference in the order passed by trial Court - Petitioner entitled to cross examine the witness - Petition disposed of : *Dinesh Vs. State of M.P., I.L.R. (2012) M.P. 1760*

– **Section 482**, Criminal Procedure Code (Amendment) Act, 2008 (5 of 2009), Section 2 (wa) – Power of transfer of Sessions Trial u/s 407, Cr.P.C. – Hearing to Victim – Victim is an aggrieved person not only in a crime but also in an investigation, inquiry, trial, appeal, revision, review and also the proceedings by which the inherent powers of this Court u/s 482, Cr.P.C. are invoked – The transfer certainly causes prejudice to the victim as he has a right not only to know the venue of conduction of trial, but also to oppose on cogent ground – Impugned order is recalled – M.Cr.C. No. 9261/2012 is restored to its original number : *Uday Bhan Vs. State of M.P., I.L.R. (2014) M.P. 2722 (DB)*

– **Section 482** - If there is no infirmity or illegality in the order - No interference can be called for u/s 482 - Petition is liable to be dismissed : *Balwant Singh Tomar @ Balwanta Vs. Tigmanshu Dhulia, I.L.R. (2013) M.P. 967*

– **Section 482** – See – Negotiable Instruments Act, 1881, Section 138 : *Monotech Systems Ltd. Vs. Jai Badri Vishal Graphics, I.L.R. (2012) M.P. *28*

11. Miscellaneous

– **Section 482** – Documents of Defence – Normally these documents can not be examined unless the same are of unimpeachable character : *Monotech Systems Ltd. Vs. Jai Badri Vishal Graphics, I.L.R. (2012) M.P. *28*

– **Section 482**, Evidence Act (1 of 1872), Section 165 – Documents pertaining to medical report of injured were taken on record – Same were produced by the prosecution in compliance of the direction of the trial court – Held – Since the documents are necessary for just decision and also for proving the nature of injury, trial court has properly used its discretion as Court was having power to order production of necessary

documents u/s 165 of the Evidence Act – Trial Court has rightly allowed the application – Petition is dismissed : *Raju Vs. State of M.P., I.L.R. (2014) M.P. 3308*

– **Section 482** – Grant of Police remand – Order granting police remand is challenged on the ground that the same can be granted for 15 days and after the lapse of first 15 days police remand can not be granted – Held – Since the applicants were earlier in custody for another crime and the investigating officer could not get their custody for investigating the present crime, as such no irregularity has been committed by learned Special Judge in permitting their police custody for investigation : *Premasukh Vs. State of M.P., I.L.R. (2015) M.P. 273*

– **Section 482** – Inherent jurisdiction – Petition for quashing prosecution u/s 138 of Negotiable Instruments Act and u/s 420 of I.P.C. on the ground that petitioner is not the signatory of the cheque which has been dishonoured – Held – Since the petitioner is not the signatory of the cheque which has been dishonoured, no case against him u/s 138 of the Act is made out – But since allegation of cheating is there complaint may proceed against him for the offence u/s 420 of I.P.C. : *Tulsi Ram Yadav Vs. Smt. Phoolwati, I.L.R. (2014) M.P. 1969*

– **Section 482** - Inherent Powers of High Court - For preventing filing false and fake medical certificate by accused to seek temporary bail - Direction issued to prevent such irregularities : *Raj Kumar Pandey Vs. State of M.P., I.L.R. (2012) M.P. 1788*

– **Section 482**, Juvenile Justice (Care and Protection of Children) Act (56 of 2000), Section 2(k) and Juvenile Justice (Care and Protection of Children) Rules, 2007, Rule 20 & 12 - Determination of age - Applicant was absconding and could be apprehended after 4 years - As applicant was out of the clutches of investigating agency, therefore, investigating agency is directed to ascertain the age as per the provisions of rule 12 - Revision disposed off : *Ashfaq Vs. State of M.P., I.L.R. (2012) M.P. 2887*

– **Section 482** – See – Prevention of Corruption Act, 1988, Section 19 : *Ajita Bajpai Pande (Smt.) Vs. State of M.P., I.L.R. (2015) M.P. 3113 (DB)*

– **Section 482 & 91** – Application u/s 91, Cr.P.C. was filed requiring the production of letter sent for obtaining sanction and call detail record of the two mobiles seized from the complainant – Held – Whether any particular document should be summoned or not, is essentially in the discretion of the trial court – Trial court is not bound to requisition the same on the application of the accused except for a very good reason – Petitioner can himself call details from his service provider and produce the same in defence – It is for the prosecution to determine the manner in which it wants to prove its case : *Shishir Kumar Sinha Vs. Central Bureau of Investigation, I.L.R. (2014) M.P. 1448 (DB)*

CRIMINAL PROCEDURE CODE, (M.P. AMENDMENT) ACT, 2007
(2 OF 2008)

- **First Schedule** - Change of Forum - Whether Retrospective or Prospective - Full Bench of High Court held that all cases pending before the Magistrate on 22.02.2008 remained unaffected by amendment and were triable by J.M.F.C. - Held - Any amendment shifting the forum of trial has to be on principle of retrospective in nature in absence of any indication in the amendment Act to the contrary, although proceedings concluded under the old law cannot be reopened for the purpose of applying the new procedure - Right of forum is not recognized as vested right - Judgment of Full Bench that amended provision to be applicable to pending cases is not correct on principle - Decision rendered by Full Bench overruled : *Ramesh Kumar Soni Vs. State of M.P., I.L.R. (2013) M.P. 741 (SC)*

- **Section 4**, Penal Code (45 of 1860), Section 467, 468 & 471 – Court of JMFC – Stage of Trial – Charge sheet was filed, charges were framed and 6 prosecution witnesses were already examined – Held – It cannot be held that trial had not reached advanced stage – Sessions Court did not discuss that how the 6 witnesses, who have been examined are of formal nature – Case remitted back to the Court of JMFC for start of trial from the stage of date when the case was fixed for recording of prosecution evidence – Revision allowed : *Dilip Kumar Vs. State of M.P., I.L.R. (2015) M.P. 2788*

CRIMINAL PROCEDURE CODE (AMENDMENT) ACT, 2008
(5 OF 2009)

- **Section 2 (wa)** – See – Criminal Procedure Code, 1973, Section 482 : *Uday Bhan Vs. State of M.P., I.L.R. (2014) M.P. 2722 (DB)*

CRIMINAL TRIAL

- **Amendment in Complaint** – Complaint under Section 138 of NI Act – To provide full and effective opportunity to the parties, application requesting for the amendment in the complaint should be allowed : *Chandra Pal Singh Vs. Ashok Leyland Ltd., I.L.R. (2012) M.P. 302*

- **Denial of Opportunity** – Counsel of his choice – Accused filed an application for deferring the cross-examination on the ground that cross-examination shall be done by senior Advocate – Counsel already engaged by accused refused to cross-examine the witnesses – Nothing on record that counsel engaged by Court was not competent to cross-examine the witnesses : *Santosh Kumar Singh Vs. State of M.P., I.L.R. (2015) M.P. 807 (SC)*

– **Prosecution Documents** – Prosecution document, if it is in favour of the accused, then it can be read in his favour without its actual proof : *Ashok Prajapati Vs. State of M.P., I.L.R. (2015) M.P. 1352 (DB)*

CUSTOM

– **Pleadings & Evidence** – Custom is not only required to be pleaded but also to be proved by leading evidence – Where a caste is admittedly governed by Hindu law but it is asserted that there exists a special custom in derogation of that law, the onus rests upon those who assert the custom to make it out : *Ramu Singh Vs. Smt. Bandi Bai, I.L.R. (2012) M.P. 121*

– **Essential Ingredients of Valid custom** - To constitute a valid custom, the essential ingredients are (i) it should be ancient (ii) certain (iii) reasonable (iv) should not be opposed to morality or Public Policy (v) not forbidden by law and (vi) regular : *State of M.P. Vs. Smt. Keshar Bai, I.L.R. (2013) M.P. 2664*

CUSTOMS ACT (52 OF 1962)

– **Section 18**, Customs (Provisional Duty Assessment) Regulation, 1963 - Regulations 2 & 4 - Condition of payment and surety - Provisional duty assessed at Rs. 9,65,585/- and expected duty is Rs. 38,25,658/- - Petitioner was asked to deposit in cash Rs. 9,65,585/- and to execute a bond and Bank guarantee for Rs. 38,25,658/- - Held - Amount which could have been demanded from the petitioner should be 20% of the provisional assessment duty and for remaining duty, a bond with or without surety or security or both - Order demanding bank guarantee and deposit of full provisional assessment duty is contrary to the Regulations : *Ideal Carpets Ltd. Vs. Union of India, I.L.R. (2013) M.P. 370 (DB)*

– **Section 110(2) & 124** – Issuance of notice by registered post within six months is a sufficient compliance in the eye of law : *Commissioner of Central Excise, Indore Vs. Ram Kumar Aggrawal, I.L.R. (2011) M.P. 877 (DB)*

CUSTOMS (PROVISIONAL DUTY ASSESSMENT) REGULATION, 1963

– **Regulations 2 & 4** - See - Customs Act, 1962, Section 18 : *Ideal Carpets Ltd. Vs. Union of India, I.L.R. (2013) M.P. 370 (DB)*

D

DAKAITI AUR VYAPHARAN PRABHAVIT KSHETRA ADHINIYAM, M.P. (36 OF 1981)

– **Section 11 & 13** – See – Criminal Procedure Code, 1973, Section 167(2) : *Sunil Vs. State of M.P., I.L.R. (2012) M.P. 610*

– **Section 11 & 13** – See – Penal Code, 1860, Section 212 & 216 : *Kishnu alias Kishan Bihari Vs. State of M.P., I.L.R. (2011) M.P. 2049*

– **Section 11/13** — See – Penal Code, 1860, Section 392, 397 & 412 : *Pushpendra Vs. State of M.P., I.L.R. (2011) M.P. *100*

– **Section 13** – See – Penal Code, 1860, Section 364A : *Mohar Singh Vs. State of M.P., I.L.R. (2011) M.P. 1355 (DB)*

DATE OF BIRTH (ENTRIES IN THE SCHOOL REGISTER) RULES 1973, M.P.

- **Rule 7, 8 & 9** - Correction of date of birth - Rule 9 provides that no application for correction in date of birth recorded in school register shall be entertained after the form for the Board's examination at the end of secondary level of education has been sent to the Board or after the student has left the school, if the student has not pursued education upto the end of secondary education - Respondent is still studying in Class XII and has not left the course of secondary standard - Application for correction of date of birth was made immediately on getting the mark-sheet and at the relevant time, she had not left the education or had not completed secondary education - Rules 7 and 8 provide for rectification of mistake or correction or change in date of birth by the institution itself - These rules does not restrict the Board of Secondary Education to correct the date of birth - Writ Appeal disposed of : *Board of Secondary Education Vs. Priyanka Shrivastava, I.L.R. (2012) M.P. 2632 (DB)*

DEALERSHIP FOR PETROL PUMP

- **Constitution of Committee** - Advertisement issued on 31.12.1997 - Circular dated 1.1.1993 was in vogue which provided that chairman for the OSB's would be retired High Court Judge - Interviews were held on 27.1.1999 and on that date circular

dated 14.10.1998 was in vogue which provided that chairman would be a retired judge of High Court or retired District Judge - Board chaired by retired District Judge - Proceedings cannot be said to be vitiated for coram non-judice : *Kamruddin Siddiqui Vs. Indian Oil Corporation, I.L.R. (2011) M.P. *41*

- **Criteria of Resident** - Enquiry conducted by Tahsildar on the complaint of petitioner with regard to residence of respondent No.4 - Tahsildar has given a specific finding that respondent No. 4 is found residing at Bamitha, Distt. Chattarpur - No material brought on record to show that findings recorded by Tahsildar were called in question before any forum and were allowed to attain finality - Objection that respondent No. 4 is not resident of Chattarpur unsustainable : *Kamruddin Siddiqui Vs. Indian Oil Corporation, I.L.R. (2011) M.P. *41*

- **Suppression of Material Fact** - Total family income - Respondent No. 4 did not disclose the fact of having double storeyed building whereof, are six shops and leased out on rent - Certificate also reveals of other land and house reaping income - All these facts have not been disclosed by respondent No. 4 - There is a suppression of material fact in respect of income as warranted under Clause 2.9.7. - Selection process vitiated - O.I.C. will be at liberty to take fresh steps for allotment of retail outlet of dealership in petrol and diesel : *Kamruddin Siddiqui Vs. Indian Oil Corporation, I.L.R. (2011) M.P. *41*

DENTAL COUNCIL RULES OF MDS COURSE REGULATION 2007

- **Regulation 1** – Selection of Post graduate students – Stipend – Private Colleges – Benefit of stipend has been given to students who have been pursuing their studies in Govt. College, but benefit has not been extended to students who are pursuing their studies in private colleges – Criteria of admission in Private College and Govt. College is different – Students prosecuting their studies in Govt. College cannot be equated with students prosecuting their studies in private college, as students with higher percentage of marks are being allotted the Govt. College and fee structure is also different – Respondent No. 4 is running an Institute within statutory framework – Direction to respondent No. 4 to pay stipend to its students would infringe the fundamental right to establish and run the educational Institute – Petition dismissed : *Rahul Bhartia (Dr.) Vs. Dental Council of India, I.L.R. (2015) M.P. *38 (DB)*

DENTISTS ACT (16 OF 1948)

- **Chapter III (B) of Ordinance No. 177** - Education - Permission to pursue the next academic session - University does not have any power to relax the mandatory

requirement of 75% attendance, which is notified by the Dental Council of India and by Regulations and Ordinance No. 177 : *Supriya Kranti Vs. Barkatullah University, I.L.R. (2014) M.P. 705 (DB)*

- **Chapter III(B) of Ordinance No. 177** - Withholding of result because of involvement in a criminal case registered by S.T.F. - Held - The University is within its right to withhold the result of such candidate until the completion of the proposed enquiry : *Supriya Kranti Vs. Barkatullah University, I.L.R. (2014) M.P. 705 (DB)*

DESIGNS ACT (2 OF 1911)

- **Section 22** - See - Civil Procedure Code, 1908, Order 39 Rule 1 & 2 : *SKOL Breweries Ltd. Vs. Som Distilleries Ltd. & Breweries Ltd., I.L.R. (2013) M.P. 1589*

DEVELOPMENT AUTHORITY SERVICES (OFFICERS AND SERVANTS) RECRUITMENT RULES, M.P., 1987

- **Rule 55** – Suspension – Criminal charge – Petitioner placed under suspension on the ground of registration of criminal case for disproportionate assets – Words “Criminal charge is pending” cannot be construed to be framing of specific charges by Court – Accusation which is criminal in nature would tantamount to pending criminal charge for the purpose of Rule 55(3) – Order of suspension proper – Petition dismissed : *Mukesh Kumar Vs. State of M.P., I.L.R. (2015) M.P. 372*

- **Schedule II & III** – Qualification for promotion – Schedule II prescribes educational qualification only in case of direct recruitment whereas Schedule III deals with promotion – The educational qualification mentioned for direct recruitment can not be made applicable for promotion unless the same is specifically mentioned in Schedule III : *Ram Kumar Baishander Vs. State of M.P., I.L.R. (2012) M.P. *65*

DISCIPLINARY PROCEEDINGS

- **Judicial Review** – Scope of judicial review is limited and is not an appeal from a decision but a review of the manner in which decision is made – Court would not interfere unless it is found that finding recorded by Enquiry Officer and Disciplinary Authority is contrary to record brought on record or is based on no evidence or proceeding is conducted in violation of principles of natural justice or any other statutory rules prescribing the mode of enquiry : *Shanti Tiwari Vs. State of M.P., I.L.R. (2011) M.P. 1657 (DB)*

DISTRIBUTORSHIP OF LPG

- **False Information** - Petitioner mentioned in application that he is unmarried - Whereas in affidavit the marital status was shown to be married - Held - Marital status of candidate affects the evaluation in process of selection - Rejection of candidature of petitioner by IOCL proper - Petition dismissed : *Gaurav Tiwari Vs. Indian Oil Corporation Ltd., I.L.R. (2011) M.P. *5*

- **Selection Process** - Petitioner and respondent No.2 applied for grant of distributorship - Application of respondent No.2 was wrongly rejected by Level-1 Committee - On application by respondent No.2, mistake in wrongly rejecting the application of respondent No.2 was found - Entire selection process was set aside and fresh selection process was initiated - Held - Petitioner has not challenged the eligibility of respondent No.2 nor any doubt has been raised - As respondent No.2 was wrongly not considered in selection process therefore, entire selection process was scrapped - Procedure adopted by IOCL proper - Petition dismissed : *Gaurav Tiwari Vs. Indian Oil Corporation Ltd., I.L.R. (2011) M.P. *5*

DISTRICT AND SESSIONS JUDGES (DEATH-CUM-RETIREMENT BENEFITS) RULES, M.P. 1964

- **Rule 1-A** – See – Civil Services (Pension) Rules, M.P. 1976, Rule 42(1)(b) : *Shailendra Singh Nahar Vs. State of M.P., I.L.R. (2015) M.P. 1754 (DB)*

DOCTRINE OF ELECTION

– **Code of Civil Procedure and SARFAESI Act** – No repugnancy or inconsistency between two remedies available in the Code of Civil Procedure and under the SARFAESI Act –The doctrine of election has no application in the matter : *Kasturi Devi Jain (Smt.) Vs. Union Bank of India, I.L.R. (2011) M.P. *111*

DOCTRINE OF FRUSTRATION

– **Terms of Lease** – I.D.A. leased out the land to MPRTC for construction of Bus Terminal for a period of 30 years in the year 1982 – MPRTC entered into an agreement with appellant for construction of commercial complex on BOT basis which was contrary to the term of lease – MPRTC was already directed to handover the possession of land back to I.D.A. – Amount received by MPRTC from the appellant under agreement was directed to be repaid to him – Lease period has already expired in 2012 – Doctrine of frustration would apply : *Sri Ram Builders Vs. State of M.P., I.L.R. (2015) M.P. 1 (SC)*

DOCTRINE OF IMPOSSIBILITY

– **Statutory Formalities** – When it appears that performance of formalities prescribed by Statute has been rendered impossible by circumstances over which the persons interested had no control, like an act of God, the circumstances will be taken as a valid excuse : *Narmada Bachao Andolan Vs. State of M.P., I.L.R. (2011) M.P. *113 (SC)*

DOCTRINE OF MERGER

– **Dismissal of S.L.P. in limine** – S.L.P. dismissed in limine – Judgment of High Court cannot be said to have merged with the order of Supreme Court : *Sri Ram Builders Vs. State of M.P., I.L.R. (2015) M.P. 1 (SC)*

DOUBLE JEOPARDY

– **Applicability** - Two charge sheets pending before two different courts on altogether different set of allegations - Question of double jeopardy does not arise : *Alakh Kumar @ Alakh Das Gupta Vs. State of M.P., I.L.R. (2012) M.P. 3113*

DOWRY PROHIBITION ACT (28 OF 1961)

– **Section 3 & 4** – See – Criminal Procedure Code, 1973, Section 177, 482 : *Jayesh Tiwari Vs. State of M.P., I.L.R. (2014) M.P. 1652*

– **Section 3 & 4** - See - Criminal Procedure Code, 1973, Section 482 : *Dashrath P. Bundela Vs. State of M.P., I.L.R. (2011) M.P. 2923*

– **Section 3 & 4** – See – Criminal Procedure Code, 1973, Section 482 : *Jitendra Singh Vs. State of M.P., I.L.R. (2014) M.P. 1451*

– **Section 3 & 4** - See - Criminal Procedure Code, 1973 (2 of 1974), Section 482 : *Kamal Nayan Singh Vs. State of M.P., I.L.R. (2012) M.P. 2894*

– **Section 7**, Criminal Procedure Code, 1973 (2 of 1974), Section 156(3) & 482 - Statement made by aggrieved person - Respondent no. 2 was married with daughter of applicant - Respondent no. 2 is facing trial for offence under Section 498-A of I.P.C. - Respondent no.2 filed complaint on the basis of admission of the applicant that he had given dowry in connection with marriage of his daughter - Held - While forwarding the complaint for investigation, the Magistrate overlooked the provision of Section 7(3) of the Act - Further the word "May" in Section 156(3) makes it clear that the provision is directory and forwarding of complaint is not necessary in every case - Order passed under

Section 156(3), F.I.R. and consequent proceedings quashed : *Haji Sayyad Vs. State of M.P., I.L.R. (2012) M.P. 2610*

DRUGS AND COSMETICS ACT, (23 OF 1940)

– **Section 25(3)** - Delay in filing complaint - Appellants did not express any intention to adduce evidence to controvert the analyst report within the statutory limitation period of 28 days - Delay in the filing the complaint (more than 3 years and 9 months) becomes immaterial : *Glaxosmithkline Pharmaceuticals Ltd. Vs. State of M.P., I.L.R. (2011) M.P. 2651 (SC)*

E

EASEMENT ACT, (5 OF 1882)

– **Section 4** - Customary easement - Plaintiff herself admitted that suit land is being used as path throughout from the time of her ancestors - Path is already existing for considerable long period and is ancient, reasonable, certain, regular, is not opposed to Public Policy, and is not forbidden by law - If path is being constructed by constructing a Pakka road for the convenience of public at large, it cannot be obstructed by plaintiff : *State of M.P. Vs. Smt. Keshar Bai, I.L.R. (2013) M.P. 2664*

– **Section 7** – Restriction on easement – Well - Plaintiffs are taking water from the well of the first defendant for the last 43 years from the date of filing of the suit – However, they have not acquired any easementary right – Owner is having all right to collect and disposed within his own limits of all water under the land and on its surface which does not pass in defined channel – Water in a well is beneath the surface and no defined channels are beneath the surface – However, plaintiffs entitled for decree of injunction to the extent that till defendant obtain necessary order under the law, he shall not obstruct the plaintiffs from taking water from his well : *Mangilal Vs. Mangilal, I.L.R. (2012) M.P. *26*

– **Section 52** – Licence – Renewal Clause – Clause 8 provides that licence may be renewed – It confers discretion on I.D.A. to renew the licence – As renewal clause is not couched in mandatory terms, no indefeasible right on petitioners to seek renewal as a matter of right is conferred : *Mangal Amusement (P) Ltd. Vs. State of M.P., I.L.R. (2011) M.P. 1912 (DB)*

– **Section 52** – See – Transfer of Property Act, 1882, Section 105 : *Mangal Amusement (P) Ltd. Vs. State of M.P., I.L.R. (2011) M.P. 1912 (DB)*

EDUCATION

- **Admission** - Compensation - Petitioner took admission in M.Sc. (Botany) Previous - Eligibility criteria for granting admission in M.Sc. (Botany) is Biology as per brochure published by University - Petitioner subsequently not allowed to appear in theory examination as she did not possess B.Sc. (Biology) with Botany as subject - Held - University did not specify that B.Sc. with Botany as a subject was essential qualification - Petitioner under Bona fide belief took admission in M.Sc. (Botany) and was allowed to prosecute her studies and to participate in practical examination - Petitioner was denied permission to appear in M.Sc. (Botany) Previous Year examination without any justification - Five days time given to petitioner by University to appear in examination cannot be said to be sufficient or adequate for preparing oneself for an annual exam - Petitioner entitled for compensation of Rs.25,000 for loss of her one year : *Arpita Bisen Vs. M.P. Bhoj (Open) University, I.L.R. (2011) M.P. 696*

- **Admission** – NRI Quota – Certificate from Indian Embassy – Petitioner was denied admission under NRI quota as she had failed to produce certificate issued by Indian Embassy – Father of petitioner is residing in India but working in Merchant Navy – Definition of NRI as given in Income Tax Act cannot be imported as when the intention of Rule making body is not to include a case like petitioner, who’s father is permanently residing in India, but is treated to be NRI for Income Tax Act, as he is offshore for the period of more than 182 days – Petition dismissed : *Niharika Singh Vs. State of M.P., I.L.R. (2015) M.P. *13 (DB)*

- **Admission** - Petitioner has filed petition seeking direction to respondent No. 2 to grant admission to his son in class 11th, subject mathematics - Held - Petitioner having failed to commend regulation by CBSE to the effect that the student to be given the stream of his choice irrespective of his performance, it cannot be said that the respondents/school have faulted in discharging his public duties - Petition dismissed : *Praveen Rule Vs. Central Board of Secondary Education, I.L.R. (2014) M.P. 40*

- **Admission Test** – Mass Copying – Mass Copying has to be decided in the facts of each case and cannot be laid down with mathematical precision – Seating Pattern was changed and candidates were sitting in pairs at the end of row – Candidates sitting in pairs had secured same marks and one of the candidates of the pair was from outside the State of Madhya Pradesh and other candidates, in most of cases, did not belong to the city where examination centre was located – There is striking similarity in right match answers and wrong match answers – Candidates who were from outside the State of Madhya Pradesh and had secured good marks have neither taken admission nor challenged the cancellation of result – Decision of Committee to cancel the result as

candidates were indulged in mass copying was right – Principle of Natural Justice does not apply : *Neetu Singh Markam Vs. State of M.P., I.L.R. (2015) M.P. 651 (DB)*

– **Common Admission Test** – Entrance Examination for admission in different institutes of IIM – Raw Scores – Common Admission Test was conducted following the Item Response Theory (IRT) – Raw Scores are used in Traditional Examination System known as Classical Test Theory (CTT) – Raw Scores were applied to a process of equality and scaling using highly sophisticated mathematical modeling known as IRT – IRT approved by CAT Committee which is a body expert – Evaluation process is a academic policy cannot be subjected to writ petition in absence of any malafide or in absence of violation of any Statutory Provision – No malafide alleged against respondent No.3 who had conducted the examination in a most transparent manner – Petition dismissed : *Rutvij Waze Vs. Union of India, I.L.R. (2015) M.P. 2024 (DB)*

– **Exemption of Tution Fee** – Petitioner No. 1 already undergone sterilization operation prior to cut off date which is 13.5.2003 – He is entitled for the exemption of the tution fee – Petition allowed : *Ramesh Chandra Shrivastava (Dr.) Vs. State of M.P., I.L.R. (2011) M.P. 926*

- **Green Card** - Exemption from payment of Fee - Petitioners were admitted in B.E. Course in the academic session of 2008-2009 and were exempted from payment of fee under the policy of the State Govt. in vogue vide circular dated 17-10-2007 - Benefit of exemption was withdrawn in the light of order dated 3-7-2009 - Held - Policy dated 3-7-2009 had in fact restored the past with certain rider - Petitioners are not hit by two exceptions as laid down in policy dated 3-7-2009 - Petitioners were exempted from tuition fee since their admission in the year 2008-2009 and the same having been granted vide circular dated 17-10-2007 which is not superseded by subsequent order/policy decision dated 3-7-2009 - Petition allowed : *Satyam Pandey Vs. University Institute of Technology, RGPV, I.L.R. (2012) M.P. 2379 (DB)*

– **Opinion of Experts** – Academic issues must be left to be decided by Expert Body which deserves great respect – Court cannot act as an appellate authority in such matters – When two views are possible and if Expert Body has taken a possible view, the same deserves acceptance : *Neetu Singh Markam Vs. State of M.P., I.L.R. (2015) M.P. 651 (DB)*

EDUCATION AND UNIVERSITIES

- **Admission in Post Graduate Courses** - Extension of Cut off date - Cut off date for counselling was 31.10.2012 - Petitioner college applied for permission to run PG courses and permission was granted by Central Council of Indian Medicines on

26.10.2012 - Petitioner College received the copy of permission on 26.10.2012 and admittedly 27th, 28th and 29th were holiday - Letter of permission was given to Director Medical Education on 30.10.2012 for inclusion of petitioner institute in counselling - Petitioner institute filed an application for extension of cut off date which was rejected by respondents - Held - Central Govt. and CCIM had extended cut off dates in some other cases - Petitioner/institute was not at fault - Students who found place in the list of eligible candidates are also not at fault as petitioner/institute was not included in the list of colleges of counselling on 30.10.2012 - Action of Central Govt. as well as CCIM in not extending cut off date is discriminatory - Central Govt. directed to pass an order regarding extension of cut off date within 10 days after seeking permission from CCIM and counselling be held within 2 weeks for 15 seats, from the list of eligible candidates strictly on merit basis - Petition allowed : *Shubh Deep Ayurved Medical College Vs. Union of India, I.L.R. (2013) M.P. 2552 (DB)*

EDUCATION DEPARTMENT (TECHNICAL BRANCH)
CONTINGENCY PAID EMPLOYEES RECRUITMENT AND
CONDITIONS OF SERVICE RULES,
M.P. 1978

– **Rule 7** and Work Charged and Contingency Paid Employees Pension Rules M.P. 1979 – Krammonati – Employees on regular work charged and contingency paid establishment being governed by same set of Rules 1978 and 1979 are entitled to same benefit – Denial of benefit of krammonati scheme is bad – Respondents directed to settle the claim in the light of judgment passed in Teju Lal Yadav's case : *Man Singh Thakur Vs. State of M.P., I.L.R. (2015) M.P. 2355*

EDUCATIONAL SERVICES (COLLEGIATE BRANCH)
RECRUITMENT RULES, M.P., 1967

– **Rule 13(5)** – Educational Services (Collegiate Branch) Recruitment Rule, M.P. 1990 – Rule 15 – ‘Regular appointment’ – Induction of the petitioners into the service after following the procedure contemplated under Rule 13(5) of the Rules 1967 or Rule 15 of the Rules of 1990 is a regular appointment to the service and such an appointment qualifies the employee to be considered for grant of senior pay scale – A regular appointment will not only mean a regular appointment in accordance to Rules 12 of the Rules of 1967 and 1990, but would also include an appointment in accordance to any of the methods contemplated under the Rules – Even an emergency appointment in accordance to the provisions of Rule 13(5) of the Rules of 1967 and Rule 15 of the Rule

1990 would be a regular appointment for the purpose of grant of senior pay scale : *Ramesh Chandra Dixit (Dr.) Vs. State of M.P., I.L.R. (2012) M.P. *68*

– **Rule 13(5)** - Emergency Appointments - Date of Regularization - Petitioners were appointed on emergency basis - Candidates who were duly recruited after following the procedure for emergency appointment except, the interview by the Public Service Commission, were entitled to be regularized from the date of initial appointment and not by subsequent date : *State of M.P. Vs. Dr. Ramesh Chandra Dixit, I.L.R. (2013) M.P. 2072 (DB)*

– **Rule 13(5)** – Grant of senior pay scale and selection grade – Petitioners, who are appointed in the Higher Education Department of the State of Madhya Pradesh in the year 1986, 1987 and 1989 under Rule 13(5) of the M.P. Educational Services (Collegiate Branch Recruitment Rules 1967 claim grant of senior pay scale and selection grade in accordance to the provision of the Schemes and Circulars issued by the University Grants Commission and as adopted by the State of Madhya Pradesh and incorporated in the M.P. Educational Service (Collegiate Branch) Recruitment Rules, 1990 – Held – The petitioners are entitled to the benefit – Writ Petitions allowed : *Ramesh Chandra Dixit (Dr.) Vs. State of M.P., I.L.R. (2012) M.P. *68*

EDUCATIONAL SERVICE (COLLEGIATE BRANCH) **RECRUITMENT RULES, M.P. 1990**

– **Rule 8, Schedule III** – See – Service Law : *Ankita Bohare (Dr.) (Smt.) Vs. M.P. Public Service Commission, I.L.R. (2014) M.P. 1276*

– **Rule 8(1)(a)** – Vires of – Fixation of cut-off date – Hardship – Even if employee or petitioner loses his chance narrowly it would not render rule invalid – Action can be struck down only if it is found arbitrary – Petition dismissed : *Santosh Choubey (Dr.) (Ms.) Vs. State of M.P., I.L.R. (2015) M.P. 1199 (DB)*

– **Rule 15** – See – Educational Services (Collegiate Branch) Recruitment Rule, M.P. 1967 – Rule 13(5) : *Ramesh Chandra Dixit (Dr.) Vs. State of M.P., I.L.R. (2012) M.P. *68*

– **Schedule III** – Guest Lecturer – Petitioner was held ineligible to participate in the process of selection for the post of Professor, on the ground that experience as Guest Lecturer cannot be taken into consideration – Held – Petitioner has worked for more than 10 years regularly in a aided institution – He also find place in the select list – Eligibility criteria is that the experience shall be counted if the candidate is working in a Government aided institution – It is not necessary that the aid should be received for the

post on which the candidate is posted – Petition is allowed – Respondents were directed to consider the case of the petitioner : *Usha Porwal (Dr.) Vs. State of M.P., I.L.R. (2014) M.P. 1260*

– **Schedule III & IV** – Academic Grade Pay – There is no inconsistency in Regulations framed by UGC and Rules framed by State Govt. – Those who are promoted as Professors, become a full fledged Professor in State Service in Higher Education Department – Revised pay band is granted by UGC solely on the basis of post and not on the basis of pre-revised pay scale – Order reducing AGP to petitioners is bad and quashed : *Ramlala Shukla (Dr.) Vs. State of M.P., I.L.R. (2015) M.P. 1415*

EDUCATION SERVICE (SCHOOL BRANCH) RECRUITMENT AND PROMOTION RULES, M.P. 1982

– **Merger - Constitution, Article 311** - Merger of two departments and posts - Directorate of Adult Education was merged with Directorate of Public Instructions - Post of District Adult Education Officer absorbed with Assistant Director, Public Instructions granting them seniority - Responsibilities of the post of Asstt. Director, Adult Education and that of Public Instructions were more or less same - Although there was slight difference of pay scale but later on was brought at par - No educational qualification as such was provided for the post of Asstt. Director, Public Instructions - Absorption of the post of D.A.E.O. who were holding the qualification of graduation and were sufficiently experience with Asstt. Director, Public Instructions could not be said to be impermissible - Petition dismissed : *Shyam Narayan Sharma Vs. State of M.P., I.L.R. (2011) M.P. *36 (DB)*

Rejection on ground of Experience – Rejection of petitioner’s candidature for appointment of Area Education Officer on the ground that he does not possess 5 years teaching experience as Teacher/U.D.T./Head Master/Adhyapak of local bodies – Experience gained by him as Assistant Teacher, cannot be counted – Held –Unless the incumbent fulfills all the three elements, he is not entitled to be appointed as Area Education Officer – Experience gained by the petitioner prior to his promotion to the post of Upper Division Teacher cannot be taken into consideration – Experience gained on the feeder cadre can only be taken into consideration : *Rajesh Kumar Soni Vs. State of M.P., I.L.R. (2014) M.P. 1810*

Rule 11-B, Panchayat Adhyapak Samvarg (Employment & Conditions of Service) Rules M.P. 2008, Rule 5 and Constitution – Article 16 – Eligibility for recruitment to the post of Area Education Officer – Upper Division Teacher, Head Master of Middle Schools and ‘Adhyapaks’ of local body cadre who have 5 years of overall

teaching experience must be considered to be eligible to appear in examination – 5 years teaching experience on their “Respective Posts” for appointment on the post of Area Education Officer is quashed : *Gazetted Headmasters Pradeshik Sangh, Madhya Pradesh Vs. State of M.P., I.L.R. (2015) M.P. 2888 (DB)*

ELECTION

- **Co-operative Society** - Mass rejection of nomination papers resulting in unopposed election of members - Even State Counsel could not dispute that nomination papers were rejected on factually incorrect grounds and the candidates whose nomination papers were rejected were entitled to contest the elections - Irresistible conclusion is that entire process of election was sham and it was no election in the eye of law and entire election process was vitiated - Petition allowed : *Ramkishore Tiwari Vs. State of M.P., I.L.R. (2011) M.P. *130 (DB)*

ELECTRICITY ACT, (9 OF 1910)

– **Section 22-B**, Electricity (Supply) Act, (54 of 1948) - Penalty - Demand of higher charges/tariff for electricity consumed beyond legally fixed limit is a reasonable deterrent measure providing an appropriate sanction not as harsh as disconnection of electricity supply : *Sanghvi Foods Private Ltd. (M/s.) Vs. M.P. Electricity Board, I.L.R. (2011) M.P. *154*

ELECTRICITY ACT (36 OF 2003)

– **Section 126** - Cases of excess load of consumption of electricity are squarely covered under Explanation (b) (iv) of Section 126 : *M.P. Madhya Kshetra Vidyut Vitran Co. Ltd. Vs. Smt. Savitri Devi, I.L.R. (2013) M.P. 1027*

– **Section 126 & 127** - Disconnection of Electricity - Appeal - Premises of the appellant was searched and provisional assessment order was served - Appellant raised objections to the Provisional Assessment Order - Without deciding the objections and without passing the final order, electricity was discontinued - Held - Alternative remedy of filing appeal would only arise when a final order under Section 126 is passed - Electricity cannot be discontinued - Respondents directed to decide the objections and pass the final order - The appellant may thereafter if aggrieved can file an appeal - Appeal allowed : *Qutubuddin Vs. M.P. Pashchim Keshtra Vidyut Vitran Co. Ltd., I.L.R. (2012) M.P. 2317 (DB)*

– **Section 126 & 135**, MPERC (Establishment of Forum and Electricity Ombudsman for Redressal of Grievances of the Consumers) (Revisions-I) Regulations, 2009, Clause 2.4 (d), (m) & 3.35 - Jurisdiction - If a problem does not fall within the ambit of 'Complaint' and 'Grievance' under the regulations, the Electricity Consumer Grievance Redressal Forum cannot be said to have Jurisdiction to entertain it - An order passed without jurisdiction is 'non-est' i.e. nullity - Said order has no authority - Impugned order set aside : *M.P. Madhya Kshetra Vidyut Vitran Co. Ltd. Vs. Smt. Savitri Devi, I.L.R. (2013) M.P. 1027*

– **Section 126 & 135** – Investigation and Enforcement – Provision u/s 126 & 135 operates in different field – Theft is governed by Section 135 and not 126 – Petition dismissed : *Hotel Adityaz Ltd. Vs. Madhya Pradesh Kshetra Vidyut Vitran Co. Ltd., I.L.R. (2014) M.P. 2353*

– **Section 127** - Limitation - Condonation of Delay - Appeal was filed before wrong forum - However, Appeal was filed before proper forum after 23 days of receiving information from earlier forum - Appellate Authority condoned the delay in filing the appeal - Held - Unless compelling circumstances are available on record, the litigation should not be struck down or thrown away on the ground of limitation - Respondent No.2 has debatable questions on merit for adjudication before the appellate authority therefore, no error has been committed by appellate authority in condoning the delay : *M.P. Poorve Kshetra Vidyut Vitran Company Ltd. Vs. Presiding Officer Appellate Authority, I.L.R. (2013) M.P. 557*

– **Section 135** – See – Constitution – Article 226 : *Patidar Stone Crusher (M/s.) Vs. M.P. Vidyut Vitaran Company Ltd., I.L.R. (2015) M.P. *18*

– **Section 135** – Theft of electricity – Petition for restoration of electricity connection – Amount not deposited as per final assessment order – Disconnection of electricity supply – Held – If Petitioner deposits requisite sum in terms of third proviso to Section 135(1A) of the Act, electricity supply be restored – Writ Petition dismissed : *Patidar Stone Crusher (M/s.) Vs. M.P. Vidyut Vitaran Company Ltd., I.L.R. (2015) M.P. *18*

– **Section 135 & 154** – Demand Notice – Civil Liability – Complaint was filed for theft of Electricity – Special Court after full trial acquitted the petitioner – Special Court is bound and under statutory duty to determine civil liability – After the acquittal, the authorities have no power to assess the civil liability – Provisional assessment cannot be pressed into service against petitioner – Petition allowed : *Baijanti Bai (Smt.) Vs. M.P. Kshetriya Vidyut Vitran Co. Ltd., I.L.R. (2015) M.P. 2882*

– **Section 156** - The High Court while dealing with the criminal appeal against the conviction can also deal with the finding of civil liability determined by the Special Court and can even pass appropriate interlocutory orders on the question of its recovery : *Bhagwan Das Tiwari (Shri) Vs. State of M.P., I.L.R. (2011) M.P. 718 (DB)*

– **Section 164**, Telegraph Act (13 of 1885), Section 10 and Electricity Rules 2006, Rule 3 – Erection of Transmission Line – Compensation – Consent of Owner – As Respondent No. 1 authorized to exercise all powers vested in telegraph authority under Part III of Act, 1885 – No consent of owner of land is required for erecting transmission lines – Owner is merely entitled for compensation – As Rule 3(4) excludes application of sub-rules (1) to (3) of Rule 3 when the powers of telegraph authority under the Act, 1885 are conferred, therefore, there is no conflict between the Act, 2003 and Rules 2006 : *Vijay Agrawal Vs. Power Grid Corporation of India Ltd., I.L.R. (2012) M.P. *39 (DB)*

ELECTRICITY RULES 2006

- **Rule 3** – See – Electricity Act, 2003, Section 164 : *Vijay Agrawal Vs. Power Grid Corporation of India Ltd., I.L.R. (2012) M.P. *39 (DB)*

ELECTRICITY (SUPPLY) ACT, (54 OF 1948)

- See - Electricity Act, (9 of 1910), Section 22-B : *Sanghvi Foods Private Ltd. (M/s.) Vs. M.P. Electricity Board, I.L.R. (2011) M.P. *154*

ELECTRICITY SUPPLY CODE, M.P. 2004

– **Clause 2.1** – Occupier – Held – That the term includes the owner or the person who is in occupation of the premises – Further, an occupier has right to seek electricity connection : *Shakuna Kushwah (Smt.) Vs. State of M.P., I.L.R. (2015) M.P. 2576*

– **Clause 5.3** - Dedicated feeder - Dedicated feeder by the licensee to company - Only right which would be conferred in the company would be to get the uninterrupted electricity supply round the clock to run the unit - It would not mean that the licensee is stopped to give connections from the said feeder to the other consumers : *K.S. Oils Ltd. Morena (M/s.) Vs. Madhya Pradesh Kschetra Vidut Vitran Company Ltd., I.L.R. (2013) M.P. *32 (DB)*

– **Clause 5.3** - Dedicated Feeder - Merely because a consumer has opted for getting power supply from dedicated feeder, it does not mean that no other consumer can be provided electricity from the said feeder - It is not the Intention of the Code making authority to confine the electricity supply by dedicated feeder to a solitary consumer - It

is only to ensure that electricity supply is provided to the consumer from a particular feeder which is known as dedicated feeder : *K.S. Oils Ltd. Vs. M.P.K.V.V.C.L., I.L.R. (2012) M.P. 2425*

EMPLOYEES' PROVIDENT FUNDS AND MISCELLANEOUS PROVISIONS ACT, (19 OF 1952)

– **Section 2(f)** - Employee - Employee means any person who is employed for wages in any kind of work - Petitioner had pointed out to Inspector that out of 20 persons, 4 persons are voluntarily providing their service as per their will and convenience and are not being paid any salary or emoluments - Such contention was found to be true however, Authority held that Act is applicable as 20 persons are working in the institute - In view of Section 2(f) of the Act, as four persons were not being paid salary and there was no rebuttal to petitioner's case that they were not attending the establishment on regular basis and were coming at their own will voluntarily, the findings recorded by Authority and Tribunal are perverse and bad - Petition allowed : *Jan Shiksha Prasar Samiti Barwari Vs. Assistant Provident Fund Commissioner, I.L.R. (2013) M.P. 2544 (DB)*

– **Section 2 & 6** – Basic wages – Transport/conveyance allowance, attendant incentive and special allowance, being paid to all employees are liable to be included under the 'basic wages' – However, the lunch/canteen allowance, being paid to Operators and those employees who are required to remain on machines during lunch period could not be included in 'basic wages' – The Company is not liable to deduct provident fund for this amount : *Surya Roshni Ltd. Vs. Employees' Provident Fund, I.L.R. (2011) M.P. *104 (DB)*

– **Section 11** - Priority of payment of contributions over other debts - Statutory authorities attached certain properties of erstwhile employer but did nothing thereafter - Financial Institution because of non-payment of loan of erstwhile employer invoked Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and sold the property to the auction purchaser - Inaction after the attachment will not amount to waiver of statutory contribution - Financial Institution is liable to pay the said contribution : *Textile Mazdoor Congress Vs. State of M.P., I.L.R. (2012) M.P. *110*

– **Section 11(2)** - Statutory contribution under the Act is the first charge on the assets of the establishment - Even if the Industry of erstwhile owner is taken over by the financial institution, said statutory liability is neither waived nor extinguished- It will stand and financial institution is bound to repay the same - Bonafide purchaser of industry who was not apprised of any charge or contribution is outstanding against the

erstwhile industry not liable to pay the contribution : *Textile Mazdoor Congress Vs. State of M.P., I.L.R. (2012) M.P. *110*

– **Section 14-B & 32A** and Employees Provident Funds Scheme, 1952, Para 32-A – Damages – Petitioners are grant in-aid Private Educational Institutions – Contribution of Employees and Employer – Initially the petitioners unsuccessfully challenged the application of Act, 1952 – Contribution was deposited belatedly after the SLP was dismissed by Supreme Court – Regional Provident Fund Commissioner held petitioners liable for damages – Held – In case of APFC Vs. Ashram Madhyamik the damages were reduced to 25% – Maintaining the parity, the damages are directed to be reduced to 25% – Petition partly allowed : *Naveen Vidya Bhawan Vs. Regional Provident Fund Commissioner, I.L.R. (2015) M.P. *37*

EMPLOYEES PROVIDENT FUNDS SCHEME, 1952

– **Paragraph 32-A** – See – Employees' Provident Funds and Miscellaneous Provisions Act, 1952 Section 14-B & 32A : *Naveen Vidya Bhawan Vs. Regional Provident Fund Commissioner, I.L.R. (2015) M.P. *37*

– **Section 61** - See - Payment of Gratuity Act, 1972, Section 2(h) : *Urmila Tiwari (Smt.) Vs. Smt. Kanti Devi, I.L.R. (2011) M.P. 741*

EMPLOYEES' STATE INSURANCE ACT (34 OF 1948)

– **Section 2(12) read with Section 1(4)** - Respondent No. 1 issued notice against the appellant for recovery of Rs. 33,450/- on account of failing in depositing the contribution towards E.S.I. who is involved in hotel business - On the strength of Notification No. 1639-14902-XVI dt. 19.03.1977, counsel for the appellant first time argued that the provisions of Section 2(12) are not applicable - Held - Since the State notification was not brought in the knowledge of the respondent before learned E.S.I. Court - Proprietor put up the respondent in surprise - Nothing was pleaded in the application - Respondent should be given equal and free opportunity to oppose the validity - Impugned order set aside - Case is remanded back to learned E.S.I. Court for adjudication - After giving due and proper opportunity : *Hotel Ambassdor (M/s.) Vs. Employees State Insurance Corporation, I.L.R. (2014) M.P. 778*

– **Section 2(12), 38 & 39** - Factory - Report of E.S.I. Inspector that establishment of employer is consisted of 10 or more employees - E.S.I. Inspector did not record the name, father's name, place from which employees hails, designation, length of service &

emoluments etc. and the signature or thumb impression - Such report cannot be relied upon by the E.S.I. Court - Order of E.S.I. Court directing the employer to pay E.S.I. contribution set aside : *Ashok Kumar Gopichand Vs. Employees State Insurance Corporation, I.L.R. (2013) M.P. 421*

- **Section 53**, Motor Vehicles Act (59 of 1988), Section 166 – Motor Accident Claim – Maintainability – Review sought by the Insurance Company on the ground that the claim under the Motor Vehicle Act was not maintainable and was statutorily barred – Held – There is no pleading, proof or evidence whatsoever to indicate that the injury as sustained by the applicant was an employment injury sustained by him as an employee under the ESI Act – The case has been dealt with as a plain and simple case of motor accident in which compensation has been awarded – Review petition dismissed : *IFFCO Tokyo General Insurance Co. Ltd. Vs. Smt. Meena Mahesh, I.L.R. (2015) M.P. 758*

ENTERTAINMENTS DUTY AND ADVERTISEMENTS TAX ACT, M.P. (30 OF 1936)

- **Section 2(a), 2(b), 2(d), 3 & 4** – No entertainment tax is payable on DTH broadcast for the period between the issuance of notification of 05.05.2008 and coming into force of the new Act on 01.04.2011 – The Act of 1936 is applicable only to place related entertainment : *Tata Sky Ltd. (M/s.) Vs. State of M.P., I.L.R. (2014) M.P. 1209 (SC)*

- **Section 4(1),(2)(d)**, Municipalities Act, M.P. (37 of 1961), Section 5 - Compounding Duty - Population - Compounding duty is 25% where the population of a place is between 25001 to 50,000 and 30% where population is 50,000 to 1 lac - Railway area was excluded from Municipal Area - No notification under Section 5 of Act, 1961 that Railway area was notified as local area - Population of Railway area cannot be included in the local municipal area - Accordingly slab of 25% is applicable - Writ appeal dismissed : *State of M.P. Vs. Bharat Bhusan Vyas, I.L.R. (2012) M.P. 2622 (DB)*

ENTRY TAX ACT, M.P. (52 OF 1976)

- **Charging Section** - "Mediker" and "Starch" - Mediker and Starch have not been classified under Entry Tax Act nor are covered under Schedules I & II - Charging Section has to be taken into consideration - "Mediker" is basically a medicinal product but is used as shampoo - However, its period of treatment is four weeks and shampoo is not used generally for washing hair and therefore, principle of ejusdem generis is not applicable - It is out of the purview of Schedule III and cannot be taxed since both 'Mediker' and 'Starch' are used in production of further products and not meant for sale -

As article is not taxable goods under the statute then the provisions of Entry Tax Act cannot be attracted - Petition allowed : *Marico Industries Ltd. Vs. State of M.P., I.L.R. (2013) M.P. 2625 (DB)*

– **Section 2(d)(f), 3, 7 & 14**, Commercial Tax Act, M.P. 1994 (5 of 1995), Section 17 & 43 - Levy of Entry Tax - Petitioner Company made purchases from industrial units having facility of exemption from payment of entry tax and commercial tax - Entry Tax is a tax on the entry of goods into local area for consumption, use or sale in course of business of dealer of Schedule II goods - Petitioner made purchase of goods at Panna and caused entry of goods into another local area namely Satna - Since taxable event had occurred therefore, the petitioner has incurred the liability to make payment of tax - Petition dismissed : *Kalyani Minerals Pvt. Ltd. (M/s.) Vs. Additional Commissioner of Commercial Tax, I.L.R. (2011) M.P. 2381 (DB)*

– **Section 3, 3-B & 14** - Incidence of taxation - Section 3 of Act is charging provision - Words used in later part of Section 3(1) that such tax shall be paid by every dealer who is liable to pay tax under VAT Act, is only for identifying the person who is liable to pay entry tax - Ss. 3-B & 14 are machinery provisions : *Lilasons Breweries Ltd. (M/s.) Vs. State of M.P., I.L.R. (2011) M.P. *28 (DB)*

– **Section 3, 3-B & 14** - Notification u/s 3-B - Absence of - Absence of notification u/s 3-B cannot come in the way of validity of charging S. 3 of the Act and render it inoperative - Absence of notification prescribing special procedure for collection of entry tax upon foreign liquor and beer - General machinery provision of S. 14 is clearly attracted : *Lilasons Breweries Ltd. (M/s.) Vs. State of M.P., I.L.R. (2011) M.P. *28 (DB)*

– **Section 4(1)**, Entry Tax Rules, (M.P.), 1976, Rule 4(1)(iii) - Concessional Rate - Coal - Petitioner supplied coal to M.P.E.B. for the use as raw material - Declaration in that regard was accepted and concessional rate of 1% was applied - However, the assessment was reopened on the orders of the Divisional Commissioner - Held - Concessional rate on coal was on declaration when entry was effected in local area by registered dealer for use of raw material in manufacture of other goods - Assessing officer had rightly accepted the declaration - Order reopening the assessment quashed : *Western Coal Field Ltd. Vs. Addl. Commissioner, Commercial, I.L.R. (2013) M.P. 1037 (DB)*

ENTRY TAX RULES, (M.P.), 1976

– **Rule 4(1)(iii)** - See - Entry Tax Act, M.P., 1976, Section 4(1) : *Western Coal Field Ltd. Vs. Addl. Commissioner, Commercial, I.L.R. (2013) M.P. 1037 (DB)*

ENVIRONMENT (PROTECTION) RULES, 1986

– **Rule 5(3)**, Minor Mineral Rules, M.P. 1996, Rule 49 - Provisions of Environmental Impact Assessment (EIA) notification dated 14.09.2006 issued by Central Government in exercise of powers u/R 5(3)(a) of the Environment (Protection) Rules, 1986 do not apply to quarrying operations of sand and 'Bajri' in view of Rule 49(1) of M.P. Minor Mineral Rules, 1996 - Consequently, no prior environmental clearance is required to be obtained in respect of quarrying of sand and 'Bajri' : *Ajay Dubey Vs. State of M.P., I.L.R. (2011) M.P. *21 (DB)*

– **Rule 5(3)**, Minor Mineral Rules, M.P. 1996, Rule 49 - The notification u/R 5(3) of Environment (Protection) Rules, 1986 is not an enactment within the meaning of S. 24(1) of the Environment (Protection) Act, 1986 and, therefore, it cannot have overriding effect on Rule 49 of the M.P. Minor Mineral Rules, 1996 : *Ajay Dubey Vs. State of M.P., I.L.R. (2011) M.P. *21 (DB)*

EQUAL PAY FOR EQUAL WORK

– **Pay-Scale** - Bal Mandir Shikshikas initially appointed by Gram Panchayat which subsequently became part in Municipal Corporation are employees of Municipal Corporation – However, they failed to establish that their nature of duty is similar to that of L.D.T. – The claim of respondents No. 1 and 2 for grant of pay-scale of L.D.T. can not be accepted : *Municipal Corporation, Katni Vs. Madhu Pasreeja, I.L.R. (2011) M.P. 859 (DB)*

– **Method of Recruitment and Duties** – As the method of recruitment of Home Guard and Police Constables appointed in the regular establishment of Police Department and even in the manner of discharging the duty and exercise of powers, there is no exact similarity – Principle of *equal work for equal pay* can not be enforced in its totality : *Home Guard Sainik Evam Parivar Kalyan Sangh Vs. State of M.P., I.L.R. (2012) M.P. 382*

ESSENTIAL COMMODITIES ACT (10 OF 1955)

– **Section 3** – In order to prosecute a person for violation of terms and conditions of the scheme it is necessary for the prosecution to prove that the scheme is in the nature of control order – Any scheme framed under executive power cannot fall within the purview of Control Order – Person cannot be prosecuted and held guilty : *Teepa @ Surendra Vs. State of M.P., I.L.R. (2015) M.P. 3419*

– **Section 3/7**, (Khadya Padarth) Sarvajanic Nagrik Purti Vitran Scheme (M.P.), 1991, Clause 12 & 13 - Violation of Scheme - Madhya Pradesh (Khadya Padarth)

Sarvajanik Nagrik Purti Vitran Scheme, 1991 is not a scheme framed by virtue of the power given u/s 3 of the Act - Prosecution of accused for violation of clause 12/13 not valid - Order is set aside with direction to trial Court to frame charges accordance with law : *Dhruv Kumar Singh Vs. State of M.P., I.L.R. (2012) M.P. 2012*

– **Section 3/7**, Penal Code (45 of 1860), Section 467, 468 & 471 and Criminal Procedure Code, 1973 (2 of 1974) - Framing of charge - Powers of Revisional Court - Driver co accused was carrying a tanker in which 20,000/- liter kerosene oil of blue colour was found - Held - Revisional jurisdiction can not embark upon re-appreciation of evidence unless the finding of fact is on the face of it illegal or perverse - It is a cardinal principle of law that in a revision, the revisional court will not interfere with the order of the court below, unless there is some compelling reason for doing so such as where the judgment or order of the court below is vitiated by perversity or gross illegality - The impugned order does not suffer from any illegality nor there is any error of jurisdiction - Thus, it is clear that charges are properly framed - Revision dismissed : *Rajeev Kumar Vs. State of M.P., I.L.R. (2012) M.P. 2583*

– **Section 3/7** - Violation of Order - When there is a violation of any Order, regarding any essential commodity, then the provisions of Act, 1955 would apply - It is not prima facie found that petitioner has violated any Order under Section 3 of the Act, 1955, he cannot be punished under Section 7 of the Act, 1955 - Proceedings quashed : *Narottam Singh Tomer Vs. State of M.P., I.L.R. (2013) M.P. 2498*

– **Section 6-A**, Dravikrat Petroleum Gas (Pradaya Aur Vitran Viniyam) Aadesh 2000 - Seizure & Confiscation of Essential Commodity - District Supply Controller alongwith staff approached the Gas Agency of the petitioner and verified the entire stock and registers - He found that 70 Gas Cylinders of domestic category are short and some cylinders are kept in various vehicles instead of keeping them in the godown - Assistant Supply Officer, seized 70 Gas Cylinders and a report was submitted to the Collector - Collector after giving an opportunity of hearing, confiscated and the petitioner was directed to deposit the cost of those 70 Gas Cylinders so that those cylinders may be returned to the petitioner - Appeal was also dismissed by the Addl. Sessions Judge - Held - For the violation of the Control Order 2000 that 70 Gas Cylinders were found short in the stock, no confiscation order could be passed because there was nothing in the stock to be seized by the Supply Officers - Orders passed by the Collector and Addl. Sessions Judge set aside : *Col. Gas Service (M/s.) Vs. Collector, Jabalpur, I.L.R. (2013) M.P. 497*

– **Section 6A, 6C & 6E** - Alternate Remedy - Applicant must first avail the alternate remedy by filing application before the Competent Authority for release of vehicle - Competent Authority should dispose off the application within a month and release the vehicle on supurdnama after collecting security - Security not to exceed

market price at the time of seizure - Petition disposed of : *Parsadilal Vs. State of M.P., I.L.R. (2012) M.P. 1780*

– **Section 6E** - See - Criminal Procedure Code, 1973, Section 482 : *Parsadilal Vs. State of M.P., I.L.R. (2012) M.P. 1780*

ESTABLISHMENT OF MEDICAL COLLEGE REGULATIONS, 1999

– **Regulations 7 & 8** – See – Medical Council Act, 1956, Section 10-A : *RKDF Medical College Hospital and Research Centre Vs. Union of India, I.L.R. (2015) M.P. 2107 (DB)*

EVIDENCE ACT (1 OF 1872)

SYNOPSIS : Section 3

- | | |
|---|---|
| 1. Appreciation of Evidence | 2. Benefit of Doubt |
| 3. Child Witness | 4. Circumstantial Evidence |
| 5. Concocted/ Tutored Witnesses | 6. Credibility of Witnesses |
| 7. Defence Witness/Evidence | 8. Electronic Evidence |
| 9. Evidence of Prosecutrix held not reliable | 10. Evidence of Prosecutrix held reliable |
| 11. Eye Witnesses | 12. Material Omission / Contradiction in Evidence of Witnesses |
| 13. Independent Witness | 14. Interested/Related Witness |
| 15. Medical and Ocular Evidence | 16. Miscellaneous |

1. Appreciation of Evidence

– **Section 3** – Appreciation of Evidence – Circumstantial Evidence – If any criminal Court comes to the conclusion that ocular evidence is not believable, then the remaining evidence can not be left unconsidered – It is the duty of the Criminal Court to assess the remaining circumstantial evidence so as to ascertain whether chain of circumstantial evidence is complete and accused may or may not be held guilty on the basis of such evidence : *Vrijlal Ghosi Vs. State of M.P., I.L.R. (2012) M.P. 1351 (DB)*

– **Section 3** - Appreciation of Evidence - F.I.R. was lodged by brother of the victim, who was not the eye-witness - He took the information from the victim when victim was admitted to the Hospital in a serious condition - When the victim was

examined by police u/s 161 of Cr.P.C. he stated categorically that it was the appellant 'G' who assaulted him in his abdomen and thigh by a knife - It can not be said that omnibus allegations were made against all the three persons and thereafter the present appellant was chosen as a main culprit : *Guddu Alias Sameer Vs. State of M.P., I.L.R. (2012) M.P. 1717*

– **Section 3** – Appreciation of Evidence – In F.I.R. and Police statement, it was stated that appellant used a 'tabal' in assaulting while in deposition in court witnesses deposed about use of 'farsa' by the appellant – Held – The inconsistency losses significance in view of the fact that the incident occurred at night and 'tabal' as well as 'farsa' are more or less same type of sharp cutting objects – The evidence of three eyewitnesses can not be overthrown for such discrepancy : *Maujilal Vs. State of M.P., I.L.R. (2011) M.P. *60*

2. Benefit of doubt

– **Section 3**, Penal Code (45 of 1860), Section 302 - Murder Case - Benefit of doubt - When may be extended - Prosecution not able to prove either the recovery of weapons or recovery of other articles of the deceased allegedly recovered by the I.O. from the spot - Recovery of weapons of offence alleged to have been recovered by PW 18 pursuant to disclosure statements of accused persons being appellants herein is not free from doubts - Weapons recovered by the I.O. were not sent for forensic examination - As there was no blood stain notices on the weapons - As per FSL report no blood stain was found on the articles of the deceased - Prosecution could not establish beyond reasonable doubt that the human remains recovered by the I.O. from the spot were that of the deceased - No cogent evidence on record to establish the identity of the deceased as the person who was murdered in the incident - Appellants are acquitted of charges against them by extending them benefit of doubt. : *Amar Singh Vs. State of M.P., I.L.R. (2011) M.P. *134 (DB)*

– **Section 3**, Penal Code (45 of 1860), Section 149 - Common object - Appellants though armed with lathis did not use lathis in any manner - Only allegation against them is that they had exhorted their co-accused to fire at the opposite party - Possibility, that these accused were roped in on account of animosity, can not be ruled out - Benefit of doubt on that score must be given : *Prahalad Singh Vs. State of M.P., I.L.R. (2011) M.P. 2309 (SC)*

3. Child Witness

– **Section 3** – Child Witness – If there is no inherent defect in testimony of child witness, merely because the witness is child, her testimony cannot be disbelieved – Evidence of daughter of appellant duly corroborated by medical evidence – No material

to show that she was tutored by any person – Evidence of child witness worth reliance : *Ramkishun Vs. State of M.P., I.L.R. (2011) M.P. 1277 (DB)*

– **Section 3** – Child witness – Tutored – Eye witness (child) appears to be tutored by first informant due to property dispute with accused – Evidence of child witness not reliable : *In Reference Vs. Ganesh Lodhi, I.L.R. (2014) M.P. 2453 (DB)*

– **Section 3**, Criminal Procedure Code, 1973 (2 of 1974), Section 161 - Discrepancy in police statement and Court statement - Witness (aged 9-10 years) the son of deceased (and one accused) could not give the correct statement of the incident to the police because at that time his maternal grand mother (Nani) was not in his favour and threatened him that if he will tell this incident to any person, then she will send him to jail - Held - The witness can not be disbelieved on the ground that he did not tell the truth to the Investigating Officer and stated it after a lapse of time in the Court : *Ramesh Vs. State of M.P., I.L.R. (2011) M.P. 2565 (DB)*

– **Section 3**, Penal Code, (45 of 1860), Section 302 - Solitary child witness - Evidence of child witness contrary to medical evidence - Child witness did not disclose the names of assailants to any other witness and report against unknown persons was lodged - Evidence of child witness not reliable : *Nandram Vs. State of M.P., I.L.R. (2011) M.P. 493 (DB)*

4. Circumstantial Evidence

– **Section 3** – Circumstantial Evidence – Hon’ble Apex Court laid down five principles which constitute the ‘panchashel’ of proof of a case based on circumstantial evidence and held that following conditions must be fulfilled before a case against an accused can be said to be fully established:- (1) The Circumstances from which the conclusion of guilt is to be drawn should be fully established –The circumstances concerned ‘must or should’ be and not ‘may be’ established. (2) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty. (3) The circumstances should be of a conclusive nature and tendency. (4) They should exclude every possible hypothesis except the one to be proved, and (5) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused : *Bhagwandas Vs. State of M.P., I.L.R. (2014) M.P. 2182 (DB)*

– **Section 3**, Penal Code (45 of 1860), Section 302 – Murder – Proof – No circumstance of last seen – No blood stained weapon or cloths were seized – Not seen with the deceased before or after the incident – Only motive is well established – Chain

of circumstantial evidence is not complete – No final conclusion can be drawn that the deceased was killed or assaulted by the present appellants /accused – Appeal allowed : *Vrijlal Ghosi Vs. State of M.P., I.L.R. (2012) M.P. 1351 (DB)*

– **Section 3** – See – Penal Code, 1860, Section 302 : *Anil Sharma alias Anil Namdev Vs. State of M.P., I.L.R. (2012) M.P. *53 (DB)*

– **Section 3** – See – Penal Code, 1860, Section 302/34 : *Dilip Kumar Vs. State of M.P., I.L.R. (2014) M.P. 1916 (DB)*

5. Concocted/ Tutored Witnesses

– **Section 3** - Witness - Persons named in FIR as witnesses not examined by prosecution - Son and nephew claiming themselves to be eye witnesses not named in FIR as witnesses - Held - Witnesses are concocted witnesses : *Ramadhar @ Pappan Khamparia Vs. State of M.P., I.L.R. (2011) M.P. *32*

– **Section 3** - Witness - Tutored - Even if a part of deposition of a witness can be treated to be tutored, remaining part if inspires confidence can be believed at least taken into consideration for the purpose of corroboration : *Major Singh Vs. State of M.P., I.L.R. (2012) M.P. 2540 (DB)*

6. Credibility of Witnesses

– **Section 3** – Appreciation of Evidence – Credibility of witnesses – Case diary statements and Court statements –Material contradictions and omissions in respect of the number of assailants, weapons which they carried, the injuries caused by them and also the overt act of the assailants in the testimonies of the witnesses – Omissions and contradictions are not formal but material and goes to the root of the case – The evidence of witnesses does not inspire confidence : *Babbu @ Babulal Vs. State of M.P., I.L.R. (2011) M.P. *65 (DB)*

– **Section 3** – Appreciation of Evidence – Credibility of witness – Wife of deceased –Having no reason to give false statement against accused – Her statement/evidence is found to be natural, cogent, reliable and trustworthy – Is worthy of credence – Her testimony is worth acceptance : *Chhotelal Vs. State of M.P., I.L.R. (2011) M.P. *80 (DB)*

– **Section 3** - Witness - Exaggerations or improvements - Exaggerations or improvements per se do not render the evidence brittle - It can be one of the factors to test credibility of the prosecution version - Irrelevant details which do not in any way corrode the credibility of a witness cannot be labelled as omissions or contradictions : *Major Singh Vs. State of M.P., I.L.R. (2012) M.P. 2540 (DB)*

– **Section 3** - Witness - Exaggeration *per se* does not render the evidence brittle - It can be one of the factors against which the credibility of the prosecution story can be tested - Mere marginal variations in the statements of witnesses cannot be dubbed as improvements : *State of M.P. Vs. Dal Singh, I.L.R. (2013) M.P. 1265 (SC)*

– **Section 3 & 27** – Testimony of Police Officer – Appreciation of – Where the Court is satisfied that the evidence of the police can be independently relied upon, then there is no prohibition in law that the same cannot be accepted without independent corroboration – Court is expected to seek corroboration in such cases as a matter of caution and not as a matter of rule : *Pushpendra Vs. State of M.P., I.L.R. (2011) M.P. *100*

7. Defence Witness/Evidence

– **Section 3** – Defence Evidence – Credential value of defence witness is always at par with that of prosecution witness : *Laxmi Narayan Vs. State of M.P., I.L.R. (2014) M.P. 2177*

– **Section 3** - Defence witness - Credential value of defence witness is always at par with prosecution witness : *Mehboob Ali Vs. State of M.P., I.L.R. (2012) M.P. *101*

– **Section 3** - Defence witness - Defence is not required to prove the defence with the same standard of strict proof, which is applicable and is required to be proved by the prosecution - It would be sufficient if the probable defence has been taken and it has been proved by placing cogent evidence on record : *Rajendra Kumar Gupta Vs. State of M.P., I.L.R. (2013) M.P. 2218*

– **Section 3** - Defence witness - Status of - Defence witnesses are at par with that of prosecution witnesses and their testimony should not be disbelieved merely because they have been examined by the defence side - Appeal allowed : *Rajendra Kumar Gupta Vs. State of M.P., I.L.R. (2013) M.P. 2218*

– **Section 3** – Defence Witness – Status – Status of defence witness is at par with that of prosecution witnesses and their testimony should not be thrown out merely on the basis that they have been examined by defence : *Ram Mohan Agrawal (Dead) Through L.Rs. Vs. State of M.P., I.L.R. (2012) M.P. *46 (DB)*

8. Electronic Evidence

– **Section 3** – Proof – Conversation recorded in cassette not audible before Court – Held – Despite non-audibility of cassette, the fact of demanding bribe can be established by oral evidence of complainant and Panch witnesses : *Jagdish Chandra Raikwar Vs. State of M.P., I.L.R. (2011) M.P. 1004 (DB)*

– **Section 3** – Tape Recorded Version – No evidence that the voice recorded in the cassette of tape recorder is of appellant and complainant – The electronic evidence of demand of alleged bribe (through tape recorded version) can not be accepted : *Subhash Chandra Joshi Vs. State of M.P., I.L.R. (2012) M.P. *73 (DB)*

9. Evidence of Prosecutrix held not reliable

– **Section 3** - Sole testimony of prosecutrix - Rape - Prosecutrix sustaining injuries as a result of beating by the appellant and not in order to oppose the act of rape - Her statement is also not believable on certain counts - Held - Evidence of prosecutrix in this case, is not worthy of credence and can not be made basis of conviction for offence : *Roop Singh Vs. State of M.P., I.L.R. (2011) M.P. 2582*

– **Section 3**, Penal Code (45 of 1860), Section 376 – Rape – Prosecutrix a minor girl of unsound mind – Her evidence could not be recorded as she was found incapable of understanding – Appreciation of evidence – Three witnesses deposed different version about the availability of prosecutrix after incidence – Inflicting of injuries by knife not supported by medical evidence – Statement unworthy of credit – Major inconsistency : *State of M.P. Vs. Keshar Singh, I.L.R. (2015) M.P. 2551 (SC)*

– **Section 3** - See - Penal Code, 1860, Section 376 : *Sohan Singh Vs. State of M.P., I.L.R. (2012) M.P. 1995 (DB)*

10. Evidence of Prosecutrix held reliable

– **Section 3** – Witness – Criminal Procedure Code, 1973 (2 of 1974), Section 161 – Non-recording of statement by police – Prosecutrix who is aged about 5 to 6 years was examined for the first time in Court – I.O. has given an explanation that her statement could not be recorded as she was giving answers only by nodding her head – Entire prosecution case is based on the statement of her mother and Grand mother – Under such circumstances it cannot be said that as the appellant could not effectively cross examine the prosecutrix and thus has suffered prejudice : *Chaitu Singh Gond Vs. State of M.P., I.L.R. (2015) M.P. 1343 (DB)*

11. Eye Witnesses

– **Section 3** - Evidence of Eye Witnesses - Reliability - Appellant caught hold the infant child, push on his chest, inflicted injury over the stomach by knife thereby his intestine has come out - Eye witnesses version supported by doctor - Held - Testimony of witnesses remained in ocular which is apparent from the autopsy report - Prosecution has proved the charge beyond reasonable doubt by cogent evidence : *Thavriya @ Thavar Singh Vs. State of M.P., I.L.R. (2013) M.P. 1722 (DB)*

– **Section 3** - Eye witness - Appreciation - P.W. 5 supported the prosecution case in examination in chief - He was cross examined after 10 months of his examination in chief - Witness resiled from his statement made in examination in chief - No re-examination done by Public Prosecutor - Trial Court has also not exercised its power u/s 165 of Cr.P.C. - Bald statement of witness that first informant reached on the spot after the incident was over, cannot be acted upon : *Somu Vs. State of M.P., I.L.R. (2011) M.P. *37 (DB)*

– **Section 3** - Eye Witnesses - Number of assaults - Eye witnesses say that only assault was made by means of Knife on the chest whereas two stab wounds were found on the abdomen - If the Eye witnesses were true eye witnesses they would not have kept silence for the second assault - Defence witnesses have stated that on the question of lodging F.I.R. with respect to incident which took place in the earlier part of the day, there was exchange of words between the appellants and the deceased and they were separated by them and thereafter the appellants went to lodge F.I.R. - P.W. 9 also admitted the incident of exchange of words, whereas the other eye witnesses denied this aspect - Presence of other two eye witnesses at the time of incident appears to be doubtful : *Sanjay Vs. State of M.P., I.L.R. (2012) M.P. *104*

– **Section 3**, Penal Code (45 of 1860), Section 302 - Appreciation of Evidence - Murder case - Weapon and ammunition used is of uncertain make and quality - Normal pellet pattern based on standard weapons and ammunition, can not be applied with accuracy - Distance from which the shots fired can not therefore have the effect of dislodging a credible eye-witness account : *Prahalad Singh Vs. State of M.P., I.L.R. (2011) M.P. 2309 (SC)*

– **Section 3**, Penal Code (45 of 1860), Section 302 – Eye witness – Reliability – Eye witness stated that A2 assaulted deceased by farsa for three times and A1 assaulted by stick for 2-3 times – In FIR she had stated that only one blow by farsa was given by A2 – Such improvement in 161 statement after the MLC of deceased was done as 5 visible injuries were found – She further admitted that she was collecting cow dung at a place which was 300-400 meters away from place of incident – Identification of accused from their back at a distance of 70-80 feet was not possible by her – Witness not reliable : *Buddhu Pal Vs. State of M.P., I.L.R. (2012) M.P. 774 (DB)*

– **Section 3**, Penal Code (45 of 1860), Section 304 Part II – Eye Witness attributed the role of causing injury on the head of deceased by co-accused – However, in Court evidence he alleged that such injury was caused by appellant No.3 – Held – Any material fact or circumstance which is projected by prosecution at the initial stage of the case is not proved in the same manner and some other thing contrary to such material fact comes in evidence, then such subsequent version could not be considered to hold

conviction against the accused – Appellant No. 3 acquitted for charge under Section 304 Part II and convicted under Section 323/149 of I.P.C. : *Sunder Lal Vs. State of M.P., I.L.R. (2012) M.P. 1313*

– **Section 3** – Solitary Eye Witness – Statement of solitary witness should be consistent, reliable and should be of very high quality and calibre : *Rohit Vs. State of M.P., I.L.R. (2014) M.P. 3203 (DB)*

– **Section 3** - See - Penal Code, 1860, Section 302 : *In Reference Vs. Dilip @ Dipu, I.L.R. (2013) M.P. *4 (DB)*

12. Material Omission/Contradiction in Evidence of Witnesses

– **Section 3** – Witness – Examination in chief of prosecution witnesses was recorded on 17.12.1999 – Witnesses were not cross examined on the ground of non-preparation of case – Prosecution witnesses were cross examined after one month when they turned hostile – Witnesses were either won over or they were threatened not to support the prosecution's case – In such circumstance, previous testimony cannot be brushed aside on the ground that the witness was declared hostile – Deposition of witness given prior to cross examination can be relied upon if there is corroborative evidence to that effect : *Samar Jeet Singh Vs. State of M.P., I.L.R. (2015) M.P. 187 (DB)*

– **Section 3** – Witness – Material omissions and contradictions in the evidence of witnesses – Witnesses were also not declared hostile – Their evidence is binding on prosecution : *Maheshwari Prasad (since dead) Vs. State of M.P., I.L.R. (2011) M.P. 2039 (DB)*

13. Independent Witness

– **Section 3** – Independent & Interested witnesses – A witness is normally to be considered 'independent' unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused to wish to implicate him falsely –The term 'interested witness' postulates that the person concerned must have some direct interest in seeing that the accused person is somehow or the other convicted either because he had some animus with the accused or for some other reason : *Pushpendra Vs. State of M.P., I.L.R. (2011) M.P. *100*

– **Section 3** - Independent Witness - Witness happened to be a witness of 3-4 raids conducted by C.B.I. - One witness works in the same department of the appellant - Witnesses can not be said to be independent - No reliance can be placed : *Rajesh Kumar Goswami Vs. State of M.P., I.L.R. (2011) M.P. 2837 (DB)*

– **Section 3** - Credibility of witnesses - Doctor, who wrote the tehrir for Dying declaration and Naib Tahsildar, who recorded the Dying declaration stating that deceased told them that she got burnt by stove while preparing the food - Both are Government Servants and are independent witnesses - Nothing in cross examination to disbelieve them - Held - the trial Court committed illegality in not placing reliance on testimony of these witnesses : *Ashok Kumar Vs. State of M.P., I.L.R. (2011) M.P. 2532*

– **Section 3** - See - Criminal Procedure Code, 1973, Section 161 & 162 : *Rajesh Kumar Goswami Vs. State of M.P., I.L.R. (2011) M.P. 2837 (DB)*

14. Interested/Related Witness

– **Section 3** - Interested Witness - Testimony - Held - Neither reliable nor sufficient to draw any inference to hold conviction, unless supported by independent witness or evidence : *Kishan Singh Vs. State of M.P., I.L.R. (2014) M.P. 529 (DB)*

– **Section 3** - Interested witness - Testimony of interested and related witness cannot be discarded only on this count but Court is required to scrutinize his testimony with great care and caution : *Gangadhar Vs. State of M.P., I.L.R. (2011) M.P. 202 (DB)*

– **Section 3** - Merely on ground that prosecution witnesses are interested and partisan, their testimony cannot be discarded, but when their evidence appears inconsistent on material particulars & unnatural, it becomes hazardous to place reliance on their evidence to convict the accused persons : *Sunil Datta Vs. State of M.P., I.L.R. (2011) M.P. *50 (DB)*

– **Section 3** - Related witnesses - Evidence of witnesses cannot be discarded merely on the ground of their close relationship - However, their evidence should be examined with caution and circumspection : *Mangna @ Mahendra Vs. State of M.P., I.L.R. (2013) M.P. 216 (DB)*

– **Section 3** – Related witness – Mere relationship does not disqualify a witness – Such evidence is required to be carefully scrutinized and appreciated : *Rakesh Vs. State of M.P., I.L.R. (2012) M.P. 1 (SC)*

– **Section 3** – Related witnesses – Testimony of related witnesses should be examined with the test of close and severe scrutiny – Their testimony cannot be thrown away merely on the ground that they are related witnesses : *Rajeev Lochan Singh Vs. State of M.P., I.L.R. (2014) M.P. 3231 (DB)*

– **Section 3** - Relative Witnesses - Where presence of eye witnesses is proved to be natural and their statements appear truthful disclosure of actual facts leading to occurrence, it shall not be permissible for the Court to discard their evidence - Eye

Witnesses also suffered injuries - No reason to doubt their evidence : *Rem Singh Vs. State of M.P., I.L.R. (2013) M.P. 2003 (DB)*

– **Section 3** - Witness - Merely because the panch witnesses had admitted that they had also witnessed trap proceedings in other CBI cases not sufficient to dub them to be accomplices per se or even as interested witness : *Kailash Kumar Rohitas Vs. State of M.P., I.L.R. (2011) M.P. 2498 (DB)*

– **Section 3** – Witness – Panch Witness – Merely because panch witness has already acted as panch witness in other 4 cases is not sufficient to dub him to an accomplice per se or even as an interested witness : *Munnalal Rajak Vs. State of M.P., I.L.R. (2011) M.P. 1310 (DB)*

– **Section 3** – Witnesses – Related – Merely because witnesses are related is not sufficient to discredit their evidence – Further more, their relationship with deceased was not a factor to affect their credibility as they were more interested in bringing the real assailants to book : *Madan Vs. State of M.P., I.L.R. (2011) M.P. *94*

– **Section 3** – Witness – Relative – No impediment to convict a person on sole testimony of single witness provided he is wholly reliable – Relationship is not a factor to affect the credibility of a witness – Foundation has to be laid if plea of false implication is made : *Ramdas Kachhi Vs. State of M.P., I.L.R. (2012) M.P. 207 (DB)*

– **Section 3** – Witness – Police officer – Evidence of police officer cannot be rejected solely on the ground that he was concerned with success of trap – Presumption that every person acts honestly applies as much in favour of a police officer as any other person : *Munnalal Rajak Vs. State of M.P., I.L.R. (2011) M.P. 1310 (DB)*

– **Section 3** – See – Penal Code, 1860, Section 302 : *Jagannath Yadav Vs. State of M.P., I.L.R. (2015) M.P. 458 (DB)*

– **Section 3** – See – Penal Code, 1860, Section 302 : *Rakesh Vs. State of M.P., I.L.R. (2012) M.P. 1 (SC)*

15. Medical and Ocular Evidence

– **Section 3** - Medical and ocular evidence - Where evidence of solitary witness is in complete variance with medical evidence, the witness cannot be held to be fully reliable - Appeal allowed : *Gangadhar Vs. State of M.P., I.L.R. (2011) M.P. 202 (DB)*

– **Section 3** - See - Penal Code, 1860, Section 302 : *Gulab Rao Nagle Vs. State of M.P., I.L.R. (2014) M.P. 547 (DB)*

– **Section 3** - See - Penal Code, 1860, Section 302 : *Somu Vs. State of M.P., I.L.R. (2011) M.P. *37 (DB)*

– **Section 3** – Non-explanation of injuries of accused – Effect – Injuries found on the person of the appellant – Both the injuries sustained by the accused were not serious – It is not the defence of the appellant that the injuries were caused to him by the deceased – It can not be ruled out that the injuries found on the person of the appellant were caused by the appellant himself – Mere non-explanation of the injuries of the appellant by the prosecution may not affect the prosecution case : *Anil Sharma alias Anil Namdev Vs. State of M.P., I.L.R. (2012) M.P. *53 (DB)*

– **Section 3**, Penal Code (45 of 1860), Section 307 – Attempt to murder – Sole statement of complainant not reliable, being full of contradictions and omissions – Complainant gave a new story during the trial – Medical report was also found doubtful as the name of complainant was different and the complainant was not called before court at the time of evidence of Doctor so that he could be identified on basis of identification marks – The motive was also not proved – Prosecution case was not proved – Appellant acquitted : *Chhotya Vs. State of M.P., I.L.R. (2011) M.P. 2223*

16. Miscellaneous

– **Section 3** - Conduct of witness - Merely non-shouting of eyewitness would not dilute the prosecution case, because on seeing the incident how a witness would react it depends upon his mind and there cannot be any barometer or yardstick : *State of M.P. Vs. Suresh Singh, I.L.R. (2011) M.P. *49 (DB)*

– **Section 3**, Criminal Procedure Code, 1973 (2 of 1974), Section 154 – F.I.R. – Witness, who lodged the F.I.R. could not be examined before the trial Court – F.I.R. was not proved in a proper manner – Can not be read against accused – But being prosecution document it can be read in favour of the accused : *Vrijlal Ghosi Vs. State of M.P., I.L.R. (2012) M.P. 1351 (DB)*

– **Section 3** – Evidence of prosecution – Major portion deficient – Some accused persons acquitted – Residue sufficient – Held – Duty of Court to separate grain from the chaff and open to Court to convict an accused on basis of residue portion : *Uma Shankar Gautam Vs. State of M.P., I.L.R. (2015) M.P. 1403 (SC)*

– **Section 3** - Inconsistent Statements - At one or two stages of the same trial - Testimony becomes unreliable - Held - Conviction based on such statements/testimony deserves to be set aside : *Kishan Singh Vs. State of M.P., I.L.R. (2014) M.P. 529 (DB)*

– **Section 3**, Penal Code (45 of 1860), Section 306 - Abetment of suicide - Proof of - No evidence and material available on record to hold that just before the incident, appellants abetted deceased for committing suicide - Held - Trial Court completely mis-

directed itself in holding that the appellants are guilty of the offence u/s 306 of IPC : *Shripati @ Shriprasad Vs. State of M.P., I.L.R. (2011) M.P. 2559*

– **Section 3** - Proof - Memorandum of acknowledgment of oral partition - Document written on plain paper - Neither pleaded in the written statement nor produced earlier during plaintiff evidence - Attesting witnesses are told to be dead - Scribe and Notary not produced in evidence - Held - It appears that the document has been prepared falsely and fabricatedly : *Om Narayan Bohre Vs. Rajendra Prasad Bohre, I.L.R. (2013) M.P. 1953 (DB)*

– **Section 3** - Proof of Title - If the title of the plaintiff is challenged, he is not only bound to prove his title but he has to further prove the title of his vendor also : *Rashid Khan Vs. State of M.P., I.L.R. (2011) M.P. 2801*

– **Section 3** – Witnesses – In criminal cases, witnesses can be placed in three categories i.e., firstly wholly reliable, secondly wholly unreliable and thirdly who neither wholly reliable nor wholly unreliable – For a witness of third category, his statement cannot be accepted until and unless there is corroborative evidence to support the statement : *Surendra Kumar Vs. State of M.P., I.L.R. (2015) M.P. 1541*

– **Section 3** – Witness – Minor discrepancies – Minor discrepancies between narrations of witnesses when they speak on details, should not be used to discard the evidence in its entirety, unless such discrepancies are of material dimensions : *Rakesh Vs. State of M.P., I.L.R. (2012) M.P. 1 (SC)*

– **Section 3** - Witness - With a view to explain a thing in a better way, if something new is added then such contradiction cannot be said to be material : *State of M.P. Vs. Ravikumar Singh Malhotra, I.L.R. (2013) M.P. 442 (DB)*

Political Rivalry

– **Section 3 & 8** - False implication - Motive - Complainant is a political person and his wife had fought the election for member of Panchayat - Appellant was Up-Sarpanch at the time of incident - Held - Political rivalry between appellant and complainant cannot be ruled out : *Ramadhar @ Pappan Khamparia Vs. State of M.P., I.L.R. (2011) M.P. *32*

Hearsay Evidence

– **Section 3 & 32** - Hearsay Evidence - P.W. 2 stated that he was informed by complainant that her husband was cruel to her - Cannot be accepted under Section 32 of Act as complainant is still alive : *Santosh Vs. State of M.P., I.L.R. (2013) M.P. 2990*

– **Section 3 & 114** - See - Prevention of Corruption Act, 1988, Section 13(1)(e) : *Kamal Lal Gharde Vs. State of M.P., I.L.R. (2011) M.P. 2514 (DB)*

– **Section 6** – See – Penal Code, 1860, Section 302 : *Barjiya Vs. State of M.P., I.L.R. (2012) M.P. 182 (DB)*

Conduct of Accused

– **Section 8** – Conduct – Conduct of the appellant that if he did not demand and receive the money, why he fled away from the spot ? – This unnatural conduct is also relevant and admissible as evidence against the appellant : *Laxmikant Vs. State of M.P., I.L.R. (2015) M.P. 1034 (DB)*

Motive of Crime

– **Section 8** - Motive - Motive of crime is a double edged weapon and can be used either side - Possibilities of the appellants being falsely implicated in the case on account of previous animosity can not be completely ruled out - Benefit of the same necessarily shall go to the accused persons : *Amar Singh Vs. State of M.P., I.L.R. (2011) M.P. *134 (DB)*

Discrepancies and Infirmities in Prosecution Case

– **Section 8**, Penal Code (45 of 1860), Section 302 - Discrepancies and infirmities - Discrepancies and infirmities in the case of the prosecution - May not affect the case of the prosecution individually but taking them cumulatively renders the case of the prosecution against the appellant highly doubtful - It shall be totally unsafe to place reliance on such incredible and untrustworthy testimony of the prosecution witnesses : *Amar Singh Vs. State of M.P., I.L.R. (2011) M.P. *134 (DB)*

– **Section 8** – See – Penal Code, 1860, Section 302 : *Siddar Khan Vs. State of M.P., I.L.R. (2011) M.P. 1016 (DB)*

Test Identification Parade

– **Section 9** - Delayed Test Identification Parade - After a lapse of considerable time identification by strangers cannot be relied on - Identification by a witness for the first time in court, should not form basis of conviction - Such evidence is a weak type of evidence unless corroborated by the previous parade or other evidence - Previous Identification is a check valve to the evidence of Identification in the court : *Jagmohan Vs. State of M.P., I.L.R. (2013) M.P. 1728*

– **Section 9** – Identification of article – No other ornament was mixed at the time of Test Identification of seized ornaments – Person conducting Identification not

examined – Independent witnesses of seizure not supported prosecution case – Seizure and identification of ornaments not proved : *Gope Singh @ Gope Vs. State of M.P., I.L.R. (2015) M.P. 1521*

– **Section 9** - Identification of articles - Details of ornaments - Merely because no details of design of chain or other articles were given by the father of the deceased would not make his evidence unreliable as the articles were identified by him because deceased used to wear these articles - Initial suspicion was that of abduction and demand of ransom and only after recovery of dead body the father of the deceased came to know that the aforesaid articles were removed from the body of his son - Recovery of the articles from the possession of the appellant proved : *In Reference Vs. Rahul Rajak, I.L.R. (2012) M.P. 2034 (DB)*

– **Section 9** - Identification of ornaments - Witness admitted that the no ornaments were mixed with the ornaments identified by her - Police party was also present at the time of identification and women of her caste wear similar type of ornaments - Identification not proper : *Babuji Vs. State of M.P., I.L.R. (2011) M.P. 3173 (DB)*

– **Section 9** – See – Penal Code, 1860, Section 364A : *Mohar Singh Vs. State of M.P., I.L.R. (2011) M.P. 1355 (DB)*

– **Section 9** - Test Identification Parade - Complainant has admitted that the appellants were shown to him in the hospital prior to the T.I.P. - Test Identification is of no consequence : *Pankaj Shah Vs. State of M.P., I.L.R. (2013) M.P. 1448*

– **Section 9** – Test Identification Parade of articles – I.O. did not arrange for T.I.P. to be conducted by an Executive Magistrate – Said proceedings were conducted by a Corporator who had no experience of conducting T.I.P. – Artificial ornaments were mixed – Recovery and Seizure of ornaments not proved beyond doubt : *In Reference Vs. Santosh Kumar Singh, I.L.R. (2011) M.P. 1581 (DB)*

– **Section 9** – Test Identification Parade – Person conducting test identification parade not examined – In memo it is mentioned that 54 persons were mixed, however, no description is given in memo about those 54 persons – An explanation was required from the person who conducted T.I.P. that whether stature of persons mixed in the line of identification was similar to the appellants or not – Age group of accused persons was different and therefore, it was to be shown that persons who were mixed with appellants had similarity in their faces and appearance – Appellants were arrested on 23-6-1989 and T.I.P. was held on 5-8-1989 – No reason shown by T.I. as to why the T.I.P. was not arranged within the reasonable time – T.I.P. inspires no confidence : *Gope Singh @ Gope Vs. State of M.P., I.L.R. (2015) M.P. 1521*

– **Section 9** - Test Identification Parade - Person who conducted Test Identification Parade not examined - Property was also shown in the police station prior to holding of T.I.P. - Not creditworthy : *Lakkhu @ Lakhanlal Gond Vs. State of M.P., I.L.R. (2013) M.P. 934 (DB)*

Relevancy of News Published

– **Section 9** - Relevant fact - News published in newspaper about detention of appellants prior to seizure of Charas is relevant and cannot be disbelieved : *Kishorilal Vs. State of M.P., I.L.R. (2011) M.P. 498*

Admission

– **Section 17 & 18** - Admission - Written statement by L.Rs. of one defendant (seller of suit property), admitting the facts of the plaint, does not affect the right of another defendant (buyer of the property) : *Gajanand Vs. Gordhan, I.L.R. (2013) M.P. 1422*

– **Section 18** - See - Civil Procedure Code, 1908, Order 8 Rules 3 & 5 : *Hari Singh Vs. Vikram Singh, I.L.R. (2013) M.P. 1654*

– **Section 21** - Proof of admissions - Admissions are substantive evidence by themselves though they are not conclusive proof of the matter admitted - Witness must be asked questions which would test his veracity more so where there is a direct contradiction and conflict between his statements before the Court and alleged previous admission : *Jagdish Prasad Vs. Kanhaiyalal @ Kandhai, I.L.R. (2013) M.P. 1122*

– **Section 21** – Seizure of Smack – Smack of light yellow colour was seized whereas colour of powder was light grey as per F.S.L. report – Both the colours are different therefore, it is doubtful that powder which was seized was sent for analysis : *Raziya Vs. State of M.P., I.L.R. (2012) M.P. 173*

– **Section 21, 138 & 146** - Proof of admissions - Defendant in reply to notice had stated that the plaintiff had become unchaste after the death of her husband - In written statement it was pleaded that the plaintiff was unchaste during the life time of her husband and therefore, she was ousted from her matrimonial house in the year 1950 itself - As the defendant had made clear and specific statements which were directly in conflict with the statement in reply, the appellants were required to and should have confronted the defendant with the same during his cross-examination to test his veracity : *Jagdish Prasad Vs. Kanhaiyalal @ Kandhai, I.L.R. (2013) M.P. 1122*

– **Section 24** – See – Penal Code, 1860, Section 302 : *Hemraj Vs. State of M.P., I.L.R. (2015) M.P. 437 (DB)*

Confessions

– **Section 21** – Extra judicial confession – Confession by accused to a stranger – Held – It is a weak piece of evidence and it cannot be relied without further corroboration : *Gajraj Singh Vs. State of M.P., I.L.R. (2015) M.P. 1507 (DB)*

– **Section 25** – Confession — Section covers a confession made when accused was free and not in police custody, as also the one made before any investigation has begun – F.I.R. being a confessional statement of accused would not be admissible in evidence being hit by the Section : *Ganesh Vs. State of M.P., I.L.R. (2011) M.P. 1343 (DB)*

– **Section 25**, Criminal Procedure Code, 1973 (2 of 1974), Section 154 – Confessional Statement – Appellant/accused came to police station and made a confessional statement to Sub-Inspector, who recorded the F.I.R. – Held – This would be inadmissible against the accused : *Premdas Ahirwar Vs. State of M.P., I.L.R. (2012) M.P. 1381 (DB)*

Seizure of Articles from Accused

– **Section 3 & 27**, Penal Code (45 of 1860), Section 302 – Murder – Seizure of blood stained article (axe) from accused – Chemical Examiner only opined about the presence of blood on the article – Held – Unless and until the chemical examiner opined about the presence of human blood on the article and that too belongs to the group of the deceased, no inference can be drawn that the appellant/accused caused the death of the deceased : *Premdas Ahirwar Vs. State of M.P., I.L.R. (2012) M.P. 1381 (DB)*

– **Section 27** – Confessional statement - Admissibility – Confession of accused except regarding recovery of article from the stated concealed place, is not admissible in evidence : *Sumanlata Vs. State of M.P., I.L.R. (2012) M.P. *36*

– **Section 27** – No evidence that the appellant No.1 did any intercourse with the prosecutrix, at least the semen sample of the appellant No.2 could be compared from the semen obtained from the vaginal swab of the deceased prosecutrix : *In Reference Vs. Ganesh Lodhi, I.L.R. (2014) M.P. 2453 (DB)*

– **Section 27** - Recovery of articles - Blood Group - No report about blood group of deceased - In absence of comparison of blood group of deceased with blood group of stains found on articles no inference can be drawn against the appellant : *Lakhu @ Lakhanlal Gond Vs. State of M.P., I.L.R. (2013) M.P. 934 (DB)*

– **Section 27** - Recovery of Dagger - Seizure witnesses have admitted that some police officer had gone to the spot and had directed the constables to search a dagger

which was searched by a constable from the stack of bricks - It is clear that the dagger was not seized from the possession of the appellant or due to information given by him : *Sanjay Vs. State of M.P., I.L.R. (2012) M.P. *104*

– **Section 27** - Recovery of Dead Body - Appellant disclosed that they had thrown the dead body in the river at a particular place - Dead Body recovered from another place - Held - It is common knowledge that a thing thrown in river may not be found at the same place, as it might have travelled to some other place with the flow of water - Dead body thrown in the river may not be recovered at the time when it is being searched and it may appear after some more time - If the body of deceased was recovered by other persons on the disclosure made by accused, it is to be deemed to have been recovered in consequence of the information given by accused : *In Reference Vs. Rahul Rajak, I.L.R. (2012) M.P. 2034 (DB)*

– **Section 27** – Recovery of Weapon – Katar is alleged to have been recovered from an open place and everybody had access to the site – Blood group could not be ascertained – Recovery unreliable : *Ritesh Vs. State of M.P., I.L.R. (2015) M.P. 218 (DB)*

– **Section 27** – See – Criminal Procedure Code, 1973, Section 227 & 228 : *Raghu Thakur Vs. State of M.P., I.L.R. (2012) M.P. 1447*

– **Section 27** - See - Criminal Procedure Code, 1973, Section 307 : *In Reference Vs. Rahul Rajak, I.L.R. (2012) M.P. 2034 (DB)*

– **Section 27** – Seizure Memo – Contraband was seized and appellant was arrested on spot and thereafter F.I.R. was lodged after coming back to Police Station – Seizure Memo and Arrest memo bears the crime number – Documents are tampered : *Raziya Vs. State of M.P., I.L.R. (2012) M.P. 173*

– **Section 27** – Seizure of Weapons – Independent witnesses turned hostile – I.O. did not specifically depose that weapon was seized by the seizure memo – Seized weapon not produced before the Court – Prosecution also did not prove that injuries could be caused by seized weapon - Seizure of weapon not proved : *Ramkumar Vs. State of M.P., I.L.R. (2012) M.P. 752*

– **Section 27** - Seizure of weapon - Non- production -Stones alleged to have been used for committing crime were not produced in evidence - Seizure memo was not legally proved : *Bhursingh Vs. State of M.P., I.L.R. (2011) M.P. 3184 (DB)*

– **Section 27** – Seizure of weapons – Weapons were seized after 2 months of incident – No memorandum was recorded – Independent witnesses not examined – FSL report not proved – No question put in statement under Section 313 of Cr.P.C., signature not proved : *Buddhu Pal Vs. State of M.P., I.L.R. (2012) M.P. 774 (DB)*

– **Section 27** – Seizure of Weapon – When there is a direct evidence, non- seizure of weapon is of no consequence : *Barjiya Vs. State of M.P., I.L.R. (2012) M.P. 182 (DB)*

SYNOPSIS : Section 32

- | | |
|--------------------------------------|---|
| 1. Corroborative Evidence | 2. Doctor's Certification |
| 3. In Question Answer Form | 4. Oral Statement of Deceased |
| 5. Reliability/ Admissibility | 6. Two/Multiple Dying Declarations |
| 7. Miscellaneous | |

1. Corroborative Evidence

– **Section 32** – Dying Declaration – Conviction can be safely placed on dying declaration provided the said dying declaration is free from vice of infirmities – If the dying declaration is recorded under suspicious circumstances, then it cannot be acted upon without corroborative evidence : *Ashok Prajapati Vs. State of M.P., I.L.R. (2015) M.P. 1352 (DB)*

– **Section 32** – Dying declaration – Recording by Medical Officer – Magistrate not available – Deceased suffered 98% burn injuries – Physical and mental condition – Held – Dying declaration cannot be relied upon without independent corroboration : *Gajraj Singh Vs. State of M.P., I.L.R. (2015) M.P. 1507 (DB)*

– **Section 32(1)** - Dying Declaration - "nemo moriturus praesumitur mentire" means a man will not meet his master with a lie in his mouth - Dying declaration is clear cogent and trustworthy, a conviction can be based solely on its basis and there is no need for any corroboration by any witness - Conviction of the appellant under section 498-A IPC and 306 IPC is affirmed - Appeal allowed in part : *Mohd. Mubeen Vs. State of M.P., I.L.R. (2012) M.P. 2214*

2. Doctor's Certification

– **Section 3 & 32** – Dying Declaration – Proof – Dying declaration recorded by Naib Tahsildar and Doctor certified it at the bottom – Doctor stating in court that the deceased was throughout conscious while giving her statement – Held – The trial Court was erroneous in disbelieving the Dying declaration on the ground that Doctor has not certified in the beginning and in the end : *Santosh Singh Vs. State of M.P., I.L.R. (2012) M.P. 1339*

– **Section 32** – Dying Declaration – Certificate by Doctor – Doctor who had certified that victim is in fit state of mind to give statement not examined – In view of the statement of the Executive Magistrate that he got the certificate of the duty doctor, then

non-examination of duty doctor is not fatal : *Ashok Prajapati Vs. State of M.P., I.L.R. (2015) M.P. 1352 (DB)*

– **Section 32** - Dying declaration - Fitness certificate of deceased - Not necessary, where the person who recorded the statement is himself a doctor : *Prakash Wagh Vs. State of M.P., I.L.R. (2011) M.P. 239 (DB)*

– **Section 32** - Dying Declaration - Law does not provide who can record a dying declaration - There is no prescribed form, format or procedure for the same - Person who records the dying declaration must be satisfied that the maker is in fit state of mind and is capable of making such a statement - Requirement of certificate by Doctor in respect of such state of mind is not essential in every case : *State of M.P. Vs. Dal Singh, I.L.R. (2013) M.P. 1265 (SC)*

– **Section 32** - Dying Declaration - Mere satisfaction of Magistrate regarding physical fitness of the person to record dying declaration is sufficient - Statement has been proved - Then, there is no need to obtain fitness certificate or medical examination by the Doctor : *Rafiq Vs. State of M.P., I.L.R. (2014) M.P. 515 (DB)*

– **Section 32** - Dying Declaration - Recorded by Naib Tahsildar - Before recording the above statement, the doctor concerned certified that the deceased was fit for giving statement - The doctor also certified that the patient was conscious while giving the dying declaration - There is no reason to reject the same - Prosecution is fully justified in relying on the same : *Ram Viswas Vs. State of M.P., I.L.R. (2013) M.P. 1 (SC)*

3. In Question Answer Form

– **Section 32** – Dying declaration – Nature – Not recorded in question and answer form – Members of deceased's in-laws present – Possibility of influencing her – Not voluntary declaration : *Srikant Vs. State of M.P., I.L.R. (2015) M.P. 1385 (SC)*

4. Oral Statement of Deceased

– **Section 32(1)** - Oral statements made by the deceased to her parents and near relatives prior to her death relating to the cause of her death are admissible in evidence after her death : *Raman Singh Vs. State of M.P., I.L.R. (2011) M.P. 259*

5. Reliability/ Admissibility

– **Section 32** - Dying declaration - Averment by deceased in FIR recorded by Head Constable that appellatant, when the deceased sat on platform of witness (PW-11), came and asked him to eat sulphas and die - Neither supported by PW-11 nor by mother, father and uncle of deceased - The averment does not appear to be a truthful statement made by deceased : *Mijajilal Vs. State of M.P., I.L.R. (2011) M.P. 253*

– **Section 32** - Dying Declaration - Deceased suffer 45 injuries including gun shot injuries thereby sustaining fatal injuries to the internal organs - Deceased died because of excessive haemorrhage from injuries - It would not be safe to place reliance on the oral dying declaration by holding that deceased was in fit state of mind and body to make a dying declaration : *Bhuria Vs. State of M.P., I.L.R. (2013) M.P. 917 (DB)*

– **Section 32** - Dying Declaration – Doctor who recorded dying declaration not examined – Doctor who signed as attesting witness examined by prosecution – Attesting witness admitted in evidence that earlier deceased had told that she caught fire by accident but later on she retracted from her statement and alleged that appellant poured kerosene oil on her and burnt her – Factum of burning by accident not mentioned in Dying Declaration – Held – It appears that entire dying declaration was not recorded – Appellant is entitled for benefit : *Juggan Alias Sabir Khan Vs. State of M.P., I.L.R. (2011) M.P. 1272 (DB)*

– **Section 32** – Dying Declaration – Dying declaration is a substantive piece of evidence and an order of conviction can be safely recorded : *Gudda Alias Sultan Singh Vs. State of M.P., I.L.R. (2012) M.P. *57 (DB)*

– **Section 32** – Dying declaration – Dying declaration of deceased recorded by Executive Magistrate – Doctor found her fit to give statement and made certification and endorsement on the dying declaration – Mere fact that the condition of the deceased was found to be serious and critical by the doctors at the time of her admission in hospital, cannot lead to an assumption in absence of any such evidence that the deceased was not able to speak or give statement : *Babu Lal Vs. State of M.P., I.L.R. (2011) M.P. 1026 (DB)*

– **Section 32** - Dying declaration - Dying declaration recorded by Doctor - No evidence on record to indicate that anybody prompted or persuaded deceased to implicate appellant - No material to indicate that Doctor entertained any ill will or grudge against appellant - Dying declaration recorded by Doctor worth reliance - Appeal dismissed : *Somat Vs. State of M.P., I.L.R. (2011) M.P. 535 (DB)*

– **Section 32** - Dying Declaration - Dying declarations recorded by two medical experts and one Executive Magistrate - No reason for these independent witnesses to speak lie or concoct document against appellant - Dying declarations reliable : *Santosh Vs. State of M.P., I.L.R. (2011) M.P. 196 (DB)*

– **Section 32** – Dying Declaration – If Dying declaration is recorded in accordance with law, is reliable and gives a cogent and possible explanation of the occurrence of events – Dying Declaration can certainly be relied upon by the Court and could form the sole piece of evidence resulting in conviction of accused – Admissibility of dying declaration is based on the principle that the sense of impending death produces

in a man's mind, the same feeling as that the conscientious and virtuous man under oath : *Bhajju @ Karan Singh Vs. State of M.P., I.L.R. (2012) M.P. *42 (SC)*

– **Section 32** - Dying declaration - In the inquiry report prepared on the same day, it is mentioned that deceased was unconscious and vomiting - Doing so doctor must have taken 15 minutes - Victims brought to hospital at 10:30 - Recording of dying declaration between 11:00 to 11:15 - Therefore, it becomes extremely doubtful that deceased was in fit condition to make statement - Dying declaration neither bears the signature nor the thumb impression of deceased - No explanation by prosecution for the same - Dying declaration can hardly be sufficient as an unimpeachable document for safely basing the conviction : *Rakesh Patel Vs. State of M.P., I.L.R. (2013) M.P. 2952 (DB)*

– **Section 32** – Dying Declaration – Recorded by Executive Magistrate – Endorsement and certificate of doctor about the fitness of deceased for making the dying declaration, proved by Executive Magistrate – None of the doctors examined in the court stated about making of the certification about the fitness of deceased for making the dying declaration, but from the evidence of Executive Magistrate, it was proved that doctor examined the patient and certified that she was fit to give statement – Held – There appears no valid reason to suspect that deceased was not in a position to give the statement when Executive Magistrate himself felt satisfied about the fitness of the deceased : *Kamla Bai Vs. State of M.P., I.L.R. (2011) M.P. 1327 (DB)*

– **Section 32** - Dying Declaration - Recorded by the police and supported by other evidence is admissible in evidence - Merely on hyper technical grounds it cannot be disbelieved - Held - Could be a basis for conviction : *Rafiq Vs. State of M.P., I.L.R. (2014) M.P. 515 (DB)*

– **Section 32** – Dying Declaration – Statement recorded by Police – After receiving intimation from the hospital, the A.S.I. immediately went there and recorded the statement after obtaining certificate from the doctor about the fitness of deceased – There is absolutely no material on record that A.S.I. was in any way interested in securing prosecution or conviction – He had also sent a requisition to Executive Magistrate for recording a regular dying declaration – The statement could be treated as a dying declaration of deceased : *Kamla Bai Vs. State of M.P., I.L.R. (2011) M.P. 1327 (DB)*

– **Section 32** - Dying Declaration - Statement recorded by police officer - The same is not challenged on the ground that the officer who recorded the statement was in any manner interested in bringing about the conviction of appellants by concocting the said statement - It could not be held that the statement was doubtful or suspicious : *Suresh Vs. State of M.P., I.L.R. (2013) M.P. 1177 (DB)*

– **Section 32**, Penal Code (45 of 1860), Section 302 - Dying Declaration - Deceased was kept as a mistress - She demanded money for the marriage of her daughter which was denied by the appellant - Dying Declaration and statement of deceased were recorded - On careful perusal of dying declaration along with statement, the dying declaration is not beyond doubt as the deceased was in a state of helplessness and frustration on account of refusal of appellant for giving marriage expenses to her - Conviction of appellant not sustainable - Appeal allowed : *Ram Kripal Kahar Vs. State of M.P., I.L.R. (2013) M.P. 205 (DB)*

– **Section 32, 59, 61 & 62** – Dying declaration – Proof of – The contents of a document (dying declaration) can be proved by the production and proof of the said document before the Court : *Babu Lal Vs. State of M.P., I.L.R. (2011) M.P. 1026 (DB)*

6. Two/Multiple Dying Declarations

– **Section 32** – Dying declaration – Reliability – Two dying declarations – Contrary to each other – Not reliable : *Srikant Vs. State of M.P., I.L.R. (2015) M.P. 1385 (SC)*

– **Section 32** – Dying declaration – Two dying declarations, one recorded by Executive Magistrate and another by A.S.I. – Executive Magistrate duly authorized to record dying declaration obtained the fitness certificate and sent the original dying declaration to the C.J.M. after its recording – No reason for Executive Magistrate to have recorded the statement of deceased falsely – No suggestion that Executive Magistrate entertained any grudge or animus against the accused persons for recording false statement – Dying declaration recorded by Executive Magistrate was a genuine document and correct account of the statement made by deceased – Dying declaration alleged to have been recorded by A.S.I. did not inspire confidence and was rightly disbelieved by the trial Court : *Ramesh Ahirwar Vs. State of M.P., I.L.R. (2011) M.P. *85 (DB)*

– **Section 32** – Two Dying Declaration – Evidentiary Value – The evidence of dying declaration against mother-in-law (A-1) consistent, however, it appeared inconsistent and doubtful about the act attributed to A-2 – The conviction of Mother-in-law (A-1) by the trial court was justified – It would not be safe to uphold the conviction of A-2 on the basis of evidence of dying declarations – Appeal partly allowed : *Kamla Bai Vs. State of M.P., I.L.R. (2011) M.P. 1327 (DB)*

– **Section 32**, Penal Code (45 of 1860) , Section 302 – Dying Declaration – No one was present in the house at the time of incident – Dying declaration was made by injured to two witnesses who reached on the spot immediately that she sustained burn injuries by chulha – No motive for appellant to kill his wife – No mention in M.L.C. that whether smell of kerosene oil was found on the body or not – Mother and maternal uncle

of the deceased were present when the second dying declaration was recorded by Executive Magistrate – Second dying declaration appears to have been given under the influence of mother and maternal uncle – Deceased died within 2 months of marriage and there was no demand of dowry – Second dying declaration not trustworthy – Appellant acquitted : *Ashok Prajapati Vs. State of M.P., I.L.R. (2015) M.P. 1352 (DB)*

– **Section 32** - Multiple dying declaration - Each dying declaration has to be considered independently on its own merit as to its evidentiary value and one dying declaration cannot be rejected because of the contents of others - It is the duty of Court to consider each of them in its correct perspective and satisfy itself which one of them reflects the true state of affairs : *Somat Vs. State of M.P., I.L.R. (2011) M.P. 535 (DB)*

– **Section 32** – Multiple Dying Declarations – In case of multiple dying declarations, Court has to scrutinize all the dying declarations – Court must find out whether the different dying declarations are consistent with each other in material particulars before accepting and relying upon the same : *Santosh Rai Vs. State of M.P., I.L.R. (2012) M.P. *8 (DB)*

– **Section 32** - Multiple Dying Declarations - Multiple Contradictory dying declarations - Test of common prudence would be to first examine which of the dying declaration is corroborated by other prosecution evidence - Condition of deceased, medical evidence and voluntariness and genuineness of statement, physical and mental fitness of deceased and possibility of deceased being tutored are some factors which would guide the exercise of judicial discretion by Court : *Shudhakar Vs. State of M.P., I.L.R. (2012) M.P. *93 (SC)*

– **Section 32** – Multiple Dying Declaration – When there are more than one dying declaration and on the material points they are contradictory to each other, the benefit will go to the accused : *Juggan Alias Sabir Khan Vs. State of M.P., I.L.R. (2011) M.P. 1272 (DB)*

7. Miscellaneous

– **Section 32** - See - Criminal Procedure Code, 1973, Section 161 : *Suresh Vs. State of M.P., I.L.R. (2013) M.P. 1177 (DB)*

– **Section 32** - See - Penal Code, 1860, Section 302 : *Gajendra Singh Chouhan Vs. State of M.P., I.L.R. (2013) M.P. 939 (DB)*

– **Section 32** – See – Penal Code, 1860, Section 302 : *Garibdas @ Pappu Choudhari Vs. State of M.P., I.L.R. (2014) M.P. 1923 (DB)*

– **Section 32** – See – Penal Code, 1860, Section 302 : *Guddi Bai @ Sahodara Bai Vs. State of M.P., I.L.R. (2015) M.P. 3054 (DB)*

– **Section 32** - See - Penal Code, 1860, Section 302 : *Kisna Vs. State of M.P., I.L.R. (2012) M.P. 2519 (DB)*

– **Section 32** - See - Penal Code, 1860, Section 302 : *Moved by Sessions Judge, Burhanpur Vs. Jitendra, I.L.R. (2013) M.P. 223 (DB)*

– **Section 32** - See - Penal Code, 1860, Section 302 : *Prakash Wagh Vs. State of M.P., I.L.R. (2011) M.P. 239 (DB)*

– **Section 32** - See - Penal Code, 1860, Section 302 : *Sanju Vs. State of M.P., I.L.R. (2013) M.P. 1712 (DB)*

– **Section 32** - See - Penal Code, 1860, Section 302 : *State of M.P. Vs. Dal Singh, I.L.R. (2013) M.P. 1265 (SC)*

– **Section 32** – See – Penal Code, 1860, Section 302 : *Vikram Singh Vs. State of M.P., I.L.R. (2012) M.P. *40 (DB)*

– **Section 32** – See – Penal Code, 1860, Section 304-B : *State of M.P. Vs. Surendra Vishwakarma, I.L.R. (2015) M.P. 2251 (DB)*

– **Section 32 & 145** - See - Penal Code, 1860, Section 307 & 498A : *State of M.P. Vs. Rakesh Kumar, I.L.R. (2013) M.P. 2224 (DB)*

Relevancy of Register Entries

– **Section 35** - Date of Birth - Entries in School Register - An entry relating to date of birth made in school register is relevant and admissible however, such entry is of not much evidentiary value to prove the age of the person in absence of material on which the age was recorded - As there is no evidence that at whose instance and on what material the date of birth was recorded in school admission register, such entry loses its evidentiary value : *Dilip Singh Gurjar Vs. State of M.P., I.L.R. (2013) M.P. 1521 (DB)*

– **Section 35** - See - Panchayat Nirvachan Niyam, M.P. 1995, Rule 35(2) : *Basanti Bai (Smt.) Vs. Smt. Premwati Bai, I.L.R. (2012) M.P. 2416*

Decree obtained by Fraud or Collusion

– **Section 44** – Decree obtained by fraud or collusion – Ex-parte judgment and decree obtained by the defendant/appellant on the basis of forged document, by playing

fraud on the Court – May well be avoided by the plaintiff/respondent by virtue of the Section : *Basant Kumar Gaur Vs. Suggamal, I.L.R. (2011) M.P. 1534*

– **Section 44** - Fraud or Collusion in obtaining judgment - Who can challenge - A person affected by the fraud can impeach the same and can sue to set aside the judgment and its consequences - A stranger to a proceeding can always plead and prove the fraudulent nature of the transaction, even if it be a decree of the Court - Appeal dismissed : *Hameeda Begum (Smt.) Vs. Inder Kumar Jain, I.L.R. (2012) M.P. 2797*

Opinion of Experts

– **Section 3 & 45** – Proof – Merely because the handwriting expert has given his opinion, powers of the Courts are not curtailed, while examining documents with reference to the pleadings and other material on record – An unfounded claim of money without proving the original transaction can not be accepted, on the basis of such a report and scanty evidence – Trial Judge has not committed any mistake or illegality in dismissing the suit : *Mahesh Chandra Vs. Kamal Kumar, I.L.R. (2011) M.P. 2202*

– **Section 45**, Civil Procedure Code (5 of 1908), Section 151 - Medical Examination of defendant - Respondent filed application for divorce under Section 12 of Hindu Marriage Act, on the ground of impotency - Held - Family Court can issue direction for medical examination of a party regarding alleged impotency - Such direction does not violate the fundamental right flowing from Article 21 of Constitution : *Amol Chavhan Vs. Smt. Jyoti Chavhan, I.L.R. (2011) M.P. 3076*

– **Section 45** - Even if the application to get the document examined by handwriting expert was filed at the fag end of the trial when the case was fixed for final argument, the law is not so much harsh so as to shut down the doors to provide justice to the parties : *Asharam Vs. Suraj Singh Baghel, I.L.R. (2011) M.P. 684 (DB)*

– **Section 45** - Examination of thumb impression - Petitioner has filed a suit for declaration for declaring the sale deeds as null on the ground that he has neither entered in any transaction of sale with the defendants nor has sold the property by executing the aforesaid sale deeds with his thumb impression - Held - Assistance of handwriting expert is necessary to adjudicate the disputed question with respect of thumb impression - Petition allowed : *Netlal Vs. Saligram, I.L.R. (2012) M.P. 2961*

– **Section 45** – Expert Opinion – Expert opinion can be admitted only when the expert opining the act has actually seen the corpus – Merely seeing the postmortem report and opining the expertness is not admissible : *Ritesh Vs. State of M.P., I.L.R. (2015) M.P. 218 (DB)*

– **Section 45** – Handwriting expert – Opinion of handwriting expert is not conclusive, but may be rebutted by making out different discrepancies/shortcomings in the process pertaining to the examination of disputed document with reference to the specimen/standard handwriting and signatures : *Mahesh Chandra Vs. Kamal Kumar, I.L.R. (2011) M.P. 2202*

– **Section 45**, Negotiable Instruments Act (26 of 1881), Section 138 – Handwriting expert – Applicant alleged that although the cheque bears his signature however entries were made subsequently by complainant – Matter can be referred to handwriting expert to ascertain the age of entries – Application allowed : *Rajendra Mundra Vs. Kailash Jain, I.L.R. (2015) M.P. 1594*

– **Section 45** – See – Criminal Procedure Code, 1973, Section 125 : *Pushpendra Singh Thakur Vs. Smt. Mamta Thakur, I.L.R. (2012) M.P. 292*

– **Section 45** - See - Hindu Marriage Act, 1955, Section 12 & 13 : *Alka Sharma Vs. Ajaykant Sharma, I.L.R. (2011) M.P. *3 (DB)*

– **Section 45** – See – Negotiable Instruments Act, 1881, Section 20 : *Iqrar Ahmed Vs. Mohd. Sadiq, I.L.R. (2015) M.P. 511*

– **Section 45** - See - Penal Code, 1860, Section 376 : *Chhote alias Surendra Vs. State of M.P., I.L.R. (2013) M.P. 1705*

– **Section 45 & 46** – See – Medical Jurisprudence : *Praveen Kumar Vs. State of M.P., I.L.R. (2012) M.P. 1327 (DB)*

– **Section 45 & 47** - Expert Opinion - As a matter of extreme caution and judicial sobriety, the Court should not normally take up itself the responsibility of comparing the disputed signatures with that of admitted signatures or handwriting - In the event of doubt, it should leave the matter to the wisdom of experts : *State of M.P. Vs. Narayan Singh, I.L.R. (2013) M.P. 946 (DB)*

– **Section 45 & 67** – Appellant/defendant pleaded that plaintiff gave her consent in the Revenue Court by putting her thumb impression on the necessary application – An application u/s 45 of the Act was submitted by defendants in the trial Court to get the thumb impression of the plaintiff examined by handwriting expert – Against the said order a petition under Article 227 of the Constitution was submitted by the defendants which was registered – This petition was withdrawn with liberty to assail this point in appeal – Defendants filed another application before First Appellate Court which was dismissed – Held – Defendants could not be debarred from adducing the evidence by getting those documents examined by handwriting expert in order to prove their case – Appeal allowed and case sent back with a direction to provide opportunity to defendants

to get the documents examined by handwriting expert : *Kawal Singh Vs. Sembai, I.L.R. (2011) M.P. *112*

– **Section 45 & 73** - Expert opinion - Prayer for subjecting the writings on the nomination paper to examination by Handwriting Expert - Held - It is still open to the respondent to call in evidence the returning officer, who received the nomination paper - There is absolutely no justification for referring the writings to the Handwriting Expert for examination and opinion as to identity thereof – Application dismissed with costs : *Rajesh Kumar Vs. Devendra Singh, I.L.R. (2012) M.P. 2457*

Judicial Notice

– **Section 56 & 57** - Judicial Notice - In absence of documentary evidence, the Claims Tribunal may take judicial notice of the increase in minimum wages due to inflation and rise in price index and compute accordingly the income of the deceased : *Shukh Devi (Smt.) Vs. Devendra Kumar, I.L.R. (2014) M.P. 172*

Judicial Admission

– **Section 58** - Admission - Admission in pleadings or judicial admissions or admissions under Section 58 of Act, 1872 made by parties or their agents at or before the hearing of the case, stand on a higher footing than evidentiary value : *Lalman Soni Vs. Shri Rupinder Singh Gill, I.L.R. (2013) M.P. 1088*

– **Section 58** - Judicial Admissions - Judicial admissions or admissions in pleadings made by the parties or their agents at or before the hearing of the case, stand on a higher footing than evidentiary admissions - Former class of admissions are fully binding on the party that makes them and constitute a waiver of proof - On the other hand evidentiary admissions are by themselves not conclusive and can be shown to be wrong and also can be explained : *Ramsajivan Vs. Laljiram, I.L.R. (2012) M.P. 1633*

– **Section 59** – See – Motor Vehicles Act, 1988, Section 163 : *Gaurishankar Vs. Specialty Electromars, I.L.R. (2015) M.P. 2735*

Proof of Document

– **Section 64** - Admissibility of document - Merely because of document has been exhibited is not sufficient to hold that the same has been proved - Document should be proved by relevant witness - In lack of it such document cannot be held to be proved : *Pappu @ Narendra Kumar Vs. State of M.P., I.L.R. (2012) M.P. 2486*

– **Section 64** – Proof of document – Document produced by prosecution but not proved, cannot be read against accused but can be read in favour of accused : *Ramesh @ Dabbu Vs. State of M.P., I.L.R. (2014) M.P. 1355*

– **Section 64** - See - Forest Act, 1927, Section 52(5) : *Ramendra Pal Singh Vs. State of M.P., I.L.R. (2013) M.P. 1304 (DB)*

– **Section 64 & 77** - Photocopy of Certificate of Municipality - Certificate prepared from the entry made in the register at page No. 149 of the Municipality certifying that in the Municipal Register house is in dilapidated condition, the ownership of 'S' has been entered - Held - The document filed is nothing but a waste paper because it is a photocopy of some certificate and photocopy of a document is inadmissible in evidence - Indeed, the certified copy of the Municipal register which is a public document ought to have been filed : *Rashid Khan Vs. State of M.P., I.L.R. (2011) M.P. 2801*

– **Section 64, 65(e) & (f)** - See - Registration Act, 1908, Section 57(5) : *Jamuna Prasad Vs. Shivnandan, I.L.R. (2011) M.P. *137*

Secondary Evidence

– **Section 63** – Secondary Evidence – Photocopy – Will is in possession of petitioner No. 1 which is not produced inspite of notice – Held – Primary evidence is not available or that anyone of the circumstances such as non-availability or custody of the document in the hands of the adversary will be sufficient grounds for producing secondary evidence : *Kalibai Vs. Ajay, I.L.R. (2014) M.P. 3100*

– **Section 63 & 65**, Family Courts Act (66 of 1984), Section 14 - Secondary evidence - Admissibility - Held - Evidence Act is not made applicable in a mechanical manner - The discretion is vested with the Family Court to receive any evidence, any report, any relevant statement, documents, information etc., which is necessary for its assistance to deal effectually with a dispute - It is made permissible in the statute whether or not such documents are relevant or admissible in the Evidence Act : *Madhvi Sharma (Smt.) Vs. Pushpendra Sharma, I.L.R. (2013) M.P. 2823*

– **Section 63 & 65** - Secondary evidence - Both the sections are to be read conjointly - If one fulfills the test of secondary evidence, the document can be treated as secondary evidence : *Gwalior Development Authority Vs. Dushyant Sharma, I.L.R. (2013) M.P. 1582*

– **Section 65** - Photocopy of document - Petitioner filed application for taking photo copy of the receipt on the ground that the original was taken away by the husband of the plaintiff/respondent on false pretext - In application for taking secondary evidence on record, it is nowhere mentioned that the photocopy was made from the original and it was compared with original - Name of person who has obtained the photocopy by mechanical process has also not been mentioned and further who compared the same

with original is also not mentioned - Photo copy cannot be taken on record as secondary evidence : *Aneeta Rajpoot (Smt.) Vs. Smt. Saraswati Gupta, I.L.R. (2013) M.P. 43*

– **Section 65** - Secondary Evidence - Defendant/petitioner may file another application praying permission to adduce secondary evidence in the shape of oral evidence examining the witnesses in order to prove the contents of original receipt - Trial Court shall allow such an application and shall permit the petitioner/defendant and her witnesses to adduce secondary evidence in regard to contents of said document and said evidence should not be side-lined or should be treated as an inferior evidence merely because the petitioner is unable to produce the original receipt as plaintiff by playing a trick has concealed the document in question : *Aneeta Rajpoot (Smt.) Vs. Smt. Saraswati Gupta, I.L.R. (2013) M.P. 43*

– **Section 65** – Secondary Evidence – For taking the photocopies of the original document on record in the form of secondary evidence it is necessary to prove prima facie that the original document have been lost and are not in existence or in possession of the other party, lack of proving the same the photocopies of the original document can not be permitted to be taken on record in the form of secondary evidence : *Narendra Suri Vs. Ranjeet Shah, I.L.R. (2015) M.P. 3180*

– **Section 65** - Secondary evidence of Will - Defendant after filing application under Order 11 Rule 12 CPC and getting admitted the fact of execution of Will by plaintiffs, sought permission to give secondary evidence - Held - Once the petitioners/plaintiffs have admitted that there was a Will (which has been misplaced) and also a mutation proceeding in the Municipal Corporation on the basis of the copy of will, it is just and proper to allow the respondents/defendants to produce the secondary evidence of the original Will : *Shambhu Prasad Sharma Vs. Smt. Pushpa Badonya, I.L.R. (2011) M.P. 144 (DB)*

– **Section 65** – Secondary Evidence – Photocopy of a will is neither a primary evidence nor secondary evidence – Further more, the plaintiff is required to examine the person who took out the photocopy of the original – As only photocopy of the will was filed therefore, it is not proved : *Ratanlal Vs. Kishanlal, I.L.R. (2012) M.P. 131*

Admission of Electronic Evidence

– **Section 65-B** - Admissibility of Electronic Evidence - Public Prosecutor desired to exhibit the C.D. - Objection as to the admissibility of C.D. was raised which was rejected by Trial Court - Held - Special Judge is required to properly appreciate the requirement of Section 65-B of the Act, more particularly the requirement of the certificate as contained in Section 65(4) of the Act - Order of Trial Court set aside with a

direction to decide the objection afresh in the light of provisions of Section 65-B of the Act : *Satish Meharwal Vs. State of M.P., I.L.R. (2013) M.P. 777 (DB)*

Genuineness of Documents

– **Section 67** - Exhibiting of document - Exhibiting of document in Court does not amount of proof of its contents - It amounts to admission of its contents but not their truth - Genuineness, truthfulness of the document is an essence to prove it even on exhibiting and admitting the said document in the Court : *Vinod Agrawal Vs. Bharat Kumar Lathi, I.L.R. (2012) M.P. *84*

– **Section 67 & 68** - See - Registration Act, 1908, Section 57(5) : *Jamuna Prasad Vs. Shivnandan, I.L.R. (2011) M.P. *137*

– **Section 67 & 68** - See - Succession Act, 1925, Section 59 & 63 : *Sitaram Dubey (Since Deceased) Vs. Manaklal (Since Deceased), I.L.R. (2013) M.P. 1406*

Evidence of Attesting Witness to Document

– **Section 68** - Mode of proof of document required to be attested - Document shall not be used as evidence until one attesting witness has been called for proving its execution, if there be an attesting witness alive and subject to the process of the Court and capable of giving evidence : *Pradumn Singh Vs. Shiv Raj Singh, I.L.R. (2014) M.P. 424*

– **Section 68** - See - Succession Act, 1925, Section 63 : *Devkaran Vs. Rameshwar, I.L.R. (2011) M.P. 3135*

– **Section 68** - See - Succession Act, Indian, 1925, Section 63(c) : *Asharfi Devi (Smt.) Vs. Hari Prasad, I.L.R. (2011) M.P. *121*

Comparison of Signature & Handwriting

– **Section 73** - Comparison of signature, handwriting etc. - Applicant filed application for sending the Dehati Nalishi, F.I.R. and other documents to handwriting expert as according to him it were written by same person- These documents are very much available before the Trial Court - There is no rule of law that Court is precluded from coming to its own conclusion in such cases where it is fully familiar with language and script of document which is under scrutiny - Where the Court considers that opinion of a handwriting expert would be of assistance to it in coming to a decision, it may call for the evidence of an expert - Trial Court is not bound to refer the matter to the handwriting expert when by itself it can note dissimilarity in the handwritings - Revision allowed with direction to Trial Court to either itself compare the handwriting and if it

considers that opinion of handwriting expert is necessary then it shall call for the evidence of an expert : *Rinku @ Yatendra Vs. State of M.P., I.L.R. (2011) M.P. 3200*

Public Document

– **Section 74(1)(iii)** – Public document – Marking of an exhibit on the document (partition deed) is an act of the Court and as such the document after marking exhibit becomes the record of the act of the Court and a public document within the meaning of Section : *Mamta Awasthy (Smt.) Vs. Ajay Kumar Shrivastava, I.L.R. (2011) M.P. 1680*

Mode of Proof of Certified Copies of Khasra

– **Section 76** – Certified Copy – Copies of Khasra merely signed by Patwari and are not certified copies as per the requirement of Section 76 – Khasra signed by Patwari are merely certificate issued by Patwari which can be proved by examining the Patwari : *Daulat Singh Vs. Devi Singh (Dead), I.L.R. (2011) M.P. *93*

Presumption of Genuineness of Documents/Newspaper Reports

– **Section 81** - News paper report - No presumption is attached to the genuineness of newspaper reports - Assertion of petitioner relating to number of votes actually cast does not assume any significance as it was primarily based on newspaper reports : *Shrinivas Tiwari Vs. Rajkumar Urmalia, I.L.R. (2014) M.P. 113*

– **Section 90** – 30 years old document – Presumption envisaged under Section 90 is applicable to the document and not for its photocopy : *Ratanlal Vs. Kishanlal, I.L.R. (2012) M.P. 131*

– **Section 90**, Succession Act (39 of 1925), Section 63(c) – Will – Execution of – Will shrouded by suspicious circumstances – At the time of mutation of the land in question the Will (Ex.P/20) was not produced – What was stated by the plaintiff at that time was that he had purchased the suit land – But, copy of the alleged sale deed has not been filed – Held – The alleged execution of Will is thus shrouded in suspicion – Section 90 of Evidence Act, confers a discretion on the court to draw a presumption with regard to its genuineness – Appeal dismissed : *Mahaprasad Vs. Badi Bai, I.L.R. (2014) M.P. 1079*

– **Section 90** – Presumption as to the genuineness of the documents which are more than 30 years old cannot be doubted specially when there is no document of rebuttal in this regard – Judgment and decree is not found to be justified – Same therefore is set aside : *Murti Shri Pandharinath Mandir Vs. Collector, I.L.R. (2014) M.P. 1061*

– **Section 90** – Presumption – Period of 30 years has to be calculated from the date on which the document is tendered in evidence and not from the date of filing of the suit : *Ramu Singh Vs. Smt. Bandi Bai, I.L.R. (2012) M.P. 121*

– **Section 90** – Presumption – Rebuttable – Presumption under Section 90 is rebuttable – Once, the execution of the gift deed was denied by the defendants, then it was obligatory on the part of the plaintiff to prove the gift deed in accordance with the provisions of 68/69 of the Act : *Ramu Singh Vs. Smt. Bandi Bai, I.L.R. (2012) M.P. 121*

– **Section 90** – School Admission Register – Record more than 30 years old – Has more probative and evidenciary value in comparison to oral statement : *Rajendra Singh Saluja Vs. State of M.P., I.L.R. (2012) M.P. *44*

– **Section 90** – See – Civil Procedure Code, 1908, Section 100 : *Murti Shri Pandharinath Mandir Vs. Collector, I.L.R. (2014) M.P. 1061*

Penalty

– **Section 92** - Exclusion of oral evidence - Plaintiff did not file the original agreement - Penalty imposed can not be said to be in contravention of Section 92 of the Act : *Sanghvi Foods Private Ltd. (M/s.) Vs. M.P. Electricity Board, I.L.R. (2011) M.P. *154*

Burden of Proof

– **Section 92, Proviso (4)** – If any agreement is executed in writing, any further agreement in furtherance thereof cannot be made orally and no oral evidence adduced in this respect is to be admitted – Held – Under the agreement liability was on respondent No.1 to pay the entire rental for the lease of the land taken by him to appellant – Accordingly, decree is modified decreeing the entire suit against respondent No.1 : *Chandramoul Shukla Vs. Ramvishwas, I.L.R. (2014) M.P. 1339*

– **Section 67 & 101** - Burden of Proof - Burden of proof lies on a person who desires a Court to give judgment as to any legal right or liability dependent on the existence of facts which the person asserts, must prove that those facts exist : *Vinod Agrawal Vs. Bharat Kumar Lathi, I.L.R. (2012) M.P. *84*

– **Section 101** – Burden to prove – The burden to prove that the vehicle was not involved in the accident was on driver and Tempo owner (respondent no. 1 and 2) – But they failed to discharge their burden : *Mohd. Azad @ Aju Vs. Mahesh, I.L.R. (2015) M.P. 1810*

– **Section 101 & 106** - Onus of proof - Once possession is established, the person who claims that it was not a conscious possession has to establish it, because how he

came to be in possession is within his special knowledge : *Boote @ Kanchhedi Vs. State of M.P., I.L.R. (2011) M.P. 511*

– **Section 91, 103 & 114(g)** - Plaintiff is consumer of Electricity Board for supply of electricity upto the extent of 308 KVA - Plaintiff required additional energy of 277 KVA - Supplementary agreement was executed - Number of letters were sent by Plaintiff for supply of additional energy - However, plaintiff started consuming additional electricity using its existing meter - Penalty was imposed by the Board for consuming additional electricity - Held - Plaintiff did not file the original agreement - Contention of the plaintiff that no condition for realization of penalty was embodied in additional agreement can not be accepted as original agreement was not filed - Document is in power and control of plaintiff and the burden of proof was on plaintiff and it was for him to produce the original agreement - Plaintiff was also required to plead and prove the terms and conditions of earlier agreement - Appeal dismissed : *Sanghvi Foods Private Ltd. (M/s.) Vs. M.P. Electricity Board, I.L.R. (2011) M.P. *154*

– **Section 105** – See – Criminal Procedure Code, 1973, Section 397, 401 & 399 : *Gyanesh Vs. Central Bureau of Investigation, I.L.R. (2014) M.P. 3274*

– **Section 106** - See - Penal Code, 1860, Section 302 & 201 : *Dhaniya Bai Vs. State of M.P., I.L.R. (2013) M.P. 2238 (DB)*

– **Section 106** - Special Knowledge - Revisionist contested the election from the seat reserved for S.C./S.T. - Election of the Revisionist was set aside on the ground that he doesnot belong to S.T. - Revisionist did not examine his mother or any family member to assert that he belongs to S.T. and not Rajput - Adverse inference can be drawn against the revisionist - Claim for remand of matter to the Caste Scrutiny Committee cannot be entertained in the peculiar facts and circumstances of the case - Election of the Revisionist was rightly set aside - Revision dismissed : *Govind Singh Vs. Ramcharan, I.L.R. (2012) M.P. 2850*

– **Section 106 & 114** - Presumption - Adverse inference has to be drawn if evidence regarding fact specially within the knowledge of any person, is not produced by such person - Non-examination of officer to prove the authenticity of the contents of certificate is sufficient to draw an adverse inference under Section 114 of Evidence Act : *Ram Lal Kol Vs. Moti Kashyap @ Motilal, I.L.R. (2013) M.P. 1364*

– **Section 112**, Criminal Procedure Code, 1973 (2 of 1974), Section 125 – D.N.A. Test – Applicant applied for D.N.A. test of child claiming to be illegitimate child of respondent/wife – Held – Conclusiveness of presumption under Section 112 cannot be rebutted by DNA test – Proof of non-access between parties to marriage during relevant time is the only way to rebut that presumption – DNA test not to be directed as a matter

of routine : *Lallu Lal Patel Vs. Smt. Anar Kali @ Tannu Bai Yadav, I.L.R. (2011) M.P. 1605*

Statutory Presumption under Section 113-A

– **Section 113-A** - Applicability of presumption - Marriage was solemnized before 8-10 years - Presumption under section 113 A of Act, 1872 not applicable : *Sarjoo Vs. State of M.P., I.L.R. (2012) M.P. 2806*

– **Section 113-A** - Presumption - Presumption is not mandatory - The word 'may presume' has been used - Simultaneously by using the word 'all other circumstances of the case' prior to drawing the presumption by the Court makes it clear that the conscience of the Court must dictated on the facts and circumstances otherwise abstained from drawing such presumption : *Ashok Kumar Vs. State of M.P., I.L.R. (2013) M.P. 1971*

– **Section 113-A** – Presumption under – There should a link and nexus between the act of cruelty and suicide – Law does not give any presumption for continuity of cruelty – It requires definite and convincing evidence to prove the cruelty : *Ramraj Singh Vs. State of M.P., I.L.R. (2012) M.P. 193*

– **Section 113-A** – See – Penal Code, 1860, Section 306 & 498A : *Arjun Singh Vs. State of M.P., I.L.R. (2015) M.P. 1041*

– **Section 113-A** -Statutory presumption - Marriage took place more than seven years back - Statutory presumption u/s 113 of the Act was not applicable : *Shripati @ Shriprasad Vs. State of M.P., I.L.R. (2011) M.P. 2559*

– **Section 113-A & 32(1)** - See - Penal Code, 1860, Section 498, 306 & 107 : *Mohd. Mubeen Vs. State of M.P., I.L.R. (2012) M.P. 2214*

Presumption of Dowry Death

– **Section 113-B**, Penal Code, 1860, Section 304B – Deceased married with appellant about 2-3 years before her death, died of burn injuries in her nuptial home – Appellants subjected deceased to cruelty and harassment in connection with demand of dowry – It can be presumed that they caused the dowry death of deceased : *Babu Lal Vs. State of M.P., I.L.R. (2011) M.P. 1026 (DB)*

– **Section 113-B** – Presumption to dowry death – Ingredients to be established – (i) Accused had committed the dowry death of a woman; (ii) The woman was subjected to cruelty or harassment by her husband or his relatives; (iii) Such cruelty or harassment was for or in connection with any demand of dowry and (iv) The woman was subjected to

cruelty or harassment soon before her death : *Srikant Vs. State of M.P., I.L.R. (2015) M.P. 1385 (SC)*

– **Section 113-B** - See - Penal Code, 1860, Section 304-B : *Dilip Vs. State of M.P., I.L.R. (2014) M.P. 493*

– **Section 113-B** - See - Penal Code, 1860, Section 304B : *Kanhaiyalal Gupta Vs. State of M.P., I.L.R. (2011) M.P. *42 (DB)*

– **Section 113-B** – Soon before her death – Deceased harassed 5-6 months prior to the death – Justifies the harassment for or in connection with dowry : *Srikant Vs. State of M.P., I.L.R. (2015) M.P. 1385 (SC)*

Presumptions under Section 114

– **Section 114** - Long Cohabitation - Presumption of marriage - In absence of assertion of a legal marriage, presumption of a legally valid marriage cannot be drawn on the basis of long cohabitation : *Sitaram Dubey (Since Deceased) Vs. Manaklal (Since Deceased), I.L.R. (2013) M.P. 1406*

– **Section 114** - Long Cohabitation – If a woman resides with a particular person for a sufficient long period, it may not be required to prove that marriage has taken place in an appropriate manner – Appellant claiming to have resided with Santosh Guru only for a period of 13 months – She is required to prove that marriage took place as per Saptapadi or Bhanwar ceremony : *Meera Bai (Smt.) Vs. Ramesh Guru, I.L.R. (2015) M.P. 1020*

– **Section 114** – Presumption – If a man refuses to answer a question which he is not compelled to answer by law, the answer, if given would be unfavorable to him : *Akbar Khan Vs. Farida Bai, I.L.R. (2012) M.P. 737*

– **Section 114** – See – Accommodation Control Act, M.P., 1961, Section 12(1)(a) : *Agrawal Medical Agencies (M/s.) Vs. Govind Prasad, I.L.R. (2012) M.P. 942*

– **Section 114 A** and Penal Code (45 of 1860), Section 376 – Presumption operates even in absence of injuries or absence of raising alarm or delay in FIR – Statement of prosecutrix – Inherent infirmities – Doubtful – Same may not be acted upon : *Munna Vs. State of M.P., I.L.R. (2015) M.P. 1123 (SC)*

– **Section 114 (a)** – Presumption under – Looted items, weapons of evidence, blood stained cloths were recovered from appellants after 13 days of incident – Presumption could be drawn – Recovery is sufficient to connect the appellants with dacoity as well as with murder : *Juhur Bux Vs. State of M.P., I.L.R. (2011) M.P. 1734 (DB)*

– **Section 114 Illustration (a)** – Presumption under – Recovery of articles belonging to the complainant from the possession of appellant-accused immediately after the commission of offence – Possession remained unexplained by the appellant – Prima facie attracts the presumption – It needs no discussion to conclude that the robbery of the articles were found to be part of the same transaction : *Pushpendra Vs. State of M.P.*, I.L.R. (2011) M.P. *100

– **Section 114(e)**, Land Revenue Code, M.P. (20 of 1959), Section 110 & 117 - Revenue record - Entry made by Patwari in the remark column or any other column of a khasra or field book - No presumption of correctness can be attached - Therefore, even if any entry in column No. 12 has been made by Patwari in the khasra, it would not mean that plaintiff is in possession of the suit property : *Yashraj Datta (dead) Through LR. Vs. Bherulal*, I.L.R. (2013) M.P. 2660

– **Section 114(e)** – Presumption regarding judicial acts – It was argued that examination of the witness was carried out in absence of the counsel though his presence is marked, in the lack of the affidavit of the concerning advocate such version is not reliable – The court is bound to presume that the deposition of said witness was recorded in the presence of the petitioner’s counsel in view of the provision of presumption enumerated u/s 114(e) : *Gajadhar Prasad Vs. Smt. Shakuntala Mishra*, I.L.R. (2015) M.P. 2859

– **Section 114 (g)** – Evidence – Party having the best evidence in his power and possession, is duty bound to produce it in the court in order to resolve the controversy and that party should not place reliance on the abstract doctrine of onus of proof that it was not of his duty to produce it : *Natthulal Vs. Smt. Shakuntalabai*, I.L.R. (2011) M.P. 1182

– **Section 114 (g)** - Adverse Inference - Party in possession of best evidence, which would throw sufficient light on the issue in controversy withholding it - Court should draw an adverse inference against him notwithstanding that onus of proof does not lie on him : *State of M.P. Vs. Mangilal*, I.L.R. (2011) M.P. 3106

– **Section 114 (g)** - Non examination of Prosecutrix - Prosecutrix, aged 15 years, a mentally retarded girl, suffering with 60% mental disability - She was not able to speak - Her non examination would not be fatal to the prosecution : *Shyam Lal Vs. State of M.P.*, I.L.R. (2011) M.P. 2866

– **Section 114 (g)** – Presumption – A presumption must be drawn against a party who having knowledge of the fact in dispute does not go into the witness box, particularly when a prima facie case is made out against him – The question of drawing

an adverse inference on account of non-examination of a party has to be decided in the facts of the each case : *Jagdish Prasad Vs. Smt. Meera Devi, I.L.R. (2011) M.P. 1259*

– **Section 114 (g)** - Presumption - First informant not examined by prosecution - No reasons assigned by prosecution for non-examination of this witness - Held - Adverse inference can be drawn against prosecution that if this witness would have been examined in Court, he would have not supported the prosecution case : *Nandram Vs. State of M.P., I.L.R. (2011) M.P. 493 (DB)*

– **Section 114 (g)** – Presumption which may be raised, is discretionary – The Court may or may not raise such a presumption : *Jagdish Prasad Vs. Smt. Meera Devi, I.L.R. (2011) M.P. 1259*

Estoppel / Promissory Estoppel

– **Section 115** - Estoppel - Jurisdiction - In Execution proceedings, decree was challenged on the ground of nullity being without jurisdiction - Applicant had filed written statement and no objection with regard to the competency of the Civil Court was raised - Appeal filed by the applicant against the judgment and decree passed by Trial Court was also withdrawn - As the applicant had opportunity to raise the objection before the Trial Court and in absence of any such objection, the Trial Court could not consider such a point - Applicant is estopped from raising the objection of competency of Civil Court in execution proceedings : *M.P. Housing Board Vs. State of M.P., I.L.R. (2013) M.P. 2723*

– **Section 115** – Estoppel – Since the defendants were estopped from questioning the title of the plaintiff – Therefore, it is not necessary for courts below to examine the plaintiff's title : *Vijay Bahadur Singh Vs. Rameshwar, I.L.R. (2014) M.P. 1879*

– **Section 115** - Promissory Estoppel - Estoppel should always be clear, unambiguous and certain - Promise should be definite and beyond any doubt - It can only arise from a clear definite statement - Not necessarily susceptible of only one interpretation but such as will reasonably be understood in the senses contended for and for this purpose the entire material must be looked upon : *Thela Gumti Footpath Vyapari Seva Samiti Vs. State of M.P., I.L.R. (2011) M.P. *132*

– **Section 115** - See - Constitution - Article 226 : *Chintaman Masulkar Vs. State of M.P., I.L.R. (2012) M.P. 2353*

– **Section 116** – See – Accommodation Control Act, M.P., 1961, Section 12(1)(c) : *Sabir Mohd. Vs. Maganlal, I.L.R. (2011) M.P. 1243*

– **Section 116** – See – Accommodation Control Act, M.P., 1961, Section 12(1)(c) : *Sunil Kumar Vs. Dilip, I.L.R. (2015) M.P. 2965*

Competent Witness

– **Section 3 & 118** - Child Witness - Evidence of witness aged 9-10 years is natural and there seems no elements of tutoring about the incident - He gives a clear picture of the incident, which is supported by other prosecution evidence - His statement is also supported by medical evidence - His statement is believable : *Ramesh Vs. State of M.P., I.L.R. (2011) M.P. 2565 (DB)*

– **Section 118** – Child witness – Evidence should be scrutinized with care and caution especially when she claimed to be an eyewitness, but it can be accepted if it otherwise appears to be trustworthy : *Ganesh Vs. State of M.P., I.L.R. (2011) M.P. 1343 (DB)*

– **Section 119** – Deaf and Dumb Witness – Oath not administered to interpreter – Signs and gestures used during the evidence of deaf and dumb witness not recorded – Evidence not legal : *Ramkumar Vs. State of M.P., I.L.R. (2012) M.P. 752*

– **Section 120**, Powers of Attorney Act (7 of 1882), Section 1A and Civil Procedure Code (5 of 1908), Order 3 Rule 1 – Competent Witness – Husband is a competent witness for the wife – He can also be permitted to exhibit the documents and there is no need to execute the power of attorney – Husband of the Petitioner permitted to depose and exhibit the documents which have been produced by them : *Rajni Tiwari (Smt.) Vs. Smt. Bhagyawati Bai, I.L.R. (2012) M.P. 730*

Self Incrimination

– **Section 132** – Self incrimination – Evidence given by witness voluntarily without any compulsion or forced by court to depose before it – Proviso to Section 132 not applicable – His statement can be used against him : *Rabia Ahmed Khan (Smt.) Vs. State of M.P., I.L.R. (2014) M.P. 1388*

Number of Witnesses

– **Section 134** - Number of witnesses - Quality of evidence is required and not quantity - Parties are not required to examine particular number of witnesses to prove their case : *Gangadhar Vs. State of M.P., I.L.R. (2011) M.P. 202 (DB)*

– **Section 134** - Number of witnesses - Quality of witness is material and not quantity : *Nandram Vs. State of M.P., I.L.R. (2011) M.P. 493 (DB)*

Re-Examination

– **Section 138** – Re-examination – Public prosecutor was allowed by the Court to exhibit the Test Identification Parade memo as the same could not be exhibited during examination-in-chief – New matter can be introduced u/s 138 of Act, 1872 with a rider

that opposite party shall be given opportunity to cross-examine – Test Identification Parade memo was already the part of charge sheet and defence was aware of that – As defence was allowed to further cross-examine the witness, no irregularity committed in permitting the Public Prosecutor to get the Test Identification Parade memo exhibited : *Mohan Singh Vs. State of M.P., I.L.R. (2015) M.P. 2501*

Requirement of Primary Evidence

– **Section 145** – Previous statement recorded on a Compact Disk during an interview, can be used for the purpose, if the C.D. to be used for the purpose must fulfil the necessary requirements of being a primary evidence : *Dilip Takhtani Vs. State of M.P., I.L.R. (2011) M.P. 1082 (DB)*

Cross Examination

– **Section 146** – Cross Examination – Cross examination of witnesses of other side is a material implements in the hand of adverse party – He can place his case by putting the suggestions or the questions in such cross examination of witnesses – If the case is not suggested in such a manner in the cross examination of the witness, then at later stage on appreciation, the party who left such lacuna could not be permitted to challenge the unrebutted and uncrossed in chief of such witness : *Mukesh Vs. Smt. Priti, I.L.R. (2011) M.P. *97*

Hostile Witness

– **Section 137 & 154** – Declaring a witness as hostile and permitting to cross examine him – Affidavit under Order 18 Rule 4 C.P.C. was filed on 23.11.12 and witness was cross-examined on 03.09.2013 – No prayer was made either to declare him hostile or sought permission for re-examination – After 16 days, an application was filed for declaring the witness as hostile – Held – Permission could be given by the court till the witness is under examination in witness box and not at a later stage – Application rightly rejected : *Gajadhar Prasad Vs. Smt. Shakuntala Mishra, I.L.R. (2015) M.P. 2859*

– **Section 137 & 154** - Hostile - Witness admitting certain facts in his cross examination which runs contrary to the prosecution story - witness not declared as Hostile - His testimony is binding to the prosecution : *Sanjay Vs. State of M.P., I.L.R. (2012) M.P. *104*

– **Section 154** - Hostile Witness - Evidence of a hostile witness would not be totally rejected if spoken in favor of the prosecution or the accused, but it can be subjected to a close scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence may be accepted : *Major Singh Vs. State of M.P., I.L.R. (2012) M.P. 2540 (DB)*

– **Section 154** – Hostile Witness – Evidence of hostile witness can also be relied upon by the prosecution to the extent to which supports the prosecution version of incident : *Bhajju @ Karan Singh Vs. State of M.P., I.L.R. (2012) M.P. *42 (SC)*

– **Section 154** – Hostile witness – Value of his evidence – Acceptable portion of his testimony – Can also be used in evidence : *Rajeev Lochan Singh Vs. State of M.P., I.L.R. (2014) M.P. 3231 (DB)*

– **Section 154** - Witness - Prosecution witness not supporting the prosecution story in examination-in-chief - Witness not declared hostile - Prosecution is bound by the statement given by the prosecutrix : *Santosh Kumar Vishwakarma Vs. State of M.P., I.L.R. (2012) M.P. 2481*

– **Section 157** – Incident witnessed by mother of first informant who immediately informed her son on telephone – Son immediately reached on the spot and found his father dead – F.I.R. lodged by son is admissible in view of the provisions of Section 157 of the Act, 1872 : *Chandrashekhar Vs. State of M.P., I.L.R. (2012) M.P. 1321 (DB)*

– **Section 165** – See – Criminal Procedure Code, 1973, Section 482 : *Raju Vs. State of M.P., I.L.R. (2014) M.P. 3308*

EXAMINATION – AGE RELAXATION

- **Age relaxation** - State Government took a decision that age relaxation, that was given in previous two examination (held in year 2008-09 and 2009-10) is not continued now in the current examination - Held - Decision of the State Government cannot be interfered with by High Court until and unless, the statutory rules or regulations or any constitutional provisions are shown to be violated : *Subhash Kumar Dwivedi Vs. State of M.P., I.L.R. (2011) M.P. 441*

EXCISE ACT, M.P. (2 OF 1915)

– **Section 34(1)(a)** – Chemical Examination of Foreign Liquor – Liquor was identified by a Sub-Inspector who is a trained person and has got vast experience to examine the liquor – Held – Chemical examination is not the only manner by which the identity of the liquor can be proved – It can be proved by the person having expertise in the field : *Jagmohan Vs. State of M.P., I.L.R. (2014) M.P. 2714*

– **Section 34(1)(a)** – Conscious possession of liquor – Applicants are driver and cleaner – The Truck was in the sealed condition – They have no criminal antecedents – Held – It cannot be inferred that the applicants were aware about the fact that the liquor boxes were kept in the heap of the Cinthol products – There is no evidence against the

applicants – Revision is allowed, conviction and sentence is set aside : *Jagmohan Vs. State of M.P., I.L.R. (2014) M.P. 2714*

– **Section 34(1)(2) & 47(A)**, Criminal Procedure Code, 1973 (2 of 1974), Section 482 - Quashment of F.I.R. - Country made Liquor was seized from Car - Applicant was sitting in that vehicle and during search he ran away - Name of applicant disclosed by co-accused - Held - No evidence collected by prosecution to connect the applicant to the crime - Applicant cannot be convicted on the basis of disclosure statement made by co-accused - Petition allowed : *Suresh Upadhyay Vs. State of M.P., I.L.R. (2014) M.P. 871*

– **Section 34(2)**, Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Quashing of F.I.R. – Two accused persons were found transporting country-made liquor without valid license – One of the accused made confessional statement that the said liquor was purchased from the shop of applicant – Held – Applicant is not named in FIR – He was not present on the spot – Confessional statement is not admissible – No other evidence against the applicant – FIR and investigation quashed : *Rajveer Singh Vs. State of M.P., I.L.R. (2015) M.P. 1589*

– **Section 34(2)** – Possession of illicit liquor – Prosecution has to prove that accused was in possession of illegal liquor exceeding 50 bulk litres – Seized liquor was not measured either on the spot or during investigation – Container in which illicit liquor was kept were not produced before Court – Prosecution failed to prove that liquor which was seized was exceeding prohibited limit – Revision allowed : *Mukesh Vs. State of M.P., I.L.R. (2012) M.P. 264*

– **Section 47-A to 47-D** - Revision - Jurisdiction - Liquor with vehicle was seized within the District Shivpuri - Application for release of liquor was rejected by Collector (Excise), Shivpuri and order of confiscation was passed - Appeal was dismissed by Excise Commissioner, Gwalior - As the offence was committed in District Shivpuri, Order of confiscation was passed by Collector (Excise), Shivpuri and merely because the appeal was dismissed by Excise Commissioner, Gwalior, it cannot be said that Sessions Judge, Shivpuri has no jurisdiction to hear revision against appellate order : *Shashwat M. Sharma Vs. State of M.P., I.L.R. (2013) M.P. *30*

EXECUTIVE INSTRUCTIONS

– **Violation of Rules** – Executive instructions cannot be made or given effect in violation of what is mandated by the Rules – In case of conflict, Rules will prevail : *Ruchi Jain Vs. State of M.P., I.L.R. (2014) M.P. 2322 (DB)*

– **Statutory Rules** - Executive Instructions cannot supersede the Statutory Rules : *Sushma Pandey (Smt.) Vs. State of M.P., I.L.R. (2013) M.P. 58*

– **Statutory Rules** – Statutory Rules can not be supplanted by Executive Instructions : *Mukesh Tiwari Vs. State of M.P., I.L.R. (2012) M.P. 937*

EXEMPLARY COST

– **Exemplary Cost** - Whenever an instrumentality of the state acts in wanton disregard of the limits of the responsibility set up by the scheme of the constitution, it shakes the confidence of the common man in the rule of law - Exemplary cost in addition to actual cost incurred may be awarded to restore the lost confidence in the rule of law and for preventing recurrence of culpable aberrations in future : *Pooja Agrawal (Ku.) Vs. Board of Secondary Education M.P., I.L.R. (2013) M.P. 609*

EXPLOSIVE SUBSTANCES ACT (6 OF 1908)

– **Section 4 & 5**, Ammonium Nitrate Rules, 2012, Rule 3 – Ammonium Nitrate was seized on 09.04.2009, Rules 2012 came into force on 11.07.2012 – Prior to that Ammonium Nitrate was not an explosive – No license was required before 11.07.2012 – Applicant cannot be prosecuted u/s 4 & 5 of Act, 1908 as no license was required – Application allowed : *Sharad Kumar Agrawal Vs. State of M.P., I.L.R. (2015) M.P. 3102*

EX-SERVICEMEN (RESERVATION OF VACANCIES IN THE STATE CIVIL SERVICES AND POSTS CLASS III AND CLASS IV) RULES, M.P. 1985

- **Rule 6(2A)** - Graduation Certificate issued by Army/Navy/Air Force - Certificates so issued should be treated as equivalent to a Graduate Certificate issued by a recognized University : *Ram Prakash Singh Tomar Vs. State of M.P., I.L.R. (2012) M.P. 2122*

F

FAMILY COURTS ACT (66 OF 1984)

– **Section 3, 7 & 8(c)** - Suit for recovery of 'Stridhan' was filed on 01.05.2000 at Gwalior Court - On 04.03.2002 the Family Court was established under Family Courts Act to the area of Municipal Corporation, Gwalior - Held - All the proceedings after 08.03.2002 by Civil/District Court cannot be held to be legal and decree passed by trial Court (ADJ) is found to be without jurisdiction - Suit is transferred as per Section 8(c) of the Act to the Family Court, Gwalior : *Balram Shivhare Vs. Suneeta Shivhare (Smt.), I.L.R. (2013) M.P. 1656*

– **Section 7 & 8** - Exclusion of jurisdiction and pending proceedings - Family Court constituted in 2002 - Ex parte decree of dissolution of marriage obtained by applicant in the year 2000 from the Civil Court - Non-applicant filed application under Order 9 Rule 13 CPC for setting aside ex parte decree before Civil Court - Held - To bring the dispute within the jurisdiction of Family Court, the suit or proceeding must be for declaration as to validity of a marriage or as to matrimonial status of any person - By application under Order 9 Rule 13 CPC, non-applicant did not seek any declaration as to validity of their marriage or matrimonial status - Court was only obliged to consider the question of validity or effectivity of service of summons on non-applicant - Not required to be transferred to Family Court - Revision dismissed : *Arvind Singh Bhadoriya Vs. Smt. Kunti Bhadoriya, I.L.R. (2011) M.P. 270*

– **Section 7 & 24** – Suit for return of Stridhan – Maintainability of suit against relatives of husband – Suit for return of stridhan filed against husband and in laws – Family Court has jurisdiction to consider the suit of the respondent in respect of return of stridhan and was not required to file two separate suits, i.e, one against her husband before Family Court and another before Ordinary Civil Court against her in-laws : *Om Prakash Tiwary Vs. Smt. Neetu Tiwary, I.L.R. (2012) M.P. 974 (DB)*

– **Section 7, 8 & 24** – Suit for return of Stridhan – Suit for return of Stridhan without there being any relief as envisaged under Section 9,10 or 13 of Hindu Marriage Act is maintainable : *Om Prakash Tiwary Vs. Smt. Neetu Tiwary, I.L.R. (2012) M.P. 974 (DB)*

– **Section 7(1)(g)** – See – Guardians and Wards Act, 1890, Section 25 : *Deedar Singh Dhillan Vs. Preetpal Singh Chadda, I.L.R. (2015) M.P. 1368*

– **Section 14** - See - Evidence Act, 1872, Section 63 & 65 : *Madhvi Sharma (Smt.) Vs. Pushendra Sharma, I.L.R. (2013) M.P. 2823*

– **Section 19**, Hindu Marriage Act (25 of 1955), Section 13(1)(a) & 28 – Divorce petition – By Husband – Cruelty and adultery – Efforts made to reconcile differences failed – Held – Conduct of respondent/wife even if it may not be said to be adulterous, but certainly amounts to infliction of mental cruelty upon the appellant – She was found alone with one ‘L’ in a closed room, who was wearing underwear and banyan only – Leaves no room for doubt – Thus, respondent/wife treated the appellant with cruelty – Marriage between the parties is dissolved u/s 13(1)(a) of the Hindu Marriage Act : *Hariom Vs. Manjulata Sahu, I.L.R. (2014) M.P. 1042 (DB)*

FATAL ACCIDENTS ACT, (13 OF 1855)

– **Section 1-A** - Amount of compensation - Trial Court rightly assessed the monthly income of the deceased at Rs. 3000/- - Total 8 persons including old parents

were totally dependent upon deceased - Deduction towards personal expenses ought to have been assessed at the ratio of 1/5th - Applying the multiplier of 16, total loss of dependency comes to Rs. 4,60,800 - Appellants also entitled to receive additional amount of Rs. 22,000 under different heads - Compensation enhanced to Rs. 4,82,800 with interest @ 7% p.a : *Ramkali (Smt.) Vs. M.P.E.B., I.L.R. (2012) M.P. 1648 (DB)*

– **Section 1-A** - Vicarious Liability - Electrocution - Deceased came in contact with live wire which was hanging on the road - Case of respondent was that due to fault, the said line was disconnected however, subsequently the said line was rejoined by some unknown persons by putting wire illegally and thereby electricity was restored - Held - Board failed to take required care and not following the required standards in maintaining the electricity supply - There was wanton and gross negligence on the part of Board - Board and its employees were negligent for the resultant death of deceased on account of electrocution : *Ramkali (Smt.) Vs. M.P.E.B., I.L.R. (2012) M.P. 1648 (DB)*

FINANCIAL CODE, M.P.

– **Rule 84** - See - Constitution - Article 226 : *Chintaman Masulkar Vs. State of M.P., I.L.R. (2012) M.P. 2353*

- **Rule 84** - Clerical Error - Clerical error or mistake would fall within the ambit of the rule which is caused due to the negligence or want of proper care on the part of some person other than the employee seeking correction - Onus is on the employee concerned to prove such negligence : *State of M.P. Vs. Premal Shrivastava, I.L.R. (2011) M.P. 2665 (SC)*

– **Rule 84** – Date of Birth – Correction – Date of birth recorded in the service record at the time of entry in service is final and conclusive except in the case of a clerical error, which may be corrected at a later stage – Petitioner approached the authorities for correction of his date of birth after putting 24 years of service on the strength of the certificates issued after his entry in service – Not permissible in view of Rule 84 – Petition dismissed : *Surijbal Soni Vs. State of M.P., I.L.R. (2012) M.P. *37*

- **Rule 84** - Delay in applying for correction - Delay of over two decades in applying for the correction of date of birth is ex-facie fatal, notwithstanding the fact that there is no specific rule or order, prescribing the period within which such application could be filed : *State of M.P. Vs. Premal Shrivastava, I.L.R. (2011) M.P. 2665 (SC)*

FISCAL LAWS

- **Jurisdiction of Court** - Laws relating to economic activities should be viewed with greater latitude - State has to be left with wide latitude in devising ways and means of fiscal or regulatory measures, and the Court should not unless compelled by the Statute

or by the Constitution encroach into this field, or invalidate such law : *Ashok Kumar Vs. State of M.P., I.L.R. (2011) M.P. 3084 (DB)*

FISCAL STATUTE

- **Constitutional Validity** - While dealing with constitutional validity of a taxation law enacted by Parliament or State Legislature following principles must have regard : (i) There is always a presumption in favor of constitutionality of law (ii) No enactment can be struck down by just saying that it is arbitrary or unreasonable or irrational but some constitutional infirmity has to be found (iii) The court is not concerned with the wisdom or unwisdom, the justice or injustice of law as the Parliament and State Legislatures are supposed to be alive to the needs of the people (iv) Hardship is not relevant in pronouncing on constitutional validity of a fiscal statute or economic law (v) in the field of taxation, the Legislature enjoys greater latitude for classification : *State of M.P. Vs. Rakesh Kohli, I.L.R. (2012) M.P. *83 (SC)*

- **Stamp Duty is a Tax** - Hardship is not relevant in interpreting fiscal statutes : *State of M.P. Vs. Rakesh Kohli, I.L.R. (2012) M.P. *83 (SC)*

FISHERIES (GAZETTED) SERVICE RECRUITMENT RULES, M.P. 1987

- **Rule 15** – Preparation of list of suitable officers – Appellant and respondent No. 1 were officiating as Joint Directors – Appellant was junior to respondent No. 1 – Rule 15(3) postulates that any junior officer who in opinion of DPC is of exceptional merit and suitable can be assigned higher place in list than that of officer senior to him – Promotion of appellant temporarily to officiate as Director was in accordance with Rules – Order of High Court set aside : *H.S. Sidhu Vs. Devendra Bapna, I.L.R. (2015) M.P. 2819 (SC)*

FLAG CODE, 2002

- **Scope** - Is not a law within the meaning of Article 13 of Constitution of India : *Valmik Sakargayen Vs. State of M.P., I.L.R. (2012) M.P. 1536 (DB)*

FOOD STUFFS (DISTRIBUTION) CONTROL ORDER, M.P. 1960

- **Clause 4**, (Khadya Padarath) Sarvajanik Nagrik Purti Scheme, M.P. 1991, Clause 4(1) - S.D.O. has failed to assign any reason for cancellation of fair price shops run by the appellant - He also did not afford any opportunity of hearing to the appellant - Order passed by S.D.O. cannot be sustained in eye of law - Order quashed : *Mahila*

Rukhmani Primary Consumer Co-operative Society Vs. State of M.P., I.L.R. (2011) M.P. 354 (DB)

- **Clause 4**, (Khadya Padarath) Sarvajanik Nagrik Purti Scheme, M.P. 1991, Clause 4(1) - The Scheme envisages pre-decisional hearing - The post-decisional hearing cannot be a substitute for pre-decisional hearing : *Mahila Rukhmani Primary Consumer Co-operative Society Vs. State of M.P., I.L.R. (2011) M.P. 354 (DB)*

FOOD STUFFS PUBLIC DISTRIBUTION SCHEME (M.P.), 1991

- **Clause 13**, Public Distribution System (Control Order) (M.P.), 2009 – Fair price shop allotted to petitioner under Scheme, 1991 – The same was cancelled without following the procedure laid down in clause 13(5) as no enquiry was conducted and no report was called from Dy. Registrar/Asst. Registrar Co-operative Society – In view of saving clause in scheme 2009, the shop would have continued even when the new scheme come into force – Order cancelling allotment quashed – Petition allowed : *Maharani Laxmi Bai Mahila Bahu Uddeshiya Sahkari Samiti Vs. State of M.P., I.L.R. (2012) M.P. 890*

FOREIGN LIQUOR RULES, M.P. 1996

- **Rule 19(2)** – Exemption – M.P. Foreign Liquor Rules, 1996 and the M.P. Excise Act are meant to ensure maximum revenue to the State and therefore every clause prescribing exemption is to be strictly construed so that the same is not misused by anyone claiming exemption : *Pernod Ricard India (P) Ltd. (M/s.) Vs. State of M.P., I.L.R. (2014) M.P. 3149*

FOREST ACT (16 OF 1927)

- **Section 19** – Right to appear – Limited right of engaging pleader is before Forest Settlement Officer, Appellate Authority and the Court – Authorized Officers under Section 52 is not an Authorized Settlement Officer – Advocate can not appear in confiscation proceedings : *Kuldeep Sharma Vs. State of M.P., I.L.R. (2012) M.P. 907*

- **Section 19 & 72** – See – Advocate Act, 1961, Section 30 : *Kuldeep Sharma Vs. State of M.P., I.L.R. (2012) M.P. 907*

- **Section 33(1)(d)**, Criminal Procedure Code, 1973 (2 of 1974), Section 378 – Appeal against acquittal – If two views are possible and out of them, if view favourable to the accused has already been adopted by the trial court, then in routine manner by

appreciation of the evidence the another view should not be replaced by the appellate court – Appeal Dismissed : *State of M.P. Vs. Nand Kishore, I.L.R. (2012) M.P. 1296*

– **Section 52**, Advocate Act (25 of 1961), Section 30 – Confiscation Proceedings – Act, 1927 is a complete Code in itself – No evidence is recorded, therefore, Section 30 of Act, 1961 has no application – Advocate can not appear in confiscation proceedings : *Kuldeep Sharma Vs. State of M.P., I.L.R. (2012) M.P. 907*

– **Section 52, 52A & 52B** – Confiscation of Vehicle – Knowledge and consent of owner – Nothing on record that the driver of the jeep was transporting 25 bags of manganese ore with the knowledge and consent of owner – Owner has specifically stated that he had handed over the jeep to the driver for carrying passengers – Photographs of the jeep also shows that vehicle was registered as taxi having seats, which means it was meant for plying of passengers – In absence of any consent or knowledge on the part of the owner to commit forest offence, vehicle cannot be confiscated – Order confiscating the vehicle set aside : *Vijay Kanwde Vs. Sub Divisional Officer, I.L.R. (2015) M.P. 2511*

– **Section 52-C**, Criminal Procedure Code, 1973 (2 of 1974), Section 397 & 451 – Interim Custody – Magistrate and Revisional Court can not grant interim custody of vehicle de hors the bar of Section 52-C : *Ramniwas Vs. Game Range Chambal Sanctuary, Morena, I.L.R. (2012) M.P. 811*

– **Section 52-C (M.P. Amendment)** – Bar to jurisdiction of Courts – It is a complete code in itself by giving sufficient safeguards both substantive and procedural against any arbitrary exercise of Power – Because of non-obstante clause used in Section 52-C, it will have an overriding effect on other laws including general provisions of Cr.P.C. – Once intimation of initiation of confiscation proceeding is given to Magistrate, the jurisdiction of the Magistrate is ousted : *Ramniwas Vs. Game Range Chambal Sanctuary, Morena, I.L.R. (2012) M.P. 811*

– **Section 52(1)** - Confiscation of vehicles - Discharge of appellant for forest offence - Proceedings under Indian Forest Act are independent proceedings - Section 52 casts duty upon the Forest Officer to satisfy himself whether any forest offence has been committed in respect of any forest produce and there is any reason to believe that such an offence has been committed - Merely because appellant has been discharged in relation to same incident under the provisions of Indian Penal Code, it cannot be said that the vehicles are not liable to be confiscated : *Ramendra Pal Singh Vs. State of M.P., I.L.R. (2013) M.P. 1304 (DB)*

– **Section 52(5)**, Evidence Act (1 of 1872), Section 64 - Photo copy of agreement - Petitioner alleged that he had given the machines on hire to the contractor which were used without his knowledge or connivance - Photo copy of the agreement was filed -

Proceedings under the Forest Act are governed by Evidence Act - Petitioner was bound to produce the original agreement - No application was made for permission to produce secondary evidence - Photo copy of agreement cannot be considered : *Ramendra Pal Singh Vs. State of M.P., I.L.R. (2013) M.P. 1304 (DB)*

– **Section 74** - See - Criminal Procedure Code, 1973, Section 197(2) : *Yogesh @ Yogendra Vs. State of M.P., I.L.R. (2013) M.P. 299 (DB)*

FOREST (CONSERVATION) ACT (69 OF 1980)

– **Section 2** – Approval before changing use of forest land for any non-forest purpose – Held – Prior approval of Central Government is necessary : *Olpherts Pvt. Ltd. (M/s.) Vs. Union of India, I.L.R. (2015) M.P. *32*

– **Section 2** - Approval - Makes it mandatory to obtain approval from the Central Govt. in the event forest land is intended to be used for any other purpose - This does not mean that forest land becomes a land of Central Govt. : *Aseem Vaishya Vs. Union of India, I.L.R. (2012) M.P. 1888*

FRAUD

Suppression of Facts – Any order obtained by suppression of facts or on misrepresentation would be an order obtained by fraud and would be a nullity : *Madan Lal Vohra Vs. Smt. Nirmala Dubey, I.L.R. (2014) M.P. 2697*

FUNDAMENTAL RULES (AS AMENDED IN M.P. ACT 29 OF 1967)

– **Rule 56(1-a)** - Term "Government Educational Institution" - Meaning - Women Weaving Centres under the Women and Child Development Department are to be treated as educational institutions - Petitioner appointed on the post of Instructor in such centre must be treated as a teacher and would be entitled to continue on the post till he attains the age of 62 years : *Yugul Kishore Sharma Vs. State of M.P., I.L.R. (2013) M.P. 791*

FUNDAMENTAL RULES / FUNDAMENTAL RULES, M.P.

– **Rule 22(a), Revision of Pay Rules, M.P. 1998, Rule 10(2)** - Benefit of Krammonati Pay Scale - Benefit of Krammonati pay scale is extended to such government servant who in the period of 24 years have not earned advancement/promotion - Petitioner who got two promotions, is rightly held not entitled for benefit of Krammonati pay scale - Petition dismissed : *Subhash Kumar Dubey Vs. State of M.P., I.L.R. (2013) M.P. 351*

– **Rule 22-D** - Krammonati - Krammonati and F.R. 22-D are different - Krammonati is granted when employee is not getting promotion for a considerable long time - To avoid stagnation, he is granted financial up-gradation - F.R. 22-D is given when employee is promoted from one post to another carrying same pay scale but having greater responsibilities and duties - Post of Head Master is carrying greater responsibilities and duties - F.R. 22-D is applicable - Stand of respondents that F.R. 22-D is not applicable because of grant of financial up-gradation is without any basis and substance - Petition allowed : *Ram Siya Sharma Vs. State of M.P., I.L.R. (2013) M.P. 314*

– **Rule 22-D, Revision of Pay Rules, M.P. 1998, Rule 10(2)** - Rule 10 does not create a right but only protects the special pay which an incumbent earns while discharging onerous duties - Special pay not attached with the post of Camp Coordinator - The petitioner gets no benefit of Rule 10(2) - Petitioner, therefore, has rightly been held not entitled for special pay : *Subhash Kumar Dubey Vs. State of M.P., I.L.R. (2013) M.P. 351*

– **Rules 54 (7), 54-A** – No Work No Pay – Punishment of termination was set aside as excessive and minor penalty was imposed by SAT – Provisions of FR 54-A(3) will not be applicable but the period has to be regularized as per Rule 54-A (2) – Entire period cannot be treated on the principle of no work no pay – Although Petitioner is not entitled for full pay and allowance but his claim has to be settled in accordance with Rule 54(7) which is made applicable by virtue of provisions of Rule 54-A(2) : *Bhagwandeem Choudhary Vs. State of M.P., I.L.R. (2012) M.P. 869*

– **Rule 56** – Date of retirement – Railway Board's Circular dated 8.8.95 directed that certain percentage of dearness allowance to be treated as dearness pay for the purpose of calculating the DCRG for those retiring on or after 1.4.95 by simultaneously raising maximum limit of DCRG from 1 Lac to 2.5 Lacs – Held – Respondents who were born on 1.4.37 retired on attaining the age of superannuation w.e.f. 31.3.95 afternoon, are not entitled for the benefit : *Union of India Vs. Central Administrative Tribunal, Jabalpur, I.L.R. (2011) M.P. *90 (DB)*

Fundamental Rules, M.P., Rule 9(3), Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rule 9 – Revocation of suspension order – Lien – It is not open to contend that the lien would be against the place where the employee was working at the relevant time when he was placed under suspension – Lien can be against a post and not a lien on a place : *Asif Mohd. Khan Vs. State of M.P., I.L.R. (2015) M.P. 3141 (FB)*

Fundamental Rules, M.P. - Rule 56(2)(a) - Compulsory Retirement - Compulsory Retirement from service is neither dismissal nor removal - It is not a punishment prescribed by Rules and involves no penal consequences in as much as

person retired is entitled to pension and other retiral benefits proportionate to the period of service standing to his credit : *R.C. Chandel Vs. High Court of M.P., I.L.R. (2012) M.P. *103 (SC)*

Fundamental Rules, M.P. - Rule 56(2)(a) - Compulsory Retirement - Confirmation as District Judge - Confirmation as District Judge and grant of selection grade and super time scale donot wipe out the earlier adverse entries which have remained on record and continued to hold the field : *R.C. Chandel Vs. High Court of M.P., I.L.R. (2012) M.P. *103 (SC)*

Fundamental Rules, M.P. - Rule 56(2)(a) - Compulsory Retirement - Material - Appellant did not have unblemished service record all along - He was graded "Average" on few occasions and was assessed "Poor" also - Quality of judgments and orders were not found satisfactory - Reputation was observed to be tainted on few occasions - Representation for expunction of Adverse Remarks failed - Material available amply shows that the material germane for taking decision by Full Courts to consider whether the appellant could be continued in judicial service or deserved to be retired compulsorily did exist - It is not the scope of judicial review to go into adequacy or sufficiency of such material : *R.C. Chandel Vs. High Court of M.P., I.L.R. (2012) M.P. *103 (SC)*

Fundamental Rules, M.P. - Rule 56(2)(a) - Compulsory Retirement - View of Administrative Committee - View of Administrative Committee is not final - It is recommendatory in nature - It is open to Full Court to accept the report of committee or to take a different view : *R.C. Chandel Vs. High Court of M.P., I.L.R. (2012) M.P. *103 (SC)*

G

GANDI BASTI ADHINIYAM, M.P. (39 OF 1976)

– **Section 20** - Sanction of Competent Authority - Respondent filed a suit for eviction without obtaining sanction of competent authority - It is not disputed that the property in dispute is situated in a slum area - Suit for eviction is barred as no sanction from competent authority was obtained : *Shantibai (Smt.) Vs. Abdul Gafar, I.L.R. (2012) M.P. 2162*

GENERAL CLAUSES ACT (10 OF 1897)

– **“Schedule”** – Means, schedule to the Act or Regulation in which the word occur – Further held, it is the duty of the respondent to mention with accuracy and precision the meaning of scheduled bank – It cannot be expected from a common man to

make research to ascertain the meaning : *Lata Agrawal (Smt.) Vs. Indian Oil Corporation, I.L.R. (2014) M.P. 2096*

– **Section 6(e)** – See – Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhinyam, M.P. 2005, Section 2(1) : *State of M.P. Vs. Smt. Munni Bai, I.L.R. (2012) M.P. 847 (DB)*

– **Section 27** – See – Accommodation Control Act, M.P., 1961, Section 12(1)(a) : *Agrawal Medical Agencies (M/s.) Vs. Govind Prasad, I.L.R. (2012) M.P. 942*

– **Section 27** – See – Criminal Procedure Code, 1973, Section 482 : *Dhanraj Vs. Ashok Kumar, I.L.R. (2014) M.P. 1172*

GENERAL CLAUSES ACT, M.P. 1957 (3 OF 1958)

– **Section 13** – Singular or Plural – Principle underlying Section 13 of Act, 1957 regarding singular including the plural and vice versa does not have universal application and that principle can apply only when no contrary intention is deducible from the scheme or the language used in Statute : *Bhanushali Housing Cooperative Society Ltd. Vs. Mangilal, I.L.R. (2015) M.P. 2293 (SC)*

GENERAL SALES TAX ACT, M.P. 1958 (2 OF 1959)

– **Section 2(d)(i) & 33-A** - Recovery of Dues - For the recovery of dues of the Firm, which is a dealer, the personal property of the Partner of the Firm can not be attached or auctioned : *State of M.P. Vs. Smt. Zubeda Bano, I.L.R. (2011) M.P. 2302 (DB)*

– **Section 12** - Denial of exemption from payment of entry tax under the notification No. A-3-9-95-ST-V(57) dated 5th July, 1995 for the period 01.04.1996 to 31.03.1997 - Held - Dealer is exempted from payment of sales tax under notification dated 23rd October, 1981 but the goods are not exempted - Liability to pay sales tax continued - Under the notification No. 55 dated 05.07.1995 said liability was reduced to 2% therefore, in terms of notification, petitioner was entitled to claim exemption from payment of entry tax on the goods in question on satisfaction of other conditions specified in notification : *Kapil Steels Ltd. Vs. Assistant Commissioner of Commercial Tax, I.L.R. (2014) M.P. 298 (DB)*

– **Section 33-A** - Attachment - Respondent purchased a suit house for a consideration of Rs. 45,000/- from one of the partners of a firm - Suit property was subsequently attached for recovery of arrears of tax against the firm - No documents were filed by the appellants that any tax was due against the firm - Secondly there is nothing on record that the respondent was aware of the recovery proceedings at the time of the

execution of the sale deed - Attachment of the house contrary to law - Appeal dismissed : *The Secretary, Finance Deptt. Vs. Smt. Shanti Bai, I.L.R. (2013) M.P. 2423*

– **Section 44(1), (2), (3) & 3(3)** - Board of Revenue rejected the application u/s 44 of the Act only on technical ground that it was filed by the Additional Commissioner Sales Tax who was not competent to file it - Held - Section 44, it is apparent that the statute provides that the Commissioner may, by application in writing can seek a reference u/s 44(1) or (2) of the Act - Sub Section 3 of Section 3 specifically provides that the Additional Commissioner of the Sales Tax shall exercise all the powers and perform all the duties conferred or imposed on the Commissioner by or under this Act, throughout the State and for this purpose any reference to the Commissioner in this Act shall be deemed to include a reference to the Additional Commissioner of Sales Tax - Board of Revenue without considering the aforesaid provisions have wrongly rejected - Application filed by the Additional Commissioner on behalf of the Commissioner, Sales Tax was maintainable - Matter is remitted back : *State of M.P. Vs. M/s. Surya Agro Oils Ltd., I.L.R. (2014) M.P. 30 (DB)*

GOVANSH VADH PRATISHEDH ADHINIYAM, M.P. (6 OF 2004)

– **Section 11(5)**, Criminal Procedure Code, 1973 (2 of 1974), Section 451 - Supurdgi of vehicle - Vehicle seized under Section 11(d),(f) & (o) of M.P. Govansh Vadh Pratishedh Adhinyam and Section 26 of Prevention of Cruelty to Animals Act - Proceedings for confiscation of the seized trucks have been commenced before the District Magistrate - Held - The jurisdiction of the Judicial Magistrate First Class i.e. trial court is not ousted from releasing the said property in interim custody : *Mohd. Islam Vs. State of M.P., I.L.R. (2013) M.P. 2265*

GOVERNMENT COMPANY

– **Ownership of property** – Govt. company is a separate legal entity and does not hold property on behalf of government : *Bharat Sanchar Nigam Ltd. Vs. Commissioner, Municipal Corporation, I.L.R. (2011) M.P. *92*

GRAM ROJGAR SAHAYAK KI NIYUKTI SE SAMBANDHIT NAVEEN DISHA NIRDESH

– **Clause 8 Sub clause 6 & 7** – Appointment of Gram Rojgar Sahayak under the Scheme – Despite having more meritorious, respondent No. 4 was not selected for want of I.D. proof not furnished with application form – Collector by impugned order rejected the appointment of the petitioner – Held – In view of sub clause 7 of clause 8, it was not

mandatory for any candidate to have enclosed the document – Sub clause only prohibits receiving of application after the last date – Since respondent No. 4 is the resident of the concerned Gram Panchayat having his name registered in the voter list and more meritorious – Conclusion arrived at by the Collector cannot be faulted with – Petition is dismissed : *Raj Kumar Singh Lodhi Vs. State of M.P., I.L.R. (2014) M.P. 1498*

GRANT-IN-AID RULES, M.P. FOR NON-GOVERNMENTAL INSTITUTIONS (TECHNICAL)

Benefits to Employee- Aided institutions are bound to follow the orders and rules made by the State Govt. – Employees of aided institutions are entitled to receive similar benefits which are applicable to the employees of Govt. Institutions : *Y.P. Singh (Prof.) Vs. State of M.P., I.L.R. (2012) M.P. 64*

GRIHA NIRMAN MANDAL ADHINIYAM, M.P. 1972, (3 OF 1973)

– **Section 47 & 50(b), Substituted by M.P. Act No. 4 of 2011 w.e.f. 04.01.2011** Housing Board Accounts Rules, M.P. 1991, Rule 5.4 & 5.7.4. – Addition of extra expenditure towards cost price – Unless it is established that an extra expenditure has been incurred after the allotment of the site the final pricing of the unit by authority is always vulnerable and if found to be irrational and unreasonable is liable to be declared null and void – Board having failed to establish the expenditure added towards cost price of the land after the date of allotment is not justified in adding the same towards cost price of land : *Sudha Jain (Dr.) Vs. M.P. Housing and Infrastructure Development, I.L.R. (2014) M.P. 2806*

– **Section 47 & 50(b), Substituted by M.P. Act No. 4 of 2011 w.e.f. 04.01.2011** Housing Board Accounts Rules, M.P. 1991, Rule 5.4 & 5.7.4. – Date for determining the cost price – It is the date when after the scrutiny of the applications received in pursuance of the tender when allotment is finalized – Price prevailing on such date is applicable : *Sudha Jain (Dr.) Vs. M.P. Housing and Infrastructure Development, I.L.R. (2014) M.P. 2806*

– **Section 47 & 50(b), Substituted by M.P. Act No. 4 of 2011 w.e.f. 04.01.2011** Housing Board Accounts Rules, M.P. 1991, Rule 5.4 & 5.7.4. – Linking of cost price with Collector's guideline – Petitioners have purchased residential accommodations from M.P. Housing Infrastructure Board under self financing scheme – Issue revolves round the pricing of these residential accommodation – Petitioner have confined their challenge only to linking of cost price of land with Collector's guidelines – Held – Unless established that determination of market value is by the expert Committee constituted

under 2000 Guideline, Rules by following with the procedure laid down therein the market value determined by the Collector will not be foolproof determinant for pricing of the residential accommodation under the self-financing scheme – These guidelines are for the purpose of determination of stamp duty and keeps on changing every year : *Sudha Jain (Dr.) Vs. M.P. Housing and Infrastructure Development, I.L.R. (2014) M.P. 2806*

– **Section 50** - Flat - Parking charge and premium of land were not mentioned separately in initial advertisement - Parking space and land are part and parcel of Flat and are included in definition of Flat - Demand of parking charge and premium of land illegal : *Amit Pande Vs. M.P. Housing Board, I.L.R. (2011) M.P. *40*

– **Section 50**, Housing Board Accounts Rules, M.P. 1991, Rules 5.4 & 5.7 – Cost of Land – In Advertisement it was mentioned that the price of houses are provisional – Subsequent hike in price of Land at the time of allotment – In view of clause contained in advertisement and provisions of Act, 1972 and Rules, 1991, hike in price of land is permissible – However, the same has to be done by applying the doctrine of proportionality and not on the basis of Collector's guidelines – Cost of developed plot in the year 2009 was provisionally fixed at Rs. 16,500/- per sq. meter – Enhancement of the same to Rs. 30,000 per sq. meter bad – Price of developed plot may be revised by adding 10% to provisional cost every year upto the date of demand made upon the said amount – Interest at the rate of 9% per annum may be added on such enhanced revised value amount – Appeal partly allowed : *Madhya Pradesh Housing and Infrastructure Development Board Vs. B.S.S. Parihar, I.L.R. (2015) M.P. 1959 (SC)*

GUARDIANS AND WARDS ACT (8 OF 1890)

– **Section 7 & 39** – Removal of Guardian – Application for amendment – Removal of guardian sought under Section 39 – It will not be open for such person to seek a conversion of the same into that of an application u/s 7 – Trial Court was justified in rejecting the application for amendment – Petition dismissed : *Bachcha Shankar Mishra Vs. Shri Krishna Pandey, I.L.R. (2011) M.P. 934 (DB)*

– **Section 9** - Jurisdiction - "Where the minor ordinarily resides" is a mixed question of fact & law - Can not be decided under Order 7 Rule 11 C.P.C. - Order of trial Court set aside - Matter remanded back for framing issue and decision on merits : *Adesh Gupta Vs. Smt. Sadhna Gupta, I.L.R. (2012) M.P. 1808*

– **Section 10 & 47** – Appointment as the guardian of minor – Ward was born out of wedlock of appellant and his deceased wife who committed suicide – Respondent who is maternal grand father of ward has been looking after her since her birth and after the death of her mother – There is possibility of second marriage of appellant who does not

have any female support to look after the girl – Held – In considering the question of custody of a minor, the court has to be guided by the only consideration of the welfare and interest of the minor – There is no illegality in impugned order in appointing the maternal grand father as guardian – Appeal is dismissed : *Rajeev Verma Vs. Santosh Kumar Kushwaha, I.L.R. (2014) M.P. 1073 (DB)*

– **Section 12 & 25** – See – Hindu Minority and Guardianship Act, 1956, Section 6 : *Surendra Patel Vs. Ritu @ Vandana Patel, I.L.R. (2015) M.P. 177 (DB)*

– **Section 17(3) & 19(a)** - See - Hindu Minority and Guardianship Act, 1956, Section 6(c) : *Manohar Jatav Vs. State of M.P., I.L.R. (2012) M.P. 1900*

– **Section 20 & 25** - Jurisdiction - Custody proceedings of minor child would lie at the place where the ward is living - As child is living at Vidisha therefore, Court at Bhopal has no jurisdiction : *Smita Jain Vs. Anil Kumar Jain, I.L.R. (2012) M.P. 2292*

– **Section 25**, Family Courts Act (66 of 1984), Section 7(1)(g) – Jurisdiction – After the constitution of Family Court, District Court, Bhopal has no jurisdiction to entertain application u/s 25 of Act, 1890 seeking custody of child – Only Family Court has jurisdiction to entertain the said application – District Court directed to return the application for its presentation before Family Court, Bhopal : *Deedar Singh Dhillan Vs. Preetpal Singh Chadda, I.L.R. (2015) M.P. 1368*

– **Section 25** – Custody of child – Territorial jurisdiction – Ordinarily resides – Natural Guardian/Father residing at Bhopal – If child is shifted temporarily to another place even on the basis of consent of respondent, it cannot be held that Court at Bhopal has no jurisdiction – Such a question is required to be decided only after recording of evidence : *Deedar Singh Dhillan Vs. Preetpal Singh Chadda, I.L.R. (2015) M.P. 1368*

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HIGH COURT RULES, M.P., 2008

– **Rules 2(7)(e)(2 & 5)** – See – Hindu Marriage Act, 1955, Section 13(1)(i) : *Jaideep Shah Vs. Mrs. Rashmi Shah @ Miss Rashmi Vyas, I.L.R. (2011) M.P. 1688*

- **Rule 4(12)** - Part Heard Case - It is open to the Bench/Judge who has heard the case to mark a case as part heard if the Bench/Judge feels that it/he has devoted sufficient time in hearing - If the case has not been marked part-heard, it would not be proper for counsel to suggest to other bench/judge that the case be sent to another Bench/Judge by orally saying that the case was actually part-heard by other Bench/Judge -This procedure may result in bench hunting on the part of litigants - Matter directed to be listed before

appropriate bench as per roster : *State of M.P. Vs. V.K. Shrivasa, I.L.R. (2011) M.P. 2971 (DB)*

- **Rule 14** - Company Petition - Ordinarily - Word 'Ordinarily' means that provision is a general one and must be read subject to the special provisions contained in the parent enactment : *Sanil P. Sahu Vs. M/s. Vishwa Organics Pvt. Ltd., I.L.R. (2013) M.P. *42*

- **Rule 48** – See – Criminal Procedure Code, 1973, Section 397 & 401 : *Deepak Sahu Vs. State of M.P., I.L.R. (2012) M.P. 1441*

- **Chapter 4 Rule 10** - Formulation of point - Judges comprising of Division Bench differing on the point of admission - Matter was placed before Hon'ble the Chief Justice without formulating the point - Held - The Chief Justice acquires jurisdiction to nominate one or more of other Judge(s) only after such formulation of point(s) of difference - Unless such formulation is made, the Chief Justice may not even acquire the power under sub-rule (2) to nominate one or more of other Judge(s) to deliver the opinion - Matter to be placed before Hon'ble the Chief Justice for appropriate orders : *Suresh Singh Sikarwar Vs. State of M.P., I.L.R. (2011) M.P. 36 (FB)*

- **Chapter 5** - Powers, Duties and Functions of Registrar - High Court directed the Petitioner to pay Process Fee within a week otherwise, the petition shall be liable to be dismissed without reference to the Court - Section 148 of C.P.C. gives sufficient powers to the Court to extend time given by it earlier - Registrar instead of listing the case before the Court chose to dismiss the petition by his order dated 28.06.2006 - Order passed by Registrar is without jurisdiction and can only be termed as an error of the Court - Even if no application for restoration of petition is filed, still it was the duty of the Court to rectify its mistake in exercise of its suo moto powers - Order passed by Registrar is non-est : *Bhaskar Publication & Allied Industries Pvt. Ltd. Vs. Smt. Kishori Devi Agrawal, I.L.R. (2011) M.P. *149 (DB)*

- **Chapter 9 Rule 4** - Affidavit - Affidavit should contain only facts - It shall not contain any statement which is in the nature of expression of opinion or argument : *Rajendra Singh Rawat Vs. State of M.P., I.L.R. (2012) M.P. 2660*

HIGH COURT SUPERINTENDENCE RULES (M.P.), 1998

- **Entry 9 & 10 of Schedule, Constitution** – Article 227 (2)(b) – Only Court word has been used in Article 227(2)(b) – Thus Article 227(2)(b) does not empower the High Court to make rules with regard to Tribunals – Rules 1998, so far it relates to

Administrative Tribunal are ultra vires : *Union of India Vs. Registrar General, High Court of M.P., Jabalpur, I.L.R. (2012) M.P. 837 (FB)*

HIGHER JUDICIAL SERVICE (RECRUITMENT AND CONDITIONS OF SERVICE) RULES, M.P. 1994

– **Rule 5 & 7** – Cutoff marks for viva voce – Scheme of selection as made in Rules nowhere contemplates prescription of minimum cutoff marks for viva voce, such a prescription in advertisement was not permissible : *Bharat Bhushan Vs. High Court of M.P., I.L.R. (2015) M.P. 2437 (DB)*

– **Rule 14** – Rule empowers the State to compulsorily retire a member of the service, not found fit and suitable on his attaining the age of 58 years : *Krishna Kumar Gupta Vs. State of M.P., I.L.R. (2011) M.P. 1947 (DB)*

– **Rule 14** – See – Civil Services (Pension) Rules, M.P. 1976, Rule 42(1)(b) : *Shailendra Singh Nahar Vs. State of M.P., I.L.R. (2015) M.P. 1754 (DB)*

HINDU LAW

– **Nature of Property** – Ancestral or Stridhan - Property acquired by a daughter by way of gift from her father cannot be treated as an ancestral property and would be her stridhan : *Indrakali (Smt.) Vs. Ravi Bhan Prasad, I.L.R. (2012) M.P. 471*

– **Article 231(1) of Mulla's Hindu Law - Presumption of Joint Property** – There is a presumption of Joint Hindu Family but there can not be any presumption that joint family possess a joint property – It is for the person who claims it to be joint has to prove that from the funds of HUF, it was purchased : *Gopi Nath Vs. Shiv Prasad, I.L.R. (2012) M.P. *56*

– **Joint Hindu Family Property** - Two different properties purchased jointly in the names of Kannomal and Gullimal (real brothers) - Plaintiff admitted that Firm Kannomal and Gullimal was in existence - In absence of contrary evidence, it may be presumed that HUF firm must be in existence during the lifetime of brothers - Presumption about existence of particular state of affairs is available not merely in forward direction but may also be raised in backward direction - Joint nucleus of said firm about purchase of property in 1928 has been rightly inferred : *Omprakash Vs. Shri Ram, I.L.R. (2011) M.P. 722*

– **Joint Property** – Plaintiffs pleaded that the property was purchased from the funds of HUF in the name of Plaintiff No.1 – Defendant No.1 claimed the said property to be his self acquired property – Defendant No.1 merely stated that he was employed in

Police Department – No mention in written statement that on which post he was appointed – No pleadings or evidence that what was his salary and whether he was fetching that much of salary so that within a short span of five years only, he could purchase the suit property – No receipt of money orders also filed – It can be gathered that by utilizing the funds of HUF, suit property was purchased – Appeal allowed : *Gopi Nath Vs. Shiv Prasad, I.L.R. (2012) M.P. *56*

– **Change in Nature of Property** – Property in dispute originally belonged to father of the respondent No.1 which was subsequently partitioned between brothers after his death – Property falling to the share of respondent No. 1 would be self acquired property for all others except his male issue – Share allotted to respondent No.1 would still be a coparcenary property between him and the appellant though it may be his self acquired property for the others : *Rajesh Vs. Keshar Singh, I.L.R. (2012) M.P. 951*

– **Undivided Coparcenary Property** – Nature of possession of coparcener – Every coparcener is co-owner of the entire property till the same is partitioned in accordance to the procedure prescribed under the law and if the coparcenary property is in possession of some other coparcener, then as per settled proposition of Hindu Personal Law, the possession of such coparcener is deemed to be the possession as trustee of other coparceners till the partition of the same is carried out and the separate possession is given : *Gorelal Lodhi Vs. Ratan Lal Lodhi, I.L.R. (2015) M.P. 1861*

HINDU MARRIAGE ACT (25 OF 1955)

SYNOPSIS

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|-------------------------------------|--|
| 1. Annulment of Marriage | 2. Divorce |
| 3. Divorce by Mutual Consent | 4. Interim Alimony/Pendente-lite |
| 5. Permanent Alimony | 6. Restitution of Conjugal Rights |
| 7. Transfer of Cases | |

1. Annulment of Marriage

– **Section 12 & 13**, Evidence Act, 1872, Section 45 - Annulment of marriage / Divorce sought on ground of mental disorder of wife - Application by husband for subjecting wife to medical examination by Medical Board - Held - It would certainly offend the fundamental human values, which would be demeaning the personality of an individual and the dignity of a person, who would be unnecessarily subjected to such an

examination/test, for which she had not consented or volunteered herself - Order passed by trial Court allowing the application set aside : *Alka Sharma Vs. Ajaykant Sharma*, I.L.R. (2011) M.P. *3 (DB)

2. Divorce

– **Section 13** - Condonation of Cruelty - Meaning of - Held - It is forgiveness and reinstatement with knowledge - It consists of a factum of animus-remittendi - The sexual intercourse is a strong inference of condonation with its dual requirement i.e. forgiveness and restoration : *Sanjay Agrawal Vs. Jyoti Agrawal (Smt.)*, I.L.R. (2013) M.P. *29 (DB)

– **Section 13** - Divorce - Cruelty - To constitute cruelty the conduct complained of should be "grave and weighty" - When the whole conduct of the spouse shows instance of ill treatment, use of abusive language and allegations which amounts to casting aspersions it amounts to mental cruelty : *Manjusha Jadhav (Smt.) Vs. Pradeep Jadhav*, I.L.R. (2014) M.P. 763 (DB)

– **Section 13** - Divorce - Desertion - Respondent left the appellant in 2006 and did not return back - He even did not appear before Appellate Court for reconciliation - Marriage has broken down irretrievably as respondent is living separately for the last 6 years and has voluntarily deserted the appellant - Continuation of marriage would tantamount to cruelty on the appellant - Decree of divorce granted - Appeal allowed : *Aradhana (Smt.) Vs. Pradeep Mishra*, I.L.R. (2012) M.P. 2174 (DB)

– **Section 13** - Divorce - Impotency - Respondent was medically treated for infertility - Impotency means a party is impotent if his or her mental or physical condition makes a consummation of marriage a practical impossibility - Infertility would not mean impotency : *Aradhana (Smt.) Vs. Pradeep Mishra*, I.L.R. (2012) M.P. 2174 (DB)

– **Section 13** – Divorce – Irretrievable breakdown of marriage – Respondent wanted to live with the appellant as wife – The reluctance is only on the part of the appellant husband – The irretrievable breakdown of marriage is not established : *Prakashrao Vs. Smt. Jyoti*, I.L.R. (2012) M.P. 962 (DB)

– **Section 13(1)** - Cruelty - Evidence of witnesses with regard to payment of Rs. 1 lac to husband are not similar - Appellant also admitted that her sister-in-law is not residing with the parents of Husband but had implicated her in the F.I.R. - F.I.R. was lodged after filing of the divorce petition - Conduct of the appellant was cruel towards her in-laws - Appellant also falsely propagated that her father-in-law tried to commit rape upon her - Decree of divorce rightly granted : *Shikha Tamrakaar Vs. Rohit Kumar Tamrakaar*, I.L.R. (2013) M.P. 2939 (DB)

– **Section 13(1)** - Cruelty - False F.I.R. - Respondent did not amend the petition alleging cruelty by appellant by lodging false F.I.R. - Decree of divorce cannot be passed on the ground of lodging of false F.I.R. - However, the filing of false F.I.R. can be considered while considering the conduct of the appellant : *Shikha Tamrakaar Vs. Rohit Kumar Tamrakaar, I.L.R. (2013) M.P. 2939 (DB)*

– **Section 13(1)** - Cruelty - Meaning of - Law discussed : *Shikha Tamrakaar Vs. Rohit Kumar Tamrakaar, I.L.R. (2013) M.P. 2939 (DB)*

– **Section 13 (1)** - Divorce - Allegations of Cruelty - Cruelty must be of such a nature that the parties can not reasonably be expected to live together : *Anil Kumar Rathore Vs. Smt. Shashi Rathore, I.L.R. (2011) M.P. 2487 (DB)*

– **Section 13(1)** - Divorce - Desertion - Wife leaving matrimonial house since 1991 - 22 years lapsed - Held - Matrimonial bond between the parties cannot be repaired - Appellant is entitled to decree of divorce : *Dashrath Prasad Yadav Vs. Smt. Parvati Yadav, I.L.R. (2013) M.P. 2881 (DB)*

– **Section 13(1)** - Divorce - General Allegations of Cruelty - Allegations in the nature of 'normal wear and tear' in matrimonial life of a couple - Can not fall within the field of Clauses (i-a) and (i-b) of Sub-section (1) of Section 13 of the Act : *Anil Kumar Rathore Vs. Smt. Shashi Rathore, I.L.R. (2011) M.P. 2487 (DB)*

– **Section 13(1)(a)** – Cruelty – At some occasions some disputes taken place between the respondent and her husband or in laws on small household issues relating to day to day work – Such disputes are not unusual in the joint families – No inference of cruelty can be drawn on that basis : *Prakashrao Vs. Smt. Jyoti, I.L.R. (2012) M.P. 962 (DB)*

– **Section 13(1)(a)** – Cruelty – complaint by the respondent under Section 498-A of the IPC – No case of the appellant that in pursuance to the said complaint, the appellant or his family members were arrested or kept in custody – Family members of the respondent themselves took initiative to compromise the matter and on the basis of the said compromise the criminal case came to an end – Making of the complaint would not amount to cruelty : *Prakashrao Vs. Smt. Jyoti, I.L.R. (2012) M.P. 962 (DB)*

– **Section 13(1)(a)** - Divorce - Cruelty - Respondent did not have any sexual intercourse with the appellant - This amounts to mental cruelty, apart from this there is ample evidence that the respondent treated the appellant with cruelty - Mere smiling faces in photographs can not disprove cruelty - Appellant has successfully proved the ground of cruelty and she is entitled for a decree of divorce - Appeal allowed : *Amita Pathak (Smt.) Vs. S. Shiv Prasad, I.L.R. (2011) M.P. *148 (DB)*

– **Section 13(1)(a)** - Divorce - Mental Cruelty - After solemnization of marriage, the respondent treated her husband with cruelty by raising unnecessary quarrels, using filthy abuses, not preparing the food, threatening of mixing poison in food and threatening to commit suicide - Held - Ground of cruelty proved by the appellant : *Dashrath Prasad Yadav Vs. Smt. Parvati Yadav, I.L.R. (2013) M.P. 2881 (DB)*

– **Section 13(1)(a) & 13(1)(ia)** – Divorce – Cruelty and desertion – After the marriage appellant’s behaviour was not co-operative with husband and his family – She used to visit parental house without husband’s consent – They had been living separately for considerable length of time – She also made allegation of illicit relation – Held – Allegation of illicit relation cannot be lightly ignored which caused mental agony – Appellant’s behaviour was also not proper – She was not doing any household work – Appellant is responsible for mental agony which amounts to cruelty – There had been irretrievable break down of their marriage – No illegality in the impugned order granting divorce – Appeal dismissed : *Souram Bai (Smt.) Vs. Babu Lal, I.L.R. (2014) M.P. 1068 (DB)*

– **Section 13(1)(a) & 28** – See – Family Courts Act, 1984, Section 19 : *Hariom Vs. Manjulata Sahu, I.L.R. (2014) M.P. 1042 (DB)*

– **Section 13(1)(i)**, M.P. High Court Rules 2(7)(e)(2 &5) – In a petition seeking dissolution of marriage on the ground of adultery, the date and place of the adultery and the name and address of the person with whom the adultery was committed by the respondent is required to be stated – Such a person should have an opportunity to defend his reputation before such a finding is recorded : *Jaideep Shah Vs. Mrs. Rashmi Shah @ Miss Rashmi Vyas, I.L.R. (2011) M.P. 1688*

– **Section 13(1)(ia)** – Cruelty and desertion – There is no proof of mental cruelty caused by wife – It is also not proved that the wife left her matrimonial home without just and reasonable cause – She had to live with her parents out of compulsion – No error or illegality in disallowing the petition – Appeal dismissed : *Prem Narayan @ Hallebhai Vs. Smt. Banti Bai, I.L.R. (2014) M.P. 1588 (DB)*

– **Section 13(1)(ia)** – Cruelty – Appellant levelled allegations against the sister of husband that she is of shady character – She also filed various complaints u/s 498-A of I.P.C. and Protection of Women from Domestic Violence Act – She also filed various revisions against the orders granting bail – Appellant was guilty of inflicting cruelty upon her husband – Decree of divorce rightly granted – Appeal dismissed : *Mamta Bhardwaj Vs. Madhusudan Bhardwaj, I.L.R. (2015) M.P. 2977 (DB)*

– **Section 13(1)(ia)** – Cruelty – Husband was prosecuted by wife for offences punishable under Section 498A, 494, 497, 109 & 201/34 of I.P.C. – Appellant was

acquitted – False prosecution amounts to mental cruelty – False allegation of illicit relationship or bigamy also amounts to cruelty – Appellant entitled for divorce : *Dinesh Nagda Vs. Shanti Bai, I.L.R. (2012) M.P. *21 (DB)*

– **Section 13(1)(ia)** – Cruelty – To constitute cruelty, the conduct complained should be grave and weighty so as to make cohabitation virtually unendurable – Human mind is extremely complex – What is cruelty in one case may not be a cruelty in another case – There can never be any straight jacket formula or fixed parameters for determining mental cruelty in matrimonial matter : *Mamta Bhardwaj Vs. Madhusudan Bhardwaj, I.L.R. (2015) M.P. 2977 (DB)*

– **Section 13(1)(ia)(ib)** - Cruelty coupled with desertion - The standard of proof required in a case of cruelty or desertion need not be over empathized - The rule of preponderance of probabilities about the commission of offence is sufficient - Proving beyond reasonable doubt is not necessary for matrimony offences : *Kavita Verma (Smt.) Vs. Narendra Kumar Shrivastava, I.L.R. (2013) M.P. 619 (DB)*

– **Section 13(1)(ia)(ib)** - Divorce - It is trite in law that mere cruelty is not enough - Adultery coupled with cruelty or adultery coupled with desertion for two years or more, must be established before the relief of divorce can be claimed : *Kavita Verma (Smt.) Vs. Narendra Kumar Shrivastava, I.L.R. (2013) M.P. 619 (DB)*

– **Section 13(1)(ia)(ib)** - Living in Adultery - Where the status of matrimony as well as interests of society is involved, the court has right and duty to see the matrimonial offence of adultery is properly established by evidence : *Kavita Verma (Smt.) Vs. Narendra Kumar Shrivastava, I.L.R. (2013) M.P. 619 (DB)*

– **Section 13(1)(ib)** – Desertion – Respondent admitted that she is living separately for the last 9-10 years – Respondent failed to establish any reasonable ground for living separately – Respondent has deserted the appellant – Appellant entitled for decree on the ground of desertion : *Dinesh Nagda Vs. Shanti Bai, I.L.R. (2012) M.P. *21 (DB)*

3. Divorce by Mutual Consent

– **Section 13-B** - Divorce by mutual consent - Not living as husband and wife - Petition for divorce by mutual consent was filed with specific averment that the parties are not living as husband and wife since last one year - Petition was dismissed on the ground that the appellant is living separately in her parental house since 19.02.2011 and the petition was filed on 11.01.2012 - Held - Living Separately connotes not living like husband and wife - It has no reference to place of living - Further the requisite period of one year under Section 13B(1) of the Act was already elapsed when the judgment was

delivered - Judgment of Family Court set aside - Decree of divorce is granted to the parties by mutual consent : *Vartika (Smt.) Vs. Ankit Jain, I.L.R. (2013) M.P. 854 (DB)*

– **Section 13-B** – Divorce – Irretrievable break down – Petition for divorce filed by appellant on the ground of cruelty dismissed by Trial Court – In appeal, the wife did not appear inspite of publication of notice in news paper – Husband and wife residing separately for the last 18 years – In such circumstances, it shows that the marriage between the parties is irretrievably broken down – Appellant entitled to get a decree of divorce : *Kamal Singh Sisodia Vs. Smt. Rama Sisodia, I.L.R. (2015) M.P. *8 (DB)*

– **Section 26 & 13-B** - Decree of divorce by mutual consent - Respondent/Wife granted custody of the children - Appellant/husband was granted visiting rights and appellant/husband filed application for custody of children after one year - Application was dismissed as not maintainable after decree of divorce - Held - Even after the decree, the court is empowered to make order in regard to the custody, maintenance and education and is empowered from time to time to revoke, suspend or vary any such orders - Matter remanded to trial Court to decide case afresh : *Rajendra Singh Vs. Garima, I.L.R. (2014) M.P. 154 (DB)*

4. Interim Alimony/Pendente-lite

– **Section 24** – Grant of interim alimony to wife – Respondent is legally wedded wife residing separately – Not having any source of income – Held – Impugned order has been passed under the vested discretionary jurisdiction, same cannot be interfered with – If alimony is not granted to the spouse, who is not having any source of income, then such person could not live to see the fate of the matter – Amount of Rs. 5,000/- by the trial court, could not said to be on higher side – Petition dismissed : *Rajesh Gupta Vs. Mohini Gupta, I.L.R. (2015) M.P. 348*

– **Section 24** – Interim alimony and litigation cost – Interim alimony @ Rs. 1000/- per month for respondent and school going son – Challenge is made on the ground that the wife is living separately without any sufficient cause although the petitioner is ready to keep her – She is also Samvida Shala Shikshika-I and competent to maintain herself – Held – Even if the respondent is excluded to get interim alimony, petitioner is bound to pay the award amount for the welfare of school going boy despite the fact that she is also getting Rs. 1000/- per month awarded by Magistrate u/s 125 of Cr.P.C. – Petition dismissed : *Brijesh Vishwakarma Vs. Smt. Laxmi Vishwakarma, I.L.R. (2015) M.P. 609*

– **Section 24** – Interim alimony and litigation expenses – Petition u/s 9 of the Act has been filed by the respondent – Petitioner by filing the counter claim has prayed to

declare the alleged marriage as ab initio void on account of impotency of the respondent – She also filed the impugned application u/s 24 of the Act – Held – Provision of Section 24 of the Act does not exclude the spouse to get the interim alimony on account of filing of counter claim to declare the marriage as ab initio void : *Beena Dehariya Vs. Vimal Dehariya, I.L.R. (2015) M.P. 1175*

– **Section 24** – Interim alimony and maintenance – If the husband is healthy and abled body person then he could not escape from his liability to pay interim alimony or the maintenance to his wife on account of not having any source of income or less income : *Dileep Singh Vs. Smt. Bharti Mehar, I.L.R. (2015) M.P. 607*

– **Section 24** – Interim alimony – Salary of the husband is around Rs. 52,885.68 P. per month, after necessary deduction, he is getting in hand Rs. 34,660/- P.M. – Wife did not have any source of income and also not involved in any service or the profession and besides herself, she is also looking after and maintaining two minor daughters – Held – Keeping in view the price index of food stuff and other things in the market and the income of the respondent/husband, the sum of the interim alimony awarded by the trial court is hereby enhanced from Rs. 8,000/- P.M. to Rs. 12,000/- P.M. : *Aparna (Smt.) Vs. P. Durga Prasad, I.L.R. (2014) M.P. 1790*

– **Section 24** – Second Wife – Entitlement – Where a woman marries a man with full knowledge of subsistence of his first marriage, provision of Section 24 would not apply : *Jagdish Singh Sankhwar Vs. Archana, I.L.R. (2014) M.P. 2338*

– **Section 24** – See – Constitution – Article 227 : *Jagdish Singh Sankhwar Vs. Archana, I.L.R. (2014) M.P. 2338*

– **Section 24** – Since petitioner did not possess any source of income and residing separately she is entitled to get Rs. 3,000/- per month as interim alimony, Rs. 5,000/- as expense of litigation and Rs. 200/- as travelling expense for every date of hearing – Since husband is a healthy and able bodied person, he could not escape from his liability to pay the interim alimony : *Beena Dehariya Vs. Vimal Dehariya, I.L.R. (2015) M.P. 1175*

– **Section 24 & 26**, Civil Procedure Code (5 of 1908), Section 11 – Maintenance pendente-lite and expenses of proceedings – Repeated applications u/s 24 and 26 of the Act have been filed and have been dismissed thrice – None of the applications have been heard finally and decided on merits – First application was dismissed by treating the wife as ex-parte – Subsequent applications have been dismissed as barred by principles of res-judicata – Held – Lis between the parties in the present case has never been heard finally and decided on merits at any point of time – Therefore, the principles of res-judicata are not attracted – Maintenance has to be paid every month and every month cause of action is arising – Principal Judge, Family Court erred in law and facts while rejecting the

applications on technicalities – Impugned order is set aside – Principal Judge is directed to decide the application on merits : *Sona (Mrs.) Vs. Subhash, I.L.R. (2014) M.P. 2865*

– **Section 28** – Enhancement of Maintenance amount – Held – Judicial Notice can be taken that now a days the education and other relevant expenses are very high and hence in such a circumstances the quantum of interim alimony may be enhanced : *Megha Gupta (Smt.) Vs. Vikas Gupta, I.L.R. (2014) M.P. *7 (DB)*

5. Permanent Alimony

– **Section 25** - Permanent Alimony - Looking to the facts and considering the earning of respondent, amount awarded towards permanent alimony enhanced from 1 lac to 4 lacs : *Manjusha Jadhav (Smt.) Vs. Pradeep Jadhav, I.L.R. (2014) M.P. 763 (DB)*

– **Section 25** – Permanent Alimony – Marriage between the parties was declared as null and void under Section 5(2) of Act, 1955, on the ground of non-consummation of marriage due to impotency of wife – Wife not entitled for maintenance as the marriage was void : *Kamlesh Vs. Geeta, I.L.R. (2014) M.P. 1095 (DB)*

– **Section 25** – Permanent alimony – Permanent alimony @ Rs. 4,000/- p.m. was granted while passing decree of divorce – No application in this regard was made – Held – Learned trial court has committed an error while awarding permanent alimony and maintenance u/s 25 of the Act without filing any application for this purpose by wife – Impugned order pertaining to grant of permanent alimony to respondent is set-aside : *Manoj Vs. Smt. Raksha, I.L.R. (2015) M.P. 173 (DB)*

6. Restitution of Conjugal Rights

– **Section 9, 25 & 26** – Grant of permanent alimony – Application for withdrawal of petition for grant of decree for restitution of conjugal rights was allowed – At the same time, application by the respondent wife for permanent alimony and maintenance of child was also allowed – No decree was passed by the Lower Court – Held – The Supreme Court has observed that claim to permanent maintenance or alimony is based on the supposition that either her marital status has been strained or affected by passing a decree for restitution of conjugal rights or judicial separation in favour or against her, or her marriage stands dissolved by a decree of nullity or divorce – Without marital status being affected or disrupted by the court under Hindu Marriage Act, the claim of permanent alimony was not to be valid as ancillary or incidental to such affectation or disruption – Impugned order so far as it relates to grant of permanent alimony and maintenance set aside : *Vishnu Vs. Smt. Durga Bai, I.L.R. (2014) M.P. 2142 (DB)*

7. Transfer of Cases

– **Section 21-A** - Transfer of Case - Jurisdiction - Wife residing at Vidisha sought transfer of cases filed at Bhopal - As Bhopal falls within the jurisdiction of the Principal Bench, it can issue an order of transfer of one case of any subordinate Court within its jurisdiction to the Court of competent jurisdiction in other district which may not be within the jurisdiction but in the same State - Application for transfer maintainable : *Smita Jain Vs. Anil Kumar Jain, I.L.R. (2012) M.P. 2292*

– **Section 21-A & 24** - Transfer of Case - Convenience of parties - Husband has to attend proceedings under Section 125 of Cr.P.C. at Vidisha - Application for custody also liable to be transferred to Vidisha as Court at Bhopal has no jurisdiction - If petition for divorce is also transferred to Vidisha, no prejudice will be caused to husband - Cases transferred to Vidisha : *Smita Jain Vs. Anil Kumar Jain, I.L.R. (2012) M.P. 2292*

– **Section 21-A & 24** - Transfer of Case - Wife residing at Vidisha and has filed an application under Section 125 of Cr.P.C. for maintenance - Whereas husband has filed a petition for divorce and also under Guardians and Wards Act at Bhopal - Section 21-A does not include application under Section 125 of Cr.P.C. - Application under Section 125 of Cr.P.C. is not to be transferred in the manner indicated in Section 21-A of Act : *Smita Jain Vs. Anil Kumar Jain, I.L.R. (2012) M.P. 2292*

HINDU MINORITY AND GUARDIANSHIP ACT, (32 OF 1956)

– **Section 6**, Guardians and Wards Act (8 of 1890), Section 12 & 25 – Custody of minor girl aged 4½ years – Consideration – Custody given to mother – Paramount consideration is welfare of child and not rights of her parents – Both families belong to agricultural class and they have similar financial and social back ground – Daughter is still 4½ years old and the mother is capable for taking care her properly – No infirmity in the impugned order – Appeal dismissed : *Surendra Patel Vs. Ritu @ Vandana Patel, I.L.R. (2015) M.P. 177 (DB)*

– **Section 6(c)**, Guardians and Wards Act (8 of 1890), Section 17(3) & 19(a) and Constitution, Article 226 - Habeas Corpus Petition - Welfare of Child - While dealing with a habeas corpus petition paramount consideration for the High Court is the welfare of the child - Neither the statutory provisions of the Act nor the precedence on the subject are to be blindly followed : *Manohar Jatav Vs. State of M.P., I.L.R. (2012) M.P. 1900*

HINDU SUCCESSION ACT (30 OF 1956)

– **Section 4, 6 & 8** – Suit for partition and possession – Suit property is joint family property – Originally owned by the grand-father of the plaintiff – During life time of plaintiff's father no partition has taken place between plaintiff's father and his brothers – Held – Grand-son is not mentioned as class-I heir in the schedule – After coming into force of the Act grand-son has no birth right in the property of grand-father and he cannot claim partition during life of his father : *Uttam Vs. Saubhag Singh, I.L.R. (2014) M.P. 1593*

– **Section 6 (Amended)** – Share of Daughters – Daughter of a coparcener is also entitled for the same share which a son of coparcener is having in a coparcenary property – Section 16 of Hindu Marriage Act provides that children born out of void or voidable marriage shall be the legitimate children – Although the second marriage of respondent No.1 is void but the children out of such void marriage will be entitled for their share – Appellant entitled for 1/6th share in the property : *Rajesh Vs. Keshar Singh, I.L.R. (2012) M.P. 951*

– **Section 6** – Opening of succession of daughters becoming co-parceners in view of 2005 amendment – Daughters who got birth after the enforcement of amended provisions of Section 6 have co-parcenary rights in the ancestral joint Hindu family property of their parents – Such daughters shall get the rights in such property on opening the succession on account of death of the co-parcener through whom they are claiming – In the present case the petitioners got birth before 2005, their succession rights has not been opened as their father is still alive and as such not entitled to get any right, title or share in the disputed property as co-parcener : *Shanti Bai Vs. Sushila Bai, I.L.R. (2015) M.P. 1679*

– **Section 8** – Property owned by a male Hindu – Would devolve in his heir only after his death – 'J' was the owner of the suit property, who was alive on date of filing of suit – Plaintiff, the daughter of pre deceased son of 'J' can not file a suit for partition : *Babu Lal Vs. Ramkali Bai, I.L.R. (2012) M.P. 1271*

– **Section 8**, Rewa Land Revenue and Tenancy Code 1935, Section 48(1) and The Hindu Law of Inheritance (amendment) Act (2 of 1929), Section 2 – Succession – Male Hindu died in 1946 leaving behind real sister (mother of defendant No.1) and cousins (plaintiffs) – Held – Neither the plaintiffs nor the defendant No. 1 are entitled to succeed to the property of the deceased – In view of the provisions of Section 2 of the Act of 1929, the property of the deceased would devolve on his sister, namely, mother of the defendant No.1 : *Virendra Kumar Dwivedi Vs. Tirath Prasad, I.L.R. (2012) M.P. 1286*

– **Section 8** – See – Succession Act, 1925, Section 373, 384 : *Regional Commissioner Vs. Bhuria Bai, I.L.R. (2015) M.P. 2777*

– **Section 8** - Share of parties - Affidavit/Relinquishment deed - Affidavit alleged sworn by plaintiff cannot be treated as relinquishment deed - Plaintiff had never relinquished her share in favor of appellant by executing the registered Release Deed or other admissible document - Co-ownership property cannot be released or transferred by one of the co-owners in favor of other without documentation of release deed or document of transfer : *Hargovind Vs. Sagun Bai, I.L.R. (2013) M.P. 401*

– **Section 8** - Share of parties - After the death of father, the name of plaintiff, her brother and respondent No. 7 were mutated in revenue records being natural heirs - Name of plaintiff was subsequently excluded from revenue record - Entry in revenue record like khasra and khatoni could not be treated as document of title - Such record is prepared only for the purposes of saddling the liability to pay revenue of such land and not for any other purposes - Plaintiff was rightly held to be entitled for 1/3rd share : *Hargovind Vs. Sagun Bai, I.L.R. (2013) M.P. 401*

– **Section 8** – Terminal dues – Legally married wife and legitimate child – Has right to succeed : *Mamta Sharma (Smt.) Vs. State of M.P., I.L.R. (2015) M.P. 1441*

– **Section 8, 9 & 11** – See – Motor Vehicles Act, 1988, Section 166(1)(c) : *Proprietor Eastern Minerals Co. Ltd. Vs. Smt. Nisha Tomar, I.L.R. (2015) M.P. 3016*

– **Section 14** - Absolute Right - Wife was given the right of maintenance under a compromise decree - Held - If a Hindu Female is given a right in the property in view of her pre-existing right, in such a case Section 14(1) of the Act would apply - Wife had an absolute right in view of provisions of Section 14(1) of the Act : *Pandhari Vs. Ramchandra, I.L.R. (2012) M.P. 2469*

– **Section 14** - Conditions required - For applicability of Section 14 two conditions must exist (i) Concerning female Hindu must be in possession of property (ii) Such property must be possessed by her as a limited owner : *Basant Kumar Vs. Indra Sen (Deceased) Through Heirs, I.L.R. (2011) M.P. 479*

– **Section 14** - Possession - Possession of a share of husband in joint family property in lieu of maintenance is sufficient to apply the provision of sub-clause (1) of Section 14 : *Basant Kumar Vs. Indra Sen (Deceased) Through Heirs, I.L.R. (2011) M.P. 479*

– **Section 14** - Property of female Hindu - A Hindu widow has a pre-existing right of maintenance in property left by her husband and any instrument executed afterward in her favour in which her right shown as limited right, would be in

recognizance of her pre-existing right, and not as a new right created for first time : *Basant Kumar Vs. Indra Sen (Deceased) Through Heirs, I.L.R. (2011) M.P. 479*

– **Section 14** - Succession - Son died issueless during the lifetime of his father - Father died prior to commencement of Act, 1956 - Provisions of Act, 1956 would not apply - Share of deceased son would devolve on his father : *None Joo Vs. Karan Singh, I.L.R. (2012) M.P. 1641*

– **Section 15(1)(a)** - Acquisition of land by Hindu widow in lieu of her pre-existing right to maintenance - Widow became full owner of land - Held - Section 15 of the Act provides for General Rules of succession in the case of female Hindus - By virtue of Section 15(1)(a) of the Act, on the death of mother, the property will devolve upon her daughters including the children of pre-deceased daughter : *Pandhari Vs. Kalabai (Dead) Through L.R., I.L.R. (2014) M.P. 768*

– **Section 22** – See – Land Revenue Code, M.P., 1959, Section 164 (As amended in 1961) : *Kamla Bai Vs. Nathuram Sharma, I.L.R. (2015) M.P. 883*

HINDU WOMEN'S RIGHT TO PROPERTY ACT (18 OF 1937)

– **Section 559(1)** - Maintenance to widow - Husband died in 1922 - Benefit under the Act was not available to wife - However, she had a right of maintenance out of property of her late husband : *Basant Kumar Vs. Indra Sen (Deceased) Through Heirs, I.L.R. (2011) M.P. 479*

HOUSING BOARD ACCOUNTS RULES, M.P. 1991

– **Rule 5.4 & 5.7** – See – Griha Nirman Mandal Adhinyam, M.P., 1972, Section 50 : *Madhya Pradesh Housing and Infrastructure Development Board Vs. B.S.S. Parihar, I.L.R. (2015) M.P. 1959 (SC)*

– **Rule 5.4 & 5.7.4.** – See – Griha Nirman Mandal Adhinyam, M.P., 1972 (Substituted by M.P. Act No. 4 of 2011 w.e.f. 04.01.2011), Section 47 & 50(b) : *Sudha Jain (Dr.) Vs. M.P. Housing and Infrastructure Development, I.L.R. (2014) M.P. 2806*

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INAAM INQUIRY RULES, 1926

– **Rule 20** – See – Civil Procedure Code, 1908, Section 100 : *Murti Shri Pandharinath Mandir Vs. Collector, I.L.R. (2014) M.P. 1061*

INCOME TAX ACT (43 OF 1961)

– **Section 10(23C)(vi)** – Educational purpose – Inclusion of objects to manage/maintain a library, reading room and conduct classes of stitching, embroidery, weaving centre for adult education in the field of entertainment arts etc. and to make necessary arrangements for the over all development and growth of children – Can not be said that the object is not for educational purpose – Rejection of application for exemption by the petitioner society is arbitrary and illegal – Petition allowed : *Little Angels Shiksha Samiti Vs. Union of India, I.L.R. (2011) M.P. 2106 (DB)*

– **Section 10A & 144-A** - Whether direction issued by the CIT(A) to the AO for the other years which were not before the CIT(A) is contrary to the provision - Held - Directions contained in the impugned order passed by CIT(A) shall not be construed to be of binding nature by the AO - It will be open for the AO to proceed with the assessment proceedings in accordance with law : *Computer Science Corporation India Pvt. Ltd. Vs. Additional Commissioner of Income-Tax, I.L.R. (2014) M.P. 314 (DB)*

– **Section 11(1)(a)** - Income from Property - Expenses for charitable and religious purposes have been incurred in the earlier year and adjusted against the income of a subsequent year - The income of that year can be said to have been applied for charitable and religious purposes in the year in which expenses incurred for charitable and religious purposes had been adjusted : *Commissioner of Income Tax-I, Indore Vs. Shri Gujrati Samaj (Regd.), Indore, I.L.R. (2011) M.P. 2916 (DB)*

– **Section 12AA** – Procedure for Registration of Charitable Trust – While deciding the application for registration, the authority has to examine whether the application has been made in accordance with the provisions of Section 12A, Rule 17-A and form No. 10A – Commissioner is not required to examine whether the income derived by the trust is being spent for charitable purposes or the trust is earning profit – Activities of the trust must be genuine which should be in consonance with object of the trust – Commissioner is not required to examine the application of income – He has to examine whether the object of the trust are charitable or not : *Commissioner of Income Tax Vs. M/s. D.P.R. Charitable Trust, Satna, I.L.R. (2012) M.P. 296 (DB)*

– **Section 24** – Income – One Time Settlement – Under O.T.S Scheme, the bank waived Rs. 88.39 lacs from Principal loan amount which was outstanding against assessee – Assessing Officer treated the component of principal amount of Rs. 88.39 lacs as income of the assessee – Held – Waiver of amount of loan being never claimed by the assessee as its expenditure, its waiver will not amount to income of assessee : *Commissioner of Income Tax-II Vs. M/s. Dholgiri Industries Pvt. Ltd., I.L.R. (2015) M.P. 1087 (DB)*

– **Section 30, 31 & 37** - Exemption - Expenditure whether revenue or capital in nature - Plant suffered heavy damage due to an accident - Assessee claimed expenses incurred by it for the repairs of plant and charged the same in profit and loss account - Assessing officer came to conclusion that the entire plant was destroyed and was reconstructed by assessee and therefore treated the expenses as capital expenditure - Held - Assessment made on the basis of survey report, which was never supplied to assessee - No opportunity was given to assessee - It is open for assessing authority to collect private evidence but assessee must be informed and proper opportunity is to be given : *Prestige Foods Ltd., Indore (M.P.) Vs. Commissioner of Income Tax, Bhopal (M.P.), I.L.R. (2012) M.P. 2591 (DB)*

– **Section 32** - Claim of Depreciation.- A Charitable trust is entitled for claim of depreciation on the assets owned by it : *Commissioner of Income Tax-1, Indore Vs. Shri Gujrati Samaj (Regd.), Indore, I.L.R. (2011) M.P. 2916 (DB)*

– **Section 32(1) Explanation (5)**, Krishi Upaj Mandi (State Marketing Development Fund) Rules, M.P., 2000 - Held - Contribution towards the payment of pension fund - Being statutory liability in nature - Deduction of the same has rightly been allowed by the tribunal : *Commissioner of Income Tax Vs. M/s. Krishi Upaj Mandi Samiti, Timarni, I.L.R. (2014) M.P. 590 (DB)*

– **Section 32(1) Explanation (5)**, Krishi Upaj Mandi (State Marketing Development Fund) Rules, M.P., 2000 - Held - In view of the specific provision, as contained in Explanation 5 to sub-section (1) of Section 32 of the Income Tax Act - Tribunal has rightly allowed the depreciation in respect of the assets : *Commissioner of Income Tax Vs. M/s. Krishi Upaj Mandi Samiti, Timarni, I.L.R. (2014) M.P. 590 (DB)*

– **Section 37(1)** - Allowable deduction - Director of the Company, when he was on business tour, was kidnapped and for his release the ransom amount of Rs. 5,50,000/- was paid (by the Company) - Held - The amount paid as ransom money to the kidnappers was an allowable deduction : *Commissioner of Income Tax, Jabalpur Vs. M/s. Khemchand Motilal Jain, I.L.R. (2011) M.P. 2616 (DB)*

– **Section 40-A(2)** – Dis-allowance – proprietor of the concern, who is mother of respondent-assessee had paid due taxes at the same rate as the assessee would have paid and there was no avoidance of tax – Held – No attempt to evade tax was involved, hence, no dis-allowance could be made in respect of payment made to the sister concern – Appeal dismissed : *Commissioner of Income Tax Vs. Shri Kamal Kishor Lath, I.L.R. (2012) M.P. 1103 (DB)*

– **Section 43-B** - Deduction - Petitioner firm made a provision of Rs. 51,918/- for the payment of sales tax liability pertaining to period of February-March 1984 - The

amount of tax was paid on 31.05.1984 before the last date of filing of Income Tax return i.e. 30.06.1984 - Petitioner claimed aforesaid deduction in the assessment year 1984-85 - The assessing officer by interpreting section 43B held that without actual payment, no provision can be made for payment of sales tax and no deduction in that regard could have been allowed unless actually paid within the accounting year - Held - Tribunal was not justified in sustaining the addition of Rs. 51,918/- on account of sales tax liability, which was actually paid by the assessee within the statutory period and before the due date of filing of return for the aforesaid year : *Kishan Automobile (M/s.) Vs. Commissioner of Income Tax, I.L.R. (2011) M.P. 2625 (DB)*

– **Section 68 & 260-A** – Appeal – Genuineness of the gift-deed – Two persons are not related to the assessee – They are residing in two different countries – No business relation or any other blood relation between the assessee and donors – No witnesses are there to identify the execution of the “gift-deed” in accordance with law – Transaction to be a “gift” is doubtful and genuineness of the transaction in the form of a “gift” is not established – Transaction is not genuine – No substantial question of law arises for consideration – Appeal dismissed : *Aalok Khanna Vs. Commissioner of Income-Tax, Bhopal, I.L.R. (2015) M.P. 1577 (DB)*

– **Section 80-IC** - Deduction under - Appellant manufacturing advanced microprocessor based Fast Bus Transfer Scheme for Power Generation segment - Contention of appellant that it is a manufacturing process - The CIT (Appeal) considered the matter in a different aspect while the Tribunal had looked into the expenditure aspect and also in respect of the employment of certain persons - None of the authorities had considered how product namely Fast Bus Transfer Scheme Panel is manufactured or assembled - Held - Unless and until some technical expert person examines this aspect, the nature of the product cannot be ascertained whether this is a manufacturing process or is an assembling process : *Aartech Solonics Ltd. (M/s.) Vs. The Commissioner of Income Tax, I.L.R. (2013) M.P. 234 (DB)*

– **Section 127** - Transfer of assessment cases - From Ratlam to Indore - Held - Transfer of assessment cases for administrative convenience and for facilitating coordinated investigation in the group cases - Can never be said to be vague or insufficient reason, particularly wherein proper show cause notice was issued - Opportunity of hearing has been afforded - No case for interference : *Ambika Solvex Vs. Commissioner of Income Tax, I.L.R. (2014) M.P. 341 (DB)*

– **Section 132**, Arms Act (54 of 1959), Section 45(b)(ii) – Search & Seizure – Petitioner’s licensed pistol and cartridges seized by the officials of Income Tax Department – Whether Authorized Officer and Assistant Commissioner of Income Tax can be prosecuted for violation of provisions of the Arms Act, 1959 – Held – No

prosecution, suit or other proceeding shall lie against the Government or any officer of the Government for anything in good faith done or intended to be done under this Act, 1961 – Arms Act, 1959 also provides such immunity – It stipulates that nothing in the Act of 1959 shall apply to acquisition, possession or carrying, the manufacture, repair, conversion, test or proof, the sale or transfer or the import, export or transport of Arms or ammunition by a public servant in the course of his duty as such public servant – Petition dismissed : *Sunil Kapoor (Dr.) Vs. State of M.P., I.L.R. (2014) M.P. 1266*

– **Section 132** – Search & Seizure – Attachment of agricultural land and open plots – Held – Action of seizure of the immovable properties which are in the nature of agricultural lands and open plots is wholly without any authority of law and cannot be sustained – No case by respondents is made out of impossibility or impracticability as per the requirement of second proviso of Section 132(1) – Taking the recourse of the provision of deemed seizure of the petitioner’s immovable properties is wholly unwarranted – Impugned action of seizure quashed – Petitioner’s immovable properties be released from attachment forthwith – Petition allowed : *Rajendra Singh Nayak Vs. Deputy Director of Investigation-Income Tax, I.L.R. (2015) M.P. 350 (DB)*

– **Section 132, 132(c), 136 & 178(i)(b)(d)** – Jurisdiction – Appellant is resident of Bhopal as well as Aurangabad – IT return filed at Bhopal – Search operation under Section 132 related to undisclosed property related to return filed at Bhopal – Held – CJM, Bhopal has jurisdiction to try case as per Section 178 of the Act : *Babita Lila Vs. Union of India, I.L.R. (2012) M.P. 649*

– **Section 132-A** – Information, having reason to believe that cash and silver seized represent the assets which would not have been disclosed for purpose of Income Tax, may be sufficient to establish a rational connection and relevant bearing on the formation of belief leading to issuance of warrant of authorization – There is a direct nexus between material coming notice of the authority and formation of belief for issuance of warrant u/s 132-A of the Act – Petition dismissed : *Suman Singhai Vs. Director of Income Tax (Inv.), I.L.R. (2011) M.P. *62 (DB)*

– **Section 132-B** - Simple Interest - Amount of Rs. 60,000 was seized during search - Petitioner was not found liable to make payment of tax - Amount so seized is liable to be returned with simple interest : *Om Prakash Agrawal Vs. Union of India, I.L.R. (2012) M.P. 2979 (DB)*

– **Section 133-A, 153-BB & 153-BC** – Block Assessment – For conducting block assessment, the Assessing Officer has to restrict himself to the evidence found or material collected during search only – He cannot rely upon any other material which did not form part of search and seizure operation – Therefore, material used and obtained

from Sales Tax Department is not permissible for the purposes of making Block Assessment – Appeal dismissed : *Commissioner of Income Tax Vs. Shri Sant Ramdas Chawla, I.L.R. (2015) M.P. *27 (DB)*

– **Section 143(2) & 158 BC** – Non issuance of Notice within prescribed time – Additional ground with regard to non-issuance of notice within prescribed time as per Section 143(2) of Act, 1961 is a question of law – It can be raised for the first time in appeal – Question of law can be raised at any stage of proceedings : *Ashok Anand Vs. Commissioner of Income Tax, I.L.R. (2011) M.P. 1405 (DB)*

– **Section 143(3)** - Interest earned by the assessee before commencement of business on short term deposits with banks, even out of term loans secured from financial institutions, is an income chargeable under the head "Income from other sources" and would not go to reduce the interest payable by the assessee which would be capitalised after the commencement of commercial production : *Bharat Oman Refineries Ltd. (M/s.) Vs. Commissioner of Income Tax-I, I.L.R. (2013) M.P. 3024 (DB)*

– **Section 143(3), 251 & 263** – Limitation – Whether limitation for passing an order u/s 263 of Income Tax Act would be two years from the financial year 1994-95 in which the assessment order dt. 23.11.1994 was passed or shall be two years from the date of financial year 1995-96 in which the appellate order was given effect to on 04.04.1995 – Held – Limitation of two years, for passing an order u/s 263 shall reckon from original assessment order u/s 143(3) of the Act and not from the order u/s 251 of the Act by which the order passed by the Commissioner, Income Tax (Appeals) was given effect to – Order u/s 263 was barred by limitation – Appeal dismissed : *Commissioner of Income Tax, Jabalpur Vs. Vindhya Talalinks Ltd. Rewa, I.L.R. (2014) M.P. 1154 (DB)*

– **Section 144** – Remand whether open or partial – Assessment order passed under Section 144 set aside by appellate authority and remanded the matter for re-framing the assessment proceedings –Held – Order of Income Tax Officer merges with appellate order only to the extent it was considered and decided by appellate authority – Matter which is not covered by appellate order is left untouched and to that extent assessment order survives – As order was set aside, it is wiped of from its existence : *Ashok Anand Vs. Commissioner of Income Tax, I.L.R. (2011) M.P. 1405 (DB)*

– **Section 145(1)** - Method of Accounting - Rejection of account books not justified unless the serious defects in maintenance of books of account are noted and reasons are recorded - The factual position can be ascertained only from perusal of the account books - Assessing Officer, CIT and ITAT have not considered the matter in a proper perspective for rejecting the books of accounts - Matter remitted back to the CITA for afresh decision : *Mahakoshal Pottaries Vs. C.I.T., I.L.R. (2013) M.P. 2270 (DB)*

– **Section 147** – Reassessment proceedings – Can it be reopened by Assessing Officer for the year 2007-08 on the basis of directions of CIT (Appeals) passed in appeal filed for the assessment year 2008-09 – Held – Since the impugned notice issued by the Assessing Officer u/s 147 of the Act merely on the basis of directions issued by CIT (Appeals) in the appeal filed in respect of the year 2008-09 – Same has not been issued independently – Is not sustainable – However, Assessing Officer can take fresh steps against the petitioner : *Pramod Kumari Singhal (Smt.) Vs. Income Tax Officer, Indore, I.L.R. (2015) M.P. 92 (DB)*

– **Section 158B(b), 158BB** - Whether returns filed by relatives could be treated as undisclosed income - Substantial Question of Law - Whether a transaction is a genuine or bogus is a pure finding of fact and does not give rise to any substantial question of law - When charging section speaks of levy of income tax on total income of every person, it necessarily means the person who is liable to pay - Merely a wrong person is taxed with respect to a particular income, the Assessing Officer is not precluded from taxing the right with respect to that income : *Vinod Prakash Saxena Vs. Union of India, I.L.R. (2012) M.P. 1751 (DB)*

– **Section 194-A** – See – Motor Vehicles Act, 1988, Section 166 : *United India Insurance Co. Ltd. Vs. Ramlal, I.L.R. (2011) M.P. 1371*

– **Section 206 C(7)** - Interest - Interest is required to be paid on the tax which was not collected and not on the tax liability of the deductees : *Executive Engineer, PWD (NH) Division, Indore Vs. The Recovery Officer, TDS-II, Indore, I.L.R. (2012) M.P. 1755 (DB)*

– **Section 220(6)** – Petition against order passed by Deputy Commissioner, Income Tax, refusing to invoke powers u/s 220(6) of the Act rejecting the prayer of stay by observing that since the appeal is pending before Appellate Authority, recovery cannot be stayed – Held – Reason assigned for rejection of the prayer cannot be said to be justified – On the other hand, it runs contrary to the object and spirit of Section 220(6) of the Act – Power u/s 220(6) is required to be exercised only when assessee has presented an appeal – Assessing Officer/Dy. Commissioner has misdirected itself in rejecting the prayer – Impugned order is quashed – Dy. Commissioner is directed to reconsider the petitioner’s application and pass fresh reasoned order after giving opportunity of hearing to the petitioner : *Kanchanbag A Partnership Firm Vs. Union of India, I.L.R. (2014) M.P. 2837 (DB)*

– **Section 249(4)** - Payment of admitted Tax - Appellant did not make payment of admitted tax and submitted that in the search and the seizure conducted by the revenue, the Hundies of the assessee (appellant) were seized and on realization, the revenue has recovered more than the amount of admitted tax, required to have been paid to make the

appeal maintainable - Held - Amount more than the admitted tax has been recovered by the revenue out of the seized Hundies - The defect in the appeal before the CIT(A) due to non-compliance of payment of admitted tax which is a directory requirement can be treated to have been removed : *Mansukhlal Vs. Commissioner of Income Tax, I.L.R. (2011) M.P. 2614 (DB)*

– **Section 253** - Appeal - Condonation of delay - Appellant clearly stated in its application for condonation of delay that it was initially a partnership firm - Firm was dissolved - Copy of order of Commissioner Income Tax was served on the appellant however, the same was misplaced due to voluminous paper work involved pertaining to partnership period owing to dissolution of firm - Copy of order could not be handed over to the Counsel for filing the appeal on account of strain of dissolution firm, joint family separation and constant heavy losses - Appellant had made out a case for condonation of delay in filing the appeal - Dismissal of the appeal as barred by limitation not proper - Delay in filing appeal condoned - Appellate Authority directed to decide the appeal on merits : *Jetu Steels (M/s.) Vs. Deputy Commissioner of Income Tax, I.L.R. (2012) M.P. 2061 (DB)*

– **Section 253** - Appeal to Appellate Tribunal - Commissioner of Income Tax applied net profit rate of 2.5% on the turnover of Rs. 7 Crores - Revenue as well as appellant challenged the said order by filing appeal - ITAT dismissed the appeal of Revenue on the basis of some reference being made about the net profit rate being applied by CIT, also dismissed the appeal of appellant by observing that while deciding the appeal of revenue, the stand of CIT has been upheld - Held - ITAT committed error in dismissing the Appellant's appeal merely by observing that the stand of CIT has been upheld while dismissing the appeal of revenue - Contention of appellant that net profit at 2.5% could not have been applied was required to be decided by ITAT - Order of ITAT set aside - Matter remanded back for deciding appellant's contention - Appeal allowed : *Prem Swaroop Khandelwal (Shri) Vs. The Commissioner of Income Tax, I.L.R. (2013) M.P. 2731 (DB)*

– **Section 254(2)** – Rectification of order – Income Tax Appellate Tribunal can always correct a mistake while exercising its power of rectification under the Act – No substantial question of law arises – Appeal dismissed : *Commissioner of Income Tax-I Vs. M/s. M.P. Financial Corporation, I.L.R. (2015) M.P. *5 (DB)*

– **Section 256 (1), (2)** - Dharmada Account - Assessee was charging Dharmada at the rate of 2% and was maintaining separate account - However, the said account was treated as Revenue Receipts as the assessee had failed to bring on record any material to indicate contribution on regular basis to some of the Institutions - M.C.C. No. 668/1993 was dismissed - However, in the case of Commissioner of Income Tax Vs. Bijli Cotton

Mills (P) Limited, Hon'ble Supreme Court had held that an amount collected as Dharmada and deposited in a separate account is not a revenue receipt - Earlier judgment passed was not contrary to the judgment passed by Hon'ble Supreme Court as no law was laid down or no decision was taken - Authorities are entitled to ascertain on the basis of the facts of each individual case as to whether the amount collected in the name of Dharmada is actually meant for a charitable purpose or not - Decision passed in case of M.C.C. No. 668/1993 was based on peculiar facts of that case and no law contrary to law laid down in Bijli Cotton Mills, therefore, judgment passed in M.C.C. 668/1993 cannot be said to be bad in law : *Lilasons Breweries Ltd., Bhopal (M/s.) Vs. Commissioner of Income Tax, Bhopal, I.L.R. (2013) M.P. 756 (FB)*

– **Section 256(2) & 260A** - Reference and appeal to High Court - Board directed that the Department shall file appeal only in cases where tax effect exceeds monetary limits of Rs. 2 lakh in the matter of High Court - Instructions of the Board are binding to all the authorities working under the Board including the appellant - Appeal or reference below Rs. 2 lakhs, could not have been filed - Appeal is dismissed as incompetent : *Commissioner of Income Tax Vs. Ramkishore Nandkishore, I.L.R. (2013) M.P. 628 (DB)*

– **Section 260A** - Substantial Question of Law - Word Substantial as qualifying Question of law means of having substance, essential, real of sound worth, importance or considerable. It is to be understood as something in contradistinction with technical, of no substance or consequence or academic merely : *Vinod Prakash Saxena Vs. Union of India, I.L.R. (2012) M.P. 1751 (DB)*

INCOME TAX RULES, 1962

– **Rule 46A (3)** – Additional documents – Assessee's application under rule 46A of the Income Tax Rules for production of additional documents before Commissioner of Income Tax (Appeals) allowed – Assessing officer was not granted opportunity to submit the report or to verify the documents – Assessing officer busy in assessing 150 limitation cases and in Election duty – Held – Sufficient cause shown by Assessing officer for not verifying the documents on time – Assessing officer granted time for verification of additional documents – Petition allowed – Matter remitted back to Commissioner of Income Tax (Appeals) for decision afresh : *Commissioner of Income Tax-I Vs. Essence Commodities Ltd., I.L.R. (2015) M.P. 1088 (DB)*

INDUSTRIAL DISPUTES ACT (14 OF 1947)

– **Section 2(j)** - Forest Department is an "Industry" within the meaning of Section 2(j) of Industrial Disputes Act - Provisions of Industrial Employment (Standing Orders)

Act, 1961 are applicable to the employees of the Forest Department : *Adhar Singh Bisen Vs. State of M.P., I.L.R. (2014) M.P. 8 (DB)*

– **Section 2(k)** – Dispute – Workman not called for interview for selection on the post of messenger boy – Petitioner-union submitted the application, but the employer, respondent No. 2 did not agree with the submission put forth by Union before Conciliation Officer – Action amounts to an industrial dispute as envisaged u/s 2(k) of the Act – The respondent No. 1 (appropriate Government) ought to have referred the matter to CGIT – Petition allowed : *Akhil Bhartiya Adhinast Bank Karmachari Sangh Vs. Union of India, I.L.R. (2011) M.P. 932*

– **Section 2(oo) & 25F** - Retrenchment - Petitioner who was initially appointed on 13.03.1996 continued to serve without any break and served for more than 240 days in one calendar year preceding his termination - Held - Petitioner was therefore entitled for protection u/s 25F of the Act before his services could be terminated : *Sanjay Pratap Singh Vs. The Secretary, Krishi Upaj Mandi Samiti, I.L.R. (2011) M.P. *155 (DB)*

– **Section 2(oo)(bb)** - Non-renewal of contract - Since the service of the petitioner have been terminated as a result of non-renewal of contract of employment the same would not amount to retrenchment - No relief can be granted. : *Mohd. Sagir Vs. Bharat Heavy Electricals Ltd., Bhopal, I.L.R. (2013) M.P. 813*

– **Section 3** - Works Committee - Requirement of constitution of works committee depends on general or special order by appropriate Govt. - As an order has been issued by the Govt. therefore, it is obligatory on the part of the petitioner to constitute the Works Committee : *South Eastern Coal Field Ltd. Vs. Union of India, I.L.R. (2013) M.P. 2631*

– **Section 10** - Benefit to retiree employees - When a dispute is raised against the employer, the person regarding whose employment, non-employment, terms of employment or conditions of labour the dispute is raised, need not be, strictly speaking a workman within the meaning of the act, but must be one in whose employment, non-employment, terms of employment or conditions of labour the workmen as a class have a direct or substantial interest - Dispute was related to the dearness allowance of the employees, when they were workmen of the corporation - Retiree (VRS) employees are entitled to revised dearness allowance during their service period before VRS : *Managing Director, M.P. State Road Transport Corporation Bhopal Vs. Prantiya Rajya Parivahan Karmachari Sangh (Congress), Gwalior, I.L.R. (2011) M.P. 2705 (DB)*

– **Section 10** – Departmental Enquiry – Labour Court held that departmental enquiry conducted against petitioner was bad – However, on the same day allowed the respondents to lead evidence to establish misconduct of the petitioner – Application for

amendment was also allowed subsequently – Held – Labour Court is having power to permit the parties to lead evidence/additional evidence including production of documents at any stage of proceedings before they are concluded – Once the Court had found that the enquiry was non est, the Labour Court rightly gave opportunity to respondent to establish the charges before passing award – Amendment application being formal in nature was rightly allowed by the Labour Court : *Ramesh Kumar Patel Vs. Managing Director, I.L.R. (2012) M.P. 710 (DB)*

– **Section 10** - Reference of Disputes - Order of reference not challenged by petitioner but also participated in the proceedings - Objection with regard to absence of competence never challenged in the reply - Not open to the petitioner to challenge the award on this ground : *Managing Director, M.P. State Road Transport Corporation Bhopal Vs. Prantiya Rajya Parivahan Karmachari Sangh (Congress), Gwalior, I.L.R. (2011) M.P. 2705 (DB)*

– **Section 10** – Respondent no. 3 continuously worked from 1985 to 1987 – Services dispensed with after 3/8/1987 – Industrial dispute raised on 20/07/1997 – Conciliation failure report sent on 27/10/1998 – Dispute referred on 22/04/1999 to CGIT – Challenge – Whether the dispute was raised with delay – Held – As there is no prescribed time limit for raising a dispute u/s 10 of the Act and also the fact that the workman was continuously agitating against his non employment, so the delay is not unexplained as would warrant interference – Petition dismissed : *Damoh, Panna, Sagar Kshetriya Gramin Bank Vs. Union of India, I.L.R. (2015) M.P. 3188*

– **Section 10(1)(C)** - Labour Court - Jurisdiction - Cause of action - Cause of action has to be decided on the basis of principles laid down in C.P.C. - Petitioner posted at Bhopal - Order of termination served at Bhopal - Appointment letter issued from Bombay is unilateral order would not confer jurisdiction to Bombay Court - Matter remanded back to Labour Court, Bhopal to decide on merit after affording opportunity of hearing : *M.P. Medical & Sales Representative Association Vs. Senior General Manager, I.L.R. (2012) M.P. 1812 (DB)*

– **Section 17-B** – Amount paid as the ‘last wages drawn’ is not recoverable nor can it be refunded in the event the employer loses the case in the Higher Court : *Project Director, District Literacy Samiti, Tala House Vs. Ms. Mamta Shrivastava, I.L.R. (2011) M.P. 1093*

– **Section 17-B** - Payment of full wages - Appellant entitled for basic grade at the rate of Rs. 68.91 alongwith other allowances, is a reasonable amount - Matter also likely to be decided expeditiously - There is no necessity of passing an order for some higher

wages vis-a-vis of the last wages drawn by the appellant : *General Secretary Vs. Deputy General Manager, I.L.R. (2013) M.P. 273 (DB)*

– **Section 25-B** - Continuous Service - 240 days - Sundays and other holidays, by contract or statute should be treated as days on which the employee actually worked under the employer for the purposes of Section 25-F and 25-B of the Act : *State Bank of India Vs. Central Government Industrial Tribunal-Cum-Labour Court, I.L.R. (2013) M.P. 1312*

– **Section 25-B** - Reinstatement or Compensation - When the High Court has found that the award of re-instatement and back wages passed by Tribunal is just and proper, the same is to be affirmed and alternative relief of grant of compensation cannot be granted : *State Bank of India Vs. Central Government Industrial Tribunal-Cum-Labour Court, I.L.R. (2013) M.P. 1312*

– **Section 25-B, F, N** - Continuous Service - Burden of Proof - Workmen discharged his burden to prove that he has worked for more than 240 days by filing affidavit with details of working days - No question was put to him in cross examination by Bank - Nothing on record to suggest that the affidavit is erroneous - Even according to Petitioner, the respondent No. 2 had worked for a period 217 days excluding Sundays and Holidays - Respondent No. 2 had proved that he had worked for more than 240 days : *State Bank of India Vs. Central Government Industrial Tribunal-Cum-Labour Court, I.L.R. (2013) M.P. 1312*

– **Section 25 (F)** - A workman who rendered services continuously for 10 years cannot be terminated without following the provisions contained in Section 25F - Petition allowed : *Rajesh Kushwaha Vs. M.P. Rajya Beej Avam Farm Vikas Nigam, I.L.R. (2011) M.P. 665*

– **Section 25 (F)** – Back Wages – No cogent evidence that the respondent/workman was not gainfully employed after his discontinuance from service – On the other hand he is doing some work with certain nominal income – He may be awarded 25% of back wages from the date of reference : *State of M.P. Vs. Mishri Lal, I.L.R. (2011) M.P. 1509 (DB)*

– **Section 25-F** – Daily wager retrenched – Petitioner was engaged only to perform temporary work in place of a suspended employee – Worked only for 270 days in the year 1994-95 – Compensation of Rs. 30,000/- in place of reinstatement would be granted : *Shrawan Kumar Chaurasia Vs. Chief Municipal Officer, I.L.R. (2014) M.P. 3146*

– **Section 25 (F)** - Delay in raising dispute - For raising dispute about termination, reference can not be rejected on the ground of delay - Delay can be a ground to deny back wages : *Krishi Upaj Mandi Committee, Mahidpur Vs. State of M.P., I.L.R. (2012) M.P. 1613 (DB)*

– **Section 25 (F)** – Disengagement from service by the department without any notice and without payment of any retrenchment compensation – Was patently illegal – order of his reinstatement would be wholly justified : *State of M.P. Vs. Mishri Lal, I.L.R. (2011) M.P. 1509 (DB)*

– **Section 25 (F)** - Labour Court passed an award for reinstatement of petitioner but without back wages and without assigning any reason for denying back wages to the petitioner - Held - The conferment of quasi-judicial power implies that the person concerned must follow the rules of natural justice and must give reasons for making the order which he is empowered to make - Award to the extent denying back wages set aside and matter remanded for afresh decision on the point : *Pramod Singh Vs. Divisional Forest Officer, I.L.R. (2011) M.P. 2413 (DB)*

– **Section 25 (F)** - Principle of Estoppel - The petitioner, after receiving the cheque of wages for one month and retrenchment compensation, immediately encashed the same - He is, therefore, estopped from complaining that his termination was illegal because of the non-compliance of the provisions of the Section 25F of the Act : *Chedilal Dahiya Vs. Manager, Christukula Mission Higher Secondary School, Satna, I.L.R. (2011) M.P. 2759 (DB)*

– **Section 25 (F)** – Re-instatement – Respondent had worked for more than 4 years – Looking to tenure of service, order of re-instatement by Labour Court proper : *Ujjain Development Authority Vs. Kailash Ghavri, I.L.R. (2012) M.P. 378 (DB)*

– **Section 25-F** - Re-instatement with Back wages - Tribunal had directed for re-instatement of the respondent No.2 on the ground of retrenchment - Respondent No.2 can be directed to be reinstated in service even when he was put for selection for employment in bank service, he was not found fit for such employment by Selection Committee - There is material on record that the respondent No.2 after his discontinuance was unemployed through out - No material to show that the respondent No.2 was employed gainfully during the aforesaid period - Award passed by Tribunal for grant of back wages cannot be said to be bad : *State Bank of India Vs. Central Government Industrial Tribunal-Cum-Labour Court, I.L.R. (2013) M.P. 1312*

– **Section 25 (F)** - Retrenchment - Petitioner did not file any record about payment of salary, attendance register despite specific order by Labour Court - Adverse

inference has to be drawn that employee had worked for more than 240 days : *Krishi Upaj Mandi Committee, Mahidpur Vs. State of M.P., I.L.R. (2012) M.P. 1613 (DB)*

– **Section 25 (F)** - Retrenchment - Services of petitioner were terminated orally - Judgment passed in the case of Secretary State of Karnataka vs. Uma Devi has no application as petitioner was not seeking regularization but had challenged his termination - Judgment passed in the case of Uma Devi has no bearing on interpretation of section 25-F - Matter remanded back : *Ravindra Shobhawat Vs. Secretary, Krishi Upaj Mandi Samiti, Badnagar, I.L.R. (2012) M.P. 2342 (DB)*

– **Section 25 (F)** – Retrenchment – 240 days – Employee categorically made statement that he had worked more than 240 days in the year preceding to his termination – His evidence that he was working since 1-2-1996 till 12-5-2000 remained un-rebutted – Employer also did not file any service record although admittedly maintained by it – No permission was sought from the Labour Commissioner prior to termination of service of respondent – Termination of respondent amounts to illegal retrenchment : *Ujjain Development Authority Vs. Kailash Ghavri, I.L.R. (2012) M.P. 378 (DB)*

– **Section 25-F** - See - Industrial Relations Act, M.P., 1960, Section 31(3) : *Mohd. Sagir Vs. Bharat Heavy Electricals Ltd., Bhopal, I.L.R. (2013) M.P. 813*

– **Section 25 (F)** - Wages for one month and retrenchment compensation sent to the petitioner by registered post before the order of dismissal became effective - Respondent did everything within his means to pay the wages and retrenchment compensation to the petitioner before the order of dismissal became effective - There was, thus, no failure to comply with the provisions - There has been sufficient compliance of the mandatory provisions : *Chedilal Dahiya Vs. Manager, Christukula Mission Higher Secondary School, Satna, I.L.R. (2011) M.P. 2759 (DB)*

– **Section 25-N & 25-O** - Closure of Establishment - A harmonious reading of these provisions would make it clear that in case, sanction is granted u/s 25-O for closure of the establishment, there would not be any applicability of Section 25-N - The petitioners have received compensation on account of closure of the establishment - Consequently, there was no occasion for the petitioners to claim any relief against retrenchment - That being so, the Labour Court was not right in entertaining their application for retrenchment compensation - The Industrial Court was right in allowing appeal from the award of Labour Court - Writ Petition under Article 227 of the Constitution of India challenging the order of Industrial Court dismissed : *J.P. Gupta Vs. Eveready Industries India Ltd., I.L.R. (2013) M.P. 1526*

– **Section 25-N(6)** - Labour Commissioner referred the question framed by it under Section 25-N(6) - During the pendency of reference before Industrial Tribunal,

employees approached Labour Commissioner to modify the order - Order was modified without issuing any notice to the petitioner and without hearing it - In writ petition, Court directed the Labour Commissioner to decide the application afresh after hearing the petitioner - In the meanwhile, the Industrial Tribunal adjourned the proceedings but before the Labour Commissioner could decide the application, the Industrial Tribunal decided the reference - Held - When the High Court had already directed the Labour Commissioner to decide the application filed under Section 25-N(6) of Act, 1947 afresh after hearing the petitioner, the Industrial Tribunal should have refrained itself from proceedings further in the reference - Award passed by Industrial Tribunal quashed - Labour Commissioner directed to comply the earlier order and Industrial Tribunal shall proceed to decide the award after the decision taken by Labour Commissioner : *Hukumchand Jute & Industries Vs. State of M.P., I.L.R. (2012) M.P. 2102 (DB)*

– **Section 33-A** – Interim Stay of termination of service – Complaint before Industrial Court by medical representative – Respondent No.2, medical representative in the petitioner establishment, was transferred from Jabalpur to Mumbai by order dated 14.05.2009 – Alleging the transfer being due to malafide, respondent No.2. raised the dispute u/s 10 of 1947 Act – However, subsequently services of the petitioner were terminated – Held – Contentions that the termination on dispensation of service of the petitioner had no nexus with the dispute raised – Dispute was in respect of transfer and not the termination of service, therefore the provision of Section 33 was not violated as would have led to conferral of powers on the Labour Court in entertaining an application u/s 33-A of 1947 Act : *Themis Medicare Ltd. Vs. The Asstt. Labour Commissioner, I.L.R. (2014) M.P. 3126*

– **Section 33-A** – Scope – Petitioner, initially appointed as a Clerk (workman) was promoted to Junior Manager in 2002 – In 2005, he was charge sheeted and ultimately punished with punishment by compulsory retirement – Held – The petitioner was not a workman, thus, the Tribunal (C.G.I.T.) was not justified in entertaining the application under Section 33A at the instance of the employee who was not a workman : *S.K. Gaur Vs. Dena Bank, Bhopal, I.L.R. (2012) M.P. 59 (DB)*

– **Section 33C(2)** – Back Wages – Respondent raised an industrial dispute and reference was answered in favour of respondent and employer was directed to treat the respondent in service till he completed 60 years of age – Joining of respondent was accepted however, he was asked to execute an agreement of disclaimer of back wages of 54 months – Labour Court directed for payment of Rs. 98,442 in lieu of wages for 54 months as reference – Held – Any agreement which is forbidden by law is prohibited – Further action of employer in getting the agreement executed amounts to unfair labour practice – Labour Court was well within its jurisdiction in allowing the application under

Section 33C(2) of 1947 Act – Petition dismissed : *State of M.P. Vs. Jai Kishan, I.L.R. (2015) M.P. 362*

– **Section 33-C(2)** – Recovery of Money Due from an employer – Respondent filed application for calculation of wages on the pretext of some settlement arrived between parties – Order of Labour Court challenged on the ground that Labour Court has no jurisdiction to entertain petition in respect of disputed claims and also no prior adjudication on claim – Held – There was already a settlement between the parties – Labour Court only interpreted the settlement on which the claim of respondent was based – Application was maintainable : *Registrar, J.N.K.V.V., Jabalpur Vs. Sudarshan Singh, I.L.R. (2011) M.P. 1456 (DB)*

– **Section 33 C (2)** – See – Industrial Relations Act, M.P., 1960, Section 31(3) & 108 : *Hukum Singh Vs. Assistant Engineer, P.H.E., I.L.R. (2014) M.P. 3135*

– **Section 33-C(2)**, Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, (45 of 1955), Section 17 – Recovery of Money Due from an Employer – Power of Labour Court extends to interpretation of the award or settlement on which the workman's right rests, like Executing Court – Labour Court has interpreted the Wage Board – Application before Labour Court was maintainable : *Patrakar Prakashan (P) (M/s.) Vs. Smt. Vanadana Awasthy, I.L.R. (2012) M.P. *15 (DB)*

– **Section 33-C(2)**, Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, (45 of 1955), Section 17 – Without Prejudice to any other mode of recovery – Maintainability of application under Section 33(C)2 of 1947 Act was challenged on the ground of availability of form under Section 17 of 1955 Act – Held – A provision enacted without prejudice to another provisions has not the effect of affecting the operation of the other provision and any action taken under it must not be inconsistent with such other provision – Objection with regard to maintainability sans merits : *Patrakar Prakashan (P) (M/s.) Vs. Smt. Vanadana Awasthy, I.L.R. (2012) M.P. *15 (DB)*

– **Section 33(2)(b)** – Approval – Dispute pertaining to promotion of petitioner was pending before Labour Court – In the meanwhile charge-sheet was issued and after holding departmental enquiry, an application was filed by respondents seeking approval of the punishment of termination of service – Held – Section 33(1) relates to dispute in respect of which proceeding is pending and Section 33(2) relates to matter not connected with the dispute – As dispute pending pertains to promotion and not dismissal therefore, approval for action sought was in respect of termination and therefore, the matter is covered under Section 33(2)(b) and not Section 33(1)(b) – By granting approval Labour

Court has not exceeded its jurisdiction – Petition dismissed : *Prayag Modi Vs. South Eastern Coal Fields Ltd.*, I.L.R. (2015) M.P. 355

– **Section 36-B** - Power to Exempt - Exemption from constitution of works committee can be granted by applying the test that whether there exists adequate provision for investigation and settlement of industrial disputes in respect of workmen - Application for exemption was required to be decided considering that whether the committee mentioned by petitioner is well equipped and suitable which can investigate and settle the industrial disputes of workmen - As the application for grant of exemption has been rejected only on the ground that constitution of works committee is a statutory requirement therefore, matter is remanded back to decide the application of exemption afresh in the light of Section 36-B of the Act : *South Eastern Coal Field Ltd. Vs. Union of India*, I.L.R. (2013) M.P. 2631

– **Section 110**, Industrial Relations Act, M.P. (27 of 1960), Section 62 - Respondent dismissed from service on 25.09.2004 - Had the right vested in him to bring an action provided under 1960 Act, merely because the action could not be brought within the limitation prescribed in 1960 Act and that the forum for redressal of the grievance having changed where no limitation is prescribed - Held - The right to take action is not lost to the respondent who rightly availed the same under 1947 Act and the Central Government was well within its jurisdiction to entertain and refer the dispute for adjudication to CGIT by the impugned order : *Bharat Heavy Electricals Vs. Ratanlal*, I.L.R. (2013) M.P. 1353

INDUSTRIAL EMPLOYMENT (STANDING ORDERS) ACT, M.P. **(26 OF 1961)**

– **Section 2** - Applicability of Act - If an industry is of the view that because of making of relevant Rules, application of the Act of 1961 is to be excluded in its establishment, it is required to approach the appropriate Govt. to issue notification in this respect in official Gazette - Standing Orders are special laws and will prevail in service matters over the Regulations made by the employer concerned : *M.P. State Electricity Board Vs. Jagannath Pillai*, I.L.R. (2013) M.P. 1813

– **Section 2** - Provisions of the Act are applicable to the appellant - Employee of the Forest Department : *Adhar Singh Bisen Vs. State of M.P.*, I.L.R. (2014) M.P. 8 (DB)

– **Clauses 2(i)(vi)** – Petitioner was classified as permanent time keeper w.e.f. 13.10.2006 pursuant to award passed by Labour Court – Subsequently by order dated 18.07.2013, he was regularized as Mason – Petitioner seeks modification of order dated 18.07.2013 to the effect that he be regularized as Time Keeper w.e.f. 13.10.2006 from the

date of the award passed by Labour Court – Held – Though the petitioner was granted the benefit of permanent classification w.e.f. 13.10.2006, but he fails to establish that there were clear vacancies of a Time Keeper on 13.10.2006 – Same would only entitle him for difference of wages of daily wage worker and the Time Keeper, however the same will not make him the member of service in the cadre of Time Keeper – Order dated 18.07.2013 cannot be found faulted – No interference is caused : *Ram Kalesh Singh Vs. State of M.P., I.L.R. (2014) M.P. 2801*

INDUSTRIAL EMPLOYMENT (STANDING ORDERS) RULES, 1963

– **Rule 2(i)** - Permanent Employee - Workman does not satisfy the condition that she was appointed against a clear vacant post and the post on which she was said to have been appointed was sanctioned by the statutory authority and that her appointment was made by operating the regular mode of recruitment - No right accrued in her favour as would entitle her to be classified as permanent employee - Orders passed by Labour Court and Industrial Court, quashed : *State of M.P. Vs. Vatsala Rao (Smt.), I.L.R. (2011) M.P. 2990 (DB)*

– **Rule 12** - Limitation - Employer shall not be competent to initiate proceedings for major misconduct after one year of its commission - Respondent was appointed in the year 1983 - No police verification was done at that time - After 17 years of service it was found that the respondent had suppressed the fact of conviction in the attestation form which was filled on 06.09.2000 - Charge sheet was issued on 06.08.2002 - Initiation of proceedings hit by provisions of Rule 12(6) - Labour Court rightly set aside the punishment of dismissal and directed for reinstatement : *M.P. State Electricity Board Vs. Jagannath Pillai, I.L.R. (2013) M.P. 1813*

– **Rule 14-A** - Appellant engaged in the Forest Department on daily rated and was discontinued from service after completing 30 years of service - Appellant entitled to the benefit to continue in service upto the age of 58 years in accordance with Rule 14-A of the "Standard Standing Order" Annexure to the Rules of 1963, a statutory protection available to the appellant - There is no distinction between daily rated employee or regular employee : *Adhar Singh Bisen Vs. State of M.P., I.L.R. (2014) M.P. 8 (DB)*

INDUSTRIAL RELATIONS ACT, M.P. (27 OF 1960)

– **Section 2 (13)** – Appointment is not made in terms of statutory rules or against a clear vacancy or on any permanent post – The employee could not be declared or granted a permanent status in accordance with the provisions of the Act : *Mamta Shukla (Smt.) Vs. State of M.P., I.L.R. (2011) M.P. 1807 (FB)*

– **Section 31** – Direction for promotion – Petitioners failed to adduce evidence with regard to unsuitability of respondent no.1 for promotion – Direction for promotion could have been legally given : *National Fertilizers Limited Vs. Rajvendra Singh Chauhan, I.L.R. (2011) M.P. 1171 (DB)*

– **Section 31(3)**, Industrial Disputes Act (14 of 1947), Section 25-F - Petitioner appointed as Medical Attendant, remained absent for a period exceeding 30 days - Notice was sent to resume duty - He neither joined nor submitted any explanation for his unauthorised absence - Thereafter, drawing a presumption under Clause 42(10) of Standing Order, that the petitioner had voluntarily abandoned the services, name of the petitioner was struck off from the roll of the company and intimation was sent to him which was refused to accept - The petitioner thereafter approached the Company - Demanded copy of order, which was supplied to him on the same day - Labour Welfare Supervisor also met petitioner on 30.05.78 at his residence and persuaded him to join duty, however the petitioner did not resume duty - Held - There is no violation of principles of natural justice in dispensing with the services of the petitioner as the same were complied with : *Mohd. Sagir Vs. Bharat Heavy Electricals Ltd., Bhopal, I.L.R. (2013) M.P. 813*

– **Section 31(3), Schedule II** – Promotion – Maintainability of application filed before Labour Court challenging his non-promotion without seeking quashment of order of promotion of juniors – Held – Section 31(3) enables an employee to make application not only to challenge the propriety/legality of an order but also enables him to dispute the proprietary/legality of action taken by his employer acting or purporting to act under Standing Orders or rules or regulations governing service conditions of employees – Application submitted by respondent no.1 maintainable : *National Fertilizers Limited Vs. Rajvendra Singh Chauhan, I.L.R. (2011) M.P. 1171 (DB)*

– **Section 31(3) & 108**, Industrial Disputes Act (14 of 1947), Section 33 C (2) – Petitioner was working in Public Health and Engineering Department and was classified as permanent employees as department was Industry – S.L.P. against classification was dismissed by Supreme Court – Subsequent concerned department was removed from schedule of Industry – Petitioner filed application u/s 33(c) before Labour Court for execution of order of Labour Court due to non-availability of Forum under 1960 Act – Held – Labour Court has jurisdiction to entertain the application – Petition allowed : *Hukum Singh Vs. Assistant Engineer, P.H.E., I.L.R. (2014) M.P. 3135*

– **Section 62** - See - Industrial Disputes Act, 1947, Section 110 : *Bharat Heavy Electricals Vs. Ratanlal, I.L.R. (2013) M.P. 1353*

– **Section 62 & 64-A** – Limitation & condonation of delay – Petitioner was removed from service by order dated 28.02.1994 – He filed an application u/s 31(3) read with Section 61 & 107 of the Act on 05.03.1994, seeking quashment of a departmental

proceedings – Subsequently, challenge was put forth by way of an amendment in 1996 – An application u/s 64-A of the Act was filed by the petitioner – The same was rejected by Labour Court and affirmed by Industrial Court on the ground that it does not contain sufficient ground for condonation of delay – Held – Courts below were not justified in rejecting the application on the ground of delay and fell into patent error by not condoning the same : *Nand Kishore Vs. M.P.R.T.C., I.L.R. (2011) M.P. *56 (DB)*

– **Section 77** – Parties on whom orders of Board, etc. binding – Order of labour Court passed on 12.11.1992 against transferor company – Unit sold to petitioner on 6.8.1997 with condition that whatever liability will be paid by transferor company – Order of labour Court upheld by Industrial Court on appeal filed by transferor company – Petitioner directed to pay the awarded amount on an application under Section 67 of M.P.I.R. Act – Held – Section 77(c) is applicable to transferee Company and petitioner is liable to pay amount awarded by Industrial Court : *Chamunda Standard Mills, Balgarh, Dewas Vs. Ravindra, I.L.R. (2011) M.P. 1459 (DB)*

INFORMATION TECHNOLOGY ACT, (21 OF 2000)

– **Section 46, Chapter XI, Section 78** - Criminal Prosecution - Power to adjudicate u/s 46 of Act, 2000 are prescribed for civil liability and those provisions are not applicable in criminal matter - There is no bar in Act, 2000 that Civil and Criminal proceedings cannot be initiated simultaneously - Section 78 provides that investigation should be done by a police officer not below the rank of Inspector - After investigation charge sheet has to be filed - Filing of charge sheet under the provisions of Act, 2000 not illegal : *Shailabh Jain Vs. State of M.P., I.L.R. (2013) M.P. 2747*

– **Section 65 & 66** – See – Criminal Procedure Code, 1973, Section 439 : *Sudhir Sharma Vs. State of M.P., I.L.R. (2015) M.P. 1600 (DB)*

– **Section 85** - Offences by Companies - Applicants did not file the certificate of Registration of Company or Firm - In absence of any such certificate prima facie it shall be presumed that the applicants worked as an association of individuals with a particular name but it was not a registered Company - Prosecution of applicants without arraying the company as accused permissible - Even otherwise, if the Company is not added as an accused then, the charge sheet cannot be thrown - Company can be added as an accused if it is proved that the applicants were working for a particular company, which is a juristic person : *Shailabh Jain Vs. State of M.P., I.L.R. (2013) M.P. 2747*

INSURANCE ACT (4 OF 1938)

– **Section 45** - Repudiation of claim by insurer - Assured concealed the reality that she was suffering from renal disease at the time of obtaining policy - It is gathered

from bed head ticket that she was a patient of chronic renal failure for the last four years - Policy can be repudiated : *Rajendra Prasad Pathak Vs. Union of India, I.L.R. (2013) M.P. 2622*

INTERPRETATION

– “**Liable to be rejected**” and “**shall be rejected**” – Expression used in the document must be interpreted in the context it is executed : *Anuj Associates (M/s.) Vs. National Mineral Development Corporation Ltd., I.L.R. (2015) M.P. 2914 (DB)*

INTERPRETATION OF DOCUMENT

– **Contents of Documents** - It is impermissible in law to read a part of the document in isolation - The document has to be read as a whole : *Narmada Bachao Andolan Vs. State of M.P., I.L.R. (2011) M.P. *141 (SC)*

- **Nature of document** - In order to ascertain the nature of a document, intention of the parties has to be seen and the document has to be read as a whole : *Mohd. Iqbal Khan Vs. Late Manzoor Ahmad Khan, I.L.R. (2012) M.P. 1922*

INTERPRETATION OF LAW

– **Compulsory Retirement** – (a) Even a Single adverse entry about integrity of a judicial officer may be sufficient to compulsorily retire him from service. (b) Theory of effacement of adverse entry is not attracted in respect of consideration of proposal for compulsory retirement : *Shailendra Singh Nahar Vs. State of M.P., I.L.R. (2015) M.P. 1754 (DB)*

– **Injured Witnesses** – Evidence of injured witnesses is entitled to a great weight and very cogent and convincing grounds are required to discard the evidence of injured witnesses : *Ramvilas Vs. State of M.P., I.L.R. (2015) M.P. 3137 (SC)*

– **Provisions of Law** – If a law prescribes a thing to be done in a particular manner, it has to be done in the same manner and other methods are barred : *Ramniwas Vs. Game Range Chambal Sanctuary, Morena, I.L.R. (2012) M.P. 811*

- **Right of Action** - Right of action is a vested right and the law relating to forum is procedural in nature - Held - It is a law on the date of trial of the suit which is to be applied - It is well settled that all procedural laws are retrospective in nature unless the legislature expressly states to the contrary : *Bharat Heavy Electricals Vs. Ratanlal, I.L.R. (2013) M.P. 1353*

INTERPRETATION OF PLEADINGS

- **Mufasil Pleadings** – Parties are villagers – Suit was filed at Tahsil place – Some latitude should be given in case of mufasil pleadings and they should not be construed strictly : *Akbar Khan Vs. Farida Bai, I.L.R. (2012) M.P. 737*

INTERPRETATION OF STATUTES

- **Addition and Omission of Words** – Nothing is to be inserted or substituted in the words used in the statute – If the clear meaning of the provisions of Rules is available, addition or omission of words is not permissible : *S.K. Gupta Vs. State of M.P., I.L.R. (2014) M.P. 2497*

- **Appointment** – Principle governing local resident criteria in the matter of appointment of ‘Aanganwadi Karyakarta’ cannot be applied in the case of ‘Panchayat Karmi’ : *Raghvendra Singh Vs. State of M.P., I.L.R. (2015) M.P. 2845 (DB)*

- **Construction** - If there are two possible constructions of statute, then the one which leads to anomaly or absurdity and makes the statute vulnerable to attack of unconstitutionality should be avoided in preference to other which makes it rational and immune from charge of unconstitutionality : *Institute of Chartered Accountants of India Vs. Vimal Kumar Surana, I.L.R. (2011) M.P. 321 (SC)*

- **Decision of Court** - Judgment of a Court has not to be interpreted like a statute where every word, as far as possible, has to be given a liberal meaning - Observations made have to be understood in the context of facts & circumstances raised : *Bramha Swaroop Saini Vs. State of M.P., I.L.R. (2011) M.P. 796 (DB)*

- **Definition** - If a particular word is defined in that particular Act, its meaning is to be derived from the definition clause - However, if definition clause is silent on the said word, then only the dictionary meaning is to be seen : *Diamond Cements (M/s.) Vs. Union of India, I.L.R. (2013) M.P. 2417*

- **Delegation** - Collector was the appointing authority of Patwari - However, the appointment of patwari was delegated to S.D.O. by State Govt - However, it is well established in law that the delegating authority will not only retain the power to revoke the grant but also the power to act concurrently on matters within the area of delegation, except in so far as it may already have become bound by act of its delegate : *Devi Dayal Jha Vs. State of M.P., I.L.R. (2013) M.P. 363*

- **Exclusion of Jurisdiction** - Clauses which purports to exclude the jurisdiction of the Courts must be read strictly : *Ravindra Nath Tripathi Vs. Union of India, I.L.R. (2013) M.P. 1553 (DB)*

- **Golden Rule** - Composite perception is to be seen - A narrow interpretation which kills the intention of the legislature or makes the provision redundant cannot be accepted - Text and Context are the bases of Interpretation - If text is texture, context gives colour - Neither can be ignored : *Shammi Sharma Vs. Municipal Corporation, I.L.R. (2013) M.P. 2569*

- **Harmonious Construction** - Conflict between two enactments - Harmonious construction has to be applied in resolving the conflict between two enactments or rules : *Mamta Shukla (Smt.) Vs. State of M.P., I.L.R. (2011) M.P. 1807 (FB)*

- **Harmonious Construction** - Para 9 (iv) and (vi) of advertisement - Para 9 (iv) and (vi) of advertisement provided that only those candidates would be called for interview as High Court would decide on the basis of evaluation of their performance in written examination and candidates would be selected on basis of aggregate marks in written examination - Held - Harmonious construction of these provisions mean that only those candidates who secure the qualifying marks in written examination would be called for interview and marks of such candidates would be aggregated to find out their position in merit list : *Mahinder Kumar Vs. High Court of M.P. through Registrar General, I.L.R. (2014) M.P. 881 (SC)*

- **Intention** - A statute is an edict of the Legislature and the conventional way of interpreting or construing a statute is to seek the 'intention' of its maker : *Suresh Baba Vs. Virendra Tyagi, I.L.R. (2011) M.P. 614 (DB)*

- **Intention of Legislation** - Intention of Legislature must be found by reading the statute as a whole : *State of M.P. Vs. Puran Lal Nahir, I.L.R. (2012) M.P. 691 (FB)*

- **Intention of Legislation** - It is impossible to anticipate fully, the varied situations arising in future in which the application of the legislation in hand may be called for, and, words chosen to communicate such indefinite reference are bound to be, in many cases, lacking in clarity and precision. The intention of the Legislation is to ensure the payment to the agriculturists and it has authorized the Mandi Samiti to seize the property and also the agricultural produce of a person concerned, who failed to make payment to the agriculturists on account of purchase of their agricultural produce : *Krishi Upaj Mandi Samiti Vs. Sunil Kumar, I.L.R. (2011) M.P. 1445 (DB)*

- **Language of Statute** - Language of the statute has to be examined before giving a provision an extensive meaning - Court would be justified in giving the

provision a purposive construction to perpetuate the object of the Act, while ensuring that such rules framed are within the field circumscribed by the Parent Act : *Pratap Chandra Mehta Vs. State Bar Council of M.P., I.L.R. (2011) M.P. *153 (SC)*

- **May and Shall** - May does not always mean that it is directory in nature - Similarly, Shall does not always means that it is obligatory or mandatory - It depends upon the context in which the words May and Shall are employed and other circumstances - In the present context, the word may has to be read as shall/mandatory in rule 6(2A) of M.P. Ex-Servicemen (Reservation of Vacancies in the State Civil Services and Posts Class III and Class IV) Rules, 1985 : *Ram Prakash Singh Tomar Vs. State of M.P., I.L.R. (2012) M.P. 2122*

- **May or Shall** - Use of word 'May' at one place and 'Shall' at another place in the same section may strengthen the inference that these words have been used in their primary and that 'Shall' be construed as mandatory : *Shyam Narayan Sharma Vs. State of M.P., I.L.R. (2011) M.P. *36 (DB)*

- **Meaning** - Words of statute are clear, plain or unambiguous - The Courts are bound to give effect to that meaning irrespective of consequences - The use of word "shall" by the legislature cast the duty mandatory in nature - Hence, Authorities are bound to perform it : *Shammi Sharma Vs. Municipal Corporation, I.L.R. (2013) M.P. 2569*

- **Non-obstante Clause** - It is a potent clause intended to exclude every consideration arising from other provisions of the same statute or other statute - When the section does not refer to any particular provisions which it intends to override but refers to the provisions of the statute generally, it is not permissible to hold that it excludes the whole Act and stands all alone by itself : *Lilasons Breweries Ltd. (M/s.) Vs. State of M.P., I.L.R. (2011) M.P. *28 (DB)*

Order – Even if any order is wrong procedurally, but if it is leading to a just decision than it has to be upheld : *Omprakash Meena Vs. State of M.P., I.L.R. (2015) M.P. 1142 (DB)*

– **Per Incuriam** – Decisions given in ignorance or forgetfulness of some inconsistent statutory provision of some authority binding on the court concerned–If a decision has been given per incuriam, the court can ignore it : *Rattiram Vs. State of M.P., I.L.R. (2012) M.P. *47 (SC)*

– **Precedent** – Binding – Conflicting decision of Apex Court of equal number of Judges – Earlier Bench decision is binding – Unless explained by the latter Bench of

equal strength : *Parag Fans & Coolings Vs. Commissioner, Customs, I.L.R. (2015) M.P. 1845 (DB)*

- **Precedent** - Interpretation of law by a judgment relates back to the date of law itself and can not be prospective from the date of judgment unless said otherwise in the judgment : *Ganesh Singh Rawat Vs. State of M.P., I.L.R. (2012) M.P. *76*

- **Provisions of Statute** - If something is prescribed in a statute to be done in a particular manner, it has to be done in the same and other method are forbidden - Held - Revenue authorities erred in passing the impugned order - This order is set aside - Petition is allowed : *Baheed Khan Vs. State of M.P., I.L.R. (2012) M.P. 2385*

- **Provisions of Statute** - Land Acquisition Act, 1894 is an expropriatory legislation - Provisions of the Statute should be strictly construed as it deprives a person of his land without consent : *Bitan Devi (Smt.) Vs. State of M.P., I.L.R. (2012) M.P. *2*

- **Provisions of Law** - If a provision is made to deal with specific situation, the same would prevail over the general situation : *M.P. Electricity Board, Jabalpur Vs. S.K. Dubey, I.L.R. (2014) M.P. 1698 (FB)*

- **Ratio Decidendi** - Ratio decidendi of a judgment to be culled out only on reading the entire judgment - Observation in a judgment cannot be read in isolation or by reading a line here and there : *Asif Mohd. Khan Vs. State of M.P., I.L.R. (2015) M.P. 3141 (FB)*

- **Reasons** - Reasons assigned in impugned order are to be seen - Any other reason by way of reply or counter affidavit cannot provide strength to impugned order : *South Eastern Coal Field Ltd. Vs. Union of India, I.L.R. (2013) M.P. 2631*

- **Relationship of Landlord & Tenant** - Unrebutted pleadings and evidence of landlord - It is a finding of fact - No substantial question of law arises : *Maksood Ahmad (Rui Wale) Vs. Smt. Sharifunnisha, I.L.R. (2015) M.P. 1325*

- **Retrospective Operation** - It is cardinal principle of construction that every statute is prima facie prospective unless it is expressly or by necessary implication made to have retrospective operation : *M.I. Khan (Dr.) Vs. M.P. State Electricity Board, I.L.R. (2011) M.P. 868 (DB)*

- **Retrospective Operation** - When an Act does not confer any power on the delegatee to make Rules or Regulations with retrospective effect, the Rules and Regulations cannot have any retrospective operation to take away the right : *Vidik Seva Karmik Sangh Vs. State of M.P., I.L.R. (2011) M.P. *91 (DB)*

– **Scope** - A statute has to be interpreted in the context it is drafted along with the aim and object : *M.P. Madhya Kshetra Vidyut Vitran Co. Ltd. Vs. Smt. Savitri Devi, I.L.R. (2013) M.P. 1027*

– **Scope** – Legislature is deemed not to waste its words or to anything in vain – Court can not enlarge the scope of statutory provisions or intention when the language of provision is plain and unambiguous – Real intention must be gathered : *Union of India Vs. Registrar General, High Court of M.P., Jabalpur, I.L.R. (2012) M.P. 837 (FB)*

– **Social Justice** – A statutory provision is to be read in a manner so as to do justice to all the parties – Any construction leading to confusion and absurdity must be avoided – In case natural meaning leads to mischievous consequences, it must be avoided by accepting the alternative construction : *Narmada Bachao Andolan Vs. State of M.P., I.L.R. (2011) M.P. *113 (SC)*

– **Statutory Rule** – Once the statutory Rule on the question is available, no circular, government order or administrative instruction whether it is issued by the State Government or the UGC can over-ride the provisions of the Rules made under Article 309 of the Constitution : *Ramesh Chandra Dixit (Dr.) Vs. State of M.P., I.L.R. (2012) M.P. *68*

– **Statutory Rule** – Role of Circular and Communications – When a statutory rule is available, it would be appropriate to consider the rule and interpret it in its existing form and if the rule can be interpreted and a meaning of the Rule derived on such interpretation, then it is not necessary to advert to the circulars or the communications made, executive in nature for clarification of the Rules : *Ramesh Chandra Dixit (Dr.) Vs. State of M.P., I.L.R. (2012) M.P. *68*

- **Term “Subject to”** - All Recruitment Rules were made subject to M.P. Ex-Servicemen (Reservation of Vacancies in the State Civil Services and Posts Class III and Class IV) Rules, 1985, which were made for Ex-Servicemen - Intention of Rule making authority was to give way to Ex-Servicemen to the extent the rules gives them privilege by making room in the Recruitment Rules : *Ram Prakash Singh Tomar Vs. State of M.P., I.L.R. (2012) M.P. 2122*

- **Taxing Statute** - Levy of tax - For want of machinery provision, levy cannot become invalid - Even if rules have not been framed under the Act, levy can still hold good : *Lilasons Breweries Ltd. (M/s.) Vs. State of M.P., I.L.R. (2011) M.P. *28 (DB)*

- **Taxing Statute** - Tax - Four ingredients - (1) Nature which prescribes the taxable event attracting the levy, (2) Person on whom the levy is imposed and who is obliged to pay the tax, (3) Rate at which the tax is imposed, (4) Measure or value to

which rate will be applied for computing the tax liability : *Lilasons Breweries Ltd. (M/s.) Vs. State of M.P., I.L.R. (2011) M.P. *28 (DB)*

– **Word “shall”** – Narcotic Drugs and Psychotropic Substances Act (61 of 1985) – Section 74-A – Order under – Word “shall” – Raises presumption – Its imperative – Presumption is rebuttable by other consideration such as object and scope of enactment and the consequence flowing therefrom – Central Govt. having control over sale, purchase etc. of N.D.P.S., to ensure that the State Govt. do not deviate from basic object the word “shall” used – The provision is mandatory – State Govt. cannot deviate from order issued by Central Govt : *Man Singh Rajpoot Vs. State of M.P., I.L.R. (2015) M.P. 2826 (DB)*

ITEM-WISE AWARD

Item-wise Award – Arbitrator not obliged under the conditions contained in general conditions of contract to pass item-wise award, he could validly pass/give lump-sum award : *Union of India Vs. Hari Ram Gupta, I.L.R. (2011) M.P. 951*

J

JAIL SERVICES (GAZETTED) RECRUITMENT AND PROMOTION RULES, M.P. 2002

– **Promotion** – Respondent Nos. 3 to 7 were promoted in accordance with unamended Rules – Rules were amended on 25.10.2008 by reducing earlier prescribed quota for Senior Probation and Welfare Officer from 20% to 10% – D.P.C. meeting was held on 25.06.2009 – Promotion of respondent Nos. 3 to 7 under unamended 2002 Rules was challenged as bad in law – Held – Since in the years 2004, 2006 and 2007, no post of Superintendent, District Jail were filled in by promotion of Senior Probation and Welfare Officers, same were carried forward – There were 5 backlog posts of Superintendent, District Jail available for promotion from amongst the Senior Probation and Welfare Officer – D.P.C. was convened and the respondent Nos. 3 to 7 were considered and as they have completed the requisite years of service – They have rightly been promoted – Petition dismissed : *Madhukant Tiwari Vs. State of M.P., I.L.R. (2015) M.P. 50*

JAN SHIKSHA ADHINIYAM, M.P., 2002

– **Section 2(k)** – See – Service Law : *Rajmal Rathore Vs. State of M.P., I.L.R. (2011) M.P. 1164*

JAN SHIKSHA NIYAM, M.P., 2003

– **Rule 13** – See – Service Law : *Rajmal Rathore Vs. State of M.P., I.L.R. (2011) M.P. 1164*

JAWAHARLAL NEHRU KRISHI VISHWA VIDYALAYA ACT, 1963 **(12 OF 1963)**

– **Section 2(x) and Statute 32** – Teachers – Sports Officer – Sports officer in the Jawaharlal Nehru Krishi Vishwavidyalaya is not a teacher – Age of superannuation would be 60 years and not 62 years – However, the salary already paid to the petitioner for the period of service rendered by him beyond the age of 60 years shall not be recovered from him – However for all other purposes, the appellant would be deemed to have retired on attaining the age of 60 years : *Brejendra Kumar Pathak Vs. Jawaharlal Nehru Krishi Vishwavidyalaya, I.L.R. (2011) M.P. 1437 (DB)*

– **Section 27** – Petitioner appointed as a daily wages labour who worked for a considerable time – He was then appointed on the time scale post with the salary in that scale – Order by Vishwavidyalaya that he is to retire on attaining the age of superannuation as he is completing 60 years of age – Posts were created by the University against which post the benefit was extended to the petitioner – Therefore, it cannot be said that the petitioner was not entitled to the similar age enhancement as was granted to class-IV employees – Petitioner held entitled to enhancement of age of superannuation as was made available to the work charged employees of the Government Departments : *S.P. Patel Vs. State of M.P., I.L.R. (2014) M.P. 1739*

JOINT POSSESSION

Undivided Coparcener Property - Purchaser of the undivided interest of a coparcener in an immovable property cannot claim to be in Joint Possession of that property with all the other coparceners, hence, a joint decree can be satisfied only if it is executed as a whole and therefore, the learned executing Court has acted illegally with material irregularity in exercise of its jurisdiction by dismissing the execution application in its full satisfaction : *Hari Singh Vs. Sudhir Singh, I.L.R. (2013) M.P. 1478*

JUDGES (PROTECTION) ACT (59 OF 1985)

– **Section 3(1)** - Additional Protection to Judges - Petitioner working as Tahsildar entertained application under Section 113 of M.P. Land Revenue Code, although she has no jurisdiction to entertain the same - Held - Protection does not extend to acts purely administrative/ministerial/extra judicial/alien to Judicial duty - Any act, which is not done

in the discharge of official duty, is not covered by Section 3(1) - As application under Section 113 of the Code could have been entertained only by S.D.O. therefore, it was not her official or judicial duty to entertain the application under Section 113 of the Code - Petitioner not entitled for protection - Petition dismissed : *Meena Mehra (Smt.) Vs. The Lokayukt Organization, I.L.R. (2011) M.P. 3019 (DB)*

– **Section 3(2)** - Additional Protection of Judges - In view of the provisions of Section 3(2) of the Act, protection do not operate as legal bar to investigate into allegation against any one of the Petitioners : *Meena Mehra (Smt.) Vs. The Lokayukt Organization, I.L.R. (2011) M.P. 3019 (DB)*

JUDICIAL OFFICERS PROTECTION ACT (18 OF 1850)

– **Section 1** - Liability - An act done or ordered to be done in discharge of judicial capacity is within jurisdiction of Magistrate - Protection provided under Act of 1850 is absolute and no enquiry would be entertained even with the act or order was erroneous, irregular or illegal or was done or ordered to be done believing in good faith that he had jurisdiction to do or ordered to be done : *Suresh Kumar Sharma Vs. Durgalal Vijay, I.L.R. (2011) M.P. 628 (DB)*

JUDICIAL SERVICE

- **Judge** - Judicial Service is not an ordinary Govt. Service and Judges are not employees as such - Judges hold public office - Their function is one of the essential functions of the State - Judge must be a person of impeccable integrity and unimpeachable independence - He must be honest to the core with high moral values - Approaching the Member of Parliament for getting the adverse remark expunged is most reprehensible and highly unbecoming of a judicial officer - His petition was liable to be dismissed on this ground also : *R.C. Chandel Vs. High Court of M.P., I.L.R. (2012) M.P. *103 (SC)*

JUDICIAL SERVICE PAY REVISION, PENSION AND OTHER RETIREMENT BENEFITS RULES, M.P., 2003

– **Rules 9 & 11-A** – Dearness Allowance – Presiding Officers of Industrial Court are entitled to equal scale of pay at par with that of District Judges – They are entitled to payment of salary not only for pay fixation but also for grant of dearness allowance as may be revised from time to time in accordance with Rules – Action of State Government in treating Presiding Officers of Industrial Court differently from District Judges is

violative of Article 14 of Constitution of India : *State of M.P. Vs. Satish Shrivastava, I.L.R. (2014) M.P. 2002 (DB)*

JUDICIAL SERVICES REVISION OF PAY RULES, M.P. 2003

– **Rules 4, 7, 9 & 12** – See – Service Law : *Satish Shrivastava Vs. State of M.P., I.L.R. (2014) M.P. 2299*

– **Rule 9** – Fixation of Pay – Grant of D.A. – In terms of Rule 9 of Rules, 2003 Judicial Officers shall be allowed D.A. from 1st July 1996 at the rate applicable to the Central Government Employees – Since this would be applicable to the Members of Labour Judiciary, the benefit is to be extended to the petitioner – Respondents are directed to fix the salary of the petitioner as per Fundamental Rule 22(D) in appropriate manner w.e.f. 28.08.2003 and to restore the payment of D.A. applicable to Central Government employees in terms of Rules 9 and 12 of Rules, 2003 : *Satish Shrivastava Vs. State of M.P., I.L.R. (2014) M.P. 2299*

JURISPRUDENCE

- **Precedents** - Held - Where a case does not lay down any law it has no precedential value : *Sandeep Singh Tomar Vs. State of M.P., I.L.R. (2014) M.P. 877*

JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT (56 OF 2000)

– **Section 2(k)** - See - Criminal Procedure Code, 1973, Section 482 : *Ashfaq Vs. State of M.P., I.L.R. (2012) M.P. 2887*

– **Section 6(2)** – Determination of Age – Question of Age of accused raised during Sessions Trial – It is well within the powers of the Sessions Court to embark upon an inquiry as to the age of a person instead of referring the matter to the Juvenile Court/Juvenile Justice Board : *Sakir Mewati Vs. State of M.P., I.L.R. (2011) M.P. *116*

– **Section 6, 7 & 49** – Determination of age – After investigation the charge sheet was filed and after committal the Sessions Trial against the petitioners was also commenced before trial Court – During trial the petitioners filed the application stating themselves to be juvenile – Trial Court on the basis of the evidence of the petitioners filed with the application and the evidence collected during investigation, concluded that the petitioners were not juvenile – Held – Conclusion arrived at by the trial Judge being mere expression of an opinion with regard to the age of the accused-petitioners was not a definite finding indicating that the said accused were not juveniles – Matter remitted back to the trial Court with a direction to redetermine the age : *Sakir Mewati Vs. State of M.P., I.L.R. (2011) M.P. *116*

– **Section 7**, Juvenile Justice (Care and Protection of Children) Rules, 2007, Rule 12 - Enquiry - Date of birth of applicant is 01.10.1995 as per matriculation certificate whereas the incident took place on 18.04.2012 - Age of accused should be considered on the date of incident - When the matriculation or equivalent certificate is available, then it would be the basis of computation of date of birth - Applicant was below 18 years of age : *Subham Vs. State of M.P., I.L.R. (2013) M.P. 961*

– **Section 7** - Ossification Test - As per the Ossification test, the age of the accused could be between 16 years and 4 months to 18 years and 4 months - Where there appears to be a doubt in computation, then the benefit is to be given to the accused : *Subham Vs. State of M.P., I.L.R. (2013) M.P. 961*

– **Section 7 & 49**, Juvenile Justice (Care and Protection of Children) Rules 2007, Rule 12 - Determination of age - Sessions Court, after the case is committed to it has the power to make an enquiry and determine the age of the accused if it considers it necessary in the interests of justice or a prayer is made in that behalf : *Govind Vs. State of M.P., I.L.R. (2011) M.P. 2591*

– **Section 7A**, The Juvenile Justice (Care and Protection of Children) Rules, 2007, Rule 12 - Age Determination Inquiry - While ascertaining the age of accused, procedure laid down under Rule 12 of the Rules has to be followed - Any other procedure laid down in Cr.P.C. or any other criminal procedure cannot be imported - It is a duty cast on the Courts/J.J. Board and Committees to seek evidence by obtaining certificates as mentioned in Rule 12 - Question of ascertaining medical opinion from a duly constituted Board arises only if the documents mentioned in Rule 12 are not available - In case exact assessment of the age cannot be done, then the Court, for reasons to be recorded, if considered necessary, give the benefit to the child or juvenile by considering his or her age on lower side within the margin of 1 year : *Ashwani Kumar Saxena Vs. State of M.P., I.L.R. (2012) M.P. *107 (SC)*

– **Section 7A & 49** – See – Penal Code, 1860, Section 341 & 307/34 : *Kamlendra Singh @ Pappu Singh Vs. State of M.P., I.L.R. (2014) M.P. 1463 (SC)*

– **Section 12**, Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Section 20 – Heinousness or seriousness – Bail to a Juvenile can be rejected only on the ground that it appears reasonable grounds for believing that the release is likely to bring him into association with any known criminal or expose him to any moral, physical or psychological danger or its release would defeat the ends of justice – Heinousness or seriousness, gravity of offence is no ground to reject bail – No case is pending against juvenile under NDPS Act – Applicant entitled to be released on bail : *Pradumna Vs. State of M.P., I.L.R. (2015) M.P. *14*

– **Section 12** – Bail – Denial of – Bail to a juvenile can not be denied unless his case falls within any of the exceptions engrafted in Section 12 of the Act, 2000 : *Narayan Sharma Vs. State of M.P., I.L.R. (2012) M.P. 796*

– **Section 12** – Bail – Likely to come in contact with persons of known criminal background – Report of Probation Officer shows that this is the second sexual offence by applicant – Family of applicant belongs to labour class – He is drop out from school after passing 6th standard and since is doing manual labour – There are reasonable grounds for believing that if applicant is released on bail, he is likely to come again into the contact with persons of known criminal background – Application rejected : *Aamir Salman Vs. State of M.P., I.L.R. (2015) M.P. 2236*

– **Section 12** – Bail of Juvenile – A juvenile has to be released on bail mandatorily unless and until the exceptions carved out in the section itself are made out – Case is not covered in anyone of the three exceptions carved out under Section 12, of the Act – The juvenile is entitled for bail : *Hakam Vs. State of M.P., I.L.R. (2011) M.P. 2237*

– **Section 12** – Bail – The intention of the legislature to grant bail to the juvenile irrespective of nature or gravity of the offence alleged to have been committed by him and can be defined only in the case where there appears reasonable grounds for believing that the release is likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger or that his release shall defeat the ends of justice – Further held, that heinousness of offence is also has no relevance while considering the bail matter of a delinquent juvenile : *Jogendra Singh Vs. State of M.P., I.L.R. (2015) M.P. 1886*

– **Section 12 & 53** - Bail of Juvenile - Bail application being rejected on the ground that there is reasonable apprehension that if the petitioner is released on bail, there is every likelihood that his release would defeat the ends of justice - No infirmity in the impugned orders that may call for any interference in exercise of revisional jurisdiction - Revision dismissed : *Kishore Kunwar Raj Vs. State of M.P., I.L.R. (2013) M.P. 2260*

– **Section 12(1)** - Anticipatory Bail of Juvenile - The question involved is whether juvenile deserves bail as a matter of right who is apprehending arrest - Held - No, this section does not relate to the concept of anticipatory bail : *Sandeep Singh Tomar Vs. State of M.P., I.L.R. (2014) M.P. 877*

– **Section 15(3)** – Period of custody in Reformatory – No juvenile in conflict with law can be committed to a Reformatory for a period exceeding three years – Delinquent in conflict with law is exempted from all forms of punishment and sending to a Reformatory is a matter entirely different from being sentenced to a punishment : *In Reference Vs. Golu @ Mota, I.L.R. (2015) M.P. 1896*

– **Section 53** – Bail – Held – There is no possibility that if petitioner is released on bail, his release shall bring him into association with any known criminal or expose him to moral, physical or psychological danger or his release shall defeat the ends of justice – Both the courts below committed jurisdictional error and illegality in passing both the orders – Petitioner released on bail – Revision allowed : *Ishan @ Lucky Vs. State of M.P., I.L.R. (2015) M.P. 479*

– **Section 53** – Bail – Though the bail application of the applicant cannot be rejected on the first two grounds provided in Section 12 of the Act, however, after considering the peculiar facts that the offence is committed in public place in broad day light by causing 24 injuries to the deceased is sufficient to infer that the applicant is in a position to scare the witnesses and no witness would come forward to depose before the trial court – Therefore, in view of the third ground of Section 12 of the Act, his being at large would defeat the ends of justice – Revision is dismissed : *Mintu @ Siryaz Khan Vs. State of M.P., I.L.R. (2015) M.P. 505*

– **Section 53** – Repeat application – Repeat application for Supurdginama/Bail – Held – Since similarly placed co-accused persons have been released on supurdginama/bail – Applicant has accrued fresh right for being released on supurdginama on the ground of parity – Revision allowed : *Sachin Ahirwar Vs. State of M.P., I.L.R. (2014) M.P. 2431*

JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) RULES, 2007

– **Rule 12** - See - Juvenile Justice (Care and Protection of Children) Act, 2000, Section 7 : *Subham Vs. State of M.P., I.L.R. (2013) M.P. 961*

– **Rule 12** - See - Juvenile Justice (Care and Protection of Children) Act, 2000, Section 7 & 49 : *Govind Vs. State of M.P., I.L.R. (2011) M.P. 2591*

– **Rule 12** - See - Juvenile Justice (Care and Protection of Children) Act, 2000, Section 7A : *Ashwani Kumar Saxena Vs. State of M.P., I.L.R. (2012) M.P. *107 (SC)*

– **Rule 12(3)** – Determination of age – Prosecutrix – Birth certificate depicts birth on 29.08.1987 – Middle School Examination Certificate depicts birth on 27.08.1987 – Difference of two days – Reliability – Held – Difference of two days in dates is minor discrepancy and these certificates cannot be discarded for determination of age – Prosecutrix below 16 years of age : *State of M.P. Vs. Anoop Singh, I.L.R. (2015) M.P. 2545 (SC)*

– **Rule 20 & 12** - See - Criminal Procedure Code, 1973, Section 482 : *Ashfaq Vs. State of M.P., I.L.R. (2012) M.P. 2887*

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KASHTHA CHIRAN (VINIYAMAN) ADHINIYAM, M.P. (13 OF 1984)

– **Section 3 & 4** - Appeal/Revision against order of conservator of forests - Appeal(revision) preferred by the respondent against order passed by conservator of forest under section 12 (3) - It ought to have been entertained and decided as a Civil Appeal : *State of M.P. Vs. Aditya Narayan Shukla, I.L.R. (2012) M.P. 2872*

KEROSENE DEALERS LICENSING ORDER (M.P.), 1979

- **Cancellation of Semi Wholesale Dealership** - Scheme has been prepared under order, 1979 providing that semi wholesale dealers for distribution of Kerosene shall function only in those areas where wholesale dealers are not appointed - Nothing in show cause notice that petitioner is functioning in area where wholesale dealers are functioning - No enquiry in this regard conducted - No enquiry as to whether continuance of petitioner as semi wholesale dealer is desirable under Scheme or not - Order cancelling dealership quashed : *Gurunanak Prathmik Upbhokta Bhandar Vs. State of M.P., I.L.R. (2012) M.P. 1555*

– **Order 2(k)** – Hawker card holder – Hawker cards were issued and Hawker Card Holder was supplied 200 litres of kerosene and they were to engage themselves in distributing kerosene oil in open market – Aforesaid arrangement was withdrawn and it was decided that kerosene oil will be distributed by Public Distribution System – Petitioners have failed to demonstrate their subsisting right in terms of Order 1979 or Essential Commodities Act – Communication dated 09/10/2011 which was signed by Deputy Secretary was founded on the Notification issued in the name of Governor and published in Official Gazette – Deletion of Order 2(k) is in accordance with law – Petition dismissed : *Sunder Lal Sahu Vs. State of M.P., I.L.R. (2015) M.P. 1490 (DB)*

KEROSENE (RESTRICTION ON USE AND FIXATION OF CEILING PRICE) ORDER 1993

– **Order 2(i) read with Order 7** – “Parallel Marketing System” – Other than PDS – Held – The said order does not recognizes distribution of Kerosene by mode of Hawker Card Holders : *Sunder Lal Sahu Vs. State of M.P., I.L.R. (2015) M.P. 1490 (DB)*

**(KHADYA PADARTH) SARVAJANIK NAGRIK PURTI VITRAN
SCHEME, M.P. 1991**

– **Clause 4(1)** - See - Food Stuffs (Distribution) Control Order, M.P. 1960, Clause 4 : *Mahila Rukhmani Primary Consumer Co-operative Society Vs. State of M.P., I.L.R. (2011) M.P. 354 (DB)*

– **Clause 12 & 13** - See - Essential Commodities Act, 1955, Section 3/7 : *Dhruv Kumar Singh Vs. State of M.P., I.L.R. (2012) M.P. 2012*

– **Clause 13 (5)** – if any complaint is made against co-operative society, it is necessary to send a report to the committee of Cooperative Department who will have to make an enquiry and submit its report within 15 days – No such procedure was adopted - Action of cancellation of fair price shop is illegal – Further if respondent no. 4 did not examine the witnesses SDO was not required to take action in this regard – Order passed by Collector in Appeal against the order passed by SDO by which complaint made against petitioner was rejected is quashed - Petition allowed : *Ashok Pateria Vs. State of M.P., I.L.R. (2012) M.P. 1142*

KOLAHAL NIYANTRAN ADHINIYAM M.P., 1985 (1 OF 1986)

– **Section 13** – See – Noise Pollution (Regulation and Control) Rules, 2000, Rule 5 : *Rajendra Kumar Verma Vs. State of M.P., I.L.R. (2015) M.P. 1284 (DB)*

**KRISHI PRAYOJAN KE LIYE UPAYOG KI JA RAHI DAKHAL
RAHIT BHOOMI PAR BHOOMISWAMI ADHIKARON KA
PRADAN KIYA JANA (VISHESH UPABANDH) ADHINIYAM, M.P.
(30 OF 1984)**

– **Section 3**, Specific Relief Act, 1963, Section 38 - Declaration and perpetual injunction - Relief when cannot be granted - Appellant alleging to have acquired Bhoomiswami rights on the strength of possession for more than 100 years - State marking the land for a plantation project - Appellant declared to be an encroacher and proceedings u/s 248 M.P. Land Revenue Code initiated - Held - Appellant was not found in legal possession of the land and whenever the possession of the party is not lawful or legal, then the same could not be protected by issuing or granting perpetual injunction in favor of such party and against the true owner or the recorded Bhoomiswami of land : *Sharda Prasad Vs. State of M.P., I.L.R. (2011) M.P. 461*

KRISHI UPAJ MANDI ADHINIYAM, M.P. 1972 (24 OF 1973)

– **Section 13, 57, 57-A, 70 & 72(2)(3)** - Appointment of Officer In-charge - One Krishi Upaj Mandi was split in two different mandies - Splitting of Mandi took place

after the completion of tenure of elected body - State Government postponed the holding of election in exercise of power under Section 57-A of Adhiniyam, 1972 - Committee In-charge should have been appointed instead of Officer In-charge - Petitioner permitted to continue as Chairman of Committee In-charge till holding of election - Petition allowed : *Prabhu Dayal Singh Vs. State of M.P., I.L.R. (2012) M.P. 1551*

– **Section 17(2)(xiii)(a)** – Power of Mandi Samiti – Section clearly authorizes the Mandi Samiti to seize the agriculture produce in question alongwith other property of the person concerned and arrange for re-sale in the event of default by a person who is a buyer of agricultural produce within the marketyard : *Krishi Upaj Mandi Samiti Vs. Sunil Kumar, I.L.R. (2011) M.P. 1445 (DB)*

– **Section 64** – See – Prevention of Corruption Act, 1988, Section 2 (c)(ix) : *Gambhir Singh Patel Vs. State of M.P., I.L.R. (2011) M.P. 1428 (DB)*

– **Section 67** – See – Civil Procedure Code, 1908, Section 151 : *Rashik Hasan Vs. Nagar Nigam, Bhopal, I.L.R. (2012) M.P. *69*

– **Chapter-VI (Regulation of Trading) Section 2, 3, 4, 5, 7, 19, 31, 32, 36, 37, 38, 39, 43 & 44**, Sugarcane (Regulation of Supply and Purchase) Act, M.P. 1958 (1 of 1959), Section 19 & 20, Sugarcane (Regulation of Supply and Purchase) Rules, Rule 2(f), 35, 36, 40, 41 & 43 and Sugarcane (Control) Order, Clause 3 - Whether Market Fee can be levied to the transactions involving purchase of sugarcane by factories operating in market areas of State - Act, 1958 is a special statute enacted for regulating the supply and purchase of sugarcane to the factories and covers the entire spectrum of the transactions involving the sale and purchase of sugarcane - Mechanism for fixing the minimum price of cane is contained in clause 3 of the Control Order - Mode of payment is contained in both Act, 1958 and Control Order - Provisions of Section 36 and 37 of Market Act are irreconcilable with those contained in Section 15, 16, 19 of the Act, 1958 and clause 3 of Control Order - No special facility is provided to the Cane Growers and occupiers of the factories who purchase sugarcane at the purchasing centers or within the factory premises - Control order envisages fixation of minimum price of sugarcane by Central Govt. whereas Market Act postulates determination of prices of notified agricultural produce brought into the market yard by tender bid or open auction - Provisions of Market Act would not prevail over the Control Order and that transactions involving the purchase of sugarcane by the factories operating in the market areas would not be governed by the provisions contained in Market Act - Market Fee not leviable - Appeal dismissed : *Krishi Upaj Mandi Samiti, Narsinghpur Vs. M/s. Shiv Shakti Khansari Udyog, I.L.R. (2012) M.P. *114 (SC)*

KRISHI UPAJ MANDI (ALLOTMENT OF LAND AND STRUCTURES) M.P. RULES, 2009

– **Rule 3(7)** – Allotment – Members of Association were trading in an area which was not notified under the M.P. Krishi Upaj Mandi Act – New market yard established for the first time – As it is not the case of transfer of market yard therefore provision of Rule 3(7)(a) would not apply – Provision of Rule 3(7)(b) would be applied – Question of conducting auction of plots only for the existing licensee cannot be countenanced – Auction proceedings already begun – Members of Association are free to participate – Petition dismissed : *Thok Sabji Vikreta Kalyan Sangh Vs. State of M.P., I.L.R. (2015) M.P. 964 (DB)*

– **Rule 3(7)** – Preference to old allottees – Object of sub-rule is to protect the existence of genuine licensee traders by giving due preference and also to prevent favoritism or nepotism to traders in the allotment of lands to them – Rule 3(7) of Rules, is neither arbitrary nor contrary to decision of Supreme Court in Labharam case – Petition dismissed : *Mohd. Fareed Vs. State of M.P., I.L.R. (2012) M.P. 928 (DB)*

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LABOUR JUDICIAL (RECRUITMENT & CONDITIONS OF SERVICE), RULES, M.P. 2006

– **Rule 3(2)(c)** – See – Service Law : *Satish Shrivastava Vs. State of M.P., I.L.R. (2014) M.P. 2299*

LAND ACQUISITION ACT (1 OF 1894)

– **Section 3(f)** - Public Purpose - Merely land is being acquired for a Company which is said to be power project and merely because electricity is being sold and Company is granted liberty to make some profit, it cannot be said that Public Interest is not involved : *Siyalal Kachi Vs. State of M.P., I.L.R. (2013) M.P. 1883*

– **Section 3(f)** – Public Purpose – Right of citizen to hold property is subject to right of sovereign to acquire it subject to payment of reasonable compensation – Public purpose defined in Section 3(f) is merely illustrative and not exhaustive – Inclusive definition of Section 3(f) does not restrict its ambit and scope – Expression Public Purpose is incapable of precise and comprehensive definition and it is neither desirable nor advisable to attempt to define it : *Umaraon Singh Vs. District Collector, I.L.R. (2011) M.P. *106*

– **Section 4** - See - Constitution - Article 226, 300A, 19 : *Avinash Pathak Vs. State of M.P., I.L.R. (2012) M.P. *75*

– **Section 4** - The Object of this section is that the person of the concerned locality comes to know that his land is sought to be acquired - The minimum requirement while issuing the notification is to mention the minimum description of the land - So as to enable the effected person to raise the objections adequately : *Raju Sharma Vs. State of M.P., I.L.R. (2013) M.P. 1854*

– **Section 4 & 5-A** – Acquisition of Land – Procedure prescribed is mandatory in nature – If property belongs to economically disadvantaged segment of Society or people suffering from other handicaps, then the Court is not only entitled but is duty bound to scrutinize the action/decision of the State with greater vigilance, care and circumspection keeping in view the fact that the land owner is likely to become landless and deprived of the only source of his livelihood and/or shelter : *Bitan Devi (Smt.) Vs. State of M.P., I.L.R. (2012) M.P. *2*

– **Section 4 & 5A** - Effect of Non Compliance - Defective notification and non compliance of the requirements of the Act, not only vitiates the notification but also renders all subsequent proceedings to be bad and illegal - Requirements of both the sections must be strictly fulfilled : *Raju Sharma Vs. State of M.P., I.L.R. (2013) M.P. 1854*

– **Section 4 & 6** - Acquisition of land for Construction of Canal - Canal Affected Persons - Canal affected persons can not be put at par with the submergence affected persons - However, State agreed to give more benefit to canal affected persons by shifting the date of notification under Section 4 from the date of its actual notification to the date of judgment in this case - L.A.O. accordingly directed to reconsider the market value of canal affected persons as if notification under Section 4 has been issued on 02.08.2011 and make supplementary awards in accordance with provisions of Act, 1894 - Such concession extended by State would be over and above the interim relief granted by the Court vide order dated 05.05.2010 : *State of M.P. Vs. Medha Patkar, I.L.R. (2011) M.P. 2929 (SC)*

– **Section 4 & 6** – Acquisition of land – Release of huge and big chunk of land out of total land – Land of respondents not released – Held – Amounts to hostile discrimination – Like should be treated alike : *Indore Development Authority Vs. Burhani Grih Nirman Sahakari Sansthan Maryadit, I.L.R. (2015) M.P. 1145 (DB)*

– **Section 4 & 6**, Civil Procedure Code, (5 of 1908), Section 9 - Jurisdiction of Civil Court - Validity of Acquisition Proceedings - Acquisition proceedings were initiated in the year 1963 - Land was purchased by the plaintiff in the year 1954 and his name was also mutated in revenue records - However, notice was issued to original seller who had

already died in the year 1959 - Notice was issued to original seller who was already dead and no notice was issued to plaintiff whose name was already mutated in revenue records - As principles of natural justice were violated therefore, Civil Court had jurisdiction to entertain the suit and to declare the title of plaintiff and to pass injunction order against applicants/defendants : *M.P. Housing Board Vs. State of M.P., I.L.R. (2013) M.P. 2723*

– **Section 4 & 6** – Public Purpose – Land acquired for Hydel Power Project – M.P.E.B. entered into purchase agreement with respondent no.3 company, providing that entire power generated from project is required to be supplied to M.P.S.E.B and the tariff of electricity generated from Project shall be decided by M.P.S.E. Regulatory Commission – Project cost includes expenditure and investment made by State Govt. to the extent of Rs. 21.25 crores – Project also involves the funds spent by M.P.S.E.B. and Narmada Valley Development Authority and funding of the project has been obtained from various Govt. financial institutions – Compensation has been paid from public exchequer – Project is going to benefit the people of State and will also enable augmented supply of drinking water to Indore city and adjoining areas – Land has been acquired for public purpose : *Umaraon Singh Vs. District Collector, I.L.R. (2011) M.P. *106*

– **Section 4 & 6** - See - Civil Procedure Code, 1908, Section 9 : *Mohd. Ashraf Vs. M.P. Housing Board, I.L.R. (2011) M.P. 182*

– **Section 4 & 6** – See – Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, Section 24 : *Jeevanlal Mishra Vs. State of M.P., I.L.R. (2015) M.P. 731 (DB)*

– **Section 4 & 11** – Award – Subsequent notification issued on 26.04.2002 – There was no justification in awarding the compensation on the basis of first notification dated 06.02.1998 : *Mangu Vs. State of M.P., I.L.R. (2011) M.P. 985*

– **Section 4(1), 6(2), 17(1) & 17(4)** – Construction of check post barrier – Public purpose for acquiring the land in question is satisfied as the collection of tax has not been proved by the petitioner to be in private interest – Therefore, the contention that there is no urgency as would call for invoking of Section 17 having no foundation, is negated – Held – Non compliance of provision under Section 4(1), 6(2), 17(1) & 17(4) of the Act, no interference caused – Petition dismissed : *Santosh Inderchand Taori Vs. State of M.P., I.L.R. (2012) M.P. *32*

– **Section 5-A** – Acquisition of Land – Hearing of Objection – Hearing of objection is not an empty formality – Competent Authority has to assign reasons such as the unsuitability of the alternative land for the said public purpose, the grave hardship that may be caused to owner by such expropriation, etc. – Order overruling objection

should be pregnant with reasons – Reasons are heartbeat of conclusion and in absence of reasons, the decision can not stand : *Bitan Devi (Smt.) Vs. State of M.P., I.L.R. (2012) M.P. *2*

– **Section 5-A** – Hearing of objection – Collector himself deciding the objection instead of sending the report to the Government – Held – Collector has no jurisdiction to decide the objections – Issuance of notification under section 6 of the Act is invalid – Land acquisition proceedings stands totally vitiated, as Competent Authority had neither decided the objections nor were communicated : *Indore Development Authority Vs. Burhani Grih Nirman Sahakari Sansthan Maryadit, I.L.R. (2015) M.P. 1145 (DB)*

– **Section 5-A** – Notices – Petitioners do not disclose the names of the land owners to whom the personal notices were not served under section 5-A of Act, 1894 – Proceedings are not vitiated : *Jeevanlal Mishra Vs. State of M.P., I.L.R. (2015) M.P. 731 (DB)*

– **Section 5-A** - Personal hearing - No pleadings with regard to non grant of personal hearing to land owners - However, the Company has specifically taken a stand that efforts were made to purchase the land by private negotiations - In none of representations or objections there is anything to show that such an objection was ever raised - Return of the State also discloses that the negotiations were made but failed - Petition dismissed : *Siyalal Kachi Vs. State of M.P., I.L.R. (2013) M.P. 1883*

– **Section 5-A & 40** - Subjective satisfaction for grant of consent - Subjective satisfaction for grant of consent by the Govt. is to be undertaken by conducting the enquiry as contemplated u/s 40 which gives an option either to hold enquiry as required u/s 5-A or as required under provisions of Section 40 - If an enquiry is conducted u/s 40, then enquiry u/s 5-A can be given go-by : *Siyalal Kachi Vs. State of M.P., I.L.R. (2013) M.P. 1883*

– **Section 11-A** - Period within which an award shall be made - Stay of proceedings by Court - Effect - Award was due on 31.03.2000 - There was stay of 6 years 8 months and 16 days - Period of stay liable to be excluded - Award ought to have been passed on or before 18.01.2007 - Award was passed on 31.12.2005 - After excluding the period of stay it cannot be said that the statutory provisions of Section 11-A of the Act was violated - Petition dismissed : *Geeta Bai (Smt.) Vs. State of M.P., I.L.R. (2012) M.P. *117*

– **Section 12 & 18** – Limitation for reference – At the time of passing of award, appellants were not present before the Collector – No evidence that appellant was intimated about the award or the contents of award were known to the appellant – Held – Only on the basis of amount of compensation paid by cheque, it cannot be inferred that

the award was communicated to the appellant and the contents of the award were known to the appellant – It cannot be said that the objections filed by the appellant were not in time : *Mangu Vs. State of M.P., I.L.R. (2011) M.P. 985*

– **Section 12 & 18** – Limitation – Notice u/s 12(2) of Act was served without accompanying the copy of award – Applicant filed application for obtaining certified copy of award and after receiving the same, application for reference u/s 18 was filed within a period of six months – Held – Application for reference was filed within six months from the date of receipt of copy of award and also there is no proof that copy of award was sent along with notice u/s 12(2) – Reference Court committed manifest error in rejecting the reference on the ground of limitation – Matter remitted back for adjudication on merit : *Vidya Bai (Smt.) Vs. State of M.P., I.L.R. (2015) M.P. *20*

– **Section 16 & 17** – Possession – Paper Possession or Actual possession – No strait jacket formula can be laid down for taking the possession of land – It would depend upon the facts of an individual case – If land is barren and fallow and does not have any structure or crop on it, symbolic possession may meet the requirement of law – However, this would not be the position in case crop is standing on the land or a kachha or pacca structure has been raised on such land – In that case, actual physical possession is required to be taken – In case the acquiring authority is already in possession as the same has been requisitioned under any law or property is in possession of a tenant in such a case symbolic possession qua the tenure holder would be sufficient : *Narmada Bachao Andolan Vs. State of M.P., I.L.R. (2011) M.P. *113 (SC)*

– **Section 17** – Urgency Clause – Invocation of urgency clause is a matter which is in realm of subjective satisfaction of competent court – Court would interfere only when the reasons are wholly irrelevant and same exhibit lack of application of mind – Mere pre-notification delay would not render invocation of urgency provisions void : *Umaraon Singh Vs. District Collector, I.L.R. (2011) M.P. *106*

– **Section 18** - Collector's Guidelines - Market price assessed by reference Court considering the guidelines issued by Collector for collecting stamp duty - Held - Guidelines can be a basis for ascertaining the market value of land, at the relevant time - When the State can charge stamp duty on the basis of such guidelines than for assessing market value of the land the Courts can very well take into consideration the guidelines for assessing the market value of the land at the relevant time : *State of M.P. Vs. Water Resource Department, I.L.R. (2011) M.P. 2834 (DB)*

– **Section 18** – Limitation – Provisions of Limitation Act do not apply to the application for making a reference to the Court : *Kashi Bai (Smt.) Vs. State of M.P., I.L.R. (2012) M.P. 1414*

– **Section 18** – See – Civil Procedure Code, 1908, Section 96 : *Shailesh Agnihotri Vs. Indore Development Authority, I.L.R. (2014) M.P. 1302 (DB)*

– **Section 18** – Starting point of limitation – Limitation starts running from the date of knowledge of the essential contents of award – Date of award can not be construed to be the date mentioned by the Land Acquisition Officer – Application for reference rejected by Collector being barred by time but at the same time Reference was made on the applications of other applicants – Application for reference rejected by Collector being barred by time without asserting the date of knowledge of award – Rejection of application for reference not just and proper – Order of Collector quashed – Reference with respect to the claim of the petitioners be made to the Civil Court : *Kashi Bai (Smt.) Vs. State of M.P., I.L.R. (2012) M.P. 1414*

– **Section 23** – Determination of compensation – Held – The burden of proving inadequacy of the amount is to be discharged by the claimant himself and he has to satisfactorily furnish basis for determining market value of acquired land : *State of M.P. Vs. Ravindra Kumar Sharma, I.L.R. (2014) M.P. 1580*

– **Section 28-A** – See – Civil Procedure Code, 1908, Section 96 : *Kodar Singh Vs. State of M.P., I.L.R. (2014) M.P. 3190*

– **Section 30, 53 & 54**, Civil Procedure Code (5 of 1908), Section 115 – Maintainability of Civil Revision – Order passed u/s 30 of the Act, 1894 is a decree – Appeal lies u/s 54 of the Act, 1894 – Order dismissing application u/o 7 rule 11 CPC is appealable – Civil Revision is not maintainable – Revision dismissed : *Surendra Kaur (Smt.) Vs. Satinder Singh Chhabra, I.L.R. (2015) M.P. 1867*

– **Section 48** - Actual Possession or Symbolic Possession - Actual possession should be taken and mere symbolic possession is not enough : *Pramod Singh Vs. The Secretary, Department of Housing, I.L.R. (2013) M.P. 1043*

– **Section 48** - Actual Possession - Withdrawal from acquisition - Possession of 43.22 acres of land was taken on 31.08.1967 - No possession of 1.22 acres of land was taken on the same day - Possession certificate in respect of 1.22 acres of land was prepared on next day in absence of witnesses nor the possession was handed over to B.D.A. - State has also denied the possession certificate in respect of 1.22 acres of land - Even as per award, area measuring 1.22 acres of land was not included - No compensation was paid - Buildings existing on the said land are still in existence and petrol pump is also functioning - As possession of 1.22 acres of land was never taken, therefore, the State was within its right to release the said land from acquisition : *Pramod Singh Vs. The Secretary, Department of Housing, I.L.R. (2013) M.P. 1043*

– **Section 48(1)**– Power under the aforesaid provision can be exercised by the State only, if the possession of the land has not been taken over : *Mahesh Bharadwaj Vs. State of M.P., I.L.R. (2011) M.P. *95 (DB)*

– **Part VII** - For the purpose of acquisition of land for a Company, requirement of Part VII has to be followed and in exercise of powers conferred u/s 55, Statutory Rules for acquisition of land for Companies are formulated - Record shows that a detailed enquiry was made - It cannot be said that the report of Collector was mechanical : *Siyalal Kachi Vs. State of M.P., I.L.R. (2013) M.P. 1883*

LAND DEVELOPMENT RULES, M.P., 1984

– **Rule 2** – See – Municipal Corporation Act, M.P., 1956, Section 2, 30 & 293 : *Ashish Kumar Vs. State of M.P., I.L.R. (2015) M.P. *3*

LAND DEVELOPMENT RULES M.P., 2012

– **Rule 2, 13 & 105** – See – Municipal Corporation Act, M.P., 1956, Section 2, 30 & 293 : *Ashish Kumar Vs. State of M.P., I.L.R. (2015) M.P. *3*

LAND REVENUE CODE, M.P. (20 OF 1959)

- **Conflict with Forest (Conservation) Act, 1980** - Whether Special Act will prevail over General Act - There is no conflict between the said two Acts, and their area of operation is different, no case is made out to show that special Act will prevail over General Act : *Aseem Vaishya Vs. Union of India, I.L.R. (2012) M.P. 1888*

– **Section 1(2), 2(g), 2(t), 57, 58 & 59** - Forest or Reserved Forest - State is empowered to impose lease rent and premium on it : *Aseem Vaishya Vs. Union of India, I.L.R. (2012) M.P. 1888*

– **Section 2(I)** – See – Civil Procedure Code, 1908, Order 39 Rule 1 and 2 : *Raju Vs. Awdesh, I.L.R. (2011) M.P. 1480 (DB)*

– **Section 22(2)** - Sub-Divisional Officer has been conferred powers of the Collector to appoint a Patwari and as a consequence thereof he also has the power to remove a Patwari from service : *Kala Bai (Smt.) Vs. State of M.P., I.L.R. (2011) M.P. 575 (FB)*

– **Section 35, 44 & 50** – Revisional Power – Names of petitioners were mutated in Revenue Record by Tahsildar which was challenged before S.D.O. – Against interlocutory order of permitting amendment in memo appeal, the revisions were

dismissed by Collector and Commissioner – Revision was pending before Board of Revenue, however in the meanwhile, S.D.O. dismissed the appeal for want of prosecution – Application for restoration pending – Board of Revenue set aside all the orders including order of mutation passed by Tahsildar and remitted the matter back to Tahsildar – Suo motu revisional power could not be invoked by the Board of Revenue by ignoring the propriety of the Court and also the provisions of restoration and appeal – Impugned order set aside – Case is remitted back to the Board of Revenue with a direction that subject to restoration of the appeal only to decide the correctness of the interlocutory order : *Shakuntala Devi Vs. Board of Revenue, I.L.R. (2014) M.P. 2059*

– **Section 44 & 50** - Order passed under the provisions of M.P. Lok Dhan (Shodhya Rashiyon Ki Vasuli) Adhiniyam, 1987 is not subject to appeal and revision under the provisions of Code : *Sadhna Chourasia (Smt.) Vs. Punjab National Bank, I.L.R. (2011) M.P. 61 (DB)*

– **Section 44 & 50** - Revision - Aggrieved person - Person aggrieved to invoke revisional power under Section 50 of Code would be a person who was party to proceeding : *Arun Mohan Vs. Smt. Geeta Patel, I.L.R. (2012) M.P. 1802*

– **Section 44 & 50** - Revision - Maintainability - No revision lies against an appellate order - It was beyond the jurisdiction of Board of Revenue to entertain revision against an order when appeal lies : *Arun Mohan Vs. Smt. Geeta Patel, I.L.R. (2012) M.P. 1802*

– **Section 44, 50 & 129** - Demarcation - Appeals & Revision - Demarcation was conducted by the Tahsildar and had attained finality - If the petitioners had any grievance with regard to the said order they were required to challenge the same in accordance to law by filing an appeal or revision against the said order by invoking the provisions of section 44 or section 50 of M.P. Land Revenue Code : *Murlidhar Vs. Board of Revenue, M.P., I.L.R. (2013) M.P. 597*

– **Section 50** – Interlocutory Application – Locus standi of respondent No. 1 to file appeal was challenged by petitioner by filing application before appellate authority – Appellate authority instead of deciding application directed that the same shall be heard at the time of final hearing – Petitioner filed revision before Board of Revenue seeking direction to appellate authority to decide application – Board of Revenue in its turn decided the revision on merits – Held – Board of Revenue did not have authority to ignore the jurisdiction of appellate Court to decide on merits – Board of Revenue ought to have decided objection regarding locus standi only – Order of Board of Revenue set aside – As petitioner does not want to prosecute his revision before Board of Revenue,

appellate authority directed to decide objection of locus standi first – Petition allowed : *Chhotelal Gupta Vs. Smt. Seema Agrawal, I.L.R. (2014) M.P. 2782*

– **Section 50** - Review - Condonation of delay - Delay of 23 years - Sufficient Cause - Sufficient cause is required to be established - Delay of 23 years is not an ordinary delay and can be condoned only if specific reasons with accuracy and precession are shown - It cannot be condoned on a bald statement that matter has a public element - Order condoning the delay quashed : *Radhacharan Sharma Vs. State of M.P., I.L.R. (2012) M.P. 2956*

– **Section 50** - Revision - Powers - Revisional Court has not limited jurisdiction as it can satisfy itself as to legality or propriety of any order passed by or as to the regularity of the proceedings of any revenue officer subordinate to it : *Municipal Council, Balaghat Vs. M/s. Rishubh Developers & Builders, I.L.R. (2011) M.P. *30*

– **Section 50** - Revision - Suo motu - When a person against whom suo motu exercise of power is being made is not put to an irreparable loss, period of one year from the date of detection of illegality, impropriety or irregularity in the order/proceedings would be reasonable period for exercise of suo motu powers of revision u/s 50 of Code for protection of the government land or public interest. [Minority View (Mr. Justice Abhay M. Naik)] : *Ranveer Singh (Dead) Through L.Rs. Vs. State of M.P., I.L.R. (2011) M.P. 1 (FB)*

– **Section 50** - Revision - The suo motu powers can be exercised by the revisional authority envisaged u/s 50 of the Code within a period of 180 days from the date of the knowledge of illegality, impropriety and irregularity of the proceedings committed by a revenue officer subordinate to it even if the immovable property is government land or having some public interest. [Majority View (Mr. Justice A.K. Shrivastava & Mr. Justice S.S. Dwivedi)] : *Ranveer Singh (Dead) Through L.Rs. Vs. State of M.P., I.L.R. (2011) M.P. 1 (FB)*

– **Section 50** – Suo motu Revision – Computation of period of limitation – 180 days shall be counted from the date of knowledge of illegality, impropriety and irregularity : *Savina Park Resorts & Tours Pvt. Ltd. Vs. State of M.P., I.L.R. (2012) M.P. 365*

– **Section 50** - Suo motu revision - Limitation - Under normal circumstances the powers of suo motu revision could not be exercised after an inordinate period of time, but if fraud is seen to have been committed in the matter of obtaining the patta or showing the land to be in ownership of a particular person, the aforesaid restriction of limitation or action to be taken within a reasonable time will not arise : *Chandrika Prasad Sahu Vs. State of M.P., I.L.R. (2011) M.P. 2780*

– **Section 51** – Review – Authority has to issue show cause notice disclosing grounds on which it intends to review the order – After hearing the parties, if the authority is satisfied that there is error apparent on record, should set aside the earlier order and should hear the matter afresh on merits : *Kripa Tori Vs. State of M.P., I.L.R. (2014) M.P. 1848*

– **Section 51** – Review – Lands were auctioned in 1961 and sale certificates were issued after obtaining sanction from Collector – In 1970, Collector on suo motu proceedings held that sale was not in accordance with law and since earlier order was passed by his predecessor, therefore sought permission to review – Permission was granted by Board of Revenue, however thereafter proceedings were not reopened and no notice was issued and no order was passed – Held – It cannot be said that the sales were set aside by Collector by order passed in 1970 – It was not a final order – Further as constructions have already been raised, now after 55 years it cannot be said that constructions were raised illegally : *State of M.P. Vs. Mangilal Bohare (Deceased) Through L.Rs., I.L.R. (2015) M.P. 3172 (DB)*

– **Section 51** - Review - Tahsildar reviewed the order without obtaining permission of review - Order liable to be discarded : *Jagdish Vs. Achhelal, I.L.R. (2011) M.P. 756*

– **Section 51 & 165 (7)** – Period of limitation – Suo-motu review – Although no period of limitation has been prescribed, statutory authority must exercise its jurisdiction within a reasonable period – Reasonable time must be determined by the facts of the case and the nature of the order which is being revised – Review petition initiated after more than 3 years was not sustainable – Impugned order is set aside : *Kripa Tori Vs. State of M.P., I.L.R. (2014) M.P. 1848*

– **Section 51(1)** - Review - Proceedings for review initiated by the Collector who had passed the order, but the review order was passed by the Collector, who was successor in office - Held - It was imperative on the part of the Collector to seek permission of the Board of Revenue before seeking to review the order passed by his predecessor in office - Impugned order is without jurisdiction : *Rajendra Kumar Agrawal Vs. State of M.P., I.L.R. (2011) M.P. 2749*

– **Section 57 & 247**, Mines and Minerals (Development and Regulation) Act (67 of 1957), Section 10 and Minor Minerals Rules (M.P.), 1996, Rule 9 - Govt. Lessee (Patteddars) on the land quarry lease have limited rights - State Govt. is the owner of minerals lying beneath even on a private land - Hence it can grant a lease without the prior consent of the owner or occupier of such land - As all the land belongs to the State

Govt. and land includes mines and minerals & quarries also : *Aparn Gramin Vikas Sanstha Samiti Society Vs. State of M.P., I.L.R. (2013) M.P. 762 (DB)*

– **Section 57(2),(3)**, Civil Procedure Code (5 of 1908), Section 9 - Dispute with the State Government - Plaintiffs' suit for declaration of Bhumiswami right and injunction against the Government - Held - Civil suit is maintainable : *State of M.P. Vs. Vijaya Bai, I.L.R. (2011) M.P. 3093*

– **Section 59(2)** – Premium and Penalty – Diversion of purpose – Land was acquired for setting up a Thermal Power Plant by petitioner company – Compensation paid by company – Company constructed Thermal Power Plant as well as colony/township as per plan – As there was no change of use, company is not liable to pay premium and penalty in accordance with Section 59 & 172(4) of Code, 1959 : *National Thermal Power Corporation Vs. State of M.P., I.L.R. (2015) M.P. *31*

– **Section 108** - Revenue Entry - Title - Revenue entries in record of right are not sufficient to hold the title and possession of the property unless title is proved by admissible documents : *Mohd. Ashraf Vs. M.P. Housing Board, I.L.R. (2011) M.P. 182*

– **Section 110** - Mutation - 'Person interested' - Petitioners claiming title on basis of an unregistered document which should have been registered - Petitioners cannot enter into the shoes of a 'person interested' - They were not required to be noticed by the Tahsildar : *Dinesh Kumar Vs. Smt. Sarveshari, I.L.R. (2013) M.P. 345*

– **Section 110** - Section 110 provides the decision making process of the Tehsildar - Intimation of mutation should be duly published by the beat of drums in the village to which they relate and its copy if required to be affixed at the Choupal, gudi or any other place of public resort in the village and a copy should also be sent to the gram panchayat : *Shakuntala Bai (Smt.) Vs. Chatur Singh, I.L.R. (2013) M.P. 995*

– **Section 110 & 111** - Interested person - Petitioners are the original owner - Mutation was sought on the basis of sale deed executed by Power of Attorney - Notice of mutation to petitioners was necessary as they are necessary parties : *Shakuntala Bai (Smt.) Vs. Chatur Singh, I.L.R. (2013) M.P. 995*

– **Section 110 & 111** - Mutation Proceedings - Words "all person appearing to him to be interested" does not mean that there is any unfettered and uncontrolled discretion on the Tehsildar to notice any person as per his whims and fancies - This power is to be exercised diligently and all such persons who may be interested should be noticed : *Shakuntala Bai (Smt.) Vs. Chatur Singh, I.L.R. (2013) M.P. 995*

– **Section 110 & 117** - See - Evidence Act, 1872, Section 114(e) : *Yashraj Datta (dead) Through LR. Vs. Bherulal, I.L.R. (2013) M.P. 2660*

– **Section 111** - Remedy of Civil Suit - Mutation order can be challenged by filing appeal - It is the choice of the litigant to decide the forum where more than one forums are available - The subsequent filing of suit for a different relief will not wipe out the right of the petitioner to challenge orders passed by authorities under MPLRC arising out of order of Tehsildar - Petitioner is considered as "dominus litis" : *Shakuntala Bai (Smt.) Vs. Chatur Singh, I.L.R. (2013) M.P. 995*

– **Section 114** - Revenue entry - No right, title or interest can be created by orders of Revenue Court regarding mutation : *Basant Kumar Vs. Indra Sen (Deceased) through Heirs, I.L.R. (2011) M.P. 479*

– **Section 115** – See – Civil Procedure Code, 1908, Section 9 & 100 : *State of M.P. Vs. Shree Ranchor Teekam Mandir, I.L.R. (2014) M.P. 1315*

– **Section 117** - Change in Khasra entries cannot be made without hearing the party concerned : *Sabal Singh Vs. State of M.P., I.L.R. (2013) M.P. 613*

– **Section 117** – Khasra entries – Purpose – Fiscal – Recovery of land revenue – Entries does not give any right or title in the property to any person : *Madhu Janiyani Vs. State of M.P., I.L.R. (2015) M.P. 1316*

– **Section 131** - Rights of way - Private easement is customary easement and is having wider connotation with that of rights of easement as envisaged in Easements Act, 1882 : *State of M.P. Vs. Smt. Keshar Bai, I.L.R. (2013) M.P. 2664*

– **Section 146 & 147** - Recovery of Land Revenue - Sale - No demand notice was issued to defaulters - The person (defaulter) against whom proceeding were taken up had already died prior to the initiation of such proceedings - Legal Representatives were not brought on record and no notice was given to them - Held - The sale which was without notice was null and void : *Suresh Kumar Vs. Mohan Lal, I.L.R. (2011) M.P. 2477*

– **Section 147 & 165(9-b)** - Land held by an agriculturist, which admeasures less than 6 hectares and is situated in scheduled area - Can be sold in an auction under the provisions of M.P. Lok Dhan (Shodhya Rashiyon Ki Vasuli) Adhinyam, 1987, in view of Section 147 of the Code : *Sadhna Chourasia (Smt.) Vs. Punjab National Bank, I.L.R. (2011) M.P. 61 (DB)*

– **Section 158** - Bhumiswami - Land given to plaintiffs' forefather in Inam by the-then Holkar State and not to the deity - Firstly the plaintiffs' forefather and after his death, the plaintiffs became the Bhumiswami on coming into force of the Code : *State of M.P. Vs. Vijaya Bai, I.L.R. (2011) M.P. 3093*

– **Section 158 (1)(b)** – See – Civil Procedure Code, 1908, Section 100 : *Murti Shri Pandharinath Mandir Vs. Collector, I.L.R. (2014) M.P. 1061*

– **Section 158(1)(c)**, Bhopal State Land Revenue Act, 1932, Section 2(15) – Bhoomiswami – Nawab granted a Sanad (05.08.1945) in favour of original plaintiff subject to terms & conditions mentioned therein and was placed in possession – Original plaintiff was an ‘occupant’ under the Act of 1932 and became Bhoomiswami by operation of law on commencement of the Code, 1959 : *Prithvivallabh Vs. Chandra Kishore Vyas*, I.L.R. (2011) M.P. 997

– **Section 162** – Disposal of certain land in unauthorized possession – Section 162 would apply to Govt. land notified in official Gazette by the State Government for that purpose – Section 162 cannot be invoked as a general rule : *Krishnanand Vs. State of M.P.*, I.L.R. (2014) M.P. 2110 (DB)

– **Section 164 (As amended in 1961)**, Hindu Succession Act (30 of 1956), Section 22 – Applicability of Personal Law on agricultural land – In view of amended section 164, Personal Law applies to agricultural land – Judgments passed on the basis of unamended section 164 as it was prior to 1961 have no application : *Kamla Bai Vs. Nathuram Sharma*, I.L.R. (2015) M.P. 883

– **Section 165 & 170-B** - Land was sold in favour of plaintiff in the year 1957 - Vindhya Pradesh Land Revenue and Tenancy Act, 1853 was in force which did not contain any provision restraining alienation by a tribal in favour of non-tribal - Provisions of M.P. Land Revenue Code, 1959 do not apply : *Ram Niwas Vs. Jagat Bahadur Singh*, I.L.R. (2013) M.P. 2689

– **Section 165(6)** – Non-agricultural property – Suit property not a agricultural land – Section 165(6) is not having any applicability on it : *Babu Lal Vs. Hira Lal*, I.L.R. (2012) M.P. 480

– **Section 165(6)** – See – Specific Relief Act, 1963, Section 16 & 20 : *Babu Lal Vs. Hira Lal*, I.L.R. (2012) M.P. 480

– **Section 165(6-a)** - See - Constitution - Article 244(1) : *Sudhakar Vs. State of M.P.*, I.L.R. (2014) M.P. 720 (DB)

– **Section 165(6-b)** – This Section is also subject to Section 165(7-b) – Ratification is permissible only if it fulfills the requirement of the Code and not otherwise : *Savina Park Resorts & Tours Pvt. Ltd. Vs. State of M.P.*, I.L.R. (2012) M.P. 365

– **Section 165(7-b)** – If permission is not obtained from the Collector to sell a *patta land*, even after ten years it can not be sold in contravention to the provisions – If permission of Collector is not obtained, such sale or transfer is void ab initio : *Savina Park Resorts & Tours Pvt. Ltd. Vs. State of M.P.*, I.L.R. (2012) M.P. 365

– **Section 165 (7)(b)** – Lease – Lease was granted to original lessee in the year 1923 – Possession was also delivered to lessee – As Govt. was not in possession of land therefore, no permission for sale from State Govt. was required as per circular introduced in the year 1947 : *Kripa Tori Vs. State of M.P., I.L.R. (2014) M.P. 1848*

– **Section 168** – See – Civil Procedure Code, 1908, Section 100 : *Mahesh Prasad Vs. Rambahadur, I.L.R. (2014) M.P. 1321*

– **Section 169(2) & 185(2)** - Occupancy tenant - Appellants claiming right on the basis of agreement to sell - Possession could not be deemed to be possession as lessee and their rights could not be deemed to be protected as occupancy tenant : *Jagdish Vs. Achhelal, I.L.R. (2011) M.P. 756*

– **Section 170-A, 170-B** - Land belonging to Aboriginal Tribe - Patta was granted to a member of aboriginal tribe which was cancelled and then it was allotted to Petitioner - Provisions of Section 170B can not be invoked to cancel patta : *Munna Vs. State of M.P., I.L.R. (2012) M.P. 1859*

– **Section 170-B** - Cancellation of Patta - Cancellation of patta on the ground that it was land obtained under Bhudan - No reason or provision is shown which prohibits grant of such land on patta - As cancellation of patta has an adverse impact, therefore, reasons should have been disclosed for the same : *Munna Vs. State of M.P., I.L.R. (2012) M.P. 1859*

– **Section 172** – Locus Standi – Order of diversion set aside on the ground that land was diverted for the “administrative purposes” but the land is being used for “educational purposes” – Appeal filed by respondent no. 2 who is running educational institution – Contravention of provision of Section 172 is penal in nature and therefore Bhoomi Swami and another person who is responsible for contravention can be punished – Respondent no. 2 had locus standi to challenge the order of SDO : *Sushila Raje Holkar (Sushri) Vs. State of M.P., I.L.R. (2015) M.P. 1475*

– **Section 181** - Govt. Lessee - Nazul Junglat Land directed to be given to the petitioner on approval of the Central Govt - Petitioner would be a lessee and liable to pay lease rent : *Aseem Vaishya Vs. Union of India, I.L.R. (2012) M.P. 1888*

– **Section 190** - See - Transfer of Property Act, 1882, Section 53-A : *Manik Rao Vs. Ramesh, I.L.R. (2012) M.P. 1644*

– **Section 242** - Wazib-ul-urz - Land settled with ex-proprietor in occupancy rights by High Court in Second Appeal - Land/water body was entered as Wazib-ul-urz - Held - Board of Revenue was well within its right to set aside the entries in Wazib-ul-urz

: *Municipal Council, Balaghat Vs. M/s. Rishubh Developers & Builders, I.L.R. (2011) M.P. *30*

– **Section 248** – Dispossession – Petitioners No. 1 to 6 were in unauthorized possession of land as they could not point out that they are in possession because of allotment of that land in their favour by way of sale, lease or licence etc. – Tehsildar empowered to eject them from Government Land : *Krishnanand Vs. State of M.P., I.L.R. (2014) M.P. 2110 (DB)*

– **Section 248** – Dispossession – Petitioner No. 7 was allotted land for plantation purposes – No protection is available to structure constructed by him : *Krishnanand Vs. State of M.P., I.L.R. (2014) M.P. 2110 (DB)*

– **Section 248** – Penalty for unauthorizedly taking possession of land – Held – That, the provisions of this Section are applicable to municipal area : *State of M.P. Vs. Rajendra Kumar, I.L.R. (2015) M.P. 185*

– **Section 248** – Removal of Encroachment – Petitioner raised unauthorized construction over a piece of Government Land - Petitioner failed to demonstrate that any portion of construction raised over as per sanctioned map has been breached – Action of respondents in demolishing such construction doesnot require interference – Petition dismissed : *Minal Builders (M/s.) Vs. State of M.P., I.L.R. (2011) M.P. 1886*

– **Section 248** – See – Public Trust Act, M.P. 1951, Section 27 : *Bharat Kumar Patel Vs. Shri Ram Janki Hanuman Mandir, I.L.R. (2012) M.P. 1262*

– **Section 248**, Wakf Act 1995 - Applicability - Whether revenue authorities can invoke this provision against alleged encroachment on wakf property - Held - No - Sec 248 empowers the revenue authorities to take action against certain kinds of lands which are mentioned in the said provision - Anterior to or later to amendment in Sec. 248, no action can be taken against the encroachment on notified Wakf property : *Baheed Khan Vs. State of M.P., I.L.R. (2012) M.P. 2385*

– **Section 250** – Alternative Remedy – Petitioner has a remedy of restitution of possession under the Land Revenue Code – He also has a valuable right to get the decree executed under the Code of Civil Procedure – Merely because the remedy under the Land Revenue Code is also available, his petition can not be thrown : *Toran Singh Vs. Imrat Singh, I.L.R. (2012) M.P. 1233*

– **Section 250** - Unauthorized possession - Starting period of limitation for initiating a proceeding u/s. 250 would be two years, to be calculated from the date of actual dispossession or if the date of actual dispossession is not available then the period of two years is to be calculated from the date the possession of a person is found to be unauthorized and if the possession is found to be unauthorized in a proceedings held u/s.

129 or any other statutory or legal proceeding the date on which the findings of unauthorized possession is recorded in the said proceedings : *Murlidhar Vs. Board of Revenue, M.P., I.L.R. (2013) M.P. 597*

– **Section 250 (1)(b)** -Limitation - Possession of the petitioners was found to be unauthorized on the date when the order was passed in the proceeding u/s. 129 M.P. Land Revenue Code and therefore, the starting point for calculating the period of two years would be the said date : *Murlidhar Vs. Board of Revenue, M.P., I.L.R. (2013) M.P. 597*

– **Section 257(2x)** – See – Civil Procedure Code, 1908, Section 9 : *Om Prakash Vs. Ashok Kumar, I.L.R. (2014) M.P. 2119*

– **Section 264** - Applicability of provisions of Code, 1959 - Petitioner could not establish that land belongs to Central Govt. - Applicability of Code, 1959 can not be excluded : *Aseem Vaishya Vs. Union of India, I.L.R. (2012) M.P. 1888*

LAND TO LANDLESS PERSONS

Allotment of Agricultural Land - Landless persons are not entitled for allotment of agricultural land admeasuring two hectares - It had never been contemplated nor it is compatible with R & R Policy : *Narmada Bachao Andolan Vs. State of M.P., I.L.R. (2011) M.P. *141 (SC)*

LAW OF TORTS

- **Medical Negligence** - In absence of culpable negligence, no Doctor/Surgeon could be penalized or declared guilty of committing negligence : *Laxmi Devi (Smt.) Vs. State of M.P., I.L.R. (2011) M.P. *10*

- **Strict Liability** - Negligence of Servant or employee - Respondent or company can not escape from the liability on any count : *Ramdevi (Smt.) Vs. Madhya Pradesh Vidyut Mandal, I.L.R. (2013) M.P. 1639*

LEASE AND LICENCE

– **Difference** – Law discussed : *Mangal Amusement (P) Ltd. Vs. State of M.P., I.L.R. (2011) M.P. 1912 (DB)*

LEGAL SERVICES AUTHORITIES ACT (39 OF 1987)

– **Section 12** - See - Constitution - Article 39 A, : *Rajoo @ Ramakant Vs. State of M.P., I.L.R. (2012) M.P. 2085 (SC)*

– **Section 21 & 89** – See – Court Fees Act, 1870, Section 35 & 16C : *Ramesh Chandra Vs. State of M.P., I.L.R. (2012) M.P. 320 (DB)*

LIMITATION ACT (9 OF 1908)

– **Section 5** – Condonation of delay – Reasons – Where the reasons given are hypothetical and presumptive, the unexplained delay cannot be condoned : *State of M.P. Vs. Kamlesh Kumar, I.L.R. (2015) M.P. 2732*

LIMITATION ACT (36 OF 1963)

– **Section 3 & Article 65**, Civil Procedure Code (5 of 1908), Order 39, Rule 1 & 2 - Suit for declaration and permanent injunction - Cause of action accrued on 05.06.1990, when Town Inspector did not permit demarcation of suit plot - Suit filed on 09.07.1990 - Suit not barred by limitation : *Collector, Jabalpur Vs. Smt. Chandrawati Saraf, I.L.R. (2014) M.P. 189*

– **Section 5** - Application for condonation of delay based on false averment - Delay cannot be condoned : *Bhagchand Yadav alias Girdharilal Yadav Vs. State of M.P., I.L.R. (2013) M.P. 696*

– **Section 5**, Civil Procedure Code (5 of 1908), Order 41 Rule 3-A - Application for condonation of delay - The Appellate Court in view of peculiar facts, decided to decide the application for condonation of delay along with appeal - However, application for condonation of delay was decided first before passing judgment - No interference called for : *Pop Singh Vs. Ram Singh, I.L.R. (2012) M.P. 3058*

– **Section 5** – Condonation – Objection – Appeal barred by limitation – Delay already condoned – Held – It cannot be recalled afterwards – Principle – As per the dictum of Satyadhyan Ghosal’s case by the Apex Court any order passed at earlier stage in the matter is binding as res-judicata at any subsequent stage before the same Court : *Krishna Tiwari (Smt.) Vs. Ram Kumar, I.L.R. (2015) M.P. 977*

– **Section 5** - Condonation of delay - Appellant an illiterate lady was not informed by her counsel that an intra court appeal can be filed - She was informed by another counsel - Held - For the fault on the part of the Counsel, a litigant should not suffer - Delay in filing appeal, condoned : *Sumarwati Bai (Smt.) Vs. The Mines Manager, I.L.R. (2011) M.P. 609 (DB)*

– **Section 5** - Condonation of Delay - Application u/s 5 of the Act be considered with a pragmatic and liberal approach, however, such approach should be justice oriented - However, Courts do not enjoy the unlimited and unbridled discretionary powers and the

discretion of the judicial power should be exercised within reasonable bounds known to the law - The liberal approach would not include whims or fancies, prejudices or predilections : *Pushpa Bai Kushwaha (Smt.) Vs. Santosh Kumar Gupta, I.L.R. (2013) M.P. 1926*

– **Section 5** - Condonation of delay - Besides considering all other things, the court is also bound to consider the stake of litigation : *Riyaj Khan Vs. Kasam Khan, I.L.R. (2013) M.P. *17*

– **Section 5** – Condonation of delay – Condonation of delay sought on the ground that due to lack of communication between appellant and lawyer, appeal could not be filed – The party is bound to contact Advocate periodically to know the progress and status of case – If a party is negligent, then the right of other party has accrued on account of such negligence – Delay of 1 year & 170 days cannot be condoned – Application dismissed : *Rajendra Kumar Adhwaryu Vs. Parmanand, I.L.R. (2015) M.P. 2155*

– **Section 5** – Condonation of delay – Date of knowledge – Delay of 1047 days – Applicant not impleaded as a party either in succession case or at Appellate Stage – Knowledge on 24.03.2013, when order placed for compliance – Held – Applicant though a necessary party, not impleaded as a party – Sufficient cause shown explaining delay – Delay condoned : *Regional Commissioner Vs. Bhuria Bai, I.L.R. (2015) M.P. 2777*

– **Section 5** - Condonation of Delay - Delay of 350 days - State applied for certified copy on 1-4-2010 which was delivered on the same day - No explanation for the delay during the period of more than 6 months between 27-4-2010 and 2-11-2010 - If the officers have dealt with the matter negligently, or there is no explanation of such long delay, then the delay of more than six months without any proper explanation and cogent reason cannot be condoned - Cause shown by State for condonation of delay of 350 days not justified - Application for condonation of delay dismissed - Writ Appeal is also consequently dismissed : *State of M.P. Vs. Mahendra Solanki, I.L.R. (2012) M.P. 2628 (DB)*

– **Section 5** - Condonation of delay - Delay of 1128 days - Delay by State - A liberal view should be taken as in the matter of State where nobody is personally affected, but it is people at large affected and the machinery employed by the State is impersonal machinery, however, the explanation furnished must be bonafide - Long term delay must be appreciated in the light of submissions made and circumstances brought on record - It should be seen that State is serious enough in having taken action against erring officers - In the present case although show cause notice was issued to guilty officers in the year 2003 but nothing has been brought on record as to what are the consequences of such show cause issued to them - Explanation of 1128 days also not found sufficient rather

reflects lethargy and negligence on the part of State - Application for condonation of delay rejected - Consequently appeal is also dismissed : *State of M.P. Vs. Virendra Shankar, I.L.R. (2013) M.P. 1489 (DB)*

– **Section 5** - Condonation of delay - Delay of 3773 days by the authorities of Government in filing the second appeal - Authorities are dealing in the mutation proceeding and facing the writ petition and contempt petition in the same matter - Such authorities of Govt. cannot be given the benefit of "leisurely attitude is expected from the Govt. servant" - Held - There is difference between leisurely attitude and revengeful attitude - Documents on record shows the pure revengeful attitude with an aim to save the authorities from the action in contempt proceedings - Such an action cannot be said to be bonafide or sufficient reason for condonation of delay : *State of M.P. Vs. Rajaram, I.L.R. (2013) M.P. 1947*

– **Section 5** – Condonation of delay – Delay of 6 years and 86 days for filing the application for restoration – No proper explanation for delay – Application filed in very casual manner by stating some emotional grounds rather than the ground permissible under the law – Whenever and wherever under prescribed period the requisite proceeding under the right is not filed by a party then after expiration of such period a valuable right is created in favour of other party and such right could not be curtailed on the basis of any flimsy or insufficient ground – Application dismissed : *Usha Bai (Smt.) Vs. State of M.P., I.L.R. (2015) M.P. 3096*

– **Section 5** – Condonation of delay – Delay of 6 years and 121 days has caused because of officials and due to procedure of obtaining the sanction and in the lack of information regarding status of the case – Held – While dealing with application u/s 5 of Limitation Act and to examine the sufficient cause, court should adopt the lenient view with justice oriented approach, keeping in view the stake of litigation – No proceeding should be thrown away merely on the question of limitation as barred by time – Delay is condoned subject to payment of cost of Rs. 10,000 – As condition precedent : *State of M.P. Vs. Dr. Naresh Grover, I.L.R. (2014) M.P. 1574*

– **Section 5** - Condonation of delay - Discretion of Court - The Courts do not enjoy the unlimited and unbridled discretionary powers and the discretion of judicial power should be exercised within reasonable bounds known to law : *Bhagchand Yadav alias Girdharilal Yadav Vs. State of M.P., I.L.R. (2013) M.P. 696*

– **Section 5** – Condonation of Delay – Effect of not assailing impugned order within the period prescribed by law – It is settled proposition of law that after passing the order by any subordinate authority or court, if within the prescribed period the appeal or revision is not preferred against such order by the aggrieved party, a valuable right

relating to limitation is accrued in favour of the other side in whose favour the order is passed – Such right could not be curtailed lightly contrary to available facts by adopting the lenient approach – If sufficient cause is not made out the delay cannot be condoned : *Ram Khelawan Gupta Vs. Board of Revenue, I.L.R. (2015) M.P. 1999*

– **Section 5** – Condonation of delay – Factum of keeping the matter pending for more than 3 years and doing nothing to assail the judgment of first appellate court, shows utterly carelessness – No good reason to condone the delay : *State of M.P. Vs. Mannulal, I.L.R. (2014) M.P. *19*

– **Section 5** – Condonation of delay – Held – Even if there is an inordinate delay but explanation offered is found to be bonafide and satisfactory in nature, same can be condoned – On the other hand, if the delay is short but explanation offered is found to be lacking in bonafide, same cannot be accepted as sufficient cause : *Hari Singh Vs. Kailash, I.L.R. (2014) M.P. 2168*

– **Section 5** - Condonation of delay in filing appeal - Application u/s 5 is required to be considered with a pragmatic and liberal approach - But the approach should be justice oriented : *Bhagchand Yadav alias Girdharilal Yadav Vs. State of M.P., I.L.R. (2013) M.P. 696*

– **Section 5** – Condonation of delay – Restoration application – There is long delay of 2581 days – Filed on the ground of lack of information from the counsel – There is also no affidavit of the advocate in support of application – Held – Whenever any proceeding is filed at belated stage after the period prescribed under the law, then during that period the valuable right is mature in favour of the other side and such right of the other party could not be curtailed lightly by adopting any lenient view or for extending the sympathy to the party – Petitioner has not proved sufficient cause for condoning the delay – Petition is dismissed : *Saiyad Kamar Ali Vs. State of M.P., I.L.R. (2015) M.P. 509*

– **Section 5** – Condonation of delay – Sufficient Cause – Delay of 516 days – Cause disclosed in application shows that except for lethargy on the part of officer of Govt at any stage no other cogent reason has been shown for seeking condonation of delay – Delay cannot be condoned – Application dismissed: *State of M.P. Vs. Late Abdul Gani Through L.Hs., I.L.R. (2014) M.P. 2690 (DB)*

– **Section 5** - See - Arbitration and Conciliation Act, 1996, Section 34(3) : *Union of India Vs. M/s. Naveen Kumar Contractors & Suppliers, I.L.R. (2013) M.P. 672*

– **Section 5** – See – Civil Procedure Code, 1908, Section 96 : *Indore Municipal Corporation Vs. Mansukhlal, I.L.R. (2015) M.P. 993*

– **Section 5** - See - Civil Procedure Code, 1908, Section 115, Order 9 Rule 9 : *Riyaj Khan Vs. Kasam Khan, I.L.R. (2013) M.P. *17*

– **Section 5** – See – Civil Procedure Code, 1908, Order 9 Rule 13 : *Ramesh Chandra Jain Vs. State of M.P., I.L.R. (2014) M.P. 1360*

– **Section 5** – See – Civil Procedure Code, 1908 – Order 22, Rule 9 : *Misriya (Since dead) Through L.Rs. Vs. Kishandas (Since dead), I.L.R. (2012) M.P. 744*

– **Section 5** – See – Civil Procedure Code, 1908, Order 41, Rule 3-A : *Salikram Vs. Keshav, I.L.R. (2012) M.P. 157*

– **Section 5** – See – Criminal Procedure Code, 1973, Section 397 & 401 : *Arjun Namdeo Vs. State of M.P., I.L.R. (2015) M.P. 476*

– **Section 5** – See – Municipalities Act, M.P. 1961, Section 26(2) & 29(2) : *Ravindra Chourasia Vs. Ramashankar, I.L.R. (2012) M.P. 1402*

– **Section 5** – See – Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993, Section 122(2) : *Mumbi Bai (Smt.) Vs. State of M.P., I.L.R. (2012) M.P. 1164*

– **Section 5** – Sufficient cause – Duty of Court – It is true that ‘Sufficient cause’ should be considered by adopting liberal approach but the court is also bound to take care that on wrong facts no person should be benefited under the garb of lenient approach – In the present case delay of more than 6 years caused in filing Revision before Board of Revenue was declined to be condoned : *Ram Khelawan Gupta Vs. Board of Revenue, I.L.R. (2015) M.P. 1999*

– **Section 5** - Sufficient Cause - Sufficient cause should receive a liberal construction - Decree was passed on 06.12.1985 - Application for mutation was filed in the year 2009 - After receipt of notice for mutation, appellants applied for certified copy of judgment and decree - Period of limitation would start from the date of knowledge and not from the date of judgment and decree : *Pop Singh Vs. Ram Singh, I.L.R. (2012) M.P. 3058*

– **Section 5** - Word "Sufficient" - Meaning of word "Sufficient" is "adequate" or "enough", in as much as may be necessary to answer the purpose intended - The sufficient cause must establish that the party had not acted in negligent manner or there was a want of bona fide on its part - Reasons urged in the petition for restoration of suit were not sufficient to restore the suit by condoning such inordinate delay - Dismissal of the suit in absence of party or his counsel does not require to be set-aside : *Rama Shankar Vs. Balak Das, I.L.R. (2013) M.P. 2183*

– **Section 5/14** – Condonation of delay – If the party has filed any proceedings before the Forum which is not competent to entertain, hear and adjudicate the same and on coming to know about such position, if such matter is withdrawn from such Forum and filed before the appropriate competent Forum, then the period spent by such party in prosecuting the proceedings before the wrong Forum deserves to be excluded to count the period of limitation in filing the proceedings before the competent Forum provided under the law – Impugned order set aside and the application of the petitioner filed u/s 5 of the limitation Act allowed and the entire delay in filing the second appeal is condoned : *Anil Kumar Dikshit Vs. State of M.P., I.L.R. (2014) M.P. *13*

– **Section 5 & 14** – Consideration of delay – Since the issue has not been dealt with in the spirit of Section 14 of the Limitation Act – This question be decided by the Commissioner for Workmen’s Compensation Act – Appeal is allowed – Parties are directed to appear before the Commissioner who would decide the claim petition on merits : *Mahabir Sen Vs. Vijay Singh, I.L.R. (2014) M.P. 2365*

– **Section 5 & 14** – See – Arbitration and Conciliation Act, 1996, Section 34 : *Commissioner, M.P. Housing Board Vs. M/s. Mohan Lal & Company, I.L.R. (2015) M.P. 785*

– **Section 5, 29(2) & 4 to 24** – See – Madhyastham Adhikaran Adhiniyam, M.P., 1983, Section 19 : *State of M.P. Vs. Anshuman Shukla, I.L.R. (2015) M.P. 1111 (SC)*

– **Section 14** - Conditions required to be satisfied.

In order to attract the applicability of Section 14 of the Limitation Act, following conditions are required to be satisfied :-

- (i) Both the prior and subsequent proceedings are civil proceedings prosecuted by the same party ;
- (ii) the prior proceeding had been prosecuted with due diligence and good faith;
- (iii) the failure of the prior proceeding was due to defect of jurisdiction or other cause of like nature;
- (iv) the earlier proceeding and the later proceeding must relate to the same matter in issue; and
- (v) both the proceedings are in a court : *Rajendra Prasad Vs. Ram Lal, I.L.R. (2013) M.P. 2912*

– **Section 14** - Exclusion of time - Plaint return by Court for want of jurisdiction - Benefit of Section 14 cannot be given by Court returning the case - Such benefit can be

claimed only after presentation to the Court having competent jurisdiction : *Manju Tomar (Smt.) Vs. Smt. Anjali Jain, I.L.R. (2011) M.P. 544*

– **Section 14 & Article 64 & 65** - Benefit of Section 14 - Suit initially filed by the plaintiff to restrain the defendants from interfering with the possession of the plaintiff over the suit land - Relief of possession was incorporated by way of amendment when forcible possession was taken by the defendants in respect of portion of land - Dispute between the parties with regard to mutation pending before Revenue Court - Subject matter of the proceeding pending before the Revenue Court is entirely different from the dispute which was pending adjudication in the suit - Therefore, the plaintiff is not entitled to benefit of section 14 - Suit filed for possession barred by limitation : *Rajendra Prasad Vs. Ram Lal, I.L.R. (2013) M.P. 2912*

– **Section 18** – Acknowledgement in writing – Plaintiff failed to establish original transaction of loan and further the acknowledgment of such loan before expiry of the prescribed period of limitation of three years – He has been rightly non-suited : *Mahesh Chandra Vs. Kamal Kumar, I.L.R. (2011) M.P. 2202*

– **Section 18** - Limitation - Property mortgaged with Bank - Limitation would be 12 years - Loan was sanctioned on 27.03.1992 - Appellant acknowledged the liability to repay the loan on 16.05.1996 - On 27.12.1996 Revenue Recovery Certificate was issued - The proceedings are not time barred : *Sadhna Chourasia (Smt.) Vs. Punjab National Bank, I.L.R. (2011) M.P. 61 (DB)*

– **Section 18** - See - Contract Act, 1872, Section 25 : *Sardar Surendra Singh Bedi Vs. Dhannalal, I.L.R. (2011) M.P. 2824*

– **Section 21** - Limitation - Impleadment of Party - Where after the institution of the suit, a new plaintiff or defendant is substituted, the suit shall, as regards him, be deemed to have been instituted when he was so made a party : *Vinod Guru Vs. Parul Soni, I.L.R. (2012) M.P. 1911*

– **Section 29** – See – Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002, Section 18(2) : *Baleshwar Dayal Jaiswal Vs. Bank of India, I.L.R. (2015) M.P. 2307 (SC)*

– **Section 36 & 37** - Limitation under - Document containing the terms of repayment in monthly installments executed on 10.07.1999 - Under the terms of document, the amount was required to be repaid in twelve months - Held - Since the amount was repayable in installment and the first installment was due on or before 10.08.1999 and last installment was due on 10.07.2000 and the suit was filed on

26.07.2002, therefore, the suit filed by the respondent was in time - Appeal dismissed : *Sardar Surendra Singh Bedi Vs. Dhannalal, I.L.R. (2011) M.P. 2824*

– **Section 65** – Adverse possession – Party setting up plea of acquisition of title by adverse possession has to be specific as regards to period and date from which he claims possession and then has to prove that possession was adequate in continuity, in publicity and in extent to show his possession was actually visible, exclusive, hostile and continues over statutory period to the knowledge of real owner – Person pleading adverse possession has no equity in his favour : *Brijmohan Vs. Chandresh, I.L.R. (2015) M.P. 3318*

– **Article 20** – See – Civil Procedure Code, 1908, Section 115, Order 7 Rule 11 : *Neelam Kumar Bachani Vs. Bhishamlal, I.L.R. (2014) M.P. 1632*

– **Article 27 & 113** - See - Contract Act, 1872, Section 124 & 125 : *Oriental Fire & General Insurance Co. Ltd. Vs. Saifuddin, I.L.R. (2011) M.P. 2811*

– **Article 54** – Limitation for Specific Performance of Contract – Defendant denied to execute the sale deed by sending reply to notice on 17.10.2000 – Period of three years would start from the date of denial i.e. 17.10.2000 – Prayer for Specific Performance made in the year 2004 – Suit for specific performance of contract barred by limitation : *Haribabu Vs. Himmat Singh, I.L.R. (2014) M.P. 3160 (DB)*

– **Article 54 & Section 15**, Civil Procedure Code (5 of 1908), Order 41 Rule 22 - Suit for specific performance of contract - As per Article 54 of Limitation Act, Limitation for filing suit is 3 years - Held - Stay order passed in another appeal by which owner was restrained from alienating the property - There was no stay against the plaintiffs for filing a suit claiming specific performance - Agreement to sell was executed on 03.09.2001 with a stipulation that sale deed would be executed within six months - Period of 3 years would start from 03.03.2002 i.e. after lapse of six months - Period of stay i.e. 03.03.2002 to 28.09.2006 could not be excluded with the help of Section 15 of Limitation Act - Suit was barred by Limitation - Respondents are entitled to raise the question of limitation and challenge the finding with regard to this issue even without filing of a cross-objection - Appeal dismissed : *Madina Begam (Smt.) Vs. Shiv Murti Prasad Pandey, I.L.R. (2013) M.P. 2169 (DB)*

– **Article 58** – See – Civil Procedure Code, 1908, Section 9 : *Madhu Janiyani Vs. State of M.P., I.L.R. (2015) M.P. 1316*

– **Article 65** – Adverse possession – Proof – Plaintiff claiming title over suit land by adverse possession – Plaintiffs had raised the plea that they were in possession of the suit land by virtue of unregistered/oral sale – Held – Plaintiffs were in hostile and

continuous possession and had perfected their title by way of adverse possession : *Satnam Singh Vs. Hukum Singh, I.L.R. (2014) M.P. 1083*

– **Article 65** – Suit for possession – When may be found beyond limitation – Plaintiff failed to prove that suit land was mortgaged by her with the defendant and the finding of trial Court was not challenged by her in First Appellate Court – Plaintiff could not point out from which date the suit land was taken in possession by defendant – Defendant claimed that he is in possession of the suit land right from 1961-62 on basis of unregistered sale deed (Ex. D/4) – Held – Finding of First Appellate Court that suit was barred by limitation and that no decree of possession could be granted, do not find any error – Appeal dismissed : *Lilawati (Deceased) Through LR's Vs. Vishram, I.L.R. (2012) M.P. 151*

– **Article 99** - Sale proceedings initiated by the respondent/State authorities without issuing demand notice as required u/s 146 of the Land Revenue Code or following the procedure prescribed u/s 147 of the Land Revenue Code, are null and void - The suit for possession filed by appellant/plaintiffs is not barred by limitation : *Suresh Kumar Vs. Mohan Lal, I.L.R. (2011) M.P. 2477*

– **Article 136** - After passing the decree by the trial Court if the same was remained sub-judice before the appellate Court then the limitation for filing the execution proceeding should be counted from the date of the judgment & decree passed by the appellate Court : *Netlal Vs. Thagi Bai (Dead) Through L.R. Marotirao, I.L.R. (2011) M.P. 278*

LOKAYUKT EVAM UP-LOKAYUKT ADHINIYAM, M.P. **(37 OF 1981)**

– **Section 2 & 9 to 12** – Recovery of the amount – Petitioner was appointed as Chairman of the M.P. Rajya Beej Avam Farm Vikas Nigam – He has been given the status of a Cabinet Minister – He is entitled to get all the facilities which are provided to a Cabinet Minister – Petitioner has taken certain facilities at the cost of the corporation expenses without any authority and thereby has caused financial loss to the corporation – Held – If the Corporation has earlier resolved to grant certain facilities to the Chairman of the Corporation and in view of such a decision any facility was obtained by the petitioner, it cannot be said that such a facility was obtained by abuse of his position by the petitioner – Nothing has been placed on record to indicate that such a fact was found proved even remotely – Such direction was issued to make recovery from the petitioner, is wholly unjustified – Petition allowed : *Mahendra Singh Yadav Vs. State of M.P., I.L.R. (2014) M.P. 985*

– **Section 7** – Jurisdiction to take suo motu action – When it comes to the knowledge of the Lokayukt that a crime has been committed that too under the P.C. Act he has not only a duty but also a right to inform the appropriate agency under his control and supervision to take appropriate action : *U.K. Samal Vs. The Lokayukt Organization, I.L.R. (2011) M.P. 1702 (DB)*

– **Section 8**, Special Police Establishment Act, M.P. 1947, Section 4 - Limitation - Limitation of five years as envisaged u/s 8(c) of Adhiniyam, 1981 is applicable only for Lokayukta and Up-lokayukta and not for S.P.E : *Ramesh Vs. State of M.P., I.L.R. (2011) M.P. *48 (DB)*

– **Section 10 & 12**, Criminal Procedure Code, 1973 (2 of 1974), Section 154 – F.I.R. on the basis of case forwarded by Lokayukt/Up-Lokayukt - Lokayukt forwarded the case to S.P.E. – Contention that in respect of enquiry, the procedure prescribed in Section 10 of the Adhiniyam was not followed or provision of Section 12(1) was circumvented by forwarding the case directly to S.P.E. for appropriate action does not assume any significance in the light of provision of Section 154 of the Code : *Rajesh Rajora (Dr.) Vs. State of M.P., I.L.R. (2011) M.P. *115 (DB)*

– **Section 10 & 12**, Criminal Procedure Code, 1973 (2 of 1974), Section 154 – F.I.R. on the basis of case forwarded by Lokayukt/Up-Lokayukt - Lokayukt forwarded the case to S.P.E. – Contention that in respect of enquiry, the procedure prescribed in Section 10 of the Adhiniyam was not followed or provision of Section 12(1) was circumvented by forwarding the case directly to S.P.E. for appropriate action does not assume any significance in the light of provision of Section 154 of the Code : *Rajesh Rajora (Dr.) Vs. State of M.P., I.L.R. (2011) M.P. 2255 (DB)*

– **Section 10 & 12** - Enquiry - Show cause notice - Show cause notice issued to petitioner as to why report under Section 12 be not submitted or a criminal case be registered - Enquiry continues under Section 10 till a report is made under Section 12 - Show cause notice is a part of the enquiry giving delinquent Civil Servant, an opportunity to meet the allegations made against him and the material collected during enquiry - Show cause notice cannot be said to have been issued pursuant to an enquiry made in violation of Section 10 of the Adhiniyam and principles of Natural Justice - Petition dismissed : *Rajesh Rajora (Dr.) Vs. Lokayukt Organization, I.L.R. (2012) M.P. 2146 (DB)*

– **Section 12(1)& (2)** - Report - Lokayukt or Uplokayukt can only recommend about the action to be taken - Recommendation received from the Lokayukt or Uplokayukt has to be examined by Competent Authority and then it has to take decision on it instead of treating the recommendation so received to be directory in nature for

issuance of charge sheet and holding departmental enquiry : *Dharmendra Vs. State of M.P., I.L.R. (2011) M.P. 2681 (DB)*

- See - Criminal Procedure Code, 1973, Section 154 : *Dev Vrat Mishra Vs. State of M.P., I.L.R. (2011) M.P. *23 (DB)*

**LOK DHAN (SHODHYA RASHIYON KI VASULI) ADHINIYAM,
M.P. 1987 (1 OF 1988)**

- **Section 2(i), 3(B)** - Socially desirable scheme - The tractor trolley fall within the expression "inputs and implements for promotion of agriculture" - Therefore, the loan advanced would be under "socially desirable scheme" and the proceeding for recovery of amount can be initiated u/s 3(B) of the Adhiniyam : *Sadhna Chourasia (Smt.) Vs. Punjab National Bank, I.L.R. (2011) M.P. 61 (DB)*

**LOK SEVA (ANUSUCHIT JATIYON, ANUSUCHIT JAN JATIYON
AUR ANYA PICHHADE VARGON KE LIYE ARAKSHAN)
ADHINIYAM, M.P., 1994 (21 OF 1994)**

- **Section 2(b)** - See - Service Law : *R.R. Nihare Vs. State of M.P., I.L.R. (2011) M.P. 111 (DB)*

- **Section 2(b) & 4** - Reservation of Posts - Anganwadi Workers - Post of Anganwadi Workers and Helpers are not statutory posts and have been created in terms of Scheme - Since Anganwadi Workers and helpers are not holders of any posts, therefore, provisions of Adhiniyam, 1994 are not applicable - Petition dismissed : *Pichada Avam Dalit Warg Sangh (M.P.) Vs. State of M.P., I.L.R. (2012) M.P. 458 (DB)*

- **Section 3** - See - Lower Judicial Service (Recruitment and Conditions of Service) Rules, M.P. 1994 - Rule 4, 6 : *Vikash Shukla Vs. High Court of M.P., I.L.R. (2011) M.P. 1852 (DB)*

- **Section 4** - Promotion of Respondent No. 2 to 7 was called in question on the ground that the same has been made de-hors the 100 point roster - 100 point roster would be applicable for the vacancies and the post available in one cadre - As per roster only 2 candidates of ST and one candidate of SC could have been considered for promotion - However respondent No. 2 to 7 were illegally promoted - Held - The action of respondent No. 1 cannot be affirmed - Since petitioners have also been promoted during the pendency of this petition but their seniority is placed after respondent No. 2 to 7, respondent No. 1 is directed to convene review DPC and to consider the case of the petitioners for grant of promotion with retrospective effect - In case they are found fit

they be given promotion – Seniority list be prepared assigning proper placement to all these persons from the appropriate date – Reversion of illegally promoted persons, if necessary, be also ordered : *Ashok Kumar Shukla Vs. Awadhesh Pratap Singh University, I.L.R. (2015) M.P. 335*

– **Section 4** - See - Constitution - Article 16(4-B) : *Shekhar Singh Chauhan (Dr.) Vs. State of M.P., I.L.R. (2013) M.P. 2806*

– **Section 4(4)** – See – Civil Services (Special Provision for Appointment of Women), M.P. Rules, 1997, Rule 3 : *Sunita Thakre (Dr.) Vs. State of M.P., I.L.R. (2014) M.P. 1831*

LOWER JUDICIAL SERVICE (RECRUITMENT AND CONDITIONS OF SERVICE) RULES, M.P. 1994

– **Rule 4 & 6** – Uchchta Nyayik Seva (Bharti Tatha Seva Sharten) Niyam, M.P., 1994, Rule 6, Lok Seva (Anusuchit Jatiyon, Anusuchit Jan Jatiyon Aur Anya Pichhade Vargon Ke liye Arakshan) Adhinyam, M.P., 1994, Section 3 – Rule 6 of Niyam 1994 provides that the post meant for reserved category if not filled up on account of non-availability of eligible candidate, the same shall be treated as unreserved and the same would be filled up from amongst the general category candidates – Petitioner cannot claim parity in view of the clear provisions of Niyam, 1994 and clear exclusion under Section 3 of Act, 1994 : *Vikash Shukla Vs. High Court of M.P., I.L.R. (2011) M.P. 1852 (DB)*

– **Rule 4 & 6** – Unfilled posts reserved for S.T. category – Petitioner appeared in examination for selection and appointment on the post of Civil Judge Class II as general candidate – He was placed at serial No. 3 of waiting list – 9 posts reserved for S.T. category remained unfilled – Petitioner cannot be given appointment against the post reserved for S.T. Category – Petition dismissed : *Vikash Shukla Vs. High Court of M.P., I.L.R. (2011) M.P. 1852 (DB)*

M

MADHYA BHARAT LAND REVENUE AND TENANCY ACT, SAMVAT 2007 (66 OF 1950)

– **Section 54 & 55** - Agricultural land means land used for growth of grass or food for cattle - Land recorded as beed in column of "Shamil Jot"- Such land to be treated as for agricultural purposes - A person holding land as a pacca tenant acquire

bhumiswami rights under Madhya Pradesh Land Revenue Code even if the land was "padi-Kadim" or there was any bungalow on such land : *Sabal Singh Vs. State of M.P., I.L.R. (2013) M.P. 613*

MADHYAMIK SHIKSHA ADHINIYAM, M.P. (23 OF 1965)

– **Section 3 & 28(4)**, Regulations of Board of Secondary Education, Regulations 2(6), 2(12), 2(13) & 2(14) – Bal Mandirs – Regulations applies to High School, Higher Secondary School, Multi-purpose Higher Secondary School which have been recognized by Board – Bal Mandir runs and maintains the institutions imparting pre-primary education and thus by no stretch of imagination it could be equated or compared with the schools which are called High Schools, Higher Secondary Schools or multipurpose schools which impart education of higher classes : *Municipal Corporation, Katni Vs. Madhu Pasreeja, I.L.R. (2011) M.P. 859 (DB)*

MADHYASTHAM ADHIKARAN ADHINIYAM, M.P. (29 OF 1983)

– **Section 2**, Arbitration and Conciliation Act (26 of 1996), Section 11 – Appointment of arbitrator – Adhiniyam, 1983 could be made applicable only when either party is State Govt. or Public Undertaking or its officials – M.P. Rural Road Development Authority is neither a State nor its undertaking – Arbitrator is appointed : *Brajesh Sharma (Shri) Vs. Banco Construction, I.L.R. (2015) M.P. 3374*

– **Section 2(d), 7-A, 7-B & Sub-Section (1)(a),(1)(b) & (2) of Section 7-B** - Counter Claim - Maintainability - References were made to M.P. State Arbitration Tribunal - Non-applicant Board appeared and filed their written statement on 04.11.87 and also raised counter claim on 30.06.1989 - Held - Without raising a demand with the applicant company, the counter claim made directly in the pending reference, was not maintainable - Requirement of Section 7-A and Section 7-B in the matter of raising counter claim becomes applicable as the same was raised on 18.09.2000 - Counter claim without referring to the final authority is not maintainable as the statutory requirement of Section 7-B was not complied with : *Mahalinga Shetty (M/s.) & Company Vs. M.P. Electricity Board, I.L.R. (2014) M.P. 214 (DB)*

– **Section 7** – See – Arbitration and Conciliation Act, 1996, Section 11(6) : *P.D. Agrawal Infrastructure Ltd. Vs. M.P. Rural Road Development Authority, I.L.R. (2015) M.P. 1561*

– **Section 7-A, 7-B & Sub-Section (1)(a),1(b) & (2) of Section 7-B** - Condonation of delay - Action of Tribunal in condoning inordinate unexplained delay only by mentioning public interest, was an error of jurisdiction committed by the Tribunal

: *Mahalinga Shetty (M/s.) & Company Vs. M.P. Electricity Board, I.L.R. (2014) M.P. 214 (DB)*

– **Section 7-B** - Jurisdiction of Tribunal - (i) Where works contract contains Clause for referral of dispute to the authorities, the jurisdiction of the Tribunal can be invoked only after approaching the authority as provided under the Works Contract (ii), Where the dispute has arisen under an agreement prior to coming into force of Section 7-B (2-A) of the Act which does not contain clause for referral of dispute, an aggrieved person has to approach the Tribunal within a period of three years, (iii) Where the dispute has arisen after coming into force of Section 7-B (2-A), an aggrieved person can approach the Tribunal within a period of three years from the date on which the works contract is terminated, foreclosed, abandoned or comes to an end in any other manner or when a dispute arises during the pendency of the works contract, (iv) In case the works contract is rescinded, the limitation would start from the date when the agreement is rescinded and in case of claim for damages for breach of contract, limitation would commence from the date when the final bill is prepared, (v) Dispute to the authorities has to be submitted within the time which has been prescribed in the clause - Dispute cannot be submitted to the authorities within 3 years as per the provisions of Limitation Act, (vi) Clause 29 providing for limitation for submission of dispute before the authorities is not violative of the provisions of Limitation Act : *Sanjay Dubey Vs. State of M.P., I.L.R. (2012) M.P. 2091 (FB)*

– **Section 17A** - See -Arbitration and Conciliation Act, 1996, Section 2(4) & 9 : *Joint Venture of Envio Pure Aqua Systems (P) Ltd. Vs. Municipal Corporation, Gwalior, I.L.R. (2013) M.P. 477 (DB)*

– **Section 19**, Limitation Act (36 of 1963), Section 5, 29(2) & 4 to 24 – Condonation of delay – Time barred revision u/s 19 of Act of 1983 – Section 29(2) provides that section 4 to 24 of the Limitation Act shall be applicable to any Act which prescribes a special period of limitation, unless they are expressly excluded by that special law – Delay can be condoned – Appeal allowed : *State of M.P. Vs. Anshuman Shukla, I.L.R. (2015) M.P. 1111 (SC)*

– **Section 20** – See – Arbitration and Conciliation Act, 1996, Section 8, 20 & 34 : *Seth Mohanlal Hiralal (M/s.) Vs. State of M.P., I.L.R. (2015) M.P. 2745*

**MAKHANLAL CHATURVEDI RASHTRIYA PATRAKARITA AVAM
SANCHAR VISHWAVIDYALAYA ADHINIYAM, M.P. (15 OF 1990)**

– **Section 5(xxxi) & 51** – Association of Study Institute Regulation, 2008, Clause 11.1, – Power of University to make regulations under Section 5(xxxi) are unlimited whereas General Council can make regulations only in respect of a matter for which

provision is required to be made under the Act by Regulation – Amendment of Clause 11.1 for association on the basis of inspection by the inspection team is within jurisdiction of Director of University – Petition dismissed : *Makhanlal Chaturvedi Vishwavidyalaya Adhyayan Kendra Sangh Vs. State of M.P., I.L.R. (2012) M.P. 716 (DB)*

MARKETING DISCIPLINE GUIDELINES, 2005

Marketing Discipline Guidelines, 2005, Clause 2.5 – Overriding Effect – Retesting of Sample – Sample collected from the retail outlet was found OFF SPEC- Retesting was done at the request of petitioner (respondent) and in his presence who knew that the re-testing is being done under Guidelines, 2005 which too was found OFF SPEC – No objection was raised by petitioner (respondent) at that time regarding delay – Petitioner (respondent) cannot be allowed to approbate and reprobate – Petitioner (respondent) had waived his right to raise objection with regard to delay in drawing sample and is estopped by his conduct from challenging the procedure adopted by the appellants – Appeal allowed – Order of Single Judge set aside : *Hindustan Petroleum Corporation Ltd. Vs. M/s. Royal Highway Services, I.L.R. (2015) M.P. 1989 (DB)*

MAXIM

– **Falsus in uno falsus in omnibus** – False in one thing, false in everything has no application in India : *Santosh Rai Vs. State of M.P., I.L.R. (2012) M.P. *8 (DB)*

– **Falsus in uno, falsus in omnibus** – Neither a sound rule of law nor a rule of practice : *Ramdas Kachhi Vs. State of M.P., I.L.R. (2012) M.P. 207 (DB)*

- **"mens or sententia legis"** - As per Salmon it means that the object of interpreting a statute is to ascertain the intention of the Legislature enacting it : *Suresh Baba Vs. Virendra Tyagi, I.L.R. (2011) M.P. 614 (DB)*

- **Obitur Dictum** - Obitur dictum is a mere observation or remark made by the Court by way of aside while deciding the actual issue before it - Mere casual statement or observation which is not relevant, pertinent or essential to decide the issue in hand does not form the part of judgment of the Court and have no authoritative value - These casual remarks are considered or treated as beyond the ambit of the authoritative or operative part of judgment : *Arun Kumar Aggarwal Vs. State of M.P., I.L.R. (2011) M.P. 2951 (SC)*

- **Per incuriam** - For a decision to be per incuriam, it must first be established that same is given in ignorance, forgetfulness or carelessness of some inconsistent statutory provisions, or some authority binding on Court - Judgement passed in Anand Beohar's case is not per incuriam : *R.R. Nihare Vs. State of M.P., I.L.R. (2011) M.P. 111 (DB)*

- **Vigilantibus noa dormientibus jura sub veniunt** - Means - Laws come to the assistance of those who are vigilant and not those who sleeps upon their rights - We can extend this maxim to the revisional authority who has to exercise his suo motu power : *Ranveer Singh (Dead) Through L.Rs. Vs. State of M.P., I.L.R. (2011) M.P. 1 (FB)*

MEDICAL AND DENTAL POST-GRADUATE COURSE
ENTRANCE EXAMINATION RULES, M.P., 2007

- **Rules 2(d).1 & 9.1(a)** – A Medical Officer serving on contract basis was not eligible to apply as an in-service- candidate, but if the services of such an appointee were regularized, then the experience gained by him/her by working on contractual basis was required to be taken into consideration for the purpose of selection : *Archana Chouhan Pundhir (Dr.) Vs. State of M.P., I.L.R. (2011) M.P. 1119 (SC)*

MEDICAL AND DENTAL POST GRADUATE COURSE
ENTRANCE EXAMINATION RULES, M.P., 2010

- **Rule 1.19(2)(b)** - Inter se merit - Age - Validity - In case two candidates scoring equal marks, then candidate older in age will be placed higher in inter se merit of such candidate - Held - Rule 1.19(2)(b) cannot be held to be arbitrary or unreasonable : *Pooja Mathur (Dr.) Vs. State of M.P., I.L.R. (2011) M.P. 410 (DB)*

- **Rule 1.20(16)** - Opt for waiting - If candidate is not willing to take admission in any of the subject available at the time of his counseling it would be open for him/her to give option in writing and to opt for waiting - Held - In the event of any vacancy, the candidature of such candidate shall be considered on the basis of merit - Rule 1.20(16) cannot be held to be arbitrary or unreasonable : *Pooja Mathur (Dr.) Vs. State of M.P., I.L.R. (2011) M.P. 410 (DB)*

- **Rule 20(9) & 20(11)** – Sequence of Councelling – Rule 15.10 has been introduced in the light of the judgment of the High Court – Rules are in compliance of the decision of the High Court – Rules are not unconstitutional – Petition dismissed : *Sanjay Patel Vs. State of M.P., I.L.R. (2011) M.P. 1862 (DB)*

MEDICAL AND DENTAL POST GRADUATE COURSE ENTRANCE
EXAMINATION RULES, M.P., 2012

- **Rule 9(1)(a)** - In Service Candidates - Petitioners working as Medical Officers on contract basis in Reproductive Child Health Programme - Service conditions are governed by M.P. Civil Services Conduct Rules, 1965 - Persons who are Medical Officers under Reproductive Child Health Programme and have served in rural areas for

five years are entitled to be treated as in service candidate - However, petitioners are not entitled for stipend : *Anand Das Sharma (Dr.) Vs. State of M.P., I.L.R. (2012) M.P. 2453 (DB)*

MEDICAL AND DENTAL POST GRADUATE COURSE ENTRANCE EXAMINATION RULES, M.P., 2013

– **Rule 11** – Education and Universities – Medical Colleges/Education – Admission – Irregular/Illegal admission – Inaccurate, inefficient and improper admissions process defeating Rule of merit – Meritorious candidate not getting admission in her preferred course – Held – Petitioner is not at fault and she pursued her rights and remedies as expeditiously as possible – The petitioner was a candidate placed higher in the merit list – There is fault on the part of the authorities and apparent breach of Rule 11 of the Rules of 2013 in granting admission to respondent No. 5 – The career of meritorious youth is at stake, when there is conflict between the Rules and executive instructions, the Rules will prevail – Executive instructions cannot be made or given effect in violation of what is mandated by the Rules – Admission of respondent No. 5 quashed and respondents directed to grant admission to the petitioner : *Ruchi Jain Vs. State of M.P., I.L.R. (2014) M.P. 2322 (DB)*

MEDICAL COUNCIL ACT (102 OF 1956)

– **Section 10-A**, Establishment of Medical College Regulations, 1999, Regulations 7 & 8 – Renewal – Reconsideration – Power of Central Government to refer back the Scheme of yearly renewal to MCI for reconsideration – M.C.I. submitted negative recommendation for renewal of recognition to the Central Government – Petitioner submitted a new Scheme before the Central Government in reply to the notice – Central Government remanded the matter back to M.C.I. to reconsider in the light of Scheme submitted by Petitioner – Provision of Section 10-A applies to both for proposal for opening a new medical college as also for grant of renewal permission – Scheme for yearly renewal permission is required to be processed under Section 10-A read with Regulations framed in that behalf – Central Government has power to refer back the Scheme of yearly renewal to M.C.I. for reconsideration : *RKDF Medical College Hospital and Research Centre Vs. Union of India, I.L.R. (2015) M.P. 2107 (DB)*

– **Section 10-A** – Negative Recommendation – M.C.I. submitted negative recommendation – Central Government referred the matter back to M.C.I. to reconsider in the light of fresh Scheme submitted by Petitioner – M.C.I. in its 2nd negative recommendations merely adverted to its previous recommendations and observations –

MCI is not only expected to ensure that existing medical college fulfills all the norms and standards to ensure imparting of quality medical education, but must also be concerned about burgeoning requirement of society and of creating opportunity to the deserving students who are keen to pursue medical course, keeping in mind the deficient number of Doctor's ratio catering to the society – 2nd recommendation qua the scheme submitted by petitioner is unsustainable and hence quashed – Authorities to process the scheme for yearly renewal permission further and take it to its logical end expeditiously and in any case before commencement of admission process for academic year 2015-2016 – Petition allowed : *RKDF Medical College Hospital and Research Centre Vs. Union of India, I.L.R. (2015) M.P. 2107 (DB)*

MEDICAL EDUCATION (GAZETTED) SERVICES **RECRUITMENT RULES (M.P.) 1987**

– **Schedule I** – See – Shashkiya Sewak (Adhiwarshik Aayu) Adhiniyam (M.P.) 1967, Section 2 : *Sikandar Sabana (Ku.) Vs. State of M.P., I.L.R. (2012) M.P. *17*

MEDICAL JURISPRUDENCE

– **Opinion of Expert** – Evidence Act (1 of 1872) – Section 45 & 46 – It can not be presumed that doctor is always a witness of truth – Autopsy surgeon, experience of 25 years not noticed the condition of changes in dead body (in eyes, skin, regormortis & muscular elasticcity) after six hours of death – Nothing stated by Doctor in postmortem report – Opinion given by the Doctor that the death is homicidal not acceptable : *Praveen Kumar Vs. State of M.P., I.L.R. (2012) M.P. 1327 (DB)*

MEDICAL NEGLIGENCE

- **Sterilization Operation** - Delivery of the child took place about seven months after the sterilization operation - It cannot be held that the sterilization operation had failed : *Uma (Smt.) Vs. State of M.P., I.L.R. (2013) M.P. 172 (DB)*

- **Proof of Negligence** - Plaintiff's witnesses do not disclose any negligence on the part of the respondent in performing the sterilization operation - No such evidence on record that reasonable standard of care was not taken in the operation - No material on record to establish the negligence on the part of the respondent in performing the sterilization operation - Appeal dismissed : *Uma (Smt.) Vs. State of M.P., I.L.R. (2013) M.P. 172 (DB)*

**MICRO, SMALL AND MEDIUM ENTERPRISES DEVELOPMENT
ACT (27 OF 2006)**

– **Section 19** – Requirement of depositing 75% of the amount in terms of the decree, award or other order as the case may be is mandatory – The court can only direct the manner in which the amount has to be deposited – Appeal would be entertained or admitted for hearing only when total 75% of the amount is deposited : *Orient Paper Mill Ltd. (M/s.) Vs. M/s. Bang Lime Industries, I.L.R. (2011) M.P. 1180 (DB)*

MINERAL CONCESSION RULES, 1960

– **Rule 22** – Applications for the grant of leases and applications for renewal – Only the provisions of law, as are available on the date of consideration, are to be looked into and not the law as was existing on the date of making of application : *Olpherts Pvt. Ltd. (M/s.) Vs. Union of India, I.L.R. (2015) M.P. *32*

– **Rule 22(4) & 22(d)** – Application for mining lease – Has necessarily to be dealt with in accordance with the Rules in force on the date of disposal of the application – Petition dismissed : *B.L. Nanda Vs. State of M.P., I.L.R. (2011) M.P. 1954*

– **Rule 26** – See – Mines and Minerals (Development and Regulation) Act, 1957, Section 11 : *Ultratech Cement Ltd. Vs. State of M.P., I.L.R. (2015) M.P. 123 (DB)*

– **Rule 63-A** – Petitioner applied for grant of mining lease – Application for grant of mining lease was rejected belatedly without assigning any reasons – No reasons have been placed on record to show the inordinate delay in deciding the applications by State Govt. – Apparently the petitioner has suffered a prejudice on account of delay in passing the order – Impugned order cannot be sustained : *Ultratech Cement Ltd. Vs. State of M.P., I.L.R. (2015) M.P. 123 (DB)*

– **Rule 64A** – Petitioner obtained a mining lease for extracting copper ore – The rate of royalty was enhanced by respondent/authorities, which was challenged by petitioner in Court – An interim order was passed staying recovery of enhanced amount of royalty from the petitioner – After dismissal of petition of the petitioner, the respondents issued notice to the petitioner seeking to recover the difference of royalty which was duly deposited by the petitioner – The respondents now seek to recover the simple interest at the rate of 24% on the delayed payment of the enhanced payment of royalty – Petitioner challenged the notice to recover interest submitting that there is no provision in the Act of 1957 empowering power to recover interest and therefore the notices are without jurisdiction – Held – The provisions of the Rule 64A of the Rules, 1960 empowers the authorities to recover simple interest at the rate of 24% per annum on

outstanding amount of royalty – Stay order passed by a Court does not prevent running of interest : *Hindustan Copper Ltd., Balaghat Vs. State of M.P., I.L.R. (2011) M.P. 1941*

– **Rule 64A** – See – Mines and Minerals (Development and Regulation) Act 1957 : *Hindustan Copper Ltd., Balaghat Vs. State of M.P., I.L.R. (2011) M.P. 1941*

MINERAL (PREVENTION OF ILLEGAL MINING, TRANSPORTATION AND STORAGE) RULES, M.P. 2006

– **Rule 18**, Criminal Procedure Code, 1973 (2 of 1974), Section 457 – Supurndama of Vehicle – Vehicle in question was seized as it was transporting illegal coal – No intimation to Magistrate as per the provisions of Rule 18 is given by authorized person – Magistrate has no power to release the vehicle unless and until intimation is given by authorized person – Application rejected : *Ruaab Ahmed Vs. State of M.P., I.L.R. (2015) M.P. 796*

MINES AND MINERALS (DEVELOPMENT AND REGULATION) ACT (67 OF 1957)

– **Section 4** - License - Consent of Bhumiswami - Contention of Appellant that no consent of Bhumiswami for grant of mining lease is required has no force and hence rejected : *Trilokinath Agrawal Vs. State of M.P., I.L.R. (2013) M.P. 2331 (DB)*

– **Section 9** – Royalty – Assessment – Notional Conversion Factor – There is no express provision regarding notional conversion factor to be applied during assessment – Assessment of Royalty amount must be commensurate with minerals removed or consumed by lessee – It is open to the Assessing Officer to reject the claim of the assessee and instead apply a just and reasonable notional conversion factor – Notional conversion factor that for manufacture of 1 tonne of cement 1.6 tonnes of limestone is consumed, has been fixed by impugned circulars – All cement companies have been directed to ensure installation of weighbridge as per specification for ascertaining correct quantity of removed limestone – If licensee has any objection for applying notional factor, can cause to weight the removed limestone for the purpose of computing Royalty – Conversion fact cannot be termed as unrealistic and arbitrary – As lease has been granted by State Government and returns are to be filed before State Govt. therefore, there is no impediment for State Government to issue administrative instructions – Instruction contained in circular that “Whichever is higher” to invoke notional conversion factor is quashed – Matter remitted back to the Assessing authority to re-examine the issue afresh from the stage of filing of returns – Petition disposed off : *Grasim Industries Ltd., Neemuch Vs. State of M.P., I.L.R. (2014) M.P. 2959 (DB)*

– **Section 10** - See - Land Revenue Code, M.P., 1959, Section 57 & 247 : *Aparn Gramin Vikas Sanstha Samiti Society Vs. State of M.P., I.L.R. (2013) M.P. 762 (DB)*

– **Section 11**, Mineral Concession Rules 1960, Rule 26 – Application of petitioner for grant of mining lease rejected by State Govt. – State Govt. has failed to assign reasons for rejection of the application of the petitioner by comparing the merits and demerits cases of other application qua the petitioner – Recording of reasons is a principle of natural justice – It ensures transparency and fairness in decision making – Impugned order has been passed contrary to the statutory mandate contained in Section 11(3) of the Act and Rule 26 of the Rules as well as in violation of principles of natural justice – Impugned order cannot be sustained in eye of law : *Ultratech Cement Ltd. Vs. State of M.P., I.L.R. (2015) M.P. 123 (DB)*

– **Section 11** - Preferential right of certain persons - Contingencies - Contingencies for grant of reconnaissance permit or prospecting licences - Law discussed : *Manglam Cements Ltd. Vs. State of M.P., I.L.R. (2012) M.P. *100*

– **Section 11** - Preferential right of certain persons - Mining Lease - Petitioner in his written submission had never pressed the application for grant of mining lease - Petitioner was claiming only prospecting licence - No fault can be found if the application of the petitioner was rejected : *Manglam Cements Ltd. Vs. State of M.P., I.L.R. (2012) M.P. *100*

– **Section 11** - Preferential right of certain persons - Right to claim preference is available only if the area is not notified in the Official Gazette for the purposes of grant of reconnaissance permit, prospecting licence or mining lease as the case may be : *Manglam Cements Ltd. Vs. State of M.P., I.L.R. (2012) M.P. *100*

– **Section 11(1), (2), (3) and (5)** – Mining Lease – Natural Justice – Petitioner was aware of changed date which was duly communicated by authority – Petitioner did not appear inspite of intimation – No violation of principles of natural justice – Further matter not argued on merits before High Court – As petitioner did not appear before authority therefore, non-supply of comments of Central Government do not affect the merits of the case – Petition dismissed : *Ideal Minerals (M/s.) Vs. State of M.P., I.L.R. (2014) M.P. 2766*

MINIMUM WAGES

– **Home Guards** – Home Guards discharging all duties which are being performed by a regular police personnel except actual investigation into a crime and anti-dacoity operations – State directed to take note of recommendations of State Human

Rights Commission – Till then employees working in Home Guards department be granted salary at the minimum/basic of pay prescribed for Constable in police department : *Home Guard Sainik Evam Parivar Kalyan Sangh Vs. State of M.P., I.L.R. (2012) M.P. 382*

MINING LEASE

- **Grant of** - Delay and laches - Application of appellant for grant of mining lease after expiry of period of prospecting license rejected on 02.12.2006 - On 02.03.2007, notification issued making the area in question available for grant of mineral concession - Mining lease granted to respondent No.4 by order dated 19.06.2008 - After 1½ year of grant of mining lease, petitioner challenged the grant of mining lease - Held - Facts leads to irresistible conclusion that appellant is guilty of delay and laches - Writ Appeal dismissed : *Focus Energy Ltd. (M/s.) Vs. Government of India, I.L.R. (2011) M.P. 53 (DB)*

MINOR MINERAL RULES, M.P. 1996

SYNOPSIS

- | | |
|-----------------------------------|---|
| 1. Environmental Clearance | 2. Power to impose Penalty under Rules |
| 3. Trade Quarry Lease | 4. Writ Jurisdiction |

1. Environmental Clearance

– **Fresh grant or Renewal of Permission** – Whether necessary – Direction issued by the Supreme Court in Deepak Kumar’s case cannot be restricted to mean that it applies only to fresh grant or renewal – In all cases where no mining activities are being carried out for any reason, environmental clearance is necessary before granting permission – Appeal dismissed : *Ravi Shankar Nayak Vs. Raja Bhaiya Patel, I.L.R. (2014) M.P. 1233 (DB)*

2. Power to impose Penalty under Rules

– **Rule 30(6)** – Power to impose penalty – In case any person is found transporting minerals or their products without a valid pass on the strength of an incomplete, distorted or tampered transit pass, the Collector, Addl. Collector, Chief Executive Officer of Zila/Janpad Panchayat, Deputy Director, Mining Officer, Asstt. Mining Officer or Mining Inspector may seize the mineral or its products together with all tools and equipments and the vehicle used for transport – In view of amended

provision of Rule 30(16), the Collector has the power or authority to impose penalty upto ten times the market value of the mineral and vehicle can be released on depositing of such penalty – Order imposing penalty to the ten times of the market value is proper – However, the petitioner may avail alternative, efficacious and statutory remedy of filing an appeal under Rule 57 along with an application for condonation of delay : *Rajkumar Patel Vs. State of M.P., I.L.R. (2015) M.P. 1766 (DB)*

3. Trade Quarry Lease

– **Rule 7** – Grant of trade quarry – Sand Mining – Whether the expression “for 2 years” must be construed as “Minimum 2 years” as per clause (2) of Rule 7 of the Rules 1996 – Held – No, the expression “for 2 years” in case of trade quarry means as upto 2 years or the time period as specified in the auction notice issued as per Form 15 – Petition disposed of : *Ram Swaroop Chaturvedi Vs. State of M.P., I.L.R. (2015) M.P. 2921 (DB)*

– **Rule 7(2)** – Quarry Lease of Flagstone – Renewal – Petitioner applied for renewal of quarry lease of flagstone – Application was rejected on the ground that in view of amendment in Rule 7, the quarry lease can only be granted by way of auction – Held – Right of Petitioner is only one of consideration of his application, which must be done in conformity with Rules prevalent at the relevant time when the decision is taken by appropriate Authority – After the amendment of Rule 7, quarry lease of flagstone can be granted only by way of auction for a period of five years and not otherwise – Application for renewal rightly rejected : *Shyamlal Samarwar Vs. State of M.P., I.L.R. (2015) M.P. 2426 (DB)*

– **Rule 9** - See - Land Revenue Code, M.P., 1959, Section 57 & 247 : *Aparn Gramin Vikas Sanstha Samiti Society Vs. State of M.P., I.L.R. (2013) M.P. 762 (DB)*

– **Rule 22** – Period of quarry lease – Whether the provisions of Rule 22 is applicable on grant of trade quarry – Held – No, the provision of Rule 22 is applicable for duration of grant of quarry lease and not for grant of trade quarry : *Ram Swaroop Chaturvedi Vs. State of M.P., I.L.R. (2015) M.P. 2921 (DB)*

4. Writ Jurisdiction

– **Rule 37** – Agreement – Clause 26 – Arbitration Clause – Dispute as to whether amenable to writ jurisdiction – Held – As there is Arbitration Clause in the agreement and efficacious and alternate remedy is available to the petitioner, so remedy of writ jurisdiction under Article 226 of the Constitution is not available for relief regarding refund of the amount deposited by the petitioner : *Ram Swaroop Chaturvedi Vs. State of M.P., I.L.R. (2015) M.P. 2921 (DB)*

– **Rule 49** - See - Environment (Protection) Rules, 1986, Rule 5(3) : *Ajay Dubey Vs. State of M.P., I.L.R. (2011) M.P. *21 (DB)*

MOHAMMEDAN LAW

– **Hiba** – Oral Hiba alleged to have been done in 1975 – No evidence that any action was taken for mutation of the names of beneficiaries or fact of execution of oral Hiba was brought on record in any official document – On the contrary, the owner even after alleged oral hiba had sent communication to I.D.A. as owner of property – Plea of oral hiba rightly rejected : *Akbar Ali Vs. Asgar Ali, I.L.R. (2011) M.P. *64 (DB)*

– **Joint Family** – Presumption - No presumption of jointness of family available – In Mohammedan family, various members of family live in commensality they do not form a joint family – Property purchased by one family member living jointly is not presumed to be joint family property unless it is shown that it was purchased from joint fund of family : *Akbar Ali Vs. Asgar Ali, I.L.R. (2011) M.P. *64 (DB)*

– **Section 41** – Succession – Heirs succeed to the estate of deceased as tenants-in-common in specific shares – Without any effective partition, heirs have no right to execute the sale deed – Temporary Injunction rightly issued against purchaser however, it was wrongly issued against sellers as they are recorded bhumiswamis : *Shahida (Smt.) Vs. Mohd. Mahmood, I.L.R. (2011) M.P. 2004*

– **Section 63 & 65** – See – Succession Act, 1925, Section 372 : *Oliya Begum (Smt.) Vs. Abdul Rashid, I.L.R. (2012) M.P. 1419*

– **Section 145/147**, Transfer of Property Act (4 of 1882), Section 129 - Gift or Hiba - Immovable property - Validity of gift - Three essential requisites are (1) declaration of gift by donor (2) acceptance of gift by donee and (3) delivery of possession - All essential ingredients of hiba were satisfied - Hence, it was complete - Transaction reduced into writing in form of declaration and not instrument of gift - Effect of non-registration - Held - Not compulsory - Further held, Section 129, Transfer of property Act preserves the rule of Mohammedan law and excludes the applicability of Section 123 of the Act to a gift or hiba of an immovable property by a mohammedan : *Asgar Ali Vs. Tahir Ali, I.L.R. (2013) M.P. 2354*

– **Rule 85** – Prompt Dower – Suit for declaration and injunction by respondent – On the ground that the suit plot was given to her on account of prompt dower – Respondent tried to exhibit the ‘Nikahnama’ which contains recital – Admissibility of the document was challenged on the ground that it requires payment of stamp duty – Held – Suit plot was assigned by bridegroom to bride in lieu of ‘Mahr’ at the time of marriage

and the document on which reliance is placed is marriage certificate – It is simple ‘Hiba’ – Neither a sale nor a hiba-bil-iwaz – Document does not attract any stamp duty and is admissible in evidence : *Habib Khan Vs. Shahjad Bi, I.L.R. (2014) M.P. 1517*

MOTOR SPIRIT AND HIGH SPEED DIESEL (REGULATION OF SUPPLY, DISTRIBUTION AND PREVENTIONS OF MAL PRACTICES) ORDER 2005

– **Clause 8** - See - Constitution, Article 226/227 : *Shobha Y. Ingole (Smt.) Vs. Hindustan Petroleum Corporation Ltd., I.L.R. (2012) M.P. 1827*

– **Clause 8(6),10**, Marketing Discipline Guidelines, 2005, Clause 2.5 – Overriding Effect – Retesting of Sample – There is no provision in Order 2005 for retesting – Guidelines 2005 contains provision for re-testing – Marketing Discipline Guidelines have not been framed by State Government but by Public Sector Oil Companies and therefore, the provisions of Order do not have any overriding effect in respect of Marketing Discipline Guidelines, 2005 : *Hindustan Petroleum Corporation Ltd. Vs. M/s. Royal Highway Services, I.L.R. (2015) M.P. 1989 (DB)*

MOTOR VEHICLES ACT (59 OF 1988)

– **Section 2(30) & 173** - Owner - Agreement to sell - Vehicle in question was registered in the RTO in the name of Pradeep Kumar - He can only be described as a "owner" for the purpose of Section 168 of M.V. Act - Finding to absolve him from the liability to pay compensation and to fasten such liability against the son of the appellant on the basis of agreement to sell as recorded by Claims Tribunal is not in conformity to the provisions of law, hence, set aside - Owner may satisfy the liability to pay compensation under the impugned award : *Bharat Singh Vs. Madan Kunwar, I.L.R. (2013) M.P. 2859*

– **Section 3, 15 & 149** - Pay & recover - Section 149(2)(a)(b) & (c) clearly establishes that if the driver was eligible to have a driving license as, he had license and thereafter he applied for the renewal thereof and the license was renewed in his favour, then it cannot be said that the driver was driving the vehicle, without having a license - In this case the license was renewed - Nothing on record to show that the application for renewal was not filed by the driver within the time prescribed or that he made himself ineligible to produce the license - Insurance Company is not entitled to recover the compensation from the owner/driver of the vehicle - Insurance Company liable to pay compensation - Appeal by the Insurance Company dismissed : *New India Assurance Co. Ltd. Vs. Smt. Bebi Chakravorty, I.L.R. (2014) M.P. 750*

– **Section 3(a) & 66** - Transport Vehicle owned by Central or State Government - Permit - No pleading to the effect that the offending vehicle which was owned by Union of India was being used for government purposes unconnected with commercial purposes - Benefit of Section 66 cannot be extended : *Harish Kori Vs. Raju K. Rajvardhan, I.L.R. (2012) M.P. 3069*

– **Section 59 & 96** – Age of Vehicle – Condition regarding age of vehicle beyond which it cannot be used as a stage carriage permit is with a view to ensure the safety and convenience of passengers – However, such vehicle may and can still be continued to be used by owners for all other purposes subject to any notification under Section 59 – Impugned Rule do not overlap or intrude into the powers conferred upon the Central Govt. and is not beyond the rule making power conferred upon the State : *Shaheed Khan Vs. State of M.P., I.L.R. (2011) M.P. *117 (DB)*

– **Section 59 & 96** – Minimum seating capacity of passengers for long route permits – Sub-Section 1 confers power on State Govt. to make rules for carrying into the effect of provisions of Chapter – It includes the power to specify and prescribe the conditions subject to which stage carriage permits and contract carriage permits can be granted – Such conditions may relate to matters regarding long routes – Rules providing for restrictions on seating capacity in respect of routes beyond 150 Kms has been incorporated in order to ensure secure and convenient transport services to passengers – Impugned rule is within rule making power conferred upon State and is reasonable and is in consonance with object sought to be achieved and is Constitutionally valid : *Shaheed Khan Vs. State of M.P., I.L.R. (2011) M.P. *117 (DB)*

– **Section 66 & 192** - Using Vehicle without registration/permit - Co-accused carrying crackers in a jeep without valid license - Driver of the jeep was also not possessing the permit to drive the motor vehicle - Co-accused informed that crackers were being carried for Applicant - Held - Applicant is neither owner nor driver of the jeep therefore, no charge under Section 66/192 of the Act can be framed - Order framing charge under Section 66/192 set aside - Trial would proceed for other charges : *Vijay Kumar Jain Vs. State of M.P., I.L.R. (2011) M.P. 3206*

– **Section 68**, Motor Vehicles Rules, M.P. 1994, Rule 67 - Vires - Delegation of powers by the Regional Transport Authority vide order dated 17.10.1994 is challenged as contrary to the provisions of Motor Vehicles Act, 1988 and the Rules of 1994 - Held - The order of delegation of power dated 17.10.1994 being not in consonance with Rules 67(1)(f) of the Rules 1994, the same cannot be sustained - Hence, quashed : *Mohd. Yakub Vs. Regional Transport Authority, Ujjain, I.L.R. (2014) M.P. 5 (DB)*

– **Section 68**, M.P. Motor Vehicles Rules, 1994, Rules 64 & 67 – Appointment of District Transport Authorities and their powers to grant/refuse permits – Delegation of

powers by R.T.A. shall be subject to direction and prescription issued by it as to the manner in which the powers are to be exercised – Notification dated 24-11-2010 in Rules 64 and 67 is within the power and authority conferred upon the State under Section 68(5) of the Act : *Shaheed Khan Vs. State of M.P., I.L.R. (2011) M.P. *117 (DB)*

– **Section 81** - Permit - Grant or renewal of - Period of validity - Grant of permit shall be valid for 5 years and renewal thereof would also be valid for 5 years - In case of renewal, it would be operative from the date of expiry of the initial grant : *Kanta Bai (Smt.) Vs. Balu Singh, I.L.R. (2013) M.P. 2652*

– **Section 87(1)(c)** - Temporary Permit - Grant of - Existence of a particular temporary need on the route in question -While fixing the timings Transport Authority should as far as possible avoid grant of just ahead timings and should not grant identical timings to the temporary permits with the timings of the existing operators holding permanent permits - Petition allowed : *Tansukhlal Talati Vs. State Transport Appellate Tribunal, I.L.R. (2012) M.P. 1872 (DB)*

SYNOPSIS: Section 147

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| 1. Insurance Company of Offending Vehicle to Indemnify | 2. Insurance Policy Document |
| 3. Liability of Insurance Company | 4. Opportunity to Adduce Evidence |
| 5. Pay and Recover | 6. Terms and Conditions of Policy |

1. Insurance Company of Offending Vehicle to Indemnify

– **Section 147** - Liability of Insurance Company - In case the four wheeler vehicle or two wheeler vehicle in / on which the injured/deceased was travelling received head and collision with another vehicle, on negligent act of the driver of other offending vehicle or composite/contributory negligence of the other vehicle involved then the insurance company of the opposite/offending vehicle is to indemnify the responsibility of the insured of other vehicle to compensate the injury/death of third party u/s 147 of the Act : *Siyaram @ Jaisiyaram Vs. Smt. Devkuwar, I.L.R. (2014) M.P. 461*

2. Insurance Policy Document

– **Section 147** – Liability of Insurance Company – Insurance Policy – Cover note appears to be prima-facie genuine – No cuttings are there and even it was properly

stamped by the seal of the Company – Therefore, at the time of the accident the vehicle was insured by the Company : *Vimla (Smt.) Vs. Sheikh Jabbar, I.L.R. (2015) M.P. 2739*

3. Liability of Insurance Company

– **Section 147** – Injury Case – Passenger traveling in a transport vehicle alongwith his buffaloes after paying fare for buffaloes – Insurance Company is liable : *Mahesh Chandra Vs. Anokhilal, I.L.R. (2014) M.P. 2156*

– **Section 147** - Liability of Insurance Company - Act Policy - No plea was raised in written statement that policy which was issued was an act policy - In absence of any plea raised in written statement, evidence and cross-objection, the claim of the claimants cannot be defeated on the ground which is raised for the first time during course of arguments : *Saraswati Kushwaha Vs. Badri Singh, I.L.R. (2013) M.P. 1101*

– **Section 147** - Liability of Insurance Company - Additional Premium - In case the Insurance Company has recovered any additional premium for passengers travelling in vehicle or pillion rider on two wheelers, under comprehensive/full insurance cover from the insured or / and the vehicle is fully or compressive insured by the Insurance Company, certainly it is bound to indemnify the liability of the owner of the vehicle insured and responsible for payment of award amount to injured or deceased travelling in vehicle and / or as pillion rider travelling on two wheeler vehicle to their claimants : *Siyaram @ Jaisiyaram Vs. Smt. Devkuwar, I.L.R. (2014) M.P. 461*

– **Section 147** - Liability of Insurance Company - Deceased allegedly was travelling in the Truck for safety of goods - It was alleged that because of rash and negligent driving of respondent No. 1 deceased fell down and passed away - Held - During statement u/s 161, Cr.P.C. no witness stated that the deceased was travelling in the goods vehicle for safety of goods - No witness examined by the appellants and Insurance Company stated that the deceased was travelling in the goods vehicle for safety of goods - No goods was seized by police - Other co-travellers sustaining no injury and nobody explained how deceased died - Findings recorded by the Tribunal holding Insurance Company liable jointly and severely cannot be allowed to sustain : *Laxmi Bai Vs. Naushad, I.L.R. (2013) M.P. *9*

– **Section 147** - Liability of Insurance Company - Deceased and injured were travelling in a jeep - In F.I.R. lodged by one of injured passenger it was mentioned that deceased and injured were fare paying passengers - However, Insurance Company did not examine Driver to prove that passengers were fare paying passengers - No suggestion was given to appellant that deceased was fare paying passenger - Tribunal committed error in holding that deceased were fare paying passengers and terms of policy were violated : *Guldan Uikey Vs. Praveen Kumar Kaithwas, I.L.R. (2013) M.P. 2164*

– **Section 147** - Liability of Insurance Company - Driver/deceased himself was negligent in causing accident - Insurance Policy was an Act Policy and did not cover the owner and driver - Driver/deceased stepped into shoes of owner and not third party and risk cannot be covered under Act Policy - Insurance Company not liable : *New India Assurance Company Ltd. Vs. Domenic Tahir, I.L.R. (2014) M.P. 203*

– **Section 147** - Liability of Insurance Company - Driving Licence - Cause of accident was sudden failure of brake - Driver/Claimant was not at fault - He was having the licence of same category except the endorsement and the vehicle was empty - No evidence has been adduced by Insurance Company to prove negligence of driver - Insurance Company liable : *Jam Singh Vs. Bharat, I.L.R. (2013) M.P. 2639*

– **Section 147** – Liability of Insurance Company – Fake driving licence – If owner was vigilant enough to examine the driving licence of the driver and examined his competence at the time of engaging him, Insurance company is liable to indemnify the insured even if the licence is subsequently found fake : *Oriental Insurance Co. Ltd. Vs. Sandelal, I.L.R. (2015) M.P. 770*

– **Section 147** - Liability of Insurance Company - F.I.R. is not substantive piece of evidence and cannot be placed on a higher pedestal than the statement of witnesses on oath before the Court - In absence of violation of the terms and conditions of the policy and driver having valid driving licence, the Insurance Company is liable to pay the amount of compensation : *Mamta Bai Patidar (Smt.) Vs. Ismail Khan, I.L.R. (2013) M.P. 2850*

– **Section 147** – Liability of Insurer – Thresher attached with tractor (insured) was in operation and because of mechanical fault, right leg of appellant crushed and ultimately it was amputated – Held – Since the accident occurred when the offending tractor was being used for agricultural purpose, insurance company can not be exonerated : *Kishore Vs. Shahid Shah, I.L.R. (2011) M.P. 972*

– **Section 147** - Requirement of policies and limits of liability - Held - If the injured/deceased being third party was travelling in the vehicle involved in the accident and no premium for passengers as gratuitous or otherwise travelling in insured vehicle is paid in that case - The Insurance Company, under the cover of "Act Policy" cannot be held responsible to indemnify the award passed against the owner of the vehicle involved the insured : *Siyaram @ Jaisiyaram Vs. Smt. Devkuwar, I.L.R. (2014) M.P. 461*

– **Section 147 & 173** – Liability – Jeep in which deceased was travelling dashed against a stationary truck which was not in a position to move due to mechanical failure – Spot map shows that where truck was standing sufficient space was there for passing of other vehicles – Tribunal rightly exonerated the driver, owner and Insurance Company of

truck – Appeal dismissed : *ICICI Lombard General Insurance Co. Ltd. Vs. Gopal Khatri, I.L.R. (2014) M.P. 1038*

4. Opportunity to Adduce Evidence

– **Section 147** - Liability of Insurance Company - Owner did not turn up to give his statement before Tribunal nor is present before the High Court - Matter remanded back to Tribunal to re-decide the liability of Insurance Company after giving an opportunity to adduce evidence to both parties : *Uday Singh @ Udriya Vs. Lum Singh, I.L.R. (2013) M.P. 179*

– **Section 147** - Liability of Insurance Company - Though the record was summoned from R.T.O. - No person has been called from the R.T.O. Office - Insurance Company has not proved their defence - Held - Merely taking a defence in the written statement would not be sufficient without proving it by evidence : *Vinit Sharda Vs. Sureshnath, I.L.R. (2014) M.P. 398*

5. Pay and Recover

– **Section 147 & 10** - Liability of Insurance Company - License - Road roller is a different class of vehicle requiring separate license - Driver was possessing license of L.M.V. - As driver was not possessing valid driving license but since the deceased was a third party, Insurance Company shall pay with right of recovery from owner and driver - Appeal allowed : *Manju Sahu Vs. Gyani Singh Rajput, I.L.R. (2013) M.P. 874*

– **Section 147** - Liability of Insurance Company - Claimants, the vegetable vendors were travelling in the truck which turtle down due to rash and negligent driving of driver - Insurance policy covered the risk of 5 labourers - No averment in the affidavit filed by witness of Insurance Company that Company is not liable for payment of compensation as the claimants were travelling as passengers - As the policy covered the risk of 5 labourers whereas the claimants are 7 in number, therefore, the Insurance Company can recover the amount of compensation from owner and driver in two claim cases where the amount awarded is lesser : *Dilip Vs. Mansharam, I.L.R. (2012) M.P. 2166*

– **Section 147** – Liability of Insurance Company – Driver of the jeep was having L.M.V. license whereas he was driving Transport Vehicle – Insurance company is not liable – Insurance Company shall pay and recover from the owner : *Shameena Bano (Smt.) Vs. Ram Naresh Patel, I.L.R. (2015) M.P. 2469*

– **Section 147** - Liability of Insurance Company - Driving License - Driver was not holding valid driving license on the date of accident - As deceased was third party therefore, right of recovery could be given to Insurance Company of Truck - As the

liability of Insurance Company of Motor Bike is limited to Rs. 1,00,000/- therefore, Insurance Company is rightly held liable to that extent : *Gayatri Singh (Smt.) Vs. Santosh Chaturvedi, I.L.R. (2013) M.P. 904*

– **Section 147** - Liability of Insurance Company - Learning License - Driver of offending vehicle was having learning license - Learner's license is also a valid license - Insurance Company could not be exonerated from its liability to pay compensation - Direction given by Tribunal to pay and recover set aside - Appeal allowed : *Shiv Kumar Soni Vs. Rita Kushwaha (Ku.), I.L.R. (2013) M.P. 1930*

– **Section 147** - Liability of Insurance Company - The driver was holding licence of one type whereas he was driving another type of vehicle - At the most Insurance Company is entitled to recover the amount from insured - Insurance Company made liable to pay with liberty to recover the amount from driver and insured after making payment : *Mohan Singh Vs. Mohd. Aklaq Faruki, I.L.R. (2012) M.P. 2170*

– **Section 147 & 149** - Liability of Insurance Company - When there is no statutory liability to pay compensation by the Insurance Company to the deceased who had travelled as an unauthorised passenger in the vehicle, the Insurance Company cannot be directed to pay the compensation amount and recover the same from the owner of the vehicle : *United India Insurance Co. Ltd. Vs. Jagannath, I.L.R. (2013) M.P. 1671*

6. Terms and Conditions of Policy

– **Section 147** - Liability of Insurance Company - Valid Licence - Endorsement on driving licence to drive the transport vehicle carrying goods of dangerous and hazardous nature - Absence thereof - Should not be treated to be in violation of terms and conditions of the policy - Held - Driver was possessing the valid driving licence : *Vinit Sharda Vs. Sureshnath, I.L.R. (2014) M.P. 398*

– **Section 147** - Liability of Insurance Company - Violation of Insurance Policy - Tractor was insured for agricultural purposes while it was carrying stones - As the Tractor was being used in violation of the insurance policy, Insurance Company is not liable : *Ram Milan Gupta Vs. Dashrath Singh Gond, I.L.R. (2013) M.P. 1116*

– **Section 147** - Liability of Insurance Company - Violation of Policy - Insurance Company alleged that offending vehicle was hired by occupants whereas the witness examined by Company in this regard was only a hearsay witness which is having no evidentiary value - There is nothing on record to prove that vehicle was being used for commercial purpose - Insurance Company Liable : *Saraswati Kushwaha Vs. Badri Singh, I.L.R. (2013) M.P. 1101*

– **Section 147 & 166**, Central Motor Vehicles Rules, 1989 - Liability of Insurance Company - Violation of Insurance Policy - Learning License - There is nothing on record to show that the respondent No.1 was driving the vehicle in violation of the provisions relating to learner's license : *Uday Singh @ Udriya Vs. Lum Singh, I.L.R. (2013) M.P. 179*

– **Section 147 & 166** – Liability of Insurance Company – Appellant failed to prove that deceased was its employee and was travelling in dumper in prosecution of his job – Claims Tribunal rightly held that deceased was a passenger – As there was a violation of Insurance Policy, Insurance Company is not liable to pay compensation : *Proprietor Eastern Minerals Co. Ltd. Vs. Smt. Nisha Tomar, I.L.R. (2015) M.P. 3016*

SYNOPSIS: Section 149

1. Deposit of Premium

2. Terms and Conditions of Policy

1. Deposit of Premium

– **Section 149** – Liability of Insurer – Accident took place at 11 O'clock – Premium of insurance deposited at 3.10 O'clock – Vehicle was not insured when accident took place – Insurance Company not liable : *National Insurance Co. Ltd. Vs. Harpal Singh, I.L.R. (2015) M.P. 168*

– **Section 149** – Liability of Insurer – Whether due to dishonour of cheque delivered for premium by the insured and cancellation of the insurance policy for want of premium, the insurance company could be liable to indemnify the liability of the insured for the payment of compensation award to a third party – Held – The liability subsists and the insurer has to satisfy the award of compensation, unless the policy of the insurance is cancelled by the authorized insurer and intimation of cancellation has reached the insured before the accident – Insurer can initiate proceedings for recovery of amount from insured : *Shashi Mohan Dwivedi Vs. Ganesh, I.L.R. (2014) M.P. 1568*

– **Section 149 & 147** - Compensation - Liability of Insurance Company to pay - Policy was cancelled before accident for dishonour of cheque issued towards premium - Intimation to owner about cancellation of insurance policy not proved - Insurance company liable to pay compensation - It may recover amount from owner and driver of vehicle : *New India Assurance Co. Ltd. Vs. Smt. Shobha Sharma, I.L.R. (2014) M.P. *4*

2. Terms and Conditions of Policy

– **Section 149** – Liability of Insurer – Tractor was driven by the respondent No. 4 contrary to the terms of the insurance policy and the risk of respondent No. 1 travelling

on the trolley was not covered under the policy – In such premises, it is further held that after exonerating the appellant from the liability the tribunal did not have any authority to direct the appellant to pay the awarded sum and recover the same from respondents No. 3 & 4 : *National Insurance Company Ltd. Vs. Raghunath Sahu, I.L.R. (2011) M.P. 1265*

– **Section 149** – Liability of Insurer – Tractor was insured for agricultural purposes – At the time of accident, tractor was being used for transporting sand and deceased was sitting on the trolley of such tractor – As tractor was being plied contrary to the purpose for which the same was insured, the insurance company is not liable : *Karan Lal Vs. Charan Lal, I.L.R. (2015) M.P. 164*

– **Section 149** – Plea of insurer that driver had no valid driving licence – To be proved by insurer itself : *Mahesh Chandra Vs. Anokhilal, I.L.R. (2014) M.P. 2156*

• – **Section 163**, Evidence Act (1 of 1872), Section 59 – Proof – Claims Tribunal although held that damages were caused to pair of bullocks and bullock-cart but held that appellant had failed to prove that he was owner of the same – Held – Provisions of Evidence Act do not apply with full force before Claims Tribunal – Certificates issued by Gram Panchayat conveys the meaning that bullocks & bullock-cart belongs to appellant – Compensation of Rs. 33,000/- directed to be paid towards loss of property – Appeal allowed : *Gaurishankar Vs. Specialty Electromars, I.L.R. (2015) M.P. 2735*

– **Section 163** - Compensation - Income - Claimants filed and proved the last pay certificate - Name of bank is also mentioned in certificate - Employee maintaining the record was also examined - Tribunal erred in holding that claimants have failed to prove that deceased was teacher and was getting salary of Rs. 4,284/- Compensation enhanced : *Manju Sahu Vs. Gyani Singh Rajput, I.L.R. (2013) M.P. 874*

– **Section 163** - Compensation - Thumb Rule - Deceased aged about 52 years - Thumb Rule is to be applied to those cases where there is no concrete evidence on record of definite rise in income due to future prospects - It can be deviated from in exceptional circumstances where income of deceased was found to increase : *Shyama Malviya (Smt.) Vs. Mukesh Kumar Goyal, I.L.R. (2013) M.P. 909*

– **Section 163** – Computation of notional income – Deceased not skilled labour – Notional income assessed Rs. 100/- per day – Not faulted : *Kishanlal Vs. Hemraj Jaiswal, I.L.R. (2015) M.P. 2467*

– **Section 163** - Negligence - Two Vehicles were involved in accident - Composite and Contributory negligence are not the same - Where there is absolutely no concert or common design, the liability depends purely on the aspect of negligence on the part of the driver - Vicarious liability is on the part of the owner, and the liability of the

insurance company is to indemnify on the basis of the contract of Insurance - Insurance Companies of both the vehicles are liable - Fixation of 50% liability against both the drivers proper : *Kiran Yadav Vs. Shrikrishna, I.L.R. (2013) M.P. 2674*

SYNOPSIS : Section 163-A

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| 1. Maintainability & Entitlement | 2. No Fault Liability |
| 3. Proof of Disability | 4. Quantum |

1. Maintainability & Entitlement

– **Section 163-A** – Maintainability – Owner of the vehicle was driving the vehicle when it collided against wall of a canal – Driver/owner of the vehicle died in the accident – Legal representatives of Driver/owner did not have any authority to file claim petition – However, claim petition returned to claimants to file the claim before appropriate forum : *National Insurance Company Ltd. Vs. Sunita, I.L.R. (2011) M.P. *99*

– **Section 163-A** – Whether the LR's of the deceased cum owner cum driver can claim compensation under this Section – It appeared that the accident was the result of the acts of the deceased himself and claimants also could not prove that the deceased was not himself responsible for the accident – Vehicle involved was insured for a third party and own damages under certain conditions – Claimants have also failed to prove that the deceased was covered under the policy – Held – When the deceased had stepped into the shoes of the owner of the vehicle, provisions of Section 163-A of the Act shall have no application, wherein owner of the vehicle himself is involved – Hence, LR's of the deceased could not have claimed compensation under this Section : *Deependra Kumar Vs. Oriental Insurance Co. Ltd., I.L.R. (2014) M.P. 1562*

– **Section 163-A**, Civil Procedure Code (5 of 1908), Order 23, Rule (1)(3) - First claim petition was withdrawn considering some technicalities, but without obtaining liberty to file fresh claim petition - Held - Motor Vehicle Act is beneficial piece of legislation meant for the benefit of the appellants/claimants - Rules and Procedure are meant to advance the cause of justice rather than scuttle the same on hyper technicalities - Learned Tribunal is not justified in rejecting the claim by considering the provisions of Order 23 Rule (1)(3) of C.P.C. - Appeal allowed : *Baijanti (Smt.) Vs. Laxmi Prasad Kanoujia, I.L.R. (2013) M.P. 2934*

2. No Fault Liability

– **Section 163-A** – Injury case – Claimant himself was negligent then he is not entitled to claim compensation on the principle of no fault liability : *Mahipal Singh Bhati Vs. Nisar Mohd., I.L.R. (2014) M.P. 2125*

– **Section 163-A** – Motor accident – No fault liability – Proceeding u/s 163-A being a social security provision, providing for a distinct scheme, only those whose annual income is upto Rs. 40,000/- can take the benefit thereof – All other claims are required to be determined in terms of Chapter XII of the Act – Tribunal has rightly rejected the claim of the appellants – Appeal dismissed : *Ramkali Bai Vs. Sudhir Yadav*, I.L.R. (2015) M.P. 1808

3. Proof of Disability

– **Section 163-A** – Compensation – Appellant did not examine any doctor to prove the medical documents – However, such documents and other aspects of the claim petition were proved by the appellant himself in his deposition – Tribunal did not commit any mistake in holding that appellant had suffered permanent disability : *Mukesh Vs. Smt. Priti*, I.L.R. (2011) M.P. *97

4. Quantum

– **Section 163-A** – Compensation – Appellant suffered 30% disability – Income is assessed at Rs. 15,000/- as he was non-earning member – After adding 50% of such existing deemed notional income, his annual income comes to Rs. 22,500/- – 30% comes to Rs. 6,750/- p.a. – Applying the multiplier of 15 it comes to Rs. 1,01,250/- apart from Rs. 52,522/- towards medical treatment as awarded by Tribunal – Appeal allowed : *Mukesh Vs. Smt. Priti*, I.L.R. (2011) M.P. *97

SYNOPSIS : Section 166

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|---|------------------------------------|
| 1. Contributory Negligence | 2. Delay in Lodging F.I.R. |
| 3. Evidence | 4. Legal Representatives |
| 5. Maintainability & Entitlement | 6. Pay and Recover |
| 7. Quantum | 8. Scope & Jurisdiction |
| 9. TDS on Interest | |

1. Contributory Negligence

– **Section 166** – Accident between tractor-trolley and Goods train – Negligence – Contributory negligence – Gate of Railway crossing not closed – Sound, vibration and headlight of Goods train not noticed by driver of tractor-trolley – Held – Railways is negligent to the extent of 75% and driver of tractor-trolley is composite negligent to the extent of 25% : *Sushma Singh (Smt.) Vs. Ram Shiromani Tiwari*, I.L.R. (2015) M.P. 3361

2. Delay in Lodging F.I.R.

– **Section 166** – Claim Petition – Entitlement – Delay of 266 days in filing F.I.R. after alleged accident – Number of vehicle not given to the police – Named insured vehicle not proved to be involved in that accident – Insurer not liable for giving any compensation – Direction for paying back the claim amount to the insurer alongwith interest 6% from the date of this judgment : *National Insurance Co. Ltd. Vs. Santosh, I.L.R. (2014) M.P. 3023*

– **Section 166** – Delay in lodging FIR – That delay in filing of FIR is not fatal either in criminal cases or in claim cases provided sufficient and cogent reason for delay in filing the FIR are given – According to present appellant, the delay in filing of FIR was due to the fact that he remained admitted in the hospital after the incident – On the next date of discharge, he lodged the FIR : *Mohd. Azad @ Aju Vs. Mahesh, I.L.R. (2015) M.P. 1810*

3. Evidence

– **Section 166** – Criminal Case – Relevancy – On the basis of F.I.R. or charge sheet, no inference could be drawn against the appellant No.2 – However, the Tribunal after appreciation of evidence has found that appellant No.2 was driving the vehicle in a rash and negligent manner – Papers of criminal case could be considered to get further support of such evidence : *Om Singh Tomar Vs. Smt. Krishna Devi, I.L.R. (2011) M.P. *114*

– **Section 166** - Motor Accident - Murder - Truck cleaner caused fatal injuries to the driver/deceased when the truck was standing in the side and the driver was sleeping therein - No circumstances to show that the death of the deceased was on account of accident arising out of use of motor vehicle - Appeal allowed however, the claimants shall be at liberty to claim the amount from the owner of the truck under the provisions of Workmen Compensation Act : *Bajaj Allianz General Insurance Co. Ltd. Vs. Ahsish Patel, I.L.R. (2013) M.P. 1943*

4. Legal Representatives

– **Section 166** – Initial injury claim – During pendency of claim case injured died – Claim further proceeded by legal representatives – Held – Legal representatives entitled for compensation as the benefits of claim case becomes estate of deceased : *Ramkali Thakur (Smt.) Vs. Pancharam, I.L.R. (2015) M.P. 968*

– **Section 166** - Legal Representatives - Claim petition filed on the basis of relationship with deceased by adoption - Held - In case of dispute about adoption, same is to be proved in due manner taking into consideration the provisions of Hindu Adoptions

and Maintenance Act, 1956 : *Oriental Insurance Company Ltd. Vs. Harishankar, I.L.R. (2011) M.P. 474*

– **Section 166** - Legal Representative - Nephew - Nephew in the capacity of legal representative may maintain an application for compensation : *Oriental Insurance Company Ltd. Vs. Harishankar, I.L.R. (2011) M.P. 474*

– **Section 166(1)(c)**, Hindu Succession Act (30 of 1956), Section 8, 9 & 11 – Legal Representatives (Claimants) – Legal Representative would be a person who represents the Estate of the deceased – Claim Petition filed by brothers, and father was made non-applicant who is alive – According to Section 9 and 11 of Act, 1956, in absence of Class I heir, property would devolve amongst heirs of Category II of Class II – As deceased was not survived by Class I heirs, therefore, so long as father is alive, brothers of deceased cannot file claim petition as they are not successors of deceased : *Proprietor Eastern Minerals Co. Ltd. Vs. Smt. Nisha Tomar, I.L.R. (2015) M.P. 3016*

– **Section 166(1)(c)** – Non-Applicant – Legal representative of deceased was joined as non-applicant in claims petition – If a person is joined as non-applicant and if it is found that he is entitled to get compensation, it is not required that he should file claim petition to pay for his portion of compensation – Father of deceased who was joined as non-applicant is entitled to get compensation : *Proprietor Eastern Minerals Co. Ltd. Vs. Smt. Nisha Tomar, I.L.R. (2015) M.P. 3016*

– **Section 166** - See - Succession Act, 1925, Section 372 : *Chandra (Smt.) Vs. Ranveer Singh Ramavtar, I.L.R. (2012) M.P. 2847*

5. Maintainability & Entitlement

– **Section 166**, Civil Procedure Code, 1908, Section 2(11) - Legal representative - Entitlement - A claimant though may not a legal heir but is a legal representative may be held entitled to compensation by the Claims Tribunal in a set of particular/peculiar facts and circumstances of case - Merely on account of being not a legal heir, a person applying u/s 166 of M.V. Act does not ipso facto stand excluded from description of claimant : *Savita Devi (Smt.) Vs. Smt. Sukhwinder Kaur, I.L.R. (2011) M.P. 165*

– **Section 166** – Claim Petition – Involvement of vehicle – It is not discernible that from whom and from which vehicle belonging to BSF, the accident took place – Held – Matter remitted back with a direction to ascertain the involvement of offending vehicle – Tribunal shall also insist the appellants to produce the fact finding report and shall also examine the drivers who were deployed at relevant time – A fresh award be passed against the person involved in the accident : *Union of India Vs. Smt. Girja Sahu, I.L.R. (2015) M.P. 760*

– **Section 166** - Deceased was the wife of respondent No. 2 who was the owner/insured and was driving vehicle - Due to rash and negligent driving of vehicle deceased fell down and died - Respondent No. 2 is also one of the legal representative - Tribunal rightly exonerated respondent Insurance Company, as in case compensation is awarded, the same will be in favour of a person who himself was at fault : *Teena alias Rachna (Ku.) Vs. Cholamandlam M.S. General Insurance, I.L.R. (2014) M.P. 742*

– **Section 166** – Deductions – Dependent persons on the deceased are 9 – The tribunal has no authority to deduct sum more than 1/5 from the annual income of deceased with respect of the expenses of such deceased, which he would have spent on him : *Munni Bai (Smt.) Vs. Ramnath Singh, I.L.R. (2011) M.P. *83*

– **Section 166** - Dependent - Includes mother and wife of the deceased : *Shukh Devi (Smt.) Vs. Devendra Kumar, I.L.R. (2014) M.P. 172*

– **Section 166** - Subsequent Claim Petition - Maintainability - No application for restoration of first claim petition was filed - No application for review of order was filed - No Regular appeal was filed - Second Claim Petition is maintainable subject to availability of period of limitation : *Dinesh Kumar Vs. Sunil Kumar, I.L.R. (2013) M.P. *3*

– **Section 166**, Workmen's Compensation Act (8 of 1923), Section 3 - Claim petition filed by appellant was dismissed by Tribunal - Appeal is in continuation of the proceedings initiated before the Court below, therefore, it can safely be said that the award has not attained finality - Appeal is dismissed as withdrawn with a liberty to the appellant to file a claim petition under the provisions of Workmen's Compensation Act, 1923 : *Shabbir Vs. Samsu Bhai Kaliya Bhai Dang, I.L.R. (2014) M.P. 144*

– **Section 166 & 173** - Rash and Negligent Driving - Accident occurred because of felling of bridge when the Offending Vehicle was passing - There may be some fault on the part of the concerned department however, if the driver would have been fully conscious, then the accident could have been avoided - Tribunal rightly held the owner and driver liable to pay compensation : *Saraswati Kushwaha Vs. Badri Singh, I.L.R. (2013) M.P. 1101*

– **Section 166** – See – Employees' State Insurance Act, 1948, Section 53 : *IFFCO Tokyo General Insurance Co. Ltd. Vs. Smt. Meena Mahesh, I.L.R. (2015) M.P. 758*

– **Section 166** – See – Workmen's Compensation Act, 1923, Section 10 : *Mahabir Sen Vs. Vijay Singh, I.L.R. (2014) M.P. 2365*

6. Pay and Recover

– **Section 166** - Grant of Compensation - Pay and Recover - If there is a breach of conditions of insurance on the part of the driver and the owner as the vehicle was

being driven by a person not having a valid licence, in such a situation, learned Tribunal is entitled to award an amount of compensation to be paid jointly and severally against the owner, driver and may direct the Insurance company to recover the award amount which is deposited by it before the Tribunal from the owner of the offending vehicle : *Surendra Singh Vs. Mamta, I.L.R. (2014) M.P. *2*

7. Quantum

– **Section 166** – Accident is of the year 1999 – Deceased, a farmer, aged 50 years – Owing 11 acres of agricultural land – Dependant wife and three minor children – Computation of income – Loss of supervision – Income assessed at Rs. 2,400/- p.m., more than income of an unskilled labourer – 1/4th deducted towards personal expenses – Multiplier of 13 adopted – Rs.2,80,800/- granted towards loss of dependency, Rs. 10,000/- each on account of loss of consortium and loss of estate and Rs. 6,000/- for funeral expenses, so in all an amount of Rs. 3,07,000/- granted as compensation – Appeal partly allowed : *Sushma Singh (Smt.) Vs. Ram Shiromani Tiwari, I.L.R. (2015) M.P. 3361*

– **Section 166** - Amount of compensation - Apportionment of compensation between widow and mother - In case of availability of proof about additional factors like age, degree of dependency, size of family, financial potential of individual claimant etc., the ratio or proportion may be varied depending upon the facts and circumstances of the case - Where no material available on record fully and sufficiently to make just and proper apportionment, the ratio of 9:4 may be maintained : *Savita Devi (Smt.) Vs. Smt. Sukhwinder Kaur, I.L.R. (2011) M.P. 165*

– **Section 166** - Compensation - Appellant a student doing the work of distribution of news paper - Notional income can be accepted Rs. 15,000 - Multiplier of 15 would apply - In view of 35% disability future loss of earning comes to Rs. 5250 - Amount of Rs. 1 lacs deserves to be awarded in the head of causing impotency for the injuries - Appellant entitled to Rs. 2,84,865 after adding medical expenses etc : *Harish Kori Vs. Raju K. Rajvardhan, I.L.R. (2012) M.P. 3069*

– **Section 166** – Compensation – Claimant younger brother of deceased and dependent upon him – Deceased unmarried – Monthly income of deceased Rs. 21,600 – ½ deducted towards expenses of deceased – Deceased aged about 30 years therefore, multiplier of 17 would apply – Claimant also entitled to Rs. 15,000 towards funeral expenses, loss of expectancies and loss of estate – Compensation enhanced to Rs. 1,98,600/- : *Munshi Vs. The New India Insurance Co. Ltd., I.L.R. (2011) M.P. 2012*

– **Section 166** – Compensation – Claimants are parents as their son aged about 20 years died in vehicular accident – Yearly income of deceased was Rs. 60,000 – 50% of sum liable to be deducted towards expenses of deceased – Multiplier of 18 would apply –

Claimants entitled to sum of Rs. 5,40,000 towards compensation and Rs. 15,000 towards head of funeral expenses etc : *Gokul Prasad Tripathi Vs. Vishwanath Prasad Vyask, I.L.R. (2011) M.P. 1727*

– **Section 166** - Compensation - Deceased was a child - Accident took place in the year 2007 - Compensation of Rs. 1,54,000/- appears to be on lower side - Compensation enhanced by Rs. 75,000/- : *Uday Singh @ Udriya Vs. Lum Singh, I.L.R. (2013) M.P. 179*

– **Section 166** - Compensation - Income - Income Tax Return - Income Tax disclosing the income of deceased at Rs. 1,08,500/- per annum was filed during the life time of deceased - However, there is nothing on record that when PAN was issued and the Income Tax Returns of the previous years are also not available on record - Income of the deceased assessed at Rs. 7000/- per month - Multiplier of 17 would apply in view of the age of the appellant No. 1 - Award enhanced from Rs. 8,19,500/- to Rs. 9,82,000/- : *Sunita Patidar Vs. Mohd. Ishaq Khan, I.L.R. (2013) M.P. 176*

– **Section 166** – Compensation – Quantum- Income of deceased - Deceased was having grocery shop near Railway Station which is one of the main business centers of Bhopal – He was also regularly depositing Rs. 100 to 200 per day in daily deposit scheme – He was also affording all expenses – Tribunal erred in assessing the income at Rs. 200 per day – Income of the deceased assessed at Rs. 350 per day – 1/3rd is deducted on account of expenses of deceased – Annual dependency comes to Rs. 84,000 – Deceased aged about 35 years therefore, multiplier of 16 would apply – Total dependency comes to Rs. 13,44,000 – Rs. 20,000 granted towards loss of company, funeral charges, etc. – Compensation enhanced – Appeal allowed : *Kavita @ Poonam Naryani (Smt.) Vs. Than Singh, I.L.R. (2011) M.P. 2180*

– **Section 166** – Quantum – Income of deceased – Deceased an advocate, practicing in different Courts – No document showing that deceased was income tax payer – Tribunal has not committed any error in taking into consideration the income of the deceased @ Rs. 8,000/-per month : *Munni Bai (Smt.) Vs. Ramnath Singh, I.L.R. (2011) M.P. *83*

– **Section 166** – Quantum – Leg of appellant amputated from joint – Appellant is entitled for compensation on basis of 100% permanent disability – Compensation enhanced from Rs. 2,90,000/- to Rs. 5,05,000/- : *Kishore Vs. Shahid Shah, I.L.R. (2011) M.P. 972*

– **Section 166** – Quantum of Compensation – Appellant aged about 8 years became deaf and dumb due to alleged injury in accident – As she is minor and non-earning member of family therefore, her notional income is taken as Rs. 15,000 per

annum and 50% of notional income is added which comes to Rs. 22,500 – As appellant has suffered 50% disability her income comes to Rs. 11,250 p.a. – Multiplier of 15 would apply and compensation amount comes to Rs. 1,68,750 – No medical documents have been filed but looking to the injury sustained by appellant, Rs. 20,000 is awarded under treatment head – Rs. 50,000 awarded towards necessity of further treatment – Compensation amount enhanced to Rs. 2,38,750 with 6% interest from the date of filing the claim petition : *Lalita (Ku.) Vs. Vidhya Sagar, I.L.R. (2011) M.P. 2185*

– **Section 166** – Quantum of Compensation – Deceased aged about 24 years and educated upto B.Sc. II year working as Supervisor with Plant builders – Salary certificate issued by employer not rebutted although register containing the service record of the employees not produced – Looking to the qualification of deceased his salary held to be Rs. 4000/- per month – Future prospects @ 50% of the existing salary comes to Rs. 2000/- per month – Compensation to be assessed taking into consideration the income of deceased at Rs. 6000/- per month – 1/3rd of the sum is deducted towards expenses of deceased – Yearly dependency comes to Rs. 48,000/- – Multiplier of 18 is applicable and compensation amount comes to Rs. 8,64,000/- – Further amount of Rs. 20,000/- is awarded towards traditional expenses – Compensation enhanced to Rs. 8,84,000/- : *Aditi (Smt.) Vs. Dinesh Kumar, I.L.R. (2011) M.P. *107*

– **Section 166** - Quantum of Compensation - Deceased working as Electro Homeopathy Doctor - As he was a skilled and trained person in Electro Homeopathy his income from profession and agriculture is held to be Rs. 150 per day - Four persons were dependent upon him therefore, ¼ of the income is deducted towards expenses on deceased - Annual dependency comes to Rs. 40,500 - As deceased was aged about 35 years therefore, multiplier of 16 would apply - Compensation amount comes to Rs. 6,48,000 + 20,000 towards traditional heads - Compensation enhanced to Rs. 6,68,000 with 6% interest from the date of filing of claim petition - Appeal allowed : *Kalawati (Smt.) Vs. Haneef Ahmad, I.L.R. (2011) M.P. 2459*

– **Section 166** – Just Compensation – Deceased aged (22 years) was earning Rs. 3000/- per months – Tribunal by applying multiplier of 17 and 1/3 of his income as personal expenses, passed an award of compensation of Rs. 4,33,000/- in favour of legal heirs – Held – The award is not excessive but it is in permissible limits : *New India Assurance Co. Ltd. Vs. Smt. Neetu Patel, I.L.R. (2011) M.P. *84*

– **Section 166** - Just compensation - Deceased (aged 43 years) was having his own business of Box making - He was also Income Tax payee - It would be proper to assess the income @ 4000/- per month - Compensation enhanced from 3,80,000/- to 5,10,000/- : *Sunita (Smt.) Vs. Akbar, I.L.R. (2011) M.P. 2483*

– **Section 166** - Just compensation - Deceased a young person met with accident in the year 2006 - Income on notional basis ought to have been Rs. 2,000/- per month and multiplier of 17 ought to have been applied - Amount of compensation enhanced from Rs. 98,500/- to Rs. 2,92,000/- with interest on enhanced amount : *Laxmi Bai Vs. Naushad, I.L.R. (2013) M.P. *9*

– **Section 166** – Just Compensation – Deduction – Deceased a married, leaving wife, son and old mother as dependent – Deduction of 1/3rd should be made to his income by way of personal expenses : *Sukmani @ Jyoti Vs. Jagdish, I.L.R. (2011) M.P. 2199*

– **Section 166** – Just compensation – Multiply – Deceased (19) the son of Respondents No. 3 & 4, who were 55 & 56 of age met with accident and died – Held – The multiplier of 8 by taking average of the age of parents of the deceased would be applied : *National Insurance Co. Ltd. Vs. Shyam Singh, I.L.R. (2011) M.P. 1803 (SC)*

– **Section 166** - Income - Tribunal after assessing the income of the deceased to the tune of Rs. 100/- per day, should not have taken the monthly income to the tune of Rs. 2,500/- - Monthly income taken at Rs. 3,000/- - Award enhanced to Rs. 4,35,000/- instead of Rs. 3,52,500/- : *Ram Singh Vs. Dashrath, I.L.R. (2013) M.P. 184*

– **Section 166 & 173** - Claimant lady aged 35 years and earning Rs. 5,000/- per month by doing household labour work, received injury by Bus while walking on the road - Her left leg was amputated below knee and she became permanently disabled - Compensation of Rs. 4,11,600/- awarded for future loss of earning by the Tribunal is just but for pain and suffering in case of amputation and other heads the amount awarded is inadequate - Claimant is awarded Rs. 50,000/- for pain and suffering in addition to the compensation awarded by the Tribunal and Rs. 50,000/- awarded for artificial limb : *Kanta Bai (Smt.) Vs. Balu Singh, I.L.R. (2013) M.P. 2652*

– **Section 166 & 173** - Compensation - Multiplier - Multiplier on the age of claimants would be applicable if their age is more than the age of deceased - In a case of bachelor's death one half deduction towards personal expenses may be made from the earning of deceased to capitalize the loss of dependency applying the multiplier either at the age of deceased or as per the age of the claimant whichever is higher : *Jakir Hussain Vs. Dinesh, I.L.R. (2013) M.P. 1604*

8. Scope & Jurisdiction

– **Section 166** – Accident – Arising out of use of Motor Vehicle – Bomb was planted under the bridge over which the truck passed at the time when the said bomb blew up – Bomb was planted under the bridge could not have possibly come to the

knowledge of the owner/driver despite exercise of due care and diligence by them – Accident which occasioned the death of the deceased was not caused due to the use of the motor vehicle. Claimants can very well seek the remedy available to them before the Civil Court by filing a civil suit or by seeking their claim under the Workman Compensation Act if the provisions of the said enactment applies to them : *Union of India Vs. Bhagri, I.L.R. (2012) M.P. 503*

– **Section 166** – Accident between tractor-trolley and Goods train – Claim application dismissed on the ground that Motor Accident Claims Tribunal has no jurisdiction – Whether in the peculiar facts of the case Motor Accident Claims Tribunal has jurisdiction to entertain the claim petition – Held – As the Claims Tribunal has initially entertained the claim petition because motor vehicle was involved, so afterwards the Tribunal cannot dismiss the claim application on the ground of jurisdiction as the accident took place due to sole negligence of the Railways – Claim application entertainable : *Sushma Singh (Smt.) Vs. Ram Shiromani Tiwari, I.L.R. (2015) M.P. 3361*

– **Section 166** - Accident Claim - Driver in reversing the tractor back, as a result, deceased fell down into quarry and was pressed under huge quantity of muram collapsed from the quarry - He was seriously injured and died after sometimes during treatment in the hospital - It is a case where the death occurred on account of use of the vehicle at the time of accident - There was proximate connection between the use of the vehicle and the actual cause of death - Claims tribunal has not committed any error in holding the driver as well as the owner of the offending vehicle responsible to satisfy the award : *Bhura @ Gopal Vs. Shankutala Bai, I.L.R. (2013) M.P. *26*

– **Section 166**, Civil Procedure Code (5 of 1908), Order 14 Rule 2 – Preliminary issue – Question of jurisdiction – Preliminary issue shall be considered first and if cause of action continues then all the issues are to be decided on merits : *Sushma Singh (Smt.) Vs. Ram Shiromani Tiwari, I.L.R. (2015) M.P. 3361*

9. TDS on Interest

– **Section 166**, Income Tax Act (43 of 1961), Section 194A – TDS on interest awarded by Tribunal – Claimant was awarded compensation with interest – Applicant deducted Rs. 6,571 as T.D.S. while releasing interest amount on the ground that amount of interest is more than Rs. 50,000 – Held – Interest awarded has to be spread over in number of years from the date of filing of claim petition till the date of payment – If the interest for the financial year payable exceeds Rs. 50,000/- only then the question of TDS would arise - Claimant shall be required to submit affidavit to the effect that he has furnished a declaration on Form No. 15G of Rule 29C of Income Tax Rules for each financial year in the office of Insurance Company so that concerned Company is relieved

of its obligation of payment of TDS : *United India Insurance Co. Ltd. Vs. Ramlal, I.L.R. (2011) M.P. 1371*

- – **Section 168** - Contributory Negligence - Deceased was going on his motor bike when he met with an accident with truck when the deceased tried to overtake the truck - Driver of the Truck did not appear before Tribunal to explain under what circumstances accident took place - Contributory negligence on the part of the deceased assessed at 25% instead of 50% as assessed by Tribunal : *Gayatri Singh (Smt.) Vs. Santosh Chaturvedi, I.L.R. (2013) M.P. 904*

- **Section 168 & 171** - Compensation - Deceased aged 41 years - Earning Rs. 3,500/- p.m. - 1/3rd of personal expenses deducted - Multiplier of 15 applied - Total compensation of Rs. 4,60,000/- awarded with interest : *Tulsi Bai (Smt.) Vs. Abdul Rehman, I.L.R. (2014) M.P. 758*

- **Section 168 & 171** - Compensation - Tribunal has taken into consideration the income of the deceased @ Rs. 1,53,000/- p.a. while in fact income of the deceased was Rs. 90,000/- approximately from the business and the deceased was in the age group of 40 to 50 years - Appellants are also entitled for future prospects - 1/3rd of personal expenses deducted - Amount awarded by the learned Tribunal is just and proper, which needs neither reduction nor enhancement : *Rukhmani Bai Patidar (Smt.) Vs. Smt. Imarti Bhardwaj, I.L.R. (2014) M.P. *6*

- **Section 168 & 171** – Deceased aged 34 to 35 years – Earning Rs. 3,000/- per month – 1/3rd towards personal expenses deducted – Multiplier of 16 applicable – Total compensation of Rs. 4,04,000/- awarded with interest : *Sudhar Soni (Smt.) Vs. Smt. Rinku Singh, I.L.R. (2014) M.P. *12*

- **Section 168 & 171** – Enhancement of Compensation – Claimant became permanently disabled to the extent of 100 % – Aged 39 1/2 years – Entitled to Rs. 18,17,000/- – Awarded interest on enhanced amount @ 6% p.a. : *United Indian Insurance Company Ltd. Vs. Vardiya @ Vardichandra, I.L.R. (2014) M.P. 2135*

- **Section 168 & 173** - Compensation -Determination - Deceased was 39 years old - As per the postmortem report, his age was taken as 40 years - Addition of annual income for loss of future prospects - Annual income of deceased, assessed to Rs. 36,000/- p.a. - Addition of income @ 30% for future prospects is fully justified and is in accordance with law laid down by the Hon'ble Apex Court : *National Insurance Company Ltd. Vs. Badi Bahu @ Hari Bai, I.L.R. (2014) M.P. 157*

SYNOPSIS : Section 173

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| 1. Application of Multiplier | 2. Appreciation of Evidence |
| 3. Contributory Negligence | 4. Liability of Insurance Company |
| 5. Pay and Recover | 6. Permanent Disability |
| 7. Quantum / Enhancement | 8. Scope / Entitlement |
| 9. Valuation of Claim in Appeal | |

1. Application of Multiplier

– **Section 173** – Compensation – Application of multiplier – Where the age of deceased is more than 15 years there is no necessity for seeking guidance or placing reliance on second schedule : *Bajaj Allianz Vs. Aditya, I.L.R. (2015) M.P. 983*

– **Section 173** – Compensation – Deceased age 33 years – Earning Rs. 3000 per month – Dependency Rs. 2000/- per month – Multiplier of 16 applied – Total compensation of Rs. 4,01,500/- and interest @ 6% p.a. from the date of application : *Vidhya Bai (Smt.) Vs. Kailashchandra, I.L.R. (2015) M.P. 2972*

– **Section 173** - Compensation - Deceased was an agriculturist and evidence available on record shows that annual income from agriculture was Rs. 2 lacs - Even after deducting expenses productivity of the deceased should be deemed to 25% of 2 lacs which comes to Rs. 50,000 p.a. - Total dependency of claimants after deducting 1/4th regarding expenses of deceased, comes to Rs. 37,500 - Multiplier of 14 would apply as the age of the deceased was in between 40 to 45 years - Compensation enhanced to Rs. 5,45,000/- : *Suman Singh (Smt.) Vs. Prithvipal Singh, I.L.R. (2013) M.P. *44*

– **Section 173** - Deceased aged 38 years was in settled business - Future prospect considered to the extent of 30% - Three dependent persons - 1/3rd deducted for personal expenses - Multiplier of 15 adopted - Award Rs. 16,20,000/- enhanced to Rs. 22,77,147/- with interest : *Sunita (Smt.) Vs. Smt. Sumitra, I.L.R. (2013) M.P. 2845*

– **Section 173** - Enhancement - Assessment of income - No document regarding the work of contractor-ship has been produced - Income Tax return of the year 2005-06 and 2008-09 has been produced - Earning is accepted as Rs. 80,000/- per annum and dependency as Rs. 60,000/- and by applying multiplier of 14 amount is enhanced by Rs. 1,00,000/- : *Vinit Sharda Vs. Sureshnath, I.L.R. (2014) M.P. 398*

– **Section 173** – Enhancement – Deceased, aged 47 yrs., involved in agriculture and milk business – Owing 12 acres of agricultural land – Deceased supporting entire

family of 7 persons including himself – Accident of the year 2003 – Held – Income assessed by the Tribunal @ Rs. 2,000/- p.m. is on lower side, it ought to be Rs. 5,000/- p.m. – 1/4 th deducted personal expenses as number of dependents were six in number as per the dictum of Sarla Verma's case – Multiplier of 13 adopted on the basis of the age of the deceased – So, in all total compensation of Rs. 6,15,000/- awarded : *Krishna Tiwari (Smt.) Vs. Ram Kumar, I.L.R. (2015) M.P. 977*

– **Section 173** - Enhancement of award - Looking to the age of the deceased, accepting his earning Rs. 3,000/- pm, after deducting 1/2 and applying multiplier of 15 - As per the age of the father and mother by adding Rs. 25,000/-, award is enhanced by Rs. 30,000/- : *Oriental Insurance Company Ltd. Vs. Ravi Shankar, I.L.R. (2014) M.P. 147*

– **Section 173** - Enhancement - One half towards personal expenses to be deducted as the deceased was Bachelor - Since there is no proof of age of the appellants, multiplier of 15 appears to be just and proper - Appeal dismissed : *Ganpat @ Narayan Vs. Rupal Sing, I.L.R. (2014) M.P. 141*

– **Section 173(1)** – For Enhancement – Accident is of the year 2006, learned Tribunal was not justified in awarding Rs. 2,37,979/- as compensation – The income is assessed @ 3,000/- p.m. – After deducting 1/2 as the deceased was bachelor and after applying the multiplier of 15, total compensation comes to Rs. 3,15,000/- : *Shyam Lal Vs. Ghanshyam, I.L.R. (2014) M.P. 1875*

2. Appreciation of Evidence

– **Section 173** – Compensation – Offending vehicle (Truck) was parked at the middle of road – Evidence for parking of truck supported by three witnesses including cleaner of truck – No evidence in rebuttal by Insurance Company – Finding of Tribunal that deceased was negligent as he was coming from back side of truck not proper : *Vidhya Bai (Smt.) Vs. Kailashchandra, I.L.R. (2015) M.P. 2972*

– **Section 173** – Income – Pay slip – Pay slip of deceased proved by claimant – In absence of any contradictory evidence, no doubt can be raised with regard to pay slip, which was issued in due course : *Bajaj Allianz Vs. Aditya, I.L.R. (2015) M.P. 983*

– **Section 173** – Initial claim petition was for injuries – During pendency of claim case, injured himself died – Cause of death whether connected to accident or not ? – Autopsy of corpus not carried out – Held – Because of lack of autopsy of corpus it could not be proved that injured died due to accident injuries – Hence, findings of Tribunal affirmed : *Ramkali Thakur (Smt.) Vs. Pancharam, I.L.R. (2015) M.P. 968*

3. Contributory Negligence

– **Section 173** – Composite negligence – Head on collusion – Tribunal awarded compensation to the claimant against owner and insurance company of opposite truck while exonerating owner and insurance company of the truck in which deceased was going – Held – Sole eyewitness deposed that driver of truck coming from opposite direction caused the accident by rash and negligent driving – No spot map prepared during investigation by I.O. was filed or proved in his support – Owners of both trucks are responsible for payment of award amount to claimants of deceased – Both insurance companies of both trucks to indemnify liability of insured/owner of the trucks to satisfy award payable : *National Insurance Company Ltd. Vs. Ramlal, I.L.R. (2014) M.P. 2149*

– **Section 173** – Contributory Negligence – Looking to the spot map and the evidence so brought on record by the claimants as well as by the driver of the offending vehicle, the contributory negligence of the offending vehicle and the vehicle driven, by the deceased is quantified by 80%-20% – Finding recorded by the Tribunal regarding negligence of the offending vehicle only is set-aside : *New India Assurance Co. Ltd. Vs. Smt. Preeti, I.L.R. (2014) M.P. 2382*

– **Section 173** – Contributory negligence – On the basis of uncontroverted evidence of Pillion rider and material documents, Tribunal has rightly held that deceased was not instrumental to accident : *Bajaj Allianz Vs. Aditya, I.L.R. (2015) M.P. 983*

4. Liability of Insurance Company

– **Section 173** – Liability of Insurance Company – Held – In view of the decisions rendered by this Court and in view of finding recorded by Claims Tribunal that the driver of the tractor was negligent for injury caused to the claimant, Insurance Co. is liable for paying compensation – No illegality in the impugned award – Appeal is dismissed : *ICICI Lombard Gen. Ins. Co. Ltd. Vs. Kharagram Pajapati, I.L.R. (2015) M.P. 1016*

– **Section 173** – Liability of Insurance Company – Non-payment of Insurance Premium – Insurance policy was issued subject to encashment of cheque given towards premium – Cheque was dishonored – Intimation of the same was given to the owner by the Insurance Company – In spite of that premium of Insurance Policy was not paid by the owner till happening the accident or thereafter at any point of time – Held – Unless the premium is received by Insurance Company, it could not be deemed that any risk of the vehicle was covered under policy issued – Insurance Company is exonerated – Appeal allowed : *National Insurance Company Ltd. Vs. Halkai, I.L.R. (2014) M.P. 1309*

– **Section 173(1)** – Appeal against award – Award is assailed on the ground that the driver was not having valid driving licence – Held – Since the owner has duly verified and checked the existence of driving licence before engaging the driver, he has not committed any mistake – Tribunal has rightly allowed the claim holding appellant liable to pay compensation – Appeal being merit less is dismissed : *ICICI Lombard Gen. Insurance Co. Vs. Golu, I.L.R. (2015) M.P. 404*

– **Section 173**, Central Motor Vehicles Rules 1989, Rule 9(3) - Whether the drivers are required to possess educational qualification as specified in Rule 9 and its endorsement ought to be made as per sub-rule (3) - Held -That there was no fundamental or basic breach of the terms and conditions of the policy, which could have been sufficient to hold that the Insurance Co. would not be liable to pay compensation : *Oriental Insurance Company Ltd. Vs. Ravi Shankar, I.L.R. (2014) M.P. 147*

– **Section 173(1)** – Exoneration of Insurance Company – It was expected from the Insurance Company to examine a reasonable officer to explain that how the Insurance Company is not liable to pay compensation inspite of charging of extra premium – Impugned award, modified by enhancing from Rs. 2,37,979/- to Rs. 3,15,000/- with interest @ 8% from the date of application – Insurance Company shall be liable to pay Rs. 1.00 lac alongwith proportionate interest and balance amount shall be paid by respondent Nos. 1 & 2 : *Shyam Lal Vs. Ghanshyam, I.L.R. (2014) M.P. 1875*

5. Pay and Recover

– **Section 173** – Insurance Company assailed the award of pay and recover on the ground that it is illegal as the Tribunal has recorded a finding regarding breach of policy – Held – Tribunal has passed the impugned award relying on the order passed by the Supreme Court – It does not suffer from any patent illegality or perversity – Appeal dismissed : *New India Assurance Co. Ltd. Vs. Shailesh Kurmi, I.L.R. (2015) M.P. 1807*

6. Permanent Disability

– **Section 173** - Permanent Disability - Percentage is determined on the basis of the disability certificate issued by the Medical Board - Permanent Disability results in functional disability by which loss of earning capacity can be determined : *Om Prakash Vs. Gulab Singh, I.L.R. (2014) M.P. 166*

7. Quantum / Enhancement

– **Section 173** - Amount of Compensation - Enhancement - When one is considering the case of a gravely injured child who is going to live for many years into adult life, very different considerations apply - There are compelling social reasons why a sum of money should be awarded for his future loss of earnings - Damages awarded for

her future loss of earnings will in the future be available to provide a home for her and to feed her and provide for such extra comforts as she can appreciate - It can not be assumed that her parents will remain able to house, feed and care for her throughout the rest of her life - Further held, that, if of course, damages have been awarded on the basis of the full cost of residential care so that they include the cost of roof and board, any award for future loss of earning will be small because there will be a very large overlap between the two heads of damage : *Puja (Ku.) Vs. M.P.S.R.T.C., I.L.R. (2014) M.P. 178*

– **Section 173** – Appeal – For enhancement of award – M.L.C. report, X-ray report and the X-ray plate placed on record – Same has been proved by appellant himself – Doctor has not been examined – Fracture of 9th ribs of the right side is there – Held – Law relating to the accident claim, being law of social welfare, rules relating to the admissibility of the medical documents should not be followed strictly – If the medical documents appears to be bonafide and genuine appropriate relief should be given – In view of the available scenario, nature of injuries sustained award is enhanced from 7,000/- to Rs. 25,000/- with 7.5% interest from the date of filing the claim petition : *Radhika Prasad Namdeo Vs. Driver Naresh @ Bhoora, I.L.R. (2014) M.P. 2390*

– **Section 173** – Assessment of compensation by Tribunal – Deceased, was working as Assistant Teacher – Award of Rs. 48,42,440/- – 30% added towards future prospects – Rs. 1,00,000/- awarded towards loss of consortium and Rs. 25,000/- towards last rites & rituals – Held – Award not on higher side as per the dictum of Apex Court in Rajesh's case – Appeal by Insurance Co. dismissed : *National Insurance Company Vs. Bharti Kol, I.L.R. (2015) M.P. 1018*

– **Section 173** – Compensation – Dependency – Deceased had six dependents at the time of his death – Personal expenses should have been 1/4th of his income and not 1/3rd – Award modified : *Shameena Bano (Smt.) Vs. Ram Naresh Patel, I.L.R. (2015) M.P. 2469*

– **Section 173** – Compensation – Documents of the business duly verified by the Chartered Accountant, who is a witness of the Insurance Company – Chartered Accountant also admitted that there was no manipulation in Income Tax return and accounts were maintained as per Rules – Income Tax returns should not be disbelieved – Income may be safely accepted as Rs. 9,00,000/- per annum – Since there are four dependents, 1/4 income is deducted towards personal expenses – Compensation enhanced from Rs. 65,88,106/- to Rs. 82,63,885/- – Enhanced amount shall carry interest @ 7.5% per annum from the date of filing the claim petition : *New India Assurance Co. Ltd. Vs. Smt. Preeti, I.L.R. (2014) M.P. 2382*

– **Section 173** - Compensation - Enhancement - Deceased was having the agricultural land - He was also engaged in taking the land on Adhbatai from different persons - Earning of deceased was shown apart from his own land and also from the land taken on Adhbatai - After death their own land has been given on Adhbatai - Loss of earning accepted Rs. 5,000/- p.m. award enhanced by Rs. 2,32,000/- : *Mamta Bai Patidar (Smt.) Vs. Ismail Khan, I.L.R. (2013) M.P. 2850*

– **Section 173** - Compensation - Enhancement of - Tribunal ought to have ordered some amount on account of future prospect - Award enhanced : *Anjali Bhatiya (Smt.) Vs. Rajkumar, I.L.R. (2013) M.P. 2645*

– **Section 173** – Compensation – Future prospects – Addition of 50% salary where the deceased is below 40 years and has permanent job – Addition should be 30% if the age of deceased is between 40 to 50 years – There should be no addition if the age of deceased is more than 50 years and number of dependents are 2 to 3 : *Bajaj Allianz Vs. Aditya, I.L.R. (2015) M.P. 983*

– **Section 173** - Compensation - Money cannot renew a physical frame that has been battered and shattered - The court is to award sums which must be regarded as giving reasonable compensation so as to secure some uniformity in the general method of approach : *Om Prakash Vs. Gulab Singh, I.L.R. (2014) M.P. 166*

– **Section 173** – Compensation – Standard deduction – Where deceased is married, 1/3rd should be deducted towards living expenses – Where number of dependants are 4 to 6, 1/4th should be deducted and 1/5th should be deducted if number of dependents are more than 6 : *Bajaj Allianz Vs. Aditya, I.L.R. (2015) M.P. 983*

– **Section 173** - Enhancement - Amount awarded looking to the percentage of permanent disability appears to be just and proper - However, only Rs. 2,000/- has been awarded in conventional heads enhanced by Rs. 25,000/- : *Vinit Sharda Vs. Sureshnath, I.L.R. (2014) M.P. 398*

– **Section 173** - Enhancement of award - Appellant's right hand has been amputated from the shoulder - As per Schedule I, Part-II of Workmen's Compensation Act, the loss of earning capacity is 80% and not as 42% as assessed by learned Tribunal - Award amount enhanced from 2,29,880/- to the tune of Rs. 5,80,880/- : *Jam Singh Vs. Bharat, I.L.R. (2013) M.P. 2639*

– **Section 173** - Enhancement of compensation - Tribunal as well as appellate court are bound to take into consideration not only the present scenario or the present income of the deceased but also his education status and future prospects - Even the non earning person of the family if suffers the injury or dies in the vehicular accident, then on

the basis of notional income the victim or dependent are entitled to get compensation - In such cases compensation may be awarded either on the basis of principle of notional income or as per the rate of minimum wages fixed by the State : *Om Prakash Gupta Vs. Wajeer Ahmed Ali Nayak Wadi, I.L.R. (2013) M.P. 877*

– **Section 173** – Cross-objection – Cross objection for enhancement of compensation filed without payment of court fee – No case for enhancement is made out : *ICICI Lombard General Insurance Co. Ltd. Vs. Gopal Khatri, I.L.R. (2014) M.P. 1038*

– **Section 173** – Enhancement – Tribunal has rightly determined the income – Therefore, no enhancement of compensation on that count – However, there is no mention of future prospects in the award and the age of the deceased was 35 years – Future prospect are added for the purpose of compensation @ 30% of the assessed income – Thus, the amount of compensation is enhanced by Rs. 1,08,000/- with 7.5% interest from today : *Sonia Bai Gond (Smt.) Vs. Alok Panika, I.L.R. (2014) M.P. 1546*

– **Section 173** – Quantum of compensation – Amount of Rs. 75,000/- awarded in addition to the amount of Rs. 3,67,000/- – Appellant, Insurance Company to satisfy 50% of the award and 50% shall be paid by respondent owner and respondent Insurance Company in joint or several manner within a period of two months : *National Insurance Company Ltd. Vs. Ramlal, I.L.R. (2014) M.P. 2149*

– **Section 173(1)** – Award is assailed on the ground that there is negligence on the part of the deceased and awarded compensation is on higher side – Held – Tribunal has rightly awarded the compensation and has correctly recorded the finding regarding negligent driving on the part of the driver of the bus – Award amount is also not found to be excessive – Appeal being merit less is dismissed : *Shriram General Insurance Co. Ltd. Vs. Smt. Jeevan Bai, I.L.R. (2015) M.P. 402*

8. Scope / Entitlement

– **Section 173** - Appellant neither stated in the petition nor in the FIR that who was driving the vehicle - Doctor was informed that he was hit by Motor Cycle and sustained injury - Surprisingly the co-passenger sustained no injury - Held - Section 163-A of the Act covers cases where even negligence is on the part of the victim, by way of exception to Section 166 - But at the same time, it is expected from the claimant to come with clean hands and not file cleverly drafted petition - Findings recorded based on due appreciation of evidence - Requires no interference : *Kailash Vs. Rajendra, I.L.R. (2014) M.P. 745*

– **Section 173** – Accident took place while crossing the railway gate when the driver of the truck just started to cross the line suddenly passenger train came and by

hitting caused damaged to the truck – Resultantly driver-cum-owner and cleaner died – Held – Since deceased driver-cum-owner of the truck was responsible for causing accident due to non-following the common traffic rules dependents of the deceased can not claim for damages for the deceased's own negligence – Insurance Company cannot be held to indemnify the liability – Risk of the owner is not covered under the policy : *Sharif Khan (Deceased) Through His L.Rs. Vs. Union of India, I.L.R. (2014) M.P. 3183*

– **Section 173** – Claim was dismissed on the ground that appellant is not the same person whose name was stated in the F.I.R. and due to lack of any M.L.C. report and medical papers of the appellant with the charge sheet - Further because of lack of deposition of any doctor in support of documents - Held - OPD ticket was prepared immediately after the incident by the duty doctor of Govt. Hospital - By which appellant was advised for x-ray of knee and spine and x-ray of cervical and C.T. scan of head and back - Held - That appellant sustained injuries in the alleged accident - Impugned award set aside - Claimant is awarded the sum of Rs. 10,000/- with the interest @ 6% p.a : *Badri Singh Vs. M/s. Gautam Travels, I.L.R. (2014) M.P. 161*

– **Section 173** – Dependency – Claims Tribunal deducted 1/3 of annual income of deceased towards his personal expenses – Appellant/mother was given 1/3 of income of deceased and 1/3 of amount to wife of deceased – Wife has already remarried and remained ex-parte – Giving of 1/3 amount to wife of deceased not proper : *Vidhya Bai (Smt.) Vs. Kailashchandra, I.L.R. (2015) M.P. 2972*

– **Section 173** – Exoneration of Insurance Company – Motor Accident Claims Tribunal has to decide the case on the basis of strict liability even if it is proved that the vehicle was being used by the owner contrary to the terms and conditions of the policy – Since the deceased was not travelling in the tractor at the time of accident, Insurance Company is liable to compensate the third person – Appeal filed by the Insurance Company is dismissed : *Sonia Bai Gond (Smt.) Vs. Alok Panika, I.L.R. (2014) M.P. 1546*

– **Section 173** – Injury case – Fracture of wrist & ulna bones – Injured, a government servant – Entitlement – Injured entitled for salary equivalent to loss of leave period as leave could have been utilized elsewhere – Amount of Rs. 25,000/- awarded for loss of income : *Ramkali Thakur (Smt.) Vs. Pancharam, I.L.R. (2015) M.P. 968*

– **Section 173** – Since risk of the cleaner travelling in truck for maintenance or operation of the truck is covered under the policy, his heirs are entitled to receive compensation to the tune of Rs. 1,46,000/- with 9% interest from the date of filing the petition : *Sharif Khan (Deceased) Through His L.Rs. Vs. Union of India, I.L.R. (2014) M.P. 3183*

– **Section 173** - Unless the requisite sum is deposited, the appeal against award allowing claim could not be entertained for setting aside such award - The provisions are mandatory and are equally applicable on entertaining and hearing of cross objections filed by respondents : *Oriental Insurance Co. Ltd. Vs. Manorama (Smt.)*, I.L.R. (2013) M.P. 1399

9. Valuation of Claim in Appeal

– **Section 173**, Court Fees Act (7 of 1870), Section 7 - Reduction of Valuation of Appeal - Appellant prayed for and is permitted to reduce the valuation of claim in appeal - From Rs. 4,00,000/- to Rs. 3,00,000/- : *Manju (Smt.) Vs. Mohd. Jamil*, I.L.R. (2014) M.P. 437

MOTOR VEHICLES RULES, M.P. 1994

– **Rules 64, 67** – See – Motor Vehicles Act, 1988, Section 68 : *Shaheed Khan Vs. State of M.P.*, I.L.R. (2011) M.P. *117 (DB)

– **Rule 67** - See - Motor Vehicles Act, 1988, Section 68 : *Mohd. Yakub Vs. Regional Transport Authority, Ujjain*, I.L.R. (2014) M.P. 5 (DB)

– **Rule 116A** – Classification of routes and control of plying vehicles thereon – Classification of routes is within the power and authority of State and the object behind the same is also in the interest of the public at large with specific reference to the public residing in rural areas : *Shaheed Khan Vs. State of M.P.*, I.L.R. (2011) M.P. *117 (DB)

– **Rule 204(4)** – Maintenance of bus stand by agency – Provision has been incorporated for providing better facilities at bus stands and for their better management – It is within rule making authority of State : *Shaheed Khan Vs. State of M.P.*, I.L.R. (2011) M.P. *117 (DB)

MOTORYAN KARADHAN ADHINIYAM, M.P. (25 OF 1991)

– **Section 16(3)**, Criminal Procedure Code, 1973 (2 of 1974), Section 451 & 457 - Appellant's Bus seized by the Officer-in-charge, Traffic, for offence u/s 16(3) of the Adhiniyam as well as for offences under Motor Vehicles Act and the Rules - Said Officer was not notified by the State Government under its notification dated 09.01.1992 to seize vehicles for any violation of the Adhiniyam and as such was not competent to seize the vehicle for offence u/s 16(3) of the Adhiniyam but was competent to seize it for offences under Motor Vehicles Act - Seizure of the Bus u/s 16(3) of the Adhiniyam was bad in law and is quashed - Bus will be treated as seized only under the Motor Vehicles Act -

Appellant can make an application for its custody before the appropriate Court : *Padmesh Goutam Vs. State of M.P., I.L.R. (2013) M.P. 2510 (DB)*

– **Section 16(3) & 16(4)** – See – Constitution – Article 226 & 227 : *Shailendra Kumar Motwani Vs. State of M.P., I.L.R. (2011) M.P. 2153*

– **Section 16(3), 16(4) & 16(5)**, Criminal Procedure Code, 1973 (2 of 1974), Section 451 & 457 – Taxation authority/authorized officer has a power to seize and detain a motor vehicle in case where he has reason to believe that it is being used without payment of tax, penalty or interest due – On such seizure the owner or person incharge of the vehicle is required to and has the remedy to apply to the taxing authority or the officer authorized in this behalf. Application u/s 457 of the Code filed before the Chief Judicial Magistrate is rightly rejected in view of ouster clause contained in Section 16(5) of the Adhinyam : *Shailendra Kumar Motwani Vs. State of M.P., I.L.R. (2011) M.P. 2153*

**MPERC (ESTABLISHMENT OF FORUM AND ELECTRICITY
OMBUDSMAN FOR REDRESSAL OF GRIEVANCES OF THE
CONSUMERS) (REVISIONS-I) REGULATIONS, 2009**

– **Clause 2.4 (d), (m) and 3.35** - See - Electricity Act, 2003, Section 126 & 135 : *M.P. Madhya Kshetra Vidyut Vitran Co. Ltd. Vs. Smt. Savitri Devi, I.L.R. (2013) M.P. 1027*

MUNICIPAL CORPORATION ACT, M.P. (23 OF 1956)

– **Section 2, 30 & 293**, Nagar Tatha Gram Nivesh Adhinyam, M.P., (23 of 1973), Section 2 (c), Land Development Rules, M.P., 1984, Rule 2 and Land Development Rules M.P., 2012, Rules 2, 13 & 105 – Application for Building permission – Date of consideration – The object of Act of 1973 is not only the development but the control of building – For constructing building three applications are required to be made (i) for grant of permission from Development Authority under the Land Development Rules (ii) Grant of permission from Colonizer Authority (iii) Application for grant of building permission – Petitioner was granted permission for development under Rules, 1984 – An application for grant of building permission was filed, however, the said application remained pending and Rules 2012 came into force – Petitioner was directed to submit revised plan as per the Rules, 2012 – Held – No vested right had accrued in favour of petitioner to claim grant of building permission only under the provisions of Land Development Rules, 1984 – As the application was pending and Rules 2012 have come into force therefore, the application was to be considered only and only under the provisions of Rules, 2012 – Opinion of the building sanction authority that the petitioners

were not to be granted FAR of 2.5 but a lesser FAR as per the Rules, 2012, is in accordance with law – Petition dismissed : *Ashish Kumar Vs. State of M.P., I.L.R. (2015) M.P. *3*

– **Section 5, 132 & 433** - See -Constitution - Article 246 - Entries 53 and 56 of List II of Schedule VII : *NTPC Ltd., Sidhi Vs. The Commissioner, Municipal Corporation, I.L.R. (2012) M.P. 1567 (DB)*

– **Section 9(1)(c) & 441** - Maintainability - Challenge to the nomination made u/s 9(1)(c) of the Act by filing of Public Interest Litigation - Held - Nomination can be challenged by resorting to an Election Petition by the councillor and no one else - Petition filed in the form of Public Interest Litigation - Not maintainable : *Prem Narayan Yadav Vs. State of M.P., I.L.R. (2014) M.P. 716 (DB)*

– **Section 11(5)** – Caste – Respondent No.1 belonged to Mali Caste – Saini which is a sub-caste of Mali is included in the notification – Plea that respondent No.1 being the member of Mali Caste is entitled to benefits of reservation for Saini sub-caste not permissible – No evidence to show that enlisted caste included some other caste would have been accepted – Finding that respondent No.1 not entitled to seek his election from reserved seat also affirmed : *Jagdish Kapoor (Mamaji) Vs. Dilip Alias Banti Nagori, I.L.R. (2012) M.P. 1395*

– **Section 11(5)** – Requisite Qualification – Caste – Petitioner, a returned candidate belongs to Khatri by Caste – In view of explanation appended to Section 11A, only such castes as are notified under M.P. Lok Seva (Anusuchit Jatiyon, Anusuchit Jan Jatiyon Aur Anya Pichhade Vargon Ke Liye Arakshan), Adhinyam, 1994 can be recognized for the purpose of election to the seat of a Municipal Councillor – Khatri does not find place in notification – Election rightly set aside : *Jagdish Kapoor (Mamaji) Vs. Dilip Alias Banti Nagori, I.L.R. (2012) M.P. 1395*

– **Section 29 & 30** - Whether conjoint reading of both the Sections permits the corporation to delay the meeting beyond 15 days on the ground of preparation of agenda - Held - The Authorities are bound to call the meeting - Further held, there is nothing in Section 30 which puts a cap on number or the subject of requisition meeting : *Shammi Sharma Vs. Municipal Corporation, I.L.R. (2013) M.P. 2569*

– **Section 52, 53 & 420**, Municipal Corporation (Appointment and conditions of Service of Officers and Servants) Rules, M.P. 2000, Rule 13(2) and Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rule 9 - Petitioner Additional Commissioner, Municipal Corporation, Bhopal was suspended by the Municipal Commissioner in terms of the directions of the State Government - Commissioner has failed to exercise the discretion vested in him u/r 9 and has exercised the same at the

dictates of the Appellate Authority - Order of suspension quashed : *K.K. Singh Chouhan Vs. State of M.P., I.L.R. (2013) M.P. 820*

– **Section 80 & 84** – Grant of lease of immovable property – An agreement was entered into between the Municipal Corporation and the builder – Municipal Corporation delegated limited right of recovering premium from allottee and to recommend the person to whom the shop should be allotted, to the builder – It cannot be held that the agreement in question between Municipal Corporation and Builder is contrary to law : *Vijay Shanker Shukla Vs. Municipal Corporation, Jabalpur, I.L.R. (2015) M.P. 3275 (DB)*

– **Section 132, 135, 136 & 138**, Municipality (Determination of Annual Letting Value of Buildings/Lands) Rules, M.P. 1997 - Non-payment of Property Tax - Ground raised in election petition - Dismissal of election petition on the ground of non-payment of property tax without considering the amended provisions of Section 132, 135, 136 & 138 of Act of 1956 and Rules, 1997 bad - Findings bad : *Pushkar Singh Tomar Vs. K.P. Sharma, I.L.R. (2011) M.P. *46*

– **Section 132, 135 & 138** – Property Tax – “Whether the residential blocks situated within the precincts of the petitioner University to house the teachers and staff of the University would be subject to property tax u/s 132 & 135 of the M.P. Municipal Corporation Act, 1956”– Held – Property being transferred by the State Government in favour of the petitioner vide sub-section (1) of Section 55 of 1963 Act is for achieving the object for which the University has been brought into existence – Thus, there is no vesting in title as would create any ownership of property in favour of the petitioner – The ownership continues with the State which leads to a necessary corollary that being a property owned by State, it is exempted from Property Tax as per Section 136(a)(ii) of 1956 Act – For this reason also the respondents are not justified in imposing the impugned property Tax – Petition allowed : *Jawahar Lal Nehru Krishi Vishwa Vidyalaya Vs. Municipal Corporation, Jabalpur, I.L.R. (2014) M.P. 998*

– **Section 132, 433**, Nagar Palika (Bhawno/Bhumiyo Ke Varshik Bhada Mulya Ka Avdharan) Niyam, M.P. 1997 - Imposition of service tax by corporation, by resolution and demand thereof - Held - Various clauses of Section 132 empowers corporation to impose service tax by resolution - Corporation is within its competence - Recovery of the same is in accordance with law - No case for interference : *Bhagwan Das Vs. Indore Municipal Corporation, I.L.R. (2014) M.P. 287*

– **Section 132(6)(d)(e)(o)** - See -Cantonment Act, 2006, Section 66 : *Mahakaushal Transport Sahkarita Maryadit Vs. Union of India, I.L.R. (2012) M.P. *79*

– **Section 133** – See – Constitution – Article 14, 243-X(b) : *Hoarding Advertisement People Welfare Association Vs. State of M.P., I.L.R. (2015) M.P. 2611 (DB)*

– **Section 136, 138 & 140**, Municipality (Determination of Annual letting Value of Building/Lands) Rules (M.P.),1997 - Rule 10 - Annual Letting Value - Separate Rates for Separate Types of Houses - It is open to the holder of tenement to declare the manner in which he wants the assessment of the building and for that the return appended with the resolution is a sufficient guide : *Mithulal Jain Vs. State of M.P., I.L.R. (2012) M.P. *80 (DB)*

– **Section 136(c)** - Exemption from property Tax - Demand notices for property tax to the petitioner, a private educational institution - No express provision that exemption will not apply to private educational institution - Held - The petitioner's educational institution/school is exempted from the imposition of property tax in respect of building and land used by it exclusively for educational purposes : *Satna Diocesan Society Vs. The Municipal Corporation, Rewa, I.L.R. (2013) M.P. 367*

– **Section 149** - See -Constitution - Article 226 : *Satna Diocesan Society Vs. The Municipal Corporation, Rewa, I.L.R. (2013) M.P. 367*

– **Section 292A & B** - Amending Provision - Limit to the extent of application - Petitioners, private colonizer submitted application for development & building permission on 23.12.2009 - Requisite deposits were made by petitioners with regard to fees payable - Amended provision came into force on 19.04.2010 - Held - Applications for building permission or development of colony submitted have to be processed and decided in accordance to the statutory provisions applicable on the date permission or sanction is accorded - In insisting on doing so the respondents committed no error - Petition dismissed : *Paras Lifestyles Pvt. Ltd. Vs. State of M.P., I.L.R. (2011) M.P. *127*

– **Section 299-A** – Power can be utilized under this section when construction is made in violation of act a rules or in public interest, but after due opportunity of hearing construction not found illegal – On the basis of sanction granted to petitioners permitted to make construction – Petition allowed : *Rajesh Asnani Vs. State of M.P., I.L.R. (2012) M.P. 883*

– **Section 305** – Colorable Exercise of Power – Power to demarcate regular line of public street vests with Corporation – Vesting is automatic once the requisite conditions are satisfied – Ultimate result may be widening of public street – Exercise of power of determining the regular line of public street cannot be said to be exceeding the powers so conferred – Exercise of power cannot be said to be a colorable exercise of power : *Bharat Sanchar Nigam Ltd. Vs. Commissioner, Municipal Corporation, I.L.R. (2011) M.P. *92*

– **Section 305** – Property Vested in Corporation – Conditions precedent for exercise of power – (i) regular line of public street, either as existing or as determined for

the future – (ii) beyond the front of immediately adjoining buildings : *Bharat Sanchar Nigam Ltd. Vs. Commissioner, Municipal Corporation, I.L.R. (2011) M.P. *92*

– **Section 305 & 306** – See – Constitution – Article 300-A : *Prem Narayan Patidar Vs. Municipal Corporation, Bhopal, I.L.R. (2015) M.P. 1223*

– **Section 405** – See – Constitution – Article 243Q : *State of M.P. through Secretary, Urban Administration & Development Deptt. Vs. Abhinesh Mahore, I.L.R. (2015) M.P. 754 (DB)*

– **Section 420** - Power to demand punishment or dismissal - Non-obstante clause gives an overriding effect on all other provisions of the Act as well as sub-ordinate legislation including the rules and empowers the State Govt. to direct Corporation to suspend, fine or otherwise punish any officer or servant of Corporation who is negligent in discharge of his duties : *K.K. Singh Chouhan Vs. State of M.P., I.L.R. (2013) M.P. 989 (DB)*

– **Section 441** – Election Petition – Nirvachan Niyam, Rule 9A – Name of appellant was deleted from the voter list – Appellant contested the election of Mayor of Municipal Corporation and was elected under the interim order of High Court – Election Petition also filed against her also on the ground of deletion of her name from voter list – Election Petition pending before Tribunal involves the question of correction and deletion of her name in the voter list – The Election Tribunal has to record findings and such findings would supersede the orders passed by Registration Officer – Any order passed in W.A. would adversely effect the proceedings pending before the Election Tribunal – Writ Appeal disposed off with direction that matter be finally adjudicated by Election Tribunal and till that date the order of Registration Officer deleting the name of the Petitioner shall not be given effect and shall be subject to the final decision by the Election Tribunal : *Nirmala Pathak (Smt.) Vs. State of M.P., I.L.R. (2012) M.P. 10 (DB)*

– **Section 441** - Election Petition - Non-joinder of defeated candidates - Maintainability of Election Petition - There is no provision under Act 1956 like Representatives of People Act, 1951 that in case petitioner seeks relief of his declaring him to be elected, then election petition is liable to be dismissed for not joining all defeated candidates - Election Petition could have been entertained and adjudicated for the remaining prayer except the prayer for declaring him elected : *Pushkar Singh Tomar Vs. K.P. Sharma, I.L.R. (2011) M.P. *46*

– **Section 441-B(b), (d)(ii) & 441-G** - Corrupt practice - Defeated candidate - Cannot be declared as disqualified to contest such election on the ground of corrupt practices - He could be declared to be disqualified to vote in such election for five years

and such disqualification could be removed by the State Govt : *Pushkar Singh Tomar Vs. K.P. Sharma, I.L.R. (2011) M.P. *46*

– **Section 441-C**, Municipal Corporation (Election Petition) Rules, M.P. 1963, Rules 3 & 5 and Civil Procedure Code, 1908, Order 18 Rule 4 & 13 - Procedure to be followed - Memorandum of substance of evidence - Petitioner was rightly allowed to produce the examination-in-chief on affidavit - However, subsequently to that Court had to make the memorandum of substance of evidence of witnesses examined - Memorandum of substance of witness not recorded - Evidence of petitioner taken by Court could not be deemed to be taken in accordance with law : *Pushkar Singh Tomar Vs. K.P. Sharma, I.L.R. (2011) M.P. *46*

– **Section 441-D** - See - Representation of the People Act, 1951, Section 101 : *Rekha Choudhary (Smt.) Vs. Smt. Suman Ahirwar, I.L.R. (2013) M.P. 2464*

– **Section 441-F**, Constitution, Article 226 - Appropriate Remedy - Revision - Section 441-F provides for revision before the High Court against the decision of election Tribunal within period of 30 days of such decision - Held - Filing of petition under Article 226 of the Constitution was misconceived : *Lata Mishra (Ms.) Vs. District Election Officer, Rewa, I.L.R. (2013) M.P. 1808 (DB)*

– **Section 441-F(2)** - See - Civil Procedure Code, 1908, Order 9 Rule 13 : *Pushkar Singh Tomar Vs. K.P. Sharma, I.L.R. (2011) M.P. *46*

– **Section 441 (3)** - Election Petition - Petitioner did not deposit requisite amount of Rs. 250/- alongwith election petition but deposited Rs. 100/- after the expiry of the period of filing of election petition - Held - Provisions u/s. 441 (3) are specific and mandatory in nature - It is a settled law that amount of security can not be reduced and delay in the deposit can not be condoned - No fault is found in the order passed by the learned single Judge in dismissing the petition - Appeal dismissed : *Lata Mishra (Ms.) Vs. District Election Officer, Rewa, I.L.R. (2013) M.P. 1808 (DB)*

– **Section 441(4)(a)** – Validity of election of petitioner as Corporator was challenged by respondent – After recording evidence of respondent No. 1 petitioner filed an application u/s 441(4)(a) of the Act praying that respondent No.1 be directed to implead all the candidates as party which was dismissed hence present petition has been filed – Held – All the returned candidates are required to be impleaded in case the validity of election of all the returned candidates is challenged – In the present case the validity of election of petitioner is under challenge – Therefore, all the elected Corporators are neither necessary nor proper party – Same is required if the validity of a particular election is challenged : *Dinesh Pandey Vs. Shri Bharat Mathurawala, I.L.R. (2014) M.P. 1746*

**MUNICIPAL CORPORATIONS (APPOINTMENT AND
CONDITIONS OF SERVICE OF OFFICERS AND SERVANTS),
RULES, M.P. 2000**

– **Rule 10(3)** – Promotion – Rules are statutory in nature – Promotion granted to the Petitioners after approval of the State Govt. – Petitioners also joined on promoted posts – Approval was subsequently withdrawn without affording any opportunity of hearing to the Petitioners – Even otherwise objectors were not eligible to promotion – Petition allowed : *S.K. Gupta Vs. State of M.P., I.L.R. (2014) M.P. 2497*

– **Rule 13(1), Schedule I** – See –Municipal Service (Scale of Pay & Allowance) Rules, M.P. 1967 : *Municipal Corporation, Katni Vs. Madhu Pasreeja, I.L.R. (2011) M.P. 859 (DB)*

– **Rule 13(2)** - See - Municipal Corporation Act, M.P., 1956, Section 52, 53 & 420 : *K.K. Singh Chouhan Vs. State of M.P., I.L.R. (2013) M.P. 820*

**MUNICIPAL CORPORATION (ELECTION PETITION) RULES,
M.P. 1963**

– **Section 3 & 5** - See - Municipal Corporation Act, M.P., 1956, Section 441-C : *Pushkar Singh Tomar Vs. K.P. Sharma, I.L.R. (2011) M.P. *46*

**MUNICIPAL EMPLOYEES (RECRUITMENT AND CONDITIONS
OF SERVICE) RULES, M.P. 1968**

– **Rules 2, 4, 15 & 16** - Once, a person is appointed to or borne on the cadre of the Municipal staff other than a member of the State Municipal Service (Executive), he has to be treated an employee of the particular Municipality and his seniority has to be counted in the aforesaid Municipality : *Hari Charan Soni Vs. State of M.P., I.L.R. (2011) M.P. *8*

– **Rule 51** – See – Municipalities Act, M.P. 1961, Section 94(4) : *Sujjet Kumar Nigam Vs. State of M.P., I.L.R. (2012) M.P. 1257*

MUNICIPAL SERVICES (PENSION) RULES, M.P., 1980

– **Rule 1** – See – Payment of Gratuity Act, 1972, Section 14 : *Municipal Corporation, Burhanpur Vs. Nathu, I.L.R. (2014) M.P. 2315*

MUNICIPALITIES ACT, M.P. (37 OF 1961)

– **Section 5** - See – Entertainments Duty and Advertisements Tax Act, M.P., 1936, Section 4(1) & (2)(d) : *State of M.P. Vs. Bharat Bhusan Vyas, I.L.R. (2012) M.P. 2622 (DB)*

– **Section 5-A** - Alteration of limits - Municipal Area of Lanji was constituted by notification including the Gram Panchayats Bisoni, Purva Tola, Tekri and Dulhapur - However, after receiving objections these areas were excluded from Municipal Area - Held - Govt. having notified the larger area by including the areas, has to follow the procedure prescribed under Section 5-A to exclude any such area - Subsequent notification excluding the areas without following the procedure as laid down under Section 5-A of the Act is quashed - Govt. may proceed in accordance with Section 5-A for the exclusion of areas : *Kishore Samriti Vs. State of M.P., I.L.R. (2013) M.P. 138 (DB)*

– **Section 5-A** – See – Constitution – Article 243Q, : *State of M.P. through Secretary, Urban Administration & Development Deptt. Vs. Abhinesh Mahore, I.L.R. (2015) M.P. 754 (DB)*

– **Section 5-A(2)** – Objections made with regard to the first notification expressing intent of inclusion of villages in the limits of Chhindwara Municipality were decided by the Collector and proposal was submitted to Governor on the basis of which final notification was issued on 28.08.2014 – Held – Sub-section (2) of Section 5-A explicitly postulates that the objection received by the Collector with regard to the intention to exclude or include certain areas from the limits of municipal areas must be placed before Governor for consideration before taking final decision – Impugned decision vitiated being not considered by the competent authority i.e. the Governor – Hence, original notification dated 18.06.2014 will remain undisturbed and objections concerning original notification be placed before the Governor for consideration : *Abhinesh Mahore Vs. State of M.P., I.L.R. (2015) M.P. 376 (DB)*

– **Section 19 & 3(7)** – See – Constitution – Article 243 : *Sangeeta Bansal (Smt.) Vs. State of M.P., I.L.R. (2015) M.P. 3217*

– **Section 19 & 47(1)** – Recalling of President – Three fourth of elected Councillors – The definition of Councillor has to be read in the context of Section 19 of the Act – Section 19(1)(b) explicitly refers to the Councillors elected by direct election from the wards – Whereas President is elected by direct election from the Municipal area – Process of recall of President can be initiated only the Councillors elected by direct election – Merely because President is part of the Municipal Council, would not make him an elected Councillor within the meaning of Section 19(1)(b) and 47 – For initiating

the process of recall of President, only specified number of elected Councillors of the Council need to be reckoned – For reckoning the number of three fourth of elected Councillors, the person holding the post of President cannot be taken into consideration : *Sangeeta Bansal (Smt.) Vs. State of M.P., I.L.R. (2015) M.P. 1662 (DB)*

– **Section 20** - Assignment of election petition to ADJ - District Judge has power to assign election petition to ADJ by virtue of Section 7 of M.P. Civil Courts Act, 1958 : *Rajni Sahu (Smt.) Vs. Smt. Asma, I.L.R. (2011) M.P. *47*

– **Section 20** – Election Petition – Inspection of invalid votes – Respondent No. 1 materially affected – The Trial Court/Tribunal by impugned order called for inspection of 355 ballot papers which were declared invalid during the counting –Held – The issue can be decided only after ballot papers, which were declared invalid, are inspected in the Court as trial Court has jurisdiction for calling the ballot papers for inspection : *Rakesh Jain Vs. Chhakkilal Kushwaha, I.L.R. (2011) M.P. 929 (DB)*

– **Section 20** – Election Petition – Recounting of votes – Court is not powerless in ordering of recounting of ballot papers – However, justification for an order of recounting of votes should be by placing material by the petitioner, before an order for recount is actually made : *Rajesh Kumar Vs. Premchand, I.L.R. (2011) M.P. 1056*

– **Section 20** - Forum - And in any other case - Words "and in any other case" are significant and important - Election in question was held Karera where the permanent post of ADJ exists - Election petition filed before District Judge, Shivpuri - Held - It is not always necessary that Civil District and Revenue District must be common - Where election is held within Revenue District in which the Court of District Judge is situated, the election petition is to be necessarily presented to the District Judge alone - If the Court of District Judge is not situated in Revenue District in which election is held, the election petition may be presented to the Additional District Judge having permanent seat : *Rajni Sahu (Smt.) Vs. Smt. Asma, I.L.R. (2011) M.P. *47*

– **Section 20 & 22** – See – Civil Procedure Code, 1908, Order 7 Rule 11 : *Amit Kumar Sharma Vs. Madanlal, I.L.R. (2011) M.P. 1363*

– **Section 20, 22 & 26** – Corrupt Practice – Allegations are in the nature of criminal charges – There should be no vagueness in the allegations – if allegations are vague and general and particulars are not pleaded, election petition cannot be proceeded for want of cause of action – Names of persons and place where voters were influenced not mentioned – Names of voters who were transported in govt. vehicles not disclosed – Particulars of vehicles also not disclosed – Sufficient particulars not stated for making out a case for corrupt practice – Grounds with regard to corrupt practice directed to be

deleted – Election Petition shall proceed on other grounds : *Amit Kumar Sharma Vs. Madanlal, I.L.R. (2011) M.P. 1363*

– **Section 26 & 22(a)(d)(i)**, Civil Procedure Code (5 of 1908), Order 7 Rule 11 – Revision under Section 26 – Election petition rejected as no cause of action disclosed – Revision – Held – Rejection of nomination paper on the ground of furnishing of wrong information or suppressing material information is not enforceable – Can not be a sufficient ground to challenge validity of the election of a returning candidate – No interference require – Revision dismissed : *Aziz Khan Vs. Akram Hussain, I.L.R. (2012) M.P. 1391*

– **Section 26(2)**, Municipalities (Election Petition) Rules, M.P. 1962, Rule 19(2) – Security for the Cost – Applicant has not deposited a sum of Rs. 250/- as security for the cost of the revision with the High Court “at the time of presentation” of the petition – Due to non-compliance of the same, this petition ought to be dismissed – Held – When the decision passed by the Judge has been challenged by filing the revision before the High Court u/s 26(2) of the Act, then at the time of presentation, the security of the cost must be deposited and after pointing out of the defect, if such deposit is made in the later part of the day, it would not come within the connotation “at the time of presentation” and it would lead to consequence of dismissal as specified in the later part of sub-rule 2 of Rule 19 of Election Petition Rules : *Deepak Kumar Soni Vs. Ashok Kumar, I.L.R. (2014) M.P. 3267*

– **Section 26(2) & 29(2)**, Limitation Act (36 of 1963), Section 5 – Election Petition – Section 5 of the Limitation Act does not apply to the filing of an election petition under the Act : *Ravindra Chourasia Vs. Ramashankar, I.L.R. (2012) M.P. 1402*

– **Section 47** – No confidence motion – Recording of satisfaction – It is not necessary that the Collector should conduct an enquiry with regard to identity of persons as submitted on behalf of the appellant – The affidavits filed by the 12 Councillors and their photo identity card alongwith the report of the C.E.O. are sufficient enough to record the satisfaction about their identity and if the list and other documents submitted by the C.E.O. also supports the same, the Collector can proceed in the matter by recording the satisfaction and in doing so as is done in this case Collector has not committed any error – Appeal dismissed : *Kamal Kant Bhardwaj Vs. State of M.P., I.L.R. (2014) M.P. 2491 (DB)*

– **Section 47(1)** – Recalling of President – Total number of the elected Councillors – Means, elected Councillors available on the date of signing of the proposal – On this basis calculation of three-fourth strength has to be counted : *Sangeeta Bansal (Smt.) Vs. State of M.P., I.L.R. (2015) M.P. 3217*

– **Section 47(2)** – Satisfaction of the Collector – Meaning – Collector himself verified documents and eligibility of Councillors and their intention of making proposal for racall – Their signature on proposal – Correctness of signing of proposal was tested by Collector himself : *Sangeeta Bansal (Smt.) Vs. State of M.P., I.L.R. (2015) M.P. 3217*

– **Section 94(4)**, Municipal Employees (Recruitment and Conditions of Service) Rules, M.P. 1968 – Rule 51 and State Municipal Service (Executive) Rules (M.P.), 1973 – Appointment of the petitioner is made by the Municipality subject to confirmation by the State Government – Rules 1973 are not applicable to the petitioner who is holding the post of Sub-Engineer – He shall be governed by the Rules 1968 being municipal employee – President-in-council is having no power to impose the penalty on him – Resolution imposing penalty passed by President-in-council and the order communicating the same passed by the Chief Municipal Officer, are without jurisdiction and per se illegal : *Sujet Kumar Nigam Vs. State of M.P., I.L.R. (2012) M.P. 1257*

– **Section 109**, M.P. Municipalities (Transfer of Immovable Property) Rules, 1996, Rule 3 – Disposal of Municipal Property – Unless measures mentioned in the above provisions are adhered to, no right, title or interest in municipal property is created in any individual or person : *Rakesh Vs. State of M.P., I.L.R. (2011) M.P. 1901*

– **Section 109 & 323** – Suspension of work – Municipal Council granted permission to raise first floor without adhering to the statutory provisions – Collector suspended the order dated 21.9.2000 – Held – Collector was well within his right to have intervened : *Rakesh Vs. State of M.P., I.L.R. (2011) M.P. 1901*

– **Section 127, 129 & 355** - Levy of Terminal Tax - State Government prescribed the rate of terminal tax by M.P. Terminal Tax (Assesment & Collection) on the Goods Exported from Madhya Pradesh Municipal Limits, Rules 1996 - Resolution of Municipal Council prescribing higher rate of terminal tax, is without any authority of Law : *Mohan Chopada Vs. State of M.P., I.L.R. (2012) M.P. 2930*

– **Section 131, 132, 164 & 322** - Demand notice for export tax issued to the appellant in exercise of powers u/s 164 - The Collector has absolutely no authority to quash the demand notice - Powers u/s 131 & 132 are exercisable by the State Government and have not been delegated to the Collector - Appeal dismissed : *S. Goenka Lime & Chemicals Vs. Nagar Panchayat, Kaymore, I.L.R. (2011) M.P. 358 (DB)*

– **Section 133** - See - Constitution, Article 265 : *Mohan Chopada Vs. State of M.P., I.L.R. (2012) M.P. 2930*

– **Section 167(4)(d)(e)** - Recovery - Municipal Council seized immovable property and attached and locked the administrative building of the Company - Procedure as prescribed u/s 167(4)(d)(e) of Act, 1961 nowhere provides for attaching the building

by putting lock over it - A mode which is not provided in the Statute cannot be invented by the Authority which is created by the very said statute : *Municipal Council Vs. State of M.P., I.L.R. (2014) M.P. 43*

– **Section 172(2)** – Appeal against the demand of tax which was rejected by the trial court on the ground that the petitioner has failed to deposit the amount claimed from him – Subsequently petitioner has deposited the amount – Held – Section 172(2) does not provide the payment of disputed tax as condition precedent for entertaining an appeal – Such appeal can be admitted or entertained only but cannot be heard or disposed of without pre-deposit of the tax – Trial Court has not afforded any opportunity to the petitioner to deposit the amount of tax – Impugned orders are quashed – Matter is remanded to the trial court to decide the same on merits : *Ram Lakhan Tripathi Vs. Chief Municipal Officer, I.L.R. (2014) M.P. 3143*

– **Section 312** - See - Constitution - Article 226 : *Municipal Council Vs. State of M.P., I.L.R. (2014) M.P. 43*

– **Section 319** - Two Months notice - 2 months notice required to be given to Municipal Council u/s 319(1) of the Act - Held - Has to be given in respect of anything done or purporting to be done under the Act - Withholding of amount on account of leave encashment of the employee cannot be said to be an act done or purporting to be done under the Act - Hence, Suit by Municipal employee instituted without giving such notice is maintainable - Suit was also brought within limitation : *I.B. Mishra Vs. Nagar Panchayat, Sohagpur, I.L.R. (2013) M.P. 2917*

– **Section 319(1)** – Notice under – Suit of the plaintiff was for declaration of title and perpetual injunction which falls squarely within the type of suit contemplated under Section 38 of Specific Relief Act 1963 – The bar contained in Section 319(1) has no application – Appeal dismissed : *Nagar Palika Parishad Mihona Vs. Ramnath, I.L.R. (2012) M.P. 1282*

– **Section 323** - Collector had no power or jurisdiction to set aside the resolution passed by the Municipality deciding to regulate the holding of functions in the town hall itself instead of giving it to the private contractor : *Virendra Kumar Gupta Vs. State of M.P., I.L.R. (2011) M.P. 714*

– **Section 323** - Petitioner seized and locked the immovable property of Company and attached and locked the administrative building - Lock was broke open after the intervention of the local administration and the possession of the building was given to the Company - In view of Section 323 of Act, 1961, it cannot be said that Divisional Commissioner, Collector did any illegality in correcting the illegal action by the petitioner : *Municipal Council Vs. State of M.P., I.L.R. (2014) M.P. 43*

– **Section 358** - Levy of parking fee in bus stand - Levy of parking fee for the parking of motor, trucks and buses in the bus stand owned and maintained by Nagar Panchayat is within its power - However, if Nagar Panchayat is demanding exorbitant or unreasonable parking fee without any quid pro quo, the same can always be challenged in accordance with law : *Nagar Panchayat, Kurwai Vs. Mahesh Kumar Singhal, I.L.R. (2013) M.P. 2291 (SC)*

– **Section 358** - Powers of Municipalities - Section 358(7)(m) empowers Municipality to regulate or prohibit the use of any ground under its control and it does not compel any body to use it as halting place of vehicles : *Nagar Panchayat, Kurwai Vs. Mahesh Kumar Singhal, I.L.R. (2013) M.P. 2291 (SC)*

MUNICIPALITIES (ELECTION PETITION) RULES, M.P. 1962

– **Rule 19(2)** – See – Municipalities Act, M.P., 1961, Section 26(2) : *Deepak Kumar Soni Vs. Ashok Kumar, I.L.R. (2014) M.P. 3267*

MUNICIPALITY (DETERMINATION OF ANNUAL LETTING VALUE OF BUILDING/LANDS) RULES (M.P.), 1997

– **Rule 10** - See - Municipal Corporation Act, M.P., 1956, Section 136, 138 & 140 : *Mithulal Jain Vs. State of M.P., I.L.R. (2012) M.P. *80 (DB)*

- See - Municipal Corporation Act, M.P., 1956), Section 132, 135, 136 & 138 : *Pushkar Singh Tomar Vs. K.P. Sharma, I.L.R. (2011) M.P. *46*

MUNICIPALITIES (THE CONDUCT OF BUSINESS OF THE MAYOR-IN-COUNCIL/PRESIDENT-IN-COUNCIL AND THE POWERS AND FUNCTION OF THE AUTHORITIES) RULES, M.P., 1998

– **Rule 12** – See – Prevention of Corruption Act, 1988, Section 13(1)(d), : *Sandeep Jaiswal Vs. Mithilesh Jain, I.L.R. (2011) M.P. 1787 (DB)*

MUNICIPAL SERVICE (SCALE OF PAY & ALLOWANCE) RULES, M.P. 1967

– **Municipal Corporations (Appointment and Conditions of Services of Officers and Servants) Rules, M.P. 2000, Rule 13(1), Schedule I** – Bal Mandir Shikshikas - Post of Bal Mandir Shikshikas is not mentioned in the set up as provided in Scheduled I of the Rules, 2000 – Rules, 2000 do not apply – Service Conditions of Bal Mandir Shikshikas not governed by Rules of 2000 : *Municipal Corporation, Katni Vs. Madhu Pasreeja, I.L.R. (2011) M.P. 859 (DB)*

MUSLIM LAW

Muslim Law – Alienation of undivided property – There is no prohibition not to alienate any specific item of undivided share – Normally, any specific item should not be alienated as it may cause anomaly to the other co-owners – However, the alienation can not be said to be illegal or not recognized by law if a co-owner alienates any specific property without the consent of co-owners – However, the co-owners may sue for partial partition of the property so alienated : *Akbar Khan Vs. Farida Bai, I.L.R. (2012) M.P. 737*

Muslim Law - Hiba-bil-iwaz - It is distinguishable from hiba or simple gift - It is a gift for consideration - In reality it is a sale and where the value of the property is more than Rs. 100/- it must be effected by a registered instrument : *Mohd. Iqbal Khan Vs. Late Manzoor Ahmad Khan, I.L.R. (2012) M.P. 1922*

MUSLIM WOMEN (PROTECTION OF RIGHTS ON DIVORCE) ACT (25 OF 1986)

– **Section 3** – See – Civil Procedure Code, 1908, Section 115 : *Munna Khan @ Abid Vs. Shahena Bano, I.L.R. (2015) M.P. 1565*

– **Section 3** – See – Criminal Procedure Code, 1973, Section 125 to 128 : *Qureshia Bi Vs. Abdul Hameed, I.L.R. (2014) M.P. 2466*

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NAGARIYA KSHETRO KE BHOOMIHIN VYAKTI (PATTADHRITI ADHIKARON KA PRADAN KIYA JANA) ADHINIYAM, M.P., 1984 (15 OF 1984)

– **Section 2** - Occupier of Govt. Land - Respondents in possession of Nazul Land for the last several years which was proposed to be settled in their favor by the State Govt. - House constructed over the land was also purchased by respondents - Appellant inducted as tenant by respondent No. 5 - Decree of eviction also passed against appellant - Occupancy rights of respondent No. 5 are already pre-settled and finally adjudicated - Appellant can not be allotted land - Provisions of Adhinyam 1984 can be attracted only in cases where land occupied by a landless person must be Government land on which no other person has any pre-existing rights and must therefore, be vacant and free from encumbrance : *Preetam Vs. State of M.P., I.L.R. (2012) M.P. 1509 (DB)*

– **Section 3** – Grant of Patta – Petitioner possessing the property in question (even as a tenant of trespasser) and there is no material to hold that she is not a landless person – Patta granted in petitioner’s favour by Sub-Divisional Officer is a valid Patta : *Kamla Bai (Smt.) Vs. State of M.P., I.L.R. (2011) M.P. 921*

NAGAR PALIKA (REGISTRATION OF COLONIZERS, TERMS & CONDITIONS) RULES, M.P. 1998

– **Rule 12(A) & 13** - Permission of Construction - Builder/Society not completing development work in 6-7 days - Rules of 1998 vest the Corporation with ample remedial powers - Municipal Corporation is directed to carry out the necessary inspection of development work carried out by the respondent/Society within a period of four weeks and, if work is not complete it shall take action as directed and mandated under Rules and to issue necessary permission to the appellant/petitioner : *Ramkatori Goyal (Smt.) Vs. Municipal Corporation, I.L.R. (2013) M.P. 2513 (DB)*

– **Rule 12(A) & 13** - Permission of Construction - Issuance of completion certificates of development work is not a pre-requisite for grant of permission to commence building construction in any colony - However, it is obligatory upon the competent authority under Rule 12(A) of Rules 1998 to ensure development process is completed by the colonizer before permission for construction of building is granted : *Ramkatori Goyal (Smt.) Vs. Municipal Corporation, I.L.R. (2013) M.P. 2513 (DB)*

NAGAR TATHA GRAM NIVESH ADHINIYAM, M.P., (23 OF 1973)

– **Section 2 (c)** – See – Municipal Corporation Act, M.P., 1956, Section 2, 30 & 293 : *Ashish Kumar Vs. State of M.P., I.L.R. (2015) M.P. *3*

– **Section 5, 14, 15, 16, 17 & 19** – Use of Stadium and its complex - Approval was granted by State Government for development of stadium and construction of shops but actual use of same is contrary to actual purpose and shops are being mostly used for purpose unconnected with sports or sports related activities – Directions issued for stopping all activities in all or any of 65 shops which carry out business or functions or activities which are not in accordance to permission granted and which have no nexus with sports or sports related activities – Only business activities like hotel, restaurants, medical shops etc. be permitted in these shops – Municipal Corporation should take over the entire complex disengage the builder and contractor from any activity concerned with shopping complex, its management or leasing – Three months time be given to the shop owners and give them an option either to change their business activity and bring in conformity with requirement of sanction granted or else to vacate the shop – Municipal

Corporation shall take over the possession of all shops which are vacated and shall take steps for allotting these shops in accordance with rules applicable – 10 ft. corridor in front of each shop should be free from obstructions, no business activity or any other activity should be permitted in this area and the same should be left free for movement of sports personnel and other persons who use the stadium – Petition allowed : *Vijay Shanker Shukla Vs. Municipal Corporation, Jabalpur, I.L.R. (2015) M.P. 3275 (DB)*

– **Section 17-A** – Recommendation & Suggestion of Committee – Recommendation of the Committee is only recommendatory and advisory in nature and such recommendations of the Committee are required to be considered by the State Government, but the absolute and final power is rested on the State Government to approve or reject the draft development plan or to approve the same with some modifications as it may deem appropriate – Resolutions passed by the Committee can not be said to be absolute, final and binding – State Government possesses the final authority in the matter of giving approval to the development plan : *Binabai Bhate Vs. State of M.P., I.L.R. (2011) M.P. 2091 (SC)*

– **Section 19(2)& (3)** – Publication of Notice & hearing to the persons – State Government approved the draft plan without any modification – Provisions of sub-section (2) & (3) of Section 19 are not applicable : *Binabai Bhate Vs. State of M.P., I.L.R. (2011) M.P. 2091 (SC)*

– **Section 23 & 23-A** – High Court does not have the power of review as such power of review has to be specifically provided for in the Act : *Binabai Bhate Vs. State of M.P., I.L.R. (2011) M.P. 2091 (SC)*

– **Section 23-A(1)(a)** - Modification of Plan - Bhopal Development Plan was modified vide notifications dated 06.06.2008 and 05.09.2008 - State Government modified the plan for the purpose of facilitating establishment of an institute by respondent No. 5 and not for any proposed project of the Government or for implementation of any Town Development Scheme - Exercise undertaken for the change of land use, which resulted in modification of the development plan was an empty formality - Modification of the development plan was ultra vires the provision of Section 23-A(1)(a) : *Akhil Bhartiya Upbhokta Congress Vs. State of M.P., I.L.R. (2011) M.P. *133 (SC)*

– **Section 50 & 54** – Publication of final scheme – Lapse of scheme – Fails to implement nor substantial steps taken towards implementation of final scheme within 3 years – Held – Final Scheme will lapse and in turn land acquisition proceedings will also stand vitiated – Appeal dismissed : *Indore Development Authority Vs. Burhani Grih Nirman Sahakari Sansthan Maryadit, I.L.R. (2015) M.P. 1145 (DB)*

**NAGAR TATHA GRAM NIVESH VIKASIT BHOOMIYO, GRIHO,
BHAVANO TATHA ANYA SANRACHANO KA VYAYAN NIYAM,
M.P. 1975**

- **Rule 3** - Transfer of Land - Property belongs to the State Government which on constitution of the authority vested in it - Rule 3 imposes a bar against transfer of Government land vested in or managed by the authority except with the general or special sanction of the State Government - The authority is under an obligation to ensure that it functions according to the provisions of the act and the Rules - Property of the public, which has to be dealt with in a fair, transparent and rational manner : *Neetu Tejkumar Bhagat Vs. Jabalpur Development Authority, I.L.R. (2012) M.P. 2946 (DB)*

- **Rule 5 & 6** - Transfer of the Authority Land - No attempt was made by the Authority to ascertain the market value either by holding a public auction or by inviting tenders - The action of the Authority in not ascertaining the market value of the property by a fair and transparent manner can not be approved : *Neetu Tejkumar Bhagat Vs. Jabalpur Development Authority, I.L.R. (2012) M.P. 2946 (DB)*

**NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT
(61 OF 1985)**

SYNOPSIS

- | | |
|--|---|
| <p>1. Appreciation of Evidence</p> <p>3. Compliance of Section 42</p> <p>5. Compliance of Section 50(4)</p> <p>7. Compliance of Section 55</p> <p>9. Exclusive Possession</p> <p>11. Presumption</p> <p>13. Re-testing of Samples</p> | <p>2. Bail</p> <p>4. Compliance of Section 50</p> <p>6. Compliance of Section 52/52-A</p> <p>8. Compliance of Section 57</p> <p>10. Identification of Contraband</p> <p>12. Reduction of Sentence</p> <p>14. Miscellaneous</p> |
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1. Appreciation of Evidence

- **Section 8 & 15(c)** - Seizure Witness - Seizure witnesses turned hostile - Evidence of Investigating officer can be relied if his testimony is reliable, trustworthy, cogent and duly corroborated by other admissible evidence - Evidence cannot be discarded on the ground that he is a police officer- Conviction maintained : *Mehga Singh Vs. State of M.P., I.L.R. (2013) M.P. 2194*

– **Section 8 read with Section 20(b)(i)** – Cultivation - For holding a person cultivator of plants, it has to be established that he deliberately developed and maintained the plants by cultivation using agricultural techniques or he prepared the land or soil for growing such crops - In the absence of such evidence, it can not be held that cannabis plants were being cultivated - Conviction set aside. Mere growing of stray cannabis plants in the field midst of number of other plants will not amount to cultivation of the said plants : *Chhotelal Lodh Vs. State of M.P., I.L.R. (2011) M.P. 3163*

– **Section 8 & 20(b)(ii)(B)** - Detecting Officer contradicting his own statement - Joint and common notice (about search) was given to appellants - Appellants were entitled to benefit of doubt : *Harigopal Maurya Vs. State of M.P., I.L.R. (2011) M.P. 218*

– **Section 8/15(c) & 29** – Production of seized contraband - Witnesses relied upon by the prosecution have not supported the prosecution case – There was violation of Section 42 & 57 – Evidence adduced is wholly insufficient to conclude that what was seized from the appellants alone was sent to chemical examination – Seized ‘Doda Chura’ was not produced before trial court – Lapse are not explained properly – Held – Benefit of doubt extended in favour of appellants – Conviction of appellant is set aside – Appeal allowed : *Gopal Singh Vs. State of M.P., I.L.R. (2014) M.P. 1886*

– **Section 8/18(b)** – Production of seized contraband - Independent witnesses did not support the proceedings taken up by I.O. – Seized contraband not produced before the Court – Guilt of accused not proved – Appeal allowed : *Kanhaiyalal Vs. State of M.P., I.L.R. (2015) M.P. 2184*

– **Section 8/21** – Sample – I.O. admitted that the chit pasted on sample does not contain the thumb impression and name of accused – It cannot be prima facie seen that samples are related to the accused : *Jaibun Nisha Vs. State of M.P., I.L.R. (2011) M.P. *53*

– **Section 8/21(b)** – Samples of narcotic substance were deposited with F.S.L. after 6 days – It is not clear where the samples were laid or were handled by how many people and in what ways – After coming the FSL report and submitting the charge sheet thereafter in Court, the narcotic substance was deposited in the Malkhana about two months later – No explanation where the seized substance was kept in the meanwhile – The alleged narcotic powder seized from the possession of the accused was never produced before the trial Court as a material exhibit and once again there is no explanation for its non-production – Held –There is, thus no evidence to connect the forensic report with the substance that was seized from the possession of the appellant or the other accused – The appellant is entitled to the benefit of doubt –Conviction & sentence set-aside : *Ashok @ Dangra Jaiswal Vs. State of M.P., I.L.R. (2011) M.P. 1623 (SC)*

– **Section 8, 21 (b), 18 (c) & 20 (b)(ii)(B)** - Possession of illegal contraband - Appellant is alleged to have been coming in a car containing illegal contraband - He is alleged to have left the car when the same was stopped - Appellant was chased and was apprehended - Constables have stated that they had seen the miscreant from his back as it was dark - Undisputedly, car stood parked unattended for some time in busy market area - Independent seizure witnesses also not supported the case - Appellant had made number of complaints to different authorities apprehending his false implication because his brother was killed and the police and politicians were pressurizing him not to depose in the court - Seized contraband not produced and marked article - Guilt of appellant not proved beyond reasonable doubt - Appeal allowed : *Mehboob Ali Vs. State of M.P., I.L.R. (2012) M.P. *101*

– **Section 8(c)/18** – Possession of opium – 260 gms. of opium is alleged to have been seized but only 240 gms of opium was deposited in malkhana after separating a sample of 10 gms – Arrest memo, seizure memo and panchnama of sample appears to be tampered documents as they bear F.I.R. number whereas F.I.R. was lodged much thereafter – F.S.L. not readable hence no opinion can be drawn – Appellant liable to be acquitted – Appeal allowed : *Atik Vs. State of M.P., I.L.R. (2012) M.P. 532*

– **Section 8(c) & 21-B** – Rexcof Cough Syrup – As per notification dated 14.11.1985, a preparation containing not more than 100 mgs of Codeine Phosphate per dosage unit with the concentration of not more than 2.5% in undivided preparation is exempted from application of Section 21 of the Act, 1985 – As per report of Laboratory, each 5 ml Syrup containing 9.825 mg. Codeine Phosphate which is permissible – Merely because Syrup bottles in bulk were seized would not make it punishable in absence of any express penal provision – Applicant discharged : *Rohit Chadha Vs. State of M.P., I.L.R. (2015) M.P. 3079*

– **Section 8(c), 29, 27-A, 15(c), 29 & 67** - Confessional Statement - Charges against applicant were framed on the basis of confessional statement of co-accused - No substance was seized from the possession of the applicant - Co-accused making confessional statement was having license and the quantity of poppy straw recovered from his possession was within the limits of licence issued - Violation of any condition of license is punishable under Clause 19 of the license - As the co-accused who had made the confessional statement had not committed any offence under the N.D.P.S. Act, therefore, his confessional statement would not be covered under Section 67 of the Act - Charges framed against the applicant set aside : *Shiv Shankar Agrawal Vs. Union of India, I.L.R. (2012) M.P. 2864*

– **Section 20** - Person who took the samples to F.S.L. not examined - Rojnamcha entries pertaining to the departure of police officer taking samples to F.S.L. not produced

- It cannot be assumed that same samples were sent to F.S.L : *Beta alias Ram Kinker Vs. State of M.P., I.L.R. (2013) M.P. 1431*

– **Section 20** - Possession of Contraband - No Rojnamcha entry produced and proved by prosecution showing the receipt of information and departure of team from Police Station - Officer preparing seizure not examined - Appellant was not apprised of his right of search by gazetted officer nor the police officers disclosed their identity - Nothing on record to show that seized contraband was kept in safe custody after seizure till the date of its discharge to FSL Sagar - Appeal allowed - Appellant acquitted : *Vishwanath Singh Vs. State of M.P., I.L.R. (2012) M.P. 1705*

– **Section 20(k)(i) & 42** – Power of entry, search, seizure and arrest without warrant – Cannabis plants were seized from the field of appellant – Independent witnesses turned hostile – I.O. did not say in his evidence that after taking down the information in writing in regard to cannabis plants, he had sent a copy of the same to his immediate superior official within seventy two hours – Provisions of Section 42 are mandatory – Conviction of appellant is unsustainable – Appeal allowed : *Bittu Vs. State of M.P., I.L.R. (2015) M.P. 1815*

– **Section 21** - Witness not supported the prosecution case - Case of the prosecution not proved - Conviction set aside : *Arti Sen Vs. State of M.P., I.L.R. (2014) M.P. 785*

– **Section 42** - Seizure - Independent witness of seizure memo not supported fact of seizure - Seizure Panchnama not proved : *Vinay Kumar Jain Vs. State of M.P., I.L.R. (2011) M.P. *39*

– **Section 42** - Seizure - One independent seizure witness not examined and another did not turn up for cross examination - Seizure memo not proved - Panchnamas were also could not be proved - Seized contraband also not produced before the trial Court - Held - Seizure Panchnamas not proved : *Hujul Akbar Vs. State of M.P., I.L.R. (2011) M.P. 221*

– **Section 51** - Safe custody of seized article - Delay of 2 months and 6 days in sending seized article to Court - Not proved that seized article was properly sealed and kept in proper custody in police Malkhana - Accused entitled for acquittal : *Kishorilal Vs. State of M.P., I.L.R. (2011) M.P. 498*

2. Bail

– **Section 8/18 read with Section 29, 37, 42 & 67** – Accused supplying contraband opium more than commercial quantity to the co-accused – Cannot be released

on bail generally – Application for grant of bail is rejected as being without merit : *Suresh Vs. State of M.P., I.L.R. (2014) M.P. 3303*

– **Section 8/19 & 26** – See – Criminal Procedure Code, 1973, Section 374 : *Raju Vs. Central Bureau of Narcotics, I.L.R. (2014) M.P. 1102*

– **Section 37(1)(b)(ii) & 67** - Satisfaction of Court - Admissibility of the statement made u/s 67 of the Act is not to be considered at the time of consideration of bail : *Prabhulal Vs. C.B.N. Garoth, I.L.R. (2011) M.P. 811*

3. Compliance of Section 42

– **Section 20(b)(i)** - Offence under - Proof - Investigation Officer not complying with the provision of Section 42 of the Act - He did not weigh the seized Ganja before seizure - The seized material was also not produced in the Court - No independent witness from adjoining shop was taken for search of contraband - No other witness supported the evidence of Investigation Officer - Held - The prosecution failed to prove beyond a reasonable doubt that Ganja/contraband was seized from the shop or possession of the appellant - Conviction set aside : *Ram Narayan Raikwar Vs. State of M.P., I.L.R. (2011) M.P. 3167*

– **Section 42** - Dy. S.P. was immediately informed about recovery of the contraband - Copy of the FIR leading to registration of the case was also forwarded to the Magistrate having jurisdiction - Thus, there was substantial compliance with the provisions of Section 42 : *Boote @ Kanchhedi Vs. State of M.P., I.L.R. (2011) M.P. 511*

– **Section 42** - If a police officer does not record the information at all and does not inform the official superior, it will be a clear violation of Section 42 of the Act : *Ram Narayan Raikwar Vs. State of M.P., I.L.R. (2011) M.P. 3167*

– **Section 42** - Intimation regarding information from the informer about having possession of contraband not sent to superior officer - No Rojnamcha Sanha produced to prove that telephonic message was given to the C.S.P. - Provisions of Section 42 of Act, 1985 not complied : *Beta alias Ram Kinker Vs. State of M.P., I.L.R. (2013) M.P. 1431*

– **Section 42** - Investigating officer after receiving information about transportation of contraband immediately entered the same into daily diary register and prepared memo of secret information in presence of witnesses and sent the information to the C.S.P. - Provisions of Section 42 complied with : *Mehga Singh Vs. State of M.P., I.L.R. (2013) M.P. 2194*

4. Compliance of Section 50

– **Section 8(C), read with 20(b)(i)** - Person of appellant was searched and Ganja was seized from her waist - Held - Mandatory provisions of Section 50 of the Act were

not complied with and therefore the appellant can not be convicted - Notice under Section 50 of the Act was not given therefore mandatory conditions mentioned therein were not complied with - F.S.L. report not placed on record - Appeal allowed : *Ram Kali Alias Sundariya (Smt.) Vs. State of M.P., I.L.R. (2012) M.P. 1973*

– **Section 50** - Conditions - Appellants unloaded four bags from auto-rickshaw - I.O. informed the appellants about their statutory right if they so desire for being taken to be searched by the nearest Gazetted Officer of any department or by Magistrate - Appellants were searched on their wishes to be searched by I.O. - Provisions of Section 50 were complied with : *Mehga Singh Vs. State of M.P., I.L.R. (2013) M.P. 2194*

– **Section 50** – Mandatory – Consent letter written by appellant does not show that he was informed about his right to be searched before a Gazetted Officer or a Magistrate – Provisions of Section 50 not complied with : *Vishwanath Patel Vs. State of M.P., I.L.R. (2012) M.P. *41*

– **Section 50** - Notice - Language - Appellants knowing Tamil language - Not conversant with Hindi language - Consent for personal search not proved - Panchnamas are also to be recorded in the same language which was understandable to accused persons - Mandatory provision not followed : *Hujul Akbar Vs. State of M.P., I.L.R. (2011) M.P. 221*

– **Section 50** - Option - On search of body, key was recovered by which suitcase was opened and contraband was found - Prosecution had to comply with the mandatory provisions of Section 50 - Mere consent letter of the appellant prepared by seizing officer to carry out his search by said police officer does not fulfill the requirement of Section 50 : *Beta alias Ram Kinker Vs. State of M.P., I.L.R. (2013) M.P. 1431*

– **Section 50** – Search and Seizure – Appellant took out a packet from her kurti and was in her hand when it was seized – Compliance of Section 50 was mandatory – A separate notice should have been given apprising her constitutional rights to be searched before Magistrate or Gazetted Officer or by police : *Raziya Vs. State of M.P., I.L.R. (2012) M.P. 173*

5. Compliance of Section 50(4)

– **Section 50(4)** - Appellant lady not searched by the female constable - Search vitiated - Failure to comply the mandatory provision has affected the credibility of the prosecution case : *Arti Sen Vs. State of M.P., I.L.R. (2014) M.P. 785*

– **Section 50(4)** – Search of female – Whenever a lady is to be searched, her search can only be carried out by lady – Name of female carrying search is also to be

noted – Name of lady constable not mentioned in Panchnama – Search not in accordance with Section 50(4) : *Jaibun Nisha Vs. State of M.P., I.L.R. (2011) M.P. *53*

6. Compliance of Section 52/52-A

– **Section 52** - Disposal of articles seized - Court permitted to destroy 1447 Kg of poppy straw - Property not forwarded to High Level Drug Disposal Committee for destruction - Certificate of destruction was to be issued by High Level Drug Disposal Committee - No such certificate produced before the Court - Property was not destroyed as per procedure - Provisions of Section 52 not complied with : *Vinay Kumar Jain Vs. State of M.P., I.L.R. (2011) M.P. *39*

– **Section 52(A)** - Non compliance of - To make case of the prosecution credible and free from dents and lacuna, it is desirable rather necessary to make sincere compliance of Section 52(A) : *Chandra Shekhar Prasad Tiwari Vs. State of M.P., I.L.R. (2011) M.P. 2576*

– **Section 52-A** - Three packets containing 12 Kg of brown sugar were seized - Held - No evidence has been placed on record that goods were destroyed under the orders of the Court - No certificate of such destruction has been placed on record - Respondent is not in a position to justify as to why the material was not produced before the Court - Section 52-A of the Act being mandatory accused entitled to acquittal - Conviction of the appellant is set aside : *Raju @ Jitendra Vs. State of M.P., I.L.R. (2014) M.P. 209*

7. Compliance of Section 55

– **Section 55** – Custody of seized articles – No paging on malkhana register – No time of deposit of sealed packet in malkhana register – No mention that impression seal was deposited with articles – No mention that impression seal was sent along with articles to F.S.L. – Provisions of Section 55 not complied : *Raziya Vs. State of M.P., I.L.R. (2012) M.P. 173*

– **Section 55** - Deposit of seal in Malkhana - Property sent to Court after 5 months - No entry in Malkhana register about the deposit of seal and the impression of the seal - Provision of Section 55 not followed - Possibility of tempering not ruled out : *Hujul Akbar Vs. State of M.P., I.L.R. (2011) M.P. 221*

– **Section 55** - Re-sealing of property - Property is to be re-sealed by the incharge of the Malkhana with his personal seal - It is not required that seizing officer shall reseal it - Mandatory provision of Section 55 not followed : *Hujul Akbar Vs. State of M.P., I.L.R. (2011) M.P. 221*

– **Section 55** - Re-sealing - Samples should be handed over to the officer-in-charge of Malkhana and he should re-seal it with his seal and then property shall be deposited in Malkhana - If the samples are prepared after the deposit of property in Malkhan, then they shall also be re-sealed in the same way : *Dinesh Vs. Union of India, I.L.R. (2011) M.P. 210*

– **Section 55** - Safe Custody - Entry of Malkhana Register neither produced nor proved - It cannot be assumed that the substance was kept in safe custody : *Beta alias Ram Kinker Vs. State of M.P., I.L.R. (2013) M.P. 1431*

8. Compliance of Section 57

– **Section 57** - After conducting the proceedings, the designated officer returned back to Police Station and deposited the contraband in Police station and lodged report - In-charge of police station on next day prepared the full report of particulars of arrest and seizure and final report written by Station Officer of Police Station was also delivered to C.S.P. - Provisions of Section 57 complied with : *Mehga Singh Vs. State of M.P., I.L.R. (2013) M.P. 2194*

– **Section 57** - Report to arrest and seizure - Provisions of Section 57 not complied with - Conviction is bad in law and cannot be sustained : *Dinesh Vs. Union of India, I.L.R. (2011) M.P. 210*

9. Exclusive Possession

– **Section 8(b), 18, & 54** - Exclusive Possession - 135 plants of opium were seized from field - No evidence on record to show that appellant himself cultivated the opium poppy plants or the land where the plants were found exclusively belonged to him and was in his exclusive possession - On the contrary evidence on record is that land is recorded in the joint names of appellant and his brothers and father - In view of joint possession and joint ownership, the possibility of cultivation of prohibited plants by joint owners or joint cultivator can not be ruled out - It can not be safely concluded beyond all reasonable doubts that it was the appellant who cultivated the opium plants - No presumption under Section 54 can be drawn - Appeal allowed : *Ramesh Vs. State of M.P., I.L.R. (2011) M.P. 2853*

– **Section 8(b) read with 20(b)(i)** - Cautious and exclusive possession - 155 plants of cannabis (Ganja) were found planted - They were uprooted and seized - FSL examiner found presence of Ganja - Held - Since the prosecution has utterly failed to prove the cautious and exclusive possession of the appellant on the field of Survey No. 500 from which the Ganja plants were seized - The time of seizure is also quite different -

Entire prosecution case becomes highly suspicious - Conviction and sentence set aside : *Ram Charan Vs. State of M.P., I.L.R. (2013) M.P. 2948*

– **Section 8(c) & 20(b)(ii)(c)** -Unauthorised possession of 162 Kg of Contraband Ganja - Contraband was seized from a locked pump house in presence of appellant - No witness stated specifically about the exclusive and conscious possession to that pump house - As per record, pump house belonged to one Jitendra who could not be interrogated by the Investigation Officer, though he tried to search him - Held - Exclusive and conscious possession of the pump house in which contraband was kept is not proved with sufficient evidence by prosecution : *Chandra Shekhar Prasad Tiwari Vs. State of M.P., I.L.R. (2011) M.P. 2576*

– **Section 20(b)** - Joint Possession - 10 plants of ganja standing in the aangan which is in joint possession of three brothers - Special Judge did not commit any illegality in taking cognizance of the offence against the non-charge sheeted brothers - Even a strong suspicion leading to presumption as to possibility as against certainly makes out a case for framing of charge and the trial judge is required to record reasons only if he decides to discharge the accused : *Gopal Ji Singh Vs. State of M.P., I.L.R. (2012) M.P. 3122*

– **Section 20(B)(1)** – Cultivation – One plant was found in the house – It is not proved that house was in possession of the appellant – From seizure of one plant it can not be presumed that cannabis plant was being cultivated – It must be established that he deliberately prepared the land or soil for growing such plants, cultivated, developed and maintained the plants by using agricultural techniques – Mere seizure of one plant will not amount to cultivation – Appeal allowed : *Vishwanath Patel Vs. State of M.P., I.L.R. (2012) M.P. *41*

– **Section 29(ii)(c)** - Possession - Appellant/Landlady had handed over the rent note to Investigating Officer in respect of two rooms from where alleged Ganja was seized - It cannot be said that defence of giving two rooms on rent is an after thought - It cannot be said that appellant was in possession of premises where Ganja was kept or had knowledge that Ganja is kept by tenants - Appellant cannot be convicted : *Arti Sen Vs. State of M.P., I.L.R. (2014) M.P. 785*

– **Section 36-A(4) & 54** - Three inmates accused of private vehicle who were known to each other, found with contraband - The quantity of the contraband was also in same form - Presumption of conscious possession u/s 54 of the Act was available against each one of the accused : *In Reference Vs. Vijay Kesharwani, I.L.R. (2011) M.P. 307*

10. Identification of Contraband

– **Section 2(iii)(b)** - Ganja - Seizure memo does not disclose that plants were having flowering or fruiting tops - Report of Chemical Examiner shows that samples were having flowering or fruiting tops - Also not proved as in what condition seized contraband was kept in Malkhana - Not proved that seized substance was Ganja : *Arti Sen Vs. State of M.P., I.L.R. (2014) M.P. 785*

– **Section 8 & 20** - Identification of Contraband - There is no averment in the seizure memo that on what basis the alleged substance was stated to be the Ganja - It is not stated that either by tasting or by smelling it was found to be Ganja - It is also not mentioned that by whom and by which instrument, the substance was weighed - How the contraband was handled after its seizure is also not explained - Possibility of tampering the substance is also not ruled out : *Beta alias Ram Kinker Vs. State of M.P., I.L.R. (2013) M.P. 1431*

– **Section 8 & 20(b)(ii)(B)** – Identification - Appellants were apprehended carrying contraband / Ganja (cannabis/hemp) in separate Potlies - Contents of bundles (Potlies) were converted into one homogenous mixture wherefrom two samples of 25 gms each were drawn - Held - It was not possible to conclude with certainty that contents of each Potlies comprised of contraband/Ganja : *Harigopal Maurya Vs. State of M.P., I.L.R. (2011) M.P. 218*

– **Section 8/21** – Seizure – Smack was sealed in empty packet of cigarette – However, when the article was opened in Court smack was not found in packet of cigarette but in polythene packet – It can be very well said article was not in original and it was tampered : *Jaibun Nisha Vs. State of M.P., I.L.R. (2011) M.P. *53*

– **Section 8 & 21(c)** - Samples - Bulk quantity of seized poppy straw not produced before the Court - It cannot be said that samples were prepared from the bulk quantity : *Vinay Kumar Jain Vs. State of M.P., I.L.R. (2011) M.P. *39*

– **Section 20** - Possession of Charas - Non-production of seized article during trial - Only samples were produced and bulk quantity seized not produced in evidence - It cannot be said that samples were prepared from the respective bulk quantity - Seizure of 2 kg. 800 gms. Charas not proved : *Kishorilal Vs. State of M.P., I.L.R. (2011) M.P. 498*

– **Section 8 & 21(c)** - Seizure of Heroin - Samples - Colour of contraband - Grey powder was sealed at the time of sealing whereas at the time of chemical analysis brown and white powder was found - Difference in colour not explained - As samples were doubtful, therefore, seizure memo was not proved : *Dinesh Vs. Union of India, I.L.R. (2011) M.P. 210*

– **Section 8 & 21(c)** - Weight - Difference - Samples sent to FSL were said to be containing 5 gms of Heroin - FSL found 4.46 and 4.47 gms in samples - Held - When weight is taken in a covered place by sensitive balance, then measurement of weight is very accurate and if weight is taken by ordinary balance in air, the weight of sample will be different - Difference in weight of samples not of much importance : *Dinesh Vs. Union of India, I.L.R. (2011) M.P. 210*

11. Presumption

– **Section 8, 20(b)(ii)(c), 35 & 54** – Presumption – Rebuttal - 162 Kgs of Ganja was recovered from the box kept in Tapariya occupied as residence by the appellant - Appellant did not discharge the onus of proof to rebut the presumption envisaged u/ss. 35 & 54 of the Act - Conviction proper : *Boote @ Kanchhedi Vs. State of M.P., I.L.R. (2011) M.P. 511*

– **Section 20(b)(i), 35 & 54** – Presumption – Appellant did not discharge the onus of proof to rebut the presumption by showing that he had no knowledge that sack kept in his house was containing ganja – Conviction upheld : *Ramesh @ Durga Singh Lodhi Vs. State of M.P., I.L.R. (2012) M.P. *67*

– **Section 35 & 54** - Presumption of culpable mental state - Seizure Panchnama not proved - Hence possession of contraband also not proved - Presumption would not arise : *Dinesh Vs. Union of India, I.L.R. (2011) M.P. 210*

12. Reduction of Sentence

– **Section 8/18**, Penal Code (45 of 1860), Section 63 to 70 – Reduction of Sentence – As the appellant is the first offender, the sentence of 15 years is reduced to the minimum sentence of 10 years – Reduction of default sentence in lieu of fine – Provisions of Penal Code makes it clear that the amount of fine should not be harsh or excessive – Where a substantial term of imprisonment is inflicted, an excessive fine should not be imposed except in exceptional cases – R.I. of 6 months in lieu of fine is upheld : *Ansar Khan Sherani Vs. State of M.P., I.L.R. (2014) M.P. 1929 (DB)*

– **Section 8(c), 21 & 29** – Sentence – Appellants convicted u/s 21(1) and sentenced to 15 years R.I. with fine of Rs.1,00,000/- lakhs – Appellants are in jail for more than 12 years – Held – Taking into consideration all these facts while maintaining their conviction substantive sentence of R.I. for 15 years is reduced to the period already undergone – The default sentence is also reduced to the period R.I. for one year instead of R.I. for 3 years which period shall also be inclusive of the period already undergone by the appellants – Appeal Partly allowed : *Ranbir Singh Vs. State of M.P., I.L.R. (2015) M.P. 422 (DB)*

– **Section 20(b)(i)** – Sentence – Offence committed about 17 years back – Appellant has already remained in jail for a period of 1 year & 4 months – Sentence reduced to period already undergone with fine of Rs. 5,000/- : *Ramesh @ Durga Singh Lodhi Vs. State of M.P., I.L.R. (2012) M.P. *67*

– **Section 20-B II (C)** – Sentence and fine – Sentence and fine awarded to the appellant is the minimum stipulated under N.D.P.S. Act is not excessive calls for no reduction – However, the sentence imposed in default of payment of fine for one year is excessive same is reduced from 1 year R.I. to three months R.I. – Appeal is partly allowed : *Praduman Lal Kushwaha Vs. State of M.P., I.L.R. (2014) M.P. 3254*

13. Re-testing of Samples

– **Procedure** - Heroin was seized from the possession of Petitioner - However, the F.S.L. report shows the contraband as Opium - Prosecution filed application for re-testing of sample from Hyderabad - Any request for re-testing of sample may be permitted in exceptional circumstances for cogent reasons to be recorded - Application must be made within 15 days from the date of receipt of test report - Cogent reasons have been assigned by Trial Court - Revision dismissed : *Dinesh Kumar Yadav Vs. Union of India, I.L.R. (2013) M.P. 1779*

14. Miscellaneous

– **Section 9 & Art. 22** – Single convention – Cultivation of Poppy – By cultivator on behalf of Government – Cultivator has right only on seed – Rest of the plant and product belongs to Government : *Man Singh Rajpoot Vs. State of M.P., I.L.R. (2015) M.P. 2826 (DB)*

– **Section 9, 9A & 74-A** – See – Constitution – Article 226 : *Mansingh Rajpoot Vs. State of M.P., I.L.R. (2015) M.P. *12*

– **Section 20** – See – Juvenile Justice (Care and Protection of Children) Act, 2000, Section 12 : *Pradumna Vs. State of M.P., I.L.R. (2015) M.P. *14*

– **Section 20(ii)** – Quantity – When in recovery memo the quantity of Charas is mentioned as approximately 1 Kg., the benefit of word 'approximately' prefixed with quantity has to be given to accused and recovery has to be treated something between small quantity and commercial quantity within meaning of clause B of Section 20 (ii) : *Rajjo Bai (Smt.) Vs. State of M.P., I.L.R. (2011) M.P. *75*

– **Section 8 & 74-A** – Order/direction – Issued by Central Government – Mandatory – State Government to comply : *Man Singh Rajpoot Vs. State of M.P., I.L.R. (2015) M.P. 2826 (DB)*

– **Section 63(2) Proviso** - Proviso attached with Section 63(2) would be applicable to a case wherein owner of article/vehicle or his known agent and person-in-charge thereof has not faced the trial - Judgment passed in Prem Narayan's case [2003(1) MPLJ 122] is accordingly overruled : *Abhijit Singh Vs. State of M.P., I.L.R. (2011) M.P. 780 (DB)*

– **Section 52(4)** – As S.H.O. himself effected the seizure and arrest, the provisions of Section 52(4) do not apply : *Ramesh @ Durga Singh Lodhi Vs. State of M.P., I.L.R. (2012) M.P. *67*

NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES **(MADHYA PRADESH) RULES, 1985**

– **Taking of Sample** – It is always desirable to prepare the panchnama and to take sample at the spot itself – However, there is no express legal bar to drawing of sample at a later stage, provided there are justifiable and reasonable grounds to do so : *Ramesh @ Durga Singh Lodhi Vs. State of M.P., I.L.R. (2012) M.P. *67*

– **Rule 37-M & Art. 22-25 of Single convention** – Destruction of poppy straw – After cancellation or determination of license poppy straw which remained un-utilized has to be destroyed : *Man Singh Rajpoot Vs. State of M.P., I.L.R. (2015) M.P. 2826 (DB)*

– **Rule 37-M, proviso of clause (c)** – See – Constitution – Article 226 : *Mansingh Rajpoot Vs. State of M.P., I.L.R. (2015) M.P. *12*

NATIONAL COAL WAGES AGREEMENT

– **Clause 9** – Monetary Compensation in lieu of compassionate appointment – Petitioner made 1st application in 2000 for monetary compensation after death of husband – Application remained pending – A case was filed by another lady seeking succession certificate which was compromised out of court – Petitioner again filed application in the year 2006 – Committee also gave a finding that she is entitled for monetary compensation till she attains the age of 60 years – Application was rejected on the ground that if she can survive for 10 years without monetary compensation, therefore she had means of livelihood – Held – Petitioner is entitled for compensation from 2006 i.e. her second application : *Keshar Bai (Smt.) Vs. Western Coalfields Ltd., I.L.R. (2015) M.P. 328*

– **Clause 9.5.0** - Employment / monetary compensation of female dependant - Appellant's husband died in harness - Appellant given compassionate appointment - Female dependant of employee who die due to an accident in mine or otherwise would have the option either to accept the monetary compensation of Rs. 3000 per month or

employment irrespective of her age - Clause 9.5.0 does not provide for grant of compensation in addition to appointment - Appellant has already opted for appointed and is now estopped from claiming compensation - Appeal dismissed : *Sumarwati Bai (Smt.) Vs. The Mines Manager, I.L.R. (2011) M.P. 609 (DB)*

NATIONAL COUNCIL FOR TEACHER EDUCATION ACT
(73 OF 1993)

– **Section 14(3), 15(3) & 16**, National Council for Teacher Education (Recognition Norms and Procedure) Regulations, 2005 – Section 7(2)(3)(4)(5)(9) – Recognition – Guidelines issued : *Adarsh Shiksha Mahavidyalaya Vs. Subhash Rahangdale, I.L.R. (2012) M.P. *19 (SC)*

– **Section 14(3), 15(3) & 16**, National Council for Teacher Education (Recognition Norms and Procedure) Regulations, 2005, Section 7(2)(3)(4)(5)(9) – Recognition – The provisions are mandatory in nature – Examining Body can not grant affiliation to any institution or hold examination unless the institution has obtained recognition under Section 14 or permission for a course or training under Section 15 : *Adarsh Shiksha Mahavidyalaya Vs. Subhash Rahangdale, I.L.R. (2012) M.P. *19 (SC)*

– **Section 15, Regulations 2009, Regulation 8(3)** - Starting New Course - Petitioners were granted permission to start B.Ed. Course from the session 2009-2010 - Petitioners can be permitted to start new course only after completing 3 academic sessions - Application seeking permission to start new course of D.Ed. was made prior to completing 3 academic sessions - Application was rightly rejected as premature - Petition dismissed : *Sparsh Education & Welfare Society Vs. National Council for Teacher Education, I.L.R. (2012) M.P. 2412 (DB)*

NATIONAL COUNCIL FOR TEACHER EDUCATION
(RECOGNITION NORMS AND PROCEDURE)
REGULATIONS, 2005

– **Section 7(2) & (3)** – Say of State Govt. – State Govt is entitled to make recommendations on the application made for grant of recognition - Regional Committee is duty bound to consider the recommendations of the State Govt before taking final decision : *Adarsh Shiksha Mahavidyalaya Vs. Subhash Rahangdale, I.L.R. (2012) M.P. *19 (SC)*

– **Section 7(2)(3)(4)(5)(9)** – See – National Council for Teacher Education Act, 1993, Sections 14(3), 15(3) & 16 : *Adarsh Shiksha Mahavidyalaya Vs. Subhash Rahangdale, I.L.R. (2012) M.P. *19 (SC)*

**NATIONAL COUNCIL FOR TEACHER EDUCATION
REGULATIONS, 2002**

– **Appendix 7 Clause 7(d) and Appendix 2B Clause (iv)** – Withdrawal of Recognition – Recognition was withdrawn that the education was being imparted in a building constructed on Kh. No. 146 and 147 and not on Kh. No. 27, 63 and 64 – Earlier the Committee was running the institute in a rented premises when the recognition was granted – Thereafter the managing Committee purchased the land and shifted the building – The lands are owned by the management and both the lands are situated in the same village – Various inspections were done and authorities allowed the Committee to conduct B.Ed. course from the building constructed on Kh. No. 146 & 147 from 2004 – Matter relegated back to appellate authority for fresh consideration of matter : *Naveen Swami Vivekanand B.Ed. College Vs. National Council For Teacher Education, I.L.R. (2015) M.P. 951 (DB)*

NATIONAL HIGHWAYS ACT (48 OF 1956)

– **Section 3** - Acquisition of land - As National Highways Act is a special enactment therefore, scope of objection is very limited to the user of land only : *Rathi Sugar Pvt. Ltd. Vs. Union of India, I.L.R. (2014) M.P. 699 (DB)*

– **Section 3** - Objections - Natural Justice - Petitioners were not present before competent authority on notified date - Ground regarding personal hearing or opportunity of hearing not available to petitioners : *Rathi Sugar Pvt. Ltd. Vs. Union of India, I.L.R. (2014) M.P. 699 (DB)*

– **Section 3(G)5 & 3E** – Possession – Quantum of compensation determined by authority challenged by appellant before arbitrator on the ground of inadequacy – Section 3 empowers to take over possession on determination and deposit of compensation amount by competent authority – Taking over of possession can not wait till decision is given by arbitrator – Appeal dismissed : *Pratap Sambhaji Rao Khutal Vs. State of M.P., I.L.R. (2012) M.P. 308 (DB)*

NATIONAL INVESTIGATION AGENCY ACT (34 OF 2008)

– **Section 21** - See - Penal Code, 1860, Section 302, 201 & 120-B : *Pragya Singh Kushwaha @ Pragya Bharti @ Pappi Didi @ Swami Purna Chetnanand Giri Vs. Union of India, I.L.R. (2012) M.P. *91 (DB)*

NATIONAL SECURITY ACT (65 OF 1980)

SYNOPSIS

- | | |
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| <p>1. Affidavit</p> <p>3. Grounds</p> <p>5. Period - Extension - Approval</p> <p>7. Preventive Detention Order</p> | <p>2. Detenu already in Custody</p> <p>4. Justified Order</p> <p>6. Powers & Duties of State Government</p> <p>8. Protection to Society</p> |
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1. Affidavit

– **Section 3** - Detention - Affidavit - In answer to a rule issued in a Habeas Corpus petition, the counter affidavit on behalf of the State should be sworn by District Magistrate who passed the detention order - City Superintendent of Police in his affidavit has not said that he had personally dealt with the matter - He has merely sworn the affidavit on the information gathered from the record - Except paper cuttings no other cogent material placed before the Court to judge the legality of detention order - Order of detention passed without application of mind - Petition allowed : *Usman Vs. State of M.P., I.L.R. (2012) M.P. 1594 (DB)*

2. Detenu already in Custody

– **Section 3** - Detention - Petitioner already in jail - Nothing on record to show that detenu authority was aware of the fact that Petitioner is already in jail - Detention order bad due to non-application of mind - Petition allowed : *Chandan Dagoriya Vs. State of M.P., I.L.R. (2012) M.P. 1521 (DB)*

– **Section 3(2)** – Detenu already in custody – Held – Detention order can validly be passed and confirmed by the concerned authority only after recording satisfaction that they are aware of the fact that detenu is already in custody and on the basis of reliable material they have reason to believe that there is possibility that in case the detenu is released he would in all probabilities indulge in prejudicial activities – Since there is not a slightest indication in the impugned orders that the authorities were aware of the fact that the detenu is already in custody – Impugned orders are quashed : *Md. Vakil Vs. State of M.P., I.L.R. (2015) M.P. 626 (DB)*

3. Grounds

– **Section 3** - Grounds of Detention - Petitioners engaged in manufacturing synthetic ghee on large scale - There was a danger to the health and hygiene of the large number of persons - Detention of the petitioners could not be said to be for wrong purpose : *Brijesh Dubey Vs. State of M.P., I.L.R. (2011) M.P. 2354 (DB)*

– **Section 3**, Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, (7 of 1980), Section 3 - Detention order - Petitioners engaged in manufacturing synthetic ghee - Words 'maintenance of supplies of commodities of essential to the community' means the natural commodity - Synthetic Ghee is not a natural commodity - Detention order under Section 3 of National Security Act within the power and authority of District Magistrate : *Brijesh Dubey Vs. State of M.P., I.L.R. (2011) M.P. 2354 (DB)*

– **Section 3** - Preventive Detention - Validity - Grounds of detention were based on similar grounds on which preventive detention order passed by Authorities was earlier quashed by court - Except 'Rojnamcha Entries' no material on record to prove that activities of detenu caused disturbance in public peace and tranquility - District Magistrate was not made aware that detenu was already in custody in connection with offence under Arms Act before he passed order of detention - Vague reports by police not sufficient for reaching subjective satisfaction required for passing of detention order - Detention order reveals non-application of mind and thus not valid - Petition allowed : *Sheeba Malik (Smt.) Vs. Union of India, I.L.R. (2014) M.P. 327 (DB)*

– **Section 5 & 5A** – Order of detention - Multiple grounds – Non-mentioning of material facts – Detention order if it is saved by Section 5A, cannot be set aside due to non-mentioning of material facts like acquittal or detention of detenu : *Mangal Singh @ Mangu Vs. State of M.P., I.L.R. (2015) M.P. 3157 (FB)*

– **Section 5A** – Grounds of detention severable – Detention order passed on more than one ground – If detaining Authority is able to demonstrate that even one ground is valid for issuing the order of detention, the fact that other grounds are vague, non-existent, not relevant, not connected, etc. would make no difference : *Mangal Singh @ Mangu Vs. State of M.P., I.L.R. (2015) M.P. 3157 (FB)*

– **Section 5A** – Ground of detention severable – Whether required to be specifically pleaded – No – It is a matter of legal presumption under Section 5A and need not to restate in Counter Affidavit to be filed by the detaining authority : *Mangal Singh @ Mangu Vs. State of M.P., I.L.R. (2015) M.P. 3157 (FB)*

– **Section 14** – Revocation of detention order – Union of India quashed the detention order without considering the fact that respondent No.2 was still absconding – Fact of involvement of respondent No.2 in manufacturing synthetic Ghee and recovery of huge quantity of such was also not considered – Decision means active application of mind, proper consideration of facts of case- Petition allowed : *State of M.P. Vs. Union of India, I.L.R. (2011) M.P. *119 (DB)*

4. Justified Order

– **Section 3** - Detention - Nature of - Detention without trial is a serious matter and the order of detention must be justified by detaining authority, whenever, the personal liberty in peril due to drastic executive action under draconian law : *Usman Vs. State of M.P., I.L.R. (2012) M.P. 1594 (DB)*

5. Period - Extension - Approval

– **Section 3 & 9** – Approval by Advisory Board – State Govt. directed for detention for a period of three months – Order of detention was approved by Advisory Board – State Govt. subsequently extended the period of three months twice without seeking approval of Advisory Board – Held – For every extension approval by Advisory Board is essential – Detention beyond first period of three months is illegal accordingly quashed : *Manoj Singh Jadhone Vs. State of M.P., I.L.R. (2015) M.P. *30 (DB)*

6. Powers & Duties of State Government

– **Section 3(2) & 3(3)** – Period of detention order – Order by State Government – Held – State Government cannot pass an order of detention for a period of more than 3 months – Since the impugned order of detention is for 12 months at first instance, same is quashed : *Mohaseen Kureshi Vs. State of M.P., I.L.R. (2015) M.P. *36 (DB)*

– **Section 3(2) & (5)**, Constitution, Article 21 - Preventive detention - Non-compliance of provisions by Detaining Authority and procedural illegalities - Approval of detention reported by State Government to Central Government beyond prescribed period of 7 days - Ground of detention and necessary particulars not reported to Central Government - It violates provisions of Section 3(5) of National Security Act which are mandatory - Detention order and its confirmation set aside : *Islamuddin @ Chhotiya Vs. State of M.P., I.L.R. (2014) M.P. *3 (DB)*

– **Section 3(2), 8 & 14(1)(a)**, Constitution - Article 21 & 22(5) - Petitioner stated that he submitted representations to the State Govt. and to the Central Govt. - Central Govt. rejected the representation - But, the State Govt. did not decide the representation - Held - Writ petition was filed on 05.10.2012 - On 24.01.2013, an order dated 04.12.2012 regarding rejection of representation by the State Govt. was filed - Decision on the representation was taken belatedly - Same is contrary to the constitutional and statutory obligation conferred upon the State Govt. - Unexplained delayed decision loses both its purpose and meaning - It would fatally affect the order of detention - Hence, detention order quashed - Writ petition allowed : *Golu @ Anand Vs. State of M.P., I.L.R. (2013) M.P. 2795 (DB)*

– **Section 3(3) and 3(5) – Proviso** - Order passed by the Detaining Authority or by the State Govt. was not communicated to the Central Government at all – No document showing compliance of Section 3(5) of the Act – Order quashed : *Bhaiya @ Bhaiyalal @ Arvind Vs. State of M.P., I.L.R. (2014) M.P. 1730 (DB)*

– **Section 8 & 14, Constitution – Article 22(5)** – Order of detention – Representation was decided by State after a delay of about four months but was not communicated to petitioner – Representations made to Detaining Authority was not decided – The detention order is therefore, liable to be quashed : *Bhaiya @ Bhaiyalal @ Arvind Vs. State of M.P., I.L.R. (2014) M.P. 1730 (DB)*

– **Section 8 & 14 - Right to make representation** - Petitioner not informed about his right to make representation against detention to the Central Govt. also, as per provisions of Section 14 - Constitutional Right envisaged under Article 22 infringed - Detention order quashed : *Azam Vs. State of M.P., I.L.R. (2012) M.P. 1616 (DB)*

7. Preventive Detention Order

– **Section 3(2) - Preventive Detention** - Delay in execution of order of detention - Residential address given by petitioner not controverted by Police - Delay of four years and seven months in executing the order of detention not explained - Order of detention liable to be quashed as respondents have failed to offer any satisfactory explanation for non-execution of order of detention - Petition allowed : *Mohd. Sartaj Vs. State of M.P., I.L.R. (2012) M.P. 3007 (DB)*

– **Section 3(2) - Preventive Detention** - Object of - Objective of preventive detention is to prevent a person from acting in any manner prejudicial to the security of the State or from acting in any manner prejudicial to the maintenance of public order : *Deepak Purohit Vs. State of M.P., I.L.R. (2013) M.P. 1561 (DB)*

– **Section 3(2) – Preventive detention order** – The activities of the detenu do not convey to have the effect and potentiality to disturb or dislocate even tempo of life of the community – Hence, such an action of the detenu/petitioner could not be termed as prejudicial to the maintenance of the public order – Order of detention is unjustified, liable to be set aside : *Dhanwan Vs. State of M.P., I.L.R. (2014) M.P. *10 (DB)*

– **Section 3(2) - Preventive Detention** - Petitioner had let out a premises to one M/s Hind Dairy Food Products against whom it is alleged that it is involved in manufacturing adulterated Ghee - Held - There is nothing on record relating to the relationship of Petitioner with functioning of M/s Hind Dairy Food Products - He is only owner of premises which is let out to said M/s Hind Dairy Food Products - A landlord can not be made responsible for an act of tenant - No rebuttal of allegations that the material

facts, documents and pronouncement of judgment in favour of petitioner granting him acquittal in criminal cases were not brought to the notice of detaining authority - There was no occasion to pass any order of preventive detention - Petition allowed : *Gyanesh Sharma Vs. State of M.P., I.L.R. (2011) M.P. *151 (DB)*

– **Section 3(2)**, Constitution, Article 22(5) & 19 - Order of Preventive detention passed on the ground pertaining to Public Order - Act of detenu was merely individual i.e. it affected only two injured persons, but did not affect the peace or tranquillity of rest of the community in any manner - Therefore, it could not be held to be a breach of Public Order constituting the basis of detention of the petitioner : *Deepak Purohit Vs. State of M.P., I.L.R. (2013) M.P. 1561 (DB)*

– **Section 3(2)**, Constitution, Article 22(5) & 19 - Preventive Detention -Not punitive - Detenu can claim no right of peremptory hearing or a show cause notice before the detention order is passed by the authority : *Deepak Purohit Vs. State of M.P., I.L.R. (2013) M.P. 1561 (DB)*

– **Section 3(2)**, Constitution, Article 22(5) & 19 - Preventive detention - Order of detention against the detenu passed on 08.06.2012 - Activities of detenu which could have been prejudicial to the maintenance of Public Order in the year 2010, cannot be held to be proximate and relevant for forming subjective satisfaction of the detaining authority : *Deepak Purohit Vs. State of M.P., I.L.R. (2013) M.P. 1561 (DB)*

8. Protection to Society

– **Section 3** - Detention order - Pre-execution stage - Power of Judicial Review - Purpose of detention is to afford protection to Society - Object is not to punish a man for having done something but to intercept before he does it and to prevent him from doing so : *Brijesh Dubey Vs. State of M.P., I.L.R. (2011) M.P. 2354 (DB)*

– **Section 3(2)** – Detention Order – Activities of the detenu were prejudicial to public tranquility and even tempo of life in society – Detenu has taken a life of crime and has become a menace to society – Held – It justifies the detention order – Acquittal from criminal cases had no dampening effect on his criminal proclivity – Writ Petition dismissed : *Hari Prasad Mishra Vs. District Magistrate, Indore, I.L.R. (2012) M.P. 1123 (DB)*

– **Section 3(2)** - Order of detention - Action of the petitioner had disturbed the even tempo of life - Act of the petitioner had affected the public order - The same is sufficient to justify the order of detention : *Haji Abdul Rajjak Vs. State of M.P., I.L.R. (2012) M.P. 2428 (DB)*

– **Section 3(2)** - Order of Detention - Petitioner committed various offences even in public and also terrorized the people of the locality by throwing the country made bombs - Such acts are bound to create fear in the minds of the people and is bound to disturb the normal life of the locality - Hence, it is a case of public order - Writ petition dismissed : *Banti @ Brijesh @ Ashish Vs. Avar Sachiv, I.L.R. (2011) M.P. 2723 (DB)*

– **Section 3(2)** - Preventive detention - Law and Order and Public Order - Distinction between the areas of 'Law and Order' and 'Public order' is one of the degree and extent of the reach of the act in question on society - It is the potentiality of the act to disturb the even tempo of the life of the community which makes it prejudicial to the maintenance of the Public order - It is the length, magnitude and intensity of the terror wave unleashed by a particular eruption of disorder that helps distinguish it as an act affecting 'Public order' from the concerning 'Law and Order' - Petition dismissed : *Tanzeel Khan Vs. State of M.P., I.L.R. (2013) M.P. 2377 (DB)*

NATURAL JUSTICE

- There can be no deprivation or curtailment of any existing right, advantage or benefit enjoyed by an employee without complying with rules of natural justice : *Vidik Seva Karmik Sangh Vs. State of M.P., I.L.R. (2011) M.P. *91 (DB)*

- Whether impugned order is outcome of a quasi judicial act or an administrative act - In both the situations the principle must be complied with : *Central Homeopathic & Biochemic Association, Gwalior Vs. State of M.P., I.L.R. (2013) M.P. 837*

NEGOTIABLE INSTRUMENTS ACT (26 OF 1881)

– **Section 20**, Evidence Act (1 of 1872), Section 45 – Handwriting Expert – Accused filed application for verification of signatures on registered A.D. – Accused did not dispute his signatures on cheque – Accused also did not dispute his address – He also participated in Court proceedings – Opinion of Handwriting Expert on registered A.D. card not necessary – Application rejected : *Iqrar Ahmed Vs. Mohd. Sadiq, I.L.R. (2015) M.P. 511*

SYNOPSIS : Section 138 to 142

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| 1. Amendment in Complaint | 2. Cognizance against Public Servant |
| 3. Debt or other liability/Security Cheques | 4. Demand Notice/Service of Notice |
| 5. Evidence/Proof | 6. Liability of Company |

- | | |
|---|--------------------------------|
| 7. Limitation/Condonation of Delay | 8. Maintainability |
| 9. Presumption/Rebuttal | 10. Vicarious Liability |
| 11. Withdrawal of Complaint | 12. Miscellaneous |

1. Amendment in Complaint

– **Section 138** - Amendment in the complaint - Complainant wrongly mentioned the cheque No.332534 in place of 332554 in the complaint as well as in the notice - After completion of cross-examination of complainant an application for amendment in complaint regarding cheque number filed, which was allowed by the trial court - Revision against the order was also dismissed by the A.S.J. observing that the case is at defence stage and petitioner/accused has an opportunity to defend his case - Held - Courts below have committed illegality in allowing such amendment : *Lekhraj Singh Kushwah Vs. Brahmanand Tiwari, I.L.R. (2013) M.P. 1783*

2. Cognizance against Public Servant

– **Section 138** - Cognizance - Public Servant - Every employee of Govt. Company is Public Servant entitled to exemption under Clause (a) of proviso to Section 200 of Cr.P.C. with regard to complaint relating to offence under Section 138 of Act, 1881 : *Arjun Dev Nagpal Vs. M.P. State Industrial Development Corporation Ltd., I.L.R. (2013) M.P. *1*

– **Section 138** - Cognizance - Public Servant - Every employee of Govt. Company is Public Servant entitled to exemption under Clause (a) of proviso to Section 200 of Cr.P.C. with regard to complaint relating to offence under Section 138 of Act, 1881 : *Ramesh Babulal Baheti (Dr.) Vs. M.P. State Industrial Development Corporation Ltd., I.L.R. (2013) M.P. 249*

3. Debt or other liability/Security Cheques

– **Section 138** – Debt or other liability – Cheques given by the applicant were dishonored in view of the instructions given by applicant – Cheques in question were given for security against the mobilisation advance and those cheques could not be encashed unless the total account between the parties would have settled – The amount of such cheques cannot be considered as debt or other liability – As the cheques were presented in a premature stage, then, the entire pleadings of the complaint made by respondent does not disclose the commission of any offence – Complaint quashed : *Mahinder Singh Bhasin Vs. M/s. Ssangyong Engineering & Construction Co. Ltd., I.L.R. (2015) M.P. 2505*

4. Demand Notice/Service of Notice

– **Section 138** – Non-service of demand notice – Notice sent by registered post was returned with the report that the addressee not found, but thereafter the complainant did not make concrete efforts to serve the notice on the accused – No presumption regarding service of demand notice could be drawn – Trial court rightly appreciated the evidence and rightly acquitted the accused : *Satyendra Tiwari @ Sonu Vs. State of M.P., I.L.R. (2014) M.P. 1679*

– **Section 138** - Notice to Company - Where demand notice under Section 138 is sent to the Director of the Company, who had signed the cheque on its behalf, amounts to notice to the Company itself : *Arjun Dev Nagpal Vs. M.P. State Industrial Development Corporation Ltd., I.L.R. (2013) M.P. *1*

– **Section 138** – Service of demand notice – Different address in envelop and acknowledgment – Not established that the demand notice sent to the address as shown in complaint and notice – Not valid service : *Harbanslal Vs. Shyamsundar, I.L.R. (2015) M.P. *22*

5. Evidence/Proof

– **Section 138** – Signature – Courts below hold that there is no over writing and difference of signature – Held – Defence that there was difference in the signature of the applicant between the cheque and specimen signature in the record of his Banker or the cheque was missed or stolen are being after thought are not helping to the applicant – Revision dismissed : *Dwarka Soni Vs. State of M.P., I.L.R. (2012) M.P. 1060*

– **Section 138 & 139** - Burden of Proof - In cases of Section 138 of N.I. Act, presumption u/s 139 of N.I. Act may not lead to injustice or mistaken conviction - Doctrine of reverse burden introduced by Section 139 of N.I. Act should be delicately balanced : *Anirudh Saini Vs. Piyush Agrawal, I.L.R. (2013) M.P. 1747*

– **Section 138 & 139** - Burden of Proof - Initially the burden of proof is on accused to rebut the presumptions u/s 139 of N.I. Act by raising a probable defence - If he discharges the said burden, the onus thereafter shifts on the complainant to prove his case : *Anirudh Saini Vs. Piyush Agrawal, I.L.R. (2013) M.P. 1747*

6. Liability of Company

– **Section 138** - Winding up of Company - A company cannot escape from penal liability on the premise that a petition for winding up of the Company was presented prior to the company being called upon by a notice to pay the amount : *Arjun Dev Nagpal Vs. M.P. State Industrial Development Corporation Ltd., I.L.R. (2013) M.P. *1*

– **Section 138 & 141** – Complaint under Section 138 & 141 – Petitioner, Director of Company arrayed as a party – Petitioner had neither signed the cheque in question nor there is allegation that the petitioner is the Managing Director of the Company – There is also no allegation that the petitioner was in-charge and responsible for conduct of the business of the Company at the relevant time – Trial Court has committed an error in taking cognizance of the offence u/s 138 of Negotiable Instruments Act against the petitioner – Complaint filed against the petitioner is dismissed : *Sonali Thanawala (Smt.) Vs. M/s. Rahul Ginning Industries, I.L.R. (2014) M.P. 2739*

– **Section 138 & 141** - Offence by Company - Arraigning of the Company as an accused is a condition precedent - Section 141 makes the Directors of the Company liable for the offence in a case where cheque in question is issued for and on its behalf - Complainant is under obligation to comply with the statutory requirement by impleading Company as an accused - Complaint dismissed : *Ramesh Babulal Baheti (Dr.) Vs. M.P. State Industrial Development Corporation Ltd., I.L.R. (2013) M.P. 249*

– **Section 141** - Offences by Company - Appellant No. 2 is the signatory of the cheque and appellant No.3 is the Managing Director of the Company - Both the persons by virtue of their position are vicariously liable for the offence committed by appellant No.1/Company : *O.T.G. Global Finance Ltd. Company Vs. Mohan Mandelia, I.L.R. (2011) M.P. *152*

7. Limitation/Condonation of Delay

– **Section 138 and Proviso to Clause (b) of Section 142** – Limitation – Time Barred – Complaint u/s 138-A of the Act was filed – At a defence evidence stage it was pointed out by the defence that the same is time barred – Then application u/s 5 of Limitation Act was filed – Held – An application as per proviso to clause (b) of Section 142 of the Act must be filed alongwith complaint – Such application is not maintainable at subsequent stage i.e. after taking the cognizance, if the Magistrate took cognizance on the time barred complaint, then this defect cannot be cured by filing an application for condonation of delay at later stage – Magistrate should not have recorded the conviction as he has erroneously taken the cognizance on a time barred complaint – Application is dismissed : *Keshav Chouhan Vs. Kiran Singh, I.L.R. (2014) M.P. 2744*

– **Section 138** - Condonation of delay - Whether the accused is entitled for opportunity of hearing before condoning the delay - In absence of any provision enabling the accused to participate in the inquiry into condonation of delay in filing the complaint under the Act, which is a special Statute, the matter lies exclusively between the complainant and the Court - It is only after the process is issued, the accused can question legality or otherwise of the order condoning delay on the ground that no sufficient cause was shown : *C.K. Chawla Vs. Shishir Jain, I.L.R. (2013) M.P. 243*

– **Section 138 & 142** - Cause of action & limitation - Cheque of Rs. 5 Lacs issued by applicant returned back by Bank on the ground of 'Stop Payment' - Non-applicant issued notice on 12.09.2007 demanding refund of Rs. 7,50,000 deposited in the account of applicant through M/s Bharat Thacker - No demand of Rs. 5 Lacs payable under the cheque was made - Non-applicant again deposited the cheque and issued another notice after the same was dishonoured - Complaint filed on the basis of the second notice - Held - First notice was not in conformity of the provisions of S. 138 proviso (b) of the Act - Unless the notice served is in conformity with proviso (b), no complaint is maintainable - Complaint filed on the basis of second notice maintainable and within limitation - Petition dismissed : *Aadhar Trading (M/s.) Vs. M/s. Ambica Refinery, I.L.R. (2011) M.P. *1*

8. Maintainability

– **Section 138** – Complaint in the name of proprietor – Cheque issued in the name of Firm – Not maintainable : *Harbanslal Vs. Shyamsundar, I.L.R. (2015) M.P. *22*

– **Section 138**, Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Pendency of Civil Suit – Proceedings under Section 138 of Act, 1881 can not be quashed merely because of pendency of civil suit – Disputed questions of fact can not be gone into in proceedings under Section 482 of Cr.P.C. : *Monotech Systems Ltd. Vs. Jai Badri Vishal Graphics, I.L.R. (2012) M.P. *28*

– **Section 138** - Dishonor of Cheque - Cheque issued by appellant by signing twice - Notice also given within period of limitation - Complaint also filed within period of limitation - No infirmity in the order of conviction - Revision dismissed : *Tarachand Vs. State of M.P., I.L.R. (2012) M.P. 2016*

– **Section 138** - Dishonour of Cheque - Cheques were issued by the petitioner and the same were dishonoured - Prima facie this fact is sufficient to frame the charge under this Act : *Dharmendra Singh Bhadouriya Vs. Rohit Goyal, I.L.R. (2014) M.P. 598*

– **Section 138** – Dishonour of cheque for insufficiency etc. – Offence under this section can be said to be committed by the drawer of the cheque on an account maintained by him with the banker but not by any other person : *Alok Vs. Praveen Kumar, I.L.R. (2014) M.P. 1112*

– **Section 138** – Dishonour of cheque – Overwriting on cheque not acknowledged by drawer – No evidence regarding transaction – Cheque was issued to discharge liability is suspicious : *Harbanslal Vs. Shyamsundar, I.L.R. (2015) M.P. *22*

– **Section 138** – Liability of Legal Heirs – Complaint against petitioner regarding cheque not issued by the petitioner herself – Held – Petitioner can not be held criminally

liable in regard to a cheque issued by her mother during her life time : *Neena Chopra (Smt.) Vs. Mahendra Singh Vaishya, I.L.R. (2011) M.P. 2277*

9. Presumption/Rebuttal

– **Section 138** - Examination by Handwriting Expert - Offence is a strict liability offence - Declination to send the documents for examination and opinion of the handwriting expert would amount to depriving the accused of the opportunity of rebutting the presumption - Application allowed : *Ram Sewak Patidar Vs. Narayan Singh Patidar, I.L.R. (2012) M.P. 2876*

10. Vicarious Liability

– **Section 141** – Officers Liable – Averments in Complaint - Managing Director or a Joint Managing Director, Director or an officer who has signed the cheque, Director, Secretary or Manager who are in charge of and responsible to the Company for the conduct of the business can be made liable : *Monotech Systems Ltd. Vs. Jai Badri Vishal Graphics, I.L.R. (2012) M.P. *28*

– **Section 141** - Person In charge and Responsible - Notice was issued to all the partners but no reply was sent stating that applicant was only a sleeping partner and not in charge of management, control or conduct of business or having any responsibility in management and administration of Company - Complaint specifically mentions that all are responsible for non-payment of cheque amount after receipt of notice - Whether a person is not such person responsible for the offence is a question of fact to be proved at the stage of trial - Revision dismissed : *Naresh Kumar Vs. Smt. Prabha Bai, I.L.R. (2011) M.P. 3209*

– **Section 141** – See – Prevention of Corruption Act, 1988, Section 13(1)(d) : *Ajoy Acharya Vs. State Bureau of Inv. Against Eco. Offence, I.L.R. (2014) M.P. 915 (SC)*

– **Section 141** - Vicarious Liability - It is not necessary to reproduce the language of Section 141 verbatim in complaint - If the substance of the allegations made in the complaint fulfills the requirements of Section 141, the complaint has to proceed and is required to be tried with - Hypertechnical approach should not be adopted so as to quash the same : *Arjun Dev Nagpal Vs. M.P. State Industrial Development Corporation Ltd., I.L.R. (2013) M.P. *1*

– **Section 141** - Vicarious Liability - It is not necessary to reproduce the language of Section 141 verbatim in complaint - If the substance of the allegations made in the complaint fulfills the requirements of Section 141, the complaint has to proceed and is required to be tried with - Hypertechnical approach should not be adopted so as to quash the same : *Ramesh Babulal Baheti (Dr.) Vs. M.P. State Industrial Development Corporation Ltd., I.L.R. (2013) M.P. 249*

– **Section 141** - Vicarious Liability - Resignation - Merely because the resignation of the Director has been accepted would not assume importance as the complainant may still prove that change in the management of the Company was effected only to avoid constructive liability : *Arjun Dev Nagpal Vs. M.P. State Industrial Development Corporation Ltd., I.L.R. (2013) M.P. *1*

– **Section 141 & 142** - Complaint by Company - If the payee is a Company, the complaint should be filed in the name of Company- Section 142 does not specify that who should represent the company- A company can be represented by an employee or even by a non-employee authorized and empowered to represent the company either by a resolution or by a power of attorney - Company means any body corporate and includes a firm or other association of individuals : *Sai Tractors, Sagar Vs. Sai Tractors, Bina, I.L.R. (2012) M.P. 1773*

11. Withdrawal of Complaint

– **Section 138** - Withdrawal of Complaint - Prayer for withdrawal of complaint at defence stage on the ground of compromise cannot be allowed without following the guideline of depositing 10% of the cheque amount, as laid down by Apex Court in the case of Damodar S. Prabhu Vs. Sayed Babalal : *Raghunath Singh Patel Vs. Chandra Pal Singh Parihar, I.L.R. (2012) M.P. 3112*

12. Miscellaneous

– **Section 138**, Stamp Act (2 of 1899), Section 33(2)(a) & 35 – Whether a document can be impounded in a Criminal case u/s 35 for insufficiency of stamps – Held – Proceedings are criminal in nature and are of summary nature – Provisions of Section 35 of Stamp Act would not be attracted – Proviso to section 33(2)(a) of Stamp Act gives wide discretion to Magistrate to examine or impound – Petition u/s 482 of Cr.P.C. dismissed : *Ramesh Giri Vs. Dheeraj Gobhuj, I.L.R. (2015) M.P. 1106*

– **Section 138** – See – Criminal Procedure Code, 1973, Section 87 : *Madhu Gupta (Smt.) Vs. Veer K. Shrivastava, I.L.R. (2012) M.P. 1097*

– **Section 138** - See - Criminal Procedure Code, 1973, Section 177 : *Mohan Mandelia Vs. State of M.P., I.L.R. (2011) M.P. 562*

– **Section 138** - See - Criminal Procedure Code, 1973, Section 190 : *Akhilesh Saraf (Dr.) Vs. Smt. Usha Tiwari, I.L.R. (2011) M.P. 572*

– **Section 138** – See – Criminal Procedure Code, 1973, Section 482 : *Dhanraj Vs. Ashok Kumar, I.L.R. (2014) M.P. 1172*

– **Section 138** – See – Criminal Procedure Code, 1973, Section 482 : *Mohd. Aasim Vs. Anil Kumar Saraf, I.L.R. (2014) M.P. 2718*

– **Section 138** – See – Evidence Act, 1872, Section 45 : *Rajendra Mundra Vs. Kailash Jain, I.L.R. (2015) M.P. 1594*

• – **Section 142 & 145** - Cognizance and Evidence on Affidavit - Held - Cognizance taken by the Magistrate on complaint supported by an affidavit of the complainant cannot be held illegal or without jurisdiction - Section 145 includes the proceedings of the complaint case at the pre-summoning stage, therefore affidavit could be filed and relied upon - This section allows that the evidence of the complainant has to be given on affidavit : *Mohan Lal Agarwal Vs. G.C.M. Construction Pvt. Ltd., I.L.R. (2014) M.P. 267*

– **Section 142(b)** – A litigant is not required to explain delay of each and every day – It is sufficient for him if he gives sufficient cause for delay in filing appeal or application before Court : *Tulsiram Narwariya Vs. Mahesh Chandra, I.L.R. (2011) M.P. 2073*

– **Section 145** – Affidavit – Offence under Section 138 of the Act – Complainant submitted affidavit in support of his complaint which contain entire factual position – Held – Proper compliance of Section 200, Cr.P.C. in light of provision of Section 145 of the Act – Registration of complaint on basis of affidavit is legal – Petition dismissed : *Dinesh Vaishnav (Bairagi) Vs. Kishor Kumar Gupta, I.L.R. (2012) M.P. 654*

– **Section 147** – Compounding of Offence – Stage – Offence under Section 138 is not only an offence qua property but it is also of the nature of an economic offence – Thus parties are liberty to compound the offence even after the dismissal of their revision – Convict may pray for his release on by compounding the offence by filing application under Section 482 – Application for compromise allowed : *O.T.G. Global Finance Ltd. Vs. Mohan Mandelia, I.L.R. (2012) M.P. *29*

– **Section 147**, Criminal Procedure Code, 1973 (2 of 1974), Section 320(2) – Compromise – Permission of Court – Provisions of Section 147 of Act, 1881 override the provisions of Section 320(2) of Cr.P.C. – Section 147 of Act, 1881 does not confer any obligation to obtain permission for entering into a compromise or to compound the offence : *O.T.G. Global Finance Ltd. Vs. Mohan Mandelia, I.L.R. (2012) M.P. *29*

NIKSHEPAKON KE HITON KA SANRAKSHAN ADHINIYAM,
M.P., 2000 (16 OF 2001)

– **Section 4**, Nikshepakon Ke Hiton Ka Sanrakshan Niyam, M.P., 2003, Rule 9 – Seizure or attachment – There is distinction between seizure and attachment – Before passing the order of Seizure, the competent Authority must record satisfaction that it is satisfied or has reason to believe that the property liable to be attached is likely to be

concealed or transferred or dealt with in any manner which will result in defeating the purpose of Act – Impugned order of seizure quashed – However, Company directed not to transfer or otherwise deal with immovable property which has been seized except with the permission of the High Court – Direction to remain in force till fresh order is passed by competent authority : *Sai Prasad Foods Ltd. (M/s.) Vs. State of M.P., I.L.R. (2014) M.P. 2091 (DB)*

- **Section 4, 5 & 7** - Refund of Money invested in Chit Fund Company - Petitioner has filed the petition for refund of money invested by him with the respondent no. 3 - Properties of respondent no.3 company has already been attached under Section 4 of Act, 2000 - Special Court constituted under Section 7 is empowered to direct for equitable distribution among depositors - Petitioner directed to approach the Competent Authority who will apply to the Special Court along with certificates - Special Court will verify the liability of payment of deposits and interests accrued and shall pass necessary order for equitable distribution amongst the depositors and even if after auctioning/selling the property of the Company, if the Court finds that it is not sufficient to cover the shortfall, shall impose such fine on the Company or its Directors to cover the shortfall : *Omkar Singh Vs. State of M.P., I.L.R. (2012) M.P. *108 (DB)*

NIKSHEPAKON KE HITON KA SANRAKSHAN NIYAM, M.P., 2003

- **Rule 9** – See – Nikshepakon Ke Hiton Ka Sanrakshan Adhiniyam, M.P., 2000, Section 4 : *Sai Prasad Foods Ltd. (M/s.) Vs. State of M.P., I.L.R. (2014) M.P. 2091 (DB)*

NOISE POLLUTION (REGULATION AND CONTROL) RULES, 2000

- **Rule 5** – Kolahal Niyam Adhiniyam M.P., 1985 (1 of 1986), Section 13 – Validity of Section 13 of Act, 1985 – Rules 2000 being central rules framed under Central enactment, will prevail – Exemption provided u/s 13, Act, 1985 is ex facie in conflict with outer limit specified by Rule 5(3), Rules 2000 – To that extent section 13(1) of Act, 1985 is declared ultra vires : *Rajendra Kumar Verma Vs. State of M.P., I.L.R. (2015) M.P. 1284 (DB)*

- **Rule 5(3)** – Exemption – Use of loudspeakers at any religious place – Sound level restrictions provided by Central Legislation will have to be adhered to without any exception : *Rajendra Kumar Verma Vs. State of M.P., I.L.R. (2015) M.P. 1284 (DB)*

- **Rule 5(3)** – Installation of Pandals – Govt. Authorities must entertain application for installation of Pandals on public street keeping in mind the statutory provisions/restrictions but also dictum of Apex Court – If any authority comes across any unauthorized Pandal on a busy street, must remove the same by following due process : *Rajendra Kumar Verma Vs. State of M.P., I.L.R. (2015) M.P. 1284 (DB)*

NON-GAZETTED CLASS III SERVICES (COLLEGIATE BRANCH)
RECRUITMENT AND PROMOTION RULES, M.P. 1974

- **Amendment of Rules in 1991** - Amendment in the year 1991 providing that Laboratory Attendants having qualification for appointment on the post of Laboratory Technician only would be promoted - This amendment was already held prospective and similarly situated employees were directed to be given promotion - Order of State Administrative Tribunal was upheld by Supreme Court also - Nothing is left to be adjudicated as the claim of the identically placed persons was already decided by Tribunal duly affirmed by the Apex Court - Order for promotion of the petitioners giving benefit of promotion w.e.f. 16-12-1994 be immediately issued - However, petitioners would be entitled to the notional fixation of their pay on the promotional post of laboratory technician : *Ashok Kumar Chouksey Vs. State of M.P., I.L.R. (2012) M.P. 2675*

NOTARIES RULES, 1956

- **Rule 2(a)** - Appropriate Government - Petitioner appointed by Central Government - Appropriate Government is Central Government to enquire into the allegations of professional or other misconduct - Action initiated by State Government bad in law : *Rais Khan Vs. State of M.P., I.L.R. (2011) M.P. 395*

- **Rule 13** - Expunction of remarks - Before any castigating remarks are made by Court against any person, he should have been given an opportunity of being heard in respect of such proposed remarks/strictures - Petitioner was not heard at any point of time before passing any remark/stricture - Stricture deserves to be expunged - Petition allowed : *Rais Khan Vs. State of M.P., I.L.R. (2011) M.P. 395*

NOTIFICATION

- **Exemption Notification** - Is to be read literally - For the purpose of satisfying the eligibility criteria nothing can be read into the exemption notification which is not provided therein : *Ghanshyamdas & Co. (M/s.) Vs. Commissioner of Commercial Tax, M.P., I.L.R. (2011) M.P. *6 (DB)*

NOTIONAL INCOME

- **Uneducated and Unskilled Person** – Rs. 100/- per day in the year 2008 – The same is applicable and binding on the Tribunal on the date of award i.e. 2011 : *Kishanlal Vs. Hemraj Jaiswal, I.L.R. (2015) M.P. 2467*

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PANCHAYAT ADHYAPAK SAMVARG (EMPLOYMENT & CONDITIONS OF SERVICE) RULES M.P. 2008

– **Rule 5** – See – Educational Service (School Branch) Recruitment and Promotion Rules, M.P. 1982, Rule 11-B : *Gazetted Headmasters Pradeshik Sangh, Madhya Pradesh Vs. State of M.P., I.L.R. (2015) M.P. 2888 (DB)*

PANCHAYATS (APPEAL AND REVISION) RULES, M.P. 1995

– **Rule 3** – See – Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993, Section 91 : *Chintamani Singh Vs. State of M.P., I.L.R. (2015) M.P. 1495 (DB)*

– **Rule 3** – See – Service Law : *Harish Chandra Yadav Vs. State of M.P., I.L.R. (2012) M.P. 1107 (DB)*

– **Rule 5** – Power of Collector – Revision against order of Sub-Divisional Officer filed before Collector, mentioning it as an appeal – Held – Merely because the challenge was nomenclatured as an appeal, will not denude the Collector of the power to hear the same : *Maya Devi (Smt.) Vs. State of M.P., I.L.R. (2012) M.P. 1214*

– **Rule 5** – Second Revision - Second Revision before Minister is maintainable : *Ramkinkar Vishwakarma Vs. State of M.P., I.L.R. (2012) M.P. 1514 (DB)*

PANCHAYATS (ELECTION PETITIONS, CORRUPT PRACTICES AND DISQUALIFICATION FOR MEMBERSHIP) RULES, M.P., 1995

– **Rule 3** – Copy of Petition – Notice of election petition was served upon the returning candidate who put her appearance and on that date additional copy of election petition was given – No objection was taken that copy served along with notice was unattested or notice was served without copies of election petition – In case unattested and unsigned copies were served upon the appellant, then it should have been filed before the authority to establish this fact – The best evidence which was available to the appellant was not produced – Additional copy given on subsequent date need not be signed and attested by election petitioner as it is not the requirement of Rule 3 – Appeal dismissed : *Shakuntala Bai (Smt.) Vs. Nathulal, I.L.R. (2011) M.P. 2097 (DB)*

– **Rule 3** – Election petition not presented before Specified Officer by respondent himself and the counsel was also not authorized by respondent to submit the election

petition – No signature of respondent on the copy of the election petition, which was served on the appellant – Held – There is non compliance of the mandatory provision of Rule 3 of the rules of 1995 – Election petition liable to be rejected : *Sanjay Vs. Shri Lal, I.L.R. (2011) M.P. *102 (DB)*

– **Rule 3** - Presentation of Election Petition - Authorization - Authorization to file an election petition has to be specific and not by mere endorsement in Vakalatnama - It is not an authorization as is required under Rule 3(1) - No evidence to show that election petitioner was present at the time of presentation of election petition as he did not put his signature on the order sheet - Specified Officer committed grave error in entertaining election petition : *Uma Shankar Chobey Vs. Madan, I.L.R. (2013) M.P. 2603*

– **Rule 3** - Presentation of Election Petition - Election petition was presented by Election Petitioner through Counsel - It cannot be said that election petitioner did not present the election petition nor that she was not present when the election petition was presented : *Savitri Panika (Smt.) Vs. State of M.P., I.L.R. (2013) M.P. 2370*

– **Rule 3 & 8** – Requirement of verification of copy of election petition - Copy of election petition supplied to respondent before Election Petition Tribunal – Copy of election petition was not required to be signed and verified by election petitioner : *Natthulal Vs. Smt. Shakuntalabai, I.L.R. (2011) M.P. 1182*

– **Rule 3 & 8** - See - Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993, Section 122 : *Kamlesh Nut Vs. The Commissioner, I.L.R. (2012) M.P. 2148*

– **Rule 6** - Relief(s) - Election Petitioner did not seek the setting aside of election and declaring it to be null and void instead sought the relief of declaring the alleged votes casted in favour of returned candidate as invalid and declare fresh result in favour of Election Petitioner - As no relief was sought for declaring the election as null and void, the Specified Officer exceeded the relief sought for by Election Petitioner by declaring the result as null and void : *Uma Shankar Chobey Vs. Madan, I.L.R. (2013) M.P. 2603*

– **Rule 7** – Security Deposit – Petitioner filed Election Petition on 22.02.2010 alongwith making the security deposit of Rs. 500/- – On 06.03.2010, the petitioner filed an application and withdraw the Election Petition without any prayer of refund of security deposit – On same day i.e. 06.03.2010, the petitioner filed another Election Petition, but without making any deposit of security deposit – Held – The amount deposited with the first election petition can not be treated as deposit of security – Nothing could be done except dismissing the election petition – Petition dismissed : *Roopa Singh (Smt.) Vs. State of M.P., I.L.R. (2012) M.P. 1159*

– **Rule 7** – See – Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993, Section 122 : *Beena Pandey Vs. Mamta Devi, I.L.R. (2012) M.P. 861*

- **Rule 13** - Withdrawal of election petition - Mere filing of an application for withdrawal will not automatically result into withdrawal of election petition - It can be withdrawn only with the leave of the Specified Officer : *Leelawati (Smt.) Vs. Kanhaiyalal, I.L.R. (2011) M.P. *140*

- **Rule 21** - Corrupt Practice - To establish allegation of corrupt practice, it is incumbent upon election petitioner to lead cogent evidence - Election Petitioner did not examine those persons who were said to have participated in casting votes at two places, but examine some persons who were not named in election petition of having casted votes in favour of Returned candidate - Some evidence does not lead to a conclusion that returned candidate had taken recourse to unfair means and corrupt practice : *Uma Shankar Chobey Vs. Madan, I.L.R. (2013) M.P. 2603*

PANCHAYAT NIRVACHAN NIYAM, M.P. 1995

- **Corrupt Practices** - Rules are in pari materia to the provisions of Representation of People Act - Allegation if established have a serious consequence - Hence, required to be proved to the hilt like criminal cases i.e. proof beyond reasonable doubt - Mere bald statements cannot be treated as a conclusive proof of committing corrupt practices : *Geeta Bai (Smt.) Vs. The Sub Divisional Officer, I.L.R. (2013) M.P. 2579*

- **Rule 35** - See - Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993, Section 122 : *Janaki Devi Vs. Smt. Siya Bai, I.L.R. (2014) M.P. 686*

- **Rule 35(2)**, Evidence Act (1 of 1872), Section 35- Date of Birth - Birth certificate issued by Registrar birth and death would prevail over the school certificate : *Basanti Bai (Smt.) Vs. Smt. Premwati Bai, I.L.R. (2012) M.P. 2416*

- **Rule 35(2)** - See - Constitution, Article 243 F : *Basanti Bai (Smt.) Vs. Smt. Premwati Bai, I.L.R. (2012) M.P. 2416*

- **Rule 80** - See - Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993 : *Ganesh Ram Gayari Vs. Bagdiram, I.L.R. (2013) M.P. 1793 (DB)*

PANCHAYAT (POWERS AND FUNCTIONS OF CHIEF EXECUTIVE OFFICER), M.P. RULES, 1995

- **Change of Service Condition** - Transfer of petitioner to Rajiv Gandhi Watershed Mission cannot be said to be on equivalent post - Petitioner's service conditions are changed - He is deprived to perform statutory duties attached to his post : *Pratap Singh Mandeliya Vs. State of M.P., I.L.R. (2014) M.P. 2792*

– **Transfer** – Malicious in Nature – Entire action of transfer is based on bald complaint of Ex. M.L.A. – Cannot be said to be in administrative exigency or in public interest – Since petitioner was shunted before he could resume charge on irrelevant consideration – Transfer order is malicious in nature : *Pratap Singh Mandeliya Vs. State of M.P., I.L.R. (2014) M.P. 2792*

– **Withdrawal of Monitoring, Drawing and Disbursing Powers** – Held – Once interim order is passed staying the transfer order, it was not proper for the respondent to take away monitoring, drawing and disbursing powers from the petitioner – Attempt is made to nullify the interim order liable to be deprecated : *Pratap Singh Mandeliya Vs. State of M.P., I.L.R. (2014) M.P. 2792*

PANCHAYAT RAJ EVAM GRAM SWARAJ ADHINIYAM, M.P. 1993
(1 OF 1994)

– **Section 13(2)** – Election of Sarpanch by Panchas – This is a stop gap arrangement and transitory provision, wherein the Sarpanch is elected from Panchas till a fresh election proceeding, which is required to be commenced within six months as per statutory mandate of Section 13(2) : *Ramvati (Smt.) Vs. State of M.P., I.L.R. (2011) M.P. 1958*

– **Section 17** – Reservation of Seats – Reservation of seat of Sarpanch for Scheduled Tribe challenged on the ground that there are only two persons i.e., husband and wife and therefore, population of S.T. ought to have been declared as no population – Held- No Population do not cover a case where husband and wife belonging to S.T. live in same Gram Panchayat – Voters have choice either to elect husband or wife – Reservation of seat can not be held to be farce – Petition dismissed : *Sukhiya Lodhi Vs. State of M.P., I.L.R. (2012) M.P. 462 (DB)*

– **Section 21(4)** - No confidence motion was moved against the petitioner - No confidence motion was challenged on the ground that by accepting invalid votes there is miscarriage of justice - Held - When Rules have been framed laying down the procedure, theory of ignorance, or illiteracy and that of gathering intention does not apply - It is erroneous on the part of Authorities to accept two votes carrying a reverse right mark (↙) as valid and hold that no confidence motion was passed by more than two third majority (as required u/s 21(1) of Adhiniyam 1993) - That with 8 votes in favour of motion of no confidence, it fell short of two third of the total number of Panchas constituting Gram Panchayat as would lead to cessation of office of Sarpanch by the petitioner - Resolution of no confidence quashed - Petition allowed : *Meena Rao (Smt.) Vs. Collector, Katni, I.L.R. (2014) M.P. 682*

– **Section 21(4) & 38(1), Clause (b)** - Appeal against no confidence motion - Collector granted status-quo directing restoration of Sarpanch - Before passing of the said order petitioner was appointed as adhoc Sarpanch - Held - It was beyond the power of Collector to stay the operation of no confidence motion which lead to cessation to hold office forthwith - Petitioner is directed to be restored as adhoc Sarpanch : *Munni Bai (Smt.) Vs. State of M.P., I.L.R. (2014) M.P. 323*

– **Section 36** - Appellant, a convict of life imprisonment was released from Jail after completion of sentence and five years have not yet been elapsed - Rightly held by Writ Court that the appellant was having disqualification for holding the office of Sarpanch : *Suresh Baba Vs. Virendra Tyagi, I.L.R. (2011) M.P. 614 (DB)*

– **Section 36** - Disqualification of Office bearer of Panchayat - Act of encroachment of land or building of the Panchayat and Government must be committed by the candidate himself - Factum of encroachment must be construed strictly - In absence of any evidence, candidate cannot be held to be disqualified : *Geeta Bai (Smt.) Vs. The Sub Divisional Officer, I.L.R. (2013) M.P. 2579*

– **Section 36(1) & 36(2)** - Bar under - Would not come in the way when a writ petition seeking relief of quo warranto is filed : *Suresh Baba Vs. Virendra Tyagi, I.L.R. (2011) M.P. 614 (DB)*

– **Section 36(1)(a)**, Constitution, Article 226 - Setting aside of election - Respondent No. 7 contested the election of Member of Janpad Panchayat by suppressing the fact that he has already been convicted u/s 302 of I.P.C. and has been sentenced to undergo life imprisonment - Respondent No. 7 was apparently disqualified u/s 36(1)(a) of Adhiniyam, 1993 - High Court in suitable cases is not prevented from declaring under Article 226 that a person elected to Janpad Panchayat was not qualified to be chosen as a Member and in restraining him to function as a Member - Election of respondent No. 7 quashed : *Ram Kumar Vs. State of M.P., I.L.R. (2013) M.P. 1578*

– **Section 37**, Panchayat (Resignation by Office Bearer) Rules, M.P. 1995, Rule 4 - Acceptance of Resignation - Resignation submitted by an office bearer can be accepted only after a full and complete compliance with the provisions of Rule 4 of Rules 1995, contemplating consideration thereon by Panchayat at its next meeting under notice to petitioner - As resignation was accepted circumventing the procedure prescribed therefor and in view of non-compliance of mandatory provisions of rule 4(2) and (3), it is sufficient to hold that the resignation was not validly accepted - Petition allowed : *Bihari Das Vs. State of M.P., I.L.R. (2013) M.P. 1069*

– **Section 37(3) & 86(2)** - Appointment on the post of Panchayat Karmi - Respondent No. 6 working on the post of Sarpanch when advertisement was issued for

appointment of Panchayat Karmi and last date for submission of form was 10.8.2009 - Another advertisement was got issued and the last date for submission of form was 30.8.2009 - Resignation submitted by Respondent No. 6 was accepted by Deputy Director on 30.8.2009 and on the same day, respondent No. 6 submitted his application form - Held - Dy. Director was not competent to accept resignation and therefore, there was no valid resignation nor there was any question of its acceptance - Further more Petitioner was more meritorious than respondent No. 6 as he was not entitled to additional marks for higher education and experience - Collector was well within his competence to set aside such an illegal selection and directing for proper selection : *Mukesh Prasad Vs. State of M.P., I.L.R. (2011) M.P. *124*

– **Section 39(1)(a)** - Suspension of Office Bearer - Appellant was suspended on account of framing of charge against him u/s 376 (2)(g) of IPC - On acquittal of the charge, his application for revocation of suspension was dismissed on the ground that the petitioner was acquitted on giving benefit of doubt and against the judgment of such acquittal appeal has been filed by State and Leave to appeal has been granted u/s 378(3), Cr.P.C. - Held - The rigour of Section 39(1)(a) of the Adhiniyam, 1993 will not come in petitioner's way merely because the appeal against acquittal has been admitted by the Court - Petition allowed : *Ramesh Vs. State of M.P., I.L.R. (2013) M.P. 74 (DB)*

– **Section 39(1)(a) & 36(1) (cb) & (e)** - Disqualification - Election for the post of Sarpanch - Respondent was earlier working as Panchayat Secretary and was removed on the charge of misappropriation - Order of recovery is in force against respondent and is also facing criminal trial - As dues were not paid therefore, respondent No. 5 was disqualified from contesting the election - Pendency of criminal case has nothing to do with the payment of dues - Removal of the Respondent as Panchayat Secretary on the ground of financial irregularity disentitles him to hold the office of Panchayat irrespective of the period which has expired - The stigma of removal on the ground of corrupt practice remains till such order is set aside - Election of respondent No. 5 set aside : *Baij Nath Prasad Vs. State of M.P., I.L.R. (2014) M.P. 676*

– **Section 40** – Collector issued a direction to the Sub-Divisional Officer to take action against the petitioner for her removal as petitioner not taking interest in the work of Gram Panchayat and for implementation of various welfare schemes on account of personal dispute – Sub-Divisional Officer registered the proceeding against the petitioner – Held – Initiation of proceeding at the instance of the Collector amounts to abdication and surrender of its discretion – Can not be sustained in the eye of law : *Makhano Kori (Smt.) Vs. State of M.P., I.L.R. (2011) M.P. *59*

– **Section 40** – Removal of Sarpanch – Proceeding before SDO – Not empty formality – Principle of natural justice has to be followed – Opportunity to lead evidence

and cross-examination be afforded : *Chandrakanta Bai Vs. State of M.P., I.L.R. (2015) M.P. 1657 (DB)*

– **Section 40 & 92** – Petitioner has been removed from the post of Sarpanch – Held – Legislature was not indicating that the two enquiries be clubbed together which are to be conducted under section 40 and 92 of the Act – Authority could have initiated show cause notice to the petitioner for misconduct – Application under section 92 was required to be rejected, but for any reason the order section 40 of the Act could not have been passed – Without following the procedure of enquiry prescribed order passed – Writ Petition Allowed : *Maya Choudhary (Smt.) Vs. State of M.P., I.L.R. (2012) M.P. 895*

– **Section 40(1)(c)** - Proviso - Directory or Mandatory - Proviso to Section 40 which provides that final order in enquiry shall be passed within 90 days from the date of issuance of show cause notice which is extendable upto 30 days - Provision is directory in nature - No consequences are provided in the proviso, if no final order is passed within the stipulated period - Deletion of words as far as would not make the proviso mandatory - Intention of Legislature is to fix accountability of Panchayat Officials - Any narrow or hyper-technical interpretation will defeat the very purpose of insertion of Section 40 : *Dhanwanti Vs. State of M.P., I.L.R. (2012) M.P. 2128*

– **Section 69** - Disqualification - Disqualification will not wipe out subsequently if Sarpanch for whatever reason discontinues : *Ganesh Singh Rawat Vs. State of M.P., I.L.R. (2012) M.P. *76*

– **Section 69** - Disqualification - Real brother of Sarpanch is disqualified for appointment even if at the time of selection, Sarpanch did not attend the meeting : *Ganesh Singh Rawat Vs. State of M.P., I.L.R. (2012) M.P. *76*

– **Section 69** – Whether Panchayat Secretary can be placed under suspension by the Collector – Held – Collector is the Appointing Authority of Panchayat Secretary – Sec. 69 is still in the Statute Book – Enabling provision to appoint the Panchayat Secretary by the Collector is not taken away or deleted – Rules are framed under the Adhiniyam are in aid to the Adhiniyam – Hence, Collector continues to be the Appointing Authority and is empowered to place the petitioner (Panchayat Secretary) under suspension : *Devendra Singh Kirar Vs. State of M.P., I.L.R. (2014) M.P. 1031*

– **Section 69 & 70** – Appointment of Panchayat Karmi – Local resident – Merit is the sole criteria for appointment and cannot be superseded only on the basis that meritorious candidate is not the resident of that locality : *Jaiprakash Batham Vs. State of M.P., I.L.R. (2011) M.P. 1867*

– **Section 69 & 70** – Panchayat Karmi/Panchayat Secretary – Appointment – Whether a candidate belonging to a different Area other than the village for which the appointment of Panchayat Karmi/Panchayat Secretary is to be made is eligible for seeking appointment to the post – Held – Yes, the requirement of scheme is only directory in nature and not mandatory as it is policy of State Government to transfer Panchayat Karmi/Secretary from one village to another in the same District – Appeal dismissed : *Raghvendra Singh Vs. State of M.P., I.L.R. (2015) M.P. 2845 (DB)*

– **Section 69, 70 & 86(2)** – Appointment of Panchayat Karmi – Advertisement for appointment of Panchayat Karmi was issued with a clear stipulation that merit and clean record would be considered for selection and the candidates who are facing criminal prosecution would not be entitled to take part in selection – Held – Since the respondent No. 6 who was facing criminal prosecution at the relevant time has submitted incorrect declaration – He has also not made the application within time – His candidature has rightly not been considered – Order passed by Addl. Commissioner is quashed and order passed by Collector is affirmed – Petition is allowed : *Archana Tiwari (Smt.) Vs. State of M.P., I.L.R. (2015) M.P. 316*

– **Section 69 & 86(1)** – Panchayat Karmi and Panchayat Secretary – Different posts – Respondent No. 5 was appointed by Collector on the post of Panchayat Karmi and subsequently Panchayat Secretary – Appointment of Respondent No. 5 as Panchayat Secretary was subsequently terminated on the ground of pendency of criminal cases – Held – Merely because appointment of respondent No. 5 on the post of Panchayat Secretary was terminated, it cannot be assumed that his appointment on the post of Panchayat Karmi is also terminated – Both are different posts – Petition dismissed : *Veer Singh Gosh Vs. State of M.P., I.L.R. (2011) M.P. 1878*

– **Section 69 & 86(1)**, Panchayat (Resignation of Office Bearer) Rules, M.P. 1995, Rule 3 - Petitioner was panch in the Gram Panchayat - He applied for the post of Panchayat Karmi pursuant to the advertisement - Cutoff date for making such application was 08.05.2006 - Petitioner tendered his resignation on 31.10.2006 - When a relative of an office bearer is not to be permitted to hold the charge of the post of Secretary, then how could a panch of very Gram Panchayat be appointed on the post of panchayat karmi - Petitioner was ineligible to take part in selection for appointment on the post of Panchayat Karmi - Resignation tendered by Petitioner was also not in the manner provided under the Rules, 1995 - Petition dismissed : *Prahlad Das Tandia Vs. State of M.P., I.L.R. (2013) M.P. 279*

– **Section 69(1) & 70** - Appointment of Panchayat Karmi - Circular dated 13.8.2007 prescribed that appointment has to be made on the basis of merit - Said circular is prospective in operation - Advertisement was issued on 18.7.2007 - Agenda was prepared

on 3.8.2007 and appointment order was issued on 11.8.2007 and the petitioner joined his services thereafter - As the appointment of the petitioner was done prior to the issuance of the circular dated 13.8.2007 - Appointment of the petitioner was justified : *Kalpna Mishra Vs. State of M. P., I.L.R. (2011) M.P. 2291*

– **Section 70**, Panchayat Samvida Shala Shikshak (Employment and Conditions of Contract) Rules, M.P., 2005, Rule 14 - Maximum Age - It is within the powers of State Govt. to prescribe for minimum and maximum age of recruitment and even to amend the same by issuing executive order - By circular dated 03.11.2012 maximum age limit is 45 years for direct recruitment - Merely because the petitioner has passed the eligibility test, no vested right is created in her favour - It has been rightly held that as the petitioner has crossed the age limit of 45 years, she is not entitled for counseling for appointment to the post of Samvida Shala Shikshak Grade I - Petition dismissed : *Urmila Rajak (Smt.) Vs. State of M.P., I.L.R. (2013) M.P. 1057*

– **Section 85** - Appeal - Resolution - No appeal lies against the resolution appointing the petitioner as Panchayat Secretary - Appeal lies against the order of appointment - Prescribed authority may suspend the resolution which is required to be affirmed by next higher authority - The S.D.O. was not required to look into the claims made in the appeal - Order setting aside the Resolution is bad : *Raj Kumar Kushwaha Vs. State of M.P., I.L.R. (2013) M.P. 53*

– **Section 85** – Appointment of Panchayat Karmi – Appointment of appellant was made on the basis of majority of votes – Scheme in vogue provided for appointment on merit basis – Appointment of appellant was rightly quashed by Writ Court : *Suresh Vs. Chief Executive Officer, I.L.R. (2012) M.P. 698 (DB)*

– **Section 85** – Power of Sub-Divisional Officer – Resolution passed by the Gram Panchayat and petitioner was selected for appointment as Panchayat Karmi – Upon a complaint Sub-Divisional Officer, holding that the selection of the petitioner was not in accordance to the instructions issued by the State Government on 13.08.2007, he set aside the resolution – Held – Order of Sub-Divisional Officer being contrary to the provisions of the Act and the rules, can not be sustained – In no case the resolution of the Gram Panchayat can be set aside or cancelled in exercise of power u/s 85 of the Act : *Banwari Lal Vs. State of M.P., I.L.R. (2011) M.P. 2000*

– **Section 85** – See – Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, M.P. 2005, Section 2(1) : *Omprakash Meena Vs. State of M.P., I.L.R. (2015) M.P. 1142 (DB)*

– **Section 86(1) & 86(2)** - Appointment of Panchayat Karmi - Respondent No. 5 was appointed by casting of majority vote - It is argued that this is contrary to the principles laid down in the policy dated 13.08.2007 issued by the State Government - Held - Prior, to 13.08.2007, the procedure for appointment by majority of vote was permissible - Provisions of appointment on merit in the circular dated 27.01.2006 will be applicable only if the appointment is made by the State Authorities u/s 86(2) : *Dharmendra Singh Vs. Commissioner, Shahdol, I.L.R. (2011) M.P. 2447*

– **Section 86(1) & 86(2)** - Selection of Panchayat Karmi - Dispute raised in the meeting of the Gram Panchayat with respect to the selection of a candidate and because of the difference of opinion amongst the Panchas, the matter was referred to the Chief Executive Officer of Janpad Panchayat - This indicate that the instructions issued under sub-section (1) of Section 86 of the Act were not fully complied with by the Gram Panchayat - The only option left was to direct the competent authority to pass the order exercising the power of the Gram Panchayat as per the provisions of sub-section (2) of Section 86 of the Act - Writ petition dismissed : *Satyendra Pratap Singh Bundela Vs. State of M.P., I.L.R. (2011) M.P. 2390*

– **Section 86(2) & Scheme of MANREGA** - Nodal agency to administer the work in the Scheme is the C.E.O. of the Janpad Panchayat concerned - Gram Panchayat is only to supervise the working in the Scheme of MANREGA and not to administer the said Scheme - Object of the Scheme is to provide employment as is guaranteed to the village people : *Akhilesh Singh Baghel Vs. State of M.P., I.L.R. (2013) M.P. 2389*

– **Section 86(2) & Scheme of MANREGA** - Petitioner joined as Village Employment Assistant w.e.f. 18.10.10 - His attendance was to be marked by the Gram Panchayat, where he was posted but that was not done and as a result he was not paid any honorarium under the Scheme - Collector, Umariya directed to enquire and if the petitioner has worked to make payment honorarium to the petitioner : *Akhilesh Singh Baghel Vs. State of M.P., I.L.R. (2013) M.P. 2389*

– **Section 86 (2)** – See – Service Law : *Ram Lakhan Vs. State of M.P., I.L.R. (2012) M.P. *66*

– **Section 91**, Panchayat (Appeal and Revision) Rules, M.P. 1995, Rule 3 – Maintainability of W.P. – Challenge is made to the order passed by the Collector providing reservation made only in respect of one Gram Panchayat as against the process for the entire Janpad Panchayat – Held – Section 91 of the Act and Rule 3 of Rules 1995 provides that against the order passed by Gram Panchayat and other authority appeal or revision lies before the specified authority and superior authority respectively – Petition

is disposed of with liberty to avail appropriate remedy permissible in law : *Chintamani Singh Vs. State of M.P., I.L.R. (2015) M.P. 1495 (DB)*

– **Section 91** – Appeal – Appellant, in memo of appeal had stated reasons for filing appeal belatedly – No objection with regard to the limitation was taken by appellant before S.D.O. – S.D.O. decided the appeal on merits – It would be assumed that S.D.O. had condoned the delay – Writ Court rightly declined to accept the plea of limitation – Appeal dismissed : *Suresh Vs. Chief Executive Officer, I.L.R. (2012) M.P. 698 (DB)*

– **Section 95**, Panchayat Service (Gram Panchayat Secretary Recruitment and Conditions of Service) Rules, M.P., 2011, Rule 6(7) - Power to frame rules - Transfer of petitioners who were working as Panchayat Secretary was challenged as the transfer policy has not been framed by Commissioner as per the requirement of Rule 6(7) - Section 95 gives power to State Govt. to frame rules for carrying out the purpose of Adhinyam - Authority who is competent to frame statutory rules, can always issue executive instructions on the subject - Enabling provision available under the Act cannot be restricted by the Rules made thereunder - Rule 6(7) gives power to frame a policy by the Commissioner but it cannot be said that the powers to frame policy on the subject is restricted only to Commissioner - By Executive Instructions Rules can be supplemented but no executive instruction can supplant the rules - By transfer policy framed by State as the rules are not supplanted, no interference is warranted on this count - Petition dismissed : *Awadhesh Kumar Sharma Vs. State of M.P., I.L.R. (2012) M.P. *113*

– **Section 107 & 108**, Civil Procedure Code (5 of 1908), Order 7 Rule 11 and Specific Relief Act (47 of 1963), Section 38 – Maintainability – Suit for declaration and mandatory injunction – Application under Order 7 Rule 11, C.P.C. filed that the Civil Suit is barred looking to the provisions contained in Section 108 of the M.P. Panchayat Raj Avam Gram Swaraj Adhinyam, 1993 – Held – Provision of Section 108 of Adhinyam, 1993 and by paying heed to sub-section (3) this court finds that bar would not apply to the suit instituted u/s 38 of the Specific Relief Act – Present suit is of permanent and mandatory injunction only – Bar is not applicable – Revision dismissed : *Shanta Bai (Smt.) Vs. Kundlik, I.L.R. (2014) M.P. 1117*

– **Section 122**, Panchayat Nirvachan Niyam, M.P. 1995, Rule 35 - Election Petition - Election challenged on the ground that the respondent No. 1 does not belong to Schedule Tribe and Caste certificate filed is forged - Returning Officer did not deal with objection raised in this regard - Held - Present was not a case, where any doubt could have been raised on the caste certificate - Acceptance of the same by the Returning Officer cannot be faulted with - The caste certificate produced by respondent No. 1 could not have been declared as forged or invalid by the prescribed officer - Authority has not

committed any error in not interfering in the matter - Power lies with State Level Scrutiny Committee - Petition dismissed : *Janaki Devi Vs. Smt. Siya Bai, I.L.R. (2014) M.P. 686*

– **Section 122** - Election Petition - Election Tribunal in Section 122 proceedings can examine the entitlement of the candidate to contest against a reserve seat : *Leelawati (Smt.) Vs. Kanhaiyalal, I.L.R. (2011) M.P. *140*

– **Section 122** – Election Petition – Petitioner raised grounds with regard to improper counting by pointing out that in 3 polling booths, various votes were declared valid or invalid without there being any proper reason for the same – Parties went to trial and evidence were also led on this count – Tribunal proceeded to take note of the statement of witnesses and finally found illegality in the matter of counting and directed for recounting of the vote – Held – Tribunal proceeded in a very casual manner without application of mind or analysis of evidence – Finding recorded by the Election Tribunal is a perverse finding, shows non application of mind – Petition allowed – Matter remitted with a direction to proceed afresh : *Narendra Patel Vs. Amarkant Tiwari, I.L.R. (2011) M.P. 2172*

– **Section 122** - Election Tribunal - Alongwith nomination only photocopy of caste certificate was produced by the petitioner - The original was neither produced during nomination nor in the proceedings before Election Tribunal - Factum of issuance of said certificate by the competent authority is not established. The judgment in Kumari Madhuri Patil and anr. Vs. Addl. Commissioner, Tribunal Development and ors. has no application in such cases where only photocopy of a certificate is produced and original was never produced : *Leelawati (Smt.) Vs. Kanhaiyalal, I.L.R. (2011) M.P. *140*

– **Section 122**, Panchayats (Election Petitions, Corrupt Practices and Disqualification for Membership) Rules, M.P. 1995, Rule 3 & 8 - Presentation of Election Petition - Election Petitioner was not present at the time when the election petition was filed by her Advocate - A general Vakalatnama which doesnot specifically authorize the Advocate to present the election petition doesnot amount to compliance of provisions of Rule 3(2) of the Rules - Election Petition was not maintainable as the same was not properly filed - Petition allowed : *Kamlesh Nut Vs. The Commissioner, I.L.R. (2012) M.P. 2148*

– **Section 122**, Panchayats (Election Petitions, Corrupt Practices and Disqualification for Membership) Rules, M.P. 1995, Rule 7 – Deposit of Security – Security amount deposited with Tahsildar instead of Specified officer(S.D.O.) due to non-availability of regular Establishment/ court of S.D.O. – Deposit of security is mandatory and not the mode in which it is deposited – Election petition was rightly held to be filed

as per rules – Writ petition dismissed : *Beena Pandey Vs. Mamta Devi, I.L.R. (2012) M.P. 861*

– **Section 122**, Panchayat Nirvachan Niyam, M.P. 1995, Rule 80 - Recount of Votes - To make out a case seeking direction for recount, the facts must be pleaded and it should be supported by material particulars - Until and unless prima facie satisfaction of the Court is recorded, secrecy of the ballot papers ought to be maintained - Merely on vague allegations recount can not be directed : *Ganesh Ram Gayari Vs. Bagdiram, I.L.R. (2013) M.P. 1793 (DB)*

– **Section 122** – Proof of submission of election petition – Entry by Prescribed Officer on the marginal note of election petition and specific order sheets are sufficient proof of the date of filing and presentation by concerned person : *Hanumant Singh Vs. State of M.P., I.L.R. (2012) M.P. *58*

– **Section 122** – Recount – Burden of Proof – Burden is on the shoulder of election petitioner – Even weakness and defence can not become substitute of proof required to be given by the election petitioner – Evidence beyond pleadings is impermissible : *Hanumant Singh Vs. State of M.P., I.L.R. (2012) M.P. *58*

– **Section 122** – Recount – Recount cannot be ordered in a routine and mechanical manner – In absence of specific pleadings supported by contemporaneous evidence, recount is impermissible : *Hanumant Singh Vs. State of M.P., I.L.R. (2012) M.P. *58*

– **Section 122** – Recounting of votes – Not a matter of course – Secrecy of ballot papers – Tinkering of, not to be permitted lightly – No irregularity took place at the time of polling – No written complaint was made by petitioner to the Returning Officer – Petitioner has failed to substantiate the allegation with regard to irregularity in the counting of votes – Petition dismissed : *Netlal Panche Vs. Santosh Matre, I.L.R. (2015) M.P. 2592*

– **Section 122** - Recounting - Order of recounting passed by Sub Divisional Officer on mere asking and without there being any evidence necessitating passing of such order - Such order and the consequential order of recounting of votes was rightly quashed by writ Court - Appeal dismissed : *Ramesh Chandra Bhilala Vs. Bashir, I.L.R. (2011) M.P. 49 (DB)*

– **Section 122** - Reserved Seat - Election of the petitioner who was elected as President Janpad Panchayat was set aside on the ground that the seat was reserved for S.T. whereas the petitioner belonged to O.B.C. - Case of Election Petitioner was that petitioner was Sahu by caste and after leaving her husband who was Sahu by caste had

started living with a person who was panika by caste - It is clear from the affidavit filed by petitioner before High Court described her as Savitri Sahu @ Suparnakha W/o Shivilal Panika - Findings given by prescribed authority that petitioner belongs to Sahu caste cannot be faulted with - Election of Petitioner was rightly set aside : *Savitri Panika (Smt.) Vs. State of M.P., I.L.R. (2013) M.P. 2370*

– **Section 122** – Secrecy of Ballot – Secrecy of ballot can not be lightly tinkered in a democratic set up unless very specific pleading, material facts and particulars are there in the election petition supported by a proof of a very high degree : *Hanumant Singh Vs. State of M.P., I.L.R. (2012) M.P. *58*

– **Section 122(2)** – Election Petition – Certificate of declaration of the result after notification was issued on 03.02.2010 – Limitation was to be counted from that date – Election Petition was filed on 19.03.2010 with an application for condonation of delay – Held – The only consequence of causing the delay in filing the election petition would be its dismissal and nothing else – The entire proceedings of election petition are thus vitiated : *Mumbi Bai (Smt.) Vs. State of M.P., I.L.R. (2012) M.P. 1164*

– **Section 122(2)**, Limitation Act (36 of 1963), Section 5 – Condonation of delay – Delay caused in filing of the election petition is not condonable as provisions of Section 5 of the Limitation Act would not be attracted at all : *Mumbi Bai (Smt.) Vs. State of M.P., I.L.R. (2012) M.P. 1164*

– **Section 122(2)** – Limitation – The effective date for starting limitation is the date of notification of the election : *Mumbi Bai (Smt.) Vs. State of M.P., I.L.R. (2012) M.P. 1164*

PANCHAYAT KARMI YOJNA DATED 12.09.1995

– **Clause 3.3** - Age limit - Scheme only prescribes the minimum age limit for appointment to the post of Panchayat Karmi and it is silent with regard to the maximum age limit - Panchayat fixed a maximum age limit - Decision of the Panchayat can not be termed as illegal - Petitioner found to be over-age can not seek the appointment : *Dharmendra Singh Vs. Commissioner, Shahdol, I.L.R. (2011) M.P. 2447*

PANCHAYAT (RESIGNATION BY OFFICE BEARER) RULES, M.P. 1995

– **Rule 3** - See -Panchayat Raj Evam Gram Swaraj Adhinyam, M.P. 1993, Section 69 & 86(1) : *Prahlad Das Tandia Vs. State of M.P., I.L.R. (2013) M.P. 279*

– **Rule 4** - See - Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993, Section 37 : *Bihari Das Vs. State of M.P., I.L.R. (2013) M.P. 1069*

PANCHAYAT SAMVIDA SHALA SHIKSHAK (EMPLOYMENT AND CONDITIONS OF CONTRACT) RULES, M.P., 2005

– **Appointment** - Qualification - Petitioners are having B.Ed. degree whereas the qualification required is D.Ed. Degree - Recruitment in public services should be strictly in accordance with terms of advertisement and recruitment rules, if any - If a deviation is made from the Rules, the same would allow entry of in-eligible persons and it deprives many others who could not have competed for the posts - It is equally well settled that fixation of qualification for a particular post is a matter of recruitment policy - Merely because petitioners are over qualified, therefore, the contention that they cannot be excluded from the consideration cannot be accepted : *Sanyogita Thakur (Smt.) Vs. State of M.P., I.L.R. (2013) M.P. 1357*

– **Rule 14** - See - Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993, Section 70 : *Urmila Rajak (Smt.) Vs. State of M.P., I.L.R. (2013) M.P. 1057*

PANCHAYAT SERVICE (DISCIPLINE AND APPEAL) RULES, M.P. 1999

– **Rule 4(1)** – Petitioner who is Sahayak Adhyapak has challenged his suspension by Collector on the ground that the Collector being an appellate authority under M.P. Panchayat Adhyapak Samvarg (Niyam Evam Seva Ki Sharten) Niyam, 2008 does not have the power to suspend him – Held – Since the Committee constituted under Rule 5(2) of 2008 Rule is subordinate to the Collector – Therefore, as per rule 4(1) of 1999 Rules, the Collector is within his powers to place the petitioner under suspension – No interference is warranted – Petition is dismissed : *Yuvraj Singh Vs. State of M.P., I.L.R. (2014) M.P. 2074*

– **Rule 4(1)** – Suspension of Panchayat Secretary by Collector – Challenged on the ground that C.E.O. is the disciplinary/appointing authority and C.E.O. cannot be treated as sub-ordinate to Collector – Held – C.E.O. must be treated as sub-ordinate to Collector as he is in lower rank/position and class in comparison to the Collector – Collector is competent to place the petitioner under suspension – Impugned orders are appealable – Petitions are dismissed : *Dashrath Singh Vs. State of M.P., I.L.R. (2014) M.P. 2789*

– **Rule 5, 6 & 7** - Complaints regarding misuse of funds of various scheme such as S.G.R.Y. Food Scheme, Indira Awas Scheme, Mid Day Meal against petitioner, a

Panchayat Karmi, appointed in accordance with Panchayat Karmi Yojna 1995 - Services of petitioner terminated by the impugned resolution of Panchayat - Held - No charges are framed nor any enquiry under Rule 9 has been held, the termination order vide impugned resolution can not be withheld : *Dinesh Pawar Vs. State of M.P., I.L.R. (2011) M.P. 2337*

**PANCHAYAT SERVICE (GRAM PANCHAYAT SECRETARY
RECRUITMENT AND CONDITIONS OF SERVICE) RULES,
M.P., 2011**

– **Rule 6(7)** - See - Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993, Section 95 : *Awadhesh Kumar Sharma Vs. State of M.P., I.L.R. (2012) M.P. *113*

PARITY IN LAW

Parity in law – Parity in law can be claimed only in respect of action rightfully executed and not otherwise : *Ajoy Acharya Vs. State Bureau of Inv. Against Eco. Offence, I.L.R. (2014) M.P. 915 (SC)*

PARTITION ACT (4 OF 1893)

– **Section 4** - Partition of dwelling house belonging to an undivided family - Decree of partition - 1/3rd share in the house fell to share of 'N' - Respondents No. 1 and 2 purchased the share of 'N' in the suit house and filed execution proceedings to take over the possession of the share of 'N' as per decree of partition - Application u/s 4 to purchase share of co-owner sold to stranger (respondent Nos. 1 & 2) filed by one of the co-shares having 1/3rd right in the suit property is maintainable : *Rishabh Kumar Jain Vs. Gyanchand Jain, I.L.R. (2013) M.P. 2977*

PARTNERSHIP ACT (9 OF 1932)

– **Section 58, 59 & 60** - Registration of Firm - Place of Business - Petitioner firm was registered under the Act as it is having its place of business within the territorial jurisdiction of Sub-Registrar - After the retirement of one of the partners, partnership deed was reconstituted and place of business of firm was stated to be at Rajasthan - Application for alteration in the principal place of business was rejected by the Sub-Registrar being beyond his jurisdiction - Held - Act provides for effecting registration in any area in which the firm carries on business - It is not mandatory for registering the firm only at the place where its principal place of business is situated - Sub-Registrar

directed to pass appropriate orders : *Divya Marble (M/s.) Vs. State of M.P., I.L.R. (2012) M.P. 2718*

– **Section 69** – See – Civil Procedure Code, 1908, Order 7 Rule 11 : *Ashish Verma Vs. Neeraj Vyas, I.L.R. (2011) M.P. 2305*

PAYMENT OF GRATUITY ACT (39 OF 1972)

– **Section 2(h)**, Employees Provident Funds Scheme, 1952, Section 61 - Family - Claim of Gratuity and Provident Fund made on the basis of Will - Claimants/beneficiaries of Will not the members of family as defined under the Act, 1972 and Scheme, 1952 - Held - Despite proof of Will, they are not entitled to receive dues of the gratuity and provident funds on the strength of probate : *Urmila Tiwari (Smt.) Vs. Smt. Kanti Devi, I.L.R. (2011) M.P. 741*

– **Section 3(A)** – Grant of interest on account of delayed payment – Controlling Authority while granting gratuity also directed payment of interest on a finding that the employer was guilty of delayed payment – Appellate Authority set-aside order of grant of interest – Held – Since petitioner tendered resignation on 04.11.1998 and he approached respondent for grant of gratuity on 09.02.2009 which was paid on 16.03.2009 – There is no delay in payment – Delayed payment is due to the employee’s own fault – Interest is not payable – Petition is dismissed : *Leeladhar Puria Vs. General Manager WCL, I.L.R. (2015) M.P. 2869*

– **Section 4** – Gratuity which an employee earns can not be withheld subject to the conditions as laid down in the statute whereunder it is payable – Provisions contained in the Act nowhere stipulates the withholding of gratuity for non-vacating of quarter or for non-issuance of no objection certificates by the department concerned – The stand of petitioner that in absence of no objection and non vacating the quarter the entire gratuity is not payable, has no foundation of law, therefore, can not be approved : *W.C.L. Vs. Gyanwati, I.L.R. (2011) M.P. *120*

– **Section 4** – See – Central Bank of India (Officers) Service Regulations, 1979, Regulation 46 : *Zonal Manager, Central Bank of India Vs. R.R. Das, I.L.R. (2015) M.P. 80*

– **Section 4(6)** – Forfeiture of gratuity – Right to gratuity is a statutory right of respondent who had taken voluntary retirement – Petitioner/Employer permitted respondent No.1 to take voluntary retirement – Services of respondent No.1 were not terminated on the ground of any misconduct – Therefore, his gratuity can not be forfeited

to recover loss caused to Petitioner/Bank – Forfeiture of gratuity was illegal : *Zila Sahkari Kendriya Bank Maryadit Vs. Rajju Khan, I.L.R. (2012) M.P. 443 (DB)*

– **Section 4(6)** - See - Constitution - Article 227 : *General Manager Vs. Deendayal Gaud, I.L.R. (2013) M.P. 584*

– **Section 7(7)** – Depositing the amount of gratuity – Respondents/Badli employees had filed claim before Controlling Authority for payment of gratuity – Appeals were filed without depositing the amount as required under Section 7(7) – Question whether Controlling Authority of State Government or Central Government has jurisdiction is a mixed question of law which has to be decided by Appellate Authority – Writ Court rightly dismissed the writ petition observing that writ has been filed to circumvent the provision of Section 7(7) – Writ appeal dismissed : *National Textile Corporation Ltd. Vs. Controlling Authority Under Payment of Gratuity Act & Asstt. Labour Commissioner, I.L.R. (2015) M.P. 304 (DB)*

– **Section 14**, Municipal Services (Pension) Rules, M.P., 1980, Rule 1 – Gratuity – Employees of Municipal Corporation are entitled to payment of gratuity – Whether they had opted for pension or not ? : *Municipal Corporation, Burhanpur Vs. Nathu, I.L.R. (2014) M.P. 2315*

PAYMENT OF WAGES ACT (4 OF 1936)

– **Section 7(2)(KKK)** - Check-off facility - Employer is not under any obligation to offer check-off facility to Union - Check-off facility is a concession granted to Union under an agreement or binding settlement and cannot be claimed as a matter of right : *Rashtriya Colliery Majdoor Congress Vs. South Eastern Coalfields Ltd., I.L.R. (2011) M.P. 364 (DB)*

– **Section 7(2)(KKK)** - Check-off facility - Withdrawal of - Appellant/Union enjoying check-off facility for a period of 21 years - Facility withdrawn on extraneous consideration i.e., requirement of affiliation with Central Trade Unions which has no statutory sanction - Action of unilaterally withdrawing the facility of check-off system cannot be approved - Respondent cannot be permitted to show undue preference to any union on extraneous consideration - Withdrawal of check-off facility bad : *Rashtriya Colliery Majdoor Congress Vs. South Eastern Coalfields Ltd., I.L.R. (2011) M.P. 364 (DB)*

– **Section 9(2) & 15** - See - Constitution, Article 226 : *Hind Khadan Mazdoor Federation Vs. Coal India Ltd., I.L.R. (2011) M.P. 147*

PENAL CODE (45 OF 1860)**SYNOPSIS-Section 34****1. Exhortation****2. Individual Liability****1. Exhortation**

– **Section 34** - Appellant No. 2 simply said 'मारो' and appellant No. 1 picked up a 'Katta' from his pocket and fired on the deceased - Under these circumstances, it cannot be held that appellant No. 2 had prior knowledge that appellant No. 1 had Katta - Held - It cannot be held to be joint act so as to attract the element of common intention - Appellant No. 2 acquitted of the charge u/s 302, IPC : *Rajendra Singh Vs. State of M.P., I.L.R. (2013) M.P. 2439 (DB)*

– **Section 34** – Common intention – Appellant No.4 came on the spot along with Dharia but neither assaulted the deceased nor provoked or exhorted other appellants to kill deceased – Role assigned to A-4 would not come within purview of Section 34 : *Siddar Khan Vs. State of M.P., I.L.R. (2011) M.P. 1016 (DB)*

– **Section 34 & 300** - Common Intention - Murder - Appellants No. 1 & 2 had no prearranged plan to commit murder of deceased - Appellants No. 1 was un-armed whereas the appellant No.2 was not present at the time of incident - Only allegation is that he exhorted and asked the appellant No. 3 to give some blow - It can not be said that the appellants No. 1 and 3 had any common object to kill deceased and with the said common object they have participated in the commission of offence - They can not be made liable under Section 34 of IPC : *Shyam Prasad Vs. State of M.P., I.L.R. (2012) M.P. 1977 (DB)*

2. Individual Liability

– **Section 34** – Common Intention – A/3 alongwith other accused persons was digging embankment when dispute arose – A/3 did not cause any injury to complainant party nor did any overt act – Nothing on record that he shared common intention to cause death of deceased – A/3 acquitted : *Hari Ram Vs. State of M.P., I.L.R. (2012) M.P. *23*

– **Section 34** - Common intention - Accused A-2 was present with accused A-1 when the incident occurred, and ran away with him - Held - Merely from that it cannot be held that A-2 knew that A-1 was armed with Katta and was likely to fire at deceased, especially when incident occurred suddenly - Accused A-2 cannot be held liable for causing death of deceased with the aid of S. 34 : *Ajju @ Ajay Kumar Vs. State of M.P., I.L.R. (2011) M.P. 768 (DB)*

– **Section 34** - Common Intention - Deceased was working in a Mangoda shop - Appellants were passing from the front of the shop when the liquor bottle slipped from the hands of appellant No.3 - Deceased asked him to remove pieces of glass scattered in front of the shop - Appellant No.3 pierced the spear in the abdomen of deceased - All the appellants grappled with witnesses - Held - No injury was caused to the deceased by the appellants No.1 and 2 - It does not appear that appellants No. 1 and 2 shared common intention of appellant No.3 of causing spear injury to deceased - As the incident took place suddenly and the appellant No.3 assaulted deceased with spear which he was already having in his hand, it cannot be held that the appellants No. 1 and 2 shared common intention with appellant No. 3 : *Suresh Vs. State of M.P., I.L.R. (2013) M.P. 1177 (DB)*

– **Section 34** – Common Intention – Nothing on record that acquitted accused persons had prior knowledge that ‘A’ was having knife in his pant – Moreover, single blow was inflicted by ‘A’ – Difficult to hold that his companions were sharing a common intention to kill deceased : *Santosh Rai Vs. State of M.P., I.L.R. (2012) M.P. *8 (DB)*

– **Section 34 & 324** – Common intention to cause injury – A-4 caused injury to injured witness by means of Dharia – No evidence that other appellants shared common intention to cause injury to injured witness – A-1 to A-3 wrongly convicted u/s 324/34 IPC – A-4 convicted u/s 324 IPC : *Siddar Khan Vs. State of M.P., I.L.R. (2011) M.P. 1016 (DB)*

• – **Section 37** - Where several acts are done so as to result together in the commission of an offence, the doing of any one of them with intention to co-operate in the offence makes the actor liable to be punished for the commission of the offence : *State of M.P. Vs. Deepak Surana, I.L.R. (2011) M.P. *157 (DB)*

– **Section 63 to 70** – See – Narcotic Drugs and Psychotropic Substances Act, 1985, Section 8/18 : *Ansar Khan Sherani Vs. State of M.P., I.L.R. (2014) M.P. 1929 (DB)*

SYNOPSIS : Section 84 to 105

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| 1. Act of Person of Unsound Mind | 2. Appellant acted in Private Defence of Property |
| 3. Number and Nature of Injuries caused | 4. Right of Private Defence not available |
| 5. Miscellaneous | |

1. Act of Person of Unsound Mind

– **Section 84** – Act of person of unsound mind – Burden is on the accused to prove that she was insane at the time of commission of offence – The manner in which

offence was committed shows that at the time of incident the appellant was not insane and she was knowing the consequence of her act – No question arises for extending the benefit of Section 84 of I.P.C. : *Meena Bai Vs. State of M.P., I.L.R. (2012) M.P. 1025 (DB)*

2. Appellant acted in Private Defence of Property

– **Section 95, 96 & 99** – Private Defence of property – Number of forest offences registered against victim – Appellant caused injury while protecting the property of the forest department as he was working as Security Labourer/Guard – Appellant acted in private defence of property – Entitled for acquittal : *Shivraj Sahu Vs. State of M.P., I.L.R. (2012) M.P. *71*

3. Number and Nature of Injuries caused

– **Section 97 & 99** – Right of Private Defence – Defence taken by appellant that deceased entered in the room of his wife and tried to commit a mischief with her is unnatural, improbable and false as the deceased would not have dared to commit such an act in the presence of his wife and child – Otherwise also, appellant had no reason to cause 10 injuries to A and 5 injuries to A's wife and 4 injuries to A's minor son – Number and nature of injuries caused to deceased persons clearly indicate that these injuries could not have been caused in protecting his wife – Adverse inference deserves to be drawn against him for putting false explanation : *In Reference Vs. Gudda @ Dwarikendra, I.L.R. (2012) M.P. 613 (DB)*

4. Right of Private Defence not available

– **Section 100** - Right of Private Defence - Incident started in "Nachni Wala Khait" field from where the deceased was dragged to another field where the remaining part of the incident took place - There was no occasion for the appellants who have claimed themselves to be ploughing the field to bring so many persons with deadly weapons - "Nachni Wala Khait" not in possession of appellants - Appellants were aggressors and no right of private defence is available to them : *Chhedilal Vs. State of M.P., I.L.R. (2012) M.P. 2257 (DB)*

5. Miscellaneous

– **Section 100 & 103** – See – Criminal Procedure Code, 1973, Section 397, 401 & 399 : *Gyanesh Vs. Central Bureau of Investigation, I.L.R. (2014) M.P. 3274*

– **Section 100, 302 & 304 Part I** - Private Defence - Accused persons were in possession of land in dispute - Complainant party had gone there along with revenue authorities for getting the demarcation - As the complainant party had reached on the field along with revenue officer for placing marks of boundary on it, therefore,

apprehension in the mind of the appellants would be justified upto limited extent only - Deceased no. 1 received 17 injuries and Deceased no. 2 received 4 injuries which indicates that appellants had exceeded their right of private defence - As the appellants had acted in a cruel manner to some extent therefore, they are guilty under Section 304 Part I - Appellants sentenced to 10 years R.I. on each count - Appeal partly allowed : *Om Prakash Vs. State of M.P., I.L.R. (2012) M.P. 2836 (DB)*

– **Section 100 & 304 Part II** – Culpable homicide not amounting to murder – Right of private defence – Various persons were playing Holi and were meeting with each other – Deceased along with his friends came on a scooter and started drinking liquor and dancing – Appellant also came there and started meeting with persons by shaking hands and hugging – Some arguments and discussion took place between the deceased and appellant – While this was going on, deceased took out a bottle and started assaulting appellant – Appellant took out a knife and assaulted deceased on his left thigh – Deceased ultimately succumbed to the injuries – Held – For Right of private defence there must be no more harm inflicted than is necessary – In the present case, a solitary injury was caused on the left thigh – There was a reasonable apprehension of danger to the body as deceased had taken out a broken bottle and assaulted the appellant on his head and as the appellant exercised his right of private defence only after deceased started assaulting the appellant – Appellant cannot be said to have been exceeded his right of private defence – Appellant acquitted – Appeal allowed : *Pramod Kumar Jain @ Pradip Kumar Jain Vs. State of M.P., I.L.R. (2015) M.P. 1554*

– **Section 104 & 105** – Private defence – On the date of incident, land was under the actual possession of appellant – Complainant and his companions were criminal trespassers – Injured had sustained two simple injuries and one splenic tear – Probability of defence that the said injury was received due to fall, cannot be ruled out – Rupture of spleen even assuming to be caused by appellant has not resulted in his death – Held – Appellant was having right of private defence of property u/s 104 & 105 of the IPC – Appeal allowed : *Ganpat Vs. State of M.P., I.L.R. (2014) M.P. 1351*

SYNOPSIS-Section 107

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| 1. Abetment Meaning | 2. Demand of Due Loan |
| 3. Extortion | 4. Harassment, Beating, Abuse and Torture |

1. Abetment Meaning

– **Section 107** - Abetment - Means and includes, instigation, engagement in conspiracy and intentional aiding - Held - To constitute instigation, a person who

instigates another has to provoke, incite, urge or encourage doing of an act by "goadings" or "urging forward" i.e. a thing that stimulates someone into action, provoke to action or reaction - Presence of Mens-Rea is the necessary concomitant of instigation : *Gayatri (Smt.) Vs. State of M.P., I.L.R. (2014) M.P. 227*

2. Demand of Due Loan

– **Section 107 & 306** – Abetment to commit suicide – Demand of due loan – Does not amount to instigation – Demand made by petitioner from deceased did not amount to threats – Does not amount to abetment to commit suicide : *Radheshyam Vs. State of M.P., I.L.R. (2014) M.P. 3289*

3. Extortion

– **Section 107 & 306** – Abetment to commit suicide – Deceased under fear as extortion money Rs. 6,000/- was demanded by applicants – Deceased consumed poisonous substance – Held – Applicants by carrying out the extortion activities created fear on the deceased to implicate him in murder case, so deceased was abetted and instigated to commit suicide – Acts of applicants are covered under “first and second ingredients of the section 107 I.P.C” – Revision dismissed : *Hyder Khan Vs. State of M.P., I.L.R. (2012) M.P. 1063*

4. Harassment, Beating, Abuse and Torture

– **Section 107 & 306** – Abetment to commit suicide – Applicants, the in-laws of the deceased used to abuse her and harass her although after partition, the deceased was living separately in the same house along with her husband – Deceased committed suicide by pouring kerosene oil – Just before the incident, she was abused and beaten by the applicants – Held – Due to alleged acts committed by applicants, the deceased committed suicide - Due to alleged harassment, beating, abuse and torture, the deceased was instigated and abetted to commit suicide – Charges were rightly framed – Revision dismissed : *Bankelal Soni Vs. State of M.P., I.L.R. (2012) M.P. 1434*

– **Section 107 & 306** – Abetment to commit suicide – Harassment should be of such a nature, which amounts to instigation to any person to commit suicide or conspiracy accompanied by an act or illegal omission for commission of suicide : *State of M.P. Vs. Dulichandra, I.L.R. (2012) M.P. *34*

- – **Section 109** - Charge of abetment - Application for discharge on the ground that since the main accused has died, they being the alleged abettor, cannot be prosecuted and convicted - Held - A person can also be convicted of abetting an offence even in the event of the death of principal accused during the trial who allegedly committed that

offence - Trial Court has rightly dismissed the applicant's application for his discharge of the offences : *Pankaj Pathak Vs. State of M.P., I.L.R. (2013) M.P. 503 (DB)*

– **Section 109** – Abetment – There is direct allegation of conspiracy – It is not necessary that the abettor should concert in the offence with the person who commits it – It is sufficient if he engages in the conspiracy in pursuance of which the offence is committed : *Ajit Jain Vs. State of M.P., I.L.R. (2015) M.P. 2810 (DB)*

SYNOPSIS : Sections 120-A & B

- 1. Circumstances and Conduct**
- 2. Object of Conspiracy**
- 3. Miscellaneous**

1. Circumstances and Conduct

– **Section 120-B** - Conspiracy - Conspiracies are proved by circumstantial evidence - Existence of conspiracy and its objectives have to be inferred from the circumstances and conduct of accused persons - Incriminating circumstances must form a chain of events from which a conclusion about the guilt of the accused could be drawn : *In Reference Vs. Rahul Rajak, I.L.R. (2012) M.P. 2034 (DB)*

– **Section 120-B** - Conspiracy - Criminal conspiracy is always hatched in secrecy and it is impossible to adduce direct evidence - Offence can be proved largely from the inferences drawn from acts or illegal omission committed by conspirators in pursuance of a common design : *Ashok Kumar Jain Vs. Central Bureau of Investigation, I.L.R. (2011) M.P. 2629 (DB)*

– **Section 120-B** - Conspiracy - If some steps are resorted to by one or two of the conspirators without the knowledge of the others it will not affect the culpability of those others when they are associated with the object of Conspiracy - Merely because Company Secretary is not prosecuted, it would not exonerate the applicant of his conduct of allowing the agenda to be in meeting dated 19.04.1995 : *Ajoy Acharya Vs. State Bureau of Investigation, Bhopal, I.L.R. (2011) M.P. *147 (DB)*

– **Section 120-B** – Conspiracy – Respondent/wife of appellant alleged to have invited the deceased and his family in the house for lunch – Held – There is no evidence that respondent/wife knew the design or the plan conceived by appellant – It can not be held that respondent conspired with her husband/appellant in commission of offence – Acquittal of respondent by Trial Court proper : *In Reference Vs. Gudda @ Dwarikendra, I.L.R. (2012) M.P. 613 (DB)*

– **Section 120-B** - Conspiracy - There is no difference between the mode of proof of the offence of conspiracy and that of any other offence - It can be established by direct

evidence or by circumstantial evidence - Section 10 of Evidence Act introduces the doctrine of agency and if the conditions laid down therein are satisfied, the act done by one is admissible against the co-conspirators : *State of M.P. Vs. Deepak Surana, I.L.R. (2011) M.P. *157 (DB)*

2. Object of Conspiracy

– **Section 120-A** - Conspiracy - It is a distinct offence - The very agreement, concert or league is the ingredient of the offence - Not necessary that all the conspirators must know each and every detail of the conspiracy as long as they are co-participants in the main object of conspiracy - There may be so many devices and techniques adopted to achieve the common goal of conspiracy and there may be division of performances in the chain of actions with one object to achieve the real end of which every collaborator be interested - There must of unity of object or purpose but there may be plurality of means some times even unknown to the others - Only relevant fact is that all means adopted and illegal acts done must be purported to be in furtherance of the object of conspiracy : *Rahis Ahmed Vs. State of M.P., I.L.R. (2011) M.P. *128 (DB)*

3. Miscellaneous

– **Section 120-B, 420, 468 & 471** – See – Criminal Procedure Code, 1973, Section 228 : *Ballabhdas Jain Vs. State of M.P., I.L.R. (2011) M.P. *67 (DB)*

– **Section 120-B, 420, 468 & 471** – See – Criminal Procedure Code, 1973, Section 228 : *Harish Chand Kohli Vs. Central Bureau of Investigation, I.L.R. (2011) M.P. 1568 (DB)*

– **Section 120-B, 420, 468 & 471** – See – Criminal Procedure Code, 1973, Section 228 : *Rajesh Maindiretta Vs. Central Bureau of Investigation, I.L.R. (2011) M.P. *74 (DB)*

SYNOPSIS : Sections 147, 148 & 149

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| <p>1. Appeal on Ground of Parity</p> <p>3. Circumstantial Evidence</p> <p>5. Injured Eye Witness</p> <p>7. Recovery of Weapons</p> | <p>2. Appreciation of Evidence</p> <p>4. Conviction u/s 302/149 converted to one u/s 325/149</p> <p>6. Old Incident</p> |
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1. Appeal on Ground of Parity

– **Section 147, 149 & 302** – Appeal on the ground of parity – Two other accused persons acquitted – Appellant named in F.I.R. and presence established by ocular

evidence – Names of acquitted accused were not there in F.I.R. and could have been a case of false implication – Held – Role of appellant is distinguishable from other acquitted accused persons, principle of parity not available – Appeal dismissed : *Uma Shankar Gautam Vs. State of M.P., I.L.R. (2015) M.P. 1403 (SC)*

2. Appreciation of Evidence

– **Section 148** – Unlawful Assembly – No finding by Trial Court that all the 14 accused persons had formed unlawful assembly – On the contrary presence of 12 accused persons out of 14 is not proved beyond doubt : *Jagannath Yadav Vs. State of M.P., I.L.R. (2015) M.P. 458 (DB)*

– **Section 148 & 149** – Common intention – One of the accused is alleged to having double barrel gun but did not cause any injury to anybody – Nothing had prevented him from firing – Presence of the accused on spot doubtful – Liable to be acquitted : *Rajeev Lochan Singh Vs. State of M.P., I.L.R. (2014) M.P. 3231 (DB)*

– **Section 148, 149 & 302** – Common intention – The accused person is alleged to have caught hold the deceased and dragged him and gunshot fired from close range by the main accused – No sign of dragging were found on the body of deceased – When main accused could fire from a very close range, then there was no necessity of catching hand of deceased taking the risk of getting injured – Allegation of holding deceased doubtful – Liable to be acquitted : *Rajeev Lochan Singh Vs. State of M.P., I.L.R. (2014) M.P. 3231 (DB)*

– **Section 148, 149, 353/149 & 307/149** – Attempt to Murder – Accused robbed P.W. 2 and killed his driver and looted Rs. 15,00,000/- – On receiving information of incident, Constable alongwith force intercepted accused persons – Appellants with intention to terrorise the Constable who was public servant came towards him and fired gun shot causing him injury – No indulgence called for – Appellants already convicted for killing driver and looting P.W. 2 – Sentence awarded in present case to run concurrently with sentence awarded in another case : *Shakir Vs. State of M.P., I.L.R. (2014) M.P. 2394 (DB)*

– **Section 149** - See - Evidence Act, 1872, Section 3 : *Prahalad Singh Vs. State of M.P., I.L.R. (2011) M.P. 2309 (SC)*

– **Section 149** - Unlawful assembly - Appellant No.1 caused injury to deceased and thereafter remaining 9 accused persons came one after another and joined appellant No.1 - Held - It cannot be said that it was an unlawful assembly whose common object was to commit murder : *Gangadhar Vs. State of M.P., I.L.R. (2011) M.P. 202 (DB)*

– **Section 149** - Unlawful Assembly - Deceased and his sons were cutting grass in their field when two accused persons came there and asked the deceased about his village - The deceased was attacked by appellants - It cannot be said that the appellants had not formed an unlawful assembly within the meaning of Section 141 of I.P.C. - Use of force by members of unlawful assembly gives rise to offence of rioting which is punishable under Section 147 or 148 of I.P.C. : *Mahendra @ Mota Vs. State of M.P., I.L.R. (2013) M.P. 1453 (DB)*

– **Section 149 & 302** - Murder - Common Object - P.W. 4 had admonished accused No. 9 when he went to site and asked his labourers to discontinue work - This provoked the accused persons to teach a lesson to P.W. 4 and therefore, the common object of the assembly was to commit murder of P.W. 4 - However, deceased was attacked when he was seen with P.W. 4 who escaped unhurt - It cannot be said that the common object of the assembly was to commit murder of deceased - Appellants No. 1, 3, 5, 7 & 8 were unarmed and did not cause any injury - It cannot be said that appellants No. 1, 3, 5, 7, & 8 had shared common object to kill the deceased - Appeals of Appellants No. 1, 3, 5, 7 & 8 are allowed and they are acquitted - Conviction and sentence of remaining appellants who had actually caused injuries to the deceased are maintained - Appeal partly allowed : *Bhuria Vs. State of M.P., I.L.R. (2013) M.P. 917 (DB)*

3. Circumstantial Evidence

– **Section 147, 148, 149 & 302** – Circumstantial Evidence – No eye-witness was present at the time of incident – Axes seized from the appellants were not found stained with blood – Accused acquitted : *Rajendra Singh Vs. State of M.P., I.L.R. (2014) M.P. 2247 (DB)*

4. Conviction u/s 302/149 converted to one u/s 325/149

– **Section 149 & 302** - Murder - Unlawful Assembly - Four accused persons pelted stones and caused injuries to two witnesses - Deceased came out of the house then accused No. 1 dealt a stick blow to him - Deceased fell down and thereafter appellant No.2 dealt axe blow on his head - It cannot be said that appellant No.1 intended to cause death of deceased - Common object of assembly was not to commit murder of deceased - Conviction of appellants No. 1, 3 and 4 under Section 302/149 of I.P.C. set aside instead they are convicted under Section 325/149 of I.P.C. - Conviction of appellant No.2 under Section 302 of I.P.C. affirmed : *Rem Singh Vs. State of M.P., I.L.R. (2013) M.P. 2003 (DB)*

– **Section 149, 302 & 325** - Unlawful Assembly - Liability - Liability of each assailant under any other provision of I.P.C. would depend on the role played by them and their object during unlawful assembly - Appellants No. 2 and 3 caused injuries on the

hands and legs of deceased - It is clear that their object during unlawful assembly was not to cause murder of deceased - Appellants No. 2 and 3 are guilty of offence under Section 325/149 of I.P.C. : *Mahendra @ Mota Vs. State of M.P., I.L.R. (2013) M.P. 1453 (DB)*

5. Injured Eye Witness

Penal Code (45 of 1860) – Section 147, 148, 149, 302, 323 & 324 – Deceased sustain 26 injuries – Conviction by trial Court and upheld by High Court – Challenge – Held – Conviction based on evidence of injured eye witnesses which is amply corroborated by evidence of eye witnesses & medical evidence, so not liable to be interfered – Appeals dismissed : *Ramvilas Vs. State of M.P., I.L.R. (2015) M.P. 3137 (SC)*

6. Old Incident

– **Section 147 & 323/149** – Sentence – Incident took place about 19 years back – Appellants are suffering the mental agony of the present case and also do not have any criminal antecedents – Sentence reduced to period already undergone : *Sunder Lal Vs. State of M.P., I.L.R. (2012) M.P. 1313*

7. Recovery of Weapons

– **Section 147, 148, 149, 302, 323 & 324** – Prosecution case – Deceased sustain gun shot injury, lathi blows and spear injuries – No seizure of 'Katta' – Nor gun shot injury found – Held – All eye witnesses supporting carrying of Katta by the appellant, so his presence cannot be doubted because no 'Katta' was recovered from him : *Ramvilas Vs. State of M.P., I.L.R. (2015) M.P. 3137 (SC)*

- – **Section 161**, Prevention of Corruption Act (2 of 1947), Section 5(1)(d) read with 5(2) - Offence under - Demand as well as the acceptance of the tainted money was only with 'A-1' and not with 'A-2' - The only role assigned to 'A-2', is the role of receiving the money after the money was transferred to 'A-1' and then keeping in his pocket of his bush-shirt - Nothing on record to show that 'A-2' had anything to do with the audit of accounts of the Society of the complainant - Not a case that 'A-2' has been paid any money or in addition legal remuneration for the purpose of conferring any benefit to the complainant - Nothing on record that the money was shared by 'A-2' alongwith 'A-1' - Held - There is no evidence even to bring the case of the prosecution u/s 161, IPC qua appellant 'A-2' : *Shambu Vs. State of M.P., I.L.R. (2013) M.P. *10 (DB)*

– **Section 166, 500, 504 & 506** – Complaint – Complaint filed by the applicant was dismissed by Trial Judge after enquiry as there was no ground to proceed against non-applicant – Order of Trial Judge was also affirmed by Session Judge in revision – Same is called in question – Held – Actual words uttered by the non-applicant are

missing in the complaint and also in the statement of the applicant – Complainant simply said that some insulting words were spoken by the non-applicant – Non-applicant being Collector was hearing the grievance of the public and during that proceeding he got annoyed, threw the papers and used some rude words – This is a trivial issue and will not be punishable under IPC – No illegality in the order – Petition is dismissed : *Rajendra Singh Vs. Raghvendra Singh, I.L.R. (2015) M.P. 1582*

– **Section 177** – Major part of the cause of action against all the petitioners had accrued at Kota, where most of the alleged acts of cruelty were committed and on the other, no part of cause of action against women petitioners had arisen at Jabalpur – The Offence under Section 498-A of the IPC must be tried by a Court at Kota and not by the Court at Jabalpur – Trial Magistrate directed to return the complaint filed against the petitioners for presentation before a Court of competent jurisdiction at Kota : *Mohani Mehrotra (Smt.) Vs. Smt. Shilpi Mehrotra, I.L.R. (2012) M.P. 1099*

– **Section 182 & 211** - Defamatory statement - Written complaint which was addressed to S.H.O. containing allegations against the complainant was distributed by applicant - Applicant is not entitled to protection under Exception 8 to Section 499 in view of non-initiation of action against him by S.H.O. or S.D.O. for the offences punishable under Section 182 & 211 of I.P.C. : *Babu Khan Vs. Abdul Latif Khan, I.L.R. (2013) M.P. 492*

– **Section 188** - See - Criminal Procedure Code, 1973, Section 195 : *Ajay Singh Vs. State of M.P., I.L.R. (2012) M.P. 2310*

– **Section 193 & 195** – Lesser offence – Offence under Section 193 is lesser offence of Section 195 – Conviction for a larger offence can be converted into conviction for a lesser offence, if larger offence takes within its sweep the ingredients of lesser offence also – Giving false evidence in judicial proceedings is a common factor in both Section 193 & 195 IPC – Appellant convicted for sentence already undergone with fine of Rs. 10,000/- : *Rajendra Vs. State of M.P., I.L.R. (2011) M.P. 1323*

– **Section 195** - Giving or fabricating false evidence with intent to procure conviction – Appellant initially supported the prosecution case in examination in chief, however, took U-turn and supported defence version – Held – Finding of Trial Court that false evidence given by appellant was either to secure conviction or acquittal – Appellant could not have been convicted by Trial Court unless convincing evidence was produced by prosecution before it that false evidence during Trial under Section 304-B IPC was given with an intention to procure conviction of accused persons – Appellant could not have been convicted under Section 195 I.P.C. : *Rajendra Vs. State of M.P., I.L.R. (2011) M.P. 1323*

– **Section 197** – Sanction for Prosecution – Official Duties – Petitioner alleged that respondents have misappropriated the public money while implementing the schemes in the course of their official duties – Hence, acts of misappropriation as alleged against respondents cannot be separated from their official duties – Sanction under Section 197 necessary : *Tridev Jan Kalyan Samiti Vs. U.K. Subuddhi, I.L.R. (2015) M.P. 2516 (DB)*

– **Section 199, 467, 468 & 471**, – Petitioner stood before the Court of C.J.M. as surety and filed affidavit, bail declaration form and Bhu Adhikar Pustika (Land Record Right book) before the Court, which were found false on enquiry by the Court and also after investigation by Police – No illegality, irregularity, impropriety or incorrectness in the order of framing of charge of offence u/s 199, 467, 468 & 471, IPC : *Jagannath Singh Vs. State of M.P., I.L.R. (2011) M.P. 1768*

– **Section 212 & 216**, Dakaiti Aur Vyapharan Prabhavit Ksheshtra Adhiniyam, M.P. (36 of 1981), Section 11 & 13 – Owner of house – No documentary or oral evidence produced to show that appellant was either owner or was in possession or control of house in which dacoit was given shelter – Appellant was also not found on the spot at the time of the arrest of the dacoit – Appellant cannot be convicted – Appeal allowed : *Kishnu alias Kishan Bihari Vs. State of M.P., I.L.R. (2011) M.P. 2049*

– **Section 218** – Framing incorrect record or writing with intent to save person from punishment – Applicant had given his opinion that act of Sarpanch was in contravention of Rules and was an administrative irregularity instead of criminal act – Held – It cannot be held that applicant prepared any record or writing with intent to save Sarpanch from legal punishment – Merely on basis of difference of opinion or error of judgment, in absence of any malafide or criminal intention, a person cannot be made liable to be punished – Application allowed : *Ajay Sharma Vs. State of M.P., I.L.R. (2011) M.P. 2076 (DB)*

– **Section 300, 307 & 323**, Criminal Procedure Code, 1973 (2 of 1974), Section 227 & 228 – Framing of Charges – Attempt to commit murder – M.L.C. report shows that the injuries sustained by victim does not come under purview of earlier part of Section 300 of I.P.C. – In order to examine the ingredients of offence under Section 307 of I.P.C., the criteria stated in earlier part of Section 300 of I.P.C. has to be taken into consideration – As the victim did not sustain grievous injury or sufficient to cause death in ordinary course of nature, the case fall only under Section 323 of I.P.C. – Revision allowed : *Chhotelal Vs. State of M.P., I.L.R. (2012) M.P. 581*

SYNOPSIS : Section 302

- | | |
|-----------------------------------|----------------------------|
| 1. Blood Group | 2. Child Witness |
| 3. Circumstantial Evidence | 4. Common Intention |

5. **Conduct of Accused**
7. **Death Sentence/Rarest of Rare Case**
9. **Delayed Recovery of Articles**
11. **Dying Declaration**
13. **Evidence of Injured Witnesses**
15. **Eye Witnesses**
17. **Hearsay Evidence**
19. **Intention of Accused**
21. **Last Seen Together**
23. **Mere Presence of Accused**
25. **Multiple Dying Declarations**
27. **Murder or Culpable Homicide**
29. **Murder or Dowry Death**
31. **No Evidence**
33. **No Overt Act**
35. **Place of Incident**
37. **Presence of Witness**
39. **Recovery/Seizure Unreliable**
41. **Suicidal or Homicidal Death**
43. **Test Identification Parade**
45. **Unsoundness of Mind**
47. **Miscellaneous**
6. **Contradiction/Discrepancies**
8. **Delayed FIR**
10. **Delayed Statement**
12. **Enmity**
14. **Extra Judicial Confession**
16. **False Information to Screen Offender**
18. **Injuries**
20. **Juvenile Convict**
22. **Medical Evidence**
24. **Motive**
26. **Murder or Causing Grievous Hurt**
28. **Murder or Culpable Homicide not Amounting to Murder**
30. **New Story during Trial**
32. **No Intention to Cause Death**
34. **Non explanation of injuries not fatal**
36. **Plea of Alibi**
38. **Recovery at the Instance of the Accused**
40. **Related Witness**
42. **Suspicion**
44. **Unlawful Assembly**
46. **Weak Evidence**

1. Blood Group

– **Section 302** – Injuries – Doctor had opined that injuries on the body of the deceased were caused by two different weapons – However, prosecution tried to fasten everything on appellant – Absence of blood group and absence of evidence of origin of blood group destroyed the case of prosecution – It is unreasonable to draw adverse inference against the appellant : *Ritesh Vs. State of M.P., I.L.R. (2015) M.P. 218 (DB)*

2. Child Witness

– **Section 302** - Murder - Deceased was second wife of respondent - Child aged about 5 years was found by a truck driver on the road in naked condition - Child was taken to police station - Dead bodies of deceased along with her 2 years old child was found - On the basis of clues and leads given by the child, I.O. reached to his school and to the house - He had no occasion and reason to be tutored - Motive and suspicious conduct of respondent and evidence of child establishes the guilt of the respondent - Acquittal of respondent set aside - Respondent is convicted under Section 302 & 201 of I.P.C. : *State of M.P. Vs. Ravikumar Singh Malhotra, I.L.R. (2013) M.P. 442 (DB)*

– **Section 302** - See - Evidence Act, 1872, Section 3 : *Nandram Vs. State of M.P., I.L.R. (2011) M.P. 493 (DB)*

3. Circumstantial Evidence

– **Section 302** – Circumstantial Evidence – Appellant and his fiancée after joining the party went for an outing – Appellant informed the police that two unknown persons had attacked him and his fiancée – Deceased has suffered multiple injuries as well as appellant had also received multiple injuries including which was dangerous to life – Appellant alleged to have started disliking his fiancée because of her fattiness and introvert nature – Deceased had already joined health club for reducing her weight – Motive to commit murder due to deceased fattiness and due to her being introvert is wholly unreliable : *Ritesh Vs. State of M.P., I.L.R. (2015) M.P. 218 (DB)*

– **Section 302** – Circumstantial Evidence – Appellant was seen for the last time in the company of deceased child – Body of child was found in the box – Appellant also admitted her guilt in her statement under Section 313 of Cr.P.C. – Trial Court did not commit any error in convicting the appellant – Appeal dismissed : *Meena Bai Vs. State of M.P., I.L.R. (2012) M.P. 1025 (DB)*

– **Section 302** - Circumstantial Evidence - Appellant was sleeping with his wife in his room - In the morning he lodged a complaint that in the night his wife has committed suicide by hanging herself - In postmortem the cause of death was

strangulation and was homicidal in nature - As the appellant was alone in the room and the explanation given by him appears blatantly false and unreliable - Appellant is guilty of committing murder : *Rakesh Tiwari Vs. State of M.P., I.L.R. (2013) M.P. 1737 (DB)*

– **Section 302** - Circumstantial evidence - Burden of proof - Deceased wife died due to consumption of sulphas - Appellant admitted having given Metacin and seridone medicine - Held - No evidence that appellant was all alone in the company of deceased - Trial Court was wrong in holding that burden lies on appellant to establish that no other tablet was given to deceased : *Prahlad Vs. State of M.P., I.L.R. (2011) M.P. 489 (DB)*

– **Section 302** - Circumstantial Evidence - Deceased, the wife of the appellant died because of strangulation - Appellant was in the house along with his wife and children at the time of death - No explanation offered by the appellant - Recovery of Pillow and gold nose-pin at the instance of appellant - Appellant guilty of committing murder of his wife - Appeal dismissed : *Mohd. Hussain Ansari Vs. State of M.P., I.L.R. (2013) M.P. 1147 (DB)*

– **Section 302** - Circumstantial Evidence - Deceased wife of the appellant No.1 and daughter in law of appellant No.2 found dead in the house - Deceased was living with the appellants - Deceased died of homicidal death - No explanation offered by the appellants as to how the deceased suffered injuries and died - Appellants guilty of committing murder - Appeal dismissed : *Suraj Chandrawanshi Vs. State of M.P., I.L.R. (2013) M.P. 1153 (DB)*

– **Section 302** - Circumstantial evidence - Extra judicial confession - P.W. 2, son of deceased stated that appellant had made extra judicial confession to him - Highly suspicious that for no rhyme or reason accused would have made confession of his guilt before son of deceased - Evidence of P.W. 2 suspicious : *Halku Vs. State of M.P., I.L.R. (2011) M.P. 529 (DB)*

– **Section 302** – Circumstantial Evidence – False Explanation – Additional Link – If accused offers no explanation or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete – Where the murder of wife has been committed and there is evidence that husband and wife were seen together or the offence takes place in dwelling house where husband normally resided, then if false explanation is given by husband then it is a strong circumstance which indicates that he is responsible for the commission of crime : *Gyan Bai (Smt.) Vs. State of M.P., I.L.R. (2011) M.P. 2029 (DB)*

– **Section 302** - Circumstantial Evidence - Held, if circumstantial evidence is complete and conclusive in all respects and points to the guilt of the accused - Conviction is valid : *In Reference Vs. Kamlesh @ Ghanti, I.L.R. (2013) M.P. 3004 (DB)*

– **Section 302** - Circumstantial evidence - Recovery of weapon - Blood group of deceased was 'B' - However, blood group on Bakhar could not be detected - Held - It cannot be held with certainty that Bakhar recovered from the possession of appellant was used in commission of murder - Appeal allowed : *Halku Vs. State of M.P., I.L.R. (2011) M.P. 529 (DB)*

– **Section 302** – Circumstantial Evidence – When case rests on circumstantial evidence it must satisfy three tests (1) Circumstances must be cogently and firmly established (2) Circumstances should be of definite and unerringly pointing towards guilt of accused and (3) Circumstances taken cumulatively should form a complete chain : *State of M.P. Vs. Inder Singh, I.L.R. (2014) M.P. 2412 (DB)*

– **Section 302**, Evidence Act (1 of 1872), Section 3 – Murder – Proof – Circumstantial evidence – Circumstances proved against appellant are (1) There was strained relations between the deceased and the appellant and, therefore, there was a motive to kill the deceased (2) Deceased was last seen in the company of the appellant in room Hotel which was bolted from inside (3) Police was called on spot and the door of hotel's room was broken open (4) Deceased and accused were found lying on the carpet in injured condition and deceased was succumbed to the injuries (5) Death of the deceased was homicidal in nature (6) there was no sign of scuffle or mark of sexual assault on the deceased and no proof of theft of any article from the room or any attempt in doing so (7) Topography of the room excluded all possibility of any outsider entering into the room and committed murder of the deceased (8) Explanation furnished by the accused that some unknown person came and started assaulting the appellant inside the room and when his wife came to rescue, then they have also assaulted her, and fled away is patently false – Held – The chain of circumstances proved by the prosecution clearly and unerringly indicate that it was the appellant/accused only, who committed the murder of his wife : *Anil Sharma alias Anil Namdev Vs. State of M.P., I.L.R. (2012) M.P. *53 (DB)*

– **Section 302** – Murder – Circumstantial evidence – Accused and deceased were husband and wife – Almost all the witnesses are unanimous in their deposition that the relationship between them was cordial – Highly improbable that wife would murder her husband without any reason – Prosecution has not succeeded in showing the circumstances from which an inference of guilt could be drawn : *State of M.P. Vs. Malti Bai, I.L.R. (2014) M.P. 1475 (SC)*

– **Section 302** – Murder – Circumstantial Evidence – Accused known to deceased – Deceased left her house informing her children that she is going to purchase clothes and to meet appellant – Appellant and deceased had hot talk in the house of P.W. 5, thereafter both went away – A lady was seen entering in the house of appellant –

Appellant was seen carrying heavy luggage on his cycle – Motive also present – Chain of circumstance complete and appellant has not rendered any explanation – Appellant guilty of killing deceased : *Bhagwandas Vs. State of M.P., I.L.R. (2014) M.P. 2182 (DB)*

– **Section 302** - Murder - Circumstantial Evidence - Appellant alleged to have killed his five daughters as his proposal to sell the land was not accepted by his wives - P.W. 1 admitted that after seeing the dead bodies she started shouting that appellant had cut down the girls - Specific information that appellant had killed five daughters in his residence was given to police which was entered in the Rojnamchasanha - As information received by police was not vague or cryptic but contained precise particulars therefore, it could be treated as F.I.R. - Information given immediately after the commission of the crime so as to form part of the same transaction was relevant under Section 6 of Evidence Act - Subsequent conduct of appellant, another circumstance that he was found tied to a teak tree by means of a rope and same blood group was found on his pant as that of one of his daughter, presence of blood on the nail clipping and falsity of defence are circumstances which clearly prove the guilt of the appellant - Appeal dismissed : *In Reference Vs. Maganlal, I.L.R. (2011) M.P. 3235 (DB)*

– **Section 302** - Murder - Circumstantial Evidence - Appellant used to quarrel with his wife and had a quarrel with her in the late night, the appellant and deceased were seen together, the dead body of the deceased was found in the house, the appellant absconded from the place of occurrence and was arrested after about 5 days, weapon of offence as seized at his instance and the death of the wife of the appellant was homicidal in nature - Guilt of the appellant is proved beyond reasonable doubt : *Tunnu @ Rajesh Kumar Vs. State of M.P., I.L.R. (2012) M.P. 2498 (DB)*

– **Section 302** – Murder – Circumstantial Evidence – Appellant was having illicit relations with deceased – Appellant was alone in the house along with the deceased – Presence of sperms on petticoat and vaginal swab clearly shows that there was a cohabitation soon before the death – Deceased was alive when the appellant entered inside the house otherwise, he would have immediately came out of the house, if the deceased was already dead – In view of Section 106 of Evidence Act it shall be presumed that the appellant was the person who killed the deceased – Appeal dismissed : *Chandramani Tripathi Vs. State of M.P., I.L.R. (2015) M.P. 2764 (DB)*

– **Section 302** – Murder – Circumstantial evidence – Cases which rest upon circumstantial evidence, conviction can be permissible only when all links in chain of events are established beyond reasonable doubt and established circumstances are consistent only with hypothesis of guilt of accused and totally inconsistent with his innocence : *Neeraj Vs. State of M.P., I.L.R. (2014) M.P. 1610 (DB)*

– **Section 302** – Murder – Circumstantial Evidence – Circumstances that (i) appellant had motive to kill the deceased so that he could keep Nauni Bai as his wife, (ii) appellant was present in the hut of deceased at his last time, as such he had an opportunity to administer Rat poison in the name of medicine, (iii) Oral dying declaration of deceased that appellant gave him the medicine, carried and threw him into the water in the field and ; (iv) Evidence of F.S.L. report that Visra of deceased was containing the Zinc phosphide i.e. Rat Poison proved – The chain of the circumstances is proved against the appellant beyond doubt : *Chhotelal Vs. State of M.P., I.L.R. (2011) M.P. *80 (DB)*

– **Section 302** - Murder - Circumstantial Evidence - Conviction based on memorandum of accused and recovery of articles - Held - Circumstances sought to be proved against the appellant were not established by cogent and convincing evidence - Suspicion however strong can not take the place of proof - Conviction set aside - Appeal allowed : *Lakhu @ Lakhanlal Gond Vs. State of M.P., I.L.R. (2013) M.P. 934 (DB)*

– **Section 302** – Murder – Circumstantial Evidence – Court has to examine the evidence in its entirety especially in case of circumstantial evidence and ensure that the only inference drawn from evidence is the guilt of accused – If more than one inference can be drawn then the accused must have the benefit of doubt : *Ritesh Vs. State of M.P., I.L.R. (2015) M.P. 218 (DB)*

– **Section 302** - Murder - Circumstantial evidence - Deceased died unnatural death by rupture of spleen - Appellant/accused (husband of deceased) who was last resided together with wife/deceased in his dwelling house did not offer satisfactory explanation as to how deceased received fatal injury on her body - The explanation offered by appellant/accused that deceased committed suicide by hanging herself was found to be false - All these circumstances cumulatively establish that appellant only is responsible of homicidal death of deceased - Conviction affirmed : *Laxman Singh Vs. State of M.P., I.L.R. (2011) M.P. 229 (DB)*

– **Section 302** – Murder – Death of wife was homicidal in nature – Husband residing in the same house with his wife and was also present at the time of incident – False explanation given by him that deceased committed suicide – Only inference possible is that he and none else caused the death of deceased : *Gyan Bai (Smt.) Vs. State of M.P., I.L.R. (2011) M.P. 2029 (DB)*

– **Section 302** – See – Evidence Act, 1872, Section 3 : *Vrijlal Ghosi Vs. State of M.P., I.L.R. (2012) M.P. 1351 (DB)*

– **Section 302/34**, Evidence Act (1 of 1872), Section 3 – Circumstantial evidence – Evidence of last seen together not reliable because of material contradiction – All circumstances should unite to form a complete chain pointing towards the guilt of

accused – In absence of it accused cannot be convicted : *Dilip Kumar Vs. State of M.P., I.L.R. (2014) M.P. 1916 (DB)*

– **Section 302, 363, 367 & 376(2)(F)** – Rape – Murder – Circumstantial evidence – Appellant lifted the victim which was objected by grand-mother Shyamlibai – He was also seen on the way taking the girl with him by P.W. 2 and P.W.3 – Dead body was recovered at the instance of the appellant – Postmortem report, evidence of doctor and F.S.L. report supports the prosecution case – Held – Entire oral evidence as well as the medical evidence completely connects the appellant with the commission of the crime of rape and murder – In the absence of any satisfactory explanation by the appellant in whose custody, the minor child was, the appellant is guilty of commission of rape and murder of a girl aged 4 years : *In Reference Vs. Sunil, I.L.R. (2014) M.P. 2433 (DB)*

– **Section 302, 376-A, 363 & 201**, Protection of Children from Sexual Offences Act, (32 of 2012), Section 6 – Death Sentence – Rarest of rare case – Circumstantial evidence – Male profile from the clothes of the prosecutrix and her vaginal swab were found of the appellant – Chain of circumstantial evidence is complete and it is established that it was the appellant who, committed rape upon the prosecutrix : *In Reference Vs. Arvind alias Chhotu Thakur, I.L.R. (2014) M.P. 2441 (DB)*

– **Section 302, 376(2)(f) & 377** – Murder – Rape – Minor child was given in custody of the appellant as he had no child – She was mercilessly beaten by appellant on number of occasions – Number of injuries were found on her body – Postmortem report reveals that she was subjected to both natural and unnatural sexual assault – DNA of appellant matched with vaginal swab, clothes and anal swab of deceased – Chain of circumstances complete – Appellant guilty of committing offence : *In Reference Vs. Rajesh, I.L.R. (2014) M.P. 1139 (DB)*

– **Section 302 & 376(2)(g)** – Death Sentence – Murder – Rape – Circumstantial evidence – Prosecution has failed to prove a complete chain of circumstantial evidence – It is not proved beyond doubt that the appellants were the persons, who committed rape upon the deceased prosecutrix and killed her – Benefit of doubt is to be given to the appellants – Impugned judgment is held to perverse and deserves to be set aside – Appeal allowed : *In Reference Vs. Ganesh Lodhi, I.L.R. (2014) M.P. 2453 (DB)*

– **Section 302 & 397** - Murder - Circumstantial Evidence - Dog Tracking - Picking of smell and pointing towards appellant by sniffer dog is not a circumstance which could exclude the possibility of guilt of another person - This circumstance alone not sufficient to hold the appellants guilty : *Babuji Vs. State of M.P., I.L.R. (2011) M.P. 3173 (DB)*

4. Common Intention

– **Section 302/34** – Appellant Maiyadeen and Ramswaroop caused injury to the deceased and continued to assault him till he died – Both the accused showed common intention : *State of M.P. Vs. Maiyadeen, I.L.R. (2015) M.P. 200 (DB)*

– **Section 302/34** – Common intention – Appellant No. 1 had hot talk with complainant – He went to the house of complainant and his intention could be to kill the complainant – There was no need for appellant No. 1 to cause any harm to 11 year old boy who died in the incident – Appellant No. 1 never intended to kill the deceased – Merely by going to the house of complainant with gun and two companions do not mean that appellant No. 1 had intended to kill the deceased – No common intention of appellant No. 1 with appellant No. 2 to kill deceased child – Conviction of appellant No. 1 for offence u/s 302/34 set aside : *Samar Jeet Singh Vs. State of M.P., I.L.R. (2015) M.P. 187 (DB)*

– **Section 302/34** – Murder – Common intention or common object – Charges u/s 149 and 302 Penal Code – It is clear that the respondent Ramswaroop was jointly tried with the respondent Maiyadeen and his joint criminal actions were duly put to him in his examination u/s 313 of Cr.P.C. – Instead of charge u/s 149 of the Cr.P.C., if he is convicted with help of Section 34 of I.P.C. then, no prejudice would be caused to him – Appeal accepted against the respondents Maiyadeen and Ramswaroop – Convicted of offence u/s 302 I.P.C. and Section 302 read with Section 34 of I.P.C. respectively and sentenced to life imprisonment : *State of M.P. Vs. Maiyadeen, I.L.R. (2015) M.P. 200 (DB)*

– **Section 302/34** – P.W. 2 stated that Tulsidas assaulted the deceased whereas no other eye witnesses alleged assault by Tulsidas on deceased – If P.W. 2 could see Tulsidas assaulting deceased then other witnesses would have corroborated the fact – Cannot be said that Tulsidas had common intention : *State of M.P. Vs. Maiyadeen, I.L.R. (2015) M.P. 200 (DB)*

5. Conduct of Accused

– **Section 302** - Murder - Accused/appellants (A-1 & A-2) are the wife and her parmour - They allegedly murdered the deceased and threw the dead body in the well situated nearby - Blood stained Axe was recovered from the accused - Blood Stained cloths were recovered from the house - The room of deceased was found recently painted by cow-dung which was having blood stains - Accused/wife (A-1) avoided to search her husband/deceased - Son of deceased gave a full statement of the incident how his father was murdered by A-1 & A-2 and his evidence was found believable - No explanation by A-1 about the cause of death of husband and her silence for not searching or informing to

anybody - Homicidal death was also supported by medical evidence and F.S.L. report - Held - Appellants (A-1 & A-2) were responsible for the murder of deceased - Appeals dismissed : *Ramesh Vs. State of M.P., I.L.R. (2011) M.P. 2565 (DB)*

– **Section 302** - Murder - Appellant/husband picked up quarrel with deceased/wife and pour kerosene oil on her and lit fire by match box - Appellant arrested after 7 days of incident - Doctor found old burn injuries on the tip of his fingers, thumb and teeth biting injury on left fore arm - Held - Appellant did not take his wife to hospital for treatment - Appellant failed to account for his absence for about 7 days - Deceased was taken to hospital by neighbors and brother-in-law - Appellant guilty of offence u/s 302 of IPC : *Santosh Vs. State of M.P., I.L.R. (2011) M.P. 196 (DB)*

6. Contradiction/Discrepancies

– **Section 302**, Criminal Procedure Code, 1973 (2 of 1974), Section 157 – Copy of FIR to Magistrate – Two eye witnesses who are son and brother of deceased have admitted their inimical relation with accused – Their evidence is full of contradictions and not in conformity with medical evidence – Their presence on spot doubtful – When presence of witnesses on spot at the time of incident and lodging of FIR is doubtful, the mandatory provisions of Section 157 Cr.P.C. have to be complied with by prosecution – Prosecution failed to prove that copy of FIR was sent to Magistrate – Prosecution also failed to prove blood stains on seized weapons – Appeal allowed : *Ramu Vs. State of M.P., I.L.R. (2015) M.P. 3045 (DB)*

– **Section 302** - Murder - Discrepancies with regard to the roles played by accused A and B in the F.I.R. and Court evidence of the complainant - Fact of assault by accused A and B to the husband of the complainant not proved : *Bhursingh Vs. State of M.P., I.L.R. (2011) M.P. 3184 (DB)*

– **Section 302** – Murder – Sole accused prosecuted for causing death – Eye witness deposed that appellant inflicted three injuries whereas doctor described 8 injuries – Seizure witness did not support prosecution case – Held – Evidence of PW 1 is fully reliable and trustworthy and cannot be discarded on the basis of minor omission and contradiction as also on the ground that the witnesses of seizure of ‘Falia’ has turned hostile – Defence set up by appellant has not been proved – Conviction is affirmed : *Gulab Vs. State of M.P., I.L.R. (2014) M.P. 1606 (DB)*

– **Section 302** - See - Evidence Act, 1872, Section 3 : *Amar Singh Vs. State of M.P., I.L.R. (2011) M.P. *134 (DB)*

– **Section 302 & 436** – Murder – Evidence of Prosecution witnesses – Major contradiction, omission & improvement – No eye-witness – Held – Such discrepancies

cannot be brushed aside lightly, accused entitled to benefit of doubt – Conviction and sentence set aside – Appeal of accused allowed : *Gajraj Singh Vs. State of M.P., I.L.R. (2015) M.P. 1507 (DB)*

7. Death Sentence/Rarest of Rare Case

– **Section 302** - Death Penalty - Rarest of Rare Case - Deceased was called by approver at the instance of appellant No.1 as the accused were known to the deceased - Approver took the deceased to Bhedaghat where all the three accused were present - Sim used by approver was taken back by accused No. 2 - Deceased was never seen alive thereafter - Dead body of deceased was recovered from the river at the instance of the accused - Articles belonging to deceased were recovered from accused - Demand of ransom was made from the parents of deceased using the mobile phone of deceased - Delivery of 30 lacs was picked by accused No. 1 which was recovered from his possession - Case does not fall within the category of rarest of rare case - Death reference rejected - Accused persons sentenced to imprisonment for life : *In Reference Vs. Rahul Rajak, I.L.R. (2012) M.P. 2034 (DB)*

– **Section 302** – Death Sentence – Rarest of Rare Case – Appellant and three deceased had consumed liquor and chicken – They were intervened by security guard – Thereafter appellant caused death of three deceased by causing injury by means of hammer – Held – It cannot be said that appellant has become hazardous to the Society and therefore, merely because he has committed murder of three persons would not mean that extreme penalty of death is to be awarded – Plurality of murder can not be a determining factor in order to pass extreme penalty – Appellant having no criminal history – Death sentence not confirmed – Appellant awarded life imprisonment : *Jujhar Singh Vs. State of M.P., I.L.R. (2012) M.P. 998 (DB)*

– **Section 302** – Death Sentence – Rarest of rare case – Appellant killed three persons including a pregnant lady and a minor child – Appellant was under no duress or provocation – Conduct of stabbing three persons was so brutal, cruel, grotesque and diabolical and offence was committed in such dastardly manner that he deserves no sympathy, especially in view of the number of injuries to different persons – Reference accepted – Death Sentence affirmed : *In Reference Vs. Gudda @ Dwarikendra, I.L.R. (2012) M.P. 613 (DB)*

– **Section 302** - Murder - Death Sentence - Rarest of Rare Case - Awarding of death sentence is an exception - Genesis of crime and manner of occurrence inside the house of appellant remains clouded - Factum of crime being pre-ordained and motive of appellant in brutally assaulting the deceased after inviting him at his house for lunch stems from his suspicion on his wife's fidelity but no motive or pre-orchestration could be

culled out for the other two deceased persons - In a civilized society a tooth for a tooth and an eye for an eye ought not to be the criterion to clothe a case with rarest of rare case - Case do not fall within the category of rarest of rare case - Death sentence commuted into life sentence : *Gudda @ Dwarikendra Vs. State of M.P., I.L.R. (2013) M.P. 2309 (SC)*

– **Section 302** – Murder – Death Sentence – Rarest of rare case – The crime was committed in cruel, diabolic and brutal manner – Innocent girl aged 4 years was subjected to such a barbaric treatment by the appellant, who was her uncle – Having regard to the vulnerability of the victim and the gruesome nature of the crime, case falls in the category of “Rarest of rare case” – Death sentence is confirmed : *In Reference Vs. Sunil, I.L.R. (2014) M.P. 2433 (DB)*

– **Section 302** – Murder – Sentence of Death Penalty – Respondent killed his wife and 4 daughters by burning them – Trial Court convicted the respondent and awarded death penalty – High Court acquitted the respondent – Held – Dying declaration of elder daughter of the respondent is worth reliance which was wrongly disbelieved by High Court – Trial Court rightly held that the incident was in the category of rarest of rare cases – However as respondent has been free on being acquitted for more than 6 years, it is difficult to re-impose the death sentence on the accused at this stage – Appeal allowed – Respondent directed to undergo a sentence of life imprisonment : *State of M.P. Vs. Vishweshwar Kol, I.L.R. (2011) M.P. 1433 (SC)*

– **Section 302** – Murder – Sentence – Rarest of rare case – Circumstances and manner in which death of two innocent persons was caused and attempt on lives of two minor girls was made clearly established the mean and deprave motive of appellant calling only for one sentence i.e., death sentence – Sentence of death awarded to accused confirmed : *In Reference Vs. Santosh Kumar Singh, I.L.R. (2011) M.P. 1581 (DB)*

– **Section 302** - Sentence - Rarest of Rare Case - Appellant killed his five minor daughters as his proposal to sell the land was objected by his two wives - The aggravating circumstances overwhelmingly outweigh the mitigating circumstances - Considering the personalities of victims, age of appellant, manner of commission of crime, its magnitude and surrounding circumstances suggesting that he had committed murders of innocent children brutally neither under duress nor on provocation, the case fall under the category of rarest of rare case - Death sentence awarded to appellant confirmed : *In Reference Vs. Maganlal, I.L.R. (2011) M.P. 3235 (DB)*

– **Section 302** – Sentence – Rarest of rare case – Death sentence – There is nothing to suggest the motive for committing crime except article and cash taken away by the accused – Accused is 26 years old having no previous criminal record – Case does not fall in the rarest of the rare category – Death sentence is excessive – Hence altered to life

imprisonment – Rest part of sentence is affirmed – Appeal is partly allowed : *Santosh Kumar Singh Vs. State of M.P., I.L.R. (2015) M.P. 807 (SC)*

– **Section 302, 376-A, 363, 201 & 304 Part-II** – Death Sentence – Appellant did not kill the deceased intentionally but, while he stopped the prosecutrix from crying or shouting, suffocation was caused and the deceased prosecutrix died – However, rape with a girl of tender age is brutal on its own but, no death sentence is provided for offence u/s 376(1) or (2) of I.P.C. – Therefore, due to that brutality, no death sentence can be directed under such circumstances, it cannot be said that it is a rare of rarest case – Conviction and sentence u/s 201 & 302 of I.P.C. set aside – Conviction u/s 363 & 376-A of I.P.C. is confirmed – Appellant acquitted of the charge of offence u/s 302 & 201 of I.P.C. but, appellant is convicted for offence u/s 304 Part-II of I.P.C. under the head of charge u/s 302, I.P.C. – Appeal partly allowed : *In Reference Vs. Arvind alias Chhotu Thakur, I.L.R. (2014) M.P. 2441 (DB)*

– **Section 302, 376(2)(f), 377 & 120B** – Death sentence – Rarest of rare case – Circumstantial evidence – When the accused who was close to the family of the deceased to whom the victim used to call “uncle” had committed rape and murdered the innocent hapless girl of 7 years, the motivation of the perpetrator, the vulnerability of the victim, the enormity of the crime, the execution thereof persuade us to hold that this is a “rarest of rare” cases : *In Reference Vs. Rajesh, I.L.R. (2014) M.P. 1139 (DB)*

8. Delayed FIR

– **Section 302/148** - FIR delayed and first informant also not examined - The testimony of solitary child/eye witness was found not safe to place reliance - The conviction and sentence passed by the trial Court set aside : *Nandram Vs. State of M.P., I.L.R. (2011) M.P. 493 (DB)*

9. Delayed Recovery of Articles

– **Section 302** – Murder – Ornaments belonging to deceased recovered from the possession of appellants which were duly identified by the witnesses – Blood stained cloths recovered from the appellants – Held – It can be safely held that the appellants who were found in possession of looted articles soon after the incident are the author of the crime – 13 days delay in view of acts and circumstances of the case will be deemed soon after incident : *Juhur Bux Vs. State of M.P., I.L.R. (2011) M.P. 1734 (DB)*

10. Delayed Statement

– **Section 302**, Evidence Act (1 of 1872), Section 3 - Eye witness - Delayed Statement - Dead body of the deceased was found on 12.03.2011 whereas the statement of solitary eye witness was recorded on 13.03.2011 - During this period he did not

disclose the incident to the brother and family members of the deceased or to anybody else for a long period - Further more, it was just by chance that he went to the place of occurrence - It is quite unnatural that he kept on watching the incident for about 25-30 minutes and kept mum - It is also unnatural that the appellant No.1 did not react even after seeing him - Allegation of rape by eye witness is belied by medical evidence as the Doctor did not find any injury over vulva, vagina, inner thighs, perineum and pubic region of deceased - Recent signs of rape were also not present - In DNA report of vaginal smears of deceased, no male DNA profile was detected - Solitary eye witness in such circumstances cannot be held to be trustworthy witness - No reliance can be placed on the evidence of such witness - Reference dismissed - Appeal filed by accused persons allowed and they are acquitted : *In Reference Vs. Dilip @ Dipu, I.L.R. (2013) M.P. *4 (DB)*

11. Dying Declaration

– **Section 302**, Evidence Act (1 of 1872), Section 32 – Death by burn injuries – Dying declaration – No mention that dying declaration was read over to deceased – Benefit will go to accused – Hands were totally burnt but thumb impression with ridges and curves was taken on dying declaration – No ink impression was found on thumb of victim – Cannot be relied on – Accused acquitted : *Garibdas @ Pappu Choudhari Vs. State of M.P., I.L.R. (2014) M.P. 1923 (DB)*

– **Section 302**, Evidence Act (1 of 1872), Section 32 - Dying Declaration - Deceased suffered 100% superficial burn injuries - In such state of mind, one cannot expect that a person in such a physical condition would be able to give the exact version of incident - She had been suffering from great mental and physical agony - No suggestion and explanation as to why the witnesses who recorded the dying declaration would have deposed against the respondents - Appeal allowed - Judgment of acquittal set aside - Judgment of Trial Court restored : *State of M.P. Vs. Dal Singh, I.L.R. (2013) M.P. 1265 (SC)*

– **Section 302**, Evidence Act (1 of 1872), Section 32 - Dying Declaration - Deceased was brought to the hospital by appellant No.1 in burnt condition - The dying declarations were recorded by the Executive Magistrate and Police Constable after the arrival of the cousin and mother of the deceased - Statements of cousin and mother not recorded by police - Father of the deceased did not support prosecution case - False version was given by deceased that her husband ran away from the house after committing the offence - Whatever has been stated by deceased appears to be the result of tutoring, frustration and her helplessness - Such dying declarations can not be relied upon - Appellants acquitted : *Moved by Sessions Judge, Burhanpur Vs. Jitendra, I.L.R. (2013) M.P. 223 (DB)*

– **Section 302**, Evidence Act (1 of 1872), Section 32 – Dying Declaration – F.I.R. lodged by deceased – Deceased was fully conscious at the time of lodging F.I.R. – Deceased was alleged to have been assaulted at Osara then taken to fields near about 500 fts. and thereafter to a well – F.I.R. did not contain the facts of dragging to field or thereafter to a well where he was assaulted again – Creates doubt about genuiness of F.I.R. : *Vikram Singh Vs. State of M.P., I.L.R. (2012) M.P. *40 (DB)*

– **Section 302**, Evidence Act (1 of 1872), Section 32 - Dying Declaration - The deceased was set on fire by the appellants while she was alone in the house - She narrated the incident to her husband when he came back from the fields - In 1st dying declaration recorded by Naib Tahsildar, she did not attribute any motive to the appellants for setting her on fire whereas in the 2nd dying declaration she alleged that appellant no.1 was having evil eye on her - However, in the earliest report made by the husband of the deceased, it was alleged that when he came back from the fields he found the smoke coming out of the house and the door was opened with the help of sabbal and found that the deceased was sitting in a burnt condition and merely asked for treatment - In view of the earliest statement/information given by the husband to the police, the dying declarations made by the deceased do not appear to be trustworthy - Appeal allowed : *Kisna Vs. State of M.P., I.L.R. (2012) M.P. 2519 (DB)*

– **Section 302**, Evidence Act, (1 of 1872), Section 32 - Dying declaration - (1) recorded by doctor, (2) recorded by Inspector, Police as Dehati Nalishi, and (3) Dying declaration written as statement u/s 161 Cr.P.C. were found true and voluntary - There appeared no reason for the deceased to have made false statement accusing her husband/accused - By the fact that accused tried to extinguish the fire, it cannot be presumed that the deceased committed suicide - It stands proved that accused set fire to deceased and as a result of it she died : *Prakash Wagh Vs. State of M.P., I.L.R. (2011) M.P. 239 (DB)*

– **Section 302**, Evidence Act (1 of 1872), Section 32 - Murder - Appellant No. 2 who was having a katar in his hand had caught hold the deceased and appellant No. 1 inflicted injuries by knife - 10 injuries of sharp and pointed weapon found by doctor on the person of deceased - Evidence of eye witnesses, oral dying declaration and dying declaration found to be cogent, consistent and reliable - It stood established that both the appellants assaulted deceased with knife/katar with the intention of committing his murder - Sentence of life imprisonment held proper : *Sanju Vs. State of M.P., I.L.R. (2013) M.P. 1712 (DB)*

– **Section 302**, Evidence Act (1 of 1872), Section 32 - Murder - Dying Declarations - In written dying declarations, information given by one of the deceased to the Doctor and the Dehati Nalishi lodged by the deceased clearly speaks that the

appellant poured kerosene oil and ignited the deceased persons - There is nothing on record to show that the dying declarations were result of imagination, tutoring or prompting - Dying Declarations were made voluntarily - Appellant guilty of committing murder - Appeal dismissed : *Gajendra Singh Chouhan Vs. State of M.P., I.L.R. (2013) M.P. 939 (DB)*

– **Section 302** – Murder – Appellants poured kerosene oil and put the deceased on fire – Deceased suffered 80% burn injuries – Executive Magistrate recorded dying declaration after obtaining fitness certificate from the Doctor – Another fitness certificate was obtained after the recording of Dying Declaration – F.I.R. lodged by deceased is also a Dying Declaration – Both the dying declarations are reliable – Appellants rightly convicted under Section 302 – Appeal dismissed : *Gudda Alias Sultan Singh Vs. State of M.P., I.L.R. (2012) M.P. *57 (DB)*

– **Section 302** - Murder - Deceased in his dying declaration did not name appellant whereas the eye witness alleged that he had caught the hand of deceased - Another accused was named by nickname in the dying declaration as well as in the 161 statement of eye witness - But the identity of the accused not established as eye witness has admitted that there are several persons of the same nickname - Appellants entitled to be acquitted : *Ajay Khare Vs. State of M.P., I.L.R. (2012) M.P. 2239 (DB)*

– **Section 302** - Murder - Wife suffered burnt injuries - She immediately informed the people gathered at the place of incident that appellant has burnt her - In her 1st written dying declaration recorded in hospital in the presence of her husband, deceased stated that she caught fire while cooking food - In 2nd and 3rd written dying declarations which were certified by the Doctors, she specifically impleaded her husband - 2nd and 3rd dying declarations are supported by first oral dying declaration made to general public - Appellant also not explained in his statement under Section 313 of Cr.P.C. that how his wife caught fire - Mattress and other items were also burnt belying the story of catching fire by stove - 2nd and 3rd written dying declarations are authentic, voluntary and duly corroborated by other prosecution evidence including medical evidence - Appeal dismissed : *Shudhakar Vs. State of M.P., I.L.R. (2012) M.P. *93 (SC)*

– **Section 302** – See – Evidence Act, 1872, Section 32 : *Ashok Prajapati Vs. State of M.P., I.L.R. (2015) M.P. 1352 (DB)*

– **Section 302** - See - Evidence Act, 1872, Section 32 : *Ram Kripal Kahar Vs. State of M.P., I.L.R. (2013) M.P. 205 (DB)*

12. Enmity

– **Section 302** – Murder – Appellant gave solitary knife blow on the left side of neck below the ear resulting in cutting of muscles of neck, carotid artery and trachea –

Injury was caused due to old enmity – Held – Enmity is established and particularly looking to the nature of the injury on the neck it can be gathered that the appellant dealt the blow in order to commit murder as he brought the knife with him – Appeal dismissed : *Shivram Vs. State of M.P., I.L.R. (2012) M.P. 1009 (DB)*

– **Section 302** – Murder – Conviction and Sentence – Appeal – Death by burn injuries – 71% burn injuries in the incident – Alleged previous animosity between the parties – Cannot be a ground for false implication – Conviction affirmed : *Manohar Vs. State of M.P., I.L.R. (2014) M.P. 1913 (DB)*

– **Section 302/34 & 323/34** – Murder – Enmity – Material inconsistency between ocular and medical evidence – Held – Where the eye-witness account is found credible and trustworthy, medical opinion pointing to the alternative possibilities is not accepted as conclusive – The testimony of an injured witness is accorded a special status in law – Such a witness comes with a built-in-guarantee of his presence at the scene of crime and is unlikely to spare his actual assailment in order to falsely implicate someone – No perversity in convicting and sentencing the appellants – Appeal stands dismissed : *Suresh Vs. State of M.P., I.L.R. (2014) M.P. 2407 (DB)*

13. Evidence of Injured Witnesses

– **Section 302** – Murder – Appellant caused death of mother and son by dealing blows by means of hammer on their head – He also caused injuries to two girls – Injured witnesses corroborating prosecution case – There is nothing on record to indicate that injured witnesses are not reliable witnesses – Appellant held guilty of committing murder : *In Reference Vs. Santosh Kumar Singh, I.L.R. (2011) M.P. 1581 (DB)*

– **Section 302** - Murder - Sole injured witness - Merely because the witness was made to sit in the police station for 30-40 hours by itself is not sufficient to hold that he was the suspect : *Vijay @ Chandra Vijay Gupta Vs. State of M.P., I.L.R. (2012) M.P. 1681 (DB)*

– **Section 302, 307, 394, 397 & 450** – Murder – Accused allegedly assaulted deceased by iron hammer on head – P.W.4 was also assaulted who suffered fracture on head – P.W. 4 lodged F.I.R. – In view of evidence of injured witnesses duly corroborated by medical evidence and the recovery of stolen articles, iron hammer and blood stained clothes at the instance of accused from his house which is duly corroborated by independent witnesses of memorandum and seizure, accused is guilty : *Santosh Kumar Singh Vs. State of M.P., I.L.R. (2015) M.P. 807 (SC)*

14. Extra Judicial Confession

– **Section 302**, Evidence Act (1 of 1872), Section 24 – Extra Judicial Confession – Accused made extra judicial confession before village Choukidar and Patel soon after

the incident before his arrest – Eye witnesses and other witnesses have not supported the prosecution case – Whether conviction, made only on the basis of extra judicial confession is sustainable – Held – Since the witnesses to the extra judicial confession are independent witnesses who do not have any reason to depose against accused – Same also finds place in Dehati Nalishi, recorded soon after the incident – Which is duly corroborated by medical evidence and other circumstances – No infirmity in the order – Conviction is maintained : *Hemraj Vs. State of M.P., I.L.R. (2015) M.P. 437 (DB)*

15. Eye Witnesses

– **Section 302** - Eye witnesses - Reliability - There was no quarrel between deceased and accused - Deceased was not even talking to accused - Accused dealt repeated blows with axe on vital parts like neck, chest etc. even after deceased fell down - Evidence of eye witnesses corroborated natural and consistent - Conviction can be based on testimony of such witnesses : *Raghu Alias Raghunath Vs. State of M.P., I.L.R. (2013) M.P. 1982 (DB)*

– **Section 302** - Murder - Evidence of eye witnesses inspire confidence - Sharp edged weapons were also recovered at the instances of the appellants - Oral Evidence corroborates the Medical Evidence as 10 incised wounds were found - Fatal injuries were also caused on the vital part of the body of the deceased - Appellants had intended to commit the murder of deceased - Appeal dismissed : *Major Singh Vs. State of M.P., I.L.R. (2012) M.P. 2540 (DB)*

– **Section 302** - Murder - Injuries found on the deceased were caused by Gupti (sharp edged weapon) - Evidence of eye witnesses is corroborated by the medical evidence - No reason to discredit the prosecution case - Appeal dismissed : *Santosh Vs. State of M.P., I.L.R. (2013) M.P. 2693 (DB)*

– **Section 302** - Murder - Injuries were inflicted by Katta on vital part - Were sufficient to cause death - Evidence of eye-witnesses is cogent, consistent and they remained firm in cross examination - Their evidence is also corroborated by medical evidence - Katta was recovered on the intimation of appellant No. 1 - Conviction of appellant No. 1 is proper : *Rajendra Singh Vs. State of M.P., I.L.R. (2013) M.P. 2439 (DB)*

– **Section 302** - Murder - Medical Corroboration - Out of 14-15 accused persons, eye witness alleged that only 4 accused persons assaulted the two deceased - Version narrated by eye-witness is also corroborated by other witnesses as well as injuries found in the postmortem report - One of the accused had also lodged a F.I.R. in which he had mentioned the presence of the witness - Merely because the eye-witness like others did

not receive any injury would not make his presence doubtful : *Chhedilal Vs. State of M.P., I.L.R. (2012) M.P. 2257 (DB)*

– **Section 302** – Murder – Ocular and Medical evidence – In F.I.R. solitary eye witness had stated that assailants had assaulted deceased by means of lathies but in Court evidence improved his version and stated that Gupti, spear etc. were also used – No penetrating wound was found – Witnesses are related witnesses – Motive ascribed also not proved – F.I.R. also lodged within 15 minutes although police station was 8-9 kms away – In absence of corroboration, evidence of solitary eye witness cannot be relied upon – Appeal allowed, appellants acquitted : *Rohit Vs. State of M.P., I.L.R. (2014) M.P. 3203 (DB)*

– **Section 302** – See – Evidence Act, 1872, Section 3 : *Buddhu Pal Vs. State of M.P., I.L.R. (2012) M.P. 774 (DB)*

– **Section 302/34** – Murder – Trial Court implicitly accepted the evidence of eyewitnesses without properly considering the inconsistencies and contradictions in their evidence – The Court failed to consider that inherent infirmities in their evidence created grave suspicion and doubt about their presence at the place of occurrence – The Court also failed to notice their highly unnatural conduct – The evidence produced by the prosecution is unfit to be held the appellants guilty for the offence – Conviction & sentence set aside : *Sunil Datta Vs. State of M.P., I.L.R. (2011) M.P. *50 (DB)*

16. False Information to Screen Offender

– **Section 302 & 201** – Appellant lodged missing report of his wife – Parents of deceased suspected that appellant might have killed the wife and son by strangulation – Held – Appellant last seen with deceased persons – Recovery of dead bodies on the memorandum of appellant – Appeal dismissed : *Thakur Singh Vs. State of M.P., I.L.R. (2012) M.P. 765 (DB)*

17. Hearsay Evidence

– **Section 302**, Evidence Act (1 of 1872), Section 6 – Relevancy of Facts – Hearsay Evidence – Section 6 is exception to general rule where hearsay evidence becomes admissible – It should be contemporaneous with act and there should not be an interval which allow fabrication : *Barjiya Vs. State of M.P., I.L.R. (2012) M.P. 182 (DB)*

18. Injuries

– **Section 302/34** – Murder – Death of the deceased took place on account of septicaemia due to injury caused by axe by appellant before 30 days – There is direct evidence – Challenge is made on the ground that there is only one injury that too was

caused without premeditation as such the case falls under exception 4 of Section 300 of IPC – Held – Testimony of eye-witness as well as evidence of doctor prove that the injuries were caused by appellant – Ultimate effect of injuries which led to infection can be co-related with injuries caused by appellant – Considering over all facts and evidence, conviction of appellant u/s 302 IPC is converted in section 304 Part-I of IPC – Sentence of life imprisonment is reduced to 10 years R.I. – However fine amount is increased from Rs. 500 to 5000 : *Harji Vs. State of M.P., I.L.R. (2015) M.P. 772 (DB)*

– **Section 302/34** – Murder – Eye witnesses have testified that appellants had assaulted deceased with Sword, Pharsa and Gupti – Doctor has found 8 incised wounds – Case was also supported by circumstantial evidence – Seized articles were also found stained with human blood – Held – Fact of homicidal death is well established from the evidence on record – Corroborated by Doctor, who opined that cause of death was haemorrhage and shock due to the ante-mortem injuries caused by sharp edged weapons – No illegality committed by the trial court in convicting the appellants : *Vivek Gupta @ Jaiswal Vs. State of M.P., I.L.R. (2014) M.P. 2259 (DB)*

– **Section 302, 147, 148, 294 & 307/149** - Deceased was confronted by accused persons who were armed with knives and sword - Two accused caught hold the deceased and took him in front of house of accused No. 2 - Accused No. 1 shouted to kill him and all the accused persons assaulted him with knife and sword - Death was caused due to cumulative effect of all the injuries - Appellants guilty of committing murder - Appeal dismissed : *Mahendra @ Mehandru Vs. State of M.P., I.L.R. (2012) M.P. *87 (DB)*

19. Intention of Accused

– **Section 302** – Murder – Complainant alongwith his son and daughter were collecting Mahua when the appellant No. 1 tried to stop them from doing so – On refusal to do so, appellant No. 1 threatened that he will bring a gun and teach them a lesson – After some time, the complainant noticed that the accused persons were coming with gun and tangi – All the three persons ran towards their house – The appellants entered inside the house of the complainant and fired at son of complainant who died on the spot – Appellant No. 1 also fired causing injury to complainant – F.I.R. was lodged within 2 hours – Gun shot was fired by the appellant with an intention to kill deceased – Trial Court rightly convicted him u/s 302 : *Samar Jeet Singh Vs. State of M.P., I.L.R. (2015) M.P. 187 (DB)*

– **Section 302** – Murder – Deceased was sitting in his ration shop – Appellant came armed with a knife and dealt blow on his abdomen, back, hand and leg – Four injuries found on body by sharp edged weapon – Held – From dying declarations and the medical evidence establish that deceased repeatedly caused injuries to deceased by knife

– Injuries caused on the lumbar region and on the abdomen were deep up to abdominal cavity – Intention of appellant to cause death of deceased established – Appeal dismissed : *Sushil Kumar Vs. State of M.P., I.L.R. (2012) M.P. 230 (DB)*

– **Section 302** - Murder - Deceased was the uncle of the appellant - Accused claimed that since his land was more than deceased and the well was situated on his land, he would take more water - Accused assaulted with Axe - Held - As per post mortem report injuries by sharp edged weapon were found on the body of deceased - Appellant rightly held guilty of causing murder - Appeal dismissed : *Fagnu Vs. State of M.P., I.L.R. (2012) M.P. 1699 (DB)*

20. Juvenile Convict

– **Section 302** – Sentence for murder – Juvenile the convict is found to be of 17 years 6 months and 21 days old i.e. juvenile at the date of incident – Cannot be sent back to jail to suffer remaining part of jail sentence : *Kapil Kumar alias Bobby Vs. State of M.P., I.L.R. (2014) M.P. 1109 (DB)*

21. Last Seen Together

– **Section 302** – Murder – Circumstantial Evidence – Last seen together – Dead body of minor girl was found in the jungle as she had gone there for grazing goats – Evidence on record show that appellant was seen alongwith the deceased at a distance of 1 1/2 Km. from the place where dead body was found – No evidence that appellant was last seen at or near the place where the dead body was found – Graver the crime, graver should be the degree of proof – No F.S.L. Report produced regarding presence of blood on Darata – Appeal allowed : *Man Singh Vs. State of M.P., I.L.R. (2014) M.P. 2253 (DB)*

– **Section 302** - Murder - Circumstantial Evidence - Last Seen Together - Material omissions and contradictions in the statement of witnesses - Complainant admitted that he knew the appellant even then it was mentioned in the Marg Intimation that one person was seen carrying the can - Marg intimation is not corroborated by the statement of the witness - Prosecution has failed to prove that the deceased and appellant were last seen together - Appellant acquitted : *Karan Vs. State of M.P., I.L.R. (2013) M.P. 1162 (DB)*

– **Section 302** – Murder –Circumstantial Evidence – Law discussed : *Juhur Bux Vs. State of M.P., I.L.R. (2011) M.P. 1734 (DB)*

– **Section 302** – Murder – Circumstantial evidence – The circumstances alleged by the prosecution should be of definite tendency, unerringly pointing towards the guilt of the accused – Should form a chain so complete that there is no escape from the conviction – Circumstances should be consistent with the guilt of the accused –

Prosecution has failed to satisfy the various tests in proving the case on circumstantial evidence – Appeal dismissed : *State of M.P. Vs. Malti Bai, I.L.R. (2014) M.P. 1475 (SC)*

– **Section 302** – Murder – Circumstantial Evidence – Wife left her husband/appellant and 3 years old daughter in house – Deceased daughter was found in company of the appellant at about 12 P.M. – Explanation given by appellant that he left house at 7 am not plausible – Conduct of appellant after incident was suspicious – He was not available after incident but was arrested after 7 days of incident – Deceased was found lying on the bed covered with blanket in the room with 22 injuries on her body and cause of death was asphyxia as a result of smothering – Motive for killing 3 years old daughter also established – Chain of circumstances lead to only conclusion that appellant had killed his 3 years old daughter – Appeal dismissed : *Keshu Lal Vs. State of M.P., I.L.R. (2012) M.P. 537 (DB)*

– **Section 302** – Murder – Last seen together – Appellant and deceased used to go of outing after their engagement – Appellant from very beginning had accepted that the deceased was with him – Doctor had opined that the injuries sustained by appellant cannot be self inflicted – In view of medical evidence, injuries suffered by appellant were neither self inflicted nor friendly hand : *Ritesh Vs. State of M.P., I.L.R. (2015) M.P. 218 (DB)*

– **Section 302** – Murder – Last seen together – If the time gap between the last seen and death of deceased was more, the possibility of entry of third person to commit the murder was there : *Neeraj Vs. State of M.P., I.L.R. (2014) M.P. 1610 (DB)*

22. Medical Evidence

– **Section 302** - 100% burns - Degrees - Deceased had suffered 100% superficial burns - Burn injuries are classified into three degrees - There may be a situation where a part of the body may bear upon it severe burns but a small part of the body may have none - Burns can usually be distinguished from wounds inflicted before the body was burnt by their appearance, their position in areas highly susceptible to burning and on fleshy areas by findings recorded after internal examination : *State of M.P. Vs. Dal Singh, I.L.R. (2013) M.P. 1265 (SC)*

– **Section 302**, Criminal Procedure Code, 1973 (2 of 1974), Section 157 – Murder – Postmortem report states that time of death was 136 hours from the date of postmortem – Postmortem was done after 60 hours of incident – There is delay of 24 hours in lodging the F.I.R. – Delay of seven days in sending copy of F.I.R. to Magistrate – Head was chopped from body by causing single blow – Weapon used must have been heavy and such injury could not have been caused by sword which was seized – Sword was also not produced before Court – Recovery of head and body also not reliable –

Appellants not guilty – Appeal allowed : *Mangu Singh Vs. State of M.P., I.L.R. (2012) M.P. *6 (DB)*

– **Section 302**, Criminal Procedure Code, 1973 (2 of 1974), Section 228 – Framing of charge – Applicant had scuffle with her deceased mother -in-law who was aged about 82 years – Applicant pushed deceased on the road – Deceased died because of failure of cardio- respiratory system – No internal and external injury was found – No ingredients of Section 300 are attracted – No charge can be framed u/s 302 I.P.C. – Applicant is discharged from offence u/s 302 – Matter remanded back : *Sunita Bai Vs. State of M.P., I.L.R. (2015) M.P. 1083*

– **Section 302**, Evidence Act, (1 of 1872), Section 3 - Medical and ocular evidence - Autopsy surgeon found stab wounds and impact abrasions and laceration of mastoid region because of pieces of skull bone - Accused alleged to have caused injuries by hard and blunt object are entitled to be acquitted as oral evidence is not corroborated by medical evidence : *Somu Vs. State of M.P., I.L.R. (2011) M.P. *37 (DB)*

– **Section 302**, Evidence Act (1 of 1872), Section 3 - Oral Evidence is not supported by medical evidence - Sword injury allegedly caused from behind not found during autopsy - In Dehati Nalshi name of witness also missing - Oral evidence not reliable : *Gulab Rao Nagle Vs. State of M.P., I.L.R. (2014) M.P. 547 (DB)*

– **Section 302** - Injuries - Witnesses had stated that appellant No. 1 had caused injury by means of sword - Penetrating wound was found - Penetrating wound can be caused by sword also - Ocular evidence is not inconsistent with medical evidence : *Satal Singh Vs. State of M.P., I.L.R. (2013) M.P. 2188 (DB)*

– **Section 302** - Medical Evidence - Authoritative text books - Portion of any other authoritative text books be put to the Doctor with a view to give him an opportunity to explain his stand : *Rakesh Tiwari Vs. State of M.P., I.L.R. (2013) M.P. 1737 (DB)*

– **Section 302** - Medical Evidence - Evidence of Doctor - Unless there existed some inherent and apparent defect, the court could not have substitute its opinion for that of the Doctor's : *State of M.P. Vs. Dal Singh, I.L.R. (2013) M.P. 1265 (SC)*

– **Section 302** – Minor injuries – Death due to asphyxia – Hanging – Two doctors performed post mortem, no opinion given for homicidal death – Oral and documentary evidence not support the charge u/s 302 IPC – No cogent evidence – Conviction u/s 302 set aside : *Praveen Kumar Vs. State of M.P., I.L.R. (2012) M.P. 1327 (DB)*

– **Section 302** – Murder – Appellant having illicit relations with wife of his younger brother which was objected by deceased wife – Appellant killed his wife by pressing her neck and thereafter burning her – Medical evidence shows that cartilage of

cornea of neck was broken and lungs were found to be congested – No carbon particles found in trachea or in lungs of deceased – Dead body was lying on ground and front portion of the body was found burnt but on turning the body, back was not found burnt – No scintilla of doubt that deceased was first killed by pressing neck and thereafter dead body was burnt – Appellant rightly convicted under Section 302/34 – Appeal dismissed : *Ramkishun Vs. State of M.P., I.L.R. (2011) M.P. 1277 (DB)*

– **Section 302** – Murder – Case under Section 125 of Cr.P.C. for grant of maintenance was pending between deceased and appellant No.2 – Evidence of Sisters of deceased that appellant No.2 exhorted appellant No.1 who in his turn caused blow by means of spade to deceased not reliable in absence of corroborative independent evidence – In absence of Serologist's report, presence of blood stains on seized spade is of no value – Findings given by Trial Court cannot be said to be perverse – Appeal dismissed : *State of M.P. Vs. Kamal, I.L.R. (2014) M.P. 2415 (DB)*

– **Section 302** – Murder – Deceased suffered 80% burns upto her knees – She died because of septicaemia caused due to antemortem injuries – Nothing on record that septicaemia was not the result of the burn injuries – Appellants guilty of committing murder – Appeal dismissed : *Gudda Alias Sultan Singh Vs. State of M.P., I.L.R. (2012) M.P. *57 (DB)*

– **Section 302** – Murder – No injury by hard and blunt object was found on the body of deceased – Evidence that 5 accused persons assaulted deceased by means of lathi not worth reliance : *Jagannath Yadav Vs. State of M.P., I.L.R. (2015) M.P. 458 (DB)*

– **Section 302** – Murder – Ocular Evidence and Medical Evidence – Ocular evidence would have preference over medical evidence unless it is established that ocular evidence is totally irreconcilable with medical evidence : *Rakesh Vs. State of M.P., I.L.R. (2012) M.P. 1 (SC)*

– **Section 302** – See – Evidence Act, 1872, Section 3 & 27 : *Premdas Ahirwar Vs. State of M.P., I.L.R. (2012) M.P. 1381 (DB)*

– **Section 302 & 201**, Evidence Act (1 of 1872), Section 106 - Murder - Nature of death - Non explanation of cause of death of deceased - Post mortem report reflects that it could not be said with certainty that mode of death was homicidal - Doctor deposed that the death was caused due to asphyxia - There was no sign of struggle - No rope was used - No nail scratches were observed on the neck of the deceased - No external or internal injuries was found on the body of the appellant - Held - Prosecution has failed to prove by cogent and reliable evidence that death was homicidal in nature therefore, it was not necessary for the appellant to explain the cause of death : *Dhaniya Bai Vs. State of M.P., I.L.R. (2013) M.P. 2238 (DB)*

23. Mere Presence of Accused

– **Section 302** – Murder – No evidence against appellant/devar that he shared intention of husband to cause the death of deceased – His mere presence is not sufficient to draw such inference – He cannot be held liable for commission of murder – However, he was rightly convicted under Section 201 of I.P.C. : *Gyan Bai (Smt.) Vs. State of M.P., I.L.R. (2011) M.P. 2029 (DB)*

24. Motive

– **Section 302**, Evidence Act, (1 of 1872), Section 8 – Murder – Motive – Motive is insignificant where the case of prosecution rests on direct evidence : *Siddar Khan Vs. State of M.P., I.L.R. (2011) M.P. 1016 (DB)*

25. Multiple Dying Declarations

– **Section 302**, Evidence Act (1 of 1872), Section 32– Multiple dying declarations – In first dying declaration, the deceased stated that she got burnt accidentally – Second dying declaration was got recorded on the saying of Mahila Mandal and Chairman of Zila Panchayat – No smell of kerosene oil was found – Second dying declaration implicating the appellant not trustworthy – In order to test the reliability of a dying declaration the court has to keep in mind, the circumstances like the opportunity of the dying man for observation and that it has been made at the earliest opportunity and was not the result of tutoring by interested parties – Appeal allowed : *Guddi Bai @ Sahodara Bai Vs. State of M.P., I.L.R. (2015) M.P. 3054 (DB)*

26. Murder or Causing Grievous Hurt

– **Section 302 or 326** - Murder - Cause of Death - Appellant caused one knife injury on the abdomen of the deceased - Deceased died after 21 days on account of complications in the liver as the pus was found in the liver - Appellant guilty of committing offence under Section 326 - Sentence reduced to 3 years R.I. without any remission and fine of Rs. 1 lacs - Amount of fine be paid to the legal heirs of the deceased : *Mangilal Vs. State of M.P., I.L.R. (2012) M.P. 1660 (DB)*

27. Murder or Culpable Homicide

– **Section 302/34 & 304 Part-I** – Murder or culpable homicide – Deceased himself indulged in quarrel with accused A-1 when A-1 did not accede to his demand of providing liquor – In that quarrel, suddenly A-1 took out Katta and fired at deceased – Deceased and accused persons were on family terms and accused used to visit deceased at his house also – Held – It cannot be held with certainty that accused A-1 intended to cause death of deceased – However, since he used a fire arm, it can be held that he intended to cause such bodily injury to deceased as was likely to cause his death – His act

clearly falls within the ambit of S. 304 Part-I : *Aju @ Ajay Kumar Vs. State of M.P., I.L.R. (2011) M.P. 768 (DB)*

28. Murder or Culpable Homicide not amounting to Murder

– **Section 302, 149 or 304 Part-I** - Murder or culpable homicide not amounting to murder - Deceased and his companions alighted from bus and went to betel shop - Altercation took place between deceased and accused No. 4 - Accused No. 12 was assaulted on head by means of Baka - Deceased and other injured witnesses boarded the bus, however bus was stopped and deceased & other injured were assaulted - Held - Possibility that accused persons got provoked and without premeditation in heat of passion suddenly bent upon assaulting deceased, can not be ruled out - As such their conviction u/s 302/149 of the I.P.C. does not seem appropriate but since they caused injuries with deadly weapons on the vital parts of the body of deceased, it can certainly be held that they acted with the intention of causing death or of causing such bodily injury to deceased as was likely to cause his death making them liable to be punished u/s 304-I of I.P.C. : *Sheikh Waseem Vs. State of M.P., I.L.R. (2013) M.P. 2428 (DB)*

– **Section 302 & 304 Part-I** – Culpable Homicide – Appellant/husband and the deceased/wife were inside the room at the time of the incident and the door of the room was bolted from inside – The death of the deceased was homicidal in nature as a result of injuries caused by sharp weapon and acid – Appellant in his statement under Section 313 of the Cr.P.C. has not stated the fact that there was quarrel took place between him and the deceased and on account of sudden quarrel and in heat of passion, he himself caused injuries to the deceased – Appellant must be held to cause death in ordinary course of nature : *Anil Sharma alias Anil Namdev Vs. State of M.P., I.L.R. (2012) M.P. *53 (DB)*

– **Section 302 & 304** – Murder and Culpable homicide – "culpable homicide" is the genus and "murder" its species wherein all "murder" is "culpable homicide" but all "culpable homicide" is not "murder" : *Veeran Vs. State of M.P., I.L.R. (2011) M.P. 1629 (SC)*

– **Section 302 & 304 Part-I** – Murder – Culpable homicide not amounting to murder – Appreciation of Evidence – Appellant caused single injury – It was not clear that the weapon used was Screwdriver or Gupti – Circumstances compelled him to react once as he was hit by the deceased – Injury was neither premeditated nor with intention to cause death – Doctor is not clear regarding the cause of the death – Held – It cannot be said that the injury was sufficient in the ordinary course of nature to cause death and thus, case would be squarely covered between clause (b) of Section 299 and clause (3) of Section 300 – Therefore, it will be fit case to convert the conviction from Section 302 to

Section 304 Part-I, I.P.C. – Since appellant in jail for 9 years, sentence is reduced to the period already undergone : *Sukhlal Vs. State of M.P., I.L.R. (2014) M.P. 2202 (DB)*

– **Section 302 & 304** - Murder or Culpable Homicide - Accused had no immediate motive to kill the deceased and did not give him the blow with intention to kill - It is also difficult to hold that the appellant No. 3/accused intended to cause that particular injury which was sufficient in the ordinary course of nature to cause death - In such event, the offence committed by him would be punishable u/s 304 Part-II : *Shyam Prasad Vs. State of M.P., I.L.R. (2012) M.P. 1977 (DB)*

– **Section 302 & 304** – Murder or Culpable Homicide not amounting to murder – No enmity or motive on the part of appellant to cause murder – Incident was sudden and none of the witness has spoken about the genesis of incident – However, the circumstance indicates that the deceased had abused the appellant and therefore, he picked up axe and assaulted him – As the appellant dealt only one blow on the neck – Case falls within the ambit of Section 304 Part II – Appeal partly allowed : *Narayan Vs. State of M.P., I.L.R. (2012) M.P. 1376 (DB)*

– **Section 302 & 304 Part I** – Murder or culpable homicide not amounting to murder – There was a dispute regarding agricultural land between the parties- Appellant no. 1 and 4 have assaulted 3 injuries on the legs of the deceased- Doctor had also opined that in case the medical help would have been made available to injured immediately, then perhaps he could have survived – No injury on vital part of the body was caused – None of the accused intended to cause death of deceased – Case would fall under Section 304 Part I – Sentenced to R.I. of 10 years and fine of Rs. 1,000/- : *Jagannath Yadav Vs. State of M.P., I.L.R. (2015) M.P. 458 (DB)*

– **Section 302 & 304 Part I** – Murder or Culpable homicide – Death caused by the accused was not premeditated – Accused had no common intention to cause death of deceased – The injuries were not sufficient in the ordinary course of nature to have caused his death – Case falls under the exceptions 1 and 4 to Section 300 of IPC – Appeal allowed in part : *Veeran Vs. State of M.P., I.L.R. (2011) M.P. 1629 (SC)*

– **Section 302 & 304 Part I** - Murder or Culpable Homicide not amounting to murder - Appellant came back to his house in drunken condition - Quarrel between the appellant and his deceased wife took place in the course of which appellant poured kerosene on deceased and ignited her - Held - It could be inferred that the incident occurred under a sudden impulse without any premeditation - However, since setting fire to deceased after pouring kerosene on her indicated that appellant acted either with the intention of causing death or of causing such bodily injury as was likely to cause death - Appellant convicted under Section 304 Part I and sentence of 10 years R.I : *Roop Singh Vs. State of M.P., I.L.R. (2013) M.P. 1169 (DB)*

– **Section 302 & 304 Part I** - Murder or Culpable Homicide not amounting to murder - Deceased and injured witnesses were trying to take their bullock cart from the fields of appellants where gram crops were sown - How an occupant of field can keep mum- Act of deceased persons of taking bullock carts through the field was nothing but an invitation for quarrel on their part - Appellants assaulted without premeditation in a sudden fight and quarrel occurred on the spot between the members of two families - Appellants liable to be convicted under Section 304 part I - Appellants sentenced to undergo imprisonment of 10 years - Appeal partly allowed : *Pohap Singh Vs. State of M.P., I.L.R. (2013) M.P. 194 (DB)*

– **Section 302 & 304 Part-I** - Murder or Culpable Homicide not amounting to murder - Deceased uttered obscene abuses to appellants thereby provoking them so much that they lost self control and chased deceased until they caused injuries to him - Since the evidence indicated that appellants chased and assaulted deceased spontaneously, it seems probable that there had been no time gap between the conduct of deceased and appellants' chasing and assaulting deceased - Conviction altered to 304 Part I and sentenced to R.I. for 10 years : *Satal Singh Vs. State of M.P., I.L.R. (2013) M.P. 2188 (DB)*

– **Section 302 & 304 Part-I** – Murder or culpable homicide not amounting to murder – Held – Deceased tried to intervene in the quarrel of appellant and another person – Appellant dealt three successive blows from the blunt side of the Axe – It is not a case of heat of passion on account of which it can be said that the appellant inflicted blows – Case does not fall under exception of 4 of Section 300 of IPC : *Pisu Vs. State of M.P., I.L.R. (2014) M.P. 1099 (DB)*

– **Section 302 & 304 Part I** - Murder or culpable homicide not amounting to murder - Held - Injury inflicted to deceased on vital part without any cause or provocation with intention to murder - Were also sufficient to cause death - Intention of the accused is clear - Case does not fall under exception of 4 of Section 300 of I.P.C. : *Rajendra Singh Vs. State of M.P., I.L.R. (2013) M.P. 2439 (DB)*

– **Section 302 & 304 Part I** - Murder or Culpable Homicide not amounting to murder - Incident took place near the house of deceased - It is nowhere established that the house of the appellants was situated at or near the place of occurrence - The appellants did not act in exercise of their right of private defence or it was a case of mutual free fight - However, as the genesis or the origin of occurrence remained shrouded in obscurity and neither of the parties presented the true version of occurrence - It cannot be held established that appellants assaulted deceased with the intention and premeditation to commit his murder - Conviction altered to 304-I of I.P.C. : *Veeran Vs. State of M.P., I.L.R. (2013) M.P. 1989 (DB)*

– **Section 302 & 304 Part-I** – Murder or Culpable Homicide – Upon demanding of borrowed money, there suddenly ensued a hot altercation and appellant inflicted injuries to deceased by taking out chhuri from his pocket – Held – Assault was not premeditated and it sparked off suddenly – The offence committed by the appellant was culpable homicide not amounting to murder : *Prem Narayan Meena Vs. State of M.P., I.L.R. (2011) M.P. 1037 (DB)*

– **Section 302 or 304 Part I** - Culpable Homicide not amounting to murder - Accused persons tried to collect Mahua forcibly despite the resistance offered by deceased - Evidence also shows that some of the accused persons carried the deceased to Police Station - However, as they caused multiple serious injuries to the deceased by sticks, it can be inferred that they either intended to cause death or to cause such bodily injuries to deceased as were likely to cause his death - Conviction altered to 304 Part I and sentenced to R.I. for 10 years - Appeal partly allowed : *Mahadev Alias Jhadha Vs. State of M.P., I.L.R. (2012) M.P. 2532 (DB)*

– **Section 302 / 304 Part I** - Culpable Homicide not amounting to murder - Deceased died due to a solitary head injury caused by appellant - Appellant was provoked all of a sudden on a trivial issue - Appellant did not use any conventional weapon to inflict injury - Appellant convicted under Section 304 Part I and sentenced to 10 years RI : *Tunnu @ Rajesh Kumar Vs. State of M.P., I.L.R. (2012) M.P. 2498 (DB)*

– **Section 302 or 304 Part I** - Culpable Homicide not amounting to murder - Quarrel took place between two persons - When the deceased tried to intervene, then the appellant assaulted him - Appellant was not present at the scene of occurrence from the beginning - He had come at the place of occurrence only after hearing the call raised by co-accused - Act of the appellant comes within the purview of Section 304 Part I - Appeal partly allowed - Appellant convicted under Section 304 Part I and is sentenced to undergo R.I. for ten years : *Mangna @ Mahendra Vs. State of M.P., I.L.R. (2013) M.P. 216 (DB)*

– **Section 302 or 304 Part II** - Murder or Culpable Homicide not amounting to murder- Appellant used to visit the house of the deceased because of love relations - On the insistence of deceased that he should keep her as his wife, appellant kicked her and picked up kerosene, sprinkled it and set the deceased on fire - When she caught fire and shouted, he extinguished the fire to save her and did not try to run away from the spot - Held - It can be appreciated that the incident occurred in a sudden impulse without any premeditation on the part of appellant - Appellant did not intend to inflict the injuries on deceased which she ultimately sustained - Appellant guilty of committing offence under Section 304 Part II and sentenced to 10 years R.I : *Jham Singh Pawar Vs. State of M.P., I.L.R. (2012) M.P. 2503 (DB)*

– **Section 302 or 304** - Murder or culpable homicide not amounting to murder - Homicidal death - When the incident occurred in a sudden quarrel without premeditation and accused gave a single blow and did not act in cruel or unusual manner - Held - Case of accused would attract exception 4 to Section 300 of the I.P.C. and that trial Court committed error in holding appellant guilty u/s 302 of the I.P.C. - Since the appellant used a deadly weapon and caused injury on the vital part of the body of deceased, i.e. head which resulted into his death, appellant by his act clearly made himself liable to be punished u/s 304-I of the I.P.C. : *Rajesh @ Jadu Vs. State of M.P., I.L.R. (2013) M.P. 2450 (DB)*

– **Section 302 or 304 Part I** – Murder or Culpable Homicide not amounting to murder – Deceased used to offer pooja and was also blowing conch shell during dawn hours which was disliked by appellant – On the date of incident appellant came out with an iron rod and dealt a blow when the deceased was coming back after offering pooja – There appears no previous enmity and the incident had occurred all of a sudden on account of the blowing of conch shell – Act of appellant falls within the ambit and scope of Section 304 part I – Sentenced to 10 years R.I : *Chandrashekhar Vs. State of M.P., I.L.R. (2012) M.P. 1321 (DB)*

– **Section 302/304 Part-I** – Murder or Culpable homicide not amounting to murder – Deceased went to a shop to eat eggs where appellant was present – Altercation ensued between them – While deceased was going back appellants caused injuries by means of Gupti and Ballam – Held – Incident erupted from a sudden altercation or quarrel – Cause of such altercation also not disclosed by witnesses – Incident of assault took place just in continuation of quarrel and not after a long time – Case fall within the ambit of exception 4 of Section 300 of IPC, but since appellant wielded deadly weapon and caused injuries which cut the lung and heart of the deceased, was sufficient in ordinary course of nature to cause his death – Liable to punished under Section 304-I of the IPC – Appeal partly allowed : *Bharat Singh Vs. State of M.P., I.L.R. (2012) M.P. 237 (DB)*

– **Section 302, 304 Part-I & 34** - Murder or culpable homicide - Incident began when deceased and his son 'S' shot arrow on the accused 'M', and accused 'M' started bleeding in his hand - 'M' along with his two brothers, the appellants, rushed to the house of the deceased and started demolishing the house and drove away the deceased forward - He was ultimately caught and assaulted him by stick blow and by arrows - All this, occurred within a duration of less than half an hour - Place of both the incident are well connected with each other - No evidence, to show that appellants took a break or thought and planned the incident of killing the deceased - Held - Appellants got deprived of their power of the self control due to grave and sudden provocation seeing their brother 'M'

bleeding from his hand, as a result of arrow injury caused by the deceased - Acts of the appellants, thus seem falling under exception 1 of the 300 of IPC - Death of the deceased do not amount to murder but amount to culpable homicide not amounting to murder - Appellants convicted under Section 304 (Part-I) of IPC and sentenced to 10 years R.I : *Sugram Vs. State of M.P., I.L.R. (2012) M.P. 2246 (DB)*

– **Section 302, 304 Part I or 304 Part II** - Murder or culpable homicide - When deceased asked the accused not to consume liquor, he became violent and poured kerosene and set fire to deceased - The act of pouring kerosene and setting fire, is so imminently dangerous that it must in all probability, cause death or such bodily injury as is likely to cause death - It cannot be held that the case of accused falls within the ambit of Section 304-I or 304-II - Conviction u/s 302 is affirmed : *Prakash Wagh Vs. State of M.P., I.L.R. (2011) M.P. 239 (DB)*

– **Section 302 & 304 Part II** – Murder – Conviction and Sentence – Appeal – Eye witness turned hostile – Trial Court, treating the F.I.R. lodged by the deceased as dying declaration – Acquitted the other two accused persons, but convicted the appellant – Held – It is a case of the single blow, which landed on the stomach of the deceased, the accused persons were three in number, but they did not cause further injuries – No intention to kill – Set aside the conviction of the appellant u/s 302 of I.P.C. and the sentence of life imprisonment awarded to appellant and instead, convict appellant u/s 304 Part -II of the I.P.C. and impose upon appellant the sentence of 10 years rigorous imprisonment : *Rum Singh Vs. State of M.P., I.L.R. (2014) M.P. 1911 (DB)*

– **Section 302 & 304 Part II** - Murder - Conviction and sentence - Appeal - F.I.R. does not contain the name of appellant No. 1 - Independent eye witnesses turned hostile - P.W. 1 deposed that deceased was beaten twice - P.W. 2 deposed that the deceased was assaulted only at hand pump - Held - No blood stains were found on the alleged weapon of offence - No sharp weapon was used - No intention to kill - Appellant No. 1 did not commit any offence - Her conviction set-aside - Act committed by other appellants would fall u/s 304 Part-II and not u/s 302 of IPC : *Barro Bai @ Leela Bai Vs. State of M.P., I.L.R. (2014) M.P. 551 (DB)*

– **Section 302 & 304 Part II** - Murder or Culpable Homicide - Accused was not happy with his married life with deceased and they had frequent quarrels - In dying declaration, the deceased stated that her husband abused her and compelled her to go away and when they were sleeping together, he poured kerosene oil on her and set fire - Accused was the only person inside the room at the time of the incident alongwith his wife - Merely because there was no sign of smell of kerosene oil from the bed sheet, quilt and pillow, the case of the prosecution can not be thrown out - Appellant can not be convicted only u/s 304 Part-II IPC - Even if it is accepted that in the course of said

incident he sustained some burn injuries, it is not a ground for exonerating his guilt - Appeal dismissed : *Ram Viswas Vs. State of M.P., I.L.R. (2013) M.P. 1 (SC)*

– **Section 302 or 304 Part II** - Murder or Culpable Homicide not amounting to murder - Appellant created a scene when he was stopped, he caused injury to his infant son using knife, which he was having - Held - He was having motive - Offence u/s 302 IPC cannot be converted into Section 304 Part II, IPC : *Thavriya @ Thavar Singh Vs. State of M.P., I.L.R. (2013) M.P. 1722 (DB)*

– **Section 302 & 304 Part II** - Murder or Culpable Homicide not amounting to murder - Appellant went to the house of P.W. 5 along with his wife where they had meals and consumed liquor - Wife of the appellant slept on a cot and refused to go home - Appellant slapped her twice and took her on his shoulder and threw his wife on the floor in front of his house and started giving fist blows - Deceased died because of severe bleeding - Held - Incident took place without any premeditation - There was no previous quarrel - Assault was made with an intention to cause bodily injury only - Injuries were not sufficient in the ordinary course of nature to cause death - Appellant is guilty under Section 304 Part II and not under Section 302 - Appeal partly allowed : *Chhabbi Lal Goud Vs. State of M.P., I.L.R. (2013) M.P. 928 (DB)*

– **Section 302 or 304 Part II** – Murder or Culpable Homicide not amounting to murder – Daughter of the deceased drove out a cow of the accused from her field and accused manhandled her – Deceased came and indulged in grappling with accused who had a gun – Accused and his father also received injuries – Deceased died because of gun shot fired by appellant – Circumstances show that appellant had no intention to commit murder of deceased – In a sudden altercation, appellant fired a single shot – Appellant liable to be convicted under Section 304 Part II of I.P.C. – Appeal partly allowed : *Pawan Shukla Vs. State of M.P., I.L.R. (2012) M.P. 1019 (DB)*

– **Section 302 or 304 Part II** – Murder or Culpable Homicide not amounting to murder – Deceased rushed to the place of incident in order to save his son who was being assaulted by fists by the appellant – Appellant gave solitary knife blow in the abdomen of the deceased – Held – Act of appellant can be held to be abrupt and sudden – It can not be held with certainty that he intended to cause death of the deceased – Doctor has also not stated that injury was sufficient in ordinary course of nature to cause death – Case falls within the ambit of offence under Section 304-II – Appeal allowed accordingly : *Hyder @ Munda Vs. State of M.P., I.L.R. (2012) M.P. 1361 (DB)*

– **Section 302 & 304 Part II** - Murder or Culpable Homicide not amounting to murder - Disputed field where the incident took place fell in the share of the accused party and the complainant party was trying to use that field as way - Prosecution has suppressed the genesis of occurrence and it appears that the appellant had caused injury

to the deceased in order to save the lives of others - However, he exceeded his right of private defence and therefore, is guilty under Section 304 Part II : *Shiv Pratap Singh Vs. State of M.P., I.L.R. (2013) M.P. 188 (DB)*

– **Section 302 & 304 Part II** – Murder or Culpable Homicide not amounting to murder – Panchayat was convened and allegations of playing witchcraft was leveled against deceased and other two ladies – Appellants started beating the ladies by fists and blows – Deceased died due to the injuries sustained by her – Held – Deceased was old and frail women suffering from pneumonia – Appellants knew that assault on her by fists and blows was likely to result in her death – Appellants guilty of committing offence under Section 304 Part II of I.P.C. – Sentenced to 5 years R.I. and fine of Rs. 1,000– Appeal partly allowed : *Dhansampat Vs. State of M.P., I.L.R. (2012) M.P. 1032 (DB)*

29. Murder or Dowry Death

– **Section 302, 304-B & 306** – Murder or Dowry death – Deceased died an unnatural death by hanging – No evidence that any injury was caused to deceased during her life time leading to her death – Death of deceased could not be said to be covered under Section 299 of IPC – Order framing charge under section 302 set aside – Charges under section 304-B & 306 of IPC have rightly been framed – Revision partly allowed : *Sanjay Mehra Vs. State of M.P., I.L.R. (2012) M.P. 1430*

30. New Story During Trial

– **Section 302** – Murder – New Story – Introduction of new story during trial adversely affects the prosecution case – It creates doubt with regard to the part of the prosecution version, and also occasions doubt about the motive, entitling the accused to the benefit of doubt : *Prakash Vs. State of M.P., I.L.R. (2012) M.P. 525 (DB)*

31. No Evidence

– **Section 302** - Proof of Murder - The report does not reveal that appellant assaulted the deceased - The information memo and seizure memo not proved by the independent witnesses - The seized leg of cot was not produced before the Court at the time of evidence - Therefore, memo and seizure memo not legally proved - Finger prints of appellant were not collected during investigation to connect the appellant with the seized leg of cot - No evidence to connect the appellant with the murder of deceased or the appellant was guilty of murder - Appeal allowed : *Ramchandra Vs. State of M.P., I.L.R. (2011) M.P. 3147 (DB)*

32. No Intention to Cause Death

– **Section 302** - Murder - Accused 'S' who was standing behind the deceased 'A' inflicted knife injury on his stomach due to which he fell down - Death of 'A' caused on account of solitary injury by the accused - Held - Although, death caused by accused was

not premeditated and accused had no intention to cause death of the deceased, but the injury was sufficient in the ordinary course of nature to cause his death - Thus the case does not fall under the exceptions 1 & 4 to Section 300 of IPC - Appeal dismissed : *Sharad Vs. State of M.P., I.L.R. (2012) M.P. 1957 (DB)*

– **Section 302** - Murder - Appellant called the deceased at his house for lunch and assaulted the deceased, his wife and child causing death of all the three persons - Appellant thereafter escaped on his motorcycle after extending threats to eye witnesses - Defence that deceased had illicit relations with the wife of appellant and had tried to commit rape in the presence of his wife and child not probable - Evidence of Eye Witnesses is corroborated by medical evidence - Appellant rightly convicted under Section 302 : *Gudda @ Dwarikendra Vs. State of M.P., I.L.R. (2013) M.P. 2309 (SC)*

33. No Overt Act

– **Section 302/34** – Murder – Name of accused Badoo not mentioned in F.I.R. – No overt act attributed to him – It cannot be said beyond reasonable doubt that he participated in assault on deceased : *State of M.P. Vs. Maiyadeen, I.L.R. (2015) M.P. 200 (DB)*

– **Section 302/34** – No overt act attributed to Sitaram for assaulting the deceased – Rightly acquitted for 302 : *State of M.P. Vs. Maiyadeen, I.L.R. (2015) M.P. 200 (DB)*

– **Section 302 or 302/34** – Common intention – Appellant did not make any assault on the deceased and he had no fire arm with him at the time of incident – Appellant did not himself commit any overt- acts – Main accused took out a pistol and fired at deceased – It is possible that appellant may not be having knowledge that main accused had hidden a pistol in his pocket – Once offence is committed appellant had no option except to leave the spot – Held – Common intention could not be, therefore, attributed to him, to render him guilty with the help of Section 34 I.P.C. – Hence, his appeal accepted – Appellant acquitted : *Rajendra Vs. State of M.P., I.L.R. (2014) M.P. 3247 (DB)*

– **Section 302/34 & 307/34** – Common intention – Third appellant came to the spot alongwith two other appellants with tangi in his hand but there is no overt act on his part – Possibility cannot be ruled out that he would have changed his mind after his arrival at the spot – No overt act to show common intention with co-accused – Third appellant could not have been convicted for any of the offence with the help of Section 34 : *Samar Jeet Singh Vs. State of M.P., I.L.R. (2015) M.P. 187 (DB)*

34. Non explanation of injuries not fatal

– **Section 302** - Murder - Injuries on accused - In each and every case, prosecution is not supposed to explain the injuries of accused - In Statement under

Section 313, the accused also did not explain that as to how he received the injuries - It was not his case that deceased assaulted him - Non-explanation of injury not fatal : *Vijay @ Chandra Vijay Gupta Vs. State of M.P., I.L.R. (2012) M.P. 1681 (DB)*

– **Section 302** – Murder – Injuries on accused persons – Appellants and deceased are real brothers – Quarrel took place on the question of possession over a Kotha – Appellants also received injuries – Appellants also lodged F.I.R. against complainant mentioning injuries sustained by them – Witnesses expressed their ignorance about injuries sustained by appellants – Fact of sustaining injuries by accused not mentioned in F.I.R. lodged by complainant – Place of incident also changed by witnesses – Appellants acquitted : *Garada Vs. State of M.P., I.L.R. (2011) M.P. *52 (DB)*

35. Place of Incident

– **Section 302** – Murder – Place of incident – Appellant is alleged to have poured kerosene oil on the deceased and thereafter set her on fire while she was in the kitchen – No attempt was made to get the sample of kerosene from the floor by rubbing a cotton swab as kerosene oil would spill on the floor – Witnesses who reached immediately after the incident have stated that they found injured/deceased in the courtyard of house – Semi burnt clothes were also found in Courtyard – Possibility cannot be ruled out that incident did not take place in kitchen but it might have taken place in verandah or courtyard : *Ashok Prajapati Vs. State of M.P., I.L.R. (2015) M.P. 1352 (DB)*

36. Plea of Alibi

– **Section 302** – Murder – Evidence available on record shows that mother-in-law was in the temple at the time of commission of murder and came back after hearing the hue and cry and by that time body was already burnt – It cannot be held that she either joined in commission of death of deceased or cause the evidence of crime to disappear – Acquitted : *Gyan Bai (Smt.) Vs. State of M.P., I.L.R. (2011) M.P. 2029 (DB)*

37. Presence of Witness

– **Section 302** – Murder – Presence of witness – Complainant lodged the F.I.R. immediately after incident – P.W. 14 although declared hostile admitted that he took the deceased to hospital and complainant was with him – Presence of complainant who himself had sustained injuries cannot be doubted : *Rajeev Lochan Singh Vs. State of M.P., I.L.R. (2014) M.P. 3231 (DB)*

38. Recovery at the Instance of the Accused

– **Section 302 & 411** - Recovery of articles belonging to deceased - Evidence clearly show that the recovered articles were stolen either before or after the death of deceased - Recovery of articles belonging to and in possession of deceased at the time of

his murder, recovery of the same at the instance of the accused, certainly establishes close link of accused in commission of offence : *In Reference Vs. Rahul Rajak, I.L.R. (2012) M.P. 2034 (DB)*

– **Section 302, 201 & 404** - Trial Court found two circumstances against appellant to have been proved by the prosecution and they are (i) recovery of the dead body of the deceased from a well pursuant to his disclosure statement and (ii) recovery of Rs. 90,000/- from his house pursuant to his disclosure statement and Rs. 5,000/- from PW 17 pursuant to his disclosure statement - However, trial Court disbelieved the circumstance of last seen relied upon by the prosecution as one of the circumstances in the chain of circumstances - Held - The widow of the deceased has testified that the disclosure statement of the appellant was extracted by the Police from him by use of third degree method - Trial Court has strangely taken the circumstance of recovery of the dead body at the behest of the appellant as proved only on the basis of uncorroborated testimony of the investigating officer - No cogent evidence on record to show that the deceased was last seen in the company of the appellant before his dead body was recovered -- Evidence of the investigating officer which has been made the sole basis of conviction of the appellant is of very weak type and does not inspire our confidence - Conviction of the appellant is legally unsustainable : *Vijay Bahadur Vs. State of M.P., I.L.R. (2011) M.P. 2860 (DB)*

39. Recovery/Seizure Unreliable

– **Section 302** – Murder – Seizure of weapon – On 09.12.1995, certain belongings of appellant and deceased were recovered but was not able to get Katar despite information of Ritesh – Recovery of Katar on 10.12.1995 from the same place clearly goes to prove that it was planted on the spot after search on 09.12.1995 – Recovery of Katar unreliable : *Ritesh Vs. State of M.P., I.L.R. (2015) M.P. 218 (DB)*

40. Related Witness

– **Section 302**, Evidence Act (1 of 1872), Section 3 – Related eye witness – Deceased and eye witness ‘A’ were on same road – There was no obstruction in between them – As accused were well known to ‘A’ therefore discrepancy with regard to distance becomes irrelevant – ‘A’ immediately lodged F.I.R. mentioning the names and overt acts of accused persons which gives assurance regarding truth of its version – Witness trustworthy – Appeal dismissed : *Rakesh Vs. State of M.P., I.L.R. (2012) M.P. 1 (SC)*

– **Section 302**, Evidence Act (1 of 1872), Section 3 – Related Witness – P.W. 1 and P.W. 2 had named 7 accused persons in their F.I.R. and statement under Section 161 of Cr.P.C. – However, in supplementary statement names of all 14 accused persons were mentioned – No explanation given by witnesses as to why they did not mention the

names of all the 14 accused persons in F.I.R. and statement under Section 161 of Cr.P.C.
 – Evidence of witnesses in respect of subsequently added 7 accused persons not reliable : *Jagannath Yadav Vs. State of M.P., I.L.R. (2015) M.P. 458 (DB)*

– **Section 302** – Murder – Witness – Previous version of witnesses is duly corroborated by timely lodged FIR, Post-Mortem Report, M.L.C. of injured – Acceptable testimony of witnesses may be acted upon : *Samar Jeet Singh Vs. State of M.P., I.L.R. (2015) M.P. 187 (DB)*

41. Suicidal or Homicidal Death

– **Section 302** - Suicidal or Homicidal - Medical Evidence - Ligatures marks were found to be transverse on the neck however, in the case of suicide they would have gone upwards - When the team of doctors have opined with certainty that it was a case of strangulation, then it would be difficult for the Court to substitute its opinion and hold that the death was suicidal : *Rakesh Tiwari Vs. State of M.P., I.L.R. (2013) M.P. 1737 (DB)*

42. Suspicion

– **Section 302** – Murder – Suspicion – Suspicion how so ever strong is suspicion only and cannot take shape of proof : *Ritesh Vs. State of M.P., I.L.R. (2015) M.P. 218 (DB)*

43. Test Identification Parade

– **Section 302** – Murder – Accused Shakil was not identified by complainant in Test Identification Parade – Role of firing and driving motor cycle was attributed to other accused persons in T. I. Parade - Evidence that accused Shakil had fired and his identification in Court not reliable – Appeal allowed : *Yasin Vs. State of M.P., I.L.R. (2012) M.P. 543 (DB)*

44. Unlawful Assembly

– **Section 302/149**, Criminal Procedure Code, 1973 (2 of 1974), Section 157 - Presence of the appellants/accused on the spot not proved beyond reasonable doubt - Conviction in aid of Section 149 of IPC inappropriate - Appellants/accused acquitted : *Rattiram Vs. State of M.P., I.L.R. (2014) M.P. 607 (SC)*

– **Section 302/149 & 148** – Murder – Unlawful Assembly – Deceased was set on fire by two convicted accused persons – The respondents surrounded the deceased and were shouting that he be beaten and should not be left – Throwing burning tyre and sword also indicate the active role played by them – It is impossible to accept that the respondents arrived at the scene of occurrence after the crime was completed – Their role

is that of participants in crime who did not allow deceased to escape by encircling him – Judgment of High Court acquitting the respondents set aside – Appeal allowed : *State of M.P. Vs. Ashok, I.L.R. (2015) M.P. 1943 (SC)*

45. Unsoundness of Mind

– **Section 302, 352, 84 & 304 Part II** - Unsoundness of mind - Various questions put by trial Court to accused answered satisfactorily - Trial Court observed that he understand that the act done by him is wrong - Held - Defence of unsoundness of mind or incapable of knowing the nature of the act committed by him is to be established by the accused by cogent defence - Otherwise the common man is presumed to know the nature of the consequence of the act done : *Thavriya @ Thavar Singh Vs. State of M.P., I.L.R. (2013) M.P. 1722 (DB)*

46. Weak Evidence

– **Section 302 & 436** – Murder – Voice identification – No ocular evidence available – Reliability of voice identification of accused – Held – It is a very weak piece of evidence and cannot be relied upon without independent corroboration : *Gajraj Singh Vs. State of M.P., I.L.R. (2015) M.P. 1507 (DB)*

47. Miscellaneous

– **Section 302** – Deceased lying on the passage in front of his house and assaulted by an Axe on head – Held – Appellant dealt a forceful blow on the head of deceased with a sharp edged weapon like an Axe resulting in fracture of the skull bone and rupture of brain, itself indicate that appellant intended to cause death of deceased making him liable to be punished under section 302 of I.P.C. – Appeal Dismissed : *Ram Kushal Gautam Vs. State of M.P., I.L.R. (2012) M.P. *31 (DB)*

– **Section 302** - Defence - It is not necessary for the defence to prove its case beyond reasonable doubt but only to establish probability : *Dhaniya Bai Vs. State of M.P., I.L.R. (2013) M.P. 2238 (DB)*

– **Section 302** - Murder - Appellant was carrying a small child in his lap and threw him in front of moving jeep - Child died because of injuries sustained by him - Appellant guilty of murder - Appeal dismissed : *Bhagirath Vs. State of M.P., I.L.R. (2013) M.P. 457 (DB)*

– **Section 302** - See - Evidence Act, 1872, Section 3 : *Prahalad Singh Vs. State of M.P., I.L.R. (2011) M.P. 2309 (SC)*

– **Section 302/34** – Murder – Conviction and Sentence – Appeal – Offence proved by direct evidence – Medical evidence completely corroborates the evidence of prosecution witnesses – Offence made out – Conviction proper : *Ram Kumar Vs. State of M.P., I.L.R. (2015) M.P. 299 (SC)*

– **Section 302/34, 323/34 & 324/34** – Charge of murder and causing hurt – The version of witnesses completely falsified by the medical evidence and post-mortem report – The evidence of the witnesses also does not inspire confidence – 12 other accused persons already acquitted by trial Court – The prosecution case against the four appellants/accused also not proved beyond reasonable doubt – Appeal is allowed : *Babbu @ Babulal Vs. State of M.P., I.L.R. (2011) M.P. *65 (DB)*

– **Section 302, 201 & 120-B**, Arms Act (54 of 1959), Section 25 & 27, National Investigation Agency Act (34 of 2008), Section 21 and Unlawful Activities (Prevention) Act (37 of 1967), Section 16 & 18 - Application filed by Inspector of Police (N.I.A.) seeking permission to interrogate the appellant in jail premises was allowed and the request made by the appellant to grant permission to be assisted by an advocate during interrogation was rejected - Held - Orders affecting or adjudicating rights of accused are not interlocutory orders therefore appeal lies - Police must deal with the criminals in an efficient and effective manner and bring to book those who are involved in the crime - Interrogation of the accused shall be held within the sight of her advocate or any other person duly authorized by her - Advocate or the person authorized by her may watch the proceedings from a distance or from beyond a glass partition, but he or she shall not be within the hearing distance and it will not be open to the appellant to have consultation with him/her in the course of interrogation - Order passed by special Court is modified - Appeal allowed : *Pragya Singh Kushwaha @ Pragya Bharti @ Pappi Didi @ Swami Purna Chetnanand Giri Vs. Union of India, I.L.R. (2012) M.P. *91 (DB)*

– **Section 302 & 326/34** – Appellant was sitting in bakery shop and deceased demanded Rs.500/- and altercation took place and assaulted by Gupti and hockey – Held – Sentence of imprisonment is reduced to the period of sentence already undergone – Appeal partly allowed : *Sanjay Kumar Vs. State of M.P., I.L.R. (2012) M.P. 759 (DB)*

SYNOPSIS : Section 304 & 304 A

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| 1. Factum of Negligence | 2. Professional Negligence |
| 3. Proof of Rash and Negligent Driving | 4. Rash or Negligent Act - What does not amount to |
| 5. Miscellaneous | |

1. Factum of Negligence

– **Section 304-A** - Speed of vehicle - No technical and scientific investigation like the tyre makes or its photo graph were collected by the investigating agency - Exact or approximate speed and the factum of negligence on the part of the applicant could have been ascertained : *Arvind Singh Rajput Vs. State of M.P., I.L.R. (2011) M.P. 2904*

2. Professional Negligence

– **Section 304 & 304-A** – Culprable Homicide or causing death by negligent act – Appellant a tattooist by profession, undertook to cure deceased by making tattoos on his temples and occiput – In the process, deceased sustained internal injuries and was rendered unconscious – His son took him to Civil Hospital where he was declared as brought dead – Held – Appellant had no intention to cause death or knowledge that the injuries caused by him would be sufficient in the ordinary course of nature to cause death – Tattooing on the vital parts viz. temples as well as occiput gave a proximate cause of the death – Appellant ought to have been held guilty of causing death by professional negligence, punishable under Section 304A of the Act – Conviction under Section 304 Part II altered to Section 304A – Appeal partly allowed : *Sukku alias Sukhrat Vs. State of M.P., I.L.R. (2012) M.P. 994*

– **Section 304-A** – Administration of injection by Doctor – Applicant was having degree of Ayurvedacharya and registered in State of M.P. – He administer Benzyl Pencillin to the patient who died subsequently – Presence of Benzyl Penicillin was detected in skin and tissues of deceased as per F.S.L. report – However, the investigating officer did not send the F.S.L. report, prescription given by applicant and post mortem report to the Specialist to ascertain negligence on the part of applicant – Held – Trial Court directed to refer the medical reports of the treatment made by applicant as well as by Govt. Doctors, postmortem report and F.S.L. report to a panel of Doctors of Medical College and Director Medico Legal Institute, Bhopal – Trial Court shall proceed after the receipt of the report as per law : *Ramesh Gupta (Dr.) Vs. State of M.P., I.L.R. (2011) M.P. *86*

3. Proof of Rash and Negligent Driving

– **Section 304-A** - Rash and Negligent Driving - Proof of - Prosecution did not make any attempt to prove the exact speed from any of the witnesses - Possibility that deceased might have fell down because of his own fault from the tractor could not be ruled out - Mere on basis of the version of the witnesses, stating the high speed or the allegation of negligent driving of the offending vehicle, the person like applicant could not be convicted - Revision allowed : *Arvind Singh Rajput Vs. State of M.P., I.L.R. (2011) M.P. 2904*

4. Rash or Negligent Act - What does not amount to

– **Section 304-A** – Rash or negligent act – What is not – Petitioner asked co-accused, a line man to fault with his team – He instead of curing the fault himself, asked the deceased to cure the fault – Deceased died due to electric current – Death of deceased is not a direct result of rash and negligent act of petitioner as there is no direct nexus between the death of the deceased and alleged act of the petitioner – Proceedings of criminal case only against petitioner is quashed : *Bhuvnesh Ranjan Shukla Vs. State of M.P., I.L.R. (2011) M.P. 1613*

5. Miscellaneous

– **Section 304-A** - See - Criminal Procedure Code, 1973, Section 197 & 482 : *Kusum (Dr.) Vs. Smt. Prabhavati, I.L.R. (2014) M.P. 851*

SYNOPSIS : Section 304 B

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| 1. Acquittal | 2. Cruelty |
| 3. Cruelty Soon Before Death | 4. Death otherwise than in Normal Circumstances |
| 5. Demand not in connection of Dowry | 6. Dying Declaration |
| 7. FSL Report | 8. Intention to Cause Death |
| 9. Omnibus Allegation | 10. Proof of Demand of Dowry |
| 11. Seven years of Marriage | 12. Suspicious Circumstance |
| 13. Valid/Invalid Marriage | 14. Miscellaneous |

1. Acquittal

– **Section 304-B** – Acquittal – The judgment of the acquittal should not be disturbed unless the conclusion drawn on the basis of evidence brought on record is found to be grossly unreasonable or manifestly perverse or palpably unsustainable – Further, if two views are possible then the view in favour of accused should be taken into consideration : *Dileep Vs. State of M.P., I.L.R. (2015) M.P. 3036 (DB)*

2. Cruelty

– **Section 304-B & 498-A** – Cruelty – Appellants No. 2 and 4 did not come forward to participate in settlement of dispute with regard to dowry on the ground that they were from groom's side – Silence on their part does not amount to cruelty –

Appellants No. 2 and 4 acquitted – Appeal allowed : *Bharat Bhushan Vs. State of M.P., I.L.R. (2014) M.P. 1199 (SC)*

– **Section 304-B & 498-A** – Dowry Death & cruelty – Deceased, who was residing with appellant/her husband and in-laws in village got burnt and died –Held – Deceased was subjected to harassment or cruelty at the hands of accused persons only about 5-6 months before her death – There was no specific evidence that deceased was subjected to harassment by the appellant in connection with demand of dowry immediately or soon before her death – Appellant was liable to be convicted u/s 498-A of the Code and not u/s 304-B : *R.K. Agrawal Vs. State of M.P., I.L.R. (2011) M.P. 1557 (DB)*

– **Section 304-B & 498-A** - Dowry Death - Deceased died within 7 months of marriage - Evidence with regard to dowry demand, torture and harassment believable - Appellants guilty of offence under Section 304-B and 498-A of I.P.C. : *Vishwajeet Vs. State of M.P., I.L.R. (2013) M.P. 2702*

3. Cruelty Soon Before Death

– **Section 304-B** – Dowry Death – Proof – Unless there is evidence to show that soon before death, victim was subjected to cruelty by husband or in-laws in connection with demand of dowry, conviction can not be based : *Santosh Singh Vs. State of M.P., I.L.R. (2012) M.P. 1339*

– **Section 304-B** - Dowry Death - Prosecution is bound to prove the fact that the deceased had died due to unnatural death and soon before death, she was subjected to cruelty by the accused - In the lack of such evidence, appellant could not have been convicted u/s 304B : *Jahar Singh Vs. State of M.P., I.L.R. (2013) M.P. 658*

– **Section 304-B** – Dowry Death – Soon before death – Appellants were demanding dowry after marriage – Demand of Rs. 50,000 was made in August 1999 when appellant No. 2 left the deceased in her parent's house – Deceased was brought back by appellant No.2 and his father after five months after extending assurance that they would not make any demand – Deceased died on 6-5-2000 – No evidence to indicate that after patch up of dispute, appellants subjected deceased to cruelty for or in connection with demand of dowry – As prosecution has failed to prove that deceased was subjected to cruelty soon before her death, no presumption under Section 113B of Evidence Act can be drawn – Appellants acquitted under Section 304B of I.P.C. : *Raju @ Rajesh Avlani Vs. State of M.P., I.L.R. (2011) M.P. *101*

– **Section 304-B** - Dowry Death - Soon before death - There must be proximate link between the acts of cruelty along with the demand of dowry and death of victim : *Vishwajeet Vs. State of M.P., I.L.R. (2013) M.P. 2702*

– **Section 304-B** – Soon before death – Father of deceased was present at the time of autopsy but did not allege against appellant – Allegations were made after 2-3 months of incident – No evidence that deceased was subjected to cruelty soon before her death – Other accused already acquitted as evidence of witnesses were not found trustworthy – Appellant entitled to be acquitted – Appeal allowed : *Dileep Vs. State of M.P., I.L.R. (2015) M.P. 3036 (DB)*

– **Section 304-B**, Evidence Act, 1872, Section 113B - Soon before death - Presumption - Demand of Rs.61,000, TV, Cooler, Ring and Almirah - Deceased lived in her husband's house for 4 months - Thereafter came back to her parents house where she stayed for 5 months and informed her parents about demand of dowry - Again deceased stayed in her in-laws house for 4 months and came back and stayed for 5 months in her parents house - A-1/husband took her back to her in-laws house where she committed suicide after 15 days - Held - There had been no patch up or any Panchayat between two parties - No assurance given by A-2 for giving up the demand of motorcycle and no evidence that dispute stood resolved - Mere lapse of time by itself would not provide any defence to accused, if the course of conduct relating to cruelty or harassment in connection with demand of dowry existed - Conviction of A-1 affirmed - However, evidence found against A-2 is vague - No specific or clinching evidence that A-2 joined A-1 in meting out any cruelty for making demand of motorcycle - Conviction of A-2 on both the counts set aside - A-2 acquitted of both the charges : *Kanhaiyalal Gupta Vs. State of M.P., I.L.R. (2011) M.P. *42 (DB)*

– **Section 304-B**, Evidence Act (1 of 1872), Section 113-B - The evidence with respect to cruelty, harassment soon before death regarding demand of dowry ought to be established for bringing the charge u/s 304-B of I.P.C. at home : *Dilip Vs. State of M.P., I.L.R. (2014) M.P. 493*

4. Death otherwise than in Normal Circumstances

– **Section 304-B** – Dowry death – Proof that death occurred otherwise than normal circumstances – Death caused by burn or bodily injury – Comes within otherwise than normal circumstances : *Srikant Vs. State of M.P., I.L.R. (2015) M.P. 1385 (SC)*

5. Demand not in connection of Dowry

– **Section 304-B** - Dowry Death - Information received from younger brother of appellant regarding unnatural death of wife of the appellant by pouring Kerosene and

setting the fire - Held - Demand was not made on account of or in connection of dowry - Section 113-B of Evidence Act could not be invoked against appellant - Prosecution failed to prove the third material ingredient (C) of Section 304B that the deceased soon before her death, was subjected to any cruelty of harassment on account of or in connection of dowry by the appellant - Conviction of appellant not sustainable - Appeal allowed : *Latu @ Latori Vs. State of M.P., I.L.R. (2012) M.P. 2185*

– **Section 304-B** - Dowry Death - Law discussed : *Vishwajeet Vs. State of M.P., I.L.R. (2013) M.P. 2702*

6. Dying Declaration

– **Section 304-B**, Evidence Act (1 of 1872), Section 32 – Dying Declaration – Deceased in her dying declaration stated that accidentally she got burnt and her husband and sister-in-law rescued her – In inquest, father of deceased too stated that his daughter got burnt accidentally – Although, in his subsequent statement, he changed his entire version – No evidence that soon before death, she was subjected to cruelty – Respondent has been rightly acquitted by trial court – Leave refused : *State of M.P. Vs. Surendra Vishwakarma, I.L.R. (2015) M.P. 2251 (DB)*

7. FSL Report

– **Section 304-B** - Cause of death - No definite opinion be given about cause of death of deceased - Viscera was being preserved and sealed and same was given to the Police Constable for chemical examination - Investigating Officer not stated anything regarding FSL report of the aforesaid viscera of the deceased whether it was chemically examined or not or its report was received by the prosecution and if it was received, then there is no explanation on record to show that why the same was neither proved nor placed on record - Prosecution failed to prove the case of unnatural death of deceased : *Jahar Singh Vs. State of M.P., I.L.R. (2013) M.P. 658*

8. Intention to Cause Death

– **Section 304-B & 302/34**, Criminal Procedure Code, 1973 (2 of 1974), Section 228 – Framing of Charges – Murder – No evidence which may go to show that either the applicants caused any injury upon the deceased or caused the same with an intention to cause her death or even with knowledge that the injury would result in death – Nothing on record to show that death was culpable homicide in nature – Applicants cannot be said to be responsible for causing any injury leading to death of deceased – Hence, charge u/s 302 or 302/34 are set aside : *Rani (Smt.) Vs. State of M.P., I.L.R. (2014) M.P. 3055*

9. Omnibus Allegation

– **Section 304-B** – Dowry Death – Deceased committed suicide by setting herself on fire – Omnibus allegation that the appellant was demanding dowry – No specification of demand given by witnesses - No allegation that deceased was subjected to cruelty in consequence of demand – Matter was never referred to Panchayat and no F.I.R. was lodged in her life time – Witnesses could not specify time and date or particular period in which such dowry demands were made – Nothing on record that deceased was subjected to cruelty soon before her death - Parents of deceased were not examined – Appellant could not be convicted of offence under Section 304-B of I.P.C : *Arun Vs. State of M.P., I.L.R. (2015) M.P. 1825*

10. Proof of Demand of Dowry

– **Section 304-B & 498-A** - Dowry Death - Proof - Statement of witnesses that soon before the death of deceased, appellants were making demand of dowry - But if the oral testimony is tested on the touchstone and anvil of the material documents which are letters written by deceased and her father and medical evidence, it is clear that demand of dowry is not proved : *Rajendra Kumar Gupta Vs. State of M.P., I.L.R. (2013) M.P. 2218*

11. Seven years of Marriage

– **Section 304-B** – Dowry death – Basic essentials – The death of a woman was caused by any burn or bodily injury or otherwise than under normal circumstances; such death has occurred within 7 years of her marriage; and soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband : *Srikant Vs. State of M.P., I.L.R. (2015) M.P. 1385 (SC)*

– **Section 304-B** - Dowry Death - Deceased died of burn injuries within 7 years of marriage - Evidence on record clearly establishes the ill-treatment and physical violence for meeting their demand of dowry - Defence story put forth by the appellant not trustworthy - Appeal dismissed : *Dinesh Vs. State of M.P., I.L.R. (2012) M.P. 2230 (DB)*

– **Section 304-B** – Seven Years – In FIR date of marriage is mentioned as 22.05.1987 and incident took place on 28.03.1994 i.e. within 7 years of marriage – FIR is not a substantive piece of evidence – No other evidence to prove the date of marriage – Witnesses have accepted that marriage took place about 8-9 years back – As prosecution failed to prove that incident took place within 7 years of marriage, no offence u/s 304-B could be made out : *Rajeev Ranjan Vs. State of M.P., I.L.R. (2015) M.P. 2223*

12. Suspicious Circumstance

– **Section 304-B & 498-A** - Dowry death - Suspicious circumstance - Appellant got married with the deceased and she was subjected to harassment and cruelty on account of demand of Rs. 20,000/- in dowry - Held - It is apparent that prosecution could not prove the death of deceased by any burns or bodily injury or the same was occurred otherwise than under normal circumstances hence conviction under section 304B could not be sustained - Conviction of the appellants under Section 498A affirmed - Appeal allowed in part : *Balram Sanodiya Vs. State of M.P., I.L.R. (2012) M.P. 1926*

13. Valid/Invalid Marriage

– **Section 304-B** - Valid Marriage - Deceased was already married and appellant brought her after giving her promise to marry - When marriage was accepted by relatives, friends and others, then it cannot be said as invalid - Concept of marriage to constitute the relationship of husband and wife may require strict interpretation where claims for civil rights, right to property etc. may follow or flow - When the question of curbing a social evil is concerned a liberal approach and different perception cannot be an anathema - Invalid marriage cannot be a ground to exclude from purview of Section 304-B or 498-A of Act : *Vishwajeet Vs. State of M.P., I.L.R. (2013) M.P. 2702*

14. Miscellaneous

– **Section 304-B**, Evidence Act (1 of 1872), Section 113-B - Presumption u/s 113-B of Evidence Act is not attracted in absence of proving the ingredients of the said charge : *Dilip Vs. State of M.P., I.L.R. (2014) M.P. 493*

– **Section 304-B** – See – Evidence Act, 1872, Section 113-B : *Babu Lal Vs. State of M.P., I.L.R. (2011) M.P. 1026 (DB)*

– **Section 304-B & 498-A** - Sentence - Appellants already in jail for more than 8 and half years - Sentence reduced to period already undergone : *Vishwajeet Vs. State of M.P., I.L.R. (2013) M.P. 2702*

SYNOPSIS : Section 304 Part-I

- | | |
|---|---|
| 1. Death caused while committing theft | 2. Defence |
| 3. Eyewitness not made Witness | 4. Injuries on Vital Parts of Body |
| 5. No Previous Enmity | 6. Old Incident |

7. Plea of Alibi**8. Previous Enmity****9. Single Strike****10. Social impact of crime,
nature and situs of injuries****11. Miscellaneous****1. Death caused while committing theft**

– **Section 304 Part I** - Culpable homicide not amounting to Murder - Mother of the appellant, had borrowed a sum of Rs. 400/- from deceased nearly two years prior to the incident and had not returned the amount despite repeated demands - This led to animosity between the families - Appellant used to terrorize and intimidate deceased by kicking the main door of her house at night and appellant trespassed into the house of deceased to commit theft - Hearing some noise, she came out of the room and proceeded towards the courtyard to see as to what was happening and also to answer the call of nature - At this point of time only appellant gagged her and struck repeated blows with knife at her back and gave one on her right arm - Doctor opined that cause of death of deceased was toxemia leading to cardio respiratory failure due to eugenic peritonitis as a result of injury on the back of her abdomen - Act did not fall under the definition of 'murder' but was culpable homicide not amounting to murder and punishable under Section 304 Part-I of IPC - Appeal stands dismissed : *Raju alias Pradeep Vs. State of M.P., I.L.R. (2012) M.P. 1963*

2. Defence

– **Section 304 Part I** - Culpable Homicide not amounting to murder - P.W. 9 has admitted that when he reached the police station, the appellants were already there - This supports the defence version that after exchange of words between the appellants and deceased, the appellants had gone to police station to lodge F.I.R., when the information was received that deceased has been killed : *Sanjay Vs. State of M.P., I.L.R. (2012) M.P. *104*

3. Eyewitness not made Witness

– **Section 304 Part I** - Culpable Homicide not amounting to murder - Panchayatnamalash - One Eye witness not made witness - Presence of witness at the time of incident doubtful : *Sanjay Vs. State of M.P., I.L.R. (2012) M.P. *104*

4. Injuries on Vital Parts of Body

– **Section 304 Part I** – Culpable homicide not amounting to murder – The incident occurred upon a sudden quarrel and without premeditation, when deceased made a passage by cutting the embankment of the field of appellants for out flow of the water – In the same incident appellants also received injuries, though simple in nature– Exception 4 of Section 300 of the Indian Penal Code is clearly attracted – However, the appellants wielded a lathi and iron rod and dealt blows on the vital part of the body of deceased are liable to be punished for the offence u/s 304-I of the Code – Appeal partly allowed : *Jungali @ Ugrasen Vs. State of M.P., I.L.R. (2011) M.P. *81 (DB)*

5. No Previous Enmity

– **Section 304 Part I** - Culpable Homicide not amounting to murder - Motive - Motive alleged is that in the afternoon, the deceased had dashed the scooter to appellant - Appellant had lodged the F.I.R. by taking legal recourse - There was no previous enmity - After lodging of F.I.R. there was no need to the appellants to take revenge from the deceased - It cannot be said that there was any motive to kill the deceased : *Sanjay Vs. State of M.P., I.L.R. (2012) M.P. *104*

6. Old Incident

– **Section 304 Part-I** – Sentence – Incident took place 18 years ago – Interest of justice would serve if custodial sentence is reduced to 7 years from 10 years – Sentence reduced accordingly : *Hari Ram Vs. State of M.P., I.L.R. (2012) M.P. *23*

7. Plea of Alibi

– **Section 304 Part I** – Culpable Homicide not amounting to murder – Circumstantial Evidence – False plea of alibi – Appellants failed to prove their plea of alibi – Presumption could be raised that they were present at the place of occurrence : *Madan Vs. State of M.P., I.L.R. (2011) M.P. *94*

8. Previous Enmity

– **Section 304 Part I** – Culpable homicide not amounting to murder – Deceased died within 12 hours – Blow on head was struck with great force – Appellant themselves admitted animosity with complainant party – Rightly considered under Section 304 Part-I : *Hari Ram Vs. State of M.P., I.L.R. (2012) M.P. *23*

9. Single Strike

– **Section 304 Part I** – Culpable Homicide not amounting to Murder – Deceased and his sons were removing stones kept adjacent to the wall of their house and were making embankment – Accused party asked them not to do so – Appellant took out knife

and stabbed him on left side of chest – Incident occurred on the spur of moment without any premeditation – Appellant did not repeat assault – Appellant assaulted deceased with knife with the knowledge that it was likely to cause death or to cause such bodily injury as was likely to cause his death – Conviction of appellant under Section 304-I of IPC is modified under Section 304-II of the IPC – Appeal partly allowed : *Pandit @ Sampooranand Vs. State of M.P., I.L.R. (2012) M.P. 557*

– **Section 304 Part I or 325** - Culpable homicide - Accused assaulted only once with a light weight bamboo stick to the deceased (72 year) ultimately causing his death - His intention was not to cause such bodily injury as was likely to cause death in normal or ordinary course - The conviction of accused converted from Section 304 Part I to 325, and punished with Jail sentence for the period already undergone - Appeal partly allowed : *Yashwant Vs. State of M.P., I.L.R. (2011) M.P. 248*

10. Social impact of crime, nature and situs of injuries

– **Section 304 Part I** – Culpable Homicide not amounting to murder – Sentence – Considering the social impact of crime, nature and situs of injuries sentence is reduced to 7 years from 11 years : *Madan Vs. State of M.P., I.L.R. (2011) M.P. *94*

11. Miscellaneous

– **Section 304 Part I** - Culpable Homicide not amounting to murder - For the application of Exception-4 of Section 300 I.P.C., it is not sufficient to show that there was a sudden quarrel and there was no premeditation - It must further be shown that the offender has not taken undue advantage or acted in a cruel or unusual manner : *Raghu Alias Raghunath Vs. State of M.P., I.L.R. (2013) M.P. 1982 (DB)*

SYNOPSIS : Section 304 Part-II

- | | |
|--|--|
| 1. Absence of Corroborative Evidence | 2. Age of Accused |
| 3. Death attributable to other co accused | 4. Injuries not caused with seized object |
| 5. Medical Evidence | 6. No Conclusive Proof |
| 7. Miscellaneous | |

1. Absence of Corroborative Evidence

– **Section 304 Part II** – Culpable Homicide not amounting to murder – Eight persons were tried and seven were acquitted holding that the evidence of prosecution witnesses is not reliable in respect of acquitted persons – Evidence of P.W. 3 was treated

as partly credit worthy for convicting the appellant and partly uncredit worthy for acquitting the other accused persons – Knife was alleged to have been seized from the possession of appellant but presence of blood was not established – Out of five eye witnesses, the Trial Court disbelieved four eye witnesses and partly relied upon the evidence of P.W. 3 – In absence of any corroborative evidence to support the statement of P.W. 3, he cannot be believed – Appellant acquitted – Appeal allowed : *Surendra Kumar Vs. State of M.P., I.L.R. (2015) M.P. 1541*

2. Age of Accused

– **Section 304 Part II & 323**, Probation of Offenders Act (20 of 1958), Section 6 and Criminal Procedure Code, 1973 (2 of 1974), Section 357 - Acquitted co-accused abused deceased with filthy language and asked that why he is spreading rumor that he married his daughter after obtaining the money - Appellant lashed with stick came there and gave a blow of such stick on the head of deceased - Co accused and his son also gave blows of stick on the person of deceased - During such incident deceased was also subjected to threat of his life - Held - Considering the age i.e. 19 years, of the appellant he is held entitled to be extended benefit of mandatory provision of Section 6 of the Probation of Offenders Act and directed to pay compensation of Rs. 25,000/- to natural heirs and legal representatives of victim - Conviction of the appellant affirmed under Section 323, 304 Part II, IPC - Appeal allowed in part : *Vinay Singh Vs. State of M.P., I.L.R. (2012) M.P. 2473*

3. Death attributable to other co accused

– **Section 304 Part II or 324** – Culpable Homicide not amounting to murder or simple injury – Prosecution filed charge sheet under Section 302 – Appellant alleged to have caused injury on the head from blunt side of Farsa – Other unknown co-accused persons neither arrested nor identified – Deceased died because of rupture of liver which is attributable to other accused person – Injury caused by appellant not responsible for death of deceased – Co-accused persons have not been brought to books at all – Appellant can be convicted only for offence under Section 324 of I.P.C. – Sentenced to imprisonment already undergone – Appeal partly allowed : *Mukesh Vs. State of M.P., I.L.R. (2012) M.P. 1014*

4. Injuries not caused with seized object

– **Section 304 Part II** – Culpable Homicide not amounting to murder – Deceased sustained injuries while he was working in a rubber factory – F.I.R. was lodged after 9 hours mentioning the names of eye witnesses – One witness turned hostile and all other eye witnesses mentioned in the F.I.R. were given up – P.W. 4 deposed as an eye witness

but his name was not mentioned in F.I.R. – P.W. 4 admitted that he is still working in the same factory and officers of the factory are standing outside the Court – Injuries could not have been caused by Rubber cutter which was seized from the possession of appellant – Rubber cutter also not sent to the autopsy Doctor – Appellant was all the time present in the factory at the time of incident and had no opportunity to take the blood stained rubber cutter to his house from where it was seized – No motive behind the commission of offence – Prosecution failed to prove the guilt of the appellant – Appeal allowed : *Sikandar Singh Vs. State of M.P., I.L.R. (2015) M.P. 2214*

5. Medical Evidence

– **Section 304 Part II** – Appellant caused single knife injury in abdomen of deceased near umbilicus – None of Doctors opined that injury was sufficient in the ordinary course of nature to cause death – Death occurred nearly 19 days after the incident and was a result of cardio-respiratory failure due to abdominal injury – Medical evidence was silent as to depth of injury – Appellant was rightly held guilty of offence of culpable homicide not amounting to murder : *Santosh Rai Vs. State of M.P., I.L.R. (2012) M.P. *8 (DB)*

– **Section 304 Part II** – Deceased was injured and died during treatment – Previous enmity between parties – Discrepancies in statements of witnesses – As per F.S.L. report, it could not be ascertained that the blood found on the Lathis allegedly seized from the possession of appellants was human blood and further tests to determine blood group of the same could also not been carried out – Conviction set aside : *Pintu @ Pradeep Kumar Vs. State of M.P., I.L.R. (2014) M.P. 2263*

6. No Conclusive Proof

– **Section 304 Part II & 394** – Circumstantial Evidence – Recovery of Dead body – Absence of evidence as to motive – Mere recovery of dead body on information given by accused not a conclusive circumstance – It merely raises strong suspicion – Only concealment of the dead body is proved – No conclusive proof that murder was committed by him – Held – Conviction under Section 304 Part II converted into Section 201 of IPC, sentence of 5 years RI reduced to 3 years RI : *Ramesh Alias Guddu Sapera Vs. State of M.P., I.L.R. (2012) M.P. 550*

7. Miscellaneous

– **Section 304 Part II** - Culpable Homicide not amounting to murder - Sentence - Incident took place in the year 1991 at a spur of moment which was not premeditated - Also considering the nature of injuries caused, the jail sentence is reduced to 4 years from 5 years : *Halke Alias Hakke Vs. State of M.P., I.L.R. (2013) M.P. 439*

– **Section 304 Part II** – Culpable homicide not amounting to murder – Temporary bridge of an inferior quality was constructed on a river by the contractor under the supervision of the applicant and others – Bridge fell down as Jeep was passing through it – Seven persons died due to drowning – Offence under Section 304 Part-II made out – Revision dismissed : *Badri Prasad Tiwari Vs. State of M.P., I.L.R. (2012) M.P. 1423*

– **Section 304 Part II** – See – Evidence Act, 1872, Section 3 : *Sunder Lal Vs. State of M.P., I.L.R. (2012) M.P. 1313*

- – **Section 305** - Appellant and deceased were in love and were exchanging letters - Deceased a young girl of 16-17 years of age and student of Class XI - Appellant was her neighbour - Deceased consumed poisonous substance (Sulphas) and died during treatment - Number of love letters seized - Appellant tried to expose her letters to others - Held - Age of the deceased was 16 years - As per Principal of Govt. Higher Secondary School date of birth is 16.09.1971 - There is no mensrea to commit the offence - Requisite ingredients of the offence u/s 107 & 305 of IPC are not established - It is not established by prosecution that appellant instigated, intentionally aided, provoked, incited deliberately created such circumstances - Appeal allowed : *Prakashwati (Smt.) Vs. Mangal Singh, I.L.R. (2012) M.P. 2019 (DB)*

SYNOPSIS : Section 306

- 1. Abetment of Suicide not proved**
- 2. Abetment of Suicide proved**
- 3. Stage of framing of charges**
- 4. Miscellaneous**

1. Abetment of Suicide not proved

– **Section 306** – Abetment of suicide – Accused persons alleged to have assaulted and threatened deceased with life as they were annoyed at defamation of their cousin – Deceased committed suicide due to aforesaid beating and humiliation – However, applicants had no intention of instigating or goading the deceased to commit suicide – In all probability they not even dreamt that their conduct would lead to such disastrous consequence – By no stretch of imagination can it be said that the accused persons had created such a situation by their persistent conduct, where the deceased was left with no other option but to commit suicide – Deceased appears to be ultra sensitive to the beating and public humiliation – No charge under Section 306 of I.P.C. could be made out – Revision allowed – Applicants discharged : *Neelesh Jat Vs. State of M.P., I.L.R. (2015) M.P. 1891*

– **Section 306** - Abetment of suicide - An oral allegation of theft made by appellant against deceased, even if followed by some amount of beating, does not amount to such circumstance that the deceased was left with no option except to commit suicide - No offence proved beyond periphery of doubt - Appeal allowed : *Mijajilal Vs. State of M.P., I.L.R. (2011) M.P. 253*

– **Section 306** – Abetment of suicide – Appellant/Husband was living as Ghar Jamai and was looking after the property of his in-laws along with his brother-in-law – P.W. 7 with whom it was alleged that appellant was having illicit relations has not stated about relation – Husband of P.W. 7 not examined – Deceased/wife never informed her maternal uncle about illicit relations, who had fixed the marriage after the death of father of deceased – No evidence that appellant had ever beaten the deceased in intoxicated condition – Nothing on record that who called the Panchayat – Neither deceased nor P.W. 7 or her husband called the Panchayat – Deceased was not having issue even after expiry of more than 7 years of marriage – Prosecution failed to prove that appellant abetted his wife to commit suicide – Appeal allowed : *Ramprasad Lodhi Vs. State of M.P., I.L.R. (2015) M.P. 2203*

– **Section 306** – Abetment of Suicide – Applicant after the death of her husband was having illicit relations with deceased – She financed the deceased for opening a medical store – Later on, she started pressurizing the deceased to return the money, she had invested in the medical store – Held – Deceased was ultrasensitive to the situation and chose to end his life – Commission of suicide by deceased was sheer exercise in escapism for which the applicant cannot be held to be legally liable because by no stretch of imagination, it can be said that the applicant had succeeded in creating such a situation for the deceased that he was left with no option but to commit suicide – Charges set aside – Applicant discharged : *Mamta Rai (Smt.) Vs. State of M.P., I.L.R. (2015) M.P. 3072*

– **Section 306** – Abetment of suicide – Husband committed suicide – Wife had admitted that she is having sexual relations with another person – Husband informed his mother-in-law and brother-in-law – They also started taking side of girl and threatened to implicate in false case – Held – Threat to implicate in false case, does not amount to abetment – Charges quashed : *Shyambai Vs. State of M.P., I.L.R. (2015) M.P. 2244*

– **Section 306** – Abetment of Suicide – Report of Chemical Examiner indicating that on examination at the F.S.L., no chemical poison was detected in the viscera of the deceased – Commission of the suicide was not established with reasonable certainty – Conviction under Section 306 of the IPC could not be recorded – Conviction set aside : *Radhelal Vs. State of M.P., I.L.R. (2012) M.P. 220*

– **Section 306** - Abetment of Suicide - Within period of 3 years of marriage deceased committed suicide in her matrimonial house by pouring kerosene and setting herself on fire - Nothing has been suggested by the witnesses that prior to the incident of suicide something specific was done by the appellants with the deceased worth driving her to commit suicide - Normal instances of ill-treatment by way of neglecting the deceased or by quarreling with the deceased are not sufficient to constitute the abatement on the part of the appellants - There must be some more evidence showing specific acts during the last spell of the stay of the deceased in her matrimonial house suggestive of mens rea to instigate the deceased to commit suicide - Not a sufficient evidence for holding appellants guilty for abatement of suicide : *Shyam Lal Vs. State of M.P., I.L.R. (2011) M.P. 2871*

– **Section 306** – Abetment to commit suicide – Appellants are said to have filthily abused and humiliated deceased Sonelal to such an extent that he could not tolerate and committed suicide – Held – Act of the appellants not amounted to abetment – It did not fall within the definition as they did not in any manner instigate, conspire or aid in the doing of that thing – Hence, they did not abet commission of suicide by Sonelal – Conviction and consequent sentence are hereby set aside : *Premlal alias Dadu Vs. State of M.P., I.L.R. (2014) M.P. 1902*

– **Section 306** – Abetment to commit suicide – Deceased died all of a sudden in suspicious circumstances in her matrimonial house – Fact of death was informed by respondents to parents of deceased – Any instance saying a lady *Kali, Kaluti and Jungali* or such like words can not be said to be abetment – Appeal dismissed : *State of M.P. Vs. Rubai Singh, I.L.R. (2012) M.P. 1372*

– **Section 306** - Abetment to commit suicide - Evidence of Sister with regard to cruelty and harassment due to non-satisfaction of demand for watch and cycle did not find place in police statements - Parents of the deceased not examined - Independent witness stated that the deceased and her devrani had run away from the house after taking all their ornaments - Both were reprimanded by appellant and co-villagers and therefore, deceased committed suicide by feeling ashamed for the misconduct - Conviction of appellant under Section 306 not sustainable : *Virendra Singh Vs. State of M.P., I.L.R. (2013) M.P. 912*

– **Section 306** - Abetment to commit suicide - No date, occasion or specific particular on which the appellant or any other gave alleged harassment or cruelty to the deceased - Appellant cannot be held to have instigated the deceased to commit suicide : *Sarjoo Vs. State of M.P., I.L.R. (2012) M.P. 2806*

– **Section 306** - Abetment to commit suicide - No material on record that deceased committed suicide or died unnatural death - Appellant can not be convicted under Section 306 of IPC : *Charan Singh Vs. State of M.P., I.L.R. (2012) M.P. 1664*

– **Section 306** - Abetment to commit suicide - Prosecution witnesses did not support prosecution case - Deceased in her dying declaration had stated that appellant used to scold her for not doing work properly and therefore, she poured kerosene oil on herself and she does not want to live - It cannot be said that appellant in any manner abetted the deceased to commit suicide - Appeal allowed : *Jamna Bai Vs. State of M.P., I.L.R. (2014) M.P. 557*

– **Section 306** - Abetment to commit suicide - Suicide - No clear reason for the cause of death was given - Report of Viscera also not brought on record - In order to hold appellant guilty under Section 306, it was essential for prosecution to prove that deceased committed suicide or her death was otherwise, than under normal circumstances - In absence of such evidence, appellant cannot be convicted under Section 306 of I.P.C. : *Dhaniram Vs. State of M.P., I.L.R. (2012) M.P. 2253*

– **Section 306**, Criminal Procedure Code, 1973 (2 of 1974), Section 221 – Lesser Offence – Abetment of suicide - Allegation of un-touchability appears to be hypothetical allegation which appears to be not true – Allegation of not providing proper treatment to deceased when she fell ill also appears to be hypothetical as doctor (D.W. 4) had stated that the deceased was treated by him for her illness relating to sterility and profuse bleeding during menses – Prosecution could not prove that deceased was ever illtreated and there is no allegation which falls within the purview of Section 107 or 109 of I.P.C. No case under Section 306 of I.P.C. is made out – Appeal allowed : *Arun Vs. State of M.P., I.L.R. (2015) M.P. 1825*

– **Section 306**, Criminal Procedure Code, 1973 (2 of 1974), Section 482 - Abetment to commit Suicide - Petitioner, a Sub-Engineer, working under Chief Municipal Officer, followed the instructions given to him by his higher authorities and the encroachment was removed after giving due notice to the deceased in accordance with law and the encroachment was also removed after following due process of law - Held - No case for abetment to commit suicide is made out against the petitioner as there is no intention on the part of the petitioner to instigate the victim to commit suicide - F.I.R. and further proceedings quashed : *Vinod Tripathi Vs. State of M.P., I.L.R. (2013) M.P. 738*

– **Section 306** - See - Evidence Act, 1872, Section 3 : *Shripati @ Shriprasad Vs. State of M.P., I.L.R. (2011) M.P. 2559*

– **Section 306** – Suicide – Deceased and his father when going to farm, were restrained, abused, slapped and threatened to kill by applicants – Later on the deceased went to field and committed suicide by consuming poisonous substance – Held – There is no evidence that applicants provoked, incited or encouraged to commit suicide – Not alleged that the applicants were armed with some weapons – It cannot be presumed that deceased was so frightened that he had no option left except committing suicide and was compelled to do so – Order of framing of charge against applicants for committing offence u/s 306 cannot be sustained – Revision allowed : *Hukum Singh Yadav Vs. State of M.P., I.L.R. (2011) M.P. 1089*

– **Section 306/34, 498-A & 498-A/34** - Wife committed suicide in matrimonial home - If some family dispute was in family which was resolved by sitting along with members of family and Society then some other evidence should have been brought on record showing instigation to commit suicide - No offence of instigation of commission of suicide has been proved by the prosecution - Appellants acquitted : *Mukesh Vs. State of M.P., I.L.R. (2013) M.P. *43*

– **Section 306 & 107** - Abetment of Suicide - To constitute offence accused must have provoked, incited or induced deceased to commit suicide - Nothing has been brought on record to prove the charge of abetment after settlement of matrimonial dispute - Merely a bald statement of cruelty and harassment is not sufficient : *Ashok Kumar Vs. State of M.P., I.L.R. (2013) M.P. 1971*

– **Section 306 & 498-A** – Abetment of suicide – No evidence of cruelty or maltreatment against appellant – He cannot be convicted merely because of some incidents of disagreement and petty quarrels in domesticity – Appeal allowed : *Ramesh Vs. State of M.P., I.L.R. (2015) M.P. *25*

– **Section 306 & 498-A** – Appeal against acquittal – Respondent had made allegation that deceased had illicit relationship with his elder brother – Deceased committed suicide by consuming poison – Held – Sweeping allegations would not amount to abetment of offence of commission of suicide, and something more is required under section 107 I.P.C hence 306 IPC not made out – Conviction under section 498A IPC – Appeal Partly allowed : *State of M.P. Vs. Shrideen, I.L.R. (2012) M.P. *35*

– **Section 306 & 498-A**, Evidence Act (1 of 1872), Section 113-A – Cruelty – Marriage took place about 6 months prior to death – It is too early to hold that scolding on account of non performance of household work amounts to cruelty – Few incidents narrated regarding cruelty are simple problems which are faced in domestic married life –

Ingredients of Section 107, 109 of I.P.C. are not available – Appellants acquitted : *Arjun Singh Vs. State of M.P., I.L.R. (2015) M.P. 1041*

2. Abetment of Suicide proved

– **Section 306** – Abetment of suicide – Deceased went to field to prepare cattle food, the applicants came there, abused her – When sister of deceased objected to it, obscene words were used – Both the sisters returned home and closed the door – Applicants followed them and kicked the door – Deceased thereafter committed suicide – Trial Court rightly framed charge u/s 306/34 of IPC : *Raghuveer Vs. State of M.P., I.L.R. (2015) M.P. 1573*

– **Section 306** – Abetment to commit suicide – Applicant and co-accused used to demand money from deceased Sarpanch by making criminal intimation and complaints – Secretary of Gram Panchayat also withdrew some money by playing fraud with deceased – Held – Prima facie offence punishable under Section 306 IPC made out – Charge rightly framed : *Raghuraj Singh Vs. State of M.P., I.L.R. (2012) M.P. 287*

– **Section 306** – See – Criminal Procedure Code, 1973, Section 226 & 227 : *Naval Kishore Sharma Vs. State of M.P., I.L.R. (2012) M.P. 1444*

– **Section 306** – Suicide note left by the deceased is an important document and cannot be brushed aside : *State of M.P. Vs. Virendra, I.L.R. (2011) M.P. 1043*

– **Section 306 & 498-A** - Abetment of suicide - Cruelty - Parents and other witnesses proving that Rs.5000/- was settled to be given at the time of marriage, but only a sum of Rs.4000/- could be given - It is also proved that the deceased when returned from matrimonial home, she used to tell that appellant used to beat her and torture her on account of demand of remaining amount - The death of deceased by hanging herself at the place of appellant (her husband) is also proved - Held - It can be safely concluded that appellant by his willful acts and continued course of conduct, as aforesaid, created such circumstances that the deceased was left with no option but to commit suicide and she was compelled to take the extreme step of putting an end to her life by hanging herself - Conviction u/s 306 & 498-A do not suffer from any infirmity : *Raman Singh Vs. State of M.P., I.L.R. (2011) M.P. 259*

3. Stage of framing of charges

– **Section 306**, Criminal Procedure Code, 1973 (2 of 1974), Section 228 - Abetment of Suicide - Charge under - Making allegations against the character of the deceased with a threat and intimidation to lodge a false report against him for committing the rape and due to such act of the applicants, the deceased was instigated to commit

suicide and ultimately committed the same - Held - Once, any of the ingredients of abetment defined under Section 107 of the IPC, is revealed then it could be assumed that prima facie ingredient for framing the charge of Section 306 IPC is available in the matter - Revision dismissed : *Bhagbai Vs. State of M.P., I.L.R. (2011) M.P. 3231*

– **Section 306** - See - Criminal Procedure Code, 1973, Section 227 & 228 : *Sachin Tamrakar Vs. State of M.P., I.L.R. (2011) M.P. 2909*

– **Section 306, 302 & 498A**, Criminal Procedure Code, 1973 (2 of 1974), Section 227 & 228 - Stage of framing of charges - Charges framed on the basis of material and prima facie case as put up before the Court - Framing of charge u/s 302 or in the alternative 306 permissible - Relief of discharge at this stage cannot be granted : *Dhapubai (Smt.) Vs. State of M.P., I.L.R. (2013) M.P. 2987*

4. Miscellaneous

– **Section 306 & 34** – See – Criminal Procedure Code, 1973, Section 438 & 439 : *Praveen Dubey Vs. Ravishankar, I.L.R. (2015) M.P. 518*

SYNOPSIS : Section 307

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| 1. Attempt to commit Murder or causing grievous hurt | 2. Attempt to Murder not proved |
| 3. Attempt to Murder or Simple Injuries | 4. Attempt to Murder proved |
| 5. Benefit of Doubt | 6. Compounding/Compromise of Non-compoundable Offences |
| 7. Conduct of Witness | 8. Enmity |
| 9. Ingredients | 10. Intention |
| 11. Medical Evidence | 12. Plea of Alibi |
| 13. Recovery of Weapon | 14. Source of light at the place of incident |
| 15. Miscellaneous | |

1. Attempt to commit Murder or causing grievous hurt

– **Section 307 & 326** - Attempt to commit murder or causing grievous hurt - Assault on the hands and legs of the victims - One of the victims receiving blow on head, but not forceful - No brain haemorrhage was caused to her - Appellant did not intend to kill - Overt acts do not fall within any category of section 300 of IPC - Held - Offence

would be u/s 326 and not u/s 307 : *Basant Kumar Bhargava Vs. State of M.P., I.L.R. (2013) M.P. 468*

2. Attempt to Murder not proved

– **Section 307** – Acid throwing – Appellant is alleged to have thrown acid on the injured persons while they were sitting in front of their house – I.O. has admitted that he had not seized burnt mattress, pillow and cot although it was shown to him by complainant – I.O. also admitted that no marks and evidence of throwing acid was found on spot – He also admitted that no mark of acid was found on floor although it was kachcha – Defence of accused that complainant himself threw acid on his wife as he was having doubts about her character appears to be probable – Appeal allowed : *Jallo @ Jille Vs. State of M.P., I.L.R. (2011) M.P. *69*

– **Section 307** – Attempt to murder – Against acquittal – Complainant alleged in FIR that he had received gun shot injury in calf of left leg and in Court evidence it was stated that he had received gun shot injury in the calf of right leg – Doctor found only abrasion in calf of left leg and no gun shot injury was found – FIR also lodged after 3 1/2 hours – Trial court rightly acquitted the respondents – Appeal dismissed : *Shiv Singh Vs. Harnarayan, I.L.R. (2015) M.P. 3051 (DB)*

3. Attempt to Murder or Simple Injuries

– **Section 307** – Attempt to murder – No offence was made out u/s 307 of the IPC, but it is a case where conviction could safely be recorded u/s 324 of IPC – Since appellant is prosecuting the legal battle for the last 18 years – Only fine sentence is awarded : *Vishwanath Vs. State of M.P., I.L.R. (2014) M.P. 1603*

– **Section 307** – When appellant reached the place of incident she was unarmed – She snatched the sickle from her mother-in-law and inflicted injuries to her – Appellant also received injuries including fracture of fibula bone – Injury caused to injured was not sufficient to cause death – Appellant not guilty of offence under Section 307 of I.P.C – Appellant held guilty for offence under Section 324 of I.P.C. – Appellant has already suffered jail sentence of 6 months – Appellant sentenced to period already undergone : *Sushila Bai Vs. State of M.P., I.L.R. (2015) M.P. 2196*

– **Section 307 & 323/34** - Attempt to Murder - According to x-ray report no bony injury was found - Neither the Radiologist was examined nor x-ray report was proved - Held - The only act which could fall within the pervue of Section 307, I.P.C. is an act which by itself must be ordinarily capable of causing death in the natural and ordinary course of events and accused's criminal liability must be limited to the act which he in fact did, and can not be extended so as to embrace the consequence of another act which

he might have done but he did not do - Conviction u/s 307 converted into Section 323/34 of I.P.C. : *Ram Sanehi Vs. State of M.P., I.L.R. (2013) M.P. 1699*

– **Section 307, 323 & 324** – Attempt to murder – Applicants armed with firearms and assaulted by base of firearm but no grievous injury was caused to victim – No intention or knowledge on the part of applicants to cause murder of victim is prima facie established – No charge under Section 307 of IPC can be framed : *Anil alias Noni Panda Vs. State of M.P., I.L.R. (2012) M.P. 1081*

– **Section 307 & 324** – Attempt to commit murder or simple injury – Incised wound found over left scapular region measuring 8x4x6cm with foster, muscles, blood vessels and nerves cut – No exact opinion regarding nature of injury stated by Doctor – No fracture found – Alleged incised wound would be simple hurt and not under Section 307 of I.P.C. : *Shivraj Sahu Vs. State of M.P., I.L.R. (2012) M.P. *71*

– **Section 307 & 324** - Attempt to commit murder - When injuries have been caused to victim, the intention or the knowledge of the assailant could be gathered objectively from the nature of injuries and the part of body whereon the injuries were caused - Doctor did not say that injuries found on the body of 'R' were grievous or dangerous to his life - It remains in the region of suspense whether appellants intended or knew that by their acts they would cause the death - It would be preferable to hold that they intended to cause hurt to 'R' with deadly weapons making them liable to be punished u/s 324 or 324/149 of IPC : *Ashok Mishra Vs. State of M.P., I.L.R. (2013) M.P. 460*

– **Section 307 & 324** - Attempt to murder or causing simple hurt - Complainant alone in the street - Appellant fired from the back from a distance of 8 fts. - Did not repeat his fire - Appellant did not approach near the complainant - Appellant ran away immediately although there was no body at the time of incident to prevent him to make another gun shot - Held - Intention of appellant was to cause simple injuries - His intention cannot be presumed of causing death of complainant - Overt act of appellant constitute offence u/s 324 of IPC : *Ramadhar @ Pappan Khamparia Vs. State of M.P., I.L.R. (2011) M.P. *32*

– **Section 307 or 324** – Injury not falling under the category of the injuries as stated in former part of Section 300 of IPC – Conviction of the appellants u/s 307 of IPC and of other appellants u/s 307/34 of IPC is not sustainable – Appellants convicted u/s 324 and 324/34 of IPC : *Chandrabhan Vs. State of M.P., I.L.R. (2011) M.P. *79*

– **Section 307 & 325**, Criminal Procedure Code, 1973 (2 of 1974), Section 222 – Framing of Charges – Victim has suffered fracture of Ulna Bone which is not sufficient to cause death of a person in ordinary course of nature – A person can not die due to fracture of Ulna Bone – Charge under Section 307 set aside – Trial Court directed to frame charge

under Section 325 of I.P.C. : *Achhelal Choudhary Vs. State of M.P., I.L.R. (2012) M.P. *18*

4. Attempt to Murder proved

– **Section 307** - Attempt to Murder - Appellant assaulted the victim in his abdomen with a force so that knife pierced the abdomen of the victim as well as other portion of the abdomen - Injuries caused in abdomen of the victim were fatal in nature and if surgery was not performed, then certainly the victim would have died because the vital organs of the victim were found cut in his abdomen - Appellant assaulted the victim for at least two times, first in his abdomen and second on his thigh - Intention is visible - Sessions Judge has rightly convicted the appellant for commission of offence punishable under Section 307 of IPC : *Guddu Alias Sameer Vs. State of M.P., I.L.R. (2012) M.P. 1717*

– **Section 307** – Attempt to murder – Appellant No. 1 fired at complainant causing simple injury on his elbow – If overall conduct of appellant No. 1 is considered then, it would be apparent that he had intended to kill the complainant – Appellant No. 1 had committed an offence as u/s 307 of I.P.C. : *Samar Jeet Singh Vs. State of M.P., I.L.R. (2015) M.P. 187 (DB)*

– **Section 307** – Attempt to murder – Appellants poured petrol over the body of the injured and on account of which he suffered 42% burn injuries in the incident – Held – Intention on part of appellants to kill the injured by their act of pouring petrol and then setting him (injured) ablazed is clearly borne out – No infirmity or illegality in judgment of conviction passed by the trial Court : *Ramdayal Vs. State of M.P., I.L.R. (2011) M.P. 1047*

5. Benefit of Doubt

– **Section 307**, Arms Act, 1959, Section 25(1-B)(a) & 27 - Charge of attempt to murder by firing at police personnel - Incident narrated by Head Constable sought to be supported by police personnel only, whose presence at the spot located in the vicinity of residential quarters was shrouded with doubt and not by any public witness - The probability of the defence that the appellant was apprehended while staying in the quarter allotted to co-accused and was shot at while being taken to the police station stood duly substantiated - The appellant was required to be given the benefit of doubt - Appeal allowed : *Babuji @ Shyam Vs. State of M.P., I.L.R. (2011) M.P. 233*

– **Section 307** – Defence – Degree of proof – Degree of proof of defence should not be equated with that of prosecution where it is obliged to prove its case beyond reasonable doubt – Courts are required to see that whether the defence which has been

put forth is probable or not – If defence is found probable, then accused is entitled for the benefit of doubt : *Jallo @ Jille Vs. State of M.P., I.L.R. (2011) M.P. *69*

6. Compounding/Compromise of Non-compoundable Offences

– **Section 307** – Compromise/Compounding – Non-compoundable offences can not be compounded – However, settlement/ compromise between the parties can be taken into consideration for the purposes of determining the quantum of sentence – Sentence reduced to period already undergone : *Gulab Das Vs. State of M.P., I.L.R. (2012) M.P. 305 (SC)*

– **Section 307**, Criminal Procedure Code, 1973 (2 of 1974), Section 320 – Compromise of non-compoundable offence – Effect – Non compoundable offence can not be compounded – However, the fact of compromise can be considered in awarding sentence – Incident took place about 20 years back – Appellant was 19 years of age and has remained in jail for a period of 5 months – Sentence reduced to period already undergone : *Anil Kumar Vs. State of M.P., I.L.R. (2012) M.P. *52*

7. Conduct of Witness

– **Section 307 & 498-A**, Evidence Act (1 of 1872), Section 32 & 145 - Earlier Statements - Injured in her earlier statements which was recorded by Doctor and Constable specifically stated that she caught fire accidentally - However after two days, when her parents reached there allegations were made against the in-laws - Court while appreciating the evidence of witness has authority to examine the conduct and veracity of the witness - Appeal dismissed : *State of M.P. Vs. Rakesh Kumar, I.L.R. (2013) M.P. 2224 (DB)*

8. Enmity

– **Section 307** – Attempt to murder – Enmity – Both accused and complainant parties are Arms Dealers and are having business rivalry – Various criminal cases were registered between both the parties – Enmity is a double edged weapon – A person can be falsely implicated : *Chunnial (Dead) and Santosh Vs. State of M.P., I.L.R. (2015) M.P. 1048*

9. Ingredients

– **Section 307** – Attempt to Murder – Ingredients – There should be an intention or knowledge of the offence and secondly the act done for the purpose of carrying out the intention : *Sushila Bai Vs. State of M.P., I.L.R. (2015) M.P. 2196*

– **Section 307** – See – Criminal Procedure Code, 1973, Section 227 : *Kanhaiya Lal Vs. State of M.P., I.L.R. (2011) M.P. 2601*

10. Intention

– **Section 307** – Attempt to murder – Intention can be formed then and there on the spur of moment – When the appellant gave a forceful blow on the vital part like scalp of injured by means of sharp edged weapon, it cannot be said that requisite intent was lacking : *Maujilal Vs. State of M.P., I.L.R. (2011) M.P. *60*

– **Section 307/34** – Common intention – Second appellant went to the house of complainant alongwith gun and fired from the gun killing the deceased – He had intention to kill the complainant – Second appellant shared common intention to kill the complainant – He is rightly convicted u/s 307/34 of I.P.C. : *Samar Jeet Singh Vs. State of M.P., I.L.R. (2015) M.P. 187 (DB)*

– **Section 307 or 323** – See – Criminal Procedure Code, 1973, Section 227 & 228 : *Ramnath @ Rammu Gond Vs. State of M.P., I.L.R. (2012) M.P. 587*

11. Medical Evidence

– **Section 307** - Attempt to murder - Medical Evidence - Complainant asserted that the bullet had passed through and through his right thigh - No exit wound was found - No bullet or pellets embedded inside thigh were found - No bony injury was noticed in x-ray - Evidence of complainant incompatible with the medical evidence : *Pankaj Shah Vs. State of M.P., I.L.R. (2013) M.P. 1448*

– **Section 307** – Attempt to murder – Single blow – Appellant gave a blow by sharp edged weapon on the vital part like scalp with such force that it also caused a depressed fracture in his parietal bone, resulting in paralysis of left upper arm – The injured was found unconscious and had to be treated and remained hospitalized for a period of more than twenty one days – There are no reasons to doubt the opinion of Doctor that the injuries caused to injured were dangerous to life : *Maujilal Vs. State of M.P., I.L.R. (2011) M.P. *60*

– **Section 307** – See – Evidence Act, 1872, Section 3 : *Chhotya Vs. State of M.P., I.L.R. (2011) M.P. 2223*

– **Section 307**, Criminal Procedure Code, 1973 (2 of 1974), Section 227 – Attempt to murder – Framing of Charge - Lacerated wound inflicted on the head from blunt side of Pharsi – Doctor certified the injury as dangerous to life – Framing of charge under Section 307 of I.P.C. upheld as grave suspicion of commission of offence is prima facie made out : *Indar Singh Vs. State of M.P., I.L.R. (2012) M.P. 1451*

– **Section 307**, Criminal Procedure Code, 1973 (2 of 1974), Section 227/228 – Framing of Charge – Scuffle took place between complainant party and police personnel

– No bony injury was found on the body of victim – Police personnel were having service revolver which was not used – Considering the nature of injuries, it is clear that the force with which the injuries were caused, was not intended to cause grievous injury – Charge u/s 307 not made out – Trial Court directed to reconsider the framing of charge considering the bar created by Section 197 of Cr.P.C. to whether police personnel were on duty : *Umesh Singh Vs. State of M.P., I.L.R. (2015) M.P. 2490*

– **Section 307 & 326** – See – Criminal Procedure Code, 1973, Section 222 : *Ram Krishan Vs. Prabhu Baiga, I.L.R. (2012) M.P. *45*

12. Plea of Alibi

– **Section 307** – Plea of alibi – Police during investigation had formed that appellant was in Shimla at the time of incident – Defence witnesses also prove the presence of appellant in Shimla at the time of incident – Appellant liable to be acquitted – Appeal allowed : *Chunnilal (Dead) and Santosh Vs. State of M.P., I.L.R. (2015) M.P. 1048*

13. Recovery of Weapon

– **Section 307** – Recovery of Weapon – Independent seizure witnesses did not support prosecution – Act of showing the accused to the complainant prior to holding of T.I.P. shows the interestedness of the Investigating officer – Recovery not proved : *Pankaj Shah Vs. State of M.P., I.L.R. (2013) M.P. 1448*

14. Source of light at the place of incident

– **Section 307** – Source of light on the spot – Incident took place at 8:30 in the night and no arrangement of light shown in investigation – Not possible for complainant to see the actual assailant – Testimony of complainant doubtful : *Ramadhar @ Pappan Khamparia Vs. State of M.P., I.L.R. (2011) M.P. *32*

15. Miscellaneous

– **Section 307** – Attempt to murder – No blood was found on spot although victim has stated that blood started oozing out after the gun shot hit his abdomen – Statements u/s 161 of Cr.P.C. were recorded after 2 days – No explanation for the same was offered by I.O. – Independent witnesses were given up – Material infirmities in statements of victim and his real brother – Appellant liable to be acquitted : *Chunnilal (Dead) and Santosh Vs. State of M.P., I.L.R. (2015) M.P. 1048*

– **Section 307** – Attempt to Murder – Sentence – Appellant shot an arrow which hit on the left side of chest of complainant – FIR lodged within 4 hours as Police Station

is 19 KM away – Villagers are adjusted to dark and they recognize the known person in dark – Medical evidence also corroborates ocular evidence – Appellant rightly convicted u/s 307 – However, sentence of 7 years is reduced to 6 years – Appeal partly allowed : *Madhu @ Madaliya Vs. State of M.P., I.L.R. (2015) M.P. 2173*

– **Section 307** – See – Criminal Procedure Code, 1973, Section 222 : *Roop Singh Vs. State of M.P., I.L.R. (2012) M.P. 1048*

– **Section 307 or 325** – See – Criminal Procedure Code, 1973, Section 227 : *Gulab Vs. State of M.P., I.L.R. (2012) M.P. 1055*

• – **Section 315** - Act causing a newly born child to die - No one was examined as eye-witness either to the delivery of child or alleged act of abandonment attributed to appellant - Opinion of doctor by itself is not sufficient to raise the presumption that the child was delivered by appellant - No evidence on record that the appellant was with child and she actually delivered the baby in question - Trial Court committed error in raising presumption to hold the appellant guilty of the offence - Appeal allowed : *Dhuli Bai Vs. State of M.P., I.L.R. (2011) M.P. 2556*

– **Section 316** – See – Criminal Procedure Code, 1973, Section 482 : *Jyoti (Smt.) Vs. State of M.P., I.L.R. (2014) M.P. 1971*

– **Section 323** – Sentence – Incident occurred about 18 years ago – Compromise has also been arrived at between the parties – Sentence reduced to period already undergone and fine amount is enhanced from Rs. 500 to Rs. 1000/- : *Phool Singh Vs. State of M.P., I.L.R. (2012) M.P. 1368*

– **Section 323** – Sentence – Incident took place in the year 2000 – Appellant do not possess any criminal antecedent – Being first offender entitled to some lenient view in imposition of sentence – Sentence reduced to period already undergone : *Pillu Alias Pyarelal Vs. State of M.P., I.L.R. (2012) M.P. 1309*

– **Section 323** - Sentence - Incident took place near about 20 years back - Appellant has not remained in jail even for a single day - However, considering the fact that during last 20 years, the appellant has suffered the mental agony of his case and has also appeared before the Trial Court as well as Appellate Court, jail sentence is set aside and a fine of Rs. 1000 is imposed : *Parvat Singh Vs. Khanjuwa, I.L.R. (2012) M.P. 2491*

– **Section 323 & 376**, Criminal Procedure Code, 1973 (2 of 1974), Section 222- Inferior offence - Offence under Section 323 cannot be said to be inferior offence punishable under Section 376 - Appellant could not have been convicted without framing charge under Section 323 of I.P.C. : *Laalu @ Balmukund Sharma Vs. State of M.P., I.L.R. (2012) M.P. 2526*

– **Section 324** - Sentence - Accused/appellant suffered judicial custody of 11 days and also suffered mental agony of 17 years and during this period he might have been settled in his family - Sentenced to the period already suffered but by imposing the enhanced fine of Rs. 5,000/- : *Kailash Kumawat Vs. State of M.P., I.L.R. (2013) M.P. 651*

– **Section 324 & 326** - Simple hurt - Injured sustained incised wound near umbilicus - It is in nature of stab injury but as per deposition of Doctor, no vital organ was damaged from the injuries - Held - Appellant could not be convicted for more than Section 324 of the I.P.C. : *Kailash Kumawat Vs. State of M.P., I.L.R. (2013) M.P. 651*

– **Section 325** - Grievous hurt - Appellants were armed with wood stopped the victims and inflicted multiple injuries - Deceased was admitted in the hospital and remained there for 14 days and thereafter he was discharged - He was again admitted in the hospital after one month and died on the same day - No definite opinion with regard to cause of death was given - No evidence that the injuries were caused to deceased with intention to cause his death - No evidence that the injuries sustained by deceased were sufficient in the ordinary course of nature to cause his death - As no appeal against acquittal under Section 302 of I.P.C. has been filed therefore, question whether the appellants could be convicted under Section 302 of I.P.C. or not cannot be considered - Sentence of 3 years awarded by Trial Court proper - Appeal dismissed : *Mohan Vs. State of M.P., I.L.R. (2012) M.P. 2234 (DB)*

– **Section 325** – Grievous Injuries – Accused four in number reached on the spot after the assault was concluded by appellant No.1 – Remaining accused started assaulting injured by means of lathi – All the four were sharing common intention – They are held guilty for offence punishable under Section 325/149 of I.P.C : *Ashok Vs. State of M.P., I.L.R. (2015) M.P. 2475*

– **Section 326**, Criminal Procedure Code, 1973 (2 of 1974), Section 320 - Compromise - Sentence - Parties have entered into compromise - As offence under Section 326 is not compoundable, therefore, sentence is reduced to period already undergone : *Sambha @ Shyam Rao Pawar Vs. State of M.P., I.L.R. (2012) M.P. 2002*

– **Section 326** – Grievous hurt – Evidence of complainant inconsistent and self contradictory – F.I.R. appears to be doubtful as injured stated that F.I.R. was lodged by his father whereas in fact the F.I.R. was alleged to have been lodged by injured – Oral evidence also contradictory to medical evidence – Place of incident also changed – Defence from very beginning was that injured was molesting and passing remarks at the daughter of the appellant and therefore, he was falsely implicated – Guilt of appellant not proved beyond reasonable doubt – Appeal allowed : *Laxmi Narayan Vs. State of M.P., I.L.R. (2014) M.P. 2177*

– **Section 326** - Grievous Injury - Change of weapon - In F.I.R. it was alleged that appellant caused the injury by means of axe whereas in Court evidence it was stated that appellant assaulted by back of an axe - In view of material contradictions in the evidence of witnesses, it is clear that appellant did not cause injury from the back of axe causing grievous injury : *Mukesh Vs. State of M.P., I.L.R. (2012) M.P. 1986*

– **Section 326/149** – Grievous Injury – Unlawful Assembly – Appellant No.1 caused injuries by means of Katarna – The remaining appellants came on the spot after the assault was concluded by the appellant No.1 and when the remaining appellants assaulted the injured by means of lathi, there is no overt act on the part of the appellant No.1 – It cannot be held that the appellants No. 2 to 4 had common object with appellant No.1 to cause grievous injury – All accused persons are responsible for their own act – Only appellant No.1 is guilty of causing grievous injuries by means of Katarna and remaining accused persons cannot be held guilty under Section 326/149 I.P.C : *Ashok Vs. State of M.P., I.L.R. (2015) M.P. 2475*

– **Section 326 & 325/34** – Simple or Grievous Injury – Complainant in the morning accompanied with his son and others went to plough his field – Appellant with farsa and other co-accused lashed with sticks and asked to stop ploughing – Appellant gave blow of farsa in the occipital region to the complainant – Held – Injuries are simple in nature as no bony injury was found, hence offence u/s 326 IPC not made out – Injuries not grievous in nature hence 325 not made out – Appellant convicted under section 324/34 IPC – Appeal allowed in part : *Ram Singh Vs. State of M.P., I.L.R. (2012) M.P. 1302*

– **Section 329** – Nature of Injuries – To constitute offence under Section 329, nature of injuries should be grievous – No bony injury was found – No offence under Section 329 made out : *Anil alias Noni Panda Vs. State of M.P., I.L.R. (2012) M.P. 1081*

– **Section 333** – Causing hurt in discharge of duty – Appellant suspected that victims were involved in negligence leading to death of his buffalo – It can not be said that injured were assaulted in the execution of their duties as public servant : *Santosh Vs. State of M.P., I.L.R. (2011) M.P. 2210*

– **Section 333 & 353** – Obstruction while performing official duty – Bike of the son of complainant collided with that of a police official – Other police personnel reached on spot to support police personnel – Trial court should consider framing of charge u/s 333, 353, as they were obstructed while performing official duties : *Umesh Singh Vs. State of M.P., I.L.R. (2015) M.P. 2490*

– **Section 341** - Wrongful restraint - Chakajaam - Person concerned must have right to proceed and he should have been restrained from moving in that direction - Protest on the ground that feelings of a particular section/group have been hurt by an act

or by some crime and demanding for arrest, does not amount to come within definition of restraint of person - No ground to proceed against petitioners - Petition allowed : *Satya Prakash Parsediya (Smt.) Vs. State of M.P., I.L.R. (2013) M.P. 521*

– **Section 341, 294, 307 & 326 read with Section 34** - Complainant specifically deposed in para 2 that he had blocked the sword blow given by appellant No. 3 and no other appellant had assaulted him - Allegation of exhortation against appellants No. 1, 2 & 4 is not reliable does not find place in F.I.R. - Held - Conviction and sentence of appellants No. 1, 2 & 4 cannot be upheld - They are acquitted of all the offences - However, conviction of appellant No. 3 is maintained u/s 326 by reducing sentence to simple imprisonment for 1 year and fine of Rs. 4,000/- - Sentence u/s 341 is altered to fine sentence : *Gama @ Nirmal Kumar Vs. State of M.P., I.L.R. (2014) M.P. 554*

– **Section 341, 294 & 324** – See – Criminal Procedure Code, 1973, Section 320(2) : *Shamsher Bahadur Singh Chandel @ Golend Singh Vs. State of M.P., I.L.R. (2014) M.P. 1393*

– **Section 341 & 307/34**, Juvenile Justice (Care and Protection of Children) Act (56 of 2000), Section 7A & 49 – Juvenile Justice – Appellant convicted u/s 307 of IPC – Plea of appellant being juvenile was neither raised before trial court nor before High Court – To prove the age, High School Board Mark Sheet and admission register were produced – State was directed to verify – Addl. S.P. after verifying, reported that the documents are genuine – Held – As per document appellant was juvenile on the date of incident – Conviction and sentence awarded is set aside – Case record is directed to be placed before the concerned Juvenile Board for awarding proper sentence : *Kamlendra Singh @ Pappu Singh Vs. State of M.P., I.L.R. (2014) M.P. 1463 (SC)*

– **Section 352** - Use of Criminal Force - Held - Said charge has been fully established from the evidence of P.W.1 - No argument to disprove has been made - Same has rightly been found proved - Appeal dismissed : *Thavriya @ Thavar Singh Vs. State of M.P., I.L.R. (2013) M.P. 1722 (DB)*

– **Section 353** – Office duty – Victims were assaulted while undertaking return journey to the office – Held – Travelling by virtue of office is not a part of duty : *Santosh Vs. State of M.P., I.L.R. (2011) M.P. 2210*

– **Section 354** - Outrage Modesty - In F.I.R. it was alleged that for the first time when the complainant saw the appellant, he was sitting on the bed of the prosecutrix and thereafter the appellant left the spot - Changed version of witnesses in Court that appellant snatched the hands of prosecutrix with bad intention can not be believed - Conviction under Section 354 set aside : *Mukesh Vs. State of M.P., I.L.R. (2012) M.P. 1986*

– **Section 354** - Outraging the modesty - Appellant undressed the prosecutrix and directed her to lie down on his pant, which was placed on the earth and thereafter, he lied down upon the prosecutrix and in the meantime, the witnesses came to the spot, the appellant ran away - As the appellant had used some criminal force upon the prosecutrix to outrage her modesty, he is guilty of committing offence punishable under Section 354 of I.P.C. : *Lal Singh Gond Vs. State of M.P., I.L.R. (2012) M.P. 2510*

– **Section 354** - Outraging the modesty - Prosecutrix a minor girl was detained by appellant who was unknown to the prosecutrix - Indecent act of removal of cloths must have been done - Appellant is guilty of committing offence punishable under Section 354 - Sentenced to 6 months R.I. and a fine of Rs. 500 : *Vinod @ Arvind Vs. State of M.P., I.L.R. (2012) M.P. 2827*

– **Section 354** - See - Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Section 3(1)(xi) : *Munna Singh Vs. State of M.P., I.L.R. (2012) M.P. 1724*

– **Section 354** - Sentence - Appellant a young boy of 22 years - Already undergone the sentence of 4 months and 19 days and fine of Rs. 1000 - Appellant sentenced to period already undergone : *Manoj Vs. State of M.P., I.L.R. (2011) M.P. 506*

– **Section 354** - Sentence - Appellant not entitled for the benefit of the Probation of Offenders Act - However, incident took place in 1995 and appellant has remained in jail for 4 days - Sentence reduced to period already undergone by enhancing the fine amount to Rs. 7,500/- : *Santosh Kumar Vs. State of M.P., I.L.R. (2012) M.P. 1670*

– **Section 354** – To outrage modesty – Since there is not even an iota of evidence on record to infer that any attempt was made to outrage the modesty, conviction u/s 354 of the IPC, cannot be sustained : *Vishwanath Vs. State of M.P., I.L.R. (2014) M.P. 1603*

– **Section 354 & 294**, Criminal Procedure Code, 1973 (2 of 1974), Section 320 - Compounding of offence - Complainant was cleaning the house when respondent No. 1 with bad intention asked her to go with him inside the godown - She cried and shouted - Her brother came then respondent No. 1 started to abuse with filthy language - Held - Respondents are guilty under Section 354 & 294 of IPC - Offences are compoundable - Compromise application allowed : *State of M.P. Vs. Bahadul Singh, I.L.R. (2012) M.P. 2194*

– **Section 354-A** – Assault or use criminal force to woman with intent to disrobe her – Attempt to outrage the modesty of prosecutrix was committed inside the residential house and not at any public place – Trial Court directed to frame charge under Section 354 instead of 354-A of I.P.C. : *Pradeep Kunbi Vs. State of M.P., I.L.R. (2012) M.P. 575*

– **Section 362** - Expression "deceitful means" - Is wide enough to include the inducing a wife by husband on a false pretext : *Radheyshyam Ahirwar Vs. State of M.P., I.L.R. (2011) M.P. 517*

– **Section 362 & 366** – Abduction – For making accused liable to be convicted for abduction, he should either by force compel or by deceitful means induce to any person to go from any place : *Ashok @ Beera Vs. State of M.P., I.L.R. (2011) M.P. 1752*

SYNOPSIS : Section 363

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| 1. Consenting Party | 2. Determination of Age |
| 3. Notice to Complainant | 4. Taking away from Lawful Guardianship |

1. Consenting Party

– **Section 363 & 366-A** – Kidnapping – Prosecutrix aged about 16 years and 6 months – Where the minor leaves her father's protection knowing and having capacity to know what she is doing voluntarily joins the accused person, no offence under Section 366-A is made out – As prosecutrix was consenting party therefore, no offence under Section 363 is made out : *Indal Singh Vs. State of M.P., I.L.R. (2012) M.P. 246*

2. Determination of Age

– **Section 363** - Kidnapping - Determination of age - Prosecutrix stated that her date of birth is 13.02.1976 - Scholar register of school mentions the same date of birth which according to the father of the prosecutrix was recorded on the basis of entry in Kotwar Diary - Held - There is cogent and authentic evidence as to date of birth of prosecutrix and same can not be brushed aside merely for want of her radiological examination : *Khemraj @ Gannu Vs. State of M.P., I.L.R. (2011) M.P. 2847*

– **Section 363, 366 & 376**, Juvenile Justice (Care and Protection of Children) Rules 2007 – Determination of age – Rule 12(3)(a)(i) to (iii) – Birth Certificate and Middle School Examination Certificate, *vis-a-vis* Rule 12(3)(b) – *Ossification Test* – Held – The certificate produced as per Rule 12(3)(a)(i) to (iii) should have been relied firstly and in absence of it, the medical opinion under Rule 12(3)(b) ought to have been sought : *State of M.P. Vs. Anoop Singh, I.L.R. (2015) M.P. 2545 (SC)*

3. Notice to Complainant

– **Section 363 & 366**, Criminal Procedure Code, 1973 (2 of 1974), Section 482 - Abduction - Quashing of proceedings - Closure report filed by Police - Magistrate issued

warrant for production of prosecutrix - Where a Magistrate takes a view that there is no sufficient ground for proceeding against some of the accused persons mentioned in FIR, notice to complainant is necessary - In case of abduction, examination of victim would be necessary - Proceedings cannot be dropped - However, Magistrate is directed to issue notice to prosecutrix and on her failure to appear, Court may issue search warrant for her production - Application partly allowed : *Pawan Kumar Vs. State of M.P., I.L.R. (2012) M.P. 2297*

4. Taking away from Lawful Guardianship

– **Section 363** - Kidnapping - Appellant induced prosecutrix to go with him to the bushes near the Nala and therefore, who was taken few yards away from the place where she was playing - She was not taken away from the guardianship of her maternal grand father - Prosecutrix was taken to a nearby place, so that they could not be seen by the others - Act of the appellant does not amount to kidnapping : *Lal Singh Gond Vs. State of M.P., I.L.R. (2012) M.P. 2510*

– **Section 363** - Kidnapping - Appellant took away the minor girl out of the keeping of his lawful guardianship, without his consent - Appellant is guilty of committing offence under Section 363 of I.P.C. - However, sentence of 5 years R.I. is reduced to 3 years R.I : *Khemraj @ Gannu Vs. State of M.P., I.L.R. (2011) M.P. 2847*

– **Section 363 & 366** - Kidnapping - Prosecutrix went along with appellant in the night on her own - As prosecutrix was below 18 years of age, she was taken away from the guardianship of her parents without their consent - Appellant guilty of committing offence under Section 363 and not under Section 366 of I.P.C. - Trial Court had awarded sentence of 2 years for offence under Section 363 of I.P.C. and as the appellant has already remained in jail for 3 years, therefore, no interference is made in the sentence passed by the Trial Court - Appeal partly allowed : *Arman Ali Vs. State of M.P., I.L.R. (2012) M.P. 2817*

- – **Section 364-A** – Kidnapping – Complainant was kidnapped and kept under detention – He was threatened with knife and revolver of death – Affidavit was obtained from him to exonerate one who was accused in another case in which complainant was one of the witness for which there is no cross-examination – In the absence of cogent defence there is no reason to disbelieve version of the complainant – Held – There was no issue of demand of ransom as is required u/s 364-A of I.P.C. – Therefore, offence u/s 364-A is not made out – However, since kidnapping and threat perception is there, conviction is converted u/s 364 I.P.C. – Since appellants are in jail since last more than 8 years – Sentence awarded is reduced to the period already undergone : *Shahid Khan Vs. State of M.P., I.L.R. (2014) M.P. 2224 (DB)*

– **Section 364-A** – Kidnapping for ransom – Appellant accompanied the main accused when the girl was kidnapped – He continued in car even when the girl was taken out of the township – Appellant alighted from car when the car was stopped by main accused – Appellant informed that he is going back even when the co-accused told him if he went back he would be caught – Although the girl has stated that appellant was standing near by main accused when he informed her that she would go back only if her father pays Rs. 5 Lacs – It seems that appellant did not share the idea of obtaining ransom from father of the girl – Appellant liable to be acquitted for offence punishable under Section 364A and convicted under Section 365/120 B of I.P.C. : *Manoj Vs. State of M.P., I.L.R. (2011) M.P. *71 (DB)*

– **Section 364-A**, Dakaiti Aur Vyapharan Prabhavit Kshetra Adhinyam, M.P., 1981, Section 13 and Evidence Act, 1872, Section 9 – Test Identification Parade – No Test Identification Parade of accused persons conducted during investigation – Dock Identification for the first time in Court not reliable as abductees have specifically stated that accused persons were not known to them and they even could not identify the appellants by their names in Court – Hazardous to place reliance on the evidence of Dock Identification – Appeal allowed : *Mohar Singh Vs. State of M.P., I.L.R. (2011) M.P. 1355 (DB)*

– **Section 364-A, read with Section 120-B** – Abduction for ransom – Abductee duly identified the appellants during identification parade – Revolver with cartridges, mobile phone and car were recovered at the instance of appellants – Appellants have also threatened to cause death or hurt in order to extort ransom – Held – Prosecution has to prove that the abductee was kept in detention and threatened to cause death or hurt in order to extort ransom and communicates that demand for ransom – Prosecution has proved all the three ingredients of Section 364-A of IPC – Trial Court has not committed any error in convicting and sentencing the appellants – Trial Court’s order is maintained : *Balindar Kumar Vs. State of M.P., I.L.R. (2015) M.P. 2752 (DB)*

– **Section 364-A & 302** - Abduction and Murder - Discrepancy in oral and Medical Evidence - Eye witness stated that all the accused were having fire arms but did not say that any of them were carrying sharp edged weapon - Doctor found as many as 7 incised wound apart from gun shot injuries - As per the nature of incised wounds, the same could not have been caused by small weapons like knife - Presence of witness doubtful and cannot be relied upon : *Samarjeet Singh Vs. State of M.P., I.L.R. (2012) M.P. 2203 (DB)*

– **Section 366 & 376** - A-2, the husband of prosecutrix, persuaded her upon a false pretext of illness of her father to accompany on a motor cycle driven by A-1 upto her parental home and from there to the place where she was handed over to A-1 - She

was ravished by A-1 after being taken to a nearby plot of land - Conviction of accused/appellants A-1 for offence of rape and conviction of A-2 for the offence of abduction do not call for interference : *Radheyshyam Ahirwar Vs. State of M.P., I.L.R. (2011) M.P. 517*

– **Section 366 & 376** – Rape – Age of prosecutrix – Prosecutrix was between 16 and 19 years of age looking to the development of secondary sexual characters on her body – It is clear that on the date of incident, she was a major – Prosecutrix was a consenting party – Accused cannot be convicted : *Taj Mohammad Vs. State of M.P., I.L.R. (2014) M.P. 1908*

– **Section 366 & 376(2)(g)** – Abduction and Gang Rape – Evidence of prosecutrix corroborated by FIR and further corroborated by the evidence of a witness and partly corroborated by other witnesses who went with her – Trial Court committed no illegality in appreciating the evidence and convicting the accused – Appeal dismissed : *Buddhu @ Parshottam Vs. State of M.P., I.L.R. (2011) M.P. 2215*

– **Section 373** – Abduction – Age Determination – In absence of any direct evidence regarding age of prosecutrix, only option available with Court is to get her age determined by ossification test : *Sagar Singh Vs. State of M.P., I.L.R. (2011) M.P. 1335*

SYNOPSIS : Section 376

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| 1. Accused contacted marriage with Prosecutrix | 2. Accused known to Prosecutrix |
| 3. Age of Prosecutrix | 4. Appeal against Conviction |
| 5. Basis for Conviction or Acquittal | 6. Benefit of Doubt |
| 7. Character of Prosecutrix | 8. Consenting Party |
| 9. Custom cannot override the Statute | 10. Death Sentence/Rarest of Rare Case |
| 11. Delay Explained | 12. Delayed FIR |
| 13. Evidence of Mother reliable | 14. False Implication |
| 15. Falsus in Uno Falsus in Omibus | 16. Gang Rape |
| 17. Investigation by Inspector | 18. Medical Examination/ Evidence |
| 19. Method of Investigation | 20. No Penetration |
| 21. Prosecution bound to prove Caste of Prosecutrix | 22. Sole Evidence of Prosecutrix |

23. Statement of Prosecutrix**24. Testimony of Prosecutrix****25. Miscellaneous****1. Accused contacted marriage with Prosecutrix**

– **Section 376** - Rape - Accused contacted marriage with prosecutrix and after marriage she remained in her parental house and accused used to visit her and had physical relations with her - Subsequently, the prosecutrix was told by one lady that she is the married wife of accused having two children also and no divorce has taken place - Held - Prosecutrix under the impression that she is his wedded wife permitted him for intercourse - Accused has prima facie committed the offence under Section 376 of I.P.C. - Parents of accused also participated in conspiracy as they were living with the accused and even then they did not inform the prosecutrix about the actual position - Charge under Section 120-B /34 of I.P.C. can be framed against the parents of the accused - Revisions allowed : *Surekha Singh Vs. State of M.P., I.L.R. (2013) M.P. 3000*

2. Accused known to Prosecutrix

– **Section 376** – Rape – Appellant was known to prosecutrix – She was forcibly taken to sugarcane bush at knife point and was subjected to sexual intercourse – Act was revealed by her to P.W. 5 – Prosecutrix admittedly washed herself in the well therefore, absence of sperm or blood not material – Doctor also stated that hymen of prosecutrix was torn and ruptured – Except simply denying the offence, no evidence was led by appellant – Conviction upheld – Appeal dismissed : *Swaroop Singh Vs. State of M.P., I.L.R. (2014) M.P. 1202 (SC)*

– **Section 376(2)(g)** - Gang Rape - Accused persons were known to the prosecutrix as they reside in the same village although their names were supplied by her father-in-law - Prosecutrix identified the accused persons in Court - Scratches and tenderness in her private part and abrasions were found on her back and forearm - Rape is not only a criminal assault on the person of prosecutrix but same destroys her whole personality and incident remains in her mind forever - Statement of prosecutrix duly corroborated by Medical Evidence and other witnesses - Trial Court rightly convicted the accused - Appeal dismissed : *Lalta Prasad Vs. State of M.P., I.L.R. (2014) M.P. 560*

3. Age of Prosecutrix

– **Section 376** – Age – Father of prosecutrix did not say about age – Ossification report says that prosecutrix was found to be between 15-17 years – When two probable circumstances are available, the Court is bound to adopt the view which is favorable to the accused – Prosecutrix was aged about 17 years – No offence under Section 376 of

I.P.C. made out as prosecutrix was consenting party : *Sukhdeo Vs. State of M.P., I.L.R. (2012) M.P. 1345*

– **Section 376** - Age of Prosecutrix- Determination of - Relevant factors discussed : *Kailash @ Tanti Banjara Vs. State of M.P., I.L.R. (2013) M.P. 2063 (SC)*

– **Section 376** - Age of Prosecutrix - Determination - Parents of the prosecutrix were not examined - Entry in School register was made on the basis of information given by parents who were not examined - Age disclosed by the prosecutrix was merely hearsay - Evidence of sister who is aged about 17 years stated about the age of prosecutrix as 14 years - Sister was 3 years at the time of birth of the prosecutrix thus She is also a hearsay witness - No other documentary evidence was filed - Prosecution failed to prove that prosecutrix was aged about 14 years : *Arman Ali Vs. State of M.P., I.L.R. (2012) M.P. 2817*

– **Section 376** – Age of prosecutrix – Ossification report – When prosecution fails to produce any documentary evidence in the form of birth certificate or School Leaving Certificate, the only option is to get her age determined by reference to ossification test : *Ajab Singh Vs. State of M.P., I.L.R. (2011) M.P. *63*

– **Section 376** - Determination of age - Ossification test - Ossification test was not conducted on the advise of Director Medico Legal Institute - Investigating agency cannot refuse to investigate on any point of dispute - Whether Educational Record is believable or not is to be decided by Court and not by Doctor, even Director of Medico Legal Institute - It appears that Ossification test was refused due to some ulterior motive which creates an adverse inference against prosecution : *Arman Ali Vs. State of M.P., I.L.R. (2012) M.P. 2817*

– **Section 376** - Determination of Age - Parents of prosecutrix were not examined - No basis is shown by which the date of birth of the prosecutrix was recorded in school register - No ossification test was conducted - An adverse inference has to be drawn - Considering the entire situation prosecutrix appears to be above 16 years of age but below 18 years of age : *Arman Ali Vs. State of M.P., I.L.R. (2012) M.P. 2817*

– **Section 376** - Rape - Age of Prosecutrix - As per the Radiologist report, the age of prosecutrix was above 16 but below 18 years - The report of Radiologist which remain unproved, though cannot be utilized by the prosecution to prove its story, but the defence can certainly use it to support its case - Held - Age of the prosecutrix in the absence of any other reliable evidence being tendered by the prosecution can be safely held to be above 16 years - Trial Court has committed error in holding that the prosecutrix is less than 16 years of age : *Ajju @ Afzal Vs. State of M.P., I.L.R. (2013) M.P. 212*

– **Section 376** - Rape - Age of Prosecutrix - Determination - Neither prosecutrix nor her parents could state about her date of birth - Date of birth in School certificate was allegedly recorded on the basis of information given by father of prosecutrix, however, he could not state date of birth in the Court - No Birth Certificate or Kotwari book produced - Prosecutrix is the eldest child out of 7 children however, even the age of the youngest child not disclosed - There is no option except to assess the age on the basis of ossification test : *Devi Vs. State of M.P., I.L.R. (2012) M.P. 1708*

– **Section 376** - Rape - Age of Prosecutrix - Ossification test - Margin of 2 years - If age of juvenile is to be assessed, the lower side of computation is to be taken into consideration - When the age of prosecutrix is to be considered, then the higher side of the computation shall be considered - Ossification test shows that age of prosecutrix was 16-17 ½ years - Lower side of assessment can not be considered - If the prosecutrix was of 17 ½ years of age in ossification test, then such higher side of the assessment is to be taken : *Devi Vs. State of M.P., I.L.R. (2012) M.P. 1708*

– **Section 376/511** - Age of Prosecutrix - Kotwari Book - Entry of Kotwari Book is a conclusive proof of the birth of a particular child because the entry was made immediately after the birth of the child : *Vinod @ Arvind Vs. State of M.P., I.L.R. (2012) M.P. 2827*

– **Section 376/511** - Age of Prosecutrix - Ossification Test - Age between 14-16 years - Doctor found that secondary sex characteristics of prosecutrix were not fully developed - Pubic hair were scanty and other organs were not fully developed - Looking to the physical appearance of the prosecutrix, two years cannot be added on the upper side : *Vinod @ Arvind Vs. State of M.P., I.L.R. (2012) M.P. 2827*

– **Section 376/511** - Age of Prosecutrix - Ossification Test - Age between 15-16 years - Doctor found that secondary sex characteristics of prosecutrix were not fully developed and menaces (sic: menses) were not started - Looking to the physical appearance of the prosecutrix, two years cannot be added on the upper side : *Lal Singh Gond Vs. State of M.P., I.L.R. (2012) M.P. 2510*

4. Appeal against Conviction

– **Section 376(i)** - Rape - Appeal Against conviction - Prosecutrix is deaf and dumb, therefore, she was not examined - F.I.R. is delayed by 28 hours for which no explanation has been given - Doctor opined that no definite opinion can be given regarding rape - Medical evidence is also not supporting the prosecution case - Child eye witness who is 11 years old not appearing to be witness of sterling quality - Her testimony is without corroboration of satisfactory evidence - In the absence of any slightest degree of actual penetration, the conviction u/s 376(i) is illegal and

unsustainable - Appeal allowed : *Karu Suryawanshi Vs. State of M.P., I.L.R. (2013) M.P. 2966*

5. Basis for Conviction or Acquittal

– **Section 376** – Testimony of prosecutrix – To be classified as – (1) Reliable – (2) Unreliable – (3) Partially reliable – Then only conviction or acquittal to be based : *Gopal Vs. State of M.P., I.L.R. (2015) M.P. 1338*

6. Benefit of Doubt

– **Section 376 & 450** – Rape and house trespass – Major discrepancies in evidence of the prosecutrix and her husband – Though corroboration not necessary in sexual offences – Benefit of doubt given to the accused – Conviction set aside : *Munna Vs. State of M.P., I.L.R. (2015) M.P. 1123 (SC)*

7. Character of Prosecutrix

– **Section 376** – Rape – According to prosecutrix, she was thrown on the ground – However, no external or internal injury was found – Investigating Officer has also admitted that during investigation, it was found that report of rape was false and prosecutrix was in habit of lodging false report – Appellant acquitted – Appeal allowed : *Ghanshyam Singh Raghuvanshi Vs. State of M.P., I.L.R. (2015) M.P. 3032 (DB)*

– **Section 376** - Rape - Character of Prosecutrix - Prosecutrix admitted that once she had lodged a report against one person regarding abduction and thereafter had compromised the matter and the girls of her community are normally involved in sexual activities - Does not mean that prosecutrix or other girls of her community are public property - They also have a right to privacy and right to live - Woman of even easy virtue is entitled to privacy and cannot be invaded by any person : *Rajmal Vs. State of M.P., I.L.R. (2013) M.P. 433*

– **Section 376** – Rape – Consent under promise to marry – It is not clear whether offer of Nikah was made by the appellant first and then committed intercourse or intercourse committed by first and then as a consolation offer of Nikah was made – It is difficult to understand that intercourse has been committed under promise of the Nikah : *Shafat Vs. State of M.P., I.L.R. (2012) M.P. 201*

8. Consenting Party

– **Section 376** – Consent – Stray suggestions made in cross-examination of the Prosecutrix, which were denied by her, would not imply any consent on her part : *Sadan @ Nanhu Vs. State of M.P., I.L.R. (2011) M.P. 1348*

– **Section 376** – Consent – Whether prosecutrix was a consenting party or not is a relevant question that must be decided by Trial Court by careful scrutinization of evidence in the light of surrounding circumstances : *Ajab Singh Vs. State of M.P., I.L.R. (2011) M.P. *63*

– **Section 376** – Rape – Appellant alleged to have taken away the prosecutrix on the false pretext of illness of her mother and committed rape – Held – Prosecutrix travelled with appellant to various places and stayed at Bhopal for 10 days without making any sort of complaint – Prosecutrix had written letters to appellant to take her away from her parents or else she would end her life – Prosecutrix was consenting party – No offence made out : *Indal Singh Vs. State of M.P., I.L.R. (2012) M.P. 246*

– **Section 376** – Rape – Consenting Party – Appellant alleged to have taken the prosecutrix to his house where several family members including ladies were there who were alleged to have collected there – Prosecutrix did not inform any body and kept quite – House of appellant surrounded by several houses – On the next day she had gone along with niece of appellant for easing herself where she met with several women but did not raise any protest of alleged rape committed by appellant – Prime conduct of prosecutrix proves that she was a consenting party – In cases where prosecutrix remains silent and does not raise any protest/hue and cry despite ample opportunities, she is presumed to be a consenting party unless there are circumstances on record to rebut the said presumption : *Sagar Singh Vs. State of M.P., I.L.R. (2011) M.P. 1335*

– **Section 376** - Rape - Photographs of prosecutrix with the appellant shows that she was in love with the appellant - Prosecutrix remained with the appellant in the room for the whole night but did not raise any hue or cry - Conduct of prosecutrix clearly indicates that nothing was done by the appellant forcefully and therefore she was a consenting party : *Arman Ali Vs. State of M.P., I.L.R. (2012) M.P. 2817*

– **Section 376** – Rape – Promise of marriage – Prosecutrix already married – No divorce taken place therefore, she can not remarry during subsistence of first marriage – She developed physical relations with appellant voluntarily having the knowledge that she being married with some other person could not get marry with appellant – Prosecutrix was consenting party : *Sukhdeo Vs. State of M.P., I.L.R. (2012) M.P. 1345*

– **Section 376** – Rape – Prosecutrix appears to be consenting party as she remained with appellant for about 6 days – Appellant was already acquitted by trial court for offences u/s 363, 366 of IPC – Prosecutrix could have raised hue and cry while she was allegedly kept in a room by appellant – Prosecutrix also suppressed the story of her coming back to her mother house – As per medical documents, prosecutrix must be above 18 years of age – As prosecutrix was consenting party no offence was committed

by appellant – Appeal allowed : *Ramesh @ Dabhu Vs. State of M.P., I.L.R. (2014) M.P. 1355*

9. Custom cannot override the Statute

– **Section 376** - Rape - Prosecutrix was preparing meal when she was uplifted from her house by appellants who were armed with weapons - She was kept in a house which was guarded by appellants and they were sleeping outside the house - Appellant No.1 committed sexual intercourse with her without her consent and wishes - After 20 days she could manage to flee away on the pretext to evacuate - Defence that as per custom prevailing in Bhil community, prosecutrix was purchased from her father but even then he was not permitting to go and live with first appellant cannot be accepted as the said custom cannot override the statute unless and until it is saved in the Statute - If a major girl is sexually intercoursed without her consent and willingness, offence under Section 376 of I.P.C. is made out - Appellants were rightly convicted - Appeal dismissed : *Kunwar Singh Vs. State of M.P., I.L.R. (2013) M.P. *5*

10. Death Sentence/Rarest of Rare Case

– **Section 376, 450 & 302** – Death Sentence – Rarest of rare case – Murder – Rape – Rape and murder of 14 years girl proved – However, death sentence not a Rule but an exception – Existence of aggravating circumstances is must for awarding death sentence – Present case not within category of rarest of rare cases – However, jail sentence of 35 years ordered : *Raj Kumar Vs. State of M.P., I.L.R. (2014) M.P. 1991 (SC)*

– **Section 376(A)/ 302** - Punishment for Rape and Murder - Death Sentence - Held, that appellant being in a position of trust is responsible for having acted in a manner which brings this case in the category of rarest of rare case where the sentence of death is more desirable than any other punishment - Further held that, while awarding the death sentence the court has to apply the 'rarest of rare' test depending upon the perception of the society i.e. a society centric view has to be taken and not a judge centric view - Death Reference answered in affirmative : *In Reference Vs. Kamlesh @ Ghanti, I.L.R. (2013) M.P. 3004 (DB)*

11. Delay Explained

– **Section 376(2)(g)** – Gang Rape – Evidence of prosecutrix corroborated by testimony of mother and two other witnesses who were immediately apprised of the incident – Delay of 26 hours in lodging F.I.R. is explained – Held – A very natural and probable version of the prosecutrix was therefore, rightly accepted by the trial Judge – Appeal dismissed : *Bablu Alias Dilip Vs. State of M.P., I.L.R. (2012) M.P. *54*

12. Delayed FIR

– **Section 376** - F.I.R. - Delay - F.I.R. was lodged after delay of 6 days - Explanation offered by prosecutrix that her father was suffering from epilepsy and her uncle was not available and she had also become ill is plausible - Explanation not challenged by defence in cross-examination also - Delay explained : *Ram Ratan Kewat Vs. State of M.P., I.L.R. (2013) M.P. 1184*

– **Section 376** - Rape - FIR lodged after about 12 hours of the incident - Prosecutrix was subjected to forcible rape or not can not be ascertained merely on the basis of her statement - Conviction of the appellant u/s 376 of I.P.C. deserves to be set aside : *Roop Singh Vs. State of M.P., I.L.R. (2011) M.P. 2582*

– **Section 376** - Rape - Prosecutrix alleged that applicant committed rape while she was travelling in train - Journey ticket not produced - F.I.R. made after more than three years - Accused not named in F.I.R. - No identification parade held - Evidence of the prosecution cannot show that the accused committed the offence - Accused discharged : *Sunder Singh Vs. State of M.P., I.L.R. (2014) M.P. 236*

– **Section 376** – Rape – Prosecutrix is aged about 14 years on the date of incident – Injury marks were found on the body and private parts of prosecutrix – Statement of prosecutrix is reliable – Absence of sperm immaterial – Delay in lodging FIR properly explained – Appeal dismissed : *Rahul Alias Umesh Hada Vs. State of M.P., I.L.R. (2015) M.P. 2176*

– **Section 376**, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (33 of 1989), Section 3(1)(xi) – Incident took place on 14.05.1995 and F.I.R. lodged on 09.06.1995 – Sufficient cause not shown for delay – Prosecutrix, admitted that as her uncle-in-law came on the spot, the appellant fled, she had not informed the police about rape – They were taken by one Gopika for giving report to S.P. – Conviction set aside : *Rajola Yadav Vs. State of M.P., I.L.R. (2014) M.P. 1905*

13. Evidence of Mother reliable

– **Section 376 & 450** - House Trespass & Rape - Mother of the prosecutrix upon information reached the house and saw the house closed from inside - She peeped inside from a hole of door and saw the appellant committing rape on her daughter - On raising alarm the appellant ran away - Contradictions regarding activities and posture are minor and inconsequential - Evidence of mother is worthy of credence even without corroborations from any other independent witness - Conviction upheld : *Shyam Lal Vs. State of M.P., I.L.R. (2011) M.P. 2866*

14. False Implication

– **Section 376** – Rape – False implication – Normally Courts should not discard the evidence of prosecutrix, but the Courts should also bear in mind that in the changed values of our society, false charges of rape also cannot be ruled out : *Ajab Singh Vs. State of M.P., I.L.R. (2011) M.P. *63*

– **Section 376** - Rape - False implication - Prosecutrix was minor and unmarried girl - It can not be presumed that prosecutrix would make a false allegation of rape against the appellant at the cost of her honour and dignity and would risk her future life - Parents of the victim would not concoct a false case against the appellant for the sake of modesty, honour and reputation of their minor daughter of tender age - Appeal dismissed : *Gulab Vs. State of M.P., I.L.R. (2011) M.P. *150*

– **Section 376/511** - Attempt to commit rape - False implication - It is not believable that for wrecking vengeance or compensation any father or mother put into stake chastity and career of their minor daughter : *Manoj Vs. State of M.P., I.L.R. (2011) M.P. 506*

15. Falsus in Uno Falsus in Omibus

– **Section 376 & 450**, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (33 of 1989), Section 3(1)(xi)(xii) – Rape – Dehati Nalishi was recorded at the house of Pradhan, in which factum of rape was not disclosed by prosecutrix – Medical examination after 15 days of the incident – Prosecutrix version was not in consonance with her earliest version – Maxim “falsus in uno falsus in omibus” not applicable in India – Held – Offence of outraging modesty of prosecutrix established – Accordingly conviction under section 450 converted into 454 – Appeal partly allowed – Conviction under Section 376 read with section 3(i)(xii) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 set aside, conviction under section 3(i)(xi) maintained : *Betu Vs. State of M.P., I.L.R. (2012) M.P. 1290*

16. Gang Rape

– **Section 376(2)(g)** - Gang Rape - Appellant No.2 entered inside the house of the prosecutrix while she was alone in the house - Appellant No.1 who had come along with appellant No.2 remained outside the house - It cannot be deemed that appellant No.1 had come with appellant No.2 with intention to commit rape on the prosecutrix or he had committed any act in furtherance of their common intention to commit rape - Appellant No.1 acquitted - Conviction of appellant No.2 altered to 376(1) of I.P.C. : *Ram Ratan Kewat Vs. State of M.P., I.L.R. (2013) M.P. 1184*

– **Section 376(2)(g)** - Gang Rape - Prosecutrix was earning her livelihood by singing and dancing - She was going in a bus along with her uncle and the appellants to perform - Bus was stopped by the appellants in the mid way and the prosecutrix and her uncle were taken to a near tubewell - Appellant No. 2 dragged the uncle of the prosecutrix towards the road and appellant No.1 committed rape on the prosecutrix - It cannot be said that both the accused shared common intention - Appellant No.2 acquitted and appellant No.1 convicted under Section 376 of I.P.C. : *Rajmal Vs. State of M.P., I.L.R. (2013) M.P. 433*

– **Section 376 (2)(g)** – Gang Rape – Where a woman is raped by one or more in a group of persons acting in furtherance of their common intention, each of the persons shall be deemed to have committed gang rape : *Ramesh Vs. State of M.P., I.L.R. (2011) M.P. *87 (SC)*

17. Investigation by Inspector

– **Section 376**, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (33 of 1989), Section 3(1)(xi) – Caste – Caste certificate not produced – Statement of prosecutrix itself is not sufficient to establish that she belongs to Scheduled Tribe community – As per Rule 7 of the Rules 1995 investigation should have been made by a police officer not below the rank of Dy.S.P. – Whereas investigation was done by Inspector – Appeal allowed : *Rajola Yadav Vs. State of M.P., I.L.R. (2014) M.P. 1905*

18. Medical Examination/Evidence

– **Section 376** - Non- Examination of Doctor -Non-examination of Doctor would not be fatal if the circumstances, the testimony of the prosecutrix inspires confidence and is found to be reliable : *Triloki Vs. State of M.P., I.L.R. (2012) M.P. 1688*

– **Section 376** - Proof of Rape - Prosecutrix giving a complete go-bye to the version, in material particulars, as recorded in the FIR in her evidence recorded in Court - Medical evidence of Doctor not at all supporting the allegations of prosecutrix - Version that the appellant gagged her mouth and forcibly committed rape on her is hardly convincing - Conviction for the offences cannot be sustained : *Ajju @ Afzal Vs. State of M.P., I.L.R. (2013) M.P. 212*

– **Section 376** – Rape – In a case of rape the medico-legal examination has great importance – The story of prosecution is not supported by the medical evidence and prosecution evidence suffers from discrepancies – Further prosecutrix admitted the suggestion that she and her mother had gone to Govt. Advocate’s Office where her police statement was read out – It gives rise to presumption that there is an element of tutoring – Appeal allowed : *Phool Chand Vs. State of M.P., I.L.R. (2015) M.P. 3369 (DB)*

– **Section 376** - Rape - Lack of injury - It is well settled proposition of law that mere lack of injury or sign of struggle on the person of the prosecutrix or absence of any injury on her private parts are not sufficient circumstance to disbelieve the version of the prosecutrix - Where the ocular evidence as well as expert evidence (medical evidence) are available and both are conflicting to each other then in such a situation, the ocular evidence would prevail over the expert evidence : *Chhote alias Surendra Vs. State of M.P., I.L.R. (2013) M.P. 1705*

– **Section 376** – Rape – Medical Evidence – Doctor did not find any external injury – No injuries on private parts were found – Hymen was found intact – According to prosecutrix she had prepared meals when she was with the appellant and all other persons had also taken the meal – There were other persons also – When the statement of prosecutrix does not inspire confidence and it is contrary to the medical evidence, it would be unsafe to convict the appellant for offence under Section 376 of I.P.C. – However, the appellant had caught hold the hand of the prosecutrix and tried to outrage her modesty, appellant is convicted under Section 354 of I.P.C : *Dittu Singh @ Dilip Bhilala Vs. State of M.P., I.L.R. (2015) M.P. 2188*

– **Section 376** – Rape – Medical Evidence – Medical Jurisprudence – Oozing of blood from hymen – Necessary – If intercourse happened last 24 hours : *State of M.P. Vs. Keshar Singh, I.L.R. (2015) M.P. 2551 (SC)*

19. Method of Investigation

– **Section 376** – Rape – Method of Investigation – Guidelines should be issued by D.G. Police and Home Department to different authorities as how to deal with rape cases – Certain care has to be taken by Doctor who medically examine the victim of rape and should generally be examined by a female Doctor – Victim should also be provided the help of some psychiatric – Medical report should be prepared expeditiously and Doctor should give his/her opinion with all possible angle e.g. opinion regarding age taking into consideration the number of teeth, secondary sex characters, radiological test etc. – I.O. must ensure that victim should be handled carefully by lady police officer depending upon the availability – Victim should be sent for medical examination at the earliest and her statement should be recorded in presence of her family members – Investigation should be completed at the earliest to avoid bail to the accused on technicalities like u/s 167 of Cr.P.C. and final report be submitted at the earliest – Chief Secretary requested to examine the observations and issue comprehensive guidelines – Appeal dismissed : *Dilip Vs. State of M.P., I.L.R. (2014) M.P. 1465 (SC)*

20. No Penetration

– **Section 376(2)(F)**, Protection of Children from Sexual Offences Act, (32 of 2012), Section 4 – No mention of penetration of any part of appellant's body in the Vagina of prosecutrix either in F.I.R. or in police statement – Evidence in Court that the appellant was inserting his finger not trustworthy – No offence under Section 376(2)(f) of I.P.C. or under Section 4 of Act, 2012 made out : *Chaitu Singh Gond Vs. State of M.P., I.L.R. (2015) M.P. 1343 (DB)*

– **Section 376/511** - Attempt to commit rape - No External or Internal injury was found - Hymen was found intact - Appellant did not remove his underwear before lying upon the prosecutrix - It cannot be said that he attempted to commit the rape : *Lal Singh Gond Vs. State of M.P., I.L.R. (2012) M.P. 2510*

– **Section 376/511** - Attempt to commit rape - No injury was found - Hymen was found intact - Prosecutrix did not raise any hue and cry when her undergarments were removed though the place of incident was very much near to the public road - There was nobody to stop the appellant from committing the intercourse if he had intended to do so - As no penetration was found therefore, his overt act does not fall within the purview of attempt to commit rape : *Vinod @ Arvind Vs. State of M.P., I.L.R. (2012) M.P. 2827*

– **Section 376/511** - Attempt to commit rape - Prosecutrix did not state that appellant tried to penetrate his male organ - Merely removal of underwear and laying down on prosecutrix would not be sufficient to hold that appellant attempted to commit rape : *Manoj Vs. State of M.P., I.L.R. (2011) M.P. 506*

– **Section 376/511 & 354** - Attempt to commit rape or outraging modesty - Appellant removed underwear of prosecutrix and laid down upon her after removing his underwear - Appellant liable for molesting the modesty of prosecutrix : *Manoj Vs. State of M.P., I.L.R. (2011) M.P. 506*

– **Section 376/511 or 354** - Attempt to commit rape or outrage the modesty of a woman - Difference - Appellant/accused did not put his penis on vagina of prosecutrix and on denial of prosecutrix he performed ejaculation by his own hands - The overt-act of appellant does not come under purview of attempt to commit rape and at the most it comes under the purview of Section 354 : *Lal Singh Vs. State of M.P., I.L.R. (2011) M.P. 524*

21. Prosecution bound to prove Caste of Prosecutrix

– **Section 376**, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (33 of 1989), Section 3(1)(xi) and Evidence Act (1 of 1872), Section 45 - Caste of Prosecutrix - Any documentary evidence - Whether produced or proved on record - No

inference could have been drawn by the trial court to hold the caste of prosecutrix covered under the Act - To hold conviction under the Act the prosecution is bound to prove the caste of the victim covered under the Act as well as of the accused like appellant to invoke the provision of the Act - Conviction and sentence of the appellant set aside : *Chhote alias Surendra Vs. State of M.P., I.L.R. (2013) M.P. 1705*

22. Sole Evidence of Prosecutrix

– **Section 376** – Prosecutrix – Conviction can be based for commission of offence on the sole evidence of prosecutrix – However, evidence of prosecutrix has to be scrutinized carefully : *Dittu Singh @ Dilip Bhilala Vs. State of M.P., I.L.R. (2015) M.P. 2188*

– **Section 376** - Rape - Prosecutrix aged about 12-13 years was raped by the appellant when she was alone in the jungle - Medical evidence confirms the allegation of rape - She narrated the incident to her parents immediately after coming back to her house and her cloths were also stained with blood - Testimony of the prosecutrix alone is sufficient provided it should inspire full confidence - Evidence of prosecutrix also finds corroboration with medical evidence - Appeal dismissed : *Puran Bunkar Vs. State of M.P., I.L.R. (2012) M.P. 2219*

– **Section 376**, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (33 of 1989), Section 3(2)(v) and Evidence Act (1 of 1872), Section 3 - Rape - Conviction on basis of sole testimony of Prosecutrix - In the afternoon prosecutrix was coming from the village hand-pump after fetching drinking water, appellant stopped her on a pretext and then dragged her to nearby agriculture field and ravished her - Held - No ditch or culvert in the place of alleged incident - Prosecutrix is a young married woman of grown up years - Nothing on record to suggest that she was incapable of offering any resistance - No mark of violence or injury was found on her body, which was more likely to be found - Earthen pitcher which the prosecutrix was carrying was found intact - Version of rape in broad day light near a thoroughfare seems to be highly improbable and raises serious doubts - Hazardous to base the conviction of appellant on the sole testimony of the prosecutrix - Prosecution has failed to bring home the guilt of the accused beyond reasonable doubt - Appeal allowed : *Sohan Singh Vs. State of M.P., I.L.R. (2012) M.P. 1995 (DB)*

– **Section 376(1), 341 & 506 Part-II** – Sole testimony of prosecutrix – Rape at 10 a.m. on a busy culvert – No external injuries on body of prosecutrix – Pregnancy of seven months – Major discrepancies in evidence of the prosecutrix – Held – Testimony of prosecutrix is wholly unreliable – Appeal allowed – Accused acquitted : *Gopal Vs. State of M.P., I.L.R. (2015) M.P. 1338*

– **Section 376(2)(f)** - Rape - Statement of prosecutrix alone has to be considered and no corroboration is needed provided her statement inspires full confidence - A perverted man who has higher degree of lust and lascivious attitude and who did not even spare his own daughter - If leniency is given would amount to throttle the law - Sentence of life imprisonment rightly awarded by trial court : *Anand Vs. State of M.P., I.L.R. (2013) M.P. 668 (DB)*

23. Statement of Prosecutrix

– **Section 376** – Rape – Proof – Previous seven statements of prosecutrix, at different point of time make the story of prosecution less reliable – Statement of the prosecutrix does not inspire the confidence and she is not a witness worthy of credence – No conviction can be based on her such testimony – Conviction set aside : *Shafat Vs. State of M.P., I.L.R. (2012) M.P. 201*

24. Testimony of Prosecutrix

– **Section 376(2)(g)** - Gang Rape - Rape allegedly committed by Devar and co-accused - Prosecutrix alleged that she had received number of injuries, but the Doctor did not find any injury - Further no such allegation was made in police statement - Prosecutrix was earlier expelled from community on the allegation of illicit relationship with Chowkidar - Testimony of prosecutrix do not inspire confidence - Appeal allowed : *Puran Singh Vs. State of M.P., I.L.R. (2012) M.P. 1950*

25. Miscellaneous

– **Section 376** - Rape - Appellant undressed the prosecutrix and lay down over her - Prosecutrix in her examination in chief stated specifically that the appellant could not do anything because at that juncture, the witnesses reached to the spot and on seeing them, the appellant fled away - Appellant guilty of committing offence punishable under Section 376/511 of I.P.C. - Appeal partly allowed : *Santosh Kumar Vishwakarma Vs. State of M.P., I.L.R. (2012) M.P. 2481*

– **Section 376** - Rape - Consent - Prosecutrix was suffering 60% mental retardedness - It can safely be gathered that prosecutrix had no sense of discretion to give her consent or to express her opposition as well : *Shyam Lal Vs. State of M.P., I.L.R. (2011) M.P. 2866*

– **Section 376** - Rape - Prosecutrix used to call the appellant as Jijaji - Appellant committed rape in his house after the wife of the appellant had gone to evacuate - Evidence of prosecutrix is corroborated by medical evidence - Appeal dismissed : *Lakhan Singh Vs. State of M.P., I.L.R. (2012) M.P. *99*

– **Section 376** – See – Evidence Act, 1872, Section 3 : *State of M.P. Vs. Keshar Singh, I.L.R. (2015) M.P. 2551 (SC)*

• – **Section 379** – Theft – Animus Furandi – In absence of animus furandi and circumstances indicating that taking of movable property is in assertion of bonafide claim of right, though it may amount to civil injury, but does not fall within mischief of the offence of theft : *Gurudayal Vs. Indal, I.L.R. (2015) M.P. 2254*

– **Section 379** – Theft of Crop – Complainant must satisfactorily prove that he has sown and raised crop on the land recorded in his name and accused fails to show that he has any genuine counter claim or possession of land or that he grew the crop, and if cutting and removal of crop is proved then he can be convicted : *Gurudayal Vs. Indal, I.L.R. (2015) M.P. 2254*

– **Section 379** – Theft of Crop – Demarcation report shows that complainant party had encroached upon the land of respondents – There is dispute between the parties with regard to demarcation and physical possession – Since dispute is a civil dispute, no case of theft made out : *Gurudayal Vs. Indal, I.L.R. (2015) M.P. 2254*

– **Section 379** - Theft - Recovery of stolen currency from alleged place not proved - Entry of arrival and returning, description of work done neither produced nor exhibited - Co-accused acquitted on the basis of same evidence - Findings against principle of parity - Revision allowed - Applicant acquitted from charge : *Ramcharan Vs. State of M.P., I.L.R. (2012) M.P. 2575*

– **Section 379, 411, 120-B & 201** - Police Head Constable seized 29.851 kg. of silver from possession of the respondent - After investigation challan was filed - Judicial Magistrate First Class finding respondent not guilty for any offence, acquitted him - Property seized from the respondent, was also directed to be released in favour of the respondent - However, during this period the property was misappropriated by the police officials - Held - The property was seized on behalf of the State by its employee and property was mis-appropriated by its employee - The State is liable to return the property, after the decision of the case - Single Judge rightly directed to return the seized property or its value as on date - Writ appeal dismissed : *State of M.P. Vs. Motilal, I.L.R. (2012) M.P. 2331 (DB)*

– **Section 392 & 392/397** - Complainant while riding his Motorcycle was going towards the bus stand from residence - He was anticipated with a blow of stick by the respondent - Complainant sustained injuries on his back and fell down with his motor cycle - Respondent by showing the knife took out purse from his pocket - Held - Respondent is guilty of offence under Section 392 of IPC - Offence under Section 397 is not made out - Appeal allowed in part : *State of M.P. Vs. Mukesh, I.L.R. (2012) M.P. 1676*

– **Section 392, 394, 397 & 323** – Complainant alongwith two more persons was coming on a motor cycle and due to lathi blow given by miscreants they lost balance and fell down and suffered injuries – Mobile phone, wrist watch and cash was taken away – Accused persons were not identified in dock, no TIP was held during investigation – Seizure witnesses turned hostile – I.O. could not state that on what basis he arrested the accused persons as they were unknown to complainant – No offence made out – Appeal allowed : *Jairam Vs. State of M.P., I.L.R. (2015) M.P. 2179*

– **Section 392, 397 & 412**, Dakaiti Aur Vyapharan Prabhavit Ksheshtra Adhinyam, M.P. (36 of 1981), Section 11/13 — Disclosure statement of accused and huge recoveries from him at his instance on that very day – Itself is a sufficient circumstance to show that the accused-appellant has committed the offence of robbery : *Pushendra Vs. State of M.P., I.L.R. (2011) M.P. *100*

– **Section 394, 420, 467, 468, 471 & 506B** - See - Criminal Procedure Code, 1973, Section 482 : *Santosh Gaharwar Vs. State of M.P., I.L.R. (2012) M.P. 2300*

– **Section 395** – Dacoity – Incident took place in the early part of night – In F.I.R., the first informant had expressed suspicion upon her brother-in-law and her son – If the victims had identified the assailants then would have known that culprits were not her brother in law and her son – Suspicion expressed in F.I.R. indicates that none of the witness could identify the assailants : *Gope Singh @ Gope Vs. State of M.P., I.L.R. (2015) M.P. 1521*

– **Section 395 & 307** – Dacoity – Evidence – Identification of accused at the time of Identification parade as also in court found to be reliable at the instance of injured witness – Recovery of cash is also taken place from accused persons – MLC report, FSL report supports the prosecution case – There is seizure of fire arm – PW 2 & PW 3 fully supported the prosecution case – Held – Accused persons have rightly been convicted – However, sentence is reduced from life to R.I. 10 years : *Abid Khan Vs. State of M.P., I.L.R. (2015) M.P. 427 (DB)*

– **Section 402** - Assembly for the purpose of committing dacoity - Seized weapons not produced - Police officer who conducted the raid, prepared the seizure memo and lodged F.I.R. himself investigated the matter - Acquittal of appellants under Section 399 and conviction under Section 402 of I.P.C. is self contradictory - Appeal allowed : *Jitendra Soni Vs. State of M.P., I.L.R. (2012) M.P. 2549*

– **Section 403, 405, 415 & 425** - Civil Nature - If allegations in the complaint are taken on their face value, discloses a criminal offence, complaint cannot be quashed merely because it relates to a commercial transaction or breach of contract for which civil

remedy is available or has been availed - Commercial transaction may also involve a criminal offence : *Avdhesh Raghuvanshi Vs. State of M.P., I.L.R. (2013) M.P. 1227*

– **Section 403, 406, 418 & 420/34** - Cheating - Civil dispute - Contract to applicant for National Highway Section II Project by National Highway Authority of India - Respondent was persuaded by applicant to take part of project as a sub-contractor, whereas sub-contractor was not approved by NHAI - Applicant also violated terms and conditions of contract entered into with respondent - Held - Respondent was aware of fact that he was not fully approved sub-contractor by NHAI - Subsequently NHAI approved respondent as sub-contractor - Normally breach of trust/cheating is essentially a civil dispute unless it shows the intention of applicant to cheat from very inception - Dispute is a case of simple breach of contract and the same has already been referred to the Arbitrator - Order taking cognizance against applicants quashed - Petition allowed : *Ssangyong Engineering & Construction Co. Ltd. Vs. M/s. Yograj Infrastructure Ltd., I.L.R. (2011) M.P. 312*

– **Section 403, 409 & 120-B**, Prevention of Corruption Act (49 of 1988), Section 13(1)(c),(d) read with 13(2) – Criminal breach of trust and Corruption – Truck carrying 150 bags of cement illegally – Charge of Godown in which the cement was used to be kept, was already handed over by the appellant and as per stock register, no shortage of cement was found – Since, there was no shortage of cement therefore, merely because of seizure of cement of particular marka which was being used in Tillar Project, it cannot be held that the seized cement was of the said project – Appeal allowed : *Bhagwati Prasad Sharma Vs. State of M.P., I.L.R. (2014) M.P. 2242 (DB)*

– **Section 406** – Criminal breach of trust – Machines which were supplied by respondent no. 2 were of lesser capacity – One machine was retained to compel respondent no. 2 to return the advance payment made by Company – Nature of the dispute was purely civil – There was no dishonest intension on the part of the present petitioner to misappropriate the property belonging to respondent no. 2 – No case u/s 406 of IPC is made out from the averment in the FIR – Petitioner is discharged : *Rohit Singhal Vs. State of M.P., I.L.R. (2015) M.P. 1905*

– **Section 406** - See - Criminal Procedure Code, 1973, Section 181 : *Sandeep Sahu Vs. Vijay Sahu, I.L.R. (2012) M.P. 2307*

– **Section 406** – Vicarious liability – Petitioner is CEO/Director of the Company – No vicarious liability can be cast on the petitioner for alleged offence committed by Company – All correspondence were handled by another employee on behalf of company – The contract was also entered into by the Company and not by the petitioner in individual capacity – Therefore listing only the present petitioner as accused and without

arraying the Company and other officers as accused, the vicarious liability cannot be fastened on the present petitioner – Present FIR is an abuse of judicial process – Petitioner is discharged : *Rohit Singhal Vs. State of M.P., I.L.R. (2015) M.P. 1905*

– **Section 406 & 409** - Criminal Breach of Trust - Entrustment - Applicants responsible for payment of the sum sanctioned to the department and the same was given to the entire department - Prima facie it shall be presumed that the applicants were entrusted with the public money : *S.D. Mishra Vs. State of M.P., I.L.R. (2013) M.P. 713*

– **Section 406, 409 & 420**, Criminal Procedure Code, 1973 (2 of 1974), Section 227 – Framing of charge – Complainant entered into an agreement to purchase house with M.P. Housing Board – Complainant paid entire installments – Housing Board was under obligation to execute sale deed in favour of complainant – However, on the basis of affidavit in some Civil Proceedings Housing Board issued NOC in favour of another accused – Held – Housing Board at the best could have executed sale deed in favour of complainant – Complainant had also cancelled the agreement with another accused – Housing Board could not have issued NOC in favour of another accused – Charge rightly framed as NOC was fabricated against Rules and Regulations to extend benefit to another accused – Revision dismissed : *Daulat Singh Vishwakarma Vs. State of M.P., I.L.R. (2014) M.P. 1123*

– **Section 406, 418, 420, 467, 468 & 471/34** - Double Jeopardy - Second trial on similar allegations in the first prosecution - Petitioners were acquitted in the first prosecution - Held - Present prosecution is barred on account of the principle of double jeopardy - Offences u/s 406, 418, 420, 467, 468 & 471/34, I.P.C. are quashed - Petition allowed : *Ashok Mehrotra Vs. State of M.P., I.L.R. (2013) M.P. 3028*

– **Section 406, 420**, Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Quashing of trial proceeding – Applicants, who were the office bearers of the Samiti alleged to have sold the plots – Mortgaged with Municipal Corporation without getting their redemption – Neither any loss was caused to the Municipal Corporation nor to the purchaser – Sale deed were also executed and possession was also handed over to them – Plots were also redeemed subsequently – It was also not shown that the plots were sold in lesser amount – Held – Applicants had no dishonest intention – As they got the plots redeemed subsequently – If a cheating was intended by the applicants, then there must be some unlawful gain to the applicants and some unlawful loss to any one involved in the transaction – Prima facie no offence u/s 420 is made out– Since by the transaction no loss was caused to the Samiti and the plots were obtained by the members of the society by sale – Then prima facie it cannot be said that the applicants committed any misappropriation of the property entrusted to them – No offence of breach of trust is made out – Petition is accepted : *M.L. Gaur Vs. State of M.P., I.L.R. (2014) M.P. 1455*

– **Section 406, 420, 461, 471 & 120-B** – See – Criminal Procedure Code, 1973, Section 482 : *Subodh Kumar Gupta Vs. Smt. Alpana Gupta, I.L.R. (2015) M.P. 2494*

– **Section 408, 420, 467, 468 & 471** - See - Criminal Procedure Code, 1973, First Schedule : *Ramesh Kumar Soni Vs. State of M.P., I.L.R. (2013) M.P. 741 (SC)*

– **Section 409** - Merely non entry of amount in the cash book is per-se not amount to dishonest misappropriation - Appellant was negligent for which D.E. could have been initiated : *Durgan Prasad Ahirwar Vs. State of M.P., I.L.R. (2013) M.P. 2242*

– **Section 409** - Misappropriation of funds - Appellant working as Manager on deputation for a short time of four months - No cash/cheque was entrusted to him nor he misappropriated the cash property - Accused No. 2 who had received the money did not make entry about of payment received and about transaction in stock register, thereby causing wrongful gain to himself and loss to society - If some body on whom one relies commits theft, he can not be held criminally liable for the other - Appellant/accused No. 1 entitled for acquittal : *Ram Babu Sharma Vs. State of M.P., I.L.R. (2011) M.P. *129*

– **Section 409** - Prosecution has not produced the original vouchers - Has also not led secondary evidence - If all original vouchers have been produced, appellant could have probablise his defence - P.W. 6 was previously prosecuted by this appellant - Who having enmity with appellant therefore possibility of falsely implicating the appellant can not be ruled out : *Durgan Prasad Ahirwar Vs. State of M.P., I.L.R. (2013) M.P. 2242*

– **Section 409, 418 & 420/34** - Civil Nature - Same transaction relating to breach of contract, can give rise to civil as well as criminal liability - Magistrate rightly did not discharge the petitioners : *Duncans Industries Ltd. Vs. Jai Ramdas Panjwani, I.L.R. (2013) M.P. 1483*

– **Section 409, 420 & 120-B** – See – Criminal Procedure Code, 1973, Section 439 : *Vipin Goel Vs. State of M.P., I.L.R. (2015) M.P. 1916 (DB)*

– **Section 409, 420, 467 & 471** - Cheating - Respondent was alleged to have withdrawn the amount by forging the signatures of complainant - Evidence of Bank Manager and Handwriting Expert shows that the signature of complainant on the cheque do tally with her admitted signatures - Evidentiary value of testimony of Bank Manager is having high credential value since he must be tallying and comparing thousands of signatures on the withdrawal forms - Revision dismissed : *State of M.P. Vs. Narayan Singh, I.L.R. (2013) M.P. 946 (DB)*

– **Section 409 & 467**, Cooperative Societies Act, M.P. 1960 (17 of 1961), Section 55(2) – Guilt to be proved by prosecution – With the help of evidence – Circumstances must conclude wrongful gain to himself and wrongful loss to another to prove

misappropriation – Appellate Court does not normally reappreciate the evidence, unless finding of Court below vitiated by an error of law of procedure, misreading of evidence or is perverse – Held – Prosecution did not prove guilt – Acquitted after appreciation of evidence – Revisional Court should not interfere with sub-ordinate court findings unless gross violation of procedure or perversity in reasoning, resulting miscarriage or total failure of justice – Revision dismissed : *District Co-operative Central Bank Isagarh, District Guna (M.P.) Vs. Leeladhan, I.L.R. (2012) M.P. 593*

– **Section 419, 320, 467, 468, 471 & 120-B** – See – Recognised Examination Act, M.P., 1937, Section 4 : *Bal Kumar Kaushik Vs. State of M.P., I.L.R. (2014) M.P. 1673 (DB)*

– **Section 419, 420, 467, 468 & 471** – Cheating – Application for quashment of FIR registered on the basis of forged sale deed – Society allotted a plot in favour of “A” who in his turn sold the same to “B” without obtaining permission of society – Society cancelled the allotment made in favour of “A” and allotted the same to applicant – Respondent no. 5 society admits execution of documents in favour of applicant – It cannot be assumed that the sale deed is forged, unless proved before civil court – Matter purely of civil nature – FIR related to applicant quashed : *Sanjay Kumar Vs. State of M.P., I.L.R. (2015) M.P. 3434*

SYNOPSIS : Section 420

1. **Dispute is of Civil/Criminal Nature**
2. **Prima Facie Case**
3. **Miscellaneous**

1. Dispute is of Civil/Criminal Nature

– **Section 420** – Accusation – Except vague allegations lacking in material particulars, there is nothing in the complaint to constitute the offence of conspiracy – Allegations in the complaint are patently absurd and inherently improbable – Complainant failed to make out a prima facie case – Dispute is of civil nature and the impugned criminal proceeding appears to be frivolous, vexatious and mala fide initiated with the oblique motive – Criminal proceeding against the petitioners is quashed : *LML Limited Vs. Shri Kailash Narain Rai, I.L.R. (2012) M.P. 1471*

– **Section 420** - Cheating - Same set of facts may give rise to both civil and criminal liability - Mens rea is an essential ingredient of offence of cheating - It is necessary to show that the intention to deceive was in existence at the time of making the promise : *Namrata Chopra (Mrs.) Vs. Mr. Ashfaq Ahmad Qureshi, I.L.R. (2012) M.P. 1766*

– **Section 420** - Complaint reveals that the allegations are of civil nature and do not prima facie disclose the commission of criminal offence of cheating - Hence mere use of expression "Cheating" in the complaint is of no consequence : *Balwant Singh Tomar @ Balwanta Vs. Tigmanshu Dhulia, I.L.R. (2013) M.P. 967*

2. Prima Facie Case

– **Section 420** – Cheating – Applicant Bank was to enter into negotiation with lending Bank to resort to one time settlement on behalf of defaulter respondents No. 3 & 4 – Applicant Bank was entitled to succession fees– The OTS amount was payable either by respondents No. 3 & 4 or by applicant Bank on behalf of respondents No. 3 & 4 and NPA account was to be closed – Position of applicant Bank was of agent – Applicant Bank did not secure the interest of respondents No. 3 & 4 even after changing succession fees and got the entire debts transferred to applicant Bank – It can not be said that no offence is made out : *Kewin B. Ajit Vs. State of M.P., I.L.R. (2012) M.P. 661*

– **Section 420** – Cheating – Applicant entered into agreement to sell land by pretending himself to be the owner and received advance money – In fact father of applicant was the owner of land – Prima-facie case of cheating made out – Charge u/s 420 of I.P.C. rightly framed : *Sheikh Ismail Vs. State of M.P., I.L.R. (2015) M.P. 789*

– **Section 420** - Cheating - Company was extended benefit of ICD by MPSIDC without obtaining adequate security for repayment thereof - No resolution was passed by Board of Directors of Company for securing financial assistance in the form of ICD - Company was facing financial crisis and ultimately winded up - Held - Suppression of material facts as to adverse financial status of Company of which petitioner was Managing Director for securing loan by way of ICDs prima facie amount to cheating : *Rahis Ahmed Vs. State of M.P., I.L.R. (2011) M.P. *128 (DB)*

– **Section 420** - Cheating - Complaint filed alleging that applicant fraudulently obtained the consent of respondent No. 1 for marriage by representing that daughter of applicant was first class graduate in science and topper in M.Sc. and employed as teacher, whereas she was schizophrenic and not a post graduate and unemployed - Marksheets disclose that the daughter of the applicant has secured first division in graduation and is a post graduate - It was not possible to presume that the applicant had made any misrepresentation as to educational qualification or employment status - No legal evidence to establish prima facie that daughter of applicant is suffering from schizophrenia - Petition allowed - Proceedings quashed : *Amitabh Shukla Vs. Nath Narayan Mishra, I.L.R. (2013) M.P. 514*

– **Section 420 & 120-B** - Cheating - Complaint was filed on the allegation that the Excise contract was awarded on the basis of partnership deed dated 05.03.2002 in which the complainant was also a party and has invested huge amount but subsequently, the partnership deed dated 05.03.2002 was replaced by forged deed dated 06.03.2003 - Addl. Excise Commissioner and Dy. Commissioner of Excise gave a finding that partnership deed was replaced and appellant being head of District Excise Office is indirectly responsible - C.J.M. after considering the evidence and the departmental reports registered the case - Held - For taking cognizance or issuing process in a complaint case, the court must have merely a prima facie satisfaction that there is some material on record to proceed - Order issuing process not liable to be interfered with - Appeal dismissed : *Vinod Raghuvanshi Vs. Ajay Arora, I.L.R. (2013) M.P. 2298 (SC)*

– **Section 420** – Cheating – Post dated cheques were given for periodical repayment – It is expected from borrower that he will keep amount of installments available in Bank – Applicant instead of submitting post dated cheques periodically, retained the same and presented the bundle of post dated cheques in one day – Borrower is not expected to have huge amount in his account which is 5-10 times larger than his installments – Such act of applicant Bank was to create a situation where a borrower becomes a defaulter and thereby his assets can be auctioned – It can not be said that no prima facie offence is made out : *Kewin B. Ajit Vs. State of M.P., I.L.R. (2012) M.P. 661*

– **Section 420, 467 & 468**, Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Forged Caste Certificate – State Level Schedule Caste Certificate Scrutiny Committee after scrutinizing the caste certificate of applicant held caste certificate produced by applicant before M.P.P.S.C. for obtaining service is illegal – As caste certificate was fabricated by practicing fraud in the shape of valuable security with dishonest intention to obtain Govt. service prima facie case made out : *Usha Ajay Singh (Smt.) Vs. Shri J.L. Mishra, I.L.R. (2015) M.P. 260*

– **Section 420** – Quashing of charge – There is sufficient evidence against the applicant to show the prima facie ingredients of the alleged offence defined u/s 415 and made punishable u/s 420 of IPC – Held – At the stage of framing the charge the court has to consider only the prima facie circumstances and the same is available in the matter – Impugned order is hereby affirmed : *Rajendra Agrawal Vs. Smt. Suman Agrawal, I.L.R. (2014) M.P. 1432*

3. Miscellaneous

– **Section 420** - Cheating - Complaint was filed alleging that applicants by deceiving into a belief, that the land forming subject matter of agreement to sell executed by them was free from all encumbrances knowing fully well that the land being

earmarked as parking space for a club constructed by their brothers - Relations of applicants with their brothers were not cordial - Applicants are residents of Bombay and Pune - No material to infer knowledge that the land proposed to be sold had already been reserved for parking purpose - Not possible to hold that applicants had intention to deceive complainants : *Namrata Chopra (Mrs.) Vs. Mr. Ashfaq Ahmad Qureshi, I.L.R. (2012) M.P. 1766*

– **Section 420** - Cheating - Concealment of first subsisting marriage - Applicant No.1 got married with respondent No.2 by concealing the fact that his 1st marriage is still subsisting - Offence under Section 420 I.P.C. made out : *Praveen Choube (Dr.) Vs. State of M.P., I.L.R. (2011) M.P. 3214*

– **Section 420** – Cheating – Petitioner is a Managing Director of a Company which is engaged in sale of automobiles – Complainant purchased a vehicle and subsequently came to know that the engine number mentioned in the invoice and engine fitted in the vehicle are different – During transit vehicle had met with accident and therefore, engine was changed – Held – Allegations against applicant in the capacity of Managing Director are vague – It is essential to make requisite allegation to constitute the vicarious liability – Allegations have been made against Company, but Company has not been arrayed as accused – No proceeding can be initiated against Company as it has not been arrayed as party – Appeal allowed : *Sharad Kumar Sanghi Vs. Sangita Rane, I.L.R. (2015) M.P. 1637 (SC)*

– **Section 420** - No dishonest intention of the applicant at the time of entering into an agreement with the applicant - Mere fact that he could not keep his promise later on it cannot be presumed that he all along had a culpable intention to break the promise from the beginning - Private complaint filed by the respondent u/s 420 of the IPC quashed : *Sharif Hussain Raja Vs. Pratap Singh Pawar, I.L.R. (2013) M.P. 719*

– **Section 420** – See – Criminal Procedure Code, 1973, Section 482 : *Ashfaq Ahmed Qureshi Vs. Namrata Chopra, I.L.R. (2015) M.P. 537 (SC)*

– **Section 420** - See - Criminal Procedure Code, 1973, Section 482 & 200 : *Indu Kabra (Smt.) Vs. Elixir Infrastructure, I.L.R. (2012) M.P. 1758*

– **Section 420**, Stamp Act (2 of 1899), Section 35 - Partnership deed - Insufficiently Stamped - In a complaint for offence punishable under Section 420 of I.P.C., the Trial Court has no authority to refuse to take such documents in evidence by holding the same to be inadmissible on the ground of lack of requisite stamp duty as per the provisions of Stamp Act : *Dharmendra Bhura Vs. State of M.P., I.L.R. (2013) M.P.*

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– **Section 420, 120-B & 411** – Cheating – Amount transferred to the accounts of applicants No. 1 to 4 – Nothing on record that they had ever met with other co-accused persons – However, they are in possession of stolen property – Discharged for offence u/s 420, 120B, but charge u/s 411 affirmed : *Rabia Ahmed Khan (Smt.) Vs. State of M.P., I.L.R. (2014) M.P. 1388*

– **Section 420, 120-B & 411**, Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Cheating – Quashing – Amount of Rs. 50 crores was mis-appropriated and was deposited in one fictitious account – Several drafts were prepared in the names of different persons out of the amount of Rs. 50 Crores – Amount so deposited in the account of applicant No. 5 was withdrawn by him – Strong prima facie evidence of his involvement in conspiracy with other co-accused persons – Charges u/s 420/120B, 411 of I.P.C. rightly framed : *Rabia Ahmed Khan (Smt.) Vs. State of M.P., I.L.R. (2014) M.P. 1388*

– **Section 420, 406, 409, 467 & 468** – See – Criminal Procedure Code, 1973, Section 482 : *Aditya Singh Sengar Vs. State of M.P., I.L.R. (2015) M.P. *1*

– **Section 420, 467, 406, 468 & 471/34**, Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Quashment of charge-sheet and proceedings – Compromise – Commercial transaction between complainant and Company – Complainant has filed an application that outstanding issues between her and Company have been resolved and does not want any further action – No useful purpose would be served in pursuing such prosecution – Proceedings quashed : *Umang Choudhary Vs. State of M.P., I.L.R. (2015) M.P. 2285*

– **Section 420, 467, 468 & 471**, Criminal Procedure Code, 1973 (2 of 1974), Section 397 – Revision – Matters related to forgery of sale deed and order of mutation which cannot be decided without proper evidence – FIR shows commission of cognizable offences – No interference is called for in the order of framing of charge – Revision dismissed : *Fayyaz Ahmad Vs. State of M.P., I.L.R. (2015) M.P. 3425*

– **Section 420, 467, 468 & 471** – Cheating – Society sold Plot No. 344 – It is alleged that the applicant/purchaser made interpolation in the sale deed and added Plot No. 344-A however, no such plot is in existence as per lay out – Applicant is also alleged to have taken possession of Plot No. 345 – Applicant could not produce original documents in respect of Plot Nos. 344, 344-A before the police when matter was being investigated in compliance of order u/s 156(3) of Cr.P.C. – Allegations are required to be enquired upon – Application u/s 482 for quashing the proceedings dismissed : *Anil Kumar Chouhan @ Anil Singh Chouhan Vs. State of M.P., I.L.R. (2015) M.P. 3105*

– **Section 420, 467, 468 & 471** – Sessions Trial – Amendment of first schedule of Criminal Procedure Code by Criminal Procedure Code (MP Amendment) Act, 2007 – Applicant submitted forged marks-sheet regarding his date of birth to secure employment in the army – Charge-sheet filed on 12.12.07 – The amendment came into force on 22.02.2008 – Charge-sheet was filed prior to coming in operation of the Amendment Act – The procedural law is retrospective – No statement of prosecution witness could be recorded till 28.07.14 when the JMFC chooses to commit the case to the Court of Sessions – Therefore, the trial of the case is covered by amendment introduced by the new Act – JMFC has rightly committed the case to the Court of Sessions : *Ajay Vs. State of M.P., I.L.R. (2015) M.P. 1912*

– **Section 420, 467, 468, 471 & 120-B** – See – Criminal Procedure Code, 1973, Section 439 : *Sudhir Sharma Vs. State of M.P., I.L.R. (2015) M.P. 1600 (DB)*

– **Section 420, 467, 468, 471, 120-B & 34** – See – Constitution – Article 226 : *Avinash Dubey Vs. State of M.P., I.L.R. (2014) M.P. 2507 (DB)*

– **Section 420, 467, 468, 471 & 472** - Cheating - False Caste Certificate - Only allegation against the applicant is with respect to obtaining false certificate concerning his caste - As per the law laid down by Apex Court, such matter is to be inquired into by Caste Scrutiny Committee / State Level Committee constituting in each State - Proceedings concerning Crime No.261/2010 registered against the applicant deserve to be quashed : *Malkit Singh Vs. State of M.P., I.L.R. (2011) M.P. 296*

- – **Section 436** - Mischief - Sentence - It is true that the witnesses named in F.I.R. were not examined however, there is other evidence of complainant and his wife - No cross-examination on the vital point that when the complainant came out from the house since it set to fire he saw the appellant standing there - Conviction under Section 436 upheld - However, the incident took place about 12 years back - Looking to the advance age of the appellant no purpose would be served by sending him behind the bars - As appellant has already undergone the jail sentence of 42 days therefore, appellant is released for period already undergone, however, the amount of fine is altered to compensation and same is enhanced to Rs. 30,000/- - Appeal partly allowed : *Kalyan Singh Vs. State of M.P., I.L.R. (2013) M.P. *8*

– **Section 450** – House Trespass – Incident took place in a courtyard – Courtyard was covered from 4 sides from walls and rooms of the house of complainant – It had a gate and no one can enter inside if gate is closed – Place of incident is nothing but a part of house – Appellants No. 1 and 2 are guilty of offence u/s 450 of I.P.C. : *Samar Jeet Singh Vs. State of M.P., I.L.R. (2015) M.P. 187 (DB)*

– **Section 450, 376 & 323** – Rape – No opinion could be given by the Doctor that the prosecutrix had been subjected to rape recently – She did not try to resist the attempt of the appellant – Did not raise any hue and cry – Held – Prosecutrix was a consenting party and it was perhaps when the appellant and prosecutrix were caught red handed, the story of rape had been cooked up – Conviction u/s 450 & 376 set aside – Conviction u/s 323 is affirmed – However, custodial sentence is altered to fine sentence : *Suresh Kumar Vs. State of M.P., I.L.R. (2014) M.P. 1600*

– **Section 450 & 376(1)** – Charges of Section 450 & 376(1) were framed against the appellant – On appreciation of evidence by holding the case of consent the appellant was acquitted from the charge of Section 376(1) of IPC – Was held guilty for the offence u/s 456 of IPC – Held – (1) If the appellant was acquitted from the charges of Section 376(1) & 450 of IPC framed against him then on the basis of same evidence the appellant could not be convicted u/s 456 of IPC (2) Whenever the charge of minor offence is framed against the accused and on appreciation of evidence, if it is found that the appellant has committed some major offence of the same nature for which the charge was not framed then the Court is bound first to amend the charge and thereafter by following the prescribed procedure enumerated u/s 216 and onwards of Cr.P.C. can decide the matter : *Gajraj Singh Vs. State of M.P., I.L.R. (2011) M.P. 1747*

– **Section 451, 294, 323 & 506**, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (33 of 1989), Section 3(1)(x) - Complainant sleeping in a open courtyard of his house when the appellant and other came there and after abusing him with filthy languages gave him a blow of stick on his vest (sic: waist) and also sustained injuries in his both legs and also said 'Godia' and he was also subjected to criminal intimidation for his life - Held - Incident took place in some part of the house hence offence under Section 294, IPC is not sustainable - Initially appellant was not subjected to abuse with the name of his community or was abused with intention to humiliate on account of his community so in such premises conviction of the appellant under Section 3(1)(x) of Atrocities Act is set aside - Conviction under Section 451, 323 & 506 of IPC is affirmed : *Ramesh Vs. State of M.P., I.L.R. (2012) M.P. 2179*

– **Section 457** – Lurking House Trespass – Incident alleged to have taken place at 2 a.m. – First Informant lodged the report at 2:20 a.m. which could not have been lodged under the facts and circumstances of case – In F.I.R. it was mentioned that incident has been witnessed by various persons but no independent witness of the locality was examined – Injured witness could not identify the culprits – Prosecution witnesses could not attribute any motive for breaking open the doors of house – There is enmity between the first informant and appellants – In absence of any motive with appellants to do house breaking and as the evidence of witnesses is not reliable beyond doubt that they

could see or they saw the appellants and in absence of any source of light in the street, none of the appellants can be convicted under Section 457 of I.P.C. – Appeal allowed : *Suresh Kumar Soni Vs. State of M.P., I.L.R. (2015) M.P. 1531*

– **Section 458** - House Breaking/House lurking - Appellant entered in the house from a door less gate and ran away from the same gate - It can not be said that appellant did any house breaking - Similarly it can not be said that appellant took some precaution to conceal his presence during that house trespass - Appellant not guilty of offence under Section 458 but under Section 452 of I.P.C. : *Mukesh Vs. State of M.P., I.L.R. (2012) M.P. 1986*

– **Section 459** – Causing grievous hurt whilst committing lurking house trespass – Assault of causing grievous hurt or attempt to cause death should be done in the course of commission of offence of lurking house trespass or house breaking – If assault has been caused after entering in the house, then provision of Section 459 would not be applicable – As injured were assaulted after entering in the house, no offence under Section 459 of I.P.C. is made out : *Suresh Kumar Soni Vs. State of M.P., I.L.R. (2015) M.P. 1531*

– **Section 459** - House breaking - Assault is done after completion of house breaking - Offence u/s 459 can not be constituted - Offence u/s 458 of IPC is made out : *Basant Kumar Bhargava Vs. State of M.P., I.L.R. (2013) M.P. 468*

– **Section 459, 323, 324, 326 & 325**, Criminal Procedure Code, 1973 (2 of 1974), Section 222 – Lesser Offence – Offence under Section 323 & 324 cannot be considered as an inferior offence of same nature relating to charge under Section 459 of I.P.C. – Charges under Section 323, 324 of I.P.C. should have been separately framed : *Suresh Kumar Soni Vs. State of M.P., I.L.R. (2015) M.P. 1531*

– **Section 467**, Prevention of Corruption Act (49 of 1988), Section 13(2) - To constitute offence under Section 467, two things are required firstly accused must have forged a document and secondly document must be one of class specified in this section - First appellant can not be convicted in absence of any evidence under Section 409 & 467 of IPC - When certainly two other appellants can not be convicted under section 409/120B as story based on first appellant - Therefore, all the three appellants can not be convicted under Section 13(2) also - Prosecution not proved criminal misconduct against any of the appellants - Order set-aside - Appellants are acquitted from all charges : *O.P. Dixit Vs. State of M.P., I.L.R. (2012) M.P. *90 (DB)*

– **Section 467, 409, 120B & 409** - Ingredients stated (i) accused must be public servant, (ii) must have been entrusted, in such capacity with property (iii) must have

committed breach of trust in respect of such property : *O.P. Dixit Vs. State of M.P., I.L.R. (2012) M.P. *90 (DB)*

– **Section 467 & 468**, Criminal Procedure Code, 1973 (2 of 1974), Section 228 – Framing of Charge – No allegation that any document was forged or fabricated – No charge u/s 467, 468, I.P.C. can be framed : *Sheikh Ismail Vs. State of M.P., I.L.R. (2015) M.P. 789*

– **Section 467 & 468** - See - Criminal Procedure Code, 1973, Section 211 : *Basant Kumar Rawat Vs. State of M.P., I.L.R. (2013) M.P. 950*

– **Section 467, 468 & 471** – See – Criminal Procedure Code, (M.P. Amendment) Act, 2007, Section 4 : *Dilip Kumar Vs. State of M.P., I.L.R. (2015) M.P. 2788*

– **Section 467, 468 & 471** - See - Essential Commodities Act, 1955, Section 3/7 : *Rajeev Kumar Vs. State of M.P., I.L.R. (2012) M.P. 2583*

– **Section 493 & 495**, Criminal Procedure Code, 1973 (2 of 1974), Section 198 – Mandatory – Provisions of Section 198 are mandatory and the word complaint used in Section 198 does not include police report – Cognizance of offence under Section 493,495 can not be taken by a Magistrate on the basis of Police Report : *Mahesh Kumar Dhawan Vs. State of M.P., I.L.R. (2012) M.P. *13*

– **Section 493, 495 & 375** - Concealment of former marriage – Bodily relationship or sexual intercourse by a husband with his second wife falls under Section 493 & 495 and can not be treated as rape as defined under Section 375 of I.P.C. : *Mahesh Kumar Dhawan Vs. State of M.P., I.L.R. (2012) M.P. *13*

– **Section 494** - Bigamy - Second marriage should be proved in accordance with essential religious rites available to the parties - Complainant failed to prove the second marriage - Applicant cannot be convicted : *Santosh Vs. State of M.P., I.L.R. (2013) M.P. 2990*

– **Section 494**, Criminal Procedure Code, 1973 (2 of 1974), Section 182 - Bigamy - Territorial jurisdiction - Offence u/s 494 of I.P.C. can be tried by the Court within whose jurisdiction offence was committed or the offender last resided with his spouse of first marriage or wife of the first marriage has taken up permanent residence after the commission of offence : *Santosh Vs. State of M.P., I.L.R. (2013) M.P. 2990*

– **Section 494 & 498-A** - Second Marriage and Cruelty - No allegation that any offence of cruelty during the alleged performance of second marriage was committed - Both the offences cannot be tried in a common complaint : *Santosh Vs. State of M.P., I.L.R. (2013) M.P. 2990*

– **Section 498** – Procedure – Trial Court initially adopted the procedure prescribed for a warrant case instituted otherwise than on a police report – Recorded evidence of respondent and her witnesses at pre-charge stage – Instead of framing charge only explained particulars of offence and thereafter converted the warrant trial into summons trial – Held – Order explaining particulars of offence set aside – Trial Court directed to frame charge of the offence and afford them an opportunity to further cross examine the respondent and her witnesses : *Lakhpati Prasad Vs. Rajni Gupta, I.L.R. (2012) M.P. 1464*

– **Section 498, 306 & 107**, Evidence Act (1 of 1872), Section 113A & 32(1) - Abetment - Deceased committed suicide by burning herself - Appellant was harassing her for minute things and was also causing marpeet to her - Behaviour of appellant was cruel towards her - Held - Harassment would come within the ambit and sphere of section 107 IPC - As per presumptive clause under section 113A of the Evidence Act - It shall be presumed that the appellant was cruel : *Mohd. Mubeen Vs. State of M.P., I.L.R. (2012) M.P. 2214*

SYNOPSIS : Section 498-A

- | | |
|------------------------------------|--------------------------------|
| 1. Appreciation of Evidence | 2. Cruelty |
| 3. Jurisdiction | 4. Limitation |
| 5. Sentence | 6. Validity of Marriage |
| 7. Miscellaneous | |

1. Appreciation of Evidence

– **Section 498-A & 323**, Criminal Procedure Code, 1973 (2 of 1974), Section 227 & 228 - Discharge - Allegations made in F.I.R. and statements prima facie make out an offence - Neither decree of divorce was in existence nor any proceedings for divorce were pending on the date of incident - Lodging of F.I.R. cannot be said to be by way of counterblast - Revision dismissed : *Tarendra Vs. State of M.P., I.L.R. (2013) M.P. 2476*

– **Section 498-A** - Cruelty - Evidence of complainant not corroborated by her parents - Complainant also did not lodge the F.I.R. within reasonable time - Testimony of complainant cannot be accepted : *Santosh Vs. State of M.P., I.L.R. (2013) M.P. 2990*

– **Section 498-A** – Cruelty – Marriage was declared a nullity on the ground that wife had suppressed her age deliberately – Whether the husband demanded Rs. 5 lacs or not is a question which is to be decided in trial – Delay in lodging F.I.R. may also be explained – However, allegations against the relatives are exaggerated and seems to be not well founded – Continuance of trial against relatives of husbands will certainly be the abuse of process of Court of law – Truthfulness of F.I.R. can not be seen by the Court at

this stage – Continuance of trial against relatives of husband quashed – However, proceedings shall continue against husband : *V.K. Jain Vs. State of M.P., I.L.R. (2012) M.P. 800*

– **Section 498-A** - Cruelty - Material omissions in court statement vis-a-vis police statement - There is also contradiction regarding time of maltreatment - No report was lodged - Despite the alleged cruelty complainant used to return to her matrimonial house forgetting all the alleged incident - Behaviour of the appellant was not so bad that it can be termed as physical and mental cruelty - Held - It must be established that cruelty or harassment to wife was to force her to cause grave bodily injury to herself or to commit suicide or the harassment was to compel her to fulfill illegal demand for dowry - Section 498-A not attracted - No case is made out : *Ram Lal Vs. State of M.P., I.L.R. (2013) M.P. 2955*

– **Section 498-A** - Cruelty - Omnibus and vague allegations were made - No date & time was mentioned that as & when and by whom she was subjected to cruelty - No evidence that any private negotiations had taken place - Delay not explained in FIR - Divorce petition already filed by husband - FIR and subsequent proceedings quashed : *Ravikant Dubey Vs. State of M.P., I.L.R. (2014) M.P. 858*

– **Section 498-A** – Cruelty – Specific allegation that within 2 years of marriage, deceased was subjected to cruelty by appellants for demand of dowry – Though trial Court has not convicted the accused persons under Section 498-A IPC separately but the High Court found them guilty and punished the accused persons under Section 498-A : *Santosh Singh Vs. State of M.P., I.L.R. (2012) M.P. 1339*

– **Section 498-A** - Cruelty - There must be some demand either in terms of cash or in terms of kind for which deceased was subjected to cruelty and harassment : *Ashok Kumar Vs. State of M.P., I.L.R. (2013) M.P. 1971*

– **Section 498-A** - Cruelty - Witnesses have deposed that whenever the deceased resided in her matrimonial house she was subjected to cruelty - Acquittal of appellant under Section 306 would not entitle him for acquittal from 498-A - Appellant guilty of committing offence under Section 498-A - Appeal partly allowed : *Charan Singh Vs. State of M.P., I.L.R. (2012) M.P. 1664*

– **Section 498-A & 306** – Although no charge u/s 498-A is framed but while acquitting u/s 304-B, a person can be convicted u/s 498-A & 306 – Material contradictions with regard to articles allegedly demanded by appellant – No specific article mentioned in FIR – Even according to prosecution witnesses there was no demand of dowry in the last two years of life time of deceased – No offence u/s 498-A or 306 made out – Appeal allowed : *Rajeev Ranjan Vs. State of M.P., I.L.R. (2015) M.P. 2223*

2. Cruelty

– **Section 498-A** - Cruelty - Behaviour of appellant towards deceased was aggressive - Appellant humiliated and assaulted her in front of near relatives - Deceased was also beaten when she tried the appellant to stop his illicit relationship with other ladies - It is proved that the deceased was subjected to cruelty by the appellant within the meaning of Section 498-A : *Ashok Kumar Vs. State of M.P., I.L.R. (2011) M.P. 2532*

– **Section 498-A** - Cruelty - Complainant was married to Imran on 17.12.2003 - In F.I.R. lodged on 18.09.2012, it is alleged that soon after marriage she was being subjected to harassment and cruelty due to non fulfillment of their demand - No whisper by complainant that why she kept mum till lodging of F.I.R. - No complaints were ever made to even near relatives or Panchayat - Allegations of demand of dowry, harassment & beating are inherently improbable - Criminal proceeding quashed : *Kallu Khan Vs. State of M.P., I.L.R. (2013) M.P. 2038*

– **Section 498-A** - Cruelty - Deceased got married with elder brother of appellant - She was subjected to cruelty, harassment and torture on account of demand or in connection of dowry by the appellant and his sister - Deceased died by pouring Kerosene oil on herself - Offence under Section 304-B/34, IPC registered - However, trial Court acquitted the appellant under Section 302, 304B/34 and convicted under Section 498A - Held - After marriage, appellant and his brother living separately hence there was no circumstance to interfere in the family affairs of each other - Hence, offence under Section 498A is not made out - Appeal allowed : *Lalit Kumar Tiwari Vs. State of M.P., I.L.R. (2012) M.P. 1943*

– **Section 498-A** – Cruelty – Deceased was a literate lady and was writing letters to her relatives but she had never complained about unlawful demand and harassment in her letters – Witnesses also never made any complaint to any one in this regard – Respondents were rightly acquitted : *State of M.P. Vs. Dulichandra, I.L.R. (2012) M.P. *34*

– **Section 498-A** – Cruelty – Even if accused cannot be convicted under Section 304B of I.P.C. but this would not rescue them from offences under Section 498A of I.P.C. : *Raju @ Rajesh Avlani Vs. State of M.P., I.L.R. (2011) M.P. *101*

3. Jurisdiction

– **Section 498-A**, Criminal Procedure Code, 1973 (2 of 1974), Section 177 - No offence was committed at Bhopal - Court at Bhopal has no jurisdiction : *Amitesh Tyagi Vs. State of M.P., I.L.R. (2014) M.P. 280*

4. Limitation

– **Section 498-A**, Criminal Procedure Code, 1973 (2 of 1974), Section 468 - Limitation - Offence u/s 498-A is not an offence of continuous in nature - Respondent went to USA in 2006 and F.I.R. was lodged on 23.01.2010 - Any crime committed prior to 23.01.2007 was barred by limitation - Nothing on record to show that the respondent was beaten at Ohio on 02.09.2006 - Allegations made for offence committed at Ohio cannot be considered as such - Further Divorce was granted by order dated 17.04.2009 - As the respondent did not remain the wife, therefore, if any harassment done by applicants thereafter, then, it cannot be alleged to be an offence u/s 498-A of I.P.C. as that offence is prescribed only to help the wife and not divorced wife : *Amitesh Tyagi Vs. State of M.P., I.L.R. (2014) M.P. 280*

5. Sentence

– **Section 498-A** - Sentence - Appellant has already remained in jail for 56 days - Considering the long pendency and mental agony which the appellant has suffered sentence is reduced to period already undergone by enhancing the fine amount to Rs. 7,500/- : *Charan Singh Vs. State of M.P., I.L.R. (2012) M.P. 1664*

– **Section 498-A** – Sentence – Appellant No. 3, a lady aged about 61 years and also a heart patient – She had already remained in jail for 6-7 days – Her sentence is reduced to period already undergone with fine of Rs. 10,000 – However, sentence of appellant No.2 of two years maintained : *Raju @ Rajesh Avlani Vs. State of M.P., I.L.R. (2011) M.P. *101*

6. Validity of Marriage

– **Section 498-A** – Void Marriage – Applicant alleged to have contracted second marriage during the subsistence of first marriage – Second marriage is null and void – Any allegation of misbehavior or harassment made by second wife would not fall under the provisions of Section 498-A of I.P.C. : *Mahesh Kumar Dhawan Vs. State of M.P., I.L.R. (2012) M.P. *13*

– **Section 498-A** - Husband - Husband would cover a person who enters into marital relationship and under the colour of such proclaimed or feigned status of husband subjects the woman concerned to cruelty or coerce her in any manner or for any of the purposes enumerated in Section 498A of I.P.C. : *Raj Kumar Kanathe Vs. State of M.P., I.L.R. (2012) M.P. 2083*

– **Section 498-A** - Respondent No.2 alleged that the applicant No.1 got married with her after concealing the factum of 1st marriage which is still subsisting - Such marriage could be declared to be void by competent Court in a petition filed in this regard

- As neither of the parties have filed such petition under Hindu Marriage Act therefore, it shall be assumed that alleged marriage of parties is still subsisting and can not be treated as void - Court is not required to decide the validity of alleged marriage at the stage of framing of charge - It can not be said that respondent No.2 being illegally wedded wife, the applicants can not be prosecuted for offence of 498-A of I.P.C. : *Praveen Choube (Dr.) Vs. State of M.P., I.L.R. (2011) M.P. 3214*

– **Section 498-A** – See – Criminal Procedure Code, 1973, Section 320 : *Chanda Bai (Smt.) Vs. State of M.P., I.L.R. (2012) M.P. 1469*

– **Section 498-A** - See - Criminal Procedure Code, 1973, Section 482 : *Dashrath P. Bundela Vs. State of M.P., I.L.R. (2011) M.P. 2923*

– **Section 498-A** – See – Criminal Procedure Code, 1973, Section 482 : *Naveen Vs. State of M.P., I.L.R. (2014) M.P. 3310*

7. Miscellaneous

– **Section 498-A & 34** - See - Criminal Procedure Code, 1973, Section 482 : *Kamal Nayan Singh Vs. State of M.P., I.L.R. (2012) M.P. 2894*

– **Section 498-A, 204 & 506/34** – See – Criminal Procedure Code, 1973, Section 177 & 482 : *Jayesh Tiwari Vs. State of M.P., I.L.R. (2014) M.P. 1652*

– **Section 498-A, 294 & 506/34** – See – Criminal Procedure Code, 1973, Section 482 : *Jitendra Singh Vs. State of M.P., I.L.R. (2014) M.P. 1451*

– **Section 498-A & 306** – See – Criminal Procedure Code, 1973, Section 397 : *Sherish Hardenia Vs. State of M.P., I.L.R. (2014) M.P. 1694 (SC)*

– **Section 498-A & 506** - See - Criminal Procedure Code, 1973, Section 482 : *Gulab Singh Vs. State of M.P., I.L.R. (2014) M.P. 849*

• – **Section 500**, Criminal Procedure Code, 1973 (2 of 1974), Section 482 - Defamatory article - Quashment of proceedings - News item published in news paper that the respondent is behaving in an erratic and uncivilized manner in his bid to project himself as a police wala gunda - Trial of Editor is yet to commence - Inquiry preceding issuance of process did not reflect any prima facie involvement of anyone of the applicants - Order issuing process is set aside - However, nothing shall preclude the Magistrate from proceeding against the applicants under Section 319 of Cr.P.C. if from the evidence adduced during trial of Editor, their complicity in selection and publication of defamatory news item is established : *Rakesh Agrawal Vs. B.S. Jaggi, I.L.R. (2012) M.P. 3105*

– **Section 500** - Defamation - Applicant did not cross examine the complainant's witnesses inspite of opportunities granted to him - Therefore, he cannot argue that their evidence suffered from infirmities - Revisional jurisdiction cannot embark upon re-appreciation of evidence unless the finding of fact is illegal or perverse - Concurrent factual finding that applicant had made defamatory allegations cannot be said to be in any way uncalled for or not based on relevant evidence : *Babu Khan Vs. Abdul Latif Khan, I.L.R. (2013) M.P. 492*

– **Section 500** – Defamation – Respondent filed complaint against applicant before State Bar Council alleging professional misconduct which was dismissed – Applicant filed complaint alleging that respondent has criticized the applicant thereby adversely affecting his practice – Trial Court took cognizance on the ground that respondent had stated that “he will get his black coat off” – Such allegation did not find place in complaint but was stated in evidence – Revisional Court rightly dismissed the complaint on the ground that allegation of taking off the black coat was not alleged in complaint – Application dismissed : *Suresh Chandra Vs. N.C. Jain, I.L.R. (2012) M.P. 282*

– **Section 500** - Defamation - There must be an imputation and such imputation must have been made with an intention of harming, or knowing or having reason to believe that such imputation will harm, the reputation of the person about whom it is made : *Rasiklal Manikchand Vs. Kishore Wadhvani, I.L.R. (2011) M.P. *16*

– **Section 500** - See - Criminal Procedure Code, 1973, Section 179 & 188 : *Rasiklal Manikchand Vs. Kishore Wadhvani, I.L.R. (2011) M.P. *16*

– **Section 505(2)(1)** – See – Criminal Procedure Code, 1973, Section 216 : *Abdul Rashid Vs. State of M.P., I.L.R. (2015) M.P. 3127*

PETROLEUM ACT (30 OF 1934)

– **Section 3** – Allotment of Dealership – In previous writ petition, the Writ Court had quashed the recommendations of the committee and had directed for re-assessment – It was nowhere directed that re-assessment was to be done by a New Committee – Re-assessment done by the same Committee not wrong : *Bharat Petroleum Corporation Ltd. Vs. Laxman Chouhan, I.L.R. (2015) M.P. 571 (DB)*

– **Section 3** – See – Constitution – Article 19(1)(g) : *Saroj Bhatia (Smt.) Vs. Indian Oil Corporation Ltd., I.L.R. (2015) M.P. 98*

– **Section 20** - See - Constitution, Article 226/227 : *Shobha Y. Ingole (Smt.) Vs. Hindustan Petroleum Corporation Ltd., I.L.R. (2012) M.P. 1827*

PETROLEUM RULES, 2002

– **Rules 144 & 149** – See – Constitution – Article 19(1)(g) : *Saroj Bhatia (Smt.) Vs. Indian Oil Corporation Ltd., I.L.R. (2015) M.P. 98*

POLICE EXECUTIVE (GAZETTED) SERVICE RECRUITMENT AND APPEAL RULES, M.P. 2000

– **Rule 4** – Held – The Gazette Rules categorically prescribed three kinds of persons forming the gazetted cadre – This Rule 4 does not contemplate a fourth kind i.e. Inspector, who claims his existence in the gazetted service merely by implication based upon declaration of Inspector as gazetted : *Manoj Verma Vs. State of M.P., I.L.R. (2014) M.P. 2279 (DB)*

POLICE EXECUTIVE (NON-GAZETTED) SERVICE RECRUITMENT RULES, M.P. 1997

– **General/Special Rules** - Ex-Servicemen (Reservation of Vacancies in the State Civil Services and Posts Class III and Class IV) Rules, M.P. 1985 - Rules, 1997 are general whereas Rules, 1985 are special rules introduced with a view to make reservation, age relaxation and equivalence of qualification to Ex-Army Personnel : *Ram Prakash Singh Tomar Vs. State of M.P., I.L.R. (2012) M.P. 2122*

POLICE (GAZETTED) SERVICES RECRUITMENT RULES, M.P. 1987

– **Rule 6(2)**, Police Executive (Gazetted) Service Recruitment and Promotion Rules, M.P. 2000 and Civil Service (General Conditions of Service) Rules, M.P. 1961, Rule 9 - Seniority - Continuous officiation - Promotion Quota - Respondents were promoted on officiating basis on the post of Dy. S.P. - Tribunal directed to take the period of service rendered on officiation before confirmation into consideration for reckoning their seniority - Held - Though the promotees have a right of consideration for confirmation as per Rule 9 of Rules 1961 but at the same time Rule 6(2) of Rules, 1987 which provides 50% quota by promotion should not be breached - Promotees officiating on promoted post in excess of their quota even if adjudged suitable for confirmation will not be entitled for their promotion from the initial date but from the date on which substantive vacancy with their quota occurs - Petition partly allowed : *Mahendra Singh Sikarwar Vs. State of M.P., I.L.R. (2012) M.P. 2736 (DB)*

POLICE REGULATIONS, M.P.

- **Duties of Police** - Misbehaviour, harassment, man-handling - The police force is no more a British police with military attitude - The police force is to be friendly and to protect the people at large in our country, democratic polity where rule of law prevails - The police force considered to be acclaimed disciplined force need to understand the patience and self restraint is part of their duty - They should not harbour notion that there is no one to police the policeman : *Ashok Singh Bhadoriya Vs. State of M.P., I.L.R. (2014) M.P. 388*

- **Clause 70-A** – Promotion – Bravest and Extraordinary Act – Superintendent of Police strongly recommended the case of petitioner for the promotion on account of his brave action as he shot down one dacoit – Recommendation subsequently amended on the instructions of I.G. Police and petitioner was left out and name of another Constable was recommended – Held – Case of petitioner was arbitrarily rejected and is similarly situated with the case of another Constable who was given promotion – Respondents directed to consider the name of petitioner for out of turn promotion : *Bhupendra Singh Tomar Vs. State of M.P., I.L.R. (2012) M.P. 1119*

- **Regulations 10, 12, & 232** – Departmental Enquiry – Appointment of Enquiry Officer – Whether Superintendent of Police is the only authority to appoint the Enquiry Officer to conduct departmental enquiry against the Inspector of Police – Held – No, as per Regulation 10 read with Regulation 12, Inspector General of Police, being a Superior Officer than S.P. is also competent to exercise power of appointing Enquiry Officer to conduct the departmental enquiry : *Ram Swaroop Pandre Vs. State of M.P., I.L.R. (2015) M.P. 2850 (DB)*

- **Regulation 70-A** – Out of Turn Promotion – Such promotion is not a matter of legal right – It is within the discretion of the competent authority to grant or not to grant out of turn promotion : *Suresh Pal Singh Vs. State of M.P., I.L.R. (2012) M.P. 30 (DB)*

- **Regulation 178 (ii)** - Leave - Leave at one time upto four months can be granted without medical certificate : *Munni Singh Chauhan Vs. State of M.P., I.L.R. (2012) M.P. 2108*

- **Regulation 214** - Penalty - Regulation 214 is of a generic nature and therefore, scope, ambit and applicability of Regulation 214 can not be restricted by 226(iv), thereby entitling the competent authority to impose any of 8 penalties specified in Regulation 214 : *Girish Kumar Shukla Vs. State of M.P., I.L.R. (2012) M.P. 1885*

- **Regulation 214 & 226** - Penalty - Charge admitted by petitioner - Gross negligence has been shown by the petitioner and provisions of Regulation 226 (iv) can be

invoked only when minor offence/misconduct is involved - Regulation 226(iv) would not come into play : *Girish Kumar Shukla Vs. State of M.P., I.L.R. (2012) M.P. 1885*

- **Regulation 226** - Penalty of Dismissal - Object of this regulation is not to use weapon of dismissal mechanically and to use it when no other recourse is available - Petitioner was inflicted with minor punishments for unauthorized absence - He was never inflicted with major punishment - After rendering 38 years of service and on receiving 40 awards it was not proper to inflict him the punishment of dismissal from service : *Munni Singh Chauhan Vs. State of M.P., I.L.R. (2012) M.P. 2108*

- **Regulation 270** - Power of Review - ADGP reviewed the punishment order and cancelled the punishment of fine and remitted the matter to I.G. for further review - Regulation 270 does not contemplate such a situation where one reviewing authority may undertake review partially by cancelling the punishment order and then midway transferring to another authority - The power can be exercised by any of the superior authorities - Once a superior authority (ADGP) holds that the punishment is less/minor, no discretion is left to be exercised by IG - Show cause notice is empty formality - However, liberty is reserved to the ADGP/Authority, who has passed order to complete the exercise under regulation 270 - If the said authority deems it fit to continue with the proceedings, he may complete the same within six months from the date of production of certified copy of this order, failing which any action pursuant to order shall stand abated - Petition is allowed : *Suresh Pal Singh Vs. State of M.P., I.L.R. (2012) M.P. 2395*

- **Rule 855** - Surveillance - No material disclosed in the order of Surveillance - Action of putting petitioner under surveillance not in consonance to the provision : *Sanjay Golhani Vs. State Government of M.P., I.L.R. (2011) M.P. 1859*

- **Rule 857** - Surveillance - Duration - Surveillance should be for a shorter duration - However, period not mentioned in the order - Order cannot be allowed to stand : *Sanjay Golhani Vs. State Government of M.P., I.L.R. (2011) M.P. 1859*

POLICY GUIDELINES FOR ALLOTMENT OF DEALERSHIP UNDER KISAN SEVA KENDRA BY INDIAN OIL CORPORATION

- **Criteria for Evaluation** - Minimum qualifying marks for female candidates - Minimum qualifying marks for Open Category Applicant is 60% and for reserved category candidate is 50% - Minimum qualifying marks for female of OP category would be 60% - Held - Treating woman of open category as separate reserved category and reducing minimum eligibility criteria for allotment of dealership to 50% misconceived and erroneous - Matter remitted back : *Raj Kumari Yadav Vs. Indian Oil Corporation Ltd., I.L.R. (2011) M.P. *57*

POSSESSION

- **Co-sharers** - Possession of one co-owner is deemed to be the possession of all co-owners unless ouster is clearly pleaded and proved : *Om Narayan Bohre Vs. Rajendra Prasad Bohre, I.L.R. (2013) M.P. 1953 (DB)*

POWERS OF ATTORNEY ACT (7 OF 1882)

- **Section 1-A** – See – Evidence Act, 1872, Section 120 : *Rajni Tiwari (Smt.) Vs. Smt. Bhagyawati Bai, I.L.R. (2012) M.P. 730*

PRACTICE AND PROCEDURE

- **Order for holding summary enquiry within fixed time limit by High Court**
 – Effect – Does not mean to hold enquiry violating the principle of natural justice – If time lapses, extension may be sought : *Chandrakanta Bai Vs. State of M.P., I.L.R. (2015) M.P. 1657 (DB)*

Practice – Court can permit a person who calls a witness to put question to him which might be put in the cross-examination at any stage of the examination of witness – However, such permission could be given by the Court till the witness is under examination in the witness box and not at later stage : *Gajadhar Prasad Vs. Smt. Shakuntala Mishra, I.L.R. (2015) M.P. 2859*

PRAKOSHTHA SWAMITVA ADHINIYAM, M.P. 2000 (15 OF 2001)

- **Section 22 & 43(2)** – See – Society Registrikaran Adhiniyam, M.P., 1973, Section 2 : *Ansal Welfare Vs. State of M.P., I.L.R. (2014) M.P. 1798*

PRECEDENT

- **Conflict between the decisions** - No conflict between the decisions rendered in the case of Vishwanath Prasad vs. Board of Revenue [1964 MPLJ SN 38] and Mangilal vs. State of M.P. & ors. [1995 RN 67] as the factual matrix on the basis of which the two judgments were rendered was totally different and that the Division Bench in the Case of Mangilal on that count has rightly distinguished the case of Vishwanath Prasad : *Kala Bai (Smt.) Vs. State of M.P., I.L.R. (2011) M.P. 575 (FB)*

- **Contrary View** – If the learned Single Judge was of the view that the judgment passed in a previous case was not correct, it was desirable for him as per the well accepted practice and in view of the law laid down by the judgments to have referred the

matter to Hon'ble the Chief Justice for constitution of Larger Bench instead of observing against a view taken in the previous case, which was having binding precedent : *Jodhraj Vs. Shri Bhuteshwar Mahadev Mandir Trust, Mandsaur, I.L.R. (2012) M.P. 853 (DB)*

– **Earlier Judgment** - Precedent value of an earlier judgment of Division Bench before subsequent Division Bench – Difference of opinion on the point in issue amongst two Division Benches having analogous jurisdiction – Matter referred to larger bench : *State of M.P. Vs. Puran Lal Nihar, I.L.R. (2011) M.P. *118 (DB)*

- **Interpretation** - While interpreting a judgment court should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed - Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases - Hence, blind reliance on a decision is never proper : *Leelawati (Smt.) Vs. Kanhaiyalal, I.L.R. (2011) M.P. *140*

PRE-CONCEPTION AND PRE-NATAL DIAGNOSTIC TECHNIQUES (PROHIBITION OF SEX SELECTION) ACT, (57 OF 1994)

– **Section 3, 18, 23 & 25** – Quashment of proceedings – Report of Tehsildar – Alleged violations and irregularities in the report can be considered by the Magistrate while hearing the complaint filed by the appropriate authority/Collector – Whether Tehsildar while conducting the inspection has authority or not can also be considered by the Magistrate – Whether such complaint is true or baseless can be determined by the Magistrate after the trial – At this stage it cannot be inferred that there is an abuse of law – As such the application is devoid of merit and liable to be dismissed and dismissed accordingly : *Dinesh Agarwal (Dr.) Vs. State of M.P., I.L.R. (2015) M.P. 3438*

– **Section 28** – See – Criminal Procedure Code, 1973, Section 482 : *Manvinder Singh Gill (Dr.) Vs. State of M.P., I.L.R. (2014) M.P. 1176*

– **Section 30** – See – Criminal Procedure Code, 1973, Section 451 & 457 : *Charal Singh (Dr.) Vs. Dr. Sanjay Goyal, I.L.R. (2015) M.P. 1597*

PREPARATION AND REVISION OF MARKET VALUE GUIDELINE RULES (M.P.), 2000

– **Rules 5 & 10** – Non Compliance of ingredients – Even if ingredients of Rule 5 and Rule 10 are not strictly implemented, it will not render the ultimate determination of market value as illegal – A discretion is vested with the authority to consider the aspects

and ingredients mentioned in Rule 5 – In the absence of pointing out any violation of any mandatory, statutory provision, merely because another view is possible, no interference can be made – Petition dismissed : *Ramjilal Kulshrestha Vs. State of M.P., I.L.R. (2012) M.P. 1186*

PRESS AND REGISTRATION OF BOOKS ACT, (25 OF 1867)

– **Section 8-B** – See – Criminal Procedure Code, 1973, Section 195 & 340 : *Ajay Jha Vs. Late Shri Bisambhar Dayal Agrawal, I.L.R. (2012) M.P. 1208*

PREVENTION OF BLACK MARKETING AND MAINTENANCE OF SUPPLIES OF ESSENTIAL COMMODITIES ACT, (7 OF 1980)

– **Section 3** - See - National Security Act, 1980, Section 3 : *Brijesh Dubey Vs. State of M.P., I.L.R. (2011) M.P. 2354 (DB)*

PREVENTION OF CORRUPTION ACT (2 OF 1947)

– **Section 5(1)(d)/5(2)** – Burden of Proof - Once it is held that money is found to have been passed to Public Servant, the burden is on Public Servant to establish that it was not by way of illegal gratification - If the initial burden is discharged by prosecution, it has to be presumed that he accepted the money as illegal gratification - However, where the accused offers an explanation for receipt of the alleged amount, the question would arise that whether such explanation can be said to have been established - Accused is not required to establish the defence by proving the same beyond reasonable doubt like to establish his defence by proving the same beyond reasonable doubt like prosecution, but can establish the same even by preponderance of probabilities : *Ramnarayan Vs. State of M.P., I.L.R. (2011) M.P. 2537 (DB)*

– **Section 5(1)(d)/5(2)**, Prevention of Corruption Act (49 of 1988), Section 13(1)(d)/13(2) and Criminal Procedure Code, 1973 (2 of 1974), Section 227 & 228 - Error in framing of charge - Offence was committed on 15.1.1988 whereas Act, 1988 came into force on 12.9.1988 - Charges were framed under Section 13(1)(d)/13(2) of Act, 1988 instead of 5(1)(d)/5(2) of Act, 1947 - Unless the convict is able to establish that the effect of omission of framing charge caused real prejudice to him, that he was not informed as to what was the real case against him and that he could not defend himself properly, no interference is required on mere technicalities - No prejudice is caused to appellant which could have rendered the conviction vitiated : *Ramnarayan Vs. State of M.P., I.L.R. (2011) M.P. 2537 (DB)*

– **Section 5(1)(d)/5(2)** -Sentence - Offence is alleged to have been committed about 22 years back - Appellant is aged about 67 years of age - He has already lost his job - Sentence is reduced to 3 months R.I : *Ramnarayan Vs. State of M.P., I.L.R. (2011) M.P. 2537 (DB)*

– **Section 5(1)(d) read with 5(2)** - See - Penal Code, 1860, Section 161 : *Shambu Vs. State of M.P., I.L.R. (2013) M.P. *10 (DB)*

PREVENTION OF CORRUPTION ACT (49 OF 1988)

SYNOPSIS

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|---|--|
| <p>1. Abatement</p> <p>3. Defence</p> <p>5. Disproportionate Assets</p> <p>7. Framing of Charge</p> <p>9. Motive</p> <p>11. Public Servant</p> <p>13. Source of Income</p> | <p>2. Appreciation of Evidence</p> <p>4. Demand of Bribe</p> <p>6. Double Jeopardy</p> <p>8. Misconduct</p> <p>10. Presumption</p> <p>12. Sanction</p> <p>14. Miscellaneous</p> |
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1. Abatement

– **Section 7** - Abatement - Accused No. 2 accepted money from the complainant on the directions of the accused No. 1 - No explanation given by accused No. 2 except that no money was recovered from him - Held - Once accused comes into possession of tainted money, the only inference is that he accepted the same and thus obtained the pecuniary advantage - Appeal dismissed : *Ravi Kumar Rajwani Vs. State of M.P., I.L.R. (2011) M.P. *131 (DB)*

2. Appreciation of Evidence

– **Section 13(1)(d)**, Criminal Procedure Code, 1973, Section 311 - Examination of material witnesses - Complainant turned hostile and did not support prosecution case - Special Public Prosecutor without examining remaining witnesses closed the prosecution case - Respondent acquitted by the Trial Court - Held - All the witnesses essential to unfolding of narrative on which the prosecution is based must be called by prosecution, whether effect of their testimony is for or against the case of prosecution - Lacuna in prosecution is not to be equated with the fallout of an oversight committed by Public Prosecutor during trial, either in producing relevant material or in eliciting relevant answers from the witnesses - Function of criminal court is administration of criminal

justice and not to count errors committed by parties or to find out and declare who among the parties performed better - Case remitted back with direction to call all the remaining prosecution witnesses and to pass fresh judgment : *State of M.P. Through S.P.E., (Lokayukta), Bhopal Vs. T.D. (Thakur Das) Patel, I.L.R. (2011) M.P. 774 (DB)*

– **Section 13(1)(d)** - Illegal Gratification - Respondent demanded illegal gratification for giving favorable report - Report was not submitted till the bribe was accepted - Respondent accepted the bribe in a hotel - Tainted money also recovered from the pocket of the respondent - Independent witnesses also supported the prosecution - Judgment of acquittal reversed - Respondent convicted - Sentenced to undergo imprisonment of 6 months SI and fine of Rs. 1000 under Section 7 and imprisonment of 1 year S.I. and fine of Rs. 1000 under Section 13(1)(d) of Act, 1988 : *State of M.P. Vs. Jagdish Chandra, I.L.R. (2012) M.P. *94 (DB)*

– **Section 13(1)(d)** – Illegal Gratification – Treated currency notes were handed over to the appellant at his residence which were recovered from his possession - Appellant was holding responsible post of Building Officer – He was authorized to sanction maps of buildings etc and to take necessary action against illegal construction including demolition of such structure – Appellant had also given a show cause notice to the complainant against illegal construction – In order to satisfy the lust of his lure, appellant called the complainant at his official residence repeatedly – Circumstances show that the appellant had made demand of bribe and had also accepted the same – Appeal dismissed : *Surendra Trivedi Vs. State of M.P., I.L.R. (2012) M.P. *74 (DB)*

– **Section 13(1)(d)** – Legal opinion – Merely because the legal opinion of a lawyer may not be acceptable, he cannot be fastened with criminal liability in absence of tangible evidence that he had aided or abetted other conspirators – No documents were produced to prove that report submitted by petitioner was false and the opinion was based on the documents supplied by bank itself – Proceedings quashed : *Hari Kishan Tuteja Vs. State of M.P., I.L.R. (2014) M.P. 1973 (DB)*

– **Section 13(1)(d)** - Mens rea - Prosecution must prove affirmatively that appellant by corrupt or illegal means or by abusing his position obtained any pecuniary advantage for some other person - Even if there appeared some amount of carelessness or negligence on the part of appellant, it does not appear plausible to doubt his bona fides - Possibility cannot be ruled out that in routine manner while acting quickly or hurriedly, mistake is committed : *Vijay Kumar Paliwal Vs. State of M.P., I.L.R. (2011) M.P. *38 (DB)*

– **Section 7 & 20** - Illegal gratification - Demand - Presumption when arises - Held - The evidence of complainant is fully corroborated with F.I.R. and the evidence of

Panch witness who accompanied the complainant - It is proved beyond any doubt that appellant/accused demanded illegal gratification from the complainant - Demand was made - Section 20 of the Act is attracted as the appellant had been charged for commission of an offence u/s 7 of the Act : *Sobran Singh Banjare Vs. State of M.P., I.L.R. (2014) M.P. 799 (DB)*

– **Section 7 & 13(1)(d)/13(2)** – Complaint of bribe – Appellant (Head Constable) caught red handed taking bribe – All ingredients present to constitute offence – Bribe money was also seized from possession of appellant – No satisfactory explanation by accused that how the bribe money was received by him – Prosecution proved its case – Appeal dismissed : *Subhash Chandra Joshi Vs. State of M.P., I.L.R. (2012) M.P. *73 (DB)*

– **Section 7 & 13(1)(d) read with Section 13(2)** – Demand & acceptance of bribe money – Complainant and other witnesses deposing about the demand and acceptance of money by appellant – Bribe money also recovered from drawer of seat of appellant – Presence of phenolphthalein powder was found in fingers of appellant during the trap process – Held – No further burden is cast on the prosecution to prove the demand or motive by direct evidence – Prosecution succeeded in proving the demand and acceptance of bribe money by appellant/accused – Conviction affirmed : *Jagdish Chandra Raikwar Vs. State of M.P., I.L.R. (2011) M.P. 1004 (DB)*

– **Section 7 & 13(1)(d) read with 13(2)** - Illegal gratification - Currency notes of Rs. 500/- were received from the possession of the appellant - Number of seized notes had matched with the numbers noted in panchnama - Mixture turned pink when fingers and pant were washed - No oral or documentary evidence was adduced by accused in its rebuttal - Held - Once it is proved that the money was recovered from the possession of the accused, the burden of presumption as contemplated u/s 20 of the P.C. Act shifts upon the accused - Where the bribe money was handed over to the accused, it is proved that there was voluntary and conscious acceptance of the money - Conviction upheld : *Tula Shanker alias Tulesh Sitoke Vs. State of M.P., I.L.R. (2013) M.P. 2958 (DB)*

– **Section 7, 13(1-d) & 13(2)** – Illegal gratification – Appellant as Head Constable demanded bribe for release of seized tractor – Currency notes given in bribe were not treated with Phenolphthalein powder – Appellant alleged to have taken out money from the back pocket of pant – Pant which was seized and produced before Court did not have back pocket – Giving and recovery of money not reliable – Evidence shows that spot map was prepared on the spot and FIR was lodged after returning to Police Station, however both the documents bear same time – Evidence also disclosed that documents were tampered by I.O. – Appellant acquitted – Appeal allowed : *Shivram Vs. State of M.P., I.L.R. (2012) M.P. 166 (DB)*

– **Section 7 & 13(1)(d) read with 13(2)** - Notes were not found in appellant's clothes and the money was found kept in a polythene bag, found hanging inside the room, which was seized - Complainant and shadow witness categorically stated that no 'Likh-Padhi' was done at the place of incident - Members of the trap party did not give their search before proceeding for trap - During the proceeding Phenolphthalein powder was not used - Evidence of Joint Collector, who played prominent role in the trap proceedings, also appears suspicious - Possibility that everything was managed by 'S' and the money was planted in the house of accused can not be ruled out - Held - It can not be held with certainty that accused voluntarily accepted/obtained marked money from the complainant - Special Judge did not appreciate the evidence on record in correct perspective - Appeal allowed : *Charanlal Vs. State of M.P., I.L.R. (2011) M.P. 2878 (DB)*

– **Section 13(1)(c),(d) read with 13(2)** – See – Penal Code, 1860, Section 403, 409 & 120-B : *Bhagwati Prasad Sharma Vs. State of M.P., I.L.R. (2014) M.P. 2242 (DB)*

– **Section 13(1)(d)** - Acceptance of illegal gratification - Complainant did not substantially support the prosecution case - Spot map shows that tainted money was kept on table - Witnesses deposing that tainted money was recovered from the pocket of appellant - Evidence of complainant that he kept the money on table probable - It is suspicious as to where from the money was recovered - Appellant acquitted - Appeal allowed : *Rajesh Kumar Goswami Vs. State of M.P., I.L.R. (2011) M.P. 2837 (DB)*

– **Section 13(1)(d)** - Cabinet in meeting dated 28.01.1994 decided to stop MPSIDC from financing the industries any further - MPSIDC in its meeting dated 31.01.1994 resolved to stop the financial assistance - MPSIDC thereafter resolved in its meeting dated 19.04.1995 to extend Inter Corporate Deposits - Applicant was present in the cabinet meeting and also in the meeting dated 31.01.1994 and 19.04.1995 - He knew fully well that Cabinet categorically issued directions for discontinuance of Financial Assistance, yet, as a Director, Applicant, by abusing his post in connivance of others, co-operated in passing the resolution about IDC - No investment, advancement of loan or deposits ought to have been made by the Directors except with the prior permission of the State Govt : *Ajoy Acharya Vs. State Bureau of Investigation, Bhopal, I.L.R. (2011) M.P. *147 (DB)*

– **Section 13(1)(d)** – Demand – Appellant demanded Rs. 1 lacs – Appellant accepted amount of Rs. 45,000 – Since, the amount was quite huge it can be inferred that some settlement must have been arrived between appellant and complainant when he handed over the treated currency notes of Rs. 45,000/- : *Surendra Trivedi Vs. State of M.P., I.L.R. (2012) M.P. *74 (DB)*

– **Section 7 & 13(1)(d) read with 13(2)** – Illegal gratification – Accused in his statement under Section 313 Cr.P.C. admitted the prosecution case however, took a defence that the amount was received towards repayment of loan which was earlier given to complainant – Defence witnesses are not trustworthy as they are trying to shield his sub-ordinate – If evidence of lending loan is accepted without any documentary proof in support of alleged loan, it would be virtually impossible to convict any bribe taker – Appeal dismissed : *Dilip Sagorkar (Dead) Through L.R. Vs. State of M.P., I.L.R. (2014) M.P. 2694 (DB)*

– **Section 13(1)(d)** - Circumstantial evidence - There is always a danger that conjecture or suspicion may take place of legal proof - Circumstances should be fully established and all the facts so established should be consistent only with the hypothesis of guilt of accused - Circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved : *Vijay Kumar Paliwal Vs. State of M.P., I.L.R. (2011) M.P. *38 (DB)*

– **Section 13(1)(d)** - Conspiracy - It might be difficult to produce any direct or positive evidence to prove conspiracy, but then the prosecution is required to establish the circumstances on the basis of which it can be inferred with certainty that appellants hatched conspiracy with main accused : *Vijay Kumar Paliwal Vs. State of M.P., I.L.R. (2011) M.P. *38 (DB)*

– **Section 13(1)(d)** – Criminal misconduct – Petitioner submitted his opinion into the allegations of illegal retention of amount by Sarpanch – Held – To attract the provisions of Section 13(1)(d) of the Act, it is necessary that a person must dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or as a public servant allows any other person so to do or he by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage – By giving an opinion the applicant had not committed an offence punishable under Section 13(1)(d) : *Ajay Sharma Vs. State of M.P., I.L.R. (2011) M.P. 2076 (DB)*

– **Section 13(1)(d)**, Negotiable Instruments Act (26 of 1881), Section 141– Appellant had attended the meeting in which the resolution dated 19.04.1995 was passed contrary to the decision taken by the Cabinet – As the appellant allowed the Board of Directors to pass the resolution in spite of the earlier decisions at the hands of the Cabinet Review Committee, culpability of appellant would emerge from Section 141(2) of N.I. Act : *Ajoy Acharya Vs. State Bureau of Inv. Against Eco. Offence, I.L.R. (2014) M.P. 915 (SC)*

– **Section 13(1)(d)** – Possession of tainted money – Explanation thereof – Appellant admitted that he had taken the money from the complainant but immediately offered explanation to the members of the raiding party that the same was towards his due consultation fee and not by way of illegal gratification – Register maintained by appellant also proved that visit fees of complainant was due and complainant handed over Rs. 500/- to him by way of fees, which he was legally entitled to receive – Explanation offered by appellant appears genuine, reasonable and probable – Appeal allowed : *Ashok Nayak (Dr.) Vs. State of M.P., I.L.R. (2011) M.P. *108 (DB)*

– **Section 13(1)(d)** – Surveillance or Shadow Witness – Presence of Surveillance or Shadow witness is very much essential to prove what actually transpired at the time of transaction of bribe : *Ram Mohan Agrawal (Dead) Through L.Rs. Vs. State of M.P., I.L.R. (2012) M.P. *46 (DB)*

– **Section 13(1)(d)** – Tape Recorder – Admissibility – It is not proved that the voice containing in cassette of the tape recorded is of appellant and complainant by any scientific means and is tallying with admitted voice of appellant and complainant – No reliance can be placed on said electronic evidence : *Surendra Trivedi Vs. State of M.P., I.L.R. (2012) M.P. *74 (DB)*

– **Section 13(1)(d) read with 13(2) & 7** – Demand – Acceptance of illegal gratification has not been corroborated by any independent witness – Neither demand of bribe nor acceptance thereof has been proved by the prosecution beyond reasonable doubt – Appeal allowed : *Narain Singh (Dr.) Vs. State of M.P., I.L.R. (2014) M.P. 2400 (DB)*

– **Section 13(1)(d) & 19**, Criminal Procedure Code, 1973 (2 of 1974), Section 173(8) - Final Report - Investigating agency filed Khatma Report stating no case is made out - Trial Court refused to accept final report and observed "therefore, matter may be taken up seeking necessary sanction to prosecute the accused persons and for further action, case be registered in the criminal case diary" - This order is in the nature of obiter dictum amounting to expression of his personal view - High Court erred in setting aside the proceedings by considering and treating this observation as direction of the Court - Order of High Court set aside and order of Trial Court restored : *Arun Kumar Aggarwal Vs. State of M.P., I.L.R. (2011) M.P. 2951 (SC)*

3. Defence

– **Section 13(1)(d)** – Defence – Probable – Appellant took a defence that the complainant entered inside his office in his absence and put the currency notes in the pocket of his coat which was hanging on his chair – The fact that members of raiding party asked the complainant about the money instead of appellant further corroborates the defence – Appellant had also examined office peon in his defence – Defence taken by

appellant was probable – Prosecution failed to prove the guilt of the appellant – Appeal allowed : *Ram Mohan Agrawal (Dead) Through L.Rs. Vs. State of M.P., I.L.R. (2012) M.P. *46 (DB)*

– **Section 13(1)(d)** - Defence - Trap proceedings continued for a considerable period of 2 ½ hours - Complainant did not support the theory of hand loan - The very undisputed fact that tainted currency notes reached the hands of accused served as a sufficient corroboration to the evidence relating to trap : *Kailash Kumar Rohitas Vs. State of M.P., I.L.R. (2011) M.P. 2498 (DB)*

– **Section 13(1)(d)** - Demand - Appellant directed complainant to handover money to accused No. 2 - Money handed over to accused No. 2 which was recovered from him - There is a clear evidence of demand - Appellant guilty of commission of offence punishable under Section 13(1)(d) of P.C. Act : *Ravi Kumar Rajwani Vs. State of M.P., I.L.R. (2011) M.P. *131 (DB)*

– **Section 13(1)(d)** - Demand - Complainant not supported the prosecution story - However, for arriving at the conclusion as to whether all the ingredients of the offence like demand, acceptance and recovery of the amount of illegal gratification have been satisfied or not, the Court has to take into consideration the facts and circumstances brought on record in their entirety : *Kailash Kumar Rohitas Vs. State of M.P., I.L.R. (2011) M.P. 2498 (DB)*

– **Section 13(1)(d)** - Illegal gratification - Court may feel safe in accepting the prosecution version on the basis of oral evidence of complainant and police officers even if the trap witnesses turn hostile or are not found to be reliable - Independent witness could not be examined due to his death - Evidence of complainant and police witnesses finds support from the circumstantial evidence that the hand and pocket of the shirt of the appellant and tainted notes gave pink colour to sodium carbonate solution - This establishes that tainted currency notes were accepted or received by the appellant - Appellant did not furnish any explanation as to how the tainted currency notes were found in his pocket - Appeal dismissed : *Jay Mangal Singh Vs. State of M.P., I.L.R. (2011) M.P. *138 (DB)*

– **Section 13(1)(d)** - Illegal Gratification - Inconsistent version of complainant regarding amount demanded - Appellant who was Secretary of Samiti had no role to play for issuance of cheque - Scriber of Complaint not examined by prosecution - Complaint which was written was neither read over nor explained to complainant - Appellant had also issued receipt of Rs. 200 which was although seized but not produced - Phenolphthalein powder test was also not correctly conducted by adopting due procedure - On dipping the fingers in the solution of sodium carbonate, of Panch witness who took

out the currency note from the pocket of the appellant, also did not turn into pink - Prosecution failed to prove the guilt - Appellant acquitted : *Madanmohan Jatwa Vs. State of M.P., I.L.R. (2012) M.P. *78 (DB)*

– **Section 13(1)(d)** – Illegal Gratification – Members of the raiding party were standing on the ground floor whereas the complainant had gone to the office of the appellant which is situated on the first floor – Complainant was not accompanied by any member of raiding party – Complainant had sufficient time to come in contact with treated currency notes – If the complainant shakes his hands with the appellant, certainly the particles of phenolphthalein powder will fall on the hands of appellant : *Ram Mohan Agrawal (Dead) Through L.Rs. Vs. State of M.P., I.L.R. (2012) M.P. *46 (DB)*

– **Section 13(1)(d)** - Illegal Gratification - Mere receipt of money by the accused from the complainant will not be sufficient to fasten guilt in absence of any demand and acceptance of amount as illegal gratification - Appellant accepted the receipt of Rs. 50 from the complainant - Immediately after the trap, the appellant offered explanation that he had accepted the money towards loan transaction - The defence of appellant is corroborated by three receipts which have been brought forward by defence evidence and the complainant handed over Rs. 50 to him by way of installment of loan which he was legally entitled to receive - Explanation offered by appellant appears genuine, reasonable and probable - Appeal allowed : *Dwarka Prasad Mishra Vs. State of M.P., I.L.R. (2011) M.P. 3152 (DB)*

– **Section 13(1)(d)** – Illegal gratification – Personal search of raiding party – Panch witnesses admitted that they were not asked by detecting officer to give their personal search before entering into the Atari – This is significant as prosecution witness money was recovered from the pocket of the appellant hanging on a peg whereas the money was found in a black bag lying near appellant – Non-observance of this formality assumed in view of the fact that bribe money was also not recovered from the person of the appellant – Appeal allowed : *Maheshwari Prasad (since dead) Vs. State of M.P., I.L.R. (2011) M.P. 2039 (DB)*

4. Demand of Bribe

– **Section 7** - Demand of Bribe - Complainant is said to have informed about demand to 'S' but 'S' was not examined in the Court - Shadow witness, happened to be the friend of complainant, but he did not say that complainant told to him about the alleged demand by the accused - Joint Collector though stated that complainant told to him that accused demanded bribe and that he gave an application to Collector for the trap of accused, but the complainant denied of having given any application to Collector - No such application/complaint was proved in the Court - Held - Except the uncorroborated

evidence of complainant there appeared no other evidence to assure that accused made a demand of bribe from him - Sole uncorroborated evidence of complainant about the demand of bribe by the accused, does not inspire confidence : *Charanlal Vs. State of M.P., I.L.R. (2011) M.P. 2878 (DB)*

– **Section 7** – Demand of illegal gratification – Clerk posted in the office of Tahsildar lodged police report that on his disinclination to process the application of respondent No.2 for issuance of domicile certificate, a quarrel ensued and certain documents were torn by respondent No. 2 – Respondent No.2 thereafter filed complaint alleging that Rs. 500 were demanded by clerk and applicant impliedly encouraged the clerk for the same – Held – Under the facts of the case, it can easily be concluded that complaint was made with malafide motive as a counter blast to registration of criminal case against respondent No.2 – Applications allowed – Criminal proceedings pending against both applicants quashed : *Rajesh Dubey Vs. State of M.P., I.L.R. (2011) M.P. 1097 (DB)*

– **Section 7 & 13(1)(d)** - Demand and Illegal Gratification - Ingredients - Prosecution must prove that there was occasion or motive on the part of the accused to make demand of bribe and indeed he has made the demand of bribe and has also accepted the same : *Madanmohan Jatwa Vs. State of M.P., I.L.R. (2012) M.P. *78 (DB)*

– **Section 7 & 13(1)(d)** - Demand - No mention in complaint that any demand was made by appellant - Prosecution failed to establish demand by appellant : *Ghanshyam Narain Dubey Vs. State of M.P., I.L.R. (2011) M.P. 762 (DB)*

5. Disproportionate Assets

– **Section 13(1)(e)** - Disproportionate Assets - Income Tax Returns - Income Tax Returns being the public document do not require formal proof - Income Tax Returns filed prior to the date of raid without any anticipation that the appellant would be charged for the offences punishable under Section 13(1)(e) - Disclosure of income in income tax return is required to be accepted - Income Tax Return can be looked into even at the stage of appeal : *Mohan Lal Arya Vs. State of M.P., I.L.R. (2013) M.P. *6 (DB)*

– **Section 13(1)(e)** - Disproportionate Assets - Income Tax Returns - Known Sources of Income - Household expenses - 60% or 40% - Prosecution has failed to show any Rule which may decide as to what percentage towards the deduction of household expenses out of the salary/income of the appellant - Evidence on record show that the appellant belongs to agricultural family - Contribution of family members towards household expenses cannot be disputed - Household expenses taken to the tune of 40% : *Mohan Lal Arya Vs. State of M.P., I.L.R. (2013) M.P. *6 (DB)*

– **Section 13(1)(e)** - Disproportionate Assets - Income Tax Returns - Wife of the appellant had received a gift from her father to the tune of Rs. 3,80,000/- by demand draft much prior to check period - Such receipt was disclosed in the Income Tax Return - Relevant documents were supplied to the I.O. during the course of preliminary enquiry but were not annexed with charge sheet - Such amount liable to be included in the income of the appellant : *Mohan Lal Arya Vs. State of M.P., I.L.R. (2013) M.P. *6 (DB)*

– **Section 13(1)(e)**, Evidence Act (1 of 1872), Section 3 & 114 - Articles found in possession of accused - Electronic goods although purchased in the name of sister were found in possession of accused - Explanation for non-shifting of items from accused's house not plausible - Held - Fact is said to be proved when after considering the matters before it, the Court believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists - Court presume existence of any fact which it thinks likely to have happened having regard to the natural course of event, human conduct and public and private business - Trial Court did not commit any error in including the electronic items in appellant's movable assets : *Kamal Lal Gharde Vs. State of M.P., I.L.R. (2011) M.P. 2514 (DB)*

6. Double Jeopardy

– **Section 13(1)(d)(e)**, Criminal Procedure Code, 1973 (2 of 1974), Section 300 – Double Jeopardy – C.B.I. registered one case under Section 13(1)(e) of Act, 1988 – Another case was registered under Section 13(1)(d) of Act, 1988 for having issued forged fitness certificates after obtaining illegal gratification – Applicant pleaded that as charge sheet under Section 13(1)(d) has already been filed therefore, prosecution of applicant under Section 13(1)(e) bad – Held – Section 300 would apply only when a person has been tried once and convicted by Court of competent jurisdiction – As trial of any of the case has not been completed therefore, this provision would not apply – Although the offence remain criminal misconduct by public servant but the constituent ingredients of both the offences are different – Applicant can be prosecuted for both the offences – Revision dismissed : *B.K. Sahoo (Dr.) Vs. Central Bureau of Investigation, I.L.R. (2012) M.P. 1077 (DB)*

7. Framing of Charge

– **Section 13(1)(d)**, Criminal Procedure Code, 1973, Section 227 & 228 - Framing of charges - High Court decided contractual/civil dispute between the parties in writ petition - Does not mean that respondents have been exonerated by High Court if prima facie criminal case on the basis of material available on record is made out - Order discharging respondent set aside : *State of M.P. Vs. D.K. Rokde, I.L.R. (2011) M.P. *19 (DB)*

8. Misconduct

– **Section 13(1)(d)** – Misconduct – Contract provides for payment against running bills on intermediate certificate also postulates that all such intermediate bills shall be regarded as payments by way of advance against final payment of works actual done and completed – Excess amount paid to contractor on the basis of in-correct classification done by accused was adjusted in subsequent running bill – No offence of misconduct made out – Charge sheet quashed : *Ram Singh Ahirwar Vs. State of M.P.*, I.L.R. (2011) M.P. 1597 (DB)

– **Section 13(1)(d)** - Misconduct - Minister - Minister holds public office though he gets constitutional status and performs functions under the Constitution, law or executive policy - The Acts done and duties performed are public acts or duties as the holder of public office - He owes certain accountability for the acts done or duties performed in a democratic society governed by rule of law : *State of M.P. Vs. Deepak Surana*, I.L.R. (2011) M.P. *157 (DB)

– **Section 13(1)(d)** - Misconduct - Respondents knowing full well that the acquisition of land by T.I.T. has attained finality and there was no provision for release of the lands in the corresponding Act, appointed co-accused as their attorneys and also executed agreement to sell reflecting their knowledge about the dispute and authorized the proposed purchasers to get the lands anyhow released and to alienate the same to any person - Respondents are prima facie guilty of commission of offence - Order discharging them set aside : *State of M.P. Vs. Deepak Surana*, I.L.R. (2011) M.P. *157 (DB)

– **Section 13(1)(d)** - Misuse of office by public servant - Allegation that applicant by misusing his position as Dy.S.P., S.P.E., undervalued the house and constructed area of the house was not correctly shown in map and sale deed - The sale deed was undervalued causing loss of Rs. 29,434/- by paying less stamp duty - Held - Applicant was not posted as Dy.S.P., S.P.E. at the time of registration of sale deed - Merely because the property is undervalued and vendor or vendee is public servant, he cannot be prosecuted u/s 13(1)(d) of Act - It cannot be concluded that applicants abused their positions as public servants to obtain the pecuniary advantage : *Dev Vrat Mishra Vs. State of M.P.*, I.L.R. (2011) M.P. *23 (DB)

– **Section 13(1)(d)** – Misuse of Office – Whether the appellant had adopted corrupt or illegal means or had abused his position as public servant to obtain any valuable thing or pecuniary advantage, either for himself or for the industries to whom MPSIDC extended short term loans is a mixed question of fact and law and determination of issue would be possible only after rival parties have adduced evidence to establish

their respective claims – Appeal dismissed : *Ajoy Acharya Vs. State Bureau of Inv. Against Eco. Offence, I.L.R. (2014) M.P. 915 (SC)*

– **Section 13(1)(d)**, Municipalities (The Conduct of Business of the Mayor-in-Council/President-in-Council and the Powers and Function of the Authorities) Rules, M.P., 1998, Rule 12 – Petitioner joined only day prior to signing of agreement as Municipal Commissioner/C.E.O. – Rule 12(1) provides that it shall be necessary to send copy of resolution to C.E.O. within 7 days from the adoption of such resolution – C.E.O. had 7 days time to consider all relevant aspects of matter and take appropriate action in accordance with sub-rules (3),(4) and (5) – In the light of flagrant violations of relevant rules, the C.E.O. ought to have followed the procedure prescribed in rule 12 – Fact that Petitioner had assumed the charge only one day prior did not assume any significance as he was responsible and accountable for each and every action taken by him – Petition dismissed : *Sandeep Jaiswal Vs. Mithilesh Jain, I.L.R. (2011) M.P. 1787 (DB)*

– **Section 13(1)(d)** – Public Office – Minister holds public office though he gets constitutional status and performs functions under the Constitution, law or executive policy – Acts done and duties performed are public acts or duties as the holder of public office – Therefore, Minister owes certain accountability for the acts done or duties performed : *Rajesh Rajora (Dr.) Vs. State of M.P., I.L.R. (2011) M.P. 2255 (DB)*

9. Motive

– **Section 7 & 13(1)(d)** – Motive – Appellant/accused, though not competent to grant Patta but was an important person in survey party and therefore complainant and other members of Mohalla had impression that appellant will be helpful person in process of granting the Patta – It can not be said that there was no opportunity or motive to receive the bribe by appellant/accused : *Jagdish Chandra Raikwar Vs. State of M.P., I.L.R. (2011) M.P. 1004 (DB)*

– **Section 7 & 13(1) (d) read with Section 13(2)** – Illegal gratification – Motive & competence – Allegation of bribe – Appellant was not competent for mutation but he was an important person to initiate the mutation proceedings – Motive to receive the bribe established – Trial Court has rightly disbelieved the defence witnesses – Demand and acceptance proved and duly corroborated by witnesses – Offence proved – Appeal dismissed : *Laxmikant Vs. State of M.P., I.L.R. (2015) M.P. 1034 (DB)*

10. Presumption

– **Section 13(1)(d)/13(2), 7 & 20** - Illegal gratification - Demand & acceptance of - Presumption u/s 20, when arises - Trap Case - Appellant/accused acquitted - Held - Money was seized from the table of appellant - But mere recovery of the money from the

table of the appellant/accused by itself cannot prove the charge against the accused, in the absence of any evidence to prove payment of bribe or to show that the accused voluntarily accepted money as bribe - Appeal allowed - Appellant acquitted : *Suryakant Sharma Vs. State of M.P., I.L.R. (2013) M.P. 2231 (DB)*

– **Section 13(1)(d)/13(2), 7 & 20** - Illegal gratification - Demand & acceptance of - Presumption u/s 20, when arises - Trap Case - Respondent/accused acquitted - Held - Mere recovery by itself cannot prove the charge against the respondent/accused in the absence of any evidence to prove payment of bribe or to show that the respondent/accused voluntarily accepted the money knowing it to be bribe : *State of M.P. Vs. Babu Singh, I.L.R. (2014) M.P. 806 (DB)*

– **Section 13(1)(d) & 20** - Presumption - Appellant not made any demand of illegal gratification - Money found in possession of appellant - Premise to be established for arriving at presumption is that public servant had obtained or accepted any illegal gratification - No scientific test process was adopted to prove that appellant handled the currency notes in question - Defence that currency notes were kept in the pocket of his shirt hanging on a peg without his knowledge more probable - Appellant liable to be acquitted : *Jiyalal Vs. State of M.P., I.L.R. (2011) M.P. *26 (DB)*

– **Section 13(1)(d) & 20** - Presumption - Neither demand of bribe nor acceptance or payment thereof established from evidence on record - Serious infirmities in prosecution version sufficient to establish probability of defence that notes were put into pocket of Pyjama presuming to that of co-accused (already dead) without his knowledge or connivance - Held - Burden which rests on accused to displace presumption is not a onerous as that cast on prosecution to prove its case - Appeal allowed : *Ram Prasad Vs. State of M.P., I.L.R. (2011) M.P. *33 (DB)*

– **Section 20** – Presumption – Held – The provision cannot be overlooked – Further, once it is proved that the amount was recovered from the appellants possession, the burden of proof lies on the appellants to prove that they received the same bonafidely or for some other purpose : *Karanveer Rana Vs. State of M.P., I.L.R. (2014) M.P. 2418 (DB)*

– **Section 20** - Presumption - Initial burden of proof of demand of bribe and its acceptance should have been proved by the prosecution and then only the statutory presumption would shift upon the accused : *Madanmohan Jatwa Vs. State of M.P., I.L.R. (2012) M.P. *78 (DB)*

– **Section 20** - Presumption - Presumption is not available for Section 13(1)(d) - Appellant had given immediate spontaneous statement that money was thrust in his

pocket and he has not accepted the same - Conviction of appellant set aside - Appeal allowed : *Ghanshyam Narain Dubey Vs. State of M.P., I.L.R. (2011) M.P. 762 (DB)*

– **Section 20** – Presumption – Tainted money recovered from the possession of appellant – Appellant not able to furnish even a plausible explanation for receiving the tainted money – Presumption rightly drawn : *Munnalal Rajak Vs. State of M.P., I.L.R. (2011) M.P. 1310 (DB)*

11. Public Servant

– **Section 2 & 19** – Public Servant – M.L.A. is a public servant – Cognizance can not be taken in absence of sanction : *State of M.P. Vs. Nanhe Singh, I.L.R. (2012) M.P. 1073 (DB)*

– **Section 2(c)(i), 13(1)(d) & 13(2)** – Public Servant – Petitioner had retired from service and is practicing as Advocate – He was appointed as Enquiry Officer to conduct departmental enquiry against complainant – Co-accused demanded Rs. 1 lac on behalf of applicant to exonerate him in the enquiry – Co-accused was caught red handed – Petitioner after being appointed as Enquiry Officer is to be remunerated by honorarium/fees for his services – Hence, petitioner is a public servant – F.I.R. has been rightly registered : *T.R. Taunk Vs. State of M.P., I.L.R. (2015) M.P. 2290 (DB)*

– **Section 2 (c)(ix), Krishi Upaj Mandi Adhiniyam, M.P. 1972 (24 of 1973)]** Section 64 – Public Servant – Vice-Chairman of Samiti – Vice Chairman is a Public Servant within the meaning of Section 2(c)(ix) of Act, 1988 : *Gambhir Singh Patel Vs. State of M.P., I.L.R. (2011) M.P. 1428 (DB)*

– **Section 5 (1)** – See – Criminal Procedure Code, 1973, Section 156(3) : *Sandeep Jaiswal Vs. Mithilesh Jain, I.L.R. (2011) M.P. 1787 (DB)*

12. Sanction

– **Section 19**, Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Sanction – Observations were given by the trial Court while deciding Special case pending against co-accused person observing that the prosecution agency shall be at liberty to file fresh charge-sheet against the petitioner after obtaining the requisite sanction from the competent authority u/s 19 of Prevention of Corruption Act – Held – It could not be said that the sanction of the competent authority dated 10.07.2013 was influenced by any observation made by the trial Court in the impugned judgment – Petition did not have any question which requires any consideration on merit for which this petition could be admitted for final hearing – Application dismissed : *Ajita Bajpai Pande (Smt.) Vs. State of M.P., I.L.R. (2015) M.P. 3113 (DB)*

– **Section 19** – Cognizance – Once cognizance is taken, the Trial Court can not recall or review the same : *State of M.P. Vs. Nanhe Singh, I.L.R. (2012) M.P. 1073 (DB)*

– **Section 19** – Cognizance – Respondent was public servant when the cognizance was taken – Taking of cognizance against sitting M.L.A. in absence of sanction was incompetent and illegal – Trial Court may consider the question of taking cognizance afresh in case requisite sanction is obtained or it is established that need of sanction for taking cognizance is no longer an essentiality : *State of M.P. Vs. Nanhe Singh, I.L.R. (2012) M.P. 1073 (DB)*

– **Section 19** – Cognizance without sanction – Applicant No.1 was public servant on the date of taking of cognizance therefore, order taking cognizance and all consequent proceedings including charge quashed – However, the Trial Court can decide the question of taking cognizance afresh on the basis of same charge sheet as now applicant No.1 ceases to be a public servant : *Gambhir Singh Patel Vs. State of M.P., I.L.R. (2011) M.P. 1428 (DB)*

– **Section 19**, Criminal Procedure Code, 1973 (2 of 1974), Section 197 – Sanction – Law & Legislative Affairs Department is empowered under the Rules, to grant sanction and refusal to grant sanction by the parent department is of no consequence – Opinion of the parent department is not binding on the Law Department, while considering the case for grant of sanction – Order of sanction is self contained speaking order – No infirmity or any jurisdictional error in the sanction order – Petitions dismissed : *Om Prakash Verma Vs. State of M.P., I.L.R. (2014) M.P. 1753 (DB)*

– **Section 19** – Sanction – Although grant or refusal of sanction is purely an administrative act, yet the order is subject to judicial review and therefore, it is incumbent upon State Govt. to record reasons : *Sandeep Jaiswal Vs. Mithilesh Jain, I.L.R. (2011) M.P. 1787 (DB)*

– **Section 19** – Sanction – Appellant holding the post of Industries Commissioner being a member of IAS Cadre – He was also nominated as Director of MPSIDC by notification issued by Governor – Nomination of appellant as Director was not by virtue of his posting as Industries Commissioner – Governor is the competent authority and not the President of India as the post of Industries Commissioner was not misused but the post of nominee Director was misused : *Ajoy Acharya Vs. State Bureau of Inv. Against Eco. Offence, I.L.R. (2014) M.P. 915 (SC)*

– **Section 19** - Sanction - Applicant already ceased to hold the office i.e., Director of MPSIDC, which was alleged to have been abused by him when the charge sheet was filed - No sanction is required : *Ajoy Acharya Vs. State Bureau of Investigation, Bhopal, I.L.R. (2011) M.P. *147 (DB)*

– **Section 19** - Sanction - Competent Authority - Executive Magistrate who accorded sanction was not competent to remove the appellant from service - Such defective sanction had certainly resulted in failure of justice : *Jiyalal Vs. State of M.P., I.L.R. (2011) M.P. *26 (DB)*

– **Section 19** – Sanction – Competent Authority – Law Department – The power to sanction for prosecution has been given under the Business Allocation Rules to the Law and Legislative Department – Even if the sanction has been refused by the appointing/disciplinary authority i.e. Parent Department of the petitioner, the same is of no consequence – The opinion of the Parent Department, appointing and disciplinary authority is not binding on the Law and Legislative Department who is the competent authority for grant of sanction while considering the case for grant of sanction – Petition dismissed : *B.S. Bisoria Vs. State of M.P., I.L.R. (2014) M.P. 1264 (DB)*

– **Section 19** – Sanction – Competent Authority – Plurality of offices – Where an accused holds a plurality of offices, sanction is essential only at the hands of competent authority of the office which has been allegedly misused – Other public offices held by accused where an accused holds a plurality offices are irrelevant for purposes of obtaining sanction : *Ajoy Acharya Vs. State Bureau of Inv. Against Eco. Offence, I.L.R. (2014) M.P. 915 (SC)*

– **Section 19** – Sanction for Prosecution – Competent Authority – Vide order dated 08.02.1988, the Chief Minister delegated the power to grant sanction for prosecution of Public Servants to the Law Secretary of M.P. Law Department – Economic Offences Wing sought sanction for prosecution from Department of Housing and Environment which refused to grant sanction – Trial Court directed the prosecution to obtain sanction for prosecution from Secretary Law Department – Sanction granted by Secretary Department of Law and Justice was quashed by High Court – Held – By circular dated 28.02.1998, the Secretary, Department of Law and Justice was conferred power to grant sanction in respect of cases registered by EOW – After the power to grant sanction was delegated to Department of Law and Justice, it cannot be said that the Administrative Department had power to decline sanction – Order of High Court quashing the sanction granted by Secretary, Department of Law and Legislative Affairs set aside – No infirmity as to the competence of Secretary, Department of Law and Legislative Affairs – Appeal allowed : *State of M.P. Vs. Anand Mohan, I.L.R. (2015) M.P. 1949 (SC)*

– **Section 19** - Sanction for prosecution - Necessity - Office - Applicant is member of State Administrative Services - He is alleged to have misused his office as General Manager, M.P. State Civil Supplies Corporation Limited - Held - Word 'office' denotes that office which the Public Servant misused or abused for corrupt motives and in

respect of which sanction to prosecute him is necessary by competent authority entitled to remove him from that office - No necessity of sanction by State Government for prosecution in respect of offences committed by him as General Manager of Corporation : *O.P. Shukla Vs. State of M.P., I.L.R. (2011) M.P. 555 (DB)*

– **Section 19** - Sanction - Govt. of India issued guidelines to investigating agencies that while holding different posts on transfer of promotion, a civil servant can not be treated as holding different offices within the meaning of relevant sections of P.C. Act - Held - Interpretation of various decisions given by Ministry can not be accepted in view of the observation made in the case of Prakash Singh Badal : *Ajoy Acharya Vs. State Bureau of Investigation, Bhopal, I.L.R. (2011) M.P. *147 (DB)*

– **Section 19** – Sanction – Held – Mere error, omission or irregularity in sanction is not considered fatal unless it has resulted in the failure of justice : *Karanveer Rana Vs. State of M.P., I.L.R. (2014) M.P. 2418 (DB)*

– **Section 19** - Sanction - Merely because sanction order was drafted by the investigating agency was not sufficient to vitiate the sanction order - Even if a contrary view is taken, the validity of the consequent proceedings would remain unaffected as none of the defects has occasioned a failure of justice : *Kailash Kumar Rohitas Vs. State of M.P., I.L.R. (2011) M.P. 2498 (DB)*

– **Section 19** – Sanction – Necessity – Appellant not holding the post of nominee Director as he had already relinquished the charge of office which he is alleged to have misused – No need to obtain sanction under Section 19 of Prevention of Corruption Act, 1988 : *Ajoy Acharya Vs. State Bureau of Inv. Against Eco. Offence, I.L.R. (2014) M.P. 915 (SC)*

– **Section 19** - Sanction - Office - Transfer - Applicant working as Executive Engineer in Division No.1 transferred to Division No.5 in same capacity - Word 'transfer' used by Supreme Court in the case of Prakash Singh Badal Vs. State implies change of authority competent to accord sanction - Since there was no change in authority competent to accord sanction therefore sanction u/s 19 of Act essential - Order of trial Court set-aside - Applicant stands released - However, investigation agency can file charge-sheet after obtaining sanction - Petition allowed : *Bramha Swaroop Saini Vs. State of M.P., I.L.R. (2011) M.P. 796 (DB)*

– **Section 19** – Sanction – Sanction, by the trial Court was held to be invalid, due to non-application of mind on the part of sanctioning authority in view of certain admissions made by him, namely - (i) The investigating agency had forwarded draft sanction order along with the other documents (ii) Sanctioning Authority was not able to recollect as to -(a) on which date the documents relating to the investigation were

produced before him (b) how many documents were perused by him (c) how much time was taken in studying the documents (iii) Before granting sanction, he had not afforded any opportunity of hearing to the respondents (iv) He was also not able to say with certainty as to whether the report prepared by Chief Booking Supervisor supporting the defence was placed before him – Held – None of the facts was sufficient to invalidate the sanction on the aforesaid ground – Matter remanded back for decision on merits : *Union of India Vs. Jayant Kumar Ganguli, I.L.R. (2011) M.P. 1762 (DB)*

– **Section 19** – Sanction to prosecute – Applicant continued to serve under authority competent to remove from the office alleged to have been abused - Sanction for prosecution regarding offence required : *Ram Singh Ahirwar Vs. State of M.P., I.L.R. (2011) M.P. 1597 (DB)*

– **Section 19** – Sanction to Prosecute – Discretion – Discretionary power must be exercised on relevant and not on irrelevant or extraneous consideration – If proceeding, decision or order is influenced by extraneous considerations which ought not to have been taken into account, it cannot stand and needs correction – Sanctioning Authority instead of satisfying himself on the basis of record pertaining to investigation, misdirected himself in point of law by taking into account irrelevant and extraneous considerations – Exercise of discretionary power to grant or refuse sanction, stood vitiated – Petition allowed – Matter remanded to reconsider the matter for grant of sanction independently on the basis of material furnished by S.P.E. only : *Special Police Establishment Vs. State of M.P., I.L.R. (2011) M.P. *76 (DB)*

– **Section 19** – Sanction to Prosecute – Locus Standi – Sanctioning Authority refused to grant sanction – S.P.E. has locus standi to challenge the order refusing to grant sanction : *Special Police Establishment Vs. State of M.P., I.L.R. (2011) M.P. *76 (DB)*

13. Sources of Income

– **Section 13(1)(e)** – Known Sources of Income – Disclosure of receipt of money in income tax return is of no assistance in case of disproportionate income unless it is established that provisions contained in Rules 14, 17 and 19 of M.P. Civil Services Conduct Rules, 1965 were duly complied with : *Kedarilal Vs. State of M.P., I.L.R. (2011) M.P. 1284 (DB)*

– **Section 13(1)(e)** - Known Sources of Income - Income from legally forbidden sources can not be considered at all and on the other, income from any lawful source can be taken into account only when its existence is duly proclaimed under the relevant service rules - It can not be contended that known sources of income means sources known to accused : *Kamal Lal Gharde Vs. State of M.P., I.L.R. (2011) M.P. 2514 (DB)*

– **Section 13(1)(e)** – Known Sources of Income – Intimation about receipt of gift sent to superior officer of department cannot be treated as report to the Govt. within the meaning of Rule 14 of M.P. Civil Services Conduct Rules, 1965 unless it was addressed to Govt. or was given to Superior Officer with a request to forward it to the government pursuant to said Rule : *Kedarilal Vs. State of M.P., I.L.R. (2011) M.P. 1284 (DB)*

– **Section 13(1)(e)** – Known Sources of Income – Loan received by Government employee in violation of Rule 17(4) and (5) of Rules, 1965 cannot be treated as a known source of income : *Kedarilal Vs. State of M.P., I.L.R. (2011) M.P. 1284 (DB)*

14. Miscellaneous

– **Section 17** - Authorization - Dy.S.P. holding the charge of S.P. authorized himself under Section 17 of Act, 1988 - Each one of the officers designated in clauses (a) to (c) is competent to investigate the offence under Section 13(1)(e) even without order of authorization by S.P. as contemplated in second proviso - Order under second proviso would be necessary only in a case where investigation into the offence is sought to be conducted by an officer of a lower rank though authorized by State Govt. under first proviso - View taken in Umesh Kumar's case is erroneous and overruled : *Ashok Kumar Jain Vs. Central Bureau of Investigation, I.L.R. (2011) M.P. 2629 (DB)*

– **Section 19(1)**, Criminal Procedure Code, 1973 (2 of 1974), Section 197 – Respondent being Collector was also holding the office of Chairman of Town Improvement Trust – Allegation against the respondent is that while holding the post of Chairman of the Trust, abusing his position as a public servant, he transferred 30,000 square feet of Government land to an ineligible and unauthorized person without any consideration and he thereby caused loss of Rs. 01,34,33,381/- to State Exchequer – Held – No previous sanction u/s 19(1) of the Act and u/s 197 of the Code was required for taking cognizance against the respondent : *Special Police Establishment Vs. Vinod Chandra Semwal, I.L.R. (2011) M.P. 2240 (DB)*

– **Section 13(1)(d)** - Respondent No.1 on the day of his joining issued notice to contractor to complete the work as per terms and conditions and as per specifications - On the next day issued work completion order entitling the contractor to collect toll tax - Work was found to be of inferior quality and incomplete - Prima facie case u/s 13(1)(d) read with 13(2) made out : *State of M.P. Vs. D.K. Rokde, I.L.R. (2011) M.P. *19 (DB)*

– **Section 13(1)(d)** - Status of accused - Non-Public Servant - Applicant is Managing Director of a Company - Status of applicant is of no relevance as the offences under the Act can be abetted by or committed in conspiracy with non-public servants also : *Rahis Ahmed Vs. State of M.P., I.L.R. (2011) M.P. *128 (DB)*

– **Section 13(1)(d)** - Competence of accused - Duty to process claim put forward by the complainant was assigned to the accused - Merely because he was not entitled to have the claim passed was of no consequence - Contention is also misconceived in the light of explanation (d) appended to Section 7 of the Act : *Kailash Kumar Rohitas Vs. State of M.P., I.L.R. (2011) M.P. 2498 (DB)*

– **Section 13(1)(d)**, Criminal Procedure Code, 1973, Section 156(3) - Direction to investigate – Office of Director of S.P.E. is a police station - Special Judge appointed under P.C. Act, 1988 has jurisdiction to take cognizance of offences without the accused being committed to him for trial - Special Judge can direct the S.P.E. to investigate as per provisions of Section 156(3) of Cr.P.C. : *Ramesh Vs. State of M.P., I.L.R. (2011) M.P. *48 (DB)*

– **Section 13(1)(d)**, Criminal Procedure Code, 1973, Section 173(8) - Delay in filing charge sheet - Steps were taken to collect several evidence during investigation - S.P.E. waited for filing charge sheet till the retirement of respondent No.1 - Investigating agency cannot be held responsible for delay in investigation - Delay simplicitor not sufficient to quash the criminal proceedings : *State of M.P. Vs. D.K. Rokde, I.L.R. (2011) M.P. *19 (DB)*

– **Section 13(1)(d)** - Remedy of civil suit - Merely because remedy by way of civil suit is available, is not an impediment in maintaining a criminal complaint provided the complaint discloses the ingredients of offence alleged : *State of M.P. Vs. D.K. Rokde, I.L.R. (2011) M.P. *19 (DB)*

– **Section 13(1)(d)** – See – Criminal Procedure Code, 1973, Section 482 : *Ashok Nanda Vs. State of M.P., I.L.R. (2011) M.P. 1412 (DB)*

– **Section 13(1)(d), 13(2)**, Criminal Procedure Code, 1973 (2 of 1974), Section 468 – No period of limitation is provided under the Code or the PC Act for taking cognizance of the offence under that Act : *U.K. Samal Vs. The Lokayukt Organization, I.L.R. (2011) M.P. 1702 (DB)*

– **Section 13(1)(d) read with Section 13(2)** – See – Constitution – Article 226 : *Avinash Dubey Vs. State of M.P., I.L.R. (2014) M.P. 2507 (DB)*

– **Section 13(1)(d)/13(2)** - See -Prevention of Corruption Act, 1947, Section 5(1)(d)/5(2) : *Ramnarayan Vs. State of M.P., I.L.R. (2011) M.P. 2537 (DB)*

– **Section 13(1)(e)** – Benami Property – There is no presumption in law that a property standing in the name of a woman must have been purchased by stridhan : *Kedarilal Vs. State of M.P., I.L.R. (2011) M.P. 1284 (DB)*

– **Section 13(1)(e)** - Defective Investigation - Effect - Order taking cognizance not challenged at the earliest possible opportunity - Even if it is assumed that the investigation in any manner was defective, the order taking cognizance and consequent proceedings can not be quashed as no failure of justice had occasioned thereby : *Ashok Kumar Jain Vs. Central Bureau of Investigation, I.L.R. (2011) M.P. 2629 (DB)*

– **Section 13(1)(e)** - Investigating Officer - Investigation conducted by same police officer who had lodged the F.I.R. - It is not barred - Such investigation could be assailed only on the ground of bias or real likelihood of bias on the part of Investigating Officer : *Ashok Kumar Jain Vs. Central Bureau of Investigation, I.L.R. (2011) M.P. 2629 (DB)*

– **Section 13(1)(e)** – See – Criminal Procedure Code, 1973, Section 240 : *Ajit Jain Vs. State of M.P., I.L.R. (2015) M.P. 2810 (DB)*

– **Section 13(2)** - See - Penal Code, 1860, Section 467 : *O.P. Dixit Vs. State of M.P., I.L.R. (2012) M.P. *90 (DB)*

PREVENTION OF CRUELTY TO ANIMALS ACT (59 OF 1960)

– **Section 11** - Practice of sacrifice of animals which even otherwise has no sanction of religion cannot be permitted to be continued : *Prani Raksha Sangh Vs. State of M.P., I.L.R. (2011) M.P. *13 (DB)*

PREVENTION OF FOOD ADULTERATION ACT (37 OF 1954)

– **Section 7 & 16** - Report of Public Analyst - Unless it is proved that sample was taken after making the milk homogeneous, accused cannot be convicted merely on the basis of report of Public Analyst : *Bhawani Singh Vs. State of M.P., I.L.R. (2014) M.P. 827*

– **Section 7 & 16** - Sample - Prosecution has to prove that sample which was sent to public analyst was the same by producing the admissible documents like dispatch book, acknowledgement due receipt - In the lack of such evidence conviction cannot be sustained : *Bhawani Singh Vs. State of M.P., I.L.R. (2014) M.P. 827*

– **Section 7(i) read with Section 16(1)(a)(i)** – Analyst report – Readings of the analysis of the sample were marginally away from the standard fixed by the rules could be caused due to improper stirring of oil because if the sample is taken without churning the oil the thickness of the oil differs from layer to layer – It cannot be said that the sample taken from the applicant was adulterated – Revision is accepted : *Ramesh Chandra Vs. State of M.P., I.L.R. (2014) M.P. 1396*

– **Section 7(ii), 16(1)(a)(i)**, Prevention of Food Adulteration Rules, 1955, Rule 49(29) - Drinking Water - Sample of water was collected on 8-6-2001 and complaint was filed on 25-9-2006 - Rule 49(29) is applicable to Mineral Water and not drinking water - Even otherwise, the Rule 49(29) remained inoperative till 30-6-2001 - Complaint was also filed after the period of 3 years commencing from the date of offence - No offence is made out on the basis of the face value of the complaint - Proceedings quashed : *Prakash Desai Vs. State of M.P., I.L.R. (2012) M.P. 2602*

– **Section 7(v) read with Section 16(1)(a)**, Prevention of Food Adulteration Rules 1955 - Rule 32(a) - Food Inspector purchased the sample of 450 gm of 'Vital' Pure Refined Cooking Oil (Soya Oil) from open tin of 10 Kg. for the purpose of examination - Sample was divided into three parts and were sealed and one sample was sent to State Food Laboratory - Report of Public Analyst that sample contravenes the Rule 32(a) and the sample was mis-branded -To ascertain whether the provisions of Rule 32(a) of the Rules are violated he sought an inquiry from the Public Analyst, which was not answered by him - Held - Prosecution has failed to establish the case against the petitioner-accused beyond reasonable doubt - Accused discharged, prior to the stage of charge : *Nemichand Vs. State of M.P., I.L.R. (2011) M.P. 2896*

– **Section 11** - Food Inspector took sample from one can and he did not mix the milk of all cans - It is the choice of the Food Inspector to take sample from any Can - There is no illegality : *Basant Rao Vs. State of M.P., I.L.R. (2013) M.P. 2254*

– **Section 13** - Service of report of Public Analyst - Prosecution did not file the copy of acknowledgment due receipt, although the postal receipt was produced - It cannot be said that such notice was duly served on the applicant - Revision allowed : *Bhawani Singh Vs. State of M.P., I.L.R. (2014) M.P. 827*

– **Section 13 (2)**, Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Quashment of criminal complaint – Delay in trial – Held – Complaint was filed after one year and no progress has taken place for about 14 years, since filing of the complaint – No evidence has been recorded, accused also deprived of his rights u/s 13(2) of Act, 1954 – Proceedings are liable to be quashed on the point of delay : *Shri Mahila Grih Udyog Lijjat Papad, Jabalpur Vs. State of M.P., I.L.R. (2014) M.P. 1641*

– **Section 13(2)** - Delay in prosecution - Complaint filed after 7 months and 18 days - Accused/applicant though present in Court did not file application u/s 13(2) of the Act for re-examination of the sample by Central Food Laboratory - Held - Delay caused in filing of complaint clearly deprives the accused of his valuable right - He could not be convicted for the offence of adulteration - Appeal allowed : *Mohd. Baitulla Vs. State of M.P., I.L.R. (2011) M.P. 2607*

– **Section 13(2)** – Forwarding of Report of Public Analyst – Sample of ‘Tomato Ketchup’ was found adulterated vide Public Analyst Report dated 23.02.2010 – The declaration made on label of Ketchup disclosed that the Ketchup was ‘best before 6 months’ from January 2010, the months of manufacture – Notice u/s 13(2) was sent to the petitioner only after filing of the complaint before the Court on 29.07.2011 – Held – Notice U/S 13(2) of the Act along with the copy of the report of the Public Analyst was forwarded to the petitioner a year after the expiry of the shelf life of the sample – In such a situation, where no order of conviction can be recorded on the basis of the report, the proceedings are liable to interfered with – Petition allowed : *Prahlad Gattani Vs. State of M.P., I.L.R. (2012) M.P. 1454*

– **Section 13(2)** - Notice sent by post within four months of the date when sample was taken - It shall be presumed that there was no violation - Accused did not apply for analysis - According to the analyst the sample was adulterated - Conviction valid : *Basant Rao Vs. State of M.P., I.L.R. (2013) M.P. 2254*

– **Section 16** – Reduction of sentence – If the minimum sentence is prescribed in the particular statute it cannot be reduced by any of the criminal court including the High Court – The mandate of Section 433 of the Cr.P.C. enables the Government in an appropriate case to commute the sentence of a convict and to prematurely order his release before expiry of the sentence : *Ramesh Chandra Vs. State of M.P., I.L.R. (2014) M.P. 1396*

– **Section 16(1)(a)(i)** - Appeal against acquittal - Respondent carrying milk for selling was intercepted by the Food Inspector and sample of milk taken for chemical analysis - Held - Milk was not made homogeneous - Notice under Section 13(2) placed on record but mode of service neither filed nor proved - Appeal dismissed : *State of M.P. Vs. Bhajan Lal, I.L.R. (2012) M.P. 2199*

– **Section 20** - Sanction for prosecution - Officer appointed as Incharge Chief Medical & Health Officer (CHMO) can issue sanction - However, a person who is not appointed as District CHMO or Incharge District CHMO has no authority to grant sanction for prosecution, although he has taken charge (in another capacity) from transferred CHMO : *State of M.P. Vs. Vishnoo Prasad, I.L.R. (2011) M.P. 787*

PREVENTION OF FOOD ADULTERATION RULES, 1955

– **Rule 8** - Qualification - Food Inspector - Petitioners holding the degree of Bachelor of Technology in agriculture Engineering whereas Rule 8(c) provides Graduate in Agriculture - Expression Bachelor degree in Agriculture is more comprehensive than the expression B.Tech Degree in Agriculture Engineering - Held - Petitioners do not possess the degree in Agriculture - B.Tech. degree in agriculture Engineering cannot be

equated with the degree in Agriculture - Petitioners do not possess the requisite qualification prescribed under Rule 8(c) - Petition dismissed : *Ashish Pratap Singh Vs. State of M.P., I.L.R. (2013) M.P. 605*

- **Rule 32(a)** - See - Prevention of Food Adulteration Act, 1954, Section 7(v) read with Section 16(1)(a) : *Nemichand Vs. State of M.P., I.L.R. (2011) M.P. 2896*

- **Rule 49 (29)** - See - Prevention of Food Adulteration Act, 1954, Section 7(ii), 16(1)(a)(i) : *Prakash Desai Vs. State of M.P., I.L.R. (2012) M.P. 2602*

PREVENTION OF FOOD ADULTERATION RULES, M.P. 1962

- **Rule 16 (b)** - Sample taken in a bottle or jar - It should be sealed on ends and wrapped in thick brown paper - Proper slip of the Local Health Authority should be affixed - Public Analyst found the seal of sample intact - Held - There was no illegality : *Basant Rao Vs. State of M.P., I.L.R. (2013) M.P. 2254*

PREVENTION OF INSULTS TO NATIONAL HONOUR ACT (69 OF 1971)

- **Section 2** - Disrespect - Petitioner, a Union Minister and President of M.P. Congress Committee arrived in a party meeting in official car whereon National Flag was having a hole - On being apprised, he made a fun of it by saying it is similar to that of State Government - Held - Article 51(a) of Constitution of India enjoins a duty on every Citizen to respect National Flag - However, allegation do not prima facie make out a case under section 2 of Act, 1971 - Proceedings quashed : *Kantilal Bhuria Vs. Sanjaya Sarvaria, I.L.R. (2012) M.P. 2606*

PRINCIPLE OF RES-JUDICATA

- **Criminal Proceedings** - Is not applicable to criminal proceedings including the proceedings u/s 125 of Cr.P.C. : *Kamlesh Kumar Patel Vs. Smt. Madhulata, I.L.R. (2014) M.P. 1445*

PRISONERS' RELEASE ON PROBATION ACT M.P. (16 OF 1954)

- **Section 9**, Prisoners' Release on Probation Rules, M.P. 1964, Rule 2 - Release of prisoner on probation - Manner of commission of offence is a relevant consideration - The manner of commission of offence may be so brutal that it by itself may be a good and sole ground to decline the licence to release : *Durga Prasad Vs. State of M.P., I.L.R. (2011) M.P. 656*

PRISONERS' RELEASE ON PROBATION RULES, M.P. 1964

– **Rule 2** - See - Prisoners' Release on Probation Act, M.P., 1954, Section 9 : *Durga Prasad Vs. State of M.P., I.L.R. (2011) M.P. 656*

– **Rule 4 (Amended)** - Rule 4 has been amended on 24.03.2008 therefore, all applications, pending for the premature release under the Provisions of M.P. Prisoners Release on Probation Act, 1954 are to be decided in the light of the amended rules : *Prakash Singh Thakur Vs. State of M.P., I.L.R. (2012) M.P. 2911 (DB)*

- **Rule 4** - Amendment - Pending Applications - Pending applications for release on probation are to be decided on the basis of the Rule prevailing on the date of decision and not on the basis of the Rule prevailing on the date of conviction : *Mukesh Sharma Vs. State of M.P., I.L.R. (2013) M.P. 10 (DB)*

PRIVATE MEDICAL AND DENTAL UNDER GRADUATE COURSE ENTRANCE EXAMINATION (M.P.), RULES 2011

- **Rule 5** - Admission to Medical Colleges - Vacant Seats of NRI Quota - It is open to unaided professional educational institutions to fill up unfilled NRI seats through the entrance test conducted by them till the disposal of Appeal : *Modern Dental College and Research Centre Vs. State of M.P., I.L.R. (2012) M.P. 1501 (SC)*

PROBATION OF OFFENDERS ACT (20 OF 1958)

– **Section 3** – Powers of court to release certain offenders after admonition – Petitioners convicted u/s 294 IPC and sentenced to pay fine of Rs. 200/- each by the trial court – No previous conviction proved – Entitled to be admitted to the benefit of Section 3 of the Act : *Surendra Vs. State of M.P., I.L.R. (2014) M.P. 1134*

– **Section 6** - See - Penal Code, 1860, Section 304 Part-II & 323 : *Vinay Singh Vs. State of M.P., I.L.R. (2012) M.P. 2473*

PROCEDURAL LAW

- **Justice** - Is enacted to provide justice to the parties and not to stall the process of law : *Ram Babu Vs. Shrikrishna, I.L.R. (2011) M.P. 671 (DB)*

PROCEDURE

– **Interim stay granted** – Till next date of hearing – Meaning and effect – On next date of hearing means, when the Court applies its mind – Should not confused with – Step in proceedings – Simple adjourned without any order – Stay not specifically

vacated – Stay continue : *Sangeeta Bansal (Smt.) Vs. State of M.P., I.L.R. (2015) M.P. 3217*

PROFESSIONAL EXAMINATION BOARD (SERVICE & RECRUITMENT) RULES, 1966

- **Professional Examination Board (Service & Recruitment) Rules, 1999** - Rules are not statutory in nature : *Ashok Mishra Vs. State of M.P., I.L.R. (2012) M.P. *106*

PROFESSIONAL EXAMINATION BOARD (SERVICE & RECRUITMENT) RULES, 1999

- See - **Professional Examination Board (Service & Recruitment) Rules, 1966** : *Ashok Mishra Vs. State of M.P., I.L.R. (2012) M.P. *106*

PROMISSORY ESTOPPEL

- **Legal Relationship** – Petitioners were permitted to install rides and games under licence – No promise made to petitioner creating any legal relationship or affecting legal relationship – Even otherwise petitioners have not done anything nor have altered their position except by submitting application for renewal – As the land use has already been changed therefore, principle of promissory estoppel would also not apply – Petition dismissed : *Mangal Amusement (P) Ltd. Vs. State of M.P., I.L.R. (2011) M.P. 1912 (DB)*

- **There cannot be any estoppel against the Statute and against an order which is in conformity with the Statute** - Merely because the University accepted examination fees of certain more number of students beyond the permissible limit, it will not operate as "estoppel" in any manner : *Janta Vidyalaya Shiksha Samiti Vs. Jiwaji University, Gwalior, I.L.R. (2013) M.P. 2137*

PROSECUTION DOCUMENTS

- **Not Proved** – Prosecution documents which were not proved can not be read against the accused however if any portion is favouring the accused, the same can be read : *Buddhu Pal Vs. State of M.P., I.L.R. (2012) M.P. 774 (DB)*

PROSPECTIVE OPERATION

- **Judgment of Apex Court** – Judgment passed in Yashpal's case shall be applicable prospectively only on those certificates which were issued after the date of judgment i.e. 11-2-2005 : *Ved Prakash Sharma Vs. State of M.P., I.L.R. (2011) M.P. 1187*

PROSPECTIVE OVERRULING

– **Full Bench Judgment** - Overruling of Judgment passed by Full Bench will not affect cases which have already been tried or are at an advanced stage before Magistrates in terms of said decision : *Ramesh Kumar Soni Vs. State of M.P., I.L.R. (2013) M.P. 741 (SC)*

PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT (32 OF 2012)

– **Special Judge** - Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (33 of 1989), Section 3 (1) (xi) – Applicant charged for various offences under Act, 2012, Act, 1989 and I.P.C. – Cognizance of the case was taken by the Court notified under POSCO Act – Sessions Judge thereafter transferred the case to the Special Judge notified under Act, 1989 – Held – By the aid of Section 9 of Cr.P.C. and giving harmonious interpretation to the Acts and Notifications issued, the offence under Act, 1989 as well as under Act 2012 and I.P.C. can be tried by a Court of Session notified under Act, 1989 and trial may not required to be split up : *Mohd. Juned Vs. State of M.P., I.L.R. (2015) M.P. 484*

– **Section 4** – See – Penal Code, 1860, Section 376(2)(F) : *Chaitu Singh Gond Vs. State of M.P., I.L.R. (2015) M.P. 1343 (DB)*

– **Section 6** – See – Penal Code, 1860, Section 302, 376-A, 363 & 201 : *In Reference Vs. Arvind alias Chhotu Thakur, I.L.R. (2014) M.P. 2441 (DB)*

– **Section 7/8** – Appellant took the prosecutrix inside his house, removed her slacks and panty, lifted her onto the cot – Appellant guilty committing offence defined under Section 7 and punishable under Section 8 of Act, 2012 : *Chaitu Singh Gond Vs. State of M.P., I.L.R. (2015) M.P. 1343 (DB)*

– **Section 7/8** – Applicant is alleged to have caught hold the hand of the complainant and put his hand around her waist – Person who does “any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault” cannot be marginalised under the circumstances and it cannot be said that the act did not amount to sexual assault as per Section 7 of the said Act : *Farhan Khan Vs. State of M.P., I.L.R. (2014) M.P. 1381*

PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT (43 OF 2005)

– **Section 2(s) & 17** – Shared Household – House was constructed on plot purchased by mother-in-law on home loan – Loan amount was paid from the salary of

father-in-law – Property neither belongs to husband nor taken by him on rent nor is a joint family property – Property is exclusive and self owned property of mother-in-law of applicant : *Jyoti Parihar (Smt.) Vs. Munidra Singh Parihar, I.L.R. (2011) M.P. *110*

– **Section 12 & Proviso to Section 12** - Even an interlocutory order directing issuance of notice would not be excluded from the rigour of the proviso - Magistrate ought to have passed a reasoned order holding that prima facie a case existed for asking the petitioners as to why the reliefs, as claimed in the application should not be granted : *Ram Singh Aazad Vs. Smt. Maya Singh, I.L.R. (2012) M.P. 2072*

– **Section 12** - See - Criminal Procedure Code, 1973, Section 482 : *Ram Singh Aazad Vs. Smt. Maya Singh, I.L.R. (2012) M.P. 2072*

– **Section 12, 19, 20 & 22** - See - Criminal Procedure Code, 1973, Section 482 : *Meenakshi Jatav (Smt.) Vs. Dr. Smt. Seema Sehar, I.L.R. (2013) M.P. 729*

– **Section 12 & 27** - Cognizance - Magistrate before issuing notice to the petitioners has to consider the contents of the application - Procedure adopted by the Magistrate issuing notice to the petitioners without considering the domestic incident report and without going through the contents of the application and without specifying as to why each of the petitioners named by the complainant was to be summoned, is contrary to the Act - Impugned order set-aside - Magistrate directed to consider domestic incident report as well as the contents of the application and pass an appropriate order : *Mahesh Mathur (Dr.) Vs. State of M.P., I.L.R. (2013) M.P. 2059*

PUBLIC DISTRIBUTION SYSTEM (CONTROL ORDER), M.P. 2009

– **Clause (4) of the Annexure–II** – It has a reasonable nexus with the object sought to be achieved i.e. timely distribution of essential commodities to the card holders – Clause (4) can not be said to be either arbitrary or discriminatory – It appears to have been enacted in the interest of public in general : *Sai Kripa Gramin Prathmik Sahakari Upbhokta Bhandar Maryadit, Nainpur Vs. State of M.P., I.L.R. (2012) M.P. 109 (DB)*

– **Clause 5 (3) and clause 2 (j)** – Considering the nature of work to be performed by the lead society – Clause 5(3) provides that in rural area, marketing societies or primary agricultural cooperative societies shall be appointed as lead societies – The constitution and functioning of Primary Agricultural Credit Facilities Societies is different from other societies – Therefore, challenge to clause 5(3) must fail : *Sai Kripa Gramin Prathmik Sahakari Upbhokta Bhandar Maryadit, Nainpur Vs. State of M.P., I.L.R. (2012) M.P. 109 (DB)*

– **Clause 6 of Annexure-II** – Whether arbitrary or discriminatory – Classification of the cooperative societies for the purpose of running fair price shops in rural areas is based on intelligible differentia and has a reasonable nexus with the object i.e. availability of essential commodities at controlled prices to public in general – Thus, the provisions of clause (6) can neither be said to be arbitrary nor discriminatory : *Sai Kripa Gramin Prathmik Sahakari Upbhokta Bhandar Maryadit, Nainpur Vs. State of M.P., I.L.R. (2012) M.P. 109 (DB)*

PUBLIC GAMBLING ACT (3 OF 1867)

– **Section 4** - Accused were found gaming or present for the purpose of gaming - If there is no evidence to show that the premises were a Common Gaming House, the accused can not be convicted u/s 4 of the Act : *Anurudh Mishra Vs. State of M.P., I.L.R. (2012) M.P. 2303*

– **Section 4-A & 6 (c)** - See - Rajya Suraksha Adhinyam, M.P. 1990, Section 9 : *Preetam Sahu Vs. State of M.P., I.L.R. (2012) M.P. 1560*

PUBLIC HEALTH AND FAMILY WELFARE (GAZETTED) SERVICE RECRUITMENT (M.P.) RULES 2007

– See – Shaskiya Sevak (Adhivarshiki-Ayu) Adhinyam, (M.P.) 1967, Section 2 : *Sikandar Sabana (Ku.) Vs. State of M.P., I.L.R. (2012) M.P. *17*

PUBLIC INTEREST LITIGATION

- **Alternative remedy** - Public Interest Litigation should not be entertained where ordinarily a person aggrieved should approach the forum created under the statute : *Nepal Singh Rajput Vs. State of M.P., I.L.R. (2011) M.P. *12 (DB)*

– **Decending water level and encroachments over land of lakes and tanks** – Appropriate directions for Government (1) to constitute a committee at each Division Level to Monitor the effective implementation of the water conservation schemes introduced by the Government (2) To ensure that there should not be any encroachment over the land of ponds, tanks and lakes and if there is any encroachment that be removed immediately and (3) to take effective steps in regard to water harvesting and ground water level management so the problem of reducing the level of ground water could be tackled were given : *Rinkesh Goyal Vs. State of M.P., I.L.R. (2011) M.P. 1504 (DB)*

- **Delay and Laches** - Allotment of foreign liquor shop challenged - Foreign liquor shop notified in the area as per resolution was passed by Gram Sabha - Tenders were invited for allotment of foreign liquor shop - Resolution passed by Gram Sabha not

challenged - No objection raised with regard to opening of foreign liquor shop in the area - Country liquor shop is already running in the area and no objection with regard to running of that shop taken - Allotment of shop in favour of respondent No.5 - Petitioner is guilty of delay and laches and by his conduct he has permitted creation of third party interest - Petition suffers from delay and laches : *Nepal Singh Rajput Vs. State of M.P.*, I.L.R. (2011) M.P. *12 (DB)

- **Delay** - Delay may not defeat the claim for relief unless the position of the other side is so altered which cannot be retracted on account of lapse of time or inaction on the other party : *Neetu Tejkumar Bhagat Vs. Jabalpur Development Authority*, I.L.R. (2012) M.P. 2946 (DB)

- **Legal Rights** - Neither any fact has been pleaded nor any material has been brought in support thereof to show that any legal rights of public in general are being affected or any pecuniary loss or any loss is going to be caused to the public at large - Writ petition cannot be treated as Public Interest Litigation : *All India Bank Officers' Association Vs. State Bank of India*, I.L.R. (2011) M.P. *22 (DB)

- **Maintainability** - Petitioner an unregistered society sought a direction (1) to prevent slaughter of animals, (2) to take measures to prevent illegal felling of trees, and (3) to prevent manufacture, sale and consumption of liquor in the vicinity of temple - Held - (1) Petition is maintainable, (2) Appropriate directions to respondents issued : *Prani Raksha Sangh Vs. State of M.P.*, I.L.R. (2011) M.P. *13 (DB)

- **Quo Warranto** - Petitioner being elected as representative of District Central Co-operative Bank Ltd. filed writ petition as PIL seeking quo warranto for restraining respondent Nos.5 & 6 (who were elected as Directors) from participating in the management of the Bank - Held - Petitioner being a person who cannot be said to be unbiased, and therefore, the petition is not maintainable as PIL : *Sukhendra Singh Vs. State of M.P.*, I.L.R. (2011) M.P. 687 (DB)

- **Requirements** - Law discussed : *Narmada Bachao Andolan Vs. State of M.P.*, I.L.R. (2011) M.P. *113 (SC)

PUBLIC PREMISES (EVICTION OF UNAUTHORISED OCCUPANTS) ACT (40 OF 1971)

- **Section 2 (g)** - Public Premise - Any premise which is in the possession for the time being with the Government of India or its authority would be a 'public premises' and any person who without any authority occupies the said premises would be an 'unauthorized occupant' : *Ramcharan Vs. Airport Authority of India*, I.L.R. (2011) M.P. 2770

PUBLIC SERVICES (PROMOTION) RULES, M.P. 2002

– **Prospective in Operation** – Rules 2002 do not have any retrospective operation and shall apply to the employees of Board from 5.1.2006 i.e., when the same were adopted – Rule 7(5) of Rules do not apply to vacancies which have already arisen before 5.1.2006 – It applies only to vacancies which have arisen after 5.1.2006 – Direction given by Single Judge to convene a review D.P.C strictly in accordance with provisions of Rule 7 cannot be approved – In respect of vacancies which have already arisen prior to 5.1.2006, the D.P.C. shall consider the suitability of candidates to fill up the vacancies in accordance with the Rules which were in vogue prior to 5.1.2006 : *M.I. Khan (Dr.) Vs. M.P. State Electricity Board, I.L.R. (2011) M.P. 868 (DB)*

– **Rule 6** – Promotion – Seniority subject to suitability – Assessment of comparative merits of candidates is impermissible : *Ram Bharose Kamal Vs. State of M.P., I.L.R. (2012) M.P. 1181*

– **Rule 6 (7)** – Power of D.P.C. to declare a candidate fit or not fit – Minute reading of rule shows that DPC is empowered to declare the candidate as *fit* or *not fit* on the basis of his service record : *Ram Bharose Kamal Vs. State of M.P., I.L.R. (2012) M.P. 1181*

– **Rule 7(9)** – Promotion – Denial of promotion to the petitioner on the post of Professor assailed on the ground that since the vacancy was of the year 2004, ACR from the year 1999 to 2004 were to be taken into consideration instead of ACR for the year 2005 onwards, therefore, entire consideration was improper – Held – Rule 7(9) prescribes grading of ACR's and assigning marks by considering preceding 5 years ACR's from the year of vacancy – Since vacancy occurred in the year 2004, consideration of ACR's for the year 2005 onwards vitiates procedure followed by the DPC – DPC proceedings are not sustainable, same are quashed – Matter is remitted back to respondents to hold review DPC in terms of provisions of Rules 2002 : *Pratibha Rajgopal (Dr.) Vs. State of M.P., I.L.R. (2015) M.P. *33*

– **Rule 7(9)** – Service Law – Promotion – Petitioner's ACRs were degraded by DPC after assigning reasons – He was put in select list according to marks obtained by him strictly in accordance with seniority – Promotion could not be granted due to non availability of vacancy – No junior was promoted – Fundamental right of consideration for promotion was not denied in arbitrary manner – Petition dismissed : *Brajesh Sharan Shukla Vs. State of M.P., I.L.R. (2014) M.P. 1240*

- See - Service Law : *Virendra Kumar Swarnkar Vs. Madhya Pradesh State Agricultural Marketing Board, I.L.R. (2011) M.P. 2743*

PUBLIC TRUSTS ACT, M.P. (30 OF 1951)

– **Section 2 (4) & 4** – Public Trust – Plaintiff claimed title in respect of temple in question and adjoining land on basis of ‘Sanad’ – Defendants pleaded their right to perform Pooja in the temple and right to manage the lands on basis of ‘Hibanama’ – Held – It is nobody's case that property in dispute belongs to a Trust – The property in dispute is not a trust property – Therefore, the Courts below committed an error in directing plaintiffs to make an application u/s 4 : *Prithvivallabh Vs. Chandra Kishore Vyas, I.L.R. (2011) M.P. 997*

– **Section 4** - Two Applications for Registration - Maintainability - Two applications by different parties for registration of trust in respect of same property pending before Registrar Public Trust - Second application was entertained by Registrar however, the Revisional authority held that second application is not maintainable - Held - While deciding first application, an enquiry as per the provisions of Section 5 has to be followed and objections are required to be invited - Application filed by respondent No.1 can be treated as an objection to the first application - Registrar after enquiry can decide that which of the parties are entitled for registration of public trust - Both the applications are to be decided simultaneously : *Shri Digamber Jain Neminath Jinalaya Trust Vs. Shri 1008 Choudhary Digamber Jain Mandir Trust, I.L.R. (2013) M.P. 2320 (DB)*

– **Section 8 & 9** - Notice to affected parties - Board of Trustees removed certain trustees and appointed new trustees by passing resolution - Application was made to Registrar to record the changes brought in trusteeship of Public Trust - Registrar accordingly recorded the changes in trusteeship - Meeting of Board of Trustees was held without giving any notice to the removed trustees - Registrar, also recorded the changes without issuing notices to the removed trustees - Registrar should have issued notices to the removed trustees about the proposed changes and then should have passed appropriate order after hearing them - Remedy of Civil Suit under Section 8 of the Act is available to the removed trustees even if changes would have been accepted by the Registrar by holding an enquiry in accordance with law after giving notice to the removed trustees - As principles of natural justice were not followed therefore, the order passed by Registrar is bad and rightly quashed by Single Judge - Appeal dismissed : *Sushil Kumar Kasliwal Vs. State of M.P., I.L.R. (2013) M.P. 1296 (DB)*

– **Section 8 & 14** - Limitation to file suit - Section 8 specifically prescribes limit - Person having interest in public trust and aggrieved by order of Registrar of Public Trust should institute a civil suit within 6 months - No provision for enlargement of limitation - Limitation Act would not be applicable for condonation of delay - Limitation would start

from the date when order was passed u/s 14 of the Act - Appeal dismissed : *Prahlad Kushwaha Vs. Rani Devmati, I.L.R. (2012) M.P. 2774*

– **Section 14** – Application filed by petitioner u/s 14 for modification or clarification of order – Application dismissed on the ground that respondent No. 2 has no powers u/s 14 of the Act to review an earlier order passed by him – Held – Respondent No. 2 is not correct in holding that he has no power to modify or review the condition earlier imposed by him – Section clearly states that only the conditions or restrictions, contained in the instrument of trust or in the order of any court cannot be modified by him – He only has to see whether sanction of transaction for which an application is made will be beneficial to the interests of the public trust – Impugned order quashed – Matter is remanded back to decide the petitioner’s application afresh on merits : *Shri Jagdish Mandir Ganesh Mandir Public Trust, Jabalpur Vs. State of M.P., I.L.R. (2014) M.P. 1255*

– **Section 25, 26 & 27** - Removal and appointment of Trustees - Powers of Registrar - Registrar has no power to remove the existing trustee and appoint another by his own order and this power vests in the Civil Court only : *Shridev Mahadevji Mandir Vs. Rajesh Kumar, I.L.R. (2013) M.P. 1921*

– **Section 26 (2)** – Application to Court – If the Registrar exercises power under sub-section (2) by moving an application he is required to furnish an opportunity of being heard to the working trustees which is missing in the facts of the present case : *Shivnarayan Mahant Vs. Registrar, Public Trust, I.L.R. (2012) M.P. *70*

– **Section 26 (2) & 27** – Power of Court – On receiving rival application/objection for appointment of Managing Trustee and Trustee and proper management of trust property the Registrar Public Trust, made a reference to the Court on three issues – The Court there upon passed the order appointing /nominating the trustees and regarding management of property – Held – Such direction is akin to the provisions of sub section 2(b) of Section 27 : *Bharat Kumar Patel Vs. Shri Ram Janki Hanuman Mandir, I.L.R. (2012) M.P. 1262*

– **Section 27**, Land Revenue Code, M.P. (20 of 1959), Section 248 – Trespasser of Trust Property – Even the trespasser can not be evicted forcibly without following due process of law – Direction issued by the reference court is modified to the extent that the Registrar Public Trust shall initiate the action against the appellant under Section 248 of the Code and take over the possession of the immovable property by affording an opportunity : *Bharat Kumar Patel Vs. Shri Ram Janki Hanuman Mandir, I.L.R. (2012) M.P. 1262*

– **Section 36** - Exemption - If an institution is already registered under Society Registration Act, M.P., 1973, the provisions of Public Trust Act, M.P., ceased to apply : *Arvind Jain Vs. State of M.P., I.L.R. (2014) M.P. 455*

PUBLIC WORKS DEPARTMENT (NON-GAZETTED) SERVICE
RECRUITMENT AND CONDITION OF SERVICE RULES
(M.P.), 1972

– **Rule 20, Schedule II** - Relaxation - Petitioner although matriculate was not having certificate of Higher Secondary (Technical) Examination with Drawing as one of the subject - However, the petitioner was appointed as Tracer on regular basis - Increments were paid till 1995 and thereafter mistake was detected - Matter was taken up with controlling authority for seeking exemption from passing the requisite examination and matter was referred to State Govt. - State Govt. did not decide the matter and petitioner was allowed to retire - Held - State Govt. should have exercised its power under Rule 20 - However, State Govt. did not act with diligence instead kept the matter pending by fixing the salary on the minimum of scale which is not the pay of Tracer - Petitioner is entitled for regular pay scale of Tracer and subsequent pay revisions - Arrears be paid however, without interest - Petition allowed : *Brijees Durrani (Smt.) Vs. State of M.P., I.L.R. (2013) M.P. 1848*

PUJARI

– **Discontinuance of** – Reasons – Gram Panchayat satisfied itself by assigning either serious reasons for discontinuance of Pujari – No fault can be found in said decision, even if Petitioner’s sons were acquitted in an offence under Section 376 of I.P.C. – The prosecutrix turned hostile, who was wife of the real brother of petitioner, no interference is called for : *Kailash Narayan Dubey Vs. State of M.P., I.L.R. (2012) M.P. 916*

– **Duties** – Income and Expenditure – As Pujari is custodian of a public temple, therefore, he is bound to disclose it to Gram Panchayat and State Officials – Conduct of petitioner deprecated for not disclosing the account – Petitioner directed to submit entire record of his income expenditure and financial status within a period of 7 days – Petition dismissed : *Kailash Narayan Dubey Vs. State of M.P., I.L.R. (2012) M.P. 916*

– **Misconduct** – Conduct of Pujari can not be compared with a public servant – His conduct should be like a saint – Religious history traced which shows that Pujari enjoys a very high position in the mind of people in Indian Society which can not be equated with Civil Post holder – His conduct should be, therefore, in consonance with the said decision : *Kailash Narayan Dubey Vs. State of M.P., I.L.R. (2012) M.P. 916*

– **Statutory Provision** – There is no Constitutional or statutory provision to determine service condition etc. of Pujari – Neither there is any contract of service – Petitioner has no vested legal or constitutional right to continue : *Kailash Narayan Dubey Vs. State of M.P., I.L.R. (2012) M.P. 916*

– **Unanimous Decision** – Gram Panchayat – Unanimous decision to discontinue a Pujari after satisfying itself – Temples were initially maintained by the grant given by erstwhile State but after independence the powers were given to Gram Panchayat – Gram Panchayat is best judge to decide the suitability of Pujari for the purpose of his continuance : *Kailash Narayan Dubey Vs. State of M.P., I.L.R. (2012) M.P. 916*

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QUALIFICATION

– **Minimum educational qualification prescribed is Class 10th pass under the 10+2 High School Examination Pattern** – Petitioner is 10th Class pass and is more meritorious than respondent No. 5 – Merely because respondent No. 5 is more qualified and is 12th Class pass that cannot be a ground for ignoring the merit of the petitioner, who is qualified for appointment and giving preference to respondent No. 6 only because he is 12th Class pass, the decision taken by the Gram Panchayat by referring to Clause 3.3 of the policy dated 12.09.95 is nothing but an arbitrary decision : *Ashish Singh Vs. State of M.P., I.L.R. (2011) M.P. 1226*

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RAILWAYS ACT (24 OF 1989)

– **Section 2 (17) & 106** - Over charged or differential freight - 19 rakes were booked and railway charged for a longer route - However, the rakes were sent by a shorter route - Appellant claimed the refund of difference of charges - Such a claim would come under the category of Differential freight and not over charge - Statutory notice as required under Section 106 of Act not necessary - Dismissal of claim by Tribunal on the ground that statutory notice was sent after 6 months bad - Matter is sent back to Railway Claims Tribunal for its decision on merits : *Diamond Cements (M/s.) Vs. Union of India, I.L.R. (2013) M.P. 2417*

– **Section 106 (3)** – Refund of Overcharge – Rakes were booked for transportation of cement and the petitioner paid freight – Cement were transported through a shorter route – The difference of amount/excess amount charged for aforesaid

kms, which was claimed as refund – The claim was repudiated on the ground of delay – Held – Even a case where refund of excess amount paid towards the freight the same would be a refund of overcharge and is governed by the provisions under Section 106 of the Act – The right of the petitioners' claim for refund of time barred dues towards overcharge being covered by the notification dated 11.01.1995, the respondents were not justified in not referring the same to the General Manager who was empowered to decide the time barred claim : *Maihar Cement (M/s.) Vs. Union of India, I.L.R. (2012) M.P. *59*

– **Section 123 & 124-A** - Compensation - Deceased was a bonafide passenger and fell down from the train - Respondents opposed the petition alleging that the train had no scheduled stoppage and after it passed the station, alarm chain was pulled and the co-passenger got down however before the deceased could get down the train started again and the deceased got down from the running train as a result of which he sustained injuries - Co-passenger controverted the statement recorded by police - Respondents did not examine the person who had recorded the statement of co-passenger - Since the death was not suicide or his own criminal act, Tribunal wrongly dismissed the petition - Respondents directed to pay the amount of compensation as prescribed in death case along with interest from the date of application as prescribed : *Sushila Bai (Smt.) Vs. Union of India, I.L.R. (2013) M.P. 1394*

– **Section 123(c)(2) & 124-A** – Compensation claimed in lieu of death – Deceased was aboard a General Compartment and must have got down at Station either to quench his thirst or may be because of the pressure of crowd to ease himself and found it difficult to aboard the train when it has started moving – It cannot be said that the deceased was not acting like a prudent man and deliberated a self inflicted injury – Deceased was a bona fide passenger and his death was an untoward incident – Judgment set-aside – Compensation of Rs. 4,00,000/- awarded with 7.5% interest – Appeal allowed : *Pushpa Devi (Smt.) Vs. The General Manager, I.L.R. (2015) M.P. 2726*

– **Section 123(b) & 124(A)** – See – Railway Claims Tribunal Act, 1987, Section 23 : *Bharat Kumar Vs. Union of India, I.L.R. (2015) M.P. *21*

– **Section 123(c) & 124(a)** – See – Railway Claims Tribunal Act, 1987, Section 16 : *Lalji Bind Vs. Union of India, I.L.R. (2015) M.P. 2158*

– **Section 124-A** - Burden of Proof - In a case of railways accident or of untoward incident, the burden to prove that the deceased was not having valid ticket or pass and was not a bona fide passenger lies on the railway administration : *Shanti (Smt.) Vs. Union of India, I.L.R. (2013) M.P. 162*

– **Section 124-A** - Passenger - Person who had purchased a valid ticket for traveling by a train carrying passengers on any date is a passenger : *Sanjulata Chaudhary Vs. Union of India, I.L.R. (2013) M.P. *37*

– **Section 124-A** - Untoward event - Deceased died due to fall down from the train - Case of the deceased does not fall in any of the specified exceptions - The case would fall under 'Untoward event' : *Shanti (Smt.) Vs. Union of India, I.L.R. (2013) M.P. 162*

RAILWAY BOARD ACT (4 OF 1905) & CATERING POLICY, 2010

- **Tender** - Tender conditions challenged having no nexus with the object to be achieved by the catering policy 2010 and as such they are unjust, arbitrary, discriminatory having adverse effect on the petitioners - Held - Unless the catering policy 2010, by which policy of 2005 has been modified under the authority of Indian Railway Board Act, 1905, having binding effect of law and is declared to be ultra vires - Petition is not maintainable : *Satkar Caterers (M/s.) Vs. Union of India, I.L.R. (2013) M.P. 2123 (DB)*

RAILWAY CLAIMS TRIBUNAL ACT (54 OF 1987)

– **Section 16**, and Railways Act (24 of 1989), Section 123(c) & 124(a) – Applicant's claim was denied on the ground that the death was not due to untoward incident – Held – In the absence of specific evidence that the train was stationary at the place where accident had occurred, it has to be presumed that the victim had fell down from the moving train – Finding arrived at by Claims Tribunal cannot be given the stamp of approval – Same are set-aside – Claimant would be entitled for compensation of Rs. 4 lakhs with 6% interest p.a. from the date of claim application – Appeal is allowed : *Lalji Bind Vs. Union of India, I.L.R. (2015) M.P. 2158*

– **Section, 23, 123(c)(2) & 124-A** - Claim petition was dismissed on the ground that death was not due to an untoward incident and the deceased who although was a bonafide passenger was trying to get down from the running train - Held - Merely because the deceased was de-boarding from the moving train, the claim petition cannot be dismissed, as it was not a self inflicted injury - It does not fall under exceptions (a) to (e) of proviso to Section 124-A - Deceased died in an untoward incident - Appellants entitled for a compensation of Rs. 4,00,000/- : *Shreekant Agrawal Vs. Union of India, I.L.R. (2014) M.P. 410*

– **Section 16** – Date from which interest to be granted – Misjoinder of party – Substitution on 17.06.2013 – Interest granted from 17.06.2013 and not from date of institution of claim petition – Held – As the liability rests on Union of India and a common man is not aware of territorial boundaries of Zonal Railways, so interest to be granted from date of institution of claim petition – Appeal allowed : *Kari Bai @ Kali Bai (Smt.) Vs. Union of India, I.L.R. (2015) M.P. *29*

– **Section 16 & 23** - Compensation - Deceased was having a valid ticket from Itarsi to Mhow via Khandwa and instead of boarding a train of that route, if he had

boarded a different train, it cannot be said that the claimant is not entitled for compensation : *Sanjulata Chaudhary Vs. Union of India, I.L.R. (2013) M.P. *37*

– **Section 17(1)(b)(2)** - Condonation of delay - After deletion of Section 166(3) of Motor Vehicles Act, the Claims Tribunal should have adopted liberal approach and should not have dismissed the claim petition merely on the ground of delay of five years - Appeal allowed and matter remitted back to Tribunal for decision on merits : *M. Peetamber Vs. Union of India, I.L.R. (2013) M.P. 1107*

– **Section 17 (1) (b) & 17 (2)** - Claim petition dismissed as barred by 4 years - Held - It is expected from the Railway Claims Tribunal to consider the application for condonation of delay liberally - Learned Tribunal was not justified in dismissing the application for condonation of delay specially in a death case where appellant is only survivor and lost her son - Matter remanded back to be decided on merits : *Atar Bai (Smt.) Vs. Union of India, I.L.R. (2013) M.P. 1940*

– **Section 23**, Railways Act (24 of 1989), Section 123(b) & 124(A) – Claim by parents – Appellant’s claim was denied on the ground that the claimants have failed to establish that the deceased was unmarried and they are dependants – Held – Since the claimants have stated on affidavit that the deceased was unmarried which was not rebutted hence burden to prove that the deceased was married lay on Railways which was not discharged – Undisputedly appellants are parents of the deceased and dependants u/s 123(b) of Railways Act, 1989 – Finding arrived at by Claims Tribunal being perverse and not based on sound reason is set aside – Appellants would be entitled for compensation of Rs. 4 lakhs with 6% interest p.a. from the date of claim application – Appeal allowed : *Bharat Kumar Vs. Union of India, I.L.R. (2015) M.P. *21*

RAILWAY PROTECTION FORCE RULES, 1987

– **Rules 153, 158 & 217** – See – Service Law : *S.P. Singh Vs. West Central Railway, I.L.R. (2014) M.P. 3138*

RAJYA SAHAKARI BANK MARYADIT EMPLOYEES (TERMS OF EMPLOYMENT AND WORKING CONDITIONS) RULES, M.P. 1976

– **Rules 15(b)(2)** - See - Service Law : *R.R. Nihare Vs. State of M.P., I.L.R. (2011) M.P. 111 (DB)*

RAJYA SURAKSHA ADHINIYAM, M.P. 1990 (4 OF 1991)

– **Section 5** – Externment – No documents were supplied with show cause notice – Statement of witnesses were not given – Old and stale cases considered – Held – Order

passed in vindictive manner to suppress the voice of independent journalist : *Anoop Saxena Vs. The Secretary, Ministry of Home Affairs, Bhopal, I.L.R. (2015) M.P. 1704*

– **Section 5** – Writ jurisdiction – District Magistrate issued an order of externment based on previous five offences – Held – In the absence of any material to establish that witnesses are not coming due to apprehension of danger to property and person, order under Section 5 (b) of the Act cannot be passed : *Anoop Saxena Vs. The Secretary, Ministry of Home Affairs, Bhopal, I.L.R. (2015) M.P. 1704*

– **Section 9**, Public Gambling Act (3 of 1867), Section 4-A & 6(c) - Externment - Superintendent of Police submitted report against petitioner in the year 2008 - Order of Externment passed in 2011 - No material to show that petitioner continued to remain involved in offences under Gambling Act - Although, petitioner was convicted more than thrice within a period of three years under Gambling Act, but no material available on record for District Magistrate to record satisfaction that petitioner is likely to engage himself in the commission of offence - Order of Externment quashed : *Preetam Sahu Vs. State of M.P., I.L.R. (2012) M.P. 1560*

– **Section 14** - Appeal - Appellate Authority is required to examine each and every ground raised in memo of appeal : *Preetam Sahu Vs. State of M.P., I.L.R. (2012) M.P. 1560*

**RECOGNISED EXAMINATIONS ACT, M.P. (10 OF 1937) (ALSO
REFERRED TO AS 'MANYATAPRAPT PARIKSHA
ADHINIYAM, M.P. 1937')**

– **Section 3-D(1), 2 & 4** – See – Criminal Procedure Code, 1973, Section 439 : *Sudhir Sharma Vs. State of M.P., I.L.R. (2015) M.P. 1600 (DB)*

– **Section 3(D), 1, 2 & 5** – See – Criminal Procedure Code, 1973, Section 439 : *Vipin Goel Vs. State of M.P., I.L.R. (2015) M.P. 1916 (DB)*

– **Section 4**, Penal Code (45 of 1860), Section 419, 320, 467, 468, 471 & 120-B and Criminal Procedure Code, 1973 (2 of 1974), Section 4, 5 & 438/439 – Bail – Offence allegedly committed by the applicant is covered by the provisions of the M.P. Recognised Examination Act, 1937 – Whether applicant can be tried for the offences punishable under the provisions of I.P.C. – Held – It is premature for the applicant to pursue this contention for the simple reason that, admittedly, investigation of the case is still pending – This can be pursued only after the evidence is collated by the Investigating Officer and presented alongwith the challan before the appropriate court – This contention cannot be the basis to grant bail to the applicant : *Bal Kumar Kaushik Vs. State of M.P., I.L.R. (2014) M.P. 1673 (DB)*

RECOVERY OF DEBTS DUE TO BANKS AND FINANCIAL INSTITUTIONS ACT (51 OF 1993)

– **Section 2(g)**, Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, (54 of 2002), Section 2 (ha) - Debt - Includes any liability whether payable under a decree or order of any civil Court or any arbitration award or otherwise or under a mortgage and subsisting on and legally recoverable on the date of application : *Pithampur Steels Ltd. Vs. M/s. Kotak Mahindra Bank Ltd., I.L.R. (2013) M.P. 339 (DB)*

– **Section 2(g)**, Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, (54 of 2002), Section 2(ha), 13 & 37 - Debt Recovery Measures - Bank proceeded to take action under RDDBFI Act - It can still proceed under SARFAESI Act : *Pithampur Steels Ltd. Vs. M/s. Kotak Mahindra Bank Ltd., I.L.R. (2013) M.P. 339 (DB)*

– **Section 20** – Court Fee payable – Court Fee is a tax, and a law imposing tax has to be applied, by the letter of that law – There is no scope of any kind of intendment or notions of equity or sympathy or hardship while interpreting taxing statutes – When the relevant statutory Rule says that a certain amount of tax is payable, and if the case falls within four corners of such statutory Rule, the amount of tax mentioned in Statutory Rule is payable – Petition dismissed : *Manohar Wadhvani Vs. Bank of Baroda, I.L.R. (2011) M.P. 1932 (DB)*

– **Section 20(3) & 24** – See – Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002, Section 18(2) : *Baleshwar Dayal Jaiswal Vs. Bank of India, I.L.R. (2015) M.P. 2307 (SC)*

– **Section 24** - Limitation - Decree passed under the RDDBFI Act was already put to execution and recovery proceedings were pending - Held - It was a "live claim" and therefore, the DRAT has rightly held that the proceedings could not have been treated to be barred by limitation : *Pithampur Steels Ltd. Vs. M/s. Kotak Mahindra Bank Ltd., I.L.R. (2013) M.P. 339 (DB)*

RECRUITMENT

– **Minimum Qualification** – Candidature of Petitioners rejected only on the ground that they have obtained diploma from Universities which are not affiliated/registered/recognized by UGC – Certificates of Diploma in Computer Application issued by Universities established under Central, Provincial or State Act, prior to judgment in Yashpal's case – Order derecognizing such certificates quashed –

Respondents may examine the genuineness of such certificates : *Ved Prakash Sharma Vs. State of M.P., I.L.R. (2011) M.P. 1187*

– **Requirement of valid registration in Employment Exchange** – Treating the petitioners as ineligible on account of not having valid registration in employment exchange cannot sustain in the light of judgment passed by Apex Court in Kishore K. Pati's case – Order quashed : *Ved Prakash Sharma Vs. State of M.P., I.L.R. (2011) M.P. 1187*

REGISTERED SALE DEED

– **Presumption** – Registered sale deed has been executed by defendant No. 2 in favour of defendant No. 1, which is prima-facie valid and, therefore, a presumption arises with regard to its genuineness – Even assuming that the sale deed was executed without payment of any consideration and the defendant No. 2 was not in a fit physical and mental condition at the time of execution of the sale deed, the same would be binding on defendant No. 2 and would be voidable document – Since defendant No. 2 has not challenged the same, it would bind her and it would be invalid only to the extent of the share of the plaintiff : *Shakuntala Tiwari (Smt.) Vs. Mohd. Ramjan, I.L.R. (2012) M.P. 160*

REGISTRATION ACT (16 OF 1908)

– **Section 17** - Document, whether compulsorily registrable or not - Microscopic reading of document 34(A) shows that rights are relinquished/extinguished/created and declaration in this regard is made - The document is not only a list of events of earlier partition, but in fact and in effect is a document which created /extinguished rights etc. - Thus, it should have been registered : *Dinesh Kumar Vs. Smt. Sarveshari, I.L.R. (2013) M.P. 345*

– **Section 17**, Transfer of Property Act (4 of 1882), Section 5 - Transfer of Property - Registration - There cannot be a valid transfer of ownership of building in question to the State Govt. in absence of a valid conveyance deed - In terms of Section 17(b) of Act, 1908, registration of the documents is mandatory as the value of the property is more than Rs. 100/- : *Nagar Palika Parishad Vs. State of M.P., I.L.R. (2013) M.P. 1092*

– **Section 49** – Non-Registration – Effect – A document which is compulsorily registerable, if not registered, could be used for proving collateral purposes – Nature of possession can be looked upon and for the purpose of admission of plaintiff that entire money was paid by appellant can be taken into consideration to prove his admission : *Shanta Bai Vs. Pushkar Lal, I.L.R. (2012) M.P. *9*

– **Section 49** – Unregistered sale deed – Unregistered document not relied for settlement of a claim, of the defendant/respondent by the lower appellate Court – There was no question of making application of the bar of Section 49 : *Lilawati (Deceased) Through LR's Vs. Vishram, I.L.R. (2012) M.P. 151*

– **Section 49** – See – Transfer of Property Act, 1882, Section 122 & 123 : *Jayant Kumar (Smt.) Vs. Smt. Vasanti Devi, I.L.R. (2012) M.P. 702*

– **Section 57 (5)**, Evidence Act (1 of 1872), Section 64 & 65(e) (f) - Certified copy of the sale deed - Can be taken on record by the Courts even in the absence of laying any foundation in that respect or having obtained prior permission to adduce secondary evidence in this regard : *Jamuna Prasad Vs. Shivnandan, I.L.R. (2011) M.P. *137*

– **Section 57 (5)**, Evidence Act (1 of 1872), Section 67 & 68 - Plaintiffs produced the certified copy of the sale deed which was taken on record - Plaintiff did not examine any person including the witnesses to the sale to prove the document - On the contrary, the vendor, who was examined as DW 4, categorically denied the execution of the sale deed as well as his signatures thereon - He was also not confronted with the signature in the sale deed for the purpose of proving his signature in the sale deed - Plaintiffs have failed to prove the document, i.e. proving the fact that it was executed, signed and executed by the vendor : *Jamuna Prasad Vs. Shivnandan, I.L.R. (2011) M.P. *137*

– **Section 69** - Power of Superintendence - Power of Superintendence does not include power to cancel the earlier registered document or modify any entries in the index - As soon as the Registrar register the documents presented to him for registration the function of performance for such document produced before him is over and thereafter become a functus officio : *Satya Pal Anand Vs. State of M.P., I.L.R. (2011) M.P. 2401 (DB)*

REGULARIZATION

- **Right of** - Where an employee is appointed under particular scheme, he has no right to claim regularization only because he has worked for a particular period of time : *Vijay Kumar Bajpayee Vs. M.P. Urja Vikas Nigam Ltd., I.L.R. (2011) M.P. *51*

- **Rules** - Where appointment is not made in accordance with rules for recruitment and is de hors the rules and where appointment order clearly appoints a person against a particular project, appointment cannot be termed to be one in the regular establishment of Company - Merely because benefit of Provident Fund, Gratuity and GIS are extended to the petitioners, it cannot be construed that they become regular employees of establishment : *Vijay Kumar Bajpayee Vs. M.P. Urja Vikas Nigam Ltd., I.L.R. (2011) M.P. *51*

REGULATIONS OF BOARD OF SECONDARY EDUCATION

– **Regulations 2(6), 2(12), 2(13) & 2(14)** – See – Madhyamik Shiksha Adhiniyam, M.P., 1965, Section 3 & 28(4) : *Municipal Corporation, Katni Vs. Madhu Pasreeja, I.L.R. (2011) M.P. 859 (DB)*

REHABILITATION AND RESETTLEMENT POLICY

– **Compensation** – Whether the oustees who have accepted 100% compensation can avail the option of acceptance of 50% compensation and opt for alternative commensurate land – Supreme Court had extended the benefit of allotment of land to those who have not withdrawn the SRG benefits/compensation voluntarily or who have received the 100% compensation amount involuntarily – Policy and Order of Supreme Court does not absolve the oustees from refunding 50% of Compensation amount for becoming entitled to avail of the scheme envisaged under R & R Policy – However, on assurance given by Authority through Counsel to give one more opportunity to the oustees to avail the benefit under Para 5.1 of R&R policy on refunding 50% compensation amount received by them within three months from today, as condition precedent for allotment of alternative land, is accepted : *Narmada Hydroelectric Development Corporation Vs. Shankar, I.L.R. (2015) M.P. 2317 (DB)*

– **Entitlement of Major Son for Agricultural Land in R & R Policy**
– **Displaced family** - Definition of displaced family cannot be read in isolation, rather it requires to be considered taking into account the eligibility criteria for allotment of land in R & R Policy – Direction of High Court regarding entitlement of major son for agricultural land in R & R policy set aside : *Narmada Bachao Andolan Vs. State of M.P., I.L.R. (2011) M.P. *113 (SC)*

– **Land for Land** – Mere payment of compensation to the oustee in a case may not be enough – In case the oustee is not able to purchase the land just after getting the compensation, he may not be able to have land at all – In the process of development, the State cannot be permitted to displace tribal people, a vulnerable section of society suffering from poverty and ignorance without taking appropriate remedial measures of rehabilitation – Special Rehabilitation Grant is designed to nullify the effects of declaration of project in an area – SRG is to enable the oustee to get an amount by which he can purchase land to the extent of his land acquired in command area – Contention of State is that all oustees have accepted SRG and have withdrawn the amount – However, in absence of any pleading if an oustee feels aggrieved of what he has received he may approach Grievance Redressal Authority – However, displaced families who have not

withdrawn SRG benefits/compensation voluntarily and submit applications for allotment of land before Authority concerned, shall be entitled to allotment of agricultural land as far as possible in terms of R & R Policy : *Narmada Bachao Andolan Vs. State of M.P.*, I.L.R. (2011) M.P. *113 (SC)

REJECTION OF BID/TENDER

- **Interference** - Section 3.1 of Request for Proposal provides that bidder must possess an active ISO 9001:2000 certification at the time of submission of bid - Petitioner enclosed ISO 9001:2000 certificate which had already expired, however, the said certificate was renewed and was valid upto 18.11.2000 - Bid of petitioner rejected for want of active ISO 9001:2000 certificate - Held - It was necessary to submit active certificate along with the bid - Final decision was already taken on 09.04.2010 whereas confirmation by QA International that certificate is valid upto 18.11.2010 was made on 12.04.2010 - Petitioner thereafter also did not try to submit a valid certificate under its signatures or signatures of its authorized representative - Respondents No.1 & 2 have acted on due consideration of Section 3 & 7 of tender documents and no case for interference is made out : *Glodyne Technoserve Ltd. Vs. State of M.P.*, I.L.R. (2011) M.P. *7 (DB)

- **Judicial review** - Judicial review cannot be denied but it is intended to prevent arbitrariness or favouritism and is exercised in large public interest or if it is brought to the notice of the Court that contract power has been exercised for any collateral purpose - Only decision making process is open to judicial review - Court cannot act as an Appellate Authority : *Glodyne Technoserve Ltd. Vs. State of M.P.*, I.L.R. (2011) M.P. *7 (DB)

RENT CONTROL LEGISLATION

- **Legislature is fair to tenants as well as landlords** - Courts should adopt a reasonable and balanced approach while interpreting such legislations - Court has to take care of the interest of landlord also : *Jagdish Babu Raijaada Vs. Sanval Das Gupta*, I.L.R. (2011) M.P. *68

REPRESENTATION OF THE PEOPLE ACT (43 OF 1951)

- **Section 33** - Filing of certified copy of Electoral Roll, where the candidate is enrolled - Mandatory provision : *Vanshmani Prasad Verma Vs. Rajendra Kumar Meshram*, I.L.R. (2015) M.P. 2932

– **Section 33** - Presentation of Valid Nomination - Caste - Constituency was reserved for Scheduled Caste - Petitioner had sought to contest the election as member of Scheduled Caste - However, error crept in showing him as a candidate belonging to General Category on one page of form - Not sufficient to reject the same on the ground of disqualification : *Rajesh Kumar Vs. Devendra Singh, I.L.R. (2013) M.P. 1072*

– **Section 33** - Presentation of Valid Nomination - Incomplete Electoral Roll - Petitioner filed incomplete electoral roll - No where pleaded that he or his authorized representative was present at the time of scrutiny of nomination paper and had requested for postponing the scrutiny to the next day so as to enable him to file a complete copy of electoral roll - As per Section 33(5) electoral roll could be produced only either with the nomination paper or at the time of scrutiny - Statute does not contemplate any other time for production of such copy - Returning officer did not commit any impropriety in rejecting petitioner's nomination form - Petition dismissed : *Rajesh Kumar Vs. Devendra Singh, I.L.R. (2013) M.P. 1072*

– **Section 33 & 36** - Presentation of Valid Nomination - Power of Election Tribunal - Election Tribunal is not bound to confine itself only to the material available to the Returning Officer at the time of scrutiny - Tribunal is well within its power in considering the question of propriety and legality of order of rejection of nomination papers on the evidence produced in the course of trial of the election petition : *Rajesh Kumar Vs. Devendra Singh, I.L.R. (2013) M.P. 1072*

– **Section 33(5)** – Certified copy of Electoral Roll not filed by candidate – Mere mentioning of serial number as elector in nomination form is not compliance of mandatory provision : *Vanshmani Prasad Verma Vs. Rajendra Kumar Meshram, I.L.R. (2015) M.P. 2932*

– **Section 33(5)** – Onus/Burden of Proof of filing of certified copy of Electoral Roll is on the returned candidates (respondent) – As respondent failed to prove that he had filed certified copy of Electoral Roll, his nomination paper was wrongly accepted by returning officer : *Vanshmani Prasad Verma Vs. Rajendra Kumar Meshram, I.L.R. (2015) M.P. 2932*

– **Section 33(5)** – Stages of filing of certified copy of Electoral Roll – Firstly at the time of filing of nomination paper – Secondly at the time of screening : *Vanshmani Prasad Verma Vs. Rajendra Kumar Meshram, I.L.R. (2015) M.P. 2932*

– **Section 33(5) & 36(2)(b)** – Non-compliance of Section 33(5) – Fatal – Candidate ineligible to contest election – Nomination liable to be rejected – Election set-aside : *Vanshmani Prasad Verma Vs. Rajendra Kumar Meshram, I.L.R. (2015) M.P. 2932*

– **Section 33(5) & 36(7)** – Proof of Elector – Copy of Electoral Roll or relevant part thereof or certified copy of relevant entries of such roll – Filed at the time of filing nomination form : *Vanshmani Prasad Verma Vs. Rajendra Kumar Meshram, I.L.R. (2015) M.P. 2932*

– **Section 77** - Expenditure - Pleadings in the election petition as to the expenses incurred by return candidate per vehicle per day and the total number of vehicles used by him were not the material facts and therefore, it can not be said that by themselves they proved that he had incurred in an expenditure exceeding the prescribed limit : *Doman Singh Nagpure Vs. Pradeep Jaiswal, I.L.R. (2011) M.P. 2793*

– **Section 77, 86, 87 & 123(6)**, Civil Procedure Code (5 of 1908), Order 7 Rule 11 and Conduct of Election Rules, 1961, Rule 90 - Dismissal of Election Petition - Cause of Action - Corrupt Practice - Excess Expenditure - Excess expenditure must be incurred by candidate or by any person authorized by the candidate or his election agent - Any expenditure incurred by third person who is not authorized by a candidate or by an election agent will not be a corrupt practice : *Chandrabhan Singh Choudhary Vs. Kamal Nath, I.L.R. (2012) M.P. 2750*

– **Section 77, 86, 87 & 123(6)**, Civil Procedure Code (5 of 1908), Order 7 Rule 11 and Conduct of Election Rules, 1961, Rule 90 - Dismissal of Election Petition - Cause of Action - Pleadings - Material Facts - It is necessary to aver the fact that the candidate has incurred the expenditure or has authorized any person to incur the expenditure or that his election agent has incurred the expenditure and further the candidate has undertaken the liability to reimburse - These would constitute the material facts of an election petition - As material facts are lacking, the election of the respondent no.1 cannot be declared as void - Election petition dismissed : *Chandrabhan Singh Choudhary Vs. Kamal Nath, I.L.R. (2012) M.P. 2750*

– **Section 80 & 81**, Civil Procedure Code (5 of 1908), Order 7 Rule 11 – Corrupt Practice – To prove the allegation of corrupt practice, it should be specifically pleaded as to how and from whom the petitioner has got the information but the petition is lacking of such specific pleadings – Even if the averments made in the election petition are taken on their face value and accepted in the entirety, no triable cause of action arises in absence of specific, precise and complete pleading in respect of alleged irregularities as well as corrupt practice – Election petition dismissed : *Krishna Kumar Gupta Vs. Rajendra Shukla, I.L.R. (2015) M.P. 152*

– **Section 80, 81 & 100(1)(d)(iv)**, Conduct of Election Rules, 1961, Rule 63(1) & (2) – Irregularity in counting of Votes – Petitioner has failed to plead and prove any irregularity committed in counting the votes and how such irregularities have materially

affected the election of Respondent No. 1 – Petitioner has also failed to plead and prove that he was polled highest number of votes – Petition is dismissed : *Arjun Kakodiya Vs. Kamal Maraskole, I.L.R. (2015) M.P. 2699*

– **Section 80, 81 & 100(1)(d)(iv)**, Conduct of Election Rules, 1961, Rule 63(1) & (2) – Recounting of Votes – Petition on the ground that the petitioner’s application for recounting of votes has been refused by Returning Officer on frivolous grounds under the influence of ruling party although the same was filed at an appropriate stage – Held – There is no pleading in regard to non-compliance of instructions – There is also no specific pleading and proof regarding the influence as to who made the influence upon whom and how influence has been exerted upon the Returning Officer – Objection was also raised after completion of counting and after declaration of result – There was only suspicion which cannot form a basis for order of recount – Returning Officer has rightly rejected the application/objection : *Arjun Kakodiya Vs. Kamal Maraskole, I.L.R. (2015) M.P. 2699*

– **Section 81 (3)** - Attestation of copy of petition - Substantial compliance - Copy of petition furnished to respondent is apparently an exact photo copy of original reflecting photo impressions of signature of petitioner on each page thereof - It can safely be concluded that the object underlying provision of Section 81(3) of Act is duly fulfilled : *Kusum Singh Mahdele (Ms.) Vs. Shri Shrikant Dubey, I.L.R. (2011) M.P. *44*

– **Section 81 (3) & 83 (1)(c)** - Presentation and contents of petition - True copy of election petition - Copy of petition served upon respondent No.5 does not bear signatures of election petitioner with regard to attestation - Held - Respondent No. 5 unable to point out any material or substantial defect of vital nature which could have mislead a reasonable person to understand and meet the allegations contained in election petition - Election Petitioner has also served another copy of election petition along with annexures - No defect pointed out in such copy - Objection not liable to be accepted : *Bhagirath Prasad (Dr.) Vs. Election Commission of India, I.L.R. (2011) M.P. *4*

– **Section 82**, Civil Procedure Code (5 of 1908), Order 7 Rule 11 – Non-joinder of contesting candidates – Petitioner sought declaration that he be declared as elected candidate without joining the contesting candidates as respondents – Petition liable to be dismissed u/o 7 Rule 11 CPC – Petition dismissed : *Ram Khelawan Patel Vs. Dr. Rajendra Kumar Singh, I.L.R. (2015) M.P. 749*

– **Section 82** - Parties to petition - Corrupt practice alleged to have been committed on the basis of a document - Independent candidate was author of this document who has not been made a party - No corrupt practice alleged against independent candidate - Instead document is said to have been published at the behest of

BJP - Non-joinder of such candidate not fatal : *Bhagirath Prasad (Dr.) Vs. Election Commission of India, I.L.R. (2011) M.P. *4*

– **Section 82 (b)** - Candidate - Candidate whose nomination paper was rejected by returning officer cannot be said to be a duly nominated candidate nor he can claim to be duly nominated as a candidate : *Devendra Patel Vs. Ram Pal Singh, I.L.R. (2013) M.P. 2781 (SC)*

– **Section 83, 86, 87 & 123** - See -Civil Procedure Code, 1908, Order VII Rule 11 : *Doman Singh Nagpure Vs. Pradeep Jaiswal, I.L.R. (2011) M.P. 2793*

– **Section 83(1)** – Affidavit – Non filing of affidavit in Form 25 as prescribed under Rule 94-A of Conduct of Election Rules, 1961 is a curable defect and petition cannot be rejected : *Krishna Kumar Gupta Vs. Rajendra Shukla, I.L.R. (2015) M.P. 152*

– **Section 83(1) & 123(4)**, Civil Procedure Code (5 of 1908), Order 7 Rule 11 – Cause of Action – Respondent’s application under Order 7 Rule 11 seeking rejection of Election Petition, on the ground of non-disclosure of cause of action and that the material facts regarding corrupt practice are missing – Held – This is an undisputed fact that the name of respondent No. 1 is enrolled at Sr. No. 248 at Assembly Constituency No. 220, Ratlam City – It is also clear from the details of immovable property and the Bank account, that respondent No. 1 is permanent resident of Ratlam – Thus, it cannot be blamed that he has mentioned incorrect residential address in the nomination paper – Similarly – Closure report has been submitted in regard to Crime No. 286/1988, registered against respondent No.1 – Neither any cognizance was taken nor any charges were framed by Magistrate – Therefore, no case can be legally said to be pending against respondent No.1 – Thus, it cannot be held that respondent No.1 has concealed the fact in nomination form : *Paras Vs. Chaitanya Kashyap, I.L.R. (2015) M.P. 2712*

– **Section 83(1) & 123(4)**, Civil Procedure Code (5 of 1908), Order 7 Rule 11 – Material particulars regarding corrupt practice – Averments made with regard to false publication are not fulfilling the requirement of Section 123(4) of the Act – There is also no averment that the false publication was made at the instance of Respondent No. 1 – The advertisement is also not false – Material facts regarding corrupt practice are missing – Petition is rejected on both the grounds : *Paras Vs. Chaitanya Kashyap, I.L.R. (2015) M.P. 2712*

– **Section 83 (2)** - Verification of annexures - Non-compliance of Section 83(2) is of no consequence at the initial stage and election petition cannot be dismissed in limine : *Kusum Singh Mahdele (Ms.) Vs. Shri Shrikant Dubey, I.L.R. (2011) M.P. *44*

– **Section 86** - Trial of election petition - No material or substantial defect which could have prejudiced the respondents in taking appropriate defence pointed out - Objections not going to the root of the matter - Held - Opportunity to rectifying most of the defects on an appropriate application may be provided - Dismissal of petition u/s 86 not warranted : *Bhagirath Prasad (Dr.) Vs. Election Commission of India, I.L.R. (2011) M.P. *4*

– **Section 86, 81(3) & 87(1)**, Civil Procedure Code (5 of 1908), Order 7 Rule 11 – Corrupt Practice – Petitioner has substantially pleaded the material particulars with regard to corrupt practice mentioning the nature of corrupt practice, name of the persons involved – There is also no variance in the verification clause and the affidavit sworn by the petitioner – Provisions are complied with substantially : *Rahul Singh Lodhi Vs. Smt. Chanda Devi, I.L.R. (2015) M.P. 143*

– **Section 86, 81(3) & 87(1)**, Civil Procedure Code (5 of 1908), Order 7 Rule 11 – Mandatory Condition prescribed in Section 81(3) – Copy supplied to the respondent bears signature of the petitioner beneath the word “true copy attested”– Petitioner has fully complied with the provisions of Section 81(3) of the Act, 1951 : *Rahul Singh Lodhi Vs. Smt. Chanda Devi, I.L.R. (2015) M.P. 143*

– **Section 86, 81(3) & 87(1)**, Civil Procedure Code (5 of 1908), Order 7 Rule 11 – Striking off the pleadings – Petitioner has made concise statement of material facts with regard to corrupt practice with name of parties who have committed such corrupt practice with the date and place of commission of the same – None of the pleading can be said to be scandalous and frivolous : *Rahul Singh Lodhi Vs. Smt. Chanda Devi, I.L.R. (2015) M.P. 143*

– **Section 86 (1)** - Non-supply of C.Ds. - Transcription of C.Ds. form part of pleadings - C.Ds. only contain evidence of what has already been pleaded - Consequence of non-supply of C.Ds. is a matter to be adjudged at the trial and not at the stage of proceedings : *Kusum Singh Mahdele (Ms.) Vs. Shri Shrikant Dubey, I.L.R. (2011) M.P. *44*

– **Section 87**, Civil Procedure Code, 1908, Order 18 Rule 4(2) – Mode of examination of witnesses – Election Petition filed on charges of corrupt practices – Charge of Corrupt Practice has to be proved like a criminal charge not based on preponderance and probabilities – Held – Looking to importance and stake, evidence should be recorded by Court and not through Commissioner and not by affidavits : *Himmat Kothari Vs. Parasmal Saklecha, I.L.R. (2011) M.P. 948*

- **Section 87** - See - Civil Procedure Code, 1908, Order 16 Rule 14 : *Rajesh Kumar Vs. Devendra Singh, I.L.R. (2012) M.P. 2457*

– **Section 87(1)**, Vidhan Mandal Sadasya Nirhata Nivaran Adhiniyam, M.P., (16 of 1967), Section 3(1) – Removal of certain disqualifications – Respondent was holding office of profit as President, District Co-operative Bank, Damoh – Disqualification – Held – Though, the respondent was holding the office of Profit on date of filing the nomination but said disqualification has been removed as per Section 3 of the Act of 1967 as District Co-operative Bank is registered under the Co-operative Societies Act and is engaged in performing Banking functions – Election Petition dismissed : *Pushpendra Singh Hazari Vs. Lakhan Lal, I.L.R. (2015) M.P. 2942*

– **Section 87(1)** – Cause of Action – Non-disclosure of pending criminal cases by respondent in nomination paper – Proforma Part II Serial No. 5 requires disclosure of criminal cases wherein charges have been framed – Held – Respondent has made disclosure of criminal case though charges have not been framed in it, so it cannot be said that election of petitioner materially affected – Election Petition dismissed : *Pushpendra Singh Hazari Vs. Lakhan Lal, I.L.R. (2015) M.P. 2942*

– **Section 87(1)** – Objection – Alteration in affidavit and non-filling of certain columns in nomination paper – Held – Alteration in the affidavit are endorsed by small initials of respondent and important column in nomination paper has not been left blank, such non-compliance has not materially affected election of petitioner : *Pushpendra Singh Hazari Vs. Lakhan Lal, I.L.R. (2015) M.P. 2942*

– **Section 87(1), 86 & 81(3) read with Order 7 Rule 11 & read with Section 151 C.P.C.** – Objections – Proper attestation of petition and its Annexures are not there – Signatures of the petitioner in petition and its annexures – Held – As the petition as well as the annexures bears signature of the petitioner so it amounts to sufficient attestation as per the provisions of Section 81(3) of the Act of 1951 : *Pushpendra Singh Hazari Vs. Lakhan Lal, I.L.R. (2015) M.P. 2942*

– **Section 100** - Election Petition - Caste Certificate - Election petition is intended to focus any illegality attached to the election - Scrutiny as to the authenticity of the caste certificate furnished by the returned candidate before the returning officer is not beyond the scope of an election dispute : *Ram Lal Kol Vs. Moti Kashyap @ Motilal, I.L.R. (2013) M.P. 1364*

– **Section 100** - Election Petition - Caste Certificate - The fact that the returned candidate was permitted to contest the earlier elections to the seat reserved for S.T. is of no consequence as the authenticity of the caste certificate was never examined on judicial side : *Ram Lal Kol Vs. Moti Kashyap @ Motilal, I.L.R. (2013) M.P. 1364*

– **Section 100 (1) (d)** - Election Petition - Re-inspection of votes - Material facts such as serial numbers of postal ballot papers not opened and precise objection with

regard to each of such ballot papers if any raised by counting agent have not been stated - In absence of such information any inspection of ballot paper would amount to a roving and fishing inquiry which is not permissible : *Shriniwas Tiwari Vs. Rajkumar Urmalia, I.L.R. (2014) M.P. 113*

– **Section 100 (1)(d)(iii)(iv)**, Civil Procedure Code (5 of 1908), Order 13 Rule 10 and Civil Court Rules (M.P.) 1961, Rule 105 – Inspection/production of Ballot Papers – Inspection of ballot papers can not be granted to support vague pleas – Mere allegation of suspicion or belief that there has been improper reception, refusal or rejection of votes will not be sufficient – No pleading of material facts such as serial number of postal ballot papers alleged not to have been opened and objection if any raised by agent – Not a fit case for ordering production or inspection of postal ballot papers : *Shriniwas Tiwari Vs. Rajkumar Urmalia, I.L.R. (2012) M.P. 464*

– **Section 101**, Municipal Corporation Act, M.P. (23 of 1956), Section 441-D - Grounds for which a candidate other than the returned candidate may be declared to have been elected - Election of returned candidate was set aside on the ground that she was not competent to contest the election - Respondent No.1 who had bagged second highest votes was declared elected - Held - It is to be established by the person who claims to be elected that he would have received majority of such valid votes those were received by the returned candidate, if the returned candidate would not have fought the election - Returned candidate received more votes than the consolidated votes of 1st and 2nd runner up - There is no method to assess that if the returned candidate would not have participated, then how many votes would have been received by the remaining candidates - Respondent No.1 could not have been declared as elected candidate : *Rekha Choudhary (Smt.) Vs. Smt. Suman Ahirwar, I.L.R. (2013) M.P. 2464*

– **Section 117** - Security for costs - Security amount duly deposited at the time of presentation of election petition - No requirement in Act or rules that receipt of security deposit must be annexed to the election petition : *Bhagirath Prasad (Dr.) Vs. Election Commission of India, I.L.R. (2011) M.P. *4*

– **Section 123** – Corrupt Practice – Appeal to vote on the ground of religion – Poster merely depicts panoramic view of Rajghat – Evidence on record shows that feelings of muslim voters were not hurt – Mere reference to prophets or religions or to deities venerated in a religion or to their qualities and deeds does not necessarily amount to an appeal to the religious sentiments of electorate – Election Petition dismissed : *Manoj Kumar Agrawal Vs. Smt. Archana Chitnis, I.L.R. (2012) M.P. *14*

– **Section 123** – Corrupt Practice – Poster containing the photograph of Lal Deval Temple – Held – If picture of Respondent and election symbol is removed, the

poster would only present a panoramic view of Rajghat situated on the bank of river Tapti – Rajghat has other structures which are used for assessing water level – All temples shown in poster contain broken or abandoned idols considered as unworthy of worship – Structures visible in poster include a dilapidated mosques at Rajghat – It is difficult to hold that poster depicts any religious symbol within the meaning of Section 123 : *Manoj Kumar Agrawal Vs. Smt. Archana Chitnis, I.L.R. (2012) M.P. *14*

– **Sub-clause (6) of Section 1 of Section 100** – See – Constitution – Article 329 : *Suresh Chandra Bhandari Vs. Commissioner, Election Commission of India, I.L.R. (2014) M.P. 2076*

– **Form 25** - Affidavit - Petition not filed on the ground of any corrupt practice - Non-submission of affidavit in form 25 immaterial - Affidavit furnished to verify pleadings reflects substantial compliance with procedural requirements : *Kusum Singh Mahdele (Ms.) Vs. Shri Shrikant Dubey, I.L.R. (2011) M.P. *44*

RESJUDICATA

- **Writ Appeal** - Earlier dismissal of appeal of the selected candidates in limine and by a non-speaking order, can not be used against the appellant Bank either as a binding precedent or on the principle of res judicata - Present appeal is maintainable and needs to be considered on merits : *Satpura Narmada Kshetriya Gramin Bank Vs. A.K. Chaturvedi, I.L.R. (2011) M.P. *142 (DB)*

REVENUE BOOK CIRCULAR

Revenue Book Circular, Chapter 4-3, Clause 3 (5) - Suo motu powers - Delay - Patta was granted to the petitioner by Naib Tehsildar on 06.11.1989 - Since excess land was given on Patta, on 05.05.1992 Collector requested to Additional Commissioner that the matter may be taken in suo-motu revision and may be set aside - Additional Commissioner exercised power of suo-motu revision on 28.10.1994 - Thereafter, impugned order of cancellation of Patta was passed on 26.08.2003 - Held - The revision under R.B.C. , if it is filed by a party, the limitation would 60 days although it is 90 days in the M.P.L.R. Code, therefore, the said power can be exercised suo-motu by the authority up to the maximum period of 180 days under R.B.C. also from the date of knowledge - Matter came up in to the knowledge of Additional Commissioner on 05.05.1992 and power of suo-motu revision was exercised on 28.10.1994 -Exercise of power after more than 2 years and 5 months is not at all permissible under the law : *Rajendra Prasad Tiwari Vs. State of M.P., I.L.R. (2013) M.P. 2131*

REVIEW

Consideration by Court – In case a plea is raised and not considered properly by the Court, the remedy available to the party is to file a review petition : *Narmada Bachao Andolan Vs. State of M.P., I.L.R. (2011) M.P. *113 (SC)*

REVISION OF PAY RULES, M.P., 1983

– **Rule 7(10(b)(iv))** – Adhoc increase – Rule specifically excludes adhoc increase to ministerial staff of police department – Adhoc increase was not to be taken into consideration for revision of pay : *Sushma Tiwari (Smt.) Vs. State of M.P., I.L.R. (2011) M.P. *89 (DB)*

REVISION OF PAY RULES, M.P. 1990

– **Rule 6** - Choice of cut off date - Chief Municipal Officer cannot as a matter of right be held entitled for the revised pay scale from the date as the employees of State Government are : *Krishnapal Singh Sisodiya Vs. State of M.P., I.L.R. (2011) M.P. *43*

REVISION OF PAY RULES, M.P. 1998

– **Rule 10(2)** - See - Fundamental Rule 22(a) : *Subhash Kumar Dubey Vs. State of M.P., I.L.R. (2013) M.P. 351*

REWA REGISTRATION ACT 1917

– **Section 1** – Registration – No material on record to show that the property in question was yielding income of Rs. 25/- per annum – Held – Document is not required to be registered – Document was executed in the year 1946 and the Registration Act, 1908 and Indian Stamp Act, 1899 were made applicable to Vindhya Pradesh Region w.e.f. 16.04.50 – The same neither required registration nor payment of Stamp duty : *Mahesh Prasad Vs. Rambahadur, I.L.R. (2014) M.P. 1321*

– **Section 21** – See – Civil Procedure Code, 1908, Section 100 : *Mahesh Prasad Vs. Rambahadur, I.L.R. (2014) M.P. 1321*

REWA LAND REVENUE AND TENANCY CODE, 1935

– **Section 48(1)** – See – Hindu Succession Act, 1956, Section 8 : *Virendra Kumar Dwivedi Vs. Tirath Prasad, I.L.R. (2012) M.P. 1286*

RIGHT OF CHILDREN TO FREE AND COMPULSORY EDUCATION ACT (35 OF 2009)

– **Section 2(n)(iv)** – Unaided school – Proviso to Section 12(1)(c) – Allocation of 25% of the strength of children to weaker section of the society in pre-school classes

(Nursery to class 1) – Held – Provisions of Section 12(1)(c) has been made applicable to admission to pre-school education by private unaided schools as specified in Section 2(n)(iv) of the Act : *The Daly College, Indore Vs. State of M.P., I.L.R. (2015) M.P. 2387*

– **Section 6 & 12(1)(c)** – Establishment of schools by the State within a period of three years from commencement of the Act – Provisions of Section 12 ceased to have effect after 3 years – Held – Section 12(1)(c) of the Act is not dependent on establishment of schools by the State under Section 6 of the Act within three years : *The Daly College, Indore Vs. State of M.P., I.L.R. (2015) M.P. 2387*

– **Section 12(1)(c)**, Right of Children to Free and Compulsory Education Rules, M.P. 2011, Rule 2(1)(k) – Limits of neighbourhood – Rule 2(1)(h) – Extended limit of neighbourhood – Held – Rule 2(1)(k) and Rule 2(1)(h) are applicable in pre-school admission : *The Daly College, Indore Vs. State of M.P., I.L.R. (2015) M.P. 2387*

– **Section 12(1)(c)** – See – Constitution – Article 21-A : *The Daly College, Indore Vs. State of M.P., I.L.R. (2015) M.P. 2387*

– **Section 12(2)** – Whether Private unaided schools are entitled for reimbursement of the expenses incurred by the school on 25% children given admission in pre-school classes from weaker section – Held – Yes, it has to be reimbursed by the State : *The Daly College, Indore Vs. State of M.P., I.L.R. (2015) M.P. 2387*

RIGHT OF CHILDREN TO FREE AND COMPULSORY EDUCATION RULES, M.P. 2011

– **Rule 2(1)(k)** – See – Right of Children to Free and Compulsory Education Act, 2009, Section 12(1)(c) : *The Daly College, Indore Vs. State of M.P., I.L.R. (2015) M.P. 2387*

RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT ACT 2013 (30 OF 2013)

– **Section 24** – Notifications were issued under section 4 & 6 of Land Acquisition Act, 1894 – Award was passed on 22.04.2014 i.e., after the commencement of Act, 2013 – Proceedings do not stand lapsed but can be continued as per the provisions of Section 24(1)(a) of Act, 2013 – Proceedings which were initiated under 1894 Act are saved under 2013 Act in view of provisions of Section 114 of 2013 Act : *Jeevanlal Mishra Vs. State of M.P., I.L.R. (2015) M.P. 731 (DB)*

RIGHT TO INFORMATION ACT (22 OF 2005)

– **Section 6** – Answer Sheets – Petitioners have a right to get their answer sheets under the Act, 2005 – After obtaining they can always say as to what was the answer given by them, the material based on which they say that their answer is correct and demonstrate as to how the evaluation is not correct – Petitioners may take recourse to remedy of obtaining the answer sheets under Act, 2005 and thereafter may make fresh claim – Petition disposed off : *Dheeraj Pandey Vs. State of M.P., I.L.R. (2014) M.P. 1027 (DB)*

– **Section 8(1)(j)** – Personal information – Application under – Statement of immovable properties, movable properties, list of family members etc. sought – Held – Information sought is personal information – Cannot be disclosed unless larger public interest justifies disclosure of such information – Petition dismissed : *Ramesh Vs. Deputy Commissioner, I.L.R. (2015) M.P. 927*

RULE OF LAW

Principle – Petitioner claimours for abiding of rule of law by others, owes its duty to abide by same rule of law : *Minal Builders (M/s.) Vs. State of M.P., I.L.R. (2011) M.P. 1886*

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SAHAKARI BANK KARMCHARI SEVA NIYAM, M.P. 1982

– **Rule 16** – Probation period – Promotion – Petitioner joined service on 16.03.1961 and was confirmed as Samiti Sewak – He was inducted in the newly formed cadre of Samiti Prabandhak on 13.11.1967 on probation – Probation period was for one year – There is nothing on record to show that the said period was extended – There is also no formal order confirming the petitioner's service on the said post – Claim of the petitioner was dismissed on the ground that since he was not confirmed in the newly formed cadre of Samiti Prabandhak he is not entitle for promotion and other benefit – Held – As per Rule 16 the period of probation can be of 12 months which can be extended for 2 years if the work of the employee is not satisfactory – It cannot be said that from 1967 to 1976 for a long period of 10 years, the petitioner was on probation – Petitioner is assumed to have been confirmed – Petition is allowed, petitioner be given all the benefits as directed vide order dated 28.06.1990 within a period of 2 months : *Rajendra Prasad Kasera Vs. Indore Premier Cooperative Bank Ltd., I.L.R. (2015) M.P. 42*

SAHAKARI BHOOMI VIKAS BANK ADHINIYAM, M.P. 1966

– **Section 14(1)(4) & 21**, Cooperative Societies Act, M.P. 1960 (17 of 1961), Section 80-A – A sale which has been confirmed and become absolute u/s 21 of the 1966 Adhinyam is not amenable to revisional power u/s 80-A of the 1960 Act – Entire proceedings from the stage of filing the revision are non-est – The 1960 act can not override the 1966 Adhinyam – Both operates in separate fields : *Munshilal Rathore Vs. Zila Sahakari Bhumi Vikas Bank, I.L.R. (2011) M.P. 1693 (DB)*

SALE OF GOODS ACT (3 OF 1930)

– **Section 37 (2)** – Delivery of larger quantity – Seller may send larger quantity of goods to the buyer other than the contracted quantity and if the larger quantity is accepted by the buyer and the same is not rejected, the buyer is bound to pay for the larger quantity also : *M.P. State Road Transport Corporation Vs. M/s. Super Stone Rubber Industries, I.L.R. (2011) M.P. 2194*

SAMAJ KE KAMJOR VARGON KE KRISHI BHUMI DHARAKON KA UDHAR DENE WALON KE BHUMI HADAPANE SAMBANDHI KUCHAKRON SE PARITRAN TATHA MUKTI ADHINIYAM, M.P. 1976

– **Section 2(c)** – Weaker Section – Petitioners are joint owners and holders of 34.73 acres of land – Petitioners do not fall within the definition of holder of agricultural land in the weaker section : *Gajraj Singh (Dead) Through LRs. Mishrilal Vs. Jagdish, I.L.R. (2011) M.P. 2134*

– **Section 2 (f)** – Prohibited Transaction of Loan – There is no stipulation in the sale deeds that they are not to be acted upon or there is no clause to resell it on repayment of loan or there is distinct and clear oral understanding that the sale is not to be acted upon – there is nothing on record to indicate as to the duration within which the loan was to be repaid and there is nothing on record as to the amount repaid by petitioners to the respondents from time to time and exact date or dates when the amount was repaid – Transaction does not fall within the definition of Prohibited Transaction of Loan : *Gajraj Singh (Dead) Through LRs. Mishrilal Vs. Jagdish, I.L.R. (2011) M.P. 2134*

– **Section 8** – Application – Delay and Laches – Lands were sold in the year 1974 – Act came into force in the year 1976 – Petitioners waited till 1994 when they filed applications before S.D.O. – Delay and Laches on the part of the petitioner have rightly been held to be fatal to their claim : *Gajraj Singh (Dead) Through LRs. Mishrilal Vs. Jagdish, I.L.R. (2011) M.P. 2134*

**SAMAJ KE KAMJOR VARGON KE LIYE VIDHIK SAHAYATA
TATHA SALAH ADHINIYAM, M.P., 1976**

– **Section 16** – See – State Legal Services Authority Rules, M.P., 1996, : *Vidik Seva Karmik Sangh Vs. State of M.P., I.L.R. (2011) M.P. *91 (DB)*

**SCHEDULED CASTES AND SCHEDULED TRIBES (PREVENTION
OF ATROCITIES) ACT (33 OF 1989)**

– **Section 2(c) & 3(1)(v)** - Caste Certificate - Prosecution has to prove by cogent and an impeachable evidence that complainant falls within castes, races or tribes or parts of or groups within such castes, races or tribes which have been notified as Scheduled Castes or Tribes - Caste certificate issued by competent authority ought to be produced to discharge such burden - Mere saying of complainant that he belongs to Scheduled Caste or Tribe is not sufficient - Prosecution has failed to prove that complainant belongs to Scheduled Caste - Consequently charge under Section 3(1)(v) of the Act is also not found proved : *Harlal Vs. State of M.P., I.L.R. (2013) M.P. 1440*

– **Section 3(1)(iv) & (x)** – Insult and dispossession – Nothing has been stated by complainant that abuses were hurled on the basis of caste – Further there is no evidence to show that a member of SC/ST was dispossessed from the field – Nothing has come on record to show that the appellants have acquired or cultivated the land owned or possessed by complainant – No offence under Section 3(1)(iv)&(x) of Act, 1989 : *Phool Singh Vs. State of M.P., I.L.R. (2012) M.P. 1368*

– **Section 3(1)(v)** - Appellant made castus remarks against complainant with an intent to humiliate her at public handpump within public view - Also threw water on her person from the water pot - Appellant guilty of interfering with enjoyment of complainant's right over water - Appeal dismissed : *Rakesh Singh Vs. State of M.P., I.L.R. (2013) M.P. 2022*

– **Section 3(1)(v)** - Sentence - Appellants have undergone the mental agony for more than 18 years - Sentence of 3 years is reduced to 6 months and a fine of Rs. 3000 : *Jhallu Vs. State of M.P., I.L.R. (2012) M.P. 2812*

– **Section 3(1)(v)** - Wrongful dispossession - Only path which is the only way to come in and go out of the complainant house was closed by the appellants - Right of way was restored by Naib Tahsildar - However, thereafter again the path was closed by construction wall and an Iron Gate - Appellants guilty of committing offence under Section 3(1)(V) of the Act : *Jhallu Vs. State of M.P., I.L.R. (2012) M.P. 2812*

– **Section 3(1)(vi) (x)** - Caste - There is no ocular or documentary evidence to prove the caste of the complainant - Merely on the basis of weakness of the defence or his counsel, it could not be said that the respondent has proved that his caste and community is covered under the Act : *Parvat Singh Vs. Khanjuwa, I.L.R. (2012) M.P. 2491*

– **Section 3(1)(x)** – Calling by Caste – Appellant demanded attendance register from the complainant – When the complainant refused to give the register he uttered Chamra Saley tumhe janta hu tum kahan ke ho – There was a hot talk between appellant and complainant and during which appellant lost his temperament and utter the word Chamra – There was no intention of the appellant to insult or humiliate the complainant – Appellant liable to be acquitted : *Rajendra Kumar Shukla Vs. State of M.P., I.L.R. (2011) M.P. 1745*

– **Section 3(1)(x)** - Complainant lodged FIR against appellant who was posted as Junior Engineer alleging that he abused him with filthy language also by calling "Chamar Sale" - Held - Investigation should be carried out by an officer not below the rank of Deputy Superintendent of Police - In the present case I.O. is Sub-Inspector of police hence 3(1)(x) is not made out - Appellant could not be convicted under Section 294 and 506 IPC - Appeal allowed : *Sunderlal Vs. State of M.P., I.L.R. (2012) M.P. 1935*

– **Section 3(1)(x)** - It must be prima facie clear that the incident took place in 'public view' - An essential ingredient of the section - If it is not clear prima facie bail u/s 438 can be granted - However the discussion made in the bail order will not affect the trial of the case in any manner : *Umed Singh Vs. State of M.P., I.L.R. (2013) M.P. 1214*

– **Section 3(1)(x)** - Main cause of dispute among both the parties was entry of Ox in the field of the appellant/accused - No evidence to show that the appellant intentionally insulted or intimidated the son of complainant with intent to humiliate him because he belonged to 'Baiga' tribe - Ingredients u/s 3(1)(x) of the Act could not be proved - Appellant acquitted : *Ram Bahadur Singh Vs. State of M.P., I.L.R. (2011) M.P. 2553*

– **Section 3(1)(x)** - Original FIR not produced - MLC was prepared after 20 days of incident - As per MLC injuries were received within 48 hours - Prosecution story is suspicious - Appeal allowed : *Pappu @ Narendra Kumar Vs. State of M.P., I.L.R. (2012) M.P. 2486*

– **Section 3(1)(x)** - Place within public view and Public Place - Incident took place inside the house - Even if a remark is made inside a house but some members of the public are there then also it would be an offence since it is in the public view - However, there is nothing in F.I.R. that any member of public was present when the appellants uttered the words or that the place where the incident took place was a place which

ordinarily could be seen by public - No offence is made out - Appeal allowed : *Ramswaroop Vs. State of M.P., I.L.R. (2012) M.P. 2223*

– **Section 3(1)(x)** – Prosecution failed to prove the caste of victim by any cogent and reliable document issued by competent authority – By mere oral deposition of witness, this fact would not be deemed to be proved – Appellant acquitted from charge under Section 3(1)(x) of Act, 1989 : *Pillu Alias Pyarelal Vs. State of M.P., I.L.R. (2012) M.P. 1309*

– **Section 3(1)(x)** – See – Criminal Procedure Code, 1973, Section 194 : *Rattiram Vs. State of M.P., I.L.R. (2012) M.P. *47 (SC)*

– **Section 3(1)(x)** – See – Criminal Procedure Code, 1973, Section 320(2) : *Shamsher Bahadur Singh Chandel @ Golend Singh Vs. State of M.P., I.L.R. (2014) M.P. 1393*

– **Section 3(1)(x)** - See - Penal Code, 1860, Section 451, 294, 323 & 506 : *Ramesh Vs. State of M.P., I.L.R. (2012) M.P. 2179*

– **Section 3(1)(x)** - To constitute an offence, it is necessary to prove that the accused has insulted the complainant with intent to humiliate him because of he being a member of Scheduled Caste in the public view - Merely utterance of word "Chamra" without any intention shall not make out the offence u/s 3(i)(x) : *Shankarlal Vs. State of M.P., I.L.R. (2013) M.P. 2457*

– **Section 3(1)(x) & 3(2)(v)** – No material to show that the injured was beaten because he belonged to S.C./S.T. – In fact the injured had encroached upon a Govt. land and the appellant wanted to grab that land – Mere utterance of Caste by itself would not be sufficient to make out a case under the Act, 1989 – Appellants acquitted : *Ashok Vs. State of M.P., I.L.R. (2015) M.P. 2475*

– **Section 3(1)(xi)** – Assault to a woman – Where the accused being a stranger knows and has reason to believe that the victim of the offence is a member of such a caste or tribe, the offence would squarely fall under Section 3(1)(xi) of the Act and it would not be necessary to establish further that the offence was committed on the ground that she belongs to such a Caste or Tribe : *Baja alias Bajasingh Vs. State of M.P., I.L.R. (2012) M.P. 224*

– **Section 3(1)(xi)** - Caste - No certificate issued by Competent Authority to prove the Caste of Complainant filed - Mere oral testimony of complainant not sufficient to hold that she belonged to community concerned under the Act - Prosecution failed to prove the caste of complainant - Conviction under Section 3(1)(xi) of Act 1989 set-aside : *Santosh Kumar Vs. State of M.P., I.L.R. (2012) M.P. 1670*

– **Section 3(1)(xi)** – In order to prove caste of prosecutrix, no admissible evidence or documents issued by competent authority appointed for that purpose has neither been placed on record nor proved the same – Merely on the basis of oral deposition of prosecutrix and witnesses, it can not be deemed that prosecutrix belonged to community covered under the Act : *Munna @ Mahendra Vs. State of M.P., I.L.R. (2012) M.P. *62*

– **Section 3(1)(xi)** - Outraging Modesty - Prosecutrix was new in the village - Appellant was not knowing that she belongs to either SC/ST - No caste certificate produced before the Court - No evidence with regard to caste of the prosecutrix except the oral evidence of prosecutrix herself - F.I.R. lodged after a delay of 2 days - Conviction set aside - Appeal allowed : *Kallu @ Donger Singh Vs. State of M.P., I.L.R. (2012) M.P. 1732*

– **Section 3(1)(xi)**, Penal Code (45 of 1860), Section 354 - Proof of offence under - Appellant outraged modesty of prosecutrix belonging to schedule tribe by using criminal force - Offence under Section 354 of I.P.C. as well as Section 3(1)(xi) of the Special Act are made out : *Munna Singh Vs. State of M.P., I.L.R. (2012) M.P. 1724*

– **Section 3(1)(xi)**, Penal Code (45 of 1860), Section 354 - Proof of offence under-Difference between the offence punishable under Section 354 of I.P.C. and Section 3(1)(xi) of the Special Act-If offence punishable under Section 354 of I.P.C. is committed on a prosecutrix who, belongs to either Scheduled Caste or Scheduled Tribe then offence under Section 3(1)(xi) of SC/ST (Prevention of Atrocities) Act shall be made out -Shankarlal's case (Shankarlal Vs. State of M.P. (2005) (1) MPLJ 449) and Dabloo alias Shahjad's case (Dabloo alias Shahjad Vs. State of M.P. 2007 (1) MPLJ 250) are per incuriam, in the light of the judgment passed by Hon'ble the Apex Court in the case of Vidyadharan (Vidyadharan Vs. State of Kerla 2004 (2) MPLJ 251) : *Munna Singh Vs. State of M.P., I.L.R. (2012) M.P. 1724*

– **Section 3(1)(xi)** – Proof of Caste – Neither complainant nor any other witness deposed in the Court that complainant belonged to Scheduled Caste – No Certificate of any competent authority to that effect was produced or proved before the Court – Merely from the fact that in F.I.R., the name of complainant has been mentioned with her caste, it can not be held that she belonged to Scheduled Caste in the absence of legal evidence in Court : *Chalaniya Dheemar Vs. State of M.P., I.L.R. (2012) M.P. 189*

– **Section 3(1)(xi)** - Schedule Tribe - Proof of Caste - Prosecutrix and her husband stating them to be 'Pav Gond' which is a tribal community - Accused accepting prosecutrix and her husband are Gond and therefore, member of Schedule Tribe - No need to prove that fact by the prosecution separately - No difference, if cast certificate is

not submitted or proved by the prosecution : *Munna Singh Vs. State of M.P., I.L.R. (2012) M.P. 1724*

– **Section 3(1)(xi)** - See - Penal Code, 1860, Section 376 : *Chhote alias Surendra Vs. State of M.P., I.L.R. (2013) M.P. 1705*

– **Section 3(1)(xi)** – See – Penal Code, 1860, Section 376 : *Rajola Yadav Vs. State of M.P., I.L.R. (2014) M.P. 1905*

– **Section 3 (1) (xi)** – See – Protection of Children from Sexual Offences Act, 2012 : *Mohd. Juned Vs. State of M.P., I.L.R. (2015) M.P. 484*

– **Section 3(1)(xi)(xii)** – See – Penal Code, 1860, Section 376 & 450 : *Betu Vs. State of M.P., I.L.R. (2012) M.P. 1290*

– **Section 3(2)(v)** – Caste Certificate not filed – Prosecution failed to prove the caste of prosecutrix : *Ghanshyam Singh Raghuvanshi Vs. State of M.P., I.L.R. (2015) M.P. 3032 (DB)*

– **Section 3(2)(v)** – Offence of atrocities – Provisions of Section 3(2)(v) can be invoked only when the offence committed is punishable under I.P.C. with imprisonment of ten years or more – As offence punishable under Section 452 and 354 are punishable with 7 years and 2 years respectively therefore, charge under Section 3(2)(v) of Act, 1988 is set aside – Trial Court directed to frame charge under Section 3(1)(iii) and 3(1)(xi) of Act, 1988 : *Pradeep Kunbi Vs. State of M.P., I.L.R. (2012) M.P. 575*

– **Section 3(2)(v)** – Victim has not stated that she is a member of S.C./S.T. – Victim has also not stated that *Bhanumati* Caste belongs to S.C./S.T. – No document is proved to indicate that persons belonging to *Bhanumati* Caste are of S.C./S.T. – Even it is not proved that appellant is not the member of S.C./S.T. or the offence was committed because the victim belongs to S.C./S.T. – Offence under Section 3(2)(v) of Act, 1989 not proved : *Pappu Alias Bharat Singh Vs. State of M.P., I.L.R. (2012) M.P. *64 (DB)*

– **Section 3(2)(v)** - See - Penal Code, 1860, Section 376 : *Sohan Singh Vs. State of M.P., I.L.R. (2012) M.P. 1995 (DB)*

– **Section 3(10)(xi)** – Intention – Complainant must allege and prove that accused was not a member of S.C./S.T. and that she was intentionally insulted or intimidated by accused with an intent to humiliate in a place within public view : *Ram Babu Vs. State of M.P., I.L.R. (2011) M.P. 1549*

– **Section 18** - See - Criminal Procedure Code, 1973, Section 438 : *Ummed Singh Vs. State of M.P., I.L.R. (2013) M.P. 1214*

**SCHEDULED TRIBES AND OTHER TRADITIONAL FOREST
DWELLERS (RECOGNITION OF FOREST RIGHTS)
ACT 2006 (2 OF 2007)**

– **Section 2(c) & 6** – Forest Dwelling Scheduled Tribes – Circulars – Govt. is required to act as per the object and spirit of the provisions of Act, 2006 – Circulars issued do not disclose the manner and procedure for determination of rights of forest dwelling Scheduled Tribes and other traditional forest dwellers – Application of circulars must be refrained unless and until a person falls within the definition of forest dwelling Scheduled Tribes, other traditional forest dwellers or critical wildlife habitat after following procedure as specified under Section 6 : *Madhu Vs. State of M.P., I.L.R. (2012) M.P. *5*

– **Section 2(0)**, Civil Procedure Code (5 of 1908), Order 39 Rule 1 & 2 – Other traditional forest dweller – To show that a person belongs to forest dwelling Scheduled Tribe, it is not enough that he should belong to Scheduled Tribe Community – Three generations not less than 25 years of period, who were pastoral living in non-urban area likely to be portraying or expressive of the life of shepherds or country people especially in an idealized and conventionalized manner living or in nomadic having no fixed resident and wandering here and there, may fall within purview of Forest dwelling scheduled tribes – Plaintiffs not entitled for temporary injunction as pleadings do not contain the necessary contents as required under the Act : *Madhu Vs. State of M.P., I.L.R. (2012) M.P. *5*

SCHOOL EDUCATION

- **Transfer Certificate** - School issued Transfer Certificate not on account of any indiscipline by petitioner but because he is suffering from Tubercular Granules with frontal region of Brain disease - Held - An archaic approach of School administration that it apprehends mis-happening is not at all appreciated specifically when the petitioner is adjudged fit and is under constant medication under experts - Transfer Certificate quashed : *Shukrakant Shukla Vs. State of M.P., I.L.R. (2014) M.P. 339*

**SECURITIZATION AND RECONSTRUCTION OF FINANCIAL
ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT
(54 OF 2002)**

– **Section 2 (ha)** - See - Recovery of Debts Due to Banks and Financial Institutions (RDDDBFI) Act, 1993, Section 2(g) : *Pithampur Steels Ltd. Vs. M/s. Kotak Mahindra Bank Ltd., I.L.R. (2013) M.P. 339 (DB)*

– **Section 2(ha), 13 & 37** - See - Recovery of Debts Due to Banks and Financial Institutions (RDDBFI) Act, 1993, Section 2(g) : *Pithampur Steels Ltd. Vs. M/s. Kotak Mahindra Bank Ltd., I.L.R. (2013) M.P. 339 (DB)*

– **Section 2(i)(za), 3 & 29** – Registration and Penalty – Purchase of financial assets by one financial Company from another financial Company is a process of Securitization – If purchasing Company is not registered with respondent, then such act is punishable – As applicant Bank is not registered with RBI therefore purchase of financial assets from lending Bank is punishable under section 29 of Act : *Kewin B. Ajit Vs. State of M.P., I.L.R. (2012) M.P. 661*

– **Rule 8(2)** – Publication of notice in two news papers within seven days – Possession notice is to be published in leading newspapers not later than seven days from the date of taking possession – Use of word “shall” makes the provision mandatory – Tribunal rightly set aside the Sale as the notice was not published within seven days : *Union Bank of India Vs. Rajendra Wadhwa, I.L.R. (2015) M.P. *19 (DB)*

– **Section 13 & 34** - Jurisdiction of Civil Court -Suit was filed for declaration that the sale deed executed in favor of the borrower was null and void and for possession - Debts Recovery Tribunal has no jurisdiction to decide the question whether persons other than the mortgager had title in the mortgaged property - Validity of sale deed of property mortgaged with Bank cannot be decided by DRT - If sale deed is held to be wholly or partially invalid, it will immediately affect the validity of the mortgage of that property - Suit for declaration and possession was maintainable - Petition allowed : *Prabha Jain (Smt.) Vs. Central Bank of India, I.L.R. (2012) M.P. 2800 (DB)*

– **Section 13** - See - Vanijyik Kar Adhinyam, M.P. 1994, Section 33 & 53 : *Swagatika Impex Pvt. Ltd. (M/s.) Vs. UCO Bank, I.L.R. (2012) M.P. *105*

– **Section 13(1), (4), (9) & 17** – Objections – D.R.T. is empowered to consider whether any of the measures referred to in Section 13(4) taken by secured creditor for enforcement of security are in accordance with provisions of Act and Rules framed thereunder – Non-fulfillment of requirement of Section 13(1)(9) can be very well considered by Tribunal : *Dhar Textile Mills Ltd. Vs. Canara Bank, I.L.R. (2011) M.P. 826 (DB)*

– **Section 13(2), (4)**, Sick Industrial Companies (Special Provisions) Act, 1985, Section 15 & 22 – Maintainability of proceedings u/s 13 of Act, 2002 – Appellant Company already declared sick under Act, 1985 – In view of provisions of Section 15 of Act, 1985, proposed action through notice u/s 13(2) of Act, 2002 is not barred : *Dhar Textile Mills Ltd. Vs. Canara Bank, I.L.R. (2011) M.P. 826 (DB)*

– **Section 13(2), 13(4) & 17**, Constitution, Article 226 – Alternative remedy – No justification to entertain writ petition against notice u/s 13(2) of Act, 2002 – Such communication is not an order/action causing harm to borrower but is a step before taking recourse to measures provided u/s 13(4) of Act, 2002 – Only on taking recourse u/s 13(4), it can be said that borrower is aggrieved and only thereafter appeal u/s 17 of Act, 2002 can be filed – Writ appeal dismissed : *Velocity Ltd. (M/s.) Vs. State Bank of India, I.L.R. (2011) M.P. 839 (DB)*

– **Section 13(2), 13(4) & 17**, Constitution, Article 226 – Alternative remedy – Petitioner challenged the notice issued u/s 13(2) of Act – Petition dismissed because of alternative remedy of appeal – Held – No error committed by learned Single Judge in not entertaining the petition in view of alternative remedy – Moreover measure has also been taken u/s 13(4) of Act after the dismissal of writ petition – Petitioner has to seek alternative and efficacious remedy provided u/s 17 of Act – Writ Appeal dismissed : *Dhar Textile Mills Ltd. Vs. Canara Bank, I.L.R. (2011) M.P. 826 (DB)*

– **Section 13(8)** – Phrase – Before the date fixed for sale or transfer – The words have definite meaning and connotation – Intention of legislature while using the said language is regarding date fixed for sale and not the actual sale or transfer – Once a sale certificate is issued to the purchaser, sale becomes absolute – Sale certificate is the evidence of title – Bank can not accept the amount from the borrower after the sale is confirmed nor can return auction amount to the auction purchaser – Section 60 of Transfer of Property Act has no application : *Gaurav Enterprises (M/s.) Vs. State Bank of India, I.L.R. (2012) M.P. 49*

– **Section 14 & 17** - Appeal - Appeal under Section 17 of the Act, lies against the order passed by Collector under Section 14. : *Ram Singh Vs. State of M.P., I.L.R. (2012) M.P. 2987*

– **Section 14 & 17** - Appeal - By whom - Appeal under Section 17 can be filed by any affected person and not only by bank or financial institution : *Ram Singh Vs. State of M.P., I.L.R. (2012) M.P. 2987*

– **Section 18(2)**, Recovery of Debts Due to Banks and Financial Institutions Act (51 of 1993), Section 20(3) & 24 and Limitation Act (36 of 1963), Section 29 – Power to condone the delay – Delay in filing an appeal under Section 18(1) of SARFAESI Act can be condoned by Appellate Tribunal under Proviso to Section 20(3) of Act, 1993 read with Section 18(2) of SARFAESI Act – Appeal allowed : *Baleshwar Dayal Jaiswal Vs. Bank of India, I.L.R. (2015) M.P. 2307 (SC)*

– **Section 37** – Provisions of the SARFAESI Act and the rules made thereunder are in addition to and not in derogation of the other laws – Remedy provided under the

Act is an additional remedy which, unless barred by the Statute, can be enforced at any point of time : *Kasturi Devi Jain (Smt.) Vs. Union Bank of India, I.L.R. (2011) M.P. *111*

SENIORITY

- **Date of Appointment** - Petitioner was appointed on the post of Asstt. Engineer after he was duly selected by M.P. Public Service Commission - Petitioner is entitled for seniority from the date of his appointment and not from the date of his regularization : *Subhash Chandra Vyas Vs. State of M.P., I.L.R. (2013) M.P. 2099*

SENTENCE

- **Delay in disposal of case** - Accused not requested for early disposal of the proceeding - Minimum sentence is to be awarded : *Basant Rao Vs. State of M.P., I.L.R. (2013) M.P. 2254*

SERVICE

Service – Exemption from posting in “Working Plan” – By notification dated 22.03.1995 exemption was granted to Forest Ranger from posting in “Working Plan” – Said benefit withdrawn by order dated 5.10.2005 – Respondent posted in working plan – Held – Order dated 5.10.2005 withdrawing benefit of exemption would not apply to those to whom exemption stands already granted prior to issuance of amended guidelines : *State of M.P. Vs. Suresh Kumar Upadhyaya, I.L.R. (2011) M.P. 1128 (DB)*

SERVICE LAW

SYNOPSIS

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| 1. Absorption | 2. Advertisement |
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1. Absorption

- **Deputation** - Deputationist does not have any right to be absorbed on the deputation post - Held - No statutory Rule, Regulation and Order has been pointed out for being absorbed - Mere correspondence cannot come in the way of State for recalling the service from the borrowing department - There is no malafides or arbitrariness in issuance of the order - They have rightly been repatriated : *Madhubala Sharma (Dr.) Vs. Union of India, I.L.R. (2014) M.P. 1 (DB)*

- **Equal Pay for Equal Work** - Principle when may not apply - Service conditions of employees of the erstwhile Rural Electricity Co-operative Societies absorbed in the M.P.S.E.B. - Will be governed by the terms and conditions of the order of absorption - Pay disparity can not be challenged, if the terms and conditions of absorption were not challenged : *M.P.S.E.B. Vs. Brajendra Singh Kushwah, I.L.R. (2012) M.P. *77 (DB)*

- **Meaning** - Absorption and Promotion - Petitioner's absorption and promotion were cancelled on the ground that he did not have 5 years qualifying service - In view of paucity of employees, qualifying service of 5 years was relaxed as one time measure - Case of petitioner was considered and was granted promotion - Lien of petitioner in his parent department was also terminated - Petitioner has already worked for more than 16

years and has acquired experience - Cancellation of his absorption and promotion orders was quashed - Petition allowed : *Ashok Mishra Vs. State of M.P., I.L.R. (2012) M.P. *106*

- **Pay and Allowances** - Pay and allowances which the employees of State Bank of Indore were drawing prior to their absorption have been protected by notification - Though the respondents are well within their right in redesignating and introducing an in-cadre career progression scheme as one time relaxation so that the absorbed employees get the opportunity to progress - However, the provision that in case an option is not exercised by absorbed employees, the special pay drawn by them would be withdrawn is not in commensurate with amalgamation scheme - Withdrawal of special pay would tantamount to reduction of pay and is punitive in nature - Non exercise of option under a scheme cannot be termed as disobedience as would attract penalty of withdrawal of special pay - Clause (v) of the Scheme and consequential order quashed - Petition allowed : *K.B. Joshi Vs. State Bank of India, I.L.R. (2013) M.P. 2115*

2. Advertisement

- **Locus Standi** - Petitioners participated in the selection process without any demur - They cannot challenge the condition incorporated in advertisement after having taken part in selection process : *Bharat Bhushan Vs. High Court of M.P., I.L.R. (2015) M.P. 2437 (DB)*

- **Mistake therein** - Correction - Four posts of welder in Group "C" Highly skilled to be filled only by deputation/re-employment were released - Respondents were appointed however after assumption of charge they were served with amended appointment order by which they were posted Welder Skilled, a post lower than on which recruitment was made - Held - Post of Welder (Skilled) is earmarked to be filled in by re-employment for ex-servicemen whereas there is no such reservation for recruitment of Welder (Highly Skilled) - Amendment of recruitment order in absence of any malafide does not suffer from vice of violation of Principle of Natural Justice : *Union of India Vs. Shri Devraj Bais, I.L.R. (2012) M.P. 311 (DB)*

- **Mistake therein** - Correction - Recruitment is an administrative function - There exist possibility of committing of administrative mistake - If there is a mistake the same has to be corrected : *Union of India Vs. Shri Devraj Bais, I.L.R. (2012) M.P. 311 (DB)*

3. Appointment

- **Adhoc period** - Appointment order - Hindi typing test be passed within 4 years - The period till passing of Hindi typing test - Adhoc period : *Dulare Prasad Raikwar Vs. State of M.P., I.L.R. (2015) M.P. 1448*

- **Anganwadi Worker** - Local Resident - Respondent No. 4 was given appointment inspite of the fact that she was not the local resident of area - Local resident of area is given preference because not only she is known to the women folk but also able to look after the children by giving more time to the work assigned - Such a condition can not be said that any discrimination is done on the basis of residence of a candidate - Petitioner No. 1 was placed at serial No. 1 in the gram panchayat meeting and candidature of respondent No. 4 was not considered at all because she was not that of village - Resolution of the Gram Panchayat reflects the wish of the local people - Appointment of Petitioner affirmed - Petitioner entitled to be reinstated : *Upma Singh (Smt.) Vs. The Commissioner, Rewa, I.L.R. (2011) M.P. 2283*

- **Appointment of Anganwadi Karyakarta at Anganwadi Centre** – On the date of selection the petitioner was not having any valid certificate establishing that she belongs to Scheduled Tribe (Kol) – Petitioner was not eligible for 10 marks towards Scheduled Tribe cannot be faulted with – Petition dismissed : *Rannu Bai (Smt.) Vs. State of M.P., I.L.R. (2015) M.P. *26*

- **Appointment of Panchayat Karmi** – Appointment of appellant as Panchayat karmi was set aside on the grounds (i) there were other candidates who were higher in merit than the appellant, and (ii) that the appellant was convicted for offences under Section 294, 341, 323 & 324 and under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act – Order was challenged by the appellant on the grounds that (a) the appeal at the instance of respondent No. 5 was not maintainable (b) that at the time when the appellant was appointed on the post of Panchayat Karmi, there were no rules governing the service conditions of Panchayat Karmi and, therefore, the appointment of appellant who is an ex-convict or was not the most meritorious was not barred under any rule – Held – Even there were no service rules at the relevant time an officer, authority or body providing public employment must act in a rational, fair and reasonable manner – The Public appointment can not be permitted to be made at the whims and caprices of the appointing authority – The suitability of candidates for appointment to be a public post must be adjudged on the basis of rational and reasonable criteria – Appeal dismissed : *Harish Chandra Yadav Vs. State of M.P., I.L.R. (2012) M.P. 1107 (DB)*

- **Appointment of Panchayat Karmi** – Local Resident – Circular dated 13.08.2007, does not create any bar for a candidate who is not a local resident of Panchayat for which the Panchayat Karmi is to be selected : *Ram Lakhan Vs. State of M.P., I.L.R. (2012) M.P. *66*

- **Appointment of Panchayat Karmi** – Panchayat was required to appoint Panchayat Karmi within 7 days from 01.12.2007 – Panchayat failed to discharge the

duties within the time stipulated by the prescribed authority – It was then beyond the powers of the Gram Panchayat to have passed resolution on a subsequent date –The resolution thus passed on 25.12.2007 by Gram Panchayat was without any authority and was thus, non est : *Ram Lakhan Vs. State of M.P., I.L.R. (2012) M.P. *66*

– **Appointment of Panchayat Karmi** – Selection of respondent No. 8 as Panchayat Karmi by the Panchayat on basis of majority was not in consonance of the policy of the State Government – The order of Collector setting aside the appointment can not be faulted with : *Maya Devi (Smt.) Vs. State of M.P., I.L.R. (2012) M.P. 1214*

– **Appointment on Compassionate Ground** – Petitioner was appointed on the post of Shiksha Karmi Grade-III on compassionate ground in the year 1998 – Petitioner seeks appointment on the post of Asstt. Teacher as another person has been so appointed on compassionate ground – Held – Petitioner was appointed in the year 1998 and has filed the petition in the year 2015 – No averment that he was entitled to be granted appointment on the post of Asstt. Teacher on the basis of qualification held by him but was denied – Petitioner also failed to establish parity – Petition dismissed : *Sandip Tripathi Vs. State of M.P., I.L.R. (2015) M.P. 2636*

– **Appointment order** – Increments of pay – No where prescribes that not to be released in favour of those who have not passed the Hindi typing test : *Dulare Prasad Raikwar Vs. State of M.P., I.L.R. (2015) M.P. 1448*

– **Cancellation of Appointment** – On the basis of the enquiry report against the petitioner the Collector recorded findings and cancelled the appointment as Contract Teacher – Petitioner challenged the order and submitted that he was condemned and visited with an adverse order, without affording him an opportunity of hearing – Held – Incumbent has failed to prove the prejudice caused for non affording an opportunity of hearing – No interference is evincible – Petition dismissed : *Chakresh Kumar Jain Vs. State of M.P., I.L.R. (2012) M.P. 1251*

– **Conditional Appointment Order** – Passing of Hindi typing test – Passing of the typing test is must : *Dulare Prasad Raikwar Vs. State of M.P., I.L.R. (2015) M.P. 1448*

– **Criminal Charges** – Court acquitted the petitioner of the charges under Section 323, 294, 506-B & 451 of the IPC – Petitioner has been fair enough in disclosing the facts of criminal case and the acquittal thereof in the verification roll – It was not at all possible for the appointing authority to take a view that the petitioner was not suitable for appointment to the post of a Warder/Prahari in Central jail – Impugned order quashed – Petition allowed : *Akhilesh Kumar Patel Vs. State of M.P., I.L.R. (2015) M.P. 3196*

– **Details of Criminal Case** – Petitioner provisionally appointed to post of Sub Inspector/Executive in CISF – On requiring to fill up the attestation form, the petitioner submitted complete details of the criminal case which was pending against him and reasons of acquittal, but he did not supply the copy of order of acquittal – Held – Verification form does not prescribe that document in this regard be also filed – Thus, merely because petitioner has not filed his acquittal order, this can not be said that petitioner has violated clause-8 of verification form – Reason assigned for rejecting the appointment order is arbitrary and capricious in nature - Petition allowed : *Vinod Jayant Vs. Union of India, I.L.R. (2012) M.P. 1175*

– **Eligibility** – Participation in the counselling for appointment to the post of Samvida Shala Shikshak Grade II – Applying the principle of neutralizing the error and rounding off, the petitioner gets 90 marks which makes him eligible for selection to the post of Samvida Shala Shikshak Grade II – Directed to permit the petitioner to participate in the counselling for appointment to the post of Samvida Shala Shikshak Grade II : *Brij Bihari Vs. State of M.P., I.L.R. (2015) M.P. 613*

– **Essential Qualifications** - It is the screening committee comprising of expert who are the best judge to ascertain whether a candidate fulfill the essential qualifications – When subject experts constitute the panel of selection committee, selection by them should not be lightly set aside : *D. Subrahmanyam (Dr.) Vs. Dr. D.K. Pandey, I.L.R. (2012) M.P. *12 (DB)*

– **Excellent Sports Person** - Scheme provided for appointment of excellent sports person on the post of Lecturer in Govt. Higher Secondary School - Recommendation was sent for petitioner's appointment on the post of Lecturer - Petitioner was given appointment on the post of Upper Division Teacher, however, similarly situated persons were given appointment on the post of Lecturer - No explanation as to why similar treatment was not given to the petitioner - Respondents to look into the claim of the petitioner for his upgradation on the post of Lecturer - If it is found that the petitioner should have been appointed on the post of Lecturer, such appointment be made - Such appointment would be prospective and not retrospective in all senses - Petition disposed off : *Mahavir Prasad Jain Vs. State of M.P., I.L.R. (2012) M.P. 2688*

– **Fixation of Maximum Qualification** – High Court rightly held that fixation of higher/maximum qualification is violative of Article 14 of Constitution of India : *Life Insurance Corporation of India Vs. Triveni Sharan Mishra, I.L.R. (2015) M.P. 827 (SC)*

– **Handicapped Category** – Petitioner and respondent No. 3 both belong to SC handicapped category – Petitioner got 247 marks in the written examination whereas

respondent No. 3 got only 180 marks –The respondent No. 3, who admittedly is less meritorious than the petitioner, must pave way for the petitioner for his appointment to the post of Assistant District Prosecution Officer (ADPO), for which he was found more meritorious in the selection process – Petition is allowed – The appointment of respondent No. 3 is set aside : *Dinesh Kumar Arya Vs. State of M.P., I.L.R. (2011) M.P. 1724*

– **Higher Education in Computer** – Means such a degree in which Computer is the exclusive or the main subject and not a graduate degree of Commerce, Arts or Science where Computer Science is one of the subjects : *Rakesh Yadav Vs. State of M.P., I.L.R. (2011) M.P. 1847 (DB)*

- **Imposition of Condition** - Eligibility criteria provided in the Rules for recruitment on the post was passing of Matriculation or equivalent examination - It further provided that preference shall be given to those possessing certificate in typewriting - Imposition of stipulation of passing of the Hindi Typewriting Examination as prerequisite condition for release of the increment can not be said to be justified : *State of M.P. Vs. Onkarlal, I.L.R. (2011) M.P. 2280 (DB)*

– **Medical Examination** – Petitioner on being examined found fit for the post of Constable – Medical Admit Card for medical examination was issued to him – However same was received by him after the examination – Therefore, he could not participate in the medical examination – On being approached respondent declined him to undergo medical examination – Held – Since there is no denial of the fact that the letter issued for medical examination was delivered to the petitioner after the scheduled date of medical examination, denial of an opportunity for medical examination is not justified – Respondent shall give one opportunity and thereafter shall consider him for appointment on the basis of his performance : *Ajay Kumar Sahu Vs. Union of India, I.L.R. (2015) M.P. 2879*

– **Medical Fitness** – Appointment for the post of Executive Trainee (Finance) – Appointment has been cancelled on the ground that the petitioner was found medically unfit as he does not have vision in one eye – Even if the petitioner is having normal vision in one eye he is certainly entitled to be appointed as an Executive Trainee (Finance) – Further petitioner had also passed Chartered Accountant Examination and is working on same job in Small Industries Development Bank of India – Further advertisement shows that seats have been reserved for persons with 40% disability – One eye is treated as 30% disability – Respondents directed to appoint the petitioner with all consequential benefits – Petition allowed : *Anshul Jain Vs. National Thermal Power Corporation Ltd., I.L.R. (2015) M.P. 1690*

– **Merit List** – Mere on the basis of selection, a person is not entitled to claim appointment : *Rohit Vs. State of M.P., I.L.R. (2015) M.P. 841 (DB)*

– **Minimum Qualification** – Local Resident – Meaning of – A person may originally belong to 'A' State but because of certain contingencies, he may migrate to 'B' State and become a local resident of that 'B' State – Would it confer a status of 'original resident' of 'B' State on such a person? The answer to this is plain 'No' – When the condition in the advertisement, pursuant to which the petitioner had applied for her appointment, prescribes a condition of 'original resident' which condition she admittedly does not fulfill, she has no right to claim appointment against a post reserved for reserved category originally belonging to State of Madhya Pradesh : *Chitralekha Shakya (Smt.) Vs. State of M.P., I.L.R. (2011) M.P. 1221*

– **Non-Joinder of Selected Candidates** – Six posts were kept vacant in compliance of interim order – Even in absence of selected candidates, relief can be granted – Writ Petition do not suffer from vice of non-joinder of necessary party : *Anil Bhatt Vs. State of M.P., I.L.R. (2012) M.P. 1146*

– **Panchayat Karmi** – Qualification of – Certificate of Prathma issued by the Hindi Sahitya Sammelan, Allahabad could not be said to be equivalent to class 10 under 10+2 system, which is a necessary qualification for the purpose of appointment to the post of Panchayat Karmi : *Arvind Singh Vs. State of M.P., I.L.R. (2011) M.P. 918*

- **Panchayat Karmi Scheme** - Appointment - Preference to reserved category - It does not provide reservation of posts in favor of reserved categories - It only provides for giving them preference in case all things are equal : *Ramkinkar Vishwakarma Vs. State of M.P., I.L.R. (2012) M.P. 1514 (DB)*

– **Panchayats (Appeal and Revision) Rules, M.P. 1995 – Rule 3** – Appointment of Panchayat Karmi – Appeal Against – Person aggrieved – Appellant was appointed as Panchayat Karmi vide order dated 11.08.2007 – Appeal before S.D.O. filed by 'I' was dismissed – A revision preferred by respondent No. 5 before Additional Collector was also dismissed – The respondent No. 5 challenged the order in appeal before the Additional Commissioner – Held – An appeal under Rule 3 can even be preferred by any person aggrieved – Order passed by the Additional Commissioner can not be said to be without jurisdiction : *Harish Chandra Yadav Vs. State of M.P., I.L.R. (2012) M.P. 1107 (DB)*

- **Preference** - Petitioner applied under in-service candidate of reserved category and had given preference to the post of Subedar, Sub-Inspector of Police, Special Branch and Platoon Commander respectively - Petitioner was selected and was given appointment to the post of Platoon Commander - Subsequent to preparation of main list

certain vacancies were available on account of non-availability of eligible ex-service candidate - Respondents who were less meritorious were given appointment on the post of Sub-Inspector and petitioner was not offered the said post as he was already undergoing training for Platoon Commander - Held - Preference of the person higher in select list will be seen first and appointment has to be given accordingly - In absence of any statutory provision action of allocating higher post to less meritorious candidate is certainly contrary to law - Respondents should have revised the merit list and persons higher in merit should have been offered higher post as per preference submitted by them - Petition allowed : *Gokul Prasad Ajameriya Vs. State of M.P., I.L.R. (2014) M.P. 55*

- **Qualification** - Crucial date on which a candidate must possess the requisite qualification would be the last date on which the applications are to be submitted - It was necessary for the Petitioner to submit the proof of passing of eligibility examination atleast on the date when selection was made - Rejection of the candidature for want of requisite documents cannot be said to be unjustified : *Draupati Tiwari (Smt.) Vs. State of M.P., I.L.R. (2013) M.P. 1512 (DB)*

- **Qualification** - Petitioners although hold Diploma/Degree in Pharmacy but not registered with M.P. Pharmacy Council - Only registered Pharmacist can compound, prepare, mix or dispense any medicine on the prescription of a medical practitioner - Advertisement has to be considered in the stipulation contained in Pharmacy Act - Petitioners were rightly not considered - Petition dismissed : *Brijesh Shukla Vs. State of M.P., I.L.R. (2015) M.P. 2864*

- **Qualification** - Doctrine of Relation back - Appellant had appeared in supplementary examination of Class XII - Taking part in examination is not the complete exercise of obtaining educational qualification - Passing of examination would be only when the result is declared - Subsequent declaration of result would not mean that the candidate must be treated to have passed the examination with retrospective effect : *Draupati Tiwari (Smt.) Vs. State of M.P., I.L.R. (2013) M.P. 1512 (DB)*

- **Qualification** - Educational Services (Collegiate branch) Rules, M.P. 1990, Rule 8; Schedule III - Experience in private institution - Teaching experience of 10 years has to be counted from the date on incumbent acquires Ph.D. and not from the date prior thereto - Since the petitioner did not had to her credit ten years teaching experience in graduate/post graduate class - She was rightly not found suitable for candidature for appointment as Professor - Experience gained in private institution is not recognized in view of Government letter dated 29.04.2010 : *Ankita Bohare (Dr.) (Smt.) Vs. M.P. Public Service Commission, I.L.R. (2014) M.P. 1276*

- **Recruitment Rules** - Petitioner qualified under the provisions of Recruitment Rules, submitted an application in response to the advertisement - Public Service

Commission called 51 candidates for interview and the last candidate called for interview, was having 60% marks – Petitioner having obtained 59.06% marks in the Post Graduate Examination was not called for interview – Held – Criteria adopted by the PSC is a reasonable criteria and the process of short listing does not amount to altering or substituting the eligibility criteria provided under the recruitment rules – No case for interference is made out : *Krishna Singh (Dr.) Vs. State of M.P., I.L.R. (2011) M.P. *82*

– **Refusal by Government** – Petitioners graduate in Commerce (B.Com.), Arts (B.A.) or Science (B.Sc.) with Computer as one of the subjects – They appeared in the examination and were declared selected – But the State Government has declined to appoint them on the ground that they did not possess the minimum educational qualification – Held – The petitioners who do not satisfy the educational qualification as laid in the advertisement, are not eligible for appointment – Petition dismissed : *Rakesh Yadav Vs. State of M.P., I.L.R. (2011) M.P. 1847 (DB)*

- **Rules** – Regularisation is not a permissible mode of appointment, when rules prescribe a procedure of appointment/promotion – Induction can be made only as per those rules : *Ram Kumar Baishander Vs. State of M.P., I.L.R. (2012) M.P. *65*

– **Waiting List Candidate** – Cannot claim appointment against those vacancies which occurred subsequently or were not advertised on the ground that the same may be filled up from amongst the waiting list candidates : *Seema Pathak (Dr.) Vs. State of M.P., I.L.R. (2011) M.P. 1675*

4. Back Wages

– **Entitlement** - Grant of back wages is not a natural consequence of every order of reinstatement or retrospective promotion and in such cases, the person concerned is not ipso facto entitled to arrears of salary or back wages-Issue of back wages has to be considered in the facts of each case and authority has to determine as to whether back wages should be awarded fully or partially : *Padmanabha Bhaskaran Pillai Vs. Food Corporation of India, I.L.R. (2012) M.P. 1581*

– **Gainfully Employed** – Burden of proof to show that workman was not gainfully employed is not on the employer : *Senior Regional Manager Vs. C.G.I.T. Jabalpur, I.L.R. (2011) M.P. 1231 (DB)*

- **Promotion** - Petitioner was not granted promotion as there were adverse entries - Subsequent expunction of adverse entries - Petitioner was notionally given promotion on the basis of revised and upgraded entries - The denial of promotion to the petitioner can not be found fault with - As the respondents can not be held responsible nor can any fault be found with authorities in not awarding promotion earlier, petitioner is not entitled

to full arrears of salary of back wages : *Padmanabha Bhaskaran Pillai Vs. Food Corporation of India, I.L.R. (2012) M.P. 1581*

- **Reinstatement** - Charge of bribe and corruption could not be established to the hilt - However, needle of suspicion is against him -Petitioner liable to be re-instated - Not entitled for back wages : *Suresh Chand Upadhyay Vs. Union of India, I.L.R. (2011) M.P. 3049*

5. Benefits of Promotional Post

- **Conditional Promotion - Constitution, Article 226**, Lok Seva (Anusuchit Jatiyon, Anusuchit Jan Jation Aur Anya Pichhade Vargon Ke Liye Arakshan) Adhinyam, M.P. 1994, Section 2(b) and Rajya Sahakari Bank Maryadit Employees (Terms of Employment and Working Conditions) Rules, M.P. 1976, Rules 15(b)(2) - Promotion subject to decision - Order of amendment in rules dated 06.03.1997 challenged and finally held ultra virus by the Supreme Court - During pendency of that writ petition, petitioners were promoted, with the direction that promotion shall be subject to decision of writ petition - Also Section 2(b) of Adhinyam substituted w.e.f. 13.05.2002 with prospective effect - After decision of Supreme Court on 26.05.2009 petitioners were reverted to their substantive post - Held - Validity of order dated 06.03.1997 was examined in writ petition on the basis of un-amended provision and subsequent amendment had no bearing thereupon - Order reverting petitioners not illegal - Petition dismissed : *R.R. Nihare Vs. State of M.P., I.L.R. (2011) M.P. 111 (DB)*

- **Entitlement** - Petitioner filed petition challenging his supersession - Petition was allowed and was given promotion to the post of Joint Director w.e.f. 1993 - He was given further promotion to the post of Director w.e.f. 1998 by order dated 29.5.2009 - Petitioner had already retired in 2003 - Order mentioned that Petitioner will be entitled for salary of promotional post only after giving joining on the promotional post - Respondents fully aware that petitioner has already retired and is not possible for him to give joining on promotional post - No fault can be attributed to petitioner for not giving him timely promotion - Petitioner was vigilant and respondent had not properly dealt with the claim of the petitioner - Petitioner entitled for benefit of pay of promotional post w.e.f. 1998 - He is entitled for arrears of pay with 9% interest p.a : *H.P. Upadhyay (Dr.) Vs. State of M.P., I.L.R. (2011) M.P. 2342*

- **Grant of benefits of Vth Pay Commission Recommendations** - To the employees of the M.P. Police Housing Corporation which is registered under Indian Companies Act - Board of Directors of Respondent No. 2 resolved to adopt the same - For which proposals were sent for approval to the State Government which were turned down by the impugned communications - Held - Since it is not clear that there was any requirement of Law to obtain prior approval for grant of any service conditions of the

employees of the Corporation, there was no occasion for State to reject the resolution – If a Corporation has resolved to grant certain benefits to its employees at par with the employees of the State Government, Corporation's employee cannot automatically become the Government Employees – Therefore, rejection of proposal by the State cannot be sustained – Same is quashed – Corporation is free to resolve and implement the recommendations made by the different pay commissions to their employees : *G.M. Dubey Vs. State of M.P., I.L.R. (2014) M.P. 2054*

6. Casual Employee

- **Casual Employee** - If an employee is working against a regular post in a regular nature of work and is a full time employee not engaged for any particular season or intermittently, he will not be a daily wages employee but would come in the category of casual employee : *Surendra Saraf Vs. Dr. Hari Singh Gaur Vishwavidyalaya, I.L.R. (2011) M.P. 3037*

- **Causal Employee** - Petitioners working against work of a regular post continuously for last more than 5 to 10 years - Their work is of regular nature - They are not engaged intermittently nor are they part time employees - In note sheets and pay bills prepared by respondents, the petitioners are shown to be working against regular post - Held - Even though petitioners are categorized as 'daily wages employees', there is no reason for denying benefit to the petitioners - Even on the principle of "equal pay for equal work", petitioners are entitled to the benefit claimed for, i.e. at par with other casual employees - Respondents can not discriminate with them : *Surendra Saraf Vs. Dr. Hari Singh Gaur Vishwavidyalaya, I.L.R. (2011) M.P. 3037*

7. Communication/Grading of ACR

- **Communication** – ACRs. were communicated after a period of three months – ACRs quashed – Adverse remarks directed to be expunged – Respondents directed to convene review DPC – Petition allowed : *Roop Singh Bhil Vs. State of M.P., I.L.R. (2015) M.P. 1311*

- **Communication** - Any entry which is adverse is required to be shown to the employee to apprise him with respect to performance of his duties so that he may improve the working in future : *Rajesh Kumar Saxena Vs. State of M.P., I.L.R. (2012) M.P. 2920*

- **Communication** - If any adverse entry is made in annual confidential report, the same has to be communicated within a month and if any representation is made the same is to be decided within 30 days - In case of any inquiry in respect of representation the same is to be concluded within 3 months : *Rajesh Kumar Saxena Vs. State of M.P., I.L.R. (2012) M.P. 2920*

– **Confidential Report** - Whether the confidential report pertaining to year 1994-95 in the case of writ petitioner can be treated as 'advisory' or 'adverse' as such - Held - Depending on the finding recorded in that behalf, the learned Single Judge may pass appropriate further directions, as may required in the matter, in accordance with law : *Managing Director, M.P. Khadi & Gramodyog Board Vs. Shri Indrabhan Gautam, I.L.R. (2014) M.P. 24 (DB)*

– **Consideration** – If such an ACR is coming in way, it has to be treated as adverse and is required to be communicated and then only the same can be taken into consideration : *D.P. Sharma Vs. State of M.P., I.L.R. (2015) M.P. 852*

– **Correctness of grading made in ACR** – On receiving the report of Reporting Authority petitioner was graded as 'Excellent' Officer by the Reviewing Authority which was changed by Chairman-cum-Managing Director on the noting made by the Secretary to deny promotion to the petitioner – Held – Since Secretary never suggested any grading of the petitioner to be made in the ACR in question – He simply said that out of 10 years ACR's of the petitioner, he was graded 'B' category Officer in 7 years – Petitioner's ACR grading was done according to the circular which cannot be said to be bad in law – Petition is dismissed : *R.K. Parashar Vs. M.P. Power Management Company, I.L.R. (2014) M.P. 3088*

- **Grading of ACRs** - Downgrading - Downgrading is not permissible without giving an opportunity of hearing to the concerned employee : *S.S. Tomar Vs. State of M.P., I.L.R. (2013) M.P. 560*

- **Expunction** - Entry was made to the effect that complaints against behaviour and delay caused by petitioner are being received and he is required to improve his work - No proof of any complaint - Representation was rejected by a single line order - Adverse entry expunged - Respondents directed to regrade the petitioner after expunging adverse entries - Review DPC be called to consider the case of petitioner - Petition allowed : *Rajesh Kumar Saxena Vs. State of M.P., I.L.R. (2012) M.P. 2920*

- **Reasons** - Recording of reasons may not be requirement of the provision but the authority is required to act in a fair and just manner - Order which does not contain reason, always open in court of law for scrutiny - No application of mind in rejecting the representation - No document on record to show reasons - Contention not proved - Held - Even, the court is not obliged to act as appellate authority and is not concerned with the decision but can examine decision making process - Decision making process is vitiated or polluted, certainly the Court can exercise its jurisdiction and interfere in the matter : *Rajeev Kumar Mishra Vs. State of M.P., I.L.R. (2012) M.P. *81*

- **Representation against ACR rejected** - Review also rejected - Held - ACR not treated as punishment in service jurisprudence but have potential to spoil career - ACR should be written objective, scientific and dispassionate manner with the view to improve the officer - It's a mirror image of performance - Can not be used as weapon of colonial era : *Rajeev Kumar Mishra Vs. State of M.P., I.L.R. (2012) M.P. *81*

8. Compassionate Appointment

- **Agreement** - National Coal Wage Agreement VI - Agreement VI is binding on the management and workmen - Nothing in agreement VI which provides for priority right in favor of adult dependent - On the contrary clause 9.3.3 delineate the line of succession - Rejection of the application that wife has no priority right over adult dependant male son dehors the terms of NCWA : *Kanaklata (Mrs.) Vs. Union of India, I.L.R. (2012) M.P. 1606*

- **Antecedents/Character** - Verification of antecedents - Acquittal/discharge in criminal case pursuant to a compromise - Held - Candidate to be recruited to the police service must be worthy of confidence and must be a person of utmost rectitude and must have impeccable character and integrity - A person having criminal antecedents will not fit in this category - Even if he is acquitted or discharged, it cannot be presumed that he was completely exonerated - Impugned order set aside - Appeal allowed : *State of M.P. Vs. Parvez Khan, I.L.R. (2015) M.P. 2533 (SC)*

- **Basis of Refusal** - Appellant's husband died in harness - Appellant applied for compassionate appointment - The application rejected by respondents Bank - Held - Main criteria for appointment on compassionate basis should be the financial condition of the family of the deceased person - Unless the financial condition is entirely penury, such appointment cannot be made : *Nirmal Dubey (Smt.) Vs. Punjab National Bank, I.L.R. (2014) M.P. 1702 (DB)*

- **Eligibility** - Since there is no material on record to establish that the petitioner and her husband were dependent upon deceased govt. servant and a policy does not include a married daughter whose husband is alive - Petitioner is not eligible for appointment on compassionate ground : *Shilpi Mishra (Smt.) Vs. State of M.P., I.L.R. (2015) M.P. 1463*

- **Financial Status of Family** - Application for appointment on compassionate ground was rejected only on the ground that elder brother was in government job in other State - Deceased employee is survived by three unemployed sons and one marriageable daughter - Financial status of the family was not examined before rejecting application - Matter remitted back to reconsider the question of grant of appointment on

compassionate ground ignoring the fact of employment of elder brother : *Sohan Joshi Vs. State of M.P., I.L.R. (2013) M.P. 284*

– **National Coal Wage Agreement – Chapter VI** – Compassionate appointment – Denied on the ground of delay and that the petitioner happened to be the third wife – Succession certificate was not relied to acknowledge the petitioner being a dependent to deceased employee although no other contender came forward for claiming compassionate appointment – Held – National Coal Wage Agreement is binding on the employer – They are not justified in rejecting the claim on the ground of delay – Question of status of petitioner has been duly acknowledged by the succession court being that of widow of employee – Action of respondent neither fair nor reasonable nor bonafide – Impugned order is set aside – Respondents are directed to offer appointment to the petitioner on a suitable post within a period of 8 weeks : *Samalwati Bai (Smt.) Vs. W.C.L., I.L.R. (2014) M.P. 1510*

– **Nomination in service record** – Nature – It is not Will – Will is executed in altogether different manner – It is to be treated as wish of the employee or his request to disburse the terminal dues to any particular person : *Mamta Sharma (Smt.) Vs. State of M.P., I.L.R. (2015) M.P. 1441*

– **Office Memorandum** – A right having accrued in favour of the petitioner for consideration for appointment can not be taken away by virtue of issuance of subsequent office memorandum : *Gulrez Khan Vs. Union of India, I.L.R. (2011) M.P. 1492 (DB)*

– **Policy/Circular** - Policy/circular which was in existence on date of death of the employee, shall be considered for the purpose : *Narendra Singh Umath Vs. State of M.P., I.L.R. (2012) M.P. 1856*

– **Priority Right** – Succession Court answered the legitimacy of petitioner No.1's marriage with the deceased employee, in her favour – The petitioner gets priority right for appointment on compassionate ground – Appointment given to respondent No. 4 (Son of Second Wife) is illegal : *Surendra Shrivastava Vs. The General Manager, I.L.R. (2012) M.P. 1244*

9. Compulsory Retirement

– **Adverse Entries** - Petitioner was compulsorily retired on the basis of few adverse entries in Confidential Reports ignoring the satisfactory service record - Order of compulsory retirement cannot be affirmed merely on the basis of few stale adverse entries - As the petitioner has already attained the age of superannuation, he be treated in service till actual date of superannuation and will get 50% of salary and allowances from the date

of compulsory retirement till date of superannuation : *Vimal Kumar Pandey Vs. State of M.P., I.L.R. (2013) M.P. 288*

– **Annual Confidential Reports** – Only for three annual confidential reports of the year 1976, 1977 and 1983 as also a punishment awarded in a departmental enquiry, the petitioner was said to be found fit for compulsory retirement in the year 1998 – Recent record of the service of the petitioner was not examined – Held – Order (of compulsory retirement) quashed : *G.R. Dhupar Vs. State of M.P., I.L.R. (2012) M.P. 42*

– **Assessment** – Compulsory retirement under Fundamental Rule 56(2) in public interest – Undisputedly the screening of the petitioner was not done properly – Facts which were not germane to the service career of the petitioner inasmuch as the penalty imposed to some one else, were taken note of by the Screening Committee – He was also considered and found fit for promotion in the year 1995 – Held – Petitioner would not have been compulsory retired if his ACRs were examined properly – The recent past is required to be seen to assess the requirement of compulsory retirement of an incumbent – Impugned order is quashed – Petitioner be treated to be in service for the period he was made to compulsory retired and be granted all the benefits of continuance in service including the pay and allowances of the post till the date of normal superannuation : *R.K. Mishra Vs. State of M.P., I.L.R. (2014) M.P. 2048*

– **Bonafide Decision** – Service record evaluated by a committee of Judges of High Court – The order of compulsory retirement can not be said to be vitiated on account of non-application of mind, malafides or for want of material available on record – The decision to compulsory retire is bonafide and in public interest : *Chandraprabha Jolhe (Smt.) Vs. State of M.P., I.L.R. (2011) M.P. *109 (DB)*

– **Determination of Service** - Employees (employed in M.P. Road Transport Corporation) who completed 20 years of service or 50 years of age were compulsory retired by Corporation taking recourse to the direction of State Government in purported exercise of power u/s 34 of Road Transport Corporation Act 1950 adopted the circular No. C-3-24/2000/3/1 dated 22.08.2000, which lays down the procedure to be followed when a Government Servant is to be compulsory retired on his completion of 20 years of service or on attaining 50 years of age either under Fundamental Rule 56 or under Rule 42 of the M.P. Civil Service (Pension) Rules 1976 - Held - Determination of service of an employee of the Corporation by way of pre-mature retirement, except by way of punishment, has not been provided either in the M.P.S.R.T.C. Employees Service Regulations 1950 or in the Standard Standing Orders - Action of the respondents Corporation in pre-mature retiring its employees in public interest also not in consonance with the provisions contained in the M.P. Industrial Relation Act 1961 - Action of the respondent Corporation can not be given the stamp of approval - The action is held to be

without any authority/sanction of law, as such is void ab-initio : *Bhagwat Singh Thakur Vs. State of M.P., I.L.R. (2011) M.P. 2434*

– **Misconduct** - Petitioner, working as a constable in CISF was charge-sheeted on ground that he had permitted his sister-in-law to stay alongwith his family in the Government quarter allotted to him without obtaining prior permission from the concerned authorities and introduced her to a constable with the intention of establishing a matrimonial relationship - After enquiry report a punishment of compulsory retirement was imposed upon the petitioner - Held - Rule 8 of the House Rent and City Compensatory allowance Rules 'sister-in-law' has specifically been mentioned in Rule 8(iii) as a close relative who can live in the Government quarter alongwith a Government servant - Act of petitioner in permitting his sister-in-law to stay with him, does not fall foul of any of the instructions issued by the respondents or any of the conduct rules and, therefore, does not amount to a misconduct under the provisions of the Act and the Rules - Order of imposition of punishment upon the petitioner can not be sustained - Petitioner directed to be reinstated : *Padam Singh Shakya Vs. Union of India, I.L.R. (2011) M.P. *126*

– **Opportunity of Hearing** - Committee constituted to scrutinise the case of respondent/petitioner relied on a report of enquiry conducted behind the back of respondent/petitioner - No opportunity of hearing whatsoever was given to the respondent/petitioner in that enquiry and a report was given with respect to certain conducts of the respondent/petitioner - Order of compulsory retirement can not be sustained : *Moulana Azad National Institute of Technology Vs. Ajit Narayan, I.L.R. (2011) M.P. 2694 (DB)*

– **Pensionary Benefits** – Compulsory retirement is not treated as termination as would disentitle the employee of the pensionary benefits – Gratuity is an element of pension – Compulsory retirement of respondent and his prosecution would not disentitle him from gratuity : *Zonal Manager, Central Bank of India Vs. R.R. Das, I.L.R. (2015) M.P. 80*

– **Principles of Law** - Decision to compulsorily retire the petitioner is taken on the basis of the enquiry report and there is no scrutiny of the service record of the petitioner to find out as to whether he is a deadwood - The enquiry report in question, is based on an enquiry conducted ex parte, behind the back of the petitioner and without granting him any opportunity of hearing - The action of the respondents in compulsorily retiring the petitioner is illegal, contrary to the principles of law and has to be quashed - Petition allowed : *Ajit Narayan Vs. Union of India, I.L.R. (2011) M.P. *2*

– **Plea of Arbitrariness** – High Court evaluated the entire service record of the petitioner including the latest report of inspection without any element of unfairness, and properly examined the question of his extension in service beyond 58 years of his age – The decision making process adopted by the High Court does not indicate any fault – Plea of arbitrariness does not stand : *Krishna Kumar Gupta Vs. State of M.P., I.L.R. (2011) M.P. 1947 (DB)*

- **Procedure** - Compulsory Retirement is neither a punishment nor does it cast a stigma on the employee concerned - However, before taking a decision to compulsory retire an employee, his entire service record, character roll etc. are to be placed before the appropriate screening committee and on scrutiny of the same the committee has to decide as to whether the employee is useful to the department or is a deadwood : *Ajit Narayan Vs. Union of India, I.L.R. (2011) M.P. *2*

10. Consideration of Age

– **Age Limit** – Neither in the policy nor in the advertisement the cut-off date is appointed – The cut-off date has to be determined to be last date by which the applications were to be received by the competent authority : *Ashish Singh Vs. State of M.P., I.L.R. (2011) M.P. 1226*

– **Age of Retirement** – Petitioners who were initially appointed in a Co-operative Society were subsequently absorbed in the M.P. Electricity Board – After bifurcation of the Board they came in service of M.P. Poorva Kshetra Vidyut Vitran Co. – By the impugned order they were made to retire w.e.f. 30.11.2012 on attaining the age of 58 years – Held – If the petitioners are granted the benefit of extended age prescribed for the Co-operative Society, they would be entitled to continue up to the age of 60 years and in case the service condition available in the respondents establishment are made applicable, they will continue on the post up to the age of 60 years – Thus, impugned order cannot be sustained – Writ Petition is allowed : *Ram Sajeewan Tiwari Vs. M.P. State Electricity Board, I.L.R. (2014) M.P. *14*

- **Age of Superannuation** - AICTE Regulation which provided for age of superannuation as 65 years was adopted by State Govt. on 19-10-2010 - Appellants superannuated on 31-8-2010 - Held - Unless and until the benefit of notification is made applicable specifically, such benefit is not available to the employees - As the appellants had already attained the age of superannuation therefore, they are not entitled for the benefit of the regulation - Appeal dismissed : *Pradeep Agnihotri Vs. State of M.P., I.L.R. (2012) M.P. 2904 (DB)*

11. Contract Appointment

– **Non-extension of Contract Appointment** – Petitioner was initially appointed by the Collector-cum-District Programme Coordinator and the extension from time to time has also been granted by the Collector – Collector is well within his power to decline extension of contract period – Petition dismissed : *Hind Kishore Vs. State of M.P.*, I.L.R. (2015) M.P. *28

– **Principle of Natural Justice** - The Principle of Natural Justice and Article 14 of Constitution shall apply - National Institute of Open Schooling (NIOS) running under the aegis of Ministry of Human Resources Development, Govt. of India - It is equivalent to all Boards like CBSE, CISCE - Therefore its Vocational Certificates cannot be discarded merely on the ground that it is not affiliated with NCVT - Narrow interpretation of eligibility condition will lead to absurdity and create conflict between recognized institutions of the Government - The order of termination on this ground without following the principle of natural Justice liable to be set aside : *Prem Chand Yadav Vs. M.P. Poorva Kshetra Vidyut Vitran Co. Ltd.*, I.L.R. (2013) M.P. *22

– **Recruitment Procedure** – Initial appointment of the petitioner on part-time basis and the subsequent conversion of this appointment to a contract appointment were not preceded by following any procedure known by law – Thereafter, when the employment and recruitment notice Annexure P/5 was issued on 9.6.2005, a Seven Member Committee, consisting of Senior Faculty Members and Professors of the Institute, interviewed the candidates – Recommendation of such an Expert Body was that none of the candidates is found suitable for regular appointment to the post – Merely because the Committee had not fixed any bench mark or because the petitioner had received the maximum marks, that by itself cannot be a ground for the Court to issue a mandamus and direct for regular appointment of the petitioner : *Jyoti Mittal (Smt.) Vs. Maulana Azad National Institute of Technology, Bhopal*, I.L.R. (2011) M.P. 1695

12. Date of Birth

- **Attestation** - If any entry is made, there must be some attesting proof of the same available in the service record - Without there being any attesting proof, the correctness of the date of birth recorded in the service record is not acceptable : *Bhai Lal Burma Vs. Food Corporation of India*, I.L.R. (2013) M.P. *23

- **Change of Date of Birth** - Petitioner, prior to his retirement submitted an application dated 16.08.2000 before the respondent seeking correction of his date of birth so as to make it 09.03.1953 in place of the date of birth (year) declared by him as 1943 - The said prayer made by the petitioner was rejected by the respondent (employer) - Petitioner by the order of his retirement approached the Labour Court and the Labour

Court allowed the petitioner's application u/s 31(3) of M.P. Industrial Relations Act, 1960 and set aside the order of his retirement - In appeal the Industrial Court held that the petitioner himself declared his date of birth as 1943 at time of entry in service and that the date of birth as 09.03.1953 which is being claimed by him has not been proved - Petitioner challenged the order of Industrial Court and argued that School Leaving Certificate produced by him before Labour Court was doubted by the respondent - Held - Industrial Court committed no error in holding that the School Leaving Certificate not, properly proved, can not be relied upon - Further, if the date of birth now claimed, is taken to be correct, then the age of the petitioner while joining the services initially, would come to 11 years, which can not be accepted - Petition dismissed : *Bherulal Vs. Grasim Industries Ltd., Birlagram, Ujjain, I.L.R. (2011) M.P. 659 (DB)*

- **Correction** - Entries in Service book were filled by the Petitioner - Column pertaining to date of birth was left vacant by him - When opportunity was given by department to submit proof of date of birth, Petitioner conceded that department may proceed as per record available - Department after considering the papers of insurance in which the petitioner had mentioned his date of birth to be in year 1935 - Subsequent claim of the petitioner that his date of birth is 1930 as per janam kundli and school certificate recently issued by Head Master not reliable - Petition dismissed : *Shankar Lal Agrawal Vs. District Shahkari Kendriya Bank Maryadit, I.L.R. (2011) M.P. 3000 (DB)*

- **Correction** - Matriculation Certificate - In the letter of offer of appointment, it was mentioned that in case the person fails to produce certificate in proof of age, the same shall be assessed by Medical Board - However, there is nothing that the date of birth was recorded on the basis of the certificate produced by Petitioner or on the basis of medical report - Matriculation certificate subsequently filed by Petitioner shows different date of birth - Other school certificates also tally with the date of birth mentioned in Matriculation Certificate - As per Implementation Instruction No. 76, Date of Birth is required to be treated as has been mentioned in Matriculation certificate - Respondents are directed to treat the date of birth of the petitioner as has been mentioned in Matriculation Certificate and to permit him to continue in service till he attains the age of superannuation according to said date of birth : *Chandra Bhusan Vs. South Eastern Coal Field Limited, I.L.R. (2013) M.P. 1546*

- **Disputed Question of Fact** - Age Determination Committee rejected the contention of the petitioner that his date of birth is 01.07.1957 and not 13.12.1953 - As highly disputed question of facts are involved, the petitioner can raise a dispute before the Labour Court - Petition dismissed : *Rameshwar Prasad Pathak Vs. South Eastern Coalfields Ltd., I.L.R. (2015) M.P. 2084*

– **Implementation of Instruction No. 76(B)** – Petition filed for treating the date of birth of the petitioner to be 01.02.1955 instead of 01.09.1952 on the strength of Sirdar's certificate issued by the Board of Mining Examination which has not been certified by the Manager – Held – Birth certificate issued by the Boards/Universities/Institutions would be treated as valid provided they are issued prior to the date of employment – Clause B (i)(b) of the implementation instruction No. 76 provides that Mining Sirdarship, Winding Engine or similar certificate would be treated as authentic only where the Manager has certified the date of birth – Certificate produced by the petitioner cannot be held to be authentic and binding – Disposed of with direction to Age Determination Committee, to decide the matter after giving due opportunity of hearing to the respondent/petitioner within one month from 25.05.2014 : *Western Coal Fields Ltd. Vs. Faggu Lal, I.L.R. (2014) M.P. 1483 (DB)*

- **Manipulation in Entries** - Manipulation was not engineered by the petitioner - In such circumstances, it was the duty of the respondents No. 1 & 2 to get the age of the petitioner verified : *Bhai Lal Burma Vs. Food Corporation of India, I.L.R. (2013) M.P. *23*

- **Reliability** - Date of birth on duplicate school leaving certificate and certificate of class V not acceptable - Age comes 15-16 years on the date of entrance in department - Seems concocted document - Cannot be permitted to take benefit of his own wrong - No averment regarding original certificate - Present document never submitted earlier - Appeal dismissed : *Mahesh Chandra Khare Vs. Municipal Council, Bhind, I.L.R. (2012) M.P. 2619 (DB)*

13. Departmental Enquiry

– **Acquittal in Criminal Case** – An acquittal in criminal proceedings does not automatically absolve the employee from charges levelled against him in departmental enquiry : *Ameen Kumar Chatarjee Vs. West Central Railway, I.L.R. (2015) M.P. 618*

- **Acquittal in Criminal Case** - Charge in departmental enquiry was found proved on the basis of a statement made by petitioner before the Civil Police Authorities - Held - Petitioner cannot be held guilty in departmental enquiry merely on the basis of statement made before police authorities in a criminal case, in which he has been honorably acquitted : *Parvinder Singh (Ex. ASI/M) Vs. Union of India, I.L.R. (2012) M.P. *109*

– **Application for Adjournment** – Employee sent telegram, registered letters requesting adjournment of enquiry on the ground of ailment – Later on also submitted application for recalling exparte order pregnant with medical certificate – Held – When adjournment is sought on medical ground whether or not it is accompanied by medical

certificate, in the interest of justice, time should be granted : *Bhawani Shankar Singhal Vs. State of M.P., I.L.R. (2012) M.P. *55*

– **Bias of Enquiry Officer** – Bias has to be specifically pleaded and proved – Mere allegation of involvement of I.O. in some other criminal case does not show any bias – Procedural irregularity in departmental enquiry does not always lead to presumption of bias : *Vikram Sharma Vs. State Bank of Indore, I.L.R. (2012) M.P. *10*

– **Charge Sheet** - Civil Services (Classification, Control and Appeal) Rules, M.P. 1966 – Rule 13 – Petitioner while posted as Station House Officer, did not lodge the full report regarding the complaint of rape and instead lodged a false report in Rojnamcha Sanha – Charge-sheet served by Inspector General of Police – Petitioner questioned on the ground that petitioner is the gazetted designated officer and his appointing authority is the State Government and the charge-sheet could be served only by the appointing authority as per Rule – Held – Zonal Inspector General of Police is a controlling authority – Therefore, even in the absence of specific conferment of power, it is lawful on his part to initiate the departmental proceedings and issue the charge-sheet – Petition dismissed : *N.K. Pandey Vs. State of M.P., I.L.R. (2011) M.P. 2168*

- **Charge-Sheet** - Merely because the respondent had used a communication between Chairman and Managing Director for filing a writ petition, it cannot be said to be a ground for issuing a charge-sheet against him : *Board of Director M.P. State Warehousing Corporation Vs. Anil Kumar Saxena, I.L.R. (2013) M.P. 21 (DB)*

- **Charge Sheet** - Petitioner passed the orders in various cases wherein he exercised his quasi judicial power in the capacity of Tehsildar - Allegations are made against the petitioner that he has given benefit to ineligible persons and not followed the procedure prescribed in the M.P. Land Revenue Code - Held - Allegations of dereliction of duty, not acting in consonance with the prescribed procedure, negligence and ulterior motive are already made against the petitioner - It cannot be said that charge sheet does not constitute misconduct - No interference can be made at this stage - The petitioner is free to defend himself in the enquiry in accordance with law - Petition dismissed : *Santosh Tiwari Vs. State of M.P., I.L.R. (2013) M.P. *33*

- **Charge Sheet** - Recommendation of Lokayukt - At no point of time, the Competent Authority examined the recommendation of Lokayukt as required under Section 12(2) of Adhinyam, 1981 - Competent Authority did not take an independent decision on the said recommendation as to whether the charge sheet is required to be issued to the appellant for initiating disciplinary proceedings against him - Merely on the basis of letter received from Lokayukt Organization, the State Govt. mechanically issued the charge sheet - Charge sheet quashed with liberty to Competent Authority to take fresh

decision after examining the report received from Lokayukt : *Dharmendra Vs. State of M.P., I.L.R. (2011) M.P. 2681 (DB)*

- **Charge-Sheet** - Quashment of - Allegations of mis-behaviour, shouting slogans and disrupting bank's operation are alleged against the petitioners and it stated that this act lowers the image of the Bank amongst the customers and public at large and, therefore, the business of the bank was adversely affected and is also a misconduct under the Service Rules - Petitioners challenging the issuance of charge-sheet on the ground that demonstration or peaceful protest during lunch hours cannot be curtailed by the Bank and if the employees indulge in such a peaceful demonstration during lunch hours, it does not amount to any misconduct - As per petitioners, it amounts to infringement of their fundamental rights guaranteed under Article 19 of the Constitution, and for the same no disciplinary action can be initiated - Held - It is not a case where on the face of it, it can be said that the petitioners have demonstrated peacefully and were only exercising their fundamental right - Act of the petitioners may fall in the category of misconduct and can be termed as an act unbecoming of an officer of the Bank, for which under the service rules departmental action can be taken - Issuance of a charge-sheet does not amount to infringement of the right of an employee : *Samir Banerji Vs. State Bank of India, I.L.R. (2013) M.P. 114*

- **Competent Authority** - State Govt., in view of Income Tax raid directed the Corporation to suspend and take disciplinary action against the petitioner - Commissioner placed the petitioner under suspension and issued Charge sheet - Mayor-in-council, which is the appointing authority by its resolution approved and sanctioned the action being taken by Commissioner in compliance of order issued by State Govt. - Single Judge had quashed the order of suspension and had dismissed the petition regarding competency of issuance of Charge sheet - As no appeal has been filed against the order quashing the suspension, therefore, the result is not interfered with although the findings in that regard are set aside - Appeal dismissed : *K.K. Singh Chouhan Vs. State of M.P., I.L.R. (2013) M.P. 989 (DB)*

- **Criminal Case** - Stay - Criminal case and departmental enquiry on similar charges - Once a departmental enquiry was pending in respect of the same charges, in all fairness, the respondents should have deferred the departmental enquiry, till the pendency of the criminal case : *Parvinder Singh (Ex. ASI/M) Vs. Union of India, I.L.R. (2012) M.P. *109*

- **Delay in Enquiry** - Charge-sheet issued to the petitioner on 16.04.1994 in respect of an incident which took place on 24.03.1994, the enquiry report was submitted on 06.03.1997 - The respondent instead of taking action thereupon within a reasonable time sat over the same for about seven years, when suddenly on 22.11.2003, i.e. just

seven months before his retirement, issued a show cause notice and culminated it into a minor penalty vide impugned order dated 23.01.1994 - No explanation as to what were the circumstances which prevented respondents from taking an action on the enquiry report for about seven years - The delay in enquiry caused great prejudice to the petitioner as because of the same he suffered from being considered for higher pay scale and the proper fixation of pension - Held - The impugned order deserves to be set aside - Petition allowed : *Jagdish Prasad Vs. M.P. State Electricity Board, I.L.R. (2011) M.P. 2719*

- **Denial of Legal Assistance** - Charges levelled against the petitioner were not of complicated nature - Petitioner also not able to show any prejudice caused to him on account of denial of assistance of legal practitioner or judicial officer - No fault can be found with the departmental enquiry proceeding : *S.B. Bhargava Vs. State of M.P., I.L.R. (2011) M.P. 2425 (DB)*

- **Denovo Enquiry** - Enquiry Officer submitted its report exonerating the petitioner - Disciplinary authority instead of recording dissent note directed for fresh enquiry into the charges - Denovo enquiry in the teeth of findings of exoneration for same set of charges is not permissible : *Madhukar Shyam Jha Vs. Western Coal Fields Ltd., I.L.R. (2015) M.P. 77*

- **Examination-in-chief of witnesses without any cross examination** - One witness should be examined and then put to cross examination and then only others will enter the witness box - Enquiry stands vitiated on this ground : *Vikram Sharma Vs. State Bank of Indore, I.L.R. (2012) M.P. *10*

- **Examination of handwriting** - Not necessary and in absence of any enabling provisions, enquiry is not vitiated : *Vikram Sharma Vs. State Bank of Indore, I.L.R. (2012) M.P. *10*

- **Exparte Proceedings** - Petitioner initially attended the departmental enquiry but subsequently was proceeded exparte - Inquiry Officer in his wisdom again issued notices to the petitioner and receipt of the same was denied by him - Held - Earlier notices were sent by Registered Post but subsequently notices were alleged to have been sent by hand without any dispatch number - Process server also not examined to depose that the notices were refused either by the Petitioner or his wife - Exparte proceedings not proper : *Devashish Dutta Vs. Nepa Ltd., Napanagar, I.L.R. (2012) M.P. *20*

- **Findings** - No Evidence - Petitioner was posted as Civil Judge Class I - Petitioner had registered a complaint against CMO - Water supply to the house of Petitioner was stopped - Petitioner issued contempt notice to C.M.O. - Held - Petitioner in bonafide belief that in a pending criminal case, the CMO/accused is acting in a manner

so as to hinder the cause of administration of justice and if the Petitioner is shown to have acted bonafidely and when no malafides or improper motives are made out, High Court should not have interfered in the matter : *Iqbal Khan Ghauri Vs. State of M.P., I.L.R. (2012) M.P. *24 (DB)*

– **Grant of Opportunity** – In the absence of prejudice being pleaded or demonstrated, mere allegation of non-grant of opportunity can not be a ground for interfering with the procedure of enquiry : *J.K. Verma Vs. State of M.P., I.L.R. (2011) M.P. 1965 (DB)*

– **Grant of Opportunity** – No allegation that adequate opportunity was not given to defend the charges or inquiry officer/disciplinary authority have violated Rules and Regulations or the principles of natural justice in conducting the disciplinary proceedings – No error in conducting the departmental proceedings or denial of adequate opportunity of defence to the petitioner can be held : *Ashok Kumar Bagdi Vs. State of M.P., I.L.R. (2011) M.P. 1668*

– **Improper Motive & Extraneous Consideration** – Inference of – A judicial officer having an experience of more than 20 years, shows total recklessness and disregard in the matter of deciding more than 30 cases, particularly bail applications, in a manner which can not be approved – Inference of extraneous consideration and improper motive can be imputed : *J.K. Verma Vs. State of M.P., I.L.R. (2011) M.P. 1965 (DB)*

- **Inordinate Delay in Awarding Punishment** - Charge sheet issued in year 1988 for an incident that took place between 1980-1983 - Enquiry officer submitted his report on 30.03.1991, however the punishment of stoppage of two increments (which finally modified to 'censure') was imposed on 31.07.2001 - Except the explanation for a period from 20.11.1998 to 22.11.2000 when matter was pending with the PSC, the delay is not explained - Held - The departmental action has resulted in grave injustice and prejudice to the petitioner, which has to be remedied - Entire departmental proceedings are quashed - Respondents are directed to convene a Review DPC to consider the case of the petitioner for promotion - Writ Petition allowed : *Bhagwan Das Swarnakar Vs. State of M.P., I.L.R. (2011) M.P. 434*

– **Inquiry Officer** – Lawyer – Rule provides for appointment of a public servant or any other person as inquiry officer – Appointment of a Lawyer as Inquiry Officer though he happened to be a lawyer appearing in some cases on behalf of Company proper – In absence of any personal bias or prejudice shown due to appointment of a Lawyer as Inquiry Officer, no interference into the matter is called for : *Devashish Dutta Vs. Nepa Ltd., Napanagar, I.L.R. (2012) M.P. *20*

– **Judicial Review** – High Court does not sit as an Appellate Authority in disciplinary proceedings and is not required to re-appreciate the evidence and its interference in the same is limited to cases of no evidence, perversity or wednesbury unreasonableness : *Subhash Chandra Mukherjee Vs. Chairman, I.L.R. (2011) M.P. 2100 (DB)*

– **Legal Assistance** – Petitioner has participated in enquiry and cross examined the departmental witnesses – Nothing on record to demonstrate that what prejudice is caused to the petitioner for not providing defence assistance and how it materially effected the final outcome in enquiry – Non providing of defence assistance does not vitiate the enquiry : *Swami Prasad Yadav Vs. State of M.P., I.L.R. (2011) M.P. *77*

– **Misconduct** – Act which amounts to negligence in the discharge of duties and acts which are in total disregard to the settled principles of law in the exercise of statutory powers – The same amounts to a misconduct : *J.K. Verma Vs. State of M.P., I.L.R. (2011) M.P. 1965 (DB)*

– **Misconduct** – Petitioner remained absent unauthorisedly for a period of more than 11 years, without informing the employer or to the immediate superior authority for the reason of his absence — Such a long absence is certainly a gross misconduct which warrants major punishment – Punishment (of removal from service) inflicted could not be held to be disproportionate to the alleged misconduct : *Ashok Kumar Bagdi Vs. State of M.P., I.L.R. (2011) M.P. 1668*

– **No Evidence** – Petitioner who was working as A.D.J. was terminated from service on the ground that he had hatched conspiracy with ‘A’ to cause injuries to another A.D.J. so that bail application of father of ‘A’ will come to his board – Complainant did not disclose the source of such information – During departmental enquiry, complainant disclosed that he was informed by ‘B’ who in his turn was informed by two students about conspiracy – Neither ‘B’ nor students examined – ‘C’ and ‘D’ who had given affidavits in support of complainant also did not support in departmental enquiry and alleged that affidavits were obtained by getting their signatures on blank paper – Complainant did not disclose the source of his information for near about 4 years – Reliance of inquiry officer on the affidavits of ‘C’ and ‘D’ not proper – Findings given by enquiry officer are perverse – Order of termination quashed – As Petitioner has already attained the age of superannuation, he should be treated to be in service till the attainment of age of superannuation and will be entitled for all benefits of service – Petition allowed : *G.S. Thakur Vs. State of M.P., I.L.R. (2012) M.P. 74 (DB)*

– **Non-supply of Copy of Documents** - Civil Services (Classification, Control and Appeal) Rules, M.P., 1966, Rule 14 - Non-supply of copy of documents - On

22.12.1995 and 23.01.1996 documents in 39 pages and 51 documents were supplied to the petitioner - Petitioner not able to point out the specific documents which were not supplied to him as a result of which prejudice is caused to him and further as to how the same could materially affect the out come of the enquiry - Held - Grievance of petitioner that the relevant documents were not supplied or were supplied after the statements of witnesses were recorded is not substantiated : *S.B. Bhargava Vs. State of M.P., I.L.R. (2011) M.P. 2425 (DB)*

– **Non-supply of Copy of Statements** - Civil Services (Classification, Control and Appeal) Rules, M.P., 1966, Rule 14 - Non-supply of copy of statements - Material collected during the course of preliminary enquiry not relied upon by the enquiry officer in the departmental enquiry - It was not necessary to supply the copy of the statements of the witnesses recorded during the course of the preliminary enquiry : *S.B. Bhargava Vs. State of M.P., I.L.R. (2011) M.P. 2425 (DB)*

– **Non-supply of Documents** - Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rule 14 - Supply of documents - Petitioner was charge-sheeted - After D.E. penalty was imposed on him - Validity of orders was challenged by him - Petitioner was demanding supply of documents, which were referred in the charge sheet - Held - As per the provisions of Rule 14 of the above rules delinquent employee is entitled to inspection of the enquiry record only - Stand taken by him that he was not supplied the copies of the documents to enable him to raise defence in appropriate manner, cannot be accepted : *Sanand Singh Shrinet Vs. State of M.P., I.L.R. (2013) M.P. 2410*

- **Non-supply of Documents** - Documents desired by delinquent were not provided - Witnesses were also not summoned - Held - This alone would not vitiate the enquiry unless it is established as to how prejudice is caused to the petitioner : *Suresh Chand Upadhyay Vs. Union of India, I.L.R. (2011) M.P. 3049*

– **Non-supply of Documents** – Material documents not supplied to the petitioner inspite of demand made by him – Held – Non production of material document vitiates the enquiry as right of petitioner to defend himself is materially effected : *Swami Prasad Yadav Vs. State of M.P., I.L.R. (2011) M.P. *77*

– **Non-supply of Documents** – Non supply of documents will not vitiate the enquiry unless and until the relevance and thereafter the prejudice which is caused is proved : *Vikram Sharma Vs. State Bank of Indore, I.L.R. (2012) M.P. *10*

– **Non supply of Documents** – Prejudice – Allegation against appellant in D.E. was that he had not followed the instructions of the Zonal Office in the matter of granting loan – Non-supply of these instructions can not be held to have caused any prejudice as

all were well within the knowledge of the appellant and he had also cross examined the witnesses in respect of those instructions : *Subhash Chandra Mukherjee Vs. Chairman, I.L.R. (2011) M.P. 2100 (DB)*

– **Non-supply of Documents** – Prejudice – Petitioner admitted the charge of issuing the Rin Pustikas – Non-supply of documents loses significance – Plea taken in writ petition regarding compulsion, force or threat for taking his signature not raised before the Enquiry Officer – No infirmity in the order of disciplinary and appellate authority – Petition dismissed : *Ram Prakash Verma Vs. State of M.P., I.L.R. (2012) M.P. 416*

- **Non-supply of Enquiry Report** - As petitioner was handicapped in challenging the findings of enquiry officer before Disciplinary Authority and Appellate Authority - Principles of natural justice violated : *S.C. Seth Vs. United Commercial Bank, I.L.R. (2012) M.P. 1833*

- **Non-supply of Enquiry Report** - Mere non-supply of enquiry report will not vitiate the enquiry - Enquiry Report was provided to the petitioner along with punishment order - Petitioner failed to show how non-supply has caused prejudice to him - Enquiry not vitiated on this ground : *Suresh Chand Upadhyay Vs. Union of India, I.L.R. (2011) M.P. 3049*

- **Powers of Court** - Normally Courts are not to act as appellate authority and they cannot substitute their own findings with respect to the guilt of a delinquent officer - However, the Courts can examine the correctness of conducting the departmental enquiry and if it is found that enquiry was not properly conducted, the Courts are authorized to put a knot on the order of penalty : *Ranjan Sarvate Vs. Allahabad Bank, I.L.R. (2012) M.P. *115*

– **Procedure** – Assailed on the ground that the entire enquiry was conducted on a single day – Held – Once the petitioner participated in the enquiry without any complaint and without any protest, he becomes estopped from assailing the procedure followed in the enquiry : *J.K. Verma Vs. State of M.P., I.L.R. (2011) M.P. 1965 (DB)*

– **Scope of Judicial Review** – is limited to the deficiency in decision making process and not the decision : *Ashok Kumar Bagdi Vs. State of M.P., I.L.R. (2011) M.P. 1668*

– **Status of Enquiry Officer** – Preliminary Enquiry was conducted by an officer who is superior than main Enquiry Officer – This will not vitiate the enquiry unless it is shown that main enquiry report is either influenced by preliminary enquiry report or is

based on mechanical reliance on the preliminary enquiry report : *Vikram Sharma Vs. State Bank of Indore, I.L.R. (2012) M.P. *10*

– **Stay of Departmental Enquiry** - Departmental Enquiry based on same charge – Merely because both the proceedings are founded upon same facts departmental enquiry is not required to be kept in abeyance unless charges are complex in nature involving complicated questions of facts and law : *Vikram Sharma Vs. State Bank of Indore, I.L.R. (2012) M.P. *10*

– **Subsistence Allowance** – Non-Payment thereof – Subsistence Allowance not paid to the petitioner inspite of directions by the High Court – Reasonable Opportunity to participate and defend in inquiry was denied to the petitioner – Inquiry vitiated : *Devashish Dutta Vs. Nepa Ltd., Napanagar, I.L.R. (2012) M.P. *20*

– **Sufficient Opportunity of Defence** – Enquiry officer did not give opportunity to defence to lead evidence despite cooperation of defence : *Vikram Sharma Vs. State Bank of Indore, I.L.R. (2012) M.P. *10*

14. Disciplinary Proceedings / Authority

– **Authority** – Dy. General Manager was conferred the powers of General Manager – Order merely confers the powers to discharge the duties of General Manager and to exercise all the powers of that post – Order does not designate him nor does it empowers him to discharge the functioning of a Appointing Authority or Disciplinary Authority – Issuance of Charge sheet and punishment by Dy. G.M. without jurisdiction – Enquiry vitiated : *Devashish Dutta Vs. Nepa Ltd., Napanagar, I.L.R. (2012) M.P. *20*

– **Authority** – Superintending Engineer is the Disciplinary Authority to take action against the Assistant Engineer who has been promoted under the Time Bound Promotion Scheme in view of the order dated 07.05.1999 : *M.P. Electricity Board, Jabalpur Vs. S.K. Dubey, I.L.R. (2014) M.P. 1698 (FB)*

- **Appreciation of Evidence** – Disciplinary Proceedings against a Judge - Discharging the accused by weighing and evaluating the evidence and considering the possibility of his innocence - Suffered from patent illegality, being contrary to the settled principle of law - Could form the basis of disciplinary proceedings : *Ramesh Prasad Tihaiya Vs. M.P. High Court, I.L.R. (2011) M.P. 705 (DB)*

- **Appeal** - Duties of Appellate Authority - Appellate Authority is required to examine whether the procedure laid down in the rules has been complied with and if not, whether such non-compliance has resulted in violation of any provision of the Constitution of India or in the failure of justice : *M.M. Mudgal Vs. State of M.P., I.L.R. (2012) M.P. 2651*

- **Charges of Corruption** - The charge of bribe and corruption are quasi judicial in nature which has civil and criminal consequences - Such grave charge is required to be proved beyond any shadow of doubt and to the hilt and it can not be proved on mere probabilities -Even in Departmental Enquiry, suspicion can not take place of proof : *Suresh Chand Upadhyay Vs. Union of India, I.L.R. (2011) M.P. 3049*

- **Competency of Authority** – Delegation of power – Charge-sheet issued by the Staff Officer – Being nominated competent authority the CGM/GM can sub-delegate the powers for implementing/taking appropriate action including disciplinary action – Staff officer is competent to issue charge-sheet : *Nawal Kishor Singh Vs. S.E.C.L., I.L.R. (2015) M.P. 622*

- **Delay** - Charge-sheet issued after 18 years against petitioner pertaining to an order while working as Tahsildar - The order passed by petitioner though was set-aside by revisional authority, but the order of revisional authority is also under challenge before the Board of Revenue - Held - In view of serious allegations, delay alone cannot be a ground to set aside the disciplinary proceedings - Petition dismissed : *Surendra Kumar Jaggi Vs. State of M.P., I.L.R. (2013) M.P. 2813*

- **Enquiry Report** - Application of mind - Enquiry officer without considering the defence has merely agreed with the prosecution case - It shows complete non-application of mind - Enquiry Report is vitiated : *Vinod Kumar Shrivastava Vs. State of M.P., I.L.R. (2012) M.P. *111*

- **Grounds** – Discharge of Judicial or Quasi Judicial Functions - Grounds on which disciplinary action can be taken – Law discussed : *Iqbal Khan Ghauri Vs. State of M.P., I.L.R. (2012) M.P. *24 (DB)*

- **Imposition of Penalty** - Recommendation of Vigilance Commission - Circular issued by Ministry of Finance has already been quashed by Apex Court - Even if at all the matter was referred to the Vigilance Officer and any information was obtained, it was not to be implemented by the Disciplinary officer : *Ranjan Sarvate Vs. Allahabad Bank, I.L.R. (2012) M.P. *115*

- **Judicial Officer** – No disciplinary action could have been taken against a judicial officer when there is no material with regard to the reputation, integrity or devotion to duty nor is any corrupt motive established – Merely on the basis of vague or incomplete information or on the grounds of suspicious or on error of law which does not constitute grave charge of misconduct disciplinary action can not be taken : *Iqbal Khan Ghauri Vs. State of M.P., I.L.R. (2012) M.P. *24 (DB)*

– **Judicial Review** – Scope of Judicial Review is limited to the extent of violation of statutory provision or where the proceedings are contrary to the Wednesbury Principles : *Ram Bharose Kamal Vs. State of M.P., I.L.R. (2012) M.P. 1181*

- **Misconduct** - Allegations of using derogatory language in letters addressed to superior officers - Petitioner applied for grant of education loan for the higher studies of his son - In his various communications, he had merely expressed his frustration on inaction on the part of his superior officers in not sanctioning the loan - Such frustration cannot be termed as derogatory : *Vinod Kumar Shrivastava Vs. State of M.P., I.L.R. (2012) M.P. *111*

- **Non-speaking Order** - Non-speaking punishment and revising order - Non-speaking punishment and revising orders are cryptic and passed without application of mind : *Suresh Chand Upadhyay Vs. Union of India, I.L.R. (2011) M.P. 3049*

– **Power of Appellate Authority** – Railway Protection Force Rules, 1987, Rules 153, 158 & 217 – Appellate Authority while formulating an opinion that the nature of misconduct contemplates a major penalty, dropped the minor penalty charge sheet and remitted the matter to the disciplinary authority for issuance of fresh charge sheet for major penalty – Held – It is apparent from the provisions contained in Rule 217 that it is within the power of the Appellate Authority to set aside, confirm, reduce or enhance punishment or remit the case to the authority which imposed or enhanced the punishment or to any other authority with such direction, as it may deem fit in the circumstances of the case : *S.P. Singh Vs. West Central Railway, I.L.R. (2014) M.P. 3138*

– **Presumption** – Instigating Strike by Lawyer – Lawyers went on strike due to discontinuance of water supply by CMO – Non-intimation of strike by lawyers to District Judge by itself would not mean that petitioner had instigated – Merely because Petitioner adjourned the cases would not mean that he had instigated the lawyers – Mere suspicion or presumption can not be permitted to take place of proof for holding the petitioner guilty of this charge – Petition allowed – Petitioner directed to be reinstated with all consequential benefits : *Iqbal Khan Ghauri Vs. State of M.P., I.L.R. (2012) M.P. *24 (DB)*

– **Procedure** - It was competent for the disciplinary authority, i.e. High Court, to take a dissenting view from the findings of Enquiry Officer and to record its own finding on the basis of material available - Mere non-challenge of the order in question by way of appeal or revision or suo moto revision, could not be an impediment in taking disciplinary action against the petitioner on the basis of an order, which was patently illegal : *Ramesh Prasad Tihaiya Vs. M.P. High Court, I.L.R. (2011) M.P. 705 (DB)*

- **Reinstatement** - Complainant, Prosecutor, Witness and Judge - Same Authority - Two charge sheets were issued alleging lodging of false complaint against superior

officers of bank and also casting aspirations and accusations against various officers including the Chairman - Chairman directed for departmental enquiry - Chairman appeared as a witness in the enquiry - Chairman issued show cause notice after receiving the inquiry report - However, the punishment order was passed by a different person – Held - Main allegation is against the Chairman who issued the charge sheet although he himself was the complainant, he appeared as a witness, acted as a prosecutor, a judge and was instrumental in taking the impugned action as he himself had issued show cause notice to the petitioner - A person should not be a judge in his own cause - Fundamental principle of Natural Justice applies in quasi judicial proceedings - Doctrine of necessity does not apply - As the same person had acted as a complainant, prosecutor, witness and a judge, the entire proceedings are vitiated - Petitioner be reinstated in service with all consequential benefits : *Raj Bahadur Khare Vs. Madhya Bharat Gramin Bank Pradhan Karyalaya, Sagar, I.L.R. (2012) M.P. 2436*

– **Remand** – Disciplinary Authority dismissed the workman without issuing notice – Workman was dismissed from service in the year 1984 – He has also retired during proceedings – Matter not remanded back to the stage at which the D.E. was found to be vitiated : *Senior Regional Manager Vs. C.G.I.T. Jabalpur, I.L.R. (2011) M.P. 1231 (DB)*

- **Report of Enquiry Officer** – Disagreement with report of Enquiry Officer – Natural Justice – Disciplinary Authority dissented with the finding of exoneration recorded by Enquiry Officer – Workman dismissed from service by the Disciplinary Authority – Held – Absence of notice by Disciplinary Authority tantamounts to vitiating decision of dismissal from service : *Senior Regional Manager Vs. C.G.I.T. Jabalpur, I.L.R. (2011) M.P. 1231 (DB)*

– **Review D.P.C.** – In Writ Petition filed by Petitioner, the Division Bench of High Court directed to conduct review D.P.C. in accordance with directions issued therein – In subsequent writ petition filed by another person, Division Bench directed to conduct review D.P.C. in accordance with Promotion Rules, 2002 and earlier directions were not brought to the notice of the D.B. – Held – Rules as were available on the date of vacancy have to be applied for making consideration – Proceedings which were done adopting the norms prescribed in Promotion Rules, 2002 are not justified proceedings – Subsequent decision will not overrule the decision already rendered by Division Bench – Review D.P.C. be held strictly in accordance with order passed earlier : *Ashok Virang (Dr.) Vs. Principal Secretary, Public Health and Family Welfare Department, I.L.R. (2015) M.P. 2004*

– **Show Cause Notice** – Disciplinary authority issued show cause notice to delinquent officer mentioning that it is also in agreement with findings of enquiry

authority – Held – Disciplinary Authority had not expressed a final opinion but only indicated that he was prima facie satisfied with the report – Observation of Disciplinary Authority can not be held to be final opinion and it was always open to it to change his view after going through the show cause filed by appellant : *Subhash Chandra Mukherjee Vs. Chairman, I.L.R. (2011) M.P. 2100 (DB)*

15. Dismissal from Service

– **Admission of Guilt** – Dismissal – Petitioner who was working as clerk admitted that bonafidely he had added certain lines in the order – If an employee, working in the establishment of a subordinate court for a long period of 18 years was unaware of the fact that he was not required to add anything in the order sheet of the court on his own without the permission of the Presiding Judge and if he has done so, which fact he has admitted in his reply, it cannot be said that it would not amount to admission of the guilt including the misconduct – Petition dismissed : *Ramakant Gautam Vs. State of M.P., I.L.R. (2014) M.P. 974*

- **Admission of Guilt** - Non-grant of defence assistance - Petitioner obtained employment by impersonation - He admitted the same in the statement - Dismissal of service of the petitioner is justified - Refusal to grant representation through an agent does not violate the principles of natural justice : *Ram Singh alias Sonu Vs. Western Coal fields Ltd., I.L.R. (2013) M.P. 2788*

- **Admission of Guilt** - When there is clear admission of guilt, no departmental enquiry is required - Enquiry cannot be dispensed with unless the admission of guilt/charges is specific, unconditional, unqualified and unequivocal - In such cases of admissions, failure to hold a formal enquiry constituted a serious infirmity in the order of dismissal of the petitioner - Hence such order of removal is liable to be set aside : *Ghanshyam Sharma Vs. State of M.P., I.L.R. (2013) M.P. 581*

- **Misconduct** - Judicial Review - The scope of judicial review in disciplinary proceedings/actions and punishments is limited - Interference can be made when there is a palpable perversity in finding or it is a case of "no evidence" - Once the evidence is taken into account and is not shown to be perverse, there is no scope for reappreciating or reweighing it - Writ Court cannot travel beyond the scope of judicial review - Hence impermissible : *Union of India Vs. Sukhbir Singh Bais, I.L.R. (2013) M.P. 542 (DB)*

- **Quantum** - Petitioner working as Stenographer in Court - Manipulated the order sheet of the Court - Held - Order sheets of Court are sacrosanct in which if any interpolation made by appellant, it was a case of severe punishment - Three enquiries were initiated against the appellant - In one enquiry, punishment of dismissal from service was imposed therefore, in remaining two enquiries no separate punishment was

imposed as major punishment has already been imposed - Order appears to be just and proper - In case the order of dismissal from service is set aside by any higher forum, then Disciplinary Authority shall be free to proceed with the enquiries in accordance with law : *Dharmendra Domle Vs. State of M.P., I.L.R. (2013) M.P. 5 (DB)*

16. Fundamental Rules

- **Rule 26** - Service which counts for increment - Probation Period - Unless the duty discharged is on substantive post/service, an employee does not earn an increment because he is still under trial - Petitioner not entitled for increment during probation period : *Arvind Kumar Vs. State of M.P., I.L.R. (2013) M.P. *12*

- **Rule 54-B(3)** - Appellant acquitted by the Court only by giving benefit of doubt - The period of suspension directed to be treated as on duty and his pay and allowances for the said period were restricted to the subsistence allowance already paid to him - The discretion conferred by the rule has rightly been exercised by the competent authority - Writ Appeal dismissed : *Ramesh Singh Vs. M.P.S.E.B., I.L.R. (2011) M.P. 58 (DB)*

- **Rule 56(J)** - Rule 56(J) is applicable to the employees of Maulana Azad National Institute of Technology : *Ajit Narayan Vs. Union of India, I.L.R. (2011) M.P. *2*

17. House Rent Allowance

- **Eligibility** - H.R.A. is required to be paid to only one spouse and not to both if they are living together in one house : *Baby John Vs. State of M.P., I.L.R. (2013) M.P. 785*

- **Fundamental Rules** - HRA is a special allowance prescribed under a scheme made by the State to grant benefit to such employees who are not allotted the Government accommodation - Scheme of HRA is introduced to grant some benefit to those employees, who are living in their own houses and are working for the State - Though the allowance has not been specifically mentioned under Fundamental Rules or under other service Rules but the scheme is squarely applicable to all employees of the State - Respondents are directed to pay the HRA to the petitioner - Writ petition allowed : *Chunnilal Sen Vs. State of M.P., I.L.R. (2011) M.P. 2739*

- **No Accommodation Certificate** - Respondents who were earlier occupying the Govt. accommodation subsequently vacated the same and shifted to their individual houses - No accommodation certificate is imperative because unless it is established that due to non-availability of Govt. accommodation, they are required to stay in their own accommodation - Petitioners not entitled for House Rent Allowance : *Union of India Vs. Ajay Kumar Yadav, I.L.R. (2012) M.P. 1875 (DB)*

18. Increment

– **Condition in Appointment Order** – Respondent was appointed as A.G.-3 – In his order of appointment a condition was imposed to pass Hindi Typing Examination within two years with a further stipulation that only after one year of passing of such examination he will be entitled for the benefit of regular increments – Thereafter, on his passing of Hindi Typing Examination, the appellant released the regular increments payable after passing of the examination – Held – Passing of typing examination being not essential qualification for the purpose of recruitment, the imposition of stipulation of passing of the Hindi Typewriting Examination as pre-requisite condition for release of the increment can not be said to be justified – The said condition can not be made basis to deny the benefit of regular increments after one year from the date of his initial appointment – Appeal dismissed : *State of M.P. Vs. Onkar Lal, I.L.R. (2012) M.P. 1105 (DB)*

– **Entitlement** – In view of circular dated 12.05.93 & 08.01.93 – Entitled to – On successful completion of one year service : *Dulare Prasad Raikwar Vs. State of M.P., I.L.R. (2015) M.P. 1448*

- **Major Penalty or Minor Penalty** - Withholding of increment with cumulative effect - Withholding of increment with cumulative effect will not only cause prejudice, monetary loss to the Govt. employee while in service but the loss will also be caused after the retirement of the employee and even the family pension will also be affected - It cannot be treated as a minor penalty : *M.M. Mudgal Vs. State of M.P., I.L.R. (2012) M.P. 2651*

19. Judiciary

– **Interview Committee** – Bona fides of members of committee not doubted – No Court, can venture to go behind assessment made by expert committee and substitute its own views by laying down different criterion by altering or fixing any benchmark : *Mahinder Kumar Vs. High Court of M.P. through Registrar General, I.L.R. (2014) M.P. 881 (SC)*

– **Labour Judicial (Recruitment & Conditions of Service), Rules, M.P. 2006, Rule 3(2)(c)**, Judicial Services Revision of Pay Rules, M.P. 2003, Rules 4,7,9 & 12 – Fixation of Pay – Grant of D.A. – Petition against recovery and claiming the benefit of proper fixation of pension after the release of D.A. in terms of Rules 2003 – Held – Revision of pay of the petitioner was to be done in terms of Rule 4 and Rule 7 of Rules 2003, had it been done in appropriate manner, the petitioner would not have been subjected to any recovery whatsoever – Order of recovery is quashed : *Satish Shrivastava Vs. State of M.P., I.L.R. (2014) M.P. 2299*

– **Recruitment** – Powers of High Court – In absence of challenge to Rule 7 or without any serious infirmity in said Rule, High Court is fully empowered to evolve its own procedure of selection for Direct recruitment and promotion in respect of entry level District Judge and can also specify such procedure depending on exigencies from time to time in terms of Rule 7 of Rules, 1994 : *Mahinder Kumar Vs. High Court of M.P. through Registrar General, I.L.R. (2014) M.P. 881 (SC)*

– **Shetty Commission** – Recommendations by Shetty Commission are guidelines only which High Court should keep in mind while making selection for Higher Judicial Service : *Mahinder Kumar Vs. High Court of M.P. through Registrar General, I.L.R. (2014) M.P. 881 (SC)*

20. Kramonnati

- **Entitlement** – Lecturers/Teachers in the employment of Education and Tribal Welfare Department are entitled for the benefit of Kramonnati Scheme with effect from 19-4-1999 : *State of M.P. Vs. Mala Banerjee, I.L.R. (2015) M.P. 1642 (SC)*

- **Grant of** - Screening of service record is to be done and then the assessment is to be done whether an incumbent is fit for grant of Kramonnati or not - If an incumbent is found fit in accordance to the norms prescribed for grant of such Kramonnati pay scales, the benefit is required to be granted from the date it has become applicable : *Krishna Kant Choudhari Vs. State of M.P., I.L.R. (2013) M.P. 2518*

- **Interpretation of Scheme** - Scheme came into existence w.e.f. 19.04.1999 - Petitioner was appointed in the year 1981 - As the Scheme itself came into existence w.e.f. 19.04.1999 therefore, the petitioner will be entitled for his 1st Kramonnati w.e.f. 19.04.1999 as he had already completed 12 years of service in the year 1993 - However, for calculating the period of 24 years for grant of 2nd Kramonnati, the date of his initial appointment is to be considered - Petitioner was appointed in the year 1981, he will be entitled for 1st Kramonnati in the year 1999 and 2nd Kramonnati in the year 2005 : *Krishna Kant Choudhari Vs. State of M.P., I.L.R. (2013) M.P. 2518*

- **Time Scale of Pay Upgradation Policy** - Petitioner was granted first Kramonnati - Benefit of Upgradation in time scale pay was not granted on the ground that the petitioner did not fulfill the criteria evolved by the D.P.C. - As per Policy once the employee has been granted the benefit of Kramonnati in terms of scheme, his ACRS would not be reassessed for the purposes of granting the benefit under New Scheme - Petitioner was also granted promotions - Held - Those employees who have been granted first or second upgradation under Kramonnati Scheme or those who have been granted promotions were entitled to be granted the second time scale pay under the new Scheme without referring their cases to any scrutiny Committee - Powers was delegated to the

Head of Department - Refusal to grant second upgradation on the ground that the petitioner had not achieved the benchmark is not justified - Petition allowed : *Rajaram Patel Vs. State of M.P., I.L.R. (2013) M.P. 1319*

- **Scheme** - Annual Confidential Report - In case an employee is granted the benefit of Krammonati or the first Higher Pay Scale, his A.C.R.s are not required to be considered for the purposes of granting second higher pay scale, as per the scheme : *Baby John Vs. State of M.P., I.L.R. (2013) M.P. 785*

- **Scheme** - Circular dated 17.03.1999 /19.04.1999 - On granting the benefit of Karmonnati under the Scheme, the Kramonnat pay scale as mentioned in the Schedule enclosed with the Circular is to be granted and not the regular higher pay scale applicable to the next promotional post : *State of M.P. Vs. Ajit, I.L.R. (2013) M.P. 16 (DB)*

21. Misconduct

- **Charge-Sheet** – Misconduct – Non furnishing of original and certified copy of matriculation certificate – Whether allegation amounts to misconduct in the light of Clause 26.1 and 26.9 of Certified Standing Order or not, cannot be adjudged at the initial stage : *Nawal Kishor Singh Vs. S.E.C.L., I.L.R. (2015) M.P. 622*

- **Filthy Language** - Even assuming that the incumbent was subjected to any misbehavior by fellow employees, even then the use of filthy language in a drunken condition cannot be said to be a proper act - Amounts to serious misconduct : *Union of India Vs. Sukhbir Singh Bais, I.L.R. (2013) M.P. 542 (DB)*

- **Gainfully Employed** – Burden of proof – Once the employee pleads that he was not gainfully employed during the period of termination, the burden lies upon the employer to prove when, how and where the employee was gainfully employed during the period he stood terminated : *Chief Engineer Vs. Mithila Prasad Dwivedi, I.L.R. (2011) M.P. 1945 (DB)*

- **Meaning** - Misconduct means, conduct arising from ill motive; acts of negligence, errors of judgment or innocent mistake do not constitute such misconduct : *Vinod Kumar Shrivastava Vs. State of M.P., I.L.R. (2012) M.P. *111*

- **Negligent Handling of Fire Arm** - Petitioner is a member of Police, an armed force - Expected to handle a fire arm which is dangerous weapon with utmost care and caution - Any negligence in handling a fire arm can lead to a serious incident, besides eroding faith of public which can be highly deleterious to the moral of entire armed force - Negligent handling of fire arm is a misconduct : *Girish Kumar Shukla Vs. State of M.P., I.L.R. (2012) M.P. 1885*

- **Nexus** - The test of Notional Extension of misconduct i.e. taken place after the duty hours and outside the premises is whether such act has a nexus with the employment and its effect falls on the discipline of the establishment : *Union of India Vs. Sukhbir Singh Bais, I.L.R. (2013) M.P. 542 (DB)*

- **Suppression** – Advertisement was issued for appointment on the post of peon fixing qualification as class IX and candidates having higher qualification were not to be considered – Respondent suppressed the fact that he was already graduate – Appellant had imposed the punishment of stoppage of 2 increments with cumulative effect to another similarly situated employee – High Court rightly quashed the order of removal from service and directed for consideration for imposition of similar punishment – Appeal dismissed : *Life Insurance Corporation of India Vs. Triveni Sharan Mishra, I.L.R. (2015) M.P. 827 (SC)*

22. No Work No Pay

- **Notional Promotion** – It shall not apply to deny benefit of salary in cases of notional promotion, if the incumbent has actually worked during the relevant period on a higher post in officiating capacity : *Mahesh Prasad Bajpai Vs. State of M.P., I.L.R. (2011) M.P. 1895*

- **Officiating Post** - Officiating posting will not mean an appointment to the post carrying higher responsibility : *Union of India Vs. Radhelal Goud, I.L.R. (2013) M.P. 1325 (DB)*

23. Pay Scale

- **Central Universities Act, (25 of 2009) – Section 4(d)** - Protection of terms and conditions of service - Respondents who were appointed as daily wages employees subsequently vide resolution dated 01.05.2008, were granted the minimum of regular pay scale and allowances against the posts on which they were working - After coming into force the Central University Act wef 20.03.2009, the service conditions of the respondents stood protected - The benefit of minimum of the regular pay scale alongwith 1/30th of D.A. was also directed to be paid to the respondents vide order dated 17.07.2009 - But later, on the recommendation dated 10.04.2010 of the Finance Committee, the Executive Council of the appellant by resolution dated 24.10.2010 withdrew the order dated 17.07.2009 - Held - Respondents shall be granted such benefit due to protection u/s 4(d) till the terms and conditions of their service and remuneration were altered by the Statutes - The benefit of minimum of the regular pay scale with allowances granted to the respondents vide resolution dated 01.05.2008 cannot be withdrawn by its subsequent resolution dated 24.10.2010, which cannot be construed as a

Statute : *Dr. Harisingh Gour Vishwavidyalaya Vs. Surendra Saraf, I.L.R. (2013) M.P. 552 (DB)*

- **Discrimination** - State Govt. accepted the judgment passed by SAT by which it was held that the persons like petitioners are entitled to pay scale of Rs. 515-800 - It is not now open to Govt. to say that such benefit is not available to the petitioners as no appeal was filed against the order of the SAT - Not open to the Govt. to say that the matter is required to be referred to any High Power Committee or a Pay Commission or to any Expert Body for obtaining any recommendation for grant of such benefit : *A.L. Thakur Vs. State of M.P., I.L.R. (2013) M.P. 2784*

- **Equal Pay** – Executive and Ministerial Staff of Police Department – Recruitment process for employees of executive and ministerial staff is different – Qualifications are also different – Duties being discharged by executive and ministerial staff are different – Duties discharged by executive staff are more rigorous and hard in comparison to employees of ministerial staff – Members of ministerial staff cannot be treated at par with executive staff and their entitlement for salary at par with police employees working in executive cadre : *Sushma Tiwari (Smt.) Vs. State of M.P., I.L.R. (2011) M.P. *89 (DB)*

- **Higher Pay Scale** - Job Responsibility - Respondents have not clarified that any greater responsibility or a different higher technical job is required to be discharged by the Line Asstt. Grade II - Petitioner was already working as Line Attendant Grade I for a considerable long time - If the job responsibility was same, the benefit of experience of working could not have been denied to the Petitioner : *Ganesh Prasad Tiwari Vs. The Secretary/Addl. Secretary, M.P.S.E.B., I.L.R. (2013) M.P. 802*

- **Higher Pay Scale** - Scheme was formulated for giving the benefit of placement in pay scale on completion of 9/18/25 years of service - Benefit was denied on the ground that he was not sent for training on account of becoming overage - Held - Respondents have failed to show any scheme for selection was prescribed for sending any persons for technical training in training institute - Petitioner cannot be held responsible in absence of any such scheme - He on his own also could not have made an application to the Training Institute for admitting him for such training - There was no fault on the part of the petitioner so as to deny the benefit of consideration for grant of second higher pay scale : *Ganesh Prasad Tiwari Vs. The Secretary/Addl. Secretary, M.P.S.E.B., I.L.R. (2013) M.P. 802*

- **Pay Commission** – Central Government formulated a scheme dated 31.12.2008 which provided that Central Assistance for implementing the scheme is also subject to the condition that the entire scheme of revision of pay scales together with all

the conditions be adopted without any modification – State Government by order dt. 09.04.2010 took a decision to accord benefit of the same after approval from General Administration Department as well Finance Department – However, State issued other orders on 22.04.2010 and 22.04.2013 fixing cut off date for availing benefit of enhanced age of superannuation – Held – After having availed the financial assistance from the Central Government for implementation of the scheme and after accepting the recommendations vide order dated 09.04.2010, the State Government had no authority to pass order dated 22.04.2010 modifying the order dated 09.04.2010 – Order dated 22.04.2010 is quashed – Petitioner shall be entitled to the benefit of recommendation of VIth Pay Commission as well as the age of superannuation as directed by the State vide order dated 22.04.2013 : *K.G. Choubey (Dr.) Vs. Jawaharlal Nehru Krishi Vishwavidyalaya, I.L.R. (2014) M.P. 1838*

- Recovery of Excess Salary - Petitioner was holding the post of Forest Botanist in Forest Department - After declaration of State Forest Research Institute, the petitioner sought permission from Forest Department for participating in selection process for any of the post in Institute - Petitioner was appointed on the post of Senior Scientist which was carrying higher pay scale - Held - Merely because petitioner sought permission to appear in selection process would not mean that permission was granted - Further, petitioner did not resign from his earlier post which was required to be done - Further, the petitioner had also expressed his willingness to continue in State Forest Department - At the best he could be treated as working on deputation in Institute - Recovery of excess payment cannot be said to be illegal as if a mistake is committed it can be remedied at later stage - Petition dismissed : *R.K. Pandey Vs. State of M.P., I.L.R. (2013) M.P. 310*

- Recruitment/Promotion – Post of Surgical Specialist to be filled in by 100% promotion after the year 1993 – Prior to amendment, 60% of post were to be filled by direct recruitment – Petitioners were promoted in the year 1994 however, prior to that there were certain direct recruitments – Direct recruits were given the senior scale and selection grade pay scale therefore, they took a march over and above petitioners – The anomaly remained and inspite of various opportunities and directions by High Court, such anomaly was not explained by respondents – Where the pay is regulated by Revision of Pay Rules, the provisions of Fundamental Rules and any other rules shall not apply to the extent they are inconsistent with the Revision of Pay Rules – If a person is working on the selection grade pay scale and is promoted on the post carrying the lesser pay scale at the initial stage, the benefit of pay protection is required to be granted – Fixation of pay scale is not in accordance with Revision of Pay Rules – Matter is referred to Highly Specialized Committee for grant of proper pay scale to petitioners on promotion from the post of Asstt. Surgeon Selection Grade and to take a final decision

within four months from the date of receipt of certified copy of the order : *S.K. Saxena (Dr.) Vs. State of M.P., I.L.R. (2015) M.P. 2597*

– **Revision of pay** – Petitioner has already availed of the benefit of voluntary retirement scheme, has now claimed for enhancement of pay scale and other benefits – Held – Since the petitioner had undisputedly taken voluntary retirement before filing the instant petition, she cannot claim higher pay scale, emoluments and benefit : *Vanita Borakar (Smt.) Vs. State of M.P., I.L.R. (2015) M.P. 137*

- **Senior Grade** - Senior grade is to be granted from the date of completion of 12 years of service and not from the date of the recommendation of DPC : *Kamla Pati Dwivedi Vs. Union of India, I.L.R. (2013) M.P. 62 (DB)*

- **Senior Grade** - 12 years of service - Whether the A.C.R.s of three years preceding completion of 12 years of regular service is to be seen or preceding the date when DPC met - As the Senior grade and selection grade is to be granted only after screening regarding satisfactory performance by D.P.C. ,therefore, in absence of any circular contrary to it, three C.R.s which are required to be seen would be preceding the date when DPC convene its meeting and not preceding completion of 12 years of regular service : *Kamla Pati Dwivedi Vs. Union of India, I.L.R. (2013) M.P. 62 (DB)*

- **Senior Pay Scale** - Petitioner was working as Librarian in a college receiving Grant in Aid, from 1966 - Relaxation in qualification was granted by State Govt. in the year 1979 - Screening Committee also recommended for grant of Senior Pay Scale - Commission also recommended for grant of Selection Grade to the petitioner - Nothing brought on record as to why the claim of the petitioner has been rejected - Respondents directed to implement the recommendations of Screening Committee and Commission for grant of Senior Pay Scale and Selection Grade Pay Scale - Petition allowed : *B.S. Vishwakarma Vs. State of M.P., I.L.R. (2013) M.P. 1842*

– **State Government Circulars** – Circulars of State Govt. issued prior to judgment passed in *Uma Devi's* case – Question whether circulars issued in the matter of grant of pay-scale and regularization prior to the delivery of judgment in *Uma Devi's* case referred to Full Bench – Entitlement of pay scale already decided in favor of petitioner in previous writ petition – Questions referred in writ petition are not involving in the proceeding pending before Single Judge – Questions need not to be answered only for academic purposes : *Nanadram Kushwah Vs. State of M.P., I.L.R. (2012) M.P. 685 (FB)*

24. Pension/Family Pension

- **Civil Services (Pension) Rules, M.P. 1976 – Rule 13(2)** - Counting of qualifying services for pension - Appellant was initially appointed as Group Secretary in

Gram Panchayat on 14.10.1960 - Later on vide order dated 31.01.1982, his services were absorbed w.e.f. 01.02.1982 on the post of Gram Sahayak in the Panchayat and Social Welfare Department of the State Government - He therefore, prayed for counting of his qualifying services for pension - Held - Appellant was employee of Panchayat - He can not claim that he was in service under the State Government within the meaning of Rule 13(2) of M.P. Civil Services (Pension) Rules, 1976 - He can not be said to be State Government employee for the purpose of counting his services rendered in the Panchayat as qualifying service for pension - Appeal dismissed : *Vichitra Singh Hoda Vs. State of M.P., I.L.R. (2013) M.P. 2068 (DB)*

- **Computing Qualifying Service** - Work Charged and Contingency Paid Employees Pension Rules M.P. 1979 - Family Pension - The services of muster roll employee/daily wager can not be taken into account for the purpose of computing qualifying service for grant of family pension - Writ appeal dismissed : *Kala Bai Prajapati (Smt.) Vs. State of M.P., I.L.R. (2011) M.P. 2319 (DB)*

- **Eligibility** - Pension Scheme 1995 - Held - Where the PF organization itself qualified the employees and took their contribution, these employees must be treated as eligible employees for the grant of pension : *Jiyajirao Cotton Mills Vs. B.I.F.R., New Delhi, I.L.R. (2015) M.P. 2682*

- **Explanation** - Pension is a payment for the past services rendered by an employee : *Mamta Shukla (Smt.) Vs. State of M.P., I.L.R. (2011) M.P. 1807 (FB)*

- **Family Pension** - Petitioner's wife appointed as Emergency Assistant Professor continued to discharge her duties till 3.9.2001, on the date when she expired - Thereafter, the State Government by Policy decision dated 28.3.2003 regularised the services of Emergency Assistant Professors w.e.f. 24.12. 1998 - Held - Family of such Government Servant will be entitled for family pension : *Suresh Acharya (Professor) Vs. State of M.P., I.L.R. (2011) M.P. 1934*

- **Legally Divorced Wife** - Not entitled for the same - Payable to a legally married spouse : *Mamta Sharma (Smt.) Vs. State of M.P., I.L.R. (2015) M.P. 1441*

- **Legitimate Right** - Husband of petitioner retired on 30.06.1988 and died on 22.09.88 - On 22.09.1995, Punjab National Bank (Employees') Pension Regulation 1995 notified - Petitioner could not apply and comply other conditions necessary for pension within stipulated time and when she applied on 16.01.97 the application was turned down on the ground that proposal was not given within stipulated time - Held - Petitioner had no information about coming in vogue of Pension Regulations, therefore, she can not be deprived of the benefit of her legitimate right despite that the petition has been filed in the

year 2004 - Petition allowed : *Sumanlata Gupta (Smt.) Vs. Chairman-Cum-Managing Director, Punjab National Bank, New Delhi, I.L.R. (2011) M.P. 2420*

- **Pensionary Benefit** - Petition for extension of pensionary benefit under category of disabled dependent of the deceased employee - Held - Medical Board has issued disability Certificate - Authorities should have decided her claim on their own - Respondents directed to decide her claim for grant of pension under category of disabled dependent of deceased employee - If the petitioner succeed in her claim and is found to be eligible for handicapped pension, she would be entitled to receive the same from the date of application : *Wahid Begum Vs. Union of India, I.L.R. (2014) M.P. 378 (DB)*

- **Proprietary Right** – Pension is a proprietary right of the retired Government servant and grant of pension is not dependent on the sweet will of State – There must be strong justified reasons for the withdrawal of pension : *Shyam Sharma (Dr.) Vs. State of M.P., I.L.R. (2015) M.P. 2014*

- **Recovery of Excess Payment** - Bank erroneously paid in excess to her entitlement as sanctioned by State Govt. in the Pension Payment Order - There was no order by State Govt. to fix the appellant's pension at the rate at which it was paid by Bank - Relationship between bank and appellant is that of banker and customer - Appellant can not take benefit of mistaken excess payment made by it - Recovery of excess amount by bank proper - Appeal dismissed : *Laxmi Bai Solanki (Smt.) Vs. C.P.P.C., I.L.R. (2012) M.P. 1519 (DB)*

25. Promotion

- **Circular** – Promotion of petitioner on the vacancy occurred due to transfer of one employee from one place to another on the strength of circular issued by State Government on 09.06.1999, was cancelled and he was reverted back on his substantive post – Held – No restriction was put in the circular dated 09.06.1999 in respect of promotion on the post fallen vacant due to transfer of an employee from one municipality to another – In fact the object of said circular is that the vacancy so become available should not be filled in by direct recruitment as the lien of the transferred employee is always protected – The entire circular is misread and misconstrued – Petition is allowed, however, petitioner cannot be treated to be confirmed on the promotional post : *Mithlesh Giri Goswami Vs. State of M.P., I.L.R. (2015) M.P. 57*

- **Departmental Promotion Committee** - Appellant on basis of recommendation of the Departmental Promotion Committee, was promoted on ad hoc basis on the post of Executive Engineer - Later on, he was reverted on the basis that the post of Executive Engineer was required to be filled in by a candidate belonging to the reserved category - Held - The only sanctioned post of Executive Engineer in the set up can not be earmarked

for reserved category candidate as the same would amount to 100% reservation, which is violative of Article 16(4) of the Constitution -Writ Appeal allowed : *D.K. Kuraria Vs. M.P. Rajya Matsya Vikas Nigam, I.L.R. (2011) M.P. 2690 (DB)*

- **Fundamental Right** - Employee has no fundamental right of promotion - He only has a right to be considered for promotion - Even reduction in chances of promotion does not affect right of an employee : *Satyendra Pratap Singh Vs. State of M.P., I.L.R. (2011) M.P. 400 (DB)*

- **Grading of ACR** - Marking in the ACRs grading - If the gradings of the ACRs of the petitioner were identical to the gradings of the ACRs of respondent No. 3 he could not be granted lesser marks than the respondent No.3 : *S.S. Tomar Vs. State of M.P., I.L.R. (2013) M.P. 560*

- **Merit cum Seniority** – Principle of Merit cum Seniority lays greater emphasis on merit and ability and seniority plays a less significant role – Seniority is to be given weight only when merit and ability are approximately equal : *Mahendra Kumar Mishra Vs. State of M.P., I.L.R. (2011) M.P. 1843*

- **Merger** – Promotion – Petitioner was the employee of society which subsequently merged with M.P.S.E.B. – Such employees are placed as junior to the junior most officer of the category concerned – Denial of promotion forever cannot be comprehended under the Constitutional Scheme of Article 14 & 16 of the Constitution of India – Petitioner is entitled for consideration for further promotions as per the rules/regulations of the MPSEB : *Panchraj Tiwari Vs. M.P. State Electricity Board, I.L.R. (2015) M.P. 281 (SC)*

- **Non-Consideration** – Petitioner was working as Sister Tutor – She was having long experience of working, was possessing the Diploma in Public Health Tutor and General Nursing – Her claim of promotion on the post of Senior Sister Tutor was denied on the ground that the petitioner was not possessing the degree of Bachelor of Science (Nursing) therefore, was not eligible for such promotion – Held – Since it is the practice in the State that if for any particular department service rules are not framed, service rules framed for the similar services or post by other department are adopted – Respondent should have taken care to adopt rules of the Public Health Department rather than insisting on the norms of Indian Nursing Council in the matter of promotion of Nursing Sisters – There is no insistence in the Rules of Public Health Department that Sister Tutor must possess a Degree of Bachelor of Science with nursing subject – Thus, denial of consideration for promotion to the petitioner is grossly unjustified – Respondents are directed to consider the case of petitioner for promotion – In case the petitioner is found

fit, she would be entitled to the consequential benefit of such promotion with retrospective effect : *Anjana Mathur (Smt.) Vs. State of M.P., I.L.R. (2014) M.P. 3102*

– **Non-Consideration** – Earlier the State Administrative Tribunal directed for preparation of Combined Gradation List of Inspectors – Combined Gradation List was not prepared at proper time and when it was prepared it was never acted upon – Appellant had retired in the year 1998 whereas the Rules were amended in the year 2000 – As the appellant has retired, notional promotion to the post of Dy. S.P. be given and will be deemed to have superannuated on that post and shall be given all retirement benefits by re-calculating the same on the premise that he held the post of Dy.S.P. : *M.P. Singh Bargoti Vs. State of M.P., I.L.R. (2015) M.P. 1133 (SC)*

– **No Work No Pay** – Promotion was given to the petitioner after his exoneration in the departmental enquiry from the date, his juniors were promoted but was denied monetary benefit on the principle of no work no pay – Held – Principle of No Work No pay would apply only when an employee is found guilty of any misconduct and his promotion is delayed – If the promotion is granted with retrospective effect and if monetary benefit is denied, it would amount to a penalty of withholding of monetary benefit under Rule 10 of M.P. Civil Services (Classification, Control and Appeal) Rules, 1966 – Denial of such a benefit is illegal – Petitioner is entitled to the salary of promotional post from the date the said benefit was extended to his immediate junior – Petition allowed : *C.B. Tiwari Vs. State of M.P., I.L.R. (2015) M.P. 2402*

– **Opportunity for Participation** – On successfully passing trade training petitioner's name was brought in the fit list for promotion – In terms of GOP which was in vogue he was not required to appear in the trade test once again – In the year 1995 GOP was amended providing that person who were placed in the fit list but have not been promoted are required to take part in the Trade Test once again – There is nothing to disclose that the petitioner was informed about a change in GOP – Twice suspension of the petitioner was also held illegal by Higher Authority – Held – Petitioner was not offered full opportunity to take part in the Trade Test – Trade Test be conducted for him separately and after passing of the test his name be included in the fit list for the year in which the juniors were brought in the fit list for promotion – In case petitioner found fit, necessary orders with all consequential benefit be issued within 6 months – Petition allowed : *Hari Narayan Sharma Vs. State of M.P., I.L.R. (2014) M.P. 965*

– **Opportunity of Hearing** – Petition against withdrawal of promotion order on the ground that right has accrued in favour of the petitioner with the issuance of promotion – Same could not have been withdrawn without affording an opportunity of hearing – Held – Promotion was issued assuming that the promotional post is lying vacant – In fact there was no vacant post on the date when recommendation for

promotion was made – Mistakes are mistakes and they can always be corrected – State was justified in withdrawing the sanction for promotion : *Sunil Datt Vs. State of M.P.*, I.L.R. (2014) M.P. 1815

– **Out of Turn Promotion** – Denial of out of turn promotion to petitioner, who is Vikram Awardee and has also won several Gold and Silver medals in the National and International Championship in power lifting, although respondents have considered and promoted the similarly situated persons – Held – Cause of action for consideration of promotion accrued in 2004 and 2005 – Petitioner was considered in the year 2007 – GOP came in force in the year 2007 does not apply – The case of the petitioner was not properly considered for grant of out of turn promotion – Petitioner was entitled to be considered for promotion to the post of Company Commander – Since petitioner is already promoted to the post of Company Commander, she will get only the benefit of seniority, if found fit by D.P.C. – Matter remitted back to the respondent to consider the claim of the petitioner within a period of 3 months : *Neelima Saraf (Ku.) Vs. State of M.P.*, I.L.R. (2014) M.P. 2763

– **Power of DPC** - Fixing a criteria for assessment – DPC has power to fix a criteria to decide whether employee is *fit* or *not fit* : *Ram Bharose Kamal Vs. State of M.P.*, I.L.R. (2012) M.P. 1181

– **Practice** – In the event of an employee being found fit for promotion to a higher post, he is entitled to such promotion from the date his immediate junior was promoted in the said higher position : *Mahesh Prasad Bajpai Vs. State of M.P.*, I.L.R. (2011) M.P. 1895

– **Practice** - Punishment of stoppage of one increment - Case of promotion cannot be considered during the currency of the punishment : *R.K. Mehra Vs. State of M.P.*, I.L.R. (2011) M.P. 621 (DB)

- **Public Examination** - Written test held by the appellant for promotion of employees from clerical cadre to Officer Junior Management Grade Scale-I (OJM-I) - Written test held for Sarguja Kshetriya Gramin Bank at Ambikapur, at 10.00 am to 11.15 am while the written test of Satpura Narmada Kshetriya Gramin Bank was held at Gwalior Centre at 1.00pm to 2.15 pm - IBPS, an outside agency engaged by the both Bank for conducting the written test - Both the question paper of English language were same for both these banks and 19 questions of the second test paper (Banking Law, practice and procedure) were also same -Held - It can not be said that there was any leakage of question paper merely because the written test for promotion was held for both the Banks on the same day but at different times : *Satpura Narmada Kshetriya Gramin Bank Vs. A.K. Chaturvedi*, I.L.R. (2011) M.P. *142 (DB)

- **Recommendation of Committee** - Committee constituted for considering the Senior Lecturer for promotion to the post of Reader recommended the name of petitioner along with other Senior Lecturers - Recommendations of Committee also approved by Executive Council - Promotion of petitioner was stayed on the ground of pendency of Departmental Enquiry - Held - There is no material to show that when the promotion was recommended by Committee, any charge sheet was issued to the petitioner or any Departmental Enquiry was pending - Issuance of Charge sheet subsequent to promotion will not hamper the promotion recommended on merit - Petitioner be promoted as per recommendation of committee which were affirmed by Executive Council - Petition partly allowed : *Amitabh Shukla (Dr.) Vs. Rani Durgawati Vishwavidyalaya, I.L.R. (2013) M.P. 797*

- **Retrospective Effect** - On 10.11.2003, the case of respondent No.2 was considered and he was not found fit for promotion as he could not secure the minimum bench mark grade fixed by the D.P.C. - At the relevant time when the D.P.C. met, the order of punishment was in force - Subsequently, the case of respondent No.2 was considered for promotion and he was found fit for promotion and promoted vide order dated 10.07.2006 - No direction could have been issued to promote respondent No.2 with retrospective effect : *R.K. Mehra Vs. State of M.P., I.L.R. (2011) M.P. 621 (DB)*

- **Right to** - An employee cannot claim promotion as a matter of right - At the most he is entitled only to be considered for such promotion : *Mahendra Kumar Mishra Vs. State of M.P., I.L.R. (2011) M.P. 1843*

- **Right to** - Promotion is not a right though consideration is - Initiation of promotion will not create any right in incumbent nor promotions made at the later date can be treated from the date of initiation of proceedings : *Union of India Vs. Rajendra Prasad Yadav, I.L.R. (2013) M.P. 1008 (DB)*

- **Right to** - Seniority subject to suitability - One has only a right of consideration - Promotion depends on his suitability which is to be assessed by DPC : *Ram Bharose Kamal Vs. State of M.P., I.L.R. (2012) M.P. 1181*

- **Seniority** - From Speciality to Administrative Post - Petitioners were senior to respondents as Assistant Surgeon - Respondents got promotion due to availability of vacancy in their speciality and become senior as specialist to petitioner - However, for promotion to the administrative post the original seniority of Assistant Surgeon ought to be considered - Petition allowed : *S.K. Saxena (Dr.) Vs. State of M.P., I.L.R. (2013) M.P. *18*

- **Service Record** - Petitioner was considered by duly constituted D.P.C. but was not recommended due to his service record - When subsequently his service record was

improved, he was recommended by D.P.C. and was consequently promoted – Petition dismissed : *Mahendra Kumar Mishra Vs. State of M.P., I.L.R. (2011) M.P. 1843*

– **Statutory Rules** – Development Authority Services (Officers and Servants) Recruitment Rules, M.P. 1987 – Promotion on the post of Sub-Engineer – Can be made only as per the method prescribed in the rules – Rules prescribed a method by direct recruitment and promotion – Other methods are accordingly barred – Petitioner is senior to respondent No.3 on the feeder post, he was having requisite experience and eligibility to be considered on the promotional post of Sub-Engineer – Filling up the post of Sub-Engineer by way of regularization is impermissible in law : *Ram Kumar Baishander Vs. State of M.P., I.L.R. (2012) M.P. *65*

- **Statutory Rules** - Public Services (Promotion) Rules, M.P. 2002 - There is no impediment for promotion to an employee who is inflicted with a minor punishment which came to an end much before the D.P.C. - The rule nowhere provides that such employee can be treated as "unsuitable" for promotion : *Virendra Kumar Swarnkar Vs. Madhya Pradesh State Agricultural Marketing Board, I.L.R. (2011) M.P. 2743*

– **Time Bound Promotion** – Effect – Junior Engineer promoted to the post of Assistant Engineer under the Time Bound Promotion Scheme cannot be treated at par with the Assistant Engineer Promoted on regular basis : *M.P. Electricity Board, Jabalpur Vs. S.K. Dubey, I.L.R. (2014) M.P. 1698 (FB)*

26. Punishment / Quantum

– **Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rule 14** – Punishment of stoppage of one increment with cumulative effect and recovery against petitioner in joint enquiry – Held – No violation of law – Scope of interference is limited – No reason to interfere – Petition dismissed : *Toofan Singh Vs. M.P. State Civil Supplies, I.L.R. (2015) M.P. 1729*

– **Disproportionate Punishment** – In departmental enquiry, the petitioner was found guilty of concealing the fact that he was under detention (jail) for a week and he also submitted false medical certificate for this period – The order of dismissal from the service would not be said to be shockingly disproportionate – Petition dismissed : *Rajeshwar Rao Vs. Union of India, I.L.R. (2012) M.P. 1218 (DB)*

- **Disproportionate Punishment** - Punishment should not be disproportionate while comparing the involvement of co-delinquents who are parties to the same transaction or incident - Action of the disciplinary Authority imposing a comparatively lighter punishment to the co-delinquent and at the same time, harsher punishment to the

appellant cannot be permitted in law : *Rajendra Yadav Vs. State of M.P., I.L.R. (2013) M.P. 533 (SC)*

- **Disproportionate Punishment** - Petitioners found guilty for having by passed normal rules and procedure for issuing bank guarantee, thereby exposing bank for huge financial risk - However, no loss caused to bank - Disciplinary Authority was of the view that punishment of reduction of basic pay to the first stage of scale, however, petitioner was dismissed on the basis of communication sent by C.V.C. - Final decision to impose punishment was influenced by recommendation of C.V.C. - Disciplinary Authority are quasi judicial in nature - Order of punishment is bad as the same was passed under the influence of C.V.C. : *S.C. Seth Vs. United Commercial Bank, I.L.R. (2012) M.P. 1833*

- **Disproportionate Punishment** - Petitioner as apparent is guilty of charges of dereliction of duty as Court Moharrir, and of being in drunken state while attending the district office - Past conduct of the petitioner was also found to be not congenial for a disciplined force - Removal from service, can not be said to be disproportionate : *R.K.S. Gautam Vs. State of M.P., I.L.R. (2011) M.P. 2715*

- **Non-speaking Orders** - Against I.O.'s report a detailed representation and appeal were preferred - Both were decided by non-speaking order - Orders quashed because of non-application of mind : *Vikram Sharma Vs. State Bank of Indore, I.L.R. (2012) M.P. *10*

- **Police Regulations - Regulation 226** - Punishment - Removal from Service - Quantum - Police Regulations are having statutory force - Clauses (iii) and (v) of Regulation 226 are applicable to constables and pertains to the penalty to be awarded to a Constable - Charges were framed in regard to disobeying lawful orders of Superiors, therefore, before passing the extreme order of punishment of removal from service, clauses (iii) and (v) of Regulation ought to have been seen by Disciplinary as well as Appellate Authority - Matter remanded back to disciplinary authority to examine the case vis-à-vis Regulation 226 and fresh order in accordance to law may be passed : *Ganesh Kumar Sharma Vs. State of M.P., I.L.R. (2013) M.P. *15 (DB)*

- **Power of Appellate Authority** - Appellate authority is obliged to deal with the grounds raised in memo of appeal - Appellate Authority has not dealt with the question of quantum of punishment in the light of Regulation 226 and lost sight of fact that petitioner had rendered 38 years of service and earned 40 prizes - Appellate order set aside : *Munni Singh Chauhan Vs. State of M.P., I.L.R. (2012) M.P. 2108*

- **Quantum** - By invoking Rules (1)(b) read with Rule 9(2)(a) of Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966, the petitioner was placed under suspension for the reason that he remained in judicial custody for a

period of more than 48 hours – Under suspension the petitioner was subjected to a departmental enquiry – In departmental enquiry though he was exonerated of the charges levelled against him, however, he was found guilty of not disclosing his arrest which was in pursuant to lodging of complaint against him – Stoppage of two annual increments with cumulative effect can not be said to be unjustified as the launching of criminal prosecution was not at the instance of the employer – Petition dismissed : *A.K. Kahar Vs. M.P. Power Transmission Co. Ltd., I.L.R. (2011) M.P. *78*

– **Quantum** - Disciplinary proceedings relating to illegal discharge of the accused u/s 302 of IPC - View taken by the High Court that the order of discharge was actuated by improper motive, and consequent imposition of the penalty of withholding of two increments without cumulative effect - Was a minor punishment, after holding due enquiry and giving proper opportunity of hearing - Does not call for any interference : *Ramesh Prasad Tihaiya Vs. M.P. High Court, I.L.R. (2011) M.P. 705 (DB)*

- **Termination** - Industrial Tribunal affirmed the order of Labour Court upholding the findings with regard to departmental enquiry - However, remanded the case on the question of quantum of punishment - Labour Court upheld the punishment of termination - Industrial Tribunal in appeal held that departmental enquiry was also bad - Held - Appellate authority can not sit as an appellate authority against its own order passed on earlier occasion - Course open to the respondent was to challenge the order of appellate authority before the next higher forum and to get the same set aside : *M.P. State Electricity Board Vs. P.N. Verma, I.L.R. (2013) M.P. 564*

27. Recovery of Amount

- **Entitlement** – Although petitioner attained the age of superannuation on 31.07.2007 but he was allowed to continue up to 10.03.2008 – Excess amount paid to petitioner by way of salary for the said period was ordered to be recovered – Held – If the beneficiary had retired, order of recovery was not in accordance with the provision of law – Since the petitioner had worked for 8 months, he would be entitled to the salary for the said period – Amount recovered is directed to be refunded with interests @ 9.5% p.a. till payment is made to the petitioner : *Shabbir Mohammad Vs. State of M.P., I.L.R. (2014) M.P. 1537*

- **Excess Amount Paid** - Any amount paid illegally or by mistake without authority of law can always be recovered barring few exceptions of extreme hardship : *S.S. Nafde (Dr.) Vs. State of M.P., I.L.R. (2013) M.P. 572*

- **Excess Amount Paid** - M.P. State Administrative Tribunal allowed the petition by order dated 01.01.2000 however, the said order was reviewed by order dated 17.11.2001 – Emoluments were given to appellants by the order of Tribunal – Though the order was reviewed by Tribunal but amount was paid to appellants – Amount so paid

between 01.01.2000 till 17.11.2001 was paid because of order of Tribunal therefore, appellants cannot be held liable – Recovery of amount paid to appellants for the period between 01.01.2000 till 17.11.2001 not justified – However, recovery of amount paid subsequent to 17.11.2001 is justified : *Sushma Tiwari (Smt.) Vs. State of M.P., I.L.R. (2011) M.P. *89 (DB)*

- **Excess Amount Paid** – Even if by mistake of employer, the amount is paid to the employee and on a later date if the employer after proper determination of the same discovers the excess payment has been made by mistake or negligence, the excess amount so made could be recovered : *Nitya Ranjan Das (Dr.) Vs. State of M.P., I.L.R. (2015) M.P. 2408*

- **Excess Amount Paid** – Principles of Natural Justice – By impugned order the entitlement for grant of selection grade pay scale has been modified from 27-7-1998 to 4-3-2000 – The order was passed unilaterally without giving any opportunity of hearing to the petitioner – The modification would result in adverse consequences i.e., recovery of amount from the petitioner – Prejudice would be caused to the petitioners if the amount is recovered from them without affording an opportunity of hearing – Respondents would be at liberty to issue notice to petitioners indicating the grounds on which the date of entitlement for grant of Selection Grade/Grade Pay are sought to be modified and to pass a fresh order containing reasons : *Nitya Ranjan Das (Dr.) Vs. State of M.P., I.L.R. (2015) M.P. 2408*

- **Excess Amount Paid** - Revision of pay was done erroneously and excess payment was made - Merely because an undertaking was obtained from the petitioner, no recovery could be made after his retirement - However, the State Govt. can recover the loss from the erring officers : *Ram Siya Kanojia Vs. State of M.P., I.L.R. (2013) M.P. 70*

- **Excess Amount Paid** - Throughout the service of the husband of the petitioner, various pay Commission recommendations were accepted - Revision of pay was done by authorities - There was no folly on the part of the husband of the petitioner if, on revision, his pay was revised on a wrong stage - Pay is revised only after due verification of fixation of pay by Joint Director, Treasury and Accounts - Salary in the revised pay cannot be disbursed unless such an approval is granted - Excess payment cannot be recovered without there being a justified reason, holding that a Govt. officer had received the money intentionally knowing fully well that he was not entitled to such payment - Recovery of excess payment from the death cum retirement gratuity is quashed : *Sushma Pyasi (Smt.) Vs. State of M.P., I.L.R. (2013) M.P. *40*

- **Natural Justice** - Show cause notice was issued and after considering the reply amount of Rs. 1,54,950 was directed to be recovered - Appellate Authority remitted the case for reconsideration of the amount to be recovered after fixing the liabilities of other

erring employees - Disciplinary authority directed for recovery of Rs. 34,679 - Before arriving at the amount to be recovered, no opportunity was required to be given as the appellate authority had not exonerated the petitioner - Order directing for recovery upheld : *O.P. Patel Vs. State of M.P., I.L.R. (2012) M.P. 2983*

– **Recovery of High Rate of Interest** – Respondent granted house building advance with tentative 6.75% interest – Instalments were deducted from the salary of respondent applying the interest @ 6.75% - Recovery of higher rate of interest at the time of his retirement on the ground that rate of interest was revised from time to time – Held – Higher rate of interest was never communicated to respondent nor any deduction was made applying the same while he was in service – Instalment and interest were being deducted by appellants and it is not a case that there was any suppression or concealment made by respondent – Recovery of higher rate of interest from the gratuity rightly quashed by Single Judge – Appeal dismissed : *State of M.P. Vs. N.C. Jain, I.L.R. (2011) M.P. 1441 (DB)*

– **Recovery of House Rent Allowance** – Petitioner lives with her husband who is receiving the House Rent Allowance, therefore, House Rent Allowance received by the petitioner, was directed to refund it with effect from 09.04.1981 – Held – There was no misrepresentation on the part of the petitioner – House Rent Allowance is paid to the petitioner for years together on account of no fault on her part – After 28 years there was no justification on the part of the respondent to initiate recovery proceedings as no Govt. accommodation allotted to the petitioner : *Nirmala Sonwane (Mrs.) Vs. State of M.P., I.L.R. (2014) M.P. 1743*

28. Recruitment

- **Age Relaxation** - Appellant was not given appointment order on the ground that she was overage - Standing Instruction 79 provides relaxation in age if candidate has rendered not less than 3 years continuous service on regular basis as Central Government Civilian Employee - Appellant has rendered service in railway department for a period of one year and four months only - Service rendered by appellant in a school run by society and not by Central Govt. cannot be taken into consideration - Since, the appellant had not rendered service for continuous three years therefore not entitled for relaxation in age - Appeal dismissed : *Usha Kiran Dubey (Smt.) Vs. Secretary, Union of India, I.L.R. (2011) M.P. 606 (DB)*

– **Eligibility Criteria** – M. P. Jan Shiksha Adhinyam, 2002, Section 2(k), M. P. Jan Shiksha Niyam, 2003 – Rule 13 — Whether can be modified by executive instructions – Rules, 2003 providing qualifications for the post of Jan Shikshaks – By executive instructions dated 24-5-2010 only a particular class of teachers permitted to participate in the process of selection leaving petitioners who are otherwise eligible under

Rules, 2003 –Held - Directions contrary to the provisions of Act, Rules cannot be issued – Condition introduced by Executive Instructions set aside : *Rajmal Rathore Vs. State of M.P., I.L.R. (2011) M.P. 1164*

– **Executive Instructions** – Executive Instructions cannot override statutory rules : *Rajmal Rathore Vs. State of M.P., I.L.R. (2011) M.P. 1164*

– **Local Resident** – Petitioner born in an area which upon bifurcation came under the jurisdiction of Chhattisgarh – Her father was a resident of Chhattisgarh for last more than 50 years – Merely because the petitioner had her education in Madhya Pradesh or because she was married in Madhya Pradesh would not confer upon her the status of 'original resident' of State of Madhya Pradesh – She was rightly denied appointment on a post reserved for reserved candidate belonging originally to State of Madhya Pradesh – 'Local residence certificate' issued by the Naib Tehsildar is of no legal consequence – The local residence of a person cannot be equated with 'original residence' : *Chitrlekha Shakya (Smt.) Vs. State of M.P., I.L.R. (2011) M.P. 1221*

– **Minimum Qualification** – Notification of various Universities established in State of Chhattisgarh quashed by Apex Court after declaring the provisions of Section 5 and 6 of Chhattisgarh Niji Kshetra Vishwavidyalaya, Sanshodhan Adhiniyam, 2002 as ultra vires – Standards of Universities are required to be maintained but at the same time the fate and fortune of students is not required to be astonished : *Ved Prakash Sharma Vs. State of M.P., I.L.R. (2011) M.P. 1187*

– **Mistake** – Correction thereof – Mistakes can be corrected by affording an opportunity of hearing to the incumbents : *Union of India Vs. Shri Devraj Bais, I.L.R. (2012) M.P. 311 (DB)*

– **Mistake** – Vested Right – If due to mistake some benefit is extended in favour of person(s) not eligible for such benefit, there is no accrual of right : *Union of India Vs. Shri Devraj Bais, I.L.R. (2012) M.P. 311 (DB)*

– **Minimum Qualifying Marks** – Requirement of Minimum qualifying marks for written examination and interview was fixed by resolution which was passed before the commencement of selection process – Candidature of candidates was assessed on the basis of uniform criteria – Petitioners have not alleged any arbitrariness or bias in the process of selection – No prejudice caused to petitioners – No interference called for – Petition dismissed : *Jageshwar Prasad Raidas Vs. M.P. State Electricity Board, I.L.R. (2012) M.P. 1150*

– **Preference** - Election Duty - Persons who were deployed for election duties have been treated at par with surplus employees by the State Govt - Whenever posts are notified to be filled from surplus employees, Petitioners and similarly placed persons

should also be given the opportunity to participate in selection : *Gyanendra Pandey Vs. State of M.P., I.L.R. (2012) M.P. 2727*

- **Qualification** - Advertisement issued for recruitment of Line Attendant on contractual basis - Meter Readers challenged the prescribed qualification on the ground that although they perform the work similar to that of Line Attendants but a different qualification is prescribed as a result of which their right to seek engagement on contract basis is being denied - Held - Scheme under which appointment is to be made has not been challenged - Work performed by Meter Readers is different from that of Line Attendants - Work performed by line attendant includes certain other technical work over and above that of meter reading - In absence of violation of any statutory rule or constitutional provision, the Court can not interfere with the essential qualification prescribed for such technical work by competent technical authorities - Petition dismissed : *Ganesh Khare Vs. Principal Secretary, State of M.P., I.L.R. (2011) M.P. 3002*

- **Qualifying Marks** - Qualifying marks can be prescribed for written examination as well as for interview - However, such marks have to be prescribed in advance before the commencement of selection process : *Jageshwar Prasad Raidas Vs. M.P. State Electricity Board, I.L.R. (2012) M.P. 1150*

- **Qualifying Marks** - Where Statutory Rules prescribe, the prescription of minimum qualifying marks for viva voce, the same should be mentioned in the advertisement : *Jageshwar Prasad Raidas Vs. M.P. State Electricity Board, I.L.R. (2012) M.P. 1150*

- **Selection Criteria** - Selection Criteria has to be prescribed in advance - After process of selection is over, criteria for selection can not be changed : *Anil Bhatt Vs. State of M.P., I.L.R. (2012) M.P. 1146*

- **Statutory Rules** - In absence of any Statutory rule, appointment cannot be held to be illegal : *Ashok Mishra Vs. State of M.P., I.L.R. (2012) M.P. *106*

- **Short listing of Candidates** - Short listing can be done on the basis of administrative instructions and the minimum qualifying marks can be prescribed for written examination as well as for interview provided the action is bonafide and reasonable : *Jageshwar Prasad Raidas Vs. M.P. State Electricity Board, I.L.R. (2012) M.P. 1150*

- **Weightage of Past Service** - Meter Readers who fulfill the educational qualification for recruitment to the post of line attendant are entitled to 10% weightage due to work done by them provided they have worked for not less than 3 years : *Ganesh Khare Vs. Principal Secretary, State of M.P., I.L.R. (2011) M.P. 3002*

29. Regularization

– **Circular** – Contingency/Daily Wages Employees - State has issued a circular dated 29.09.2014 for regularizing the services of daily rated employees – University has also adopted the said circular – Employees working against vacant posts for more than 10 years – Respondent directed to constitute Committee for scrutinizing the cases of employees for regularization – Exercise be done within 6 months – Petition allowed : *Rajiv Gandhi Prodyogikiya Shramik Vishwavidyalaya Karmchari Sangh Vs. State of M.P., I.L.R. (2015) M.P. *34*

– **Entitlement** - Petitioners for grant of regularization/regular pay scale and other benefits have been considered by the respondents - Petitioners are not entitled for the same as per the law laid down by the Apex Court in case of Uma Devi - Held - Daily wage employees are only entitled to grant of minimum of the scale of the post which they are holding : *Kashi Prasad Kachhi Vs. State of M.P., I.L.R. (2014) M.P. 66*

– **Seniority** – Petitioner was appointed as daily rated employee on the post of Chowkidar – Overwhelming material to hold that he is senior to respondent No. 5 who was regularized on 01.01.1990 – Held – Respondents No. 1 to 3 are directed to regularise the services of petitioner w.e.f. 01.01.1990 alongwith difference of wages to be paid to the petitioner – Petition allowed : *Santosh Kumar Vishwakarma Vs. M.P. Housing Board, I.L.R. (2012) M.P. 1156*

30. Reservation

– **Reservation of Female/Woman** – Public Health and Family Welfare Department, Class III, Nurse Service Recruitment Rules, M.P. 1989 – Reservation of female/woman candidates – Against statutory provisions, there can not be 100% reservation in favour of woman candidates – An order or executive instruction can not supersede the statutory recruitment rules – Impugned advertisement quashed : *Sajid Khan Vs. State of M.P., I.L.R. (2011) M.P. 911*

– **Reservation of Handicapped Persons** – Posts of Commercial Tax Inspector – Advertisement does not reflect that the posts were exclusively reserved for orthopadically handicapped persons – P.S.C. has certainly committed an error in not permitting the respondent No. 1 (who is a visually handicapped person) to participate in the process of interview – Commissioner for Persons with Disabilities has rightly directed P.S.C. to permit the respondent No. 1 to appear in process of interview : *M.P. Public Service Commission Vs. Ku. Purnima Jain, I.L.R. (2011) M.P. 900*

31. Resignation

– **Acceptance thereof** - Receipt of letter withdrawing the resignation denied by respondents - No attempt was made by petitioner to resume services - Petitioner also

received the order of acceptance of resignation - Petitioner also accepted full & final payment of medical bills - He also handed over the charge - Petitioner failed to prove that resignation was withdrawn before the same was accepted - No illegality was committed by respondents by accepting the resignation - Petition dismissed : *Satyendu Mohan Vs. Union of India, I.L.R. (2013) M.P. 2108*

- **Effect** - Petitioner was very much aware of the fact that if the resignation is accepted, he will be out of the employment - Held - The moment the link of resignor with the office severed, the effect of the resignation starts : *Satyendu Mohan Vs. Union of India, I.L.R. (2013) M.P. 2108*

32. Retiral/Terminal Dues & Gratuity

- **Nomination** - Nominee's interest - Nomination in favour of second wife - First divorced wife filed application for succession certificate - It can't be a ground for delaying the payment to a nominated wife - Nomination will not supersede the right of inheritance and/or succession as the case may be if there is no specific Will made by the employee concerned - Nominee is only authorised to receive the terminal dues - But will not become absolute owner thereof - Other legal representatives, successors and coparceners would also be entitled to their share, if no specific Will is made by the employee - Nominee is entitled to receive terminal benefits of deceased employee - Shall retain the same for the purpose of distribution amongst all the legal heirs of the deceased employee : *Mamta Sharma (Smt.) Vs. State of M.P., I.L.R. (2015) M.P. 1441*

- **Service Rules** - Right to get the aforesaid benefits is a constitutional right - Gratuity or retiral dues can be withheld or reduced only as per provision made under Services Rules - No material on record to show that respondents have taken any action in invoking the said rules to stop or withhold gratuity or other dues - Respondents erred in withholding the amount of the petitioner regarding gratuity and computation : *Bhaskar Ramchandra Joshi Vs. State of M.P., I.L.R. (2013) M.P. 1907*

33. Selection Process

- **Criteria** - Upper age limit of 28 years as one of the eligibility criteria for recruitment to the posts of Sub-Inspector and Constable in the Police Department as well as Special Armed Force - Petitioner challenging the criteria being arbitrary and unreasonable, as in other Departments of State Government like Transport, Excise, Jail and Home Guards, where the employees also perform the duties of Police, the upper age limit has been fixed as 35 years - Held - It cannot be said that nature of duties performed by the Sub-Inspectors and Constables of Police Department and Special Armed Force are similar to that of the employees of Department of Transportation, Excise, Home Guards and Jail - There is no infringement of right guaranteed to the petitioner under Article 14

of the Constitution of India : *Rupendra Kumar Bhatt Vs. State of M.P., I.L.R. (2013) M.P. 130*

– **Estoppel** – A person who had participated in selection process cannot challenge the selection process on the ground of estoppel : *Rohit Vs. State of M.P., I.L.R. (2015) M.P. 841 (DB)*

– **Examination** – On the date of submission of the application form petitioner was not possessing the requisite qualification (Certificate of Computer application and Diploma Course was not passed out), which was a condition precedent in the advertisement – Held – Rejection of candidature of the petitioner on this ground is justifiable and not liable to be interfered – Petition dismissed : *Kamna Balke (Ku.) Vs. The Registrar General, I.L.R. (2011) M.P. 1876*

– **Qualification** - Veterinary Council Act (52 of 1984), Section 2(e) - Petitioners prosecuting their graduate studies - They applied for appointment on the post of Veterinary Asstt. Surgeon - Their applications were not accepted on the ground that they do not possess necessary educational qualification on the cut-off date - Held - Since, the petitioners did not possess the necessary qualification on the cut-off date specified in the advertisement, their applications have rightly been rejected - They have no right to participate in the selection process : *Shailesh Kumar Patel Vs. State of M.P., I.L.R. (2013) M.P. 2395*

– **Qualification** – Although the petitioner possesses an equivalent qualification of class 10th and has High School Certificate issued by M.P. Open School which has been duly recognized by Board of Secondary Education by notification dt. 04.10.1996 she was denied consideration, merely because the said qualification does not find mention in the advertisement – Held – Since the petitioner possesses the qualification equivalent to the Board of Secondary Education, respondents were not justified in rejecting the petitioner's candidature – Petition is allowed : *Poonam (Ku.) Vs. State of M.P., I.L.R. (2015) M.P. 89*

- **Scope of Judicial Review** – Criteria of Eligibility - Fixation of norms of eligibility for recruitment is within the realm of employer and the scope of judicial review in such a case is extremely limited : *Rupendra Kumar Bhatt Vs. State of M.P., I.L.R. (2013) M.P. 130*

– **Selection Committee** – Assignment of reasons – Unless statutes provides for the selection committee, which is neither judicial nor adjudicatory but purely an administrative, is under no legal obligation to record reasons in support of its decision : *D. Subrahmanyam (Dr.) Vs. Dr. D.K. Pandey, I.L.R. (2012) M.P. *12 (DB)*

– **Selection list** – Once a final selection list was published, without modification/cancellation of the said list, appellant cannot be deprived from the Patwari training – Respondent No. 5 who was not possessing the requisite qualification has been sent for training by subsequent orders to which no show cause was issued and no opportunity of hearing was furnished to him, however, the action of respondents not to send the appellant for Patwari training and to send respondent No. 5 in the Patwari training is arbitrary and discriminatory – Held – It is appropriate to direct the respondents to give a show cause notice to the appellant – In case respondents find that respondent No. 5 is more meritorious than the appellant, so as to deprive the appellant from the place in the selection list, after hearing him, will pass a speaking order within a period of two weeks thereafter, deciding as to whether the appellant or the respondent No. 5 is more meritorious : *Jagdish Chandra Vs. State of M.P., I.L.R. (2014) M.P. 1226 (DB)*

– **Vacant Posts** – Carried forward – Vacant posts were carried forward and were included in the vacancies of next year and exams were conducted – As the posts were not kept vacant and since unfilled vacancies were notified in subsequent advertisement for selection and selection process proceeded on that basis, the Petitioners cannot be granted any relief as the unfilled vacancies got subsumed by operation of law : *Bharat Bhushan Vs. High Court of M.P., I.L.R. (2015) M.P. 2437 (DB)*

34. Seniority

- **Ad hoc Appointment** - Appellant was appointed on adhoc basis for a period of six months or till appointment is made by Mini P.S.C. - Appellant was subsequently selected by Mini P.S.C. - In the merit list prepared by Mini P.S.C., appellant was placed at serial no. 93 and his seniority was fixed below the writ petitioners - Appointment order specifically provided that the inter se seniority shall be fixed in accordance to the merit given in the appointment letter - Appellant cannot get advantage of his ad hoc appointment for fixing the seniority as the appellant could not point out that under which service conditions rules, the appointment of appellant on ad hoc basis was made - As the ad hoc appointment was only with a further stipulation of facing the Mini P.S.C., the period of ad hoc appointment cannot be computed for fixing the inter se seniority - Appeal dismissed : *Ram Naresh Singh Tomar Vs. State of M.P., I.L.R. (2012) M.P. 2334 (DB)*

– **Criteria** - Traction Rolling Stock in Electric Loco Shed was formed and 216 posts of group D posts were required to be filled - Applications were invited from eligible Group D employees - Seniority of staff transferred from different units of Central Railway is to be decided upon the length of substantive post held by such staff in their parent cadre and not from the date of their joining in TRS : *Union of India Vs. Rajendra Prasad Yadav, I.L.R. (2013) M.P. 1008 (DB)*

– **Departmental Examination** - State Administrative Service Classification Recruitment & Condition of Service Rules, M.P., 1975, Rule 13(3) - The word 'prescribed' is used in relation to 'examination' and not in relation to the word 'question papers' - An officer is required to pass the prescribed examination and the department is not bound to confine the examination only to the papers - The Employer is the best judge to decide as to which kind of papers are required to be introduced with a view to equip its officers with proper knowledge - Employer can always Add, Amend or Reduce the number of papers - Once new paper is inserted in the examination the said paper forms part of 'prescribed examination' - Petitioner is required to pass the said exam. within the time initially granted i.e. two years - Department can assign seniority to the probationer from the date she has completed probation and passed the departmental exam : *Minakshi Singh (Smt.) Vs. State of M.P., I.L.R. (2013) M.P. 1332*

– **Deputation** – Petitioner originally appointed as Lower Division Clerk in Small Savings and State Lotteries Department – Deputation of petitioner to Pension and Employees Welfare Department – Re-transfer of petitioner back to Small Savings and State Lotteries Department – Petitioner's seniority would be counted from her day of appointment in her parent department not from day of re-transfer back to her parent department : *Madhumati Joshi (Smt.) Vs. State of M.P., I.L.R. (2014) M.P. 1771*

- **Determination of Seniority** - For determination of seniority of the officers who were recommended on the same date, age is the only valid and fair basis - Their seniority should be decided on the basis of age of the candidates who have been recommended : *D.P. Das Vs. Union of India, I.L.R. (2011) M.P. 2657 (SC)*

– **Fundamental Right** – Chances of promotion are not fundamental right – Right of consideration is fundamental right on the basis of existing seniority – Change in seniority unit results in reduction of chances of promotion – Plea untenable : *Awadesh Kumar Shrivastava Vs. State of M.P., I.L.R. (2012) M.P. 420*

– **Fundamental Right** – Is a civil right and not a fundamental right – Employee has no right to a particular number in gradation list – He has only a right of seniority to be counted from the date of his appointment – If he is transferred to another seniority unit on administrative ground, he has a right to enjoy seniority from the same date of appointment : *Awadesh Kumar Shrivastava Vs. State of M.P., I.L.R. (2012) M.P. 420*

– **Grant of Promotion** – Seniority-cum-merit – Last ACR of the petitioner average – Petitioner was not found fit for grant of promotion – Held – This could not be rightful assessment of an employee for promotion as in the terms of the criteria prescribed if the petitioner has not earned ACR of Good category in the last two years of ACRs which were taken into consideration, he could not have been denied the promotion,

on the basis of criteria of seniority-cum-merit : *D.P. Sharma Vs. State of M.P., I.L.R. (2015) M.P. 852*

– **Grant of Selection Grade** – Criteria prescribed for granting of Selection Grade – Held – Taking into account the ACRs for the past five years as well as the criteria which has been framed by High Court, the petitioner is entitled to grant of selection grade : *Chandraprabha Jolhe (Smt.) Vs. State of M.P., I.L.R. (2011) M.P. *109 (DB)*

– **Non-joinder of Affected Employees** - Non-joinder of affected persons is of no consequence as the mistake was committed by respondents themselves as they had not fixed the seniority as per the provisions of Rules : *Sushma Pandey (Smt.) Vs. State of M.P., I.L.R. (2013) M.P. 58*

– **Probation Period** – Petitioner was duly selected and was appointed as Assistant Professor (Zoology) vide order dated 27.06.2005 – The probation period came to an end on 09.07.2008 after extension – Fresh appointment order has been issued to the petitioner – Held – Seniority of the petitioner has to be counted from the date of appointment and not from the date of confirmation – Petitioner is entitled to get the benefit of service rendered by him w.e.f. 09.07.2005 when the petitioner joined the service : *Anita Kanash (Solanki) (Dr.) (Smt.) Vs. State of M.P., I.L.R. (2014) M.P. 972*

– **Rules** - Seniority is an incidence of service and where the service rules prescribe the method of its computation, it is squarely governed by such rules - In absence of a provision, ordinarily the length of service is taken into account : *D.P. Das Vs. Union of India, I.L.R. (2011) M.P. 2657 (SC)*

– **Seniority-cum-Merit/Fitness** – Criteria – Only the minimum criteria can be laid down and merit assessment would not be necessary for inclusion in the select list – Petition allowed : *D.P. Sharma Vs. State of M.P., I.L.R. (2015) M.P. 852*

– **Transfer** - Transfer from one Janpad Panchayat to another - Petitioner was appointed as Shiksha Karmi in one Janpad Panchayat - She was transferred to another Janpad Panchayat as her husband was working there - Transfer took place under a policy which did not provide that the employee would lose the seniority of earlier service - Subsequent policy issued in 2009 which provides for loss of seniority in case of such transfer is also contrary to rules - Seniority of the petitioner is to be calculated from the date of her initial appointment and not from the date of transfer : *Sushma Pandey (Smt.) Vs. State of M.P., I.L.R. (2013) M.P. 58*

35. Service Conditions

– **Anganwadi worker** – Service conditions – Place of residence – Post of Anganwadi worker is not a Statutory Post – Post of Anganwadi is created under a scheme

– Requirement of residence in a particular village where the Anganwadi is situated cannot be said to be unconstitutional : *Abhilasha Sharma (Smt.) Vs. Smt. Saroj Devi, I.L.R. (2015) M.P. 1165 (DB)*

- **Enactment** - Effect of in enactment of Central University Act - Petitioners working against posts classified under category III & IV and being paid wages at the rate notified by State Government - On 01.05.2008 the Executive Council of University exercising powers under Section 24 of M.P. Vishwavidyalaya Adhiniyam 1973 resolved that all daily wages and muster roll employees working in the University be granted the minimum of the pay scale and allowance against the post on which they are discharging the duties - After this resolution the Central University Act 2009 came into force w.e.f. 20.03.2009 - On 17.07.2009, the Vice Chancellor of the University passed an order granting minimum of the pay scale alongwith 1/30th of the Dearness Allowance to each of the petitioners - Subsequently, when this order was withdrawn the petitioner approached the Court - Held - Once the Executive Council took a decision on 01.05.2008 for granting benefit to the petitioners, the same becomes a service condition of the petitioners and by virtue of Section 4(d) of the Act of 2009 the terms and conditions of appointment which were existing on 01.05.2008 i.e. prior to 20th March 2009 could not be changed - The University which came into existence after 20th March 2009, under law was duty bound to protect the right of the petitioners which accrued to them by virtue of decision taken by the Executive Council on 01.05.2008 - Respondents have committed an error in refusing to grant the aforesaid benefit : *Surendra Saraf Vs. Dr. Hari Singh Gaur Vishwavidyalaya, I.L.R. (2011) M.P. 3037*

– **Term of Office** - Public Prosecutor/Government Pleader and Additional Public Prosecutor/ Additional Government Pleaders condition of service, Clause 20 - Condition of service - Held - The "Notwithstanding" clause has no relation with the persons who have completed 62 years of age - "No person will be continued....attains the age of 62 years" has a mandatory colour and impact - Hence, cannot be made applicable to a person who has completed the requisite age - Not entitled to continue till the joining of his successor - Petition dismissed : *Nathan Singh Rajput Vs. State of M.P., I.L.R.(2014) M.P.*5*

36. Superannuation

– **Enhancement of Age** – M.P. Power Generating Company Ltd. – Company's Human Capital Manual, Clause 34(1) – Superannuation – Age of superannuation was enhanced from 58 years to 60 years – Option were invited to serve till 60 years from class I, II and class III employees who were to be retired after April 2012, i.e. within one month from the date of order i.e. 24.04.2012 – Petitioner submitted option on 25.05.2012 but he was made to retire on completion of 58 years of age – Held – Order dated 24.04.2012 was communicated to the department where the petitioner was employed on

3/4.05.2012 – Since petitioner submitted option on 25.05.2012 it was within the period of 30 days from the date of communication – The effective date is the date of communication and not the date of order – Petition is allowed : *Narmada Pd. Tiwari Vs. State of M.P., I.L.R. (2015) M.P. 876*

– **Specific Provision regarding Age** - Petitioner working as stenographer in the establishment of the respondent No.1, M.P.A.K.V.N., completed 58 years on 31.03.2010 and, therefore, he was proposed to be superannuated from service with effect from 31.03.2010 - In Employees Service Rules, 1994-95 framed by the M.P.A.K.V.N., no specific provisions specifying the age of superannuation is provided - Petitioner alleging that he is entitled to continue up to the age of 60 years which is the age of superannuation prescribed for the employees of the State Government - Held - Age of superannuation of the employees of the respondent-company has throughout been 58 years and though the issue of enhancement was raised, it was duly considered and rejected in the meeting of the Coordination Committee - Managing Directors of the M.P.A.K.V.Ns. have also taken a clear decision in this regard - Age of superannuation in respect of employees of the respondent-company is 58 years - Petition dismissed : *T.S.N. Nair Vs. M.P. Audyogik Kendra Vikas Nigam Ltd., Bhopal, I.L.R. (2011) M.P. 3065*

37. Suspension

– **Charge Sheet** – Civil Services (Classification, Control and Appeal) Rules, M.P. 1966 – Rule 9(1) – Suspension – Appellant, posted as Chief Municipal Officer and a charge sheet was filed against him under Section 420, 409, 467 & 120-B of IPC and Section 13(1)(d) & 13(2) of the Prevention of Corruption Act – Pursuant to this he was placed under suspension – Held – The case of the appellant falls under first proviso to Rule 9(1) of the Rules 1966 which is mandatory in nature – The appellant was required to be and has rightly been placed under suspension immediately on filing of a charge sheet against him – Writ Appeal dismissed : *A.P. Singh Gaharwar Vs. State of M.P., I.L.R. (2012) M.P. *51 (DB)*

– **Non-Duty** – Petitioner was placed under suspension due to prosecution of petitioner in criminal case – Petitioner acquitted – Period of suspension was directed to be treated as non duty and not counted for the purpose of pension – Held – Suspension of petitioner was statutory suspension as it was not because of pending or contemplated departmental enquiry, but due to his prosecution in criminal case – Authority was justified in treating the period of suspension as non-duty for the purpose of duty and not a break in service : *Prakash Kumar Sahu Vs. Union of India, I.L.R. (2012) M.P. 326 (DB)*

– **Period** – Rule provides that suspension period of an employee generally shall not be more than six months but C.E.O. can extend the period for a further period of six

months – Held – Period of suspension shall automatically come to an end after six months unless it is extended by C.E.O : *Zila Sahakari Kendriya Bank Vs. M.P. State Co-Operative Tribunal, I.L.R. (2011) M.P. 2116 (DB)*

– **Salary** - Civil Services (Classification Control and Appeal) Rules, M.P. 1966, Rule 10 - Respondent was charge-sheeted for major misconduct but the minor penalty was imposed - In view of the circular dated 13.01.2005, he was entitled for full salary of the entire period of suspension : *State of M.P. Vs. Shailendra, I.L.R. (2011) M.P. 2315 (DB)*

– **Sub-delegation of Powers** – Civil Services (Classification, Control and Appeal) Rules, M.P. 1966 – Rule 9 – Suspension order of petitioner, a Class –III employee was issued by District Education Officer and not by the Collector – Held – The Collector took a decision in the note-sheet that the petitioner is to be suspended and directed for issuance of an order in this regard – The principle of sub-delegation is not attracted : *Ramhet Tyagi Vs. State of M.P., I.L.R. (2011) M.P. 1988*

38. Termination

- **Appointing/Disciplinary Authority** - Petitioner was appointed as Patwari by the Collector - S.D.O. has no authority to pass the order of termination of service : *Devi Dayal Jha Vs. State of M.P., I.L.R. (2013) M.P. 363*

- **Cancellation of Caste Certificate** - Petitioner obtained service on the strength of caste certificate which was cancelled by High Power Caste Scrutiny Committee - Services of petitioner were terminated - Where a person secures an appointment by producing a false caste certificate, his services cannot be protected and an order of reinstatement cannot be passed - Where a person secures an appointment on the basis of false caste certificate he cannot be allowed to retain the benefit of wrong committed by him and his services are liable to be terminated - Petition dismissed : *Vilas Kumar Bhugaonkar Vs. State of M.P., I.L.R. (2013) M.P. 133*

- **Caste Certificate** - Petitioner was issued caste certificate to the effect that he belongs to 'Roniya' Caste as per the State List which was in existence in State of Jharkhand - Services of petitioner were terminated only on the ground that in the Central list of O.B.C. issued for State of Jharkhand by Central Govt. caste 'Roniya' does not appear - By virtue of Section 85 of Bihar Reorganization Act, 2000, State list cannot be said to be invalid - Even otherwise, subsequently for the State of Jharkhand also 'Roniya' caste was specifically added as OBC category - Merely because of such a fact that for certain period, the list was not revalidated, it cannot be said that petitioner was not belonging to a particular caste - Termination of service bad - Petition allowed : *Jitu Prasad Vs. Industrial Development Bank, I.L.R. (2013) M.P. 2338*

– **Central Civil Services (Temporary Service), Rules, 1965 – Rule 5(1) – Termination** – Service of petitioner was terminated and his name was struck from the strength of group centre, C.R.P.F., on the ground that the petitioner concealed the vital fact in respect of involvement in criminal case prior to entering into service – Held – Wherein an employment is sought by concealing vital facts which will have a bearing on the employment sought, it is open for the employer to dispense with the service of such incumbent who had chosen not to disclose the antecedents : *Diwakar Prasad Tiwari Vs. Union of India, I.L.R. (2014) M.P. 1503*

– **Jurisdiction** – Petitioner was appointed on the post of District Programme Officer on contractual basis – Without giving any opportunity of hearing and without holding any departmental enquiry as per clause 6 of agreement services of the petitioner were terminated – Held – No enquiry at all was conducted in the present case and also no decision was taken by the State Health Committee, Bhopal who was party to the agreement – Order passed by CMHO is without jurisdiction – Petition allowed : *Rahul Jain Vs. State of M.P., I.L.R. (2014) M.P. 982*

– **Moral Turpitude** - Conviction under Section 323 of I.P.C. - Petitioner convicted under Section 323 of I.P.C. – Court cannot interfere in the findings of conviction but the reasonableness and justification may be looked into as said conviction has adverse effect on employment of employee – Dispute arose amongst family members – Offence does not involve moral turpitude – As the employee has expired therefore, all consequential benefits shall follow to the widow of deceased employee : *Shriram Sharma Vs. State of M.P., I.L.R. (2011) M.P. 1470*

- **Moral Turpitude** – Conviction - Certified Standing Orders Clause 24.1 & 26.8 - Services of the petitioner (An employee of S.E.C.L.) were terminated by the impugned order for the reason that he was convicted for an offence u/s 147, 149, 323/149, IPC - Held - Offence for which the petitioner was convicted does not lead to conclusion that the conduct of the petitioner was 'inherently base, vile, depraved or having any connection showing depravity', as could be termed as crime involving moral turpitude, as would warrant a dismissal from service - Termination quashed - Petition allowed : *R.P. Dwivedi Vs. S.E.C.L, I.L.R. (2011) M.P. 2973*

– **Natural Justice** – Petitioner applied for appointment on the post of Samvida Shala Shikshak Grade III – Although the petitioner failed to secure 40% marks in entrance examination as required under Rule 6 of M.P. Panchayat Samvida Shala Shikshak (Appointment and Conditions of Contract) Rules, 2001, but by mistake treating 42.64 marks as percentage obtained by petitioner, permitted her to participate in counseling and also granted an appointment – Subsequently her services were terminated – Held - No show cause notice is required to be issued as no useful purpose would have

been served as issuance of such notice would be a useless formalities – If undisputed facts are involved, non issuance of notice to employee is not fatal – Petition dismissed : *Rekha Pandey (Smt.) Vs. State of M.P., I.L.R. (2015) M.P. 2927*

- **Order of Termination** - Suppression of pendency of criminal case - On the date of filing of attestation, petitioner was facing criminal trial - Pendency of criminal trial was suppressed by the Petitioner in attestation form - Held - Petitioner never had a clear intention and fair conduct to disclose his involvement in criminal case - Such conduct is unbecoming of a public servant - As the petitioner had concealed and suppressed the fact of pendency of criminal case, termination of his services on this ground does not call for interference - Petition dismissed : *Bhagwat Prasad @ Mewalal @ Mewaram Vs. State of M.P., I.L.R. (2011) M.P. 3058 (DB)*

- **Period of Probation** – Petitioner working as a librarian in the establishment of the respondent-school on probation for a period of one year extendable by two years – Petitioner’s performance during the period of probation was not found to be satisfactory and in spite of issuing letters of counselling he did not show any improvement – A charge sheet was issued to the petitioner, the authorities on their own accord did not proceed any further in the enquiry – Respondent issued the order of termination in view of terms of appointment letter – Held – No fault can be found in the action of authorities – Impugned order of discontinuance amounts to termination simplicitor and is neither punitive nor does it cast any stigma upon the petitioner : *Nitesh Singh Pawar Vs. Sainik Schools Society, I.L.R. (2012) M.P. 94*

- **Police Regulations, M.P., Regulations 238 & 241** – Termination on basis of conviction – Petitioner employee of police department as head constable – Terminated from service due to conviction under Section 388 of IPC – Conviction suspended in Criminal Appeal – Held – Criminal Appeal is still pending – No interference on the order of dismissal – Admission declined : *Dinesh Kadam Vs. State of M.P., I.L.R. (2015) M.P. 1217*

- **Powers of appellate authority** - Service of the respondent was terminated by the appellant bank after a departmental enquiry - Appellate authority directed reinstatement of the employee without any back wages - Employee did not prefer any appeal or cross objection against the denial of back wages - The denial of back wages became final - Granting of back wages (by Writ Court) was beyond the jurisdiction : *District Cooperative Central Bank Ltd., Satna Vs. Sunderlal, I.L.R. (2011) M.P. 2324 (DB)*

- **Reinstatement** – Initial appointment of the petitioner was made on the vacant post of the driver for 89 days after selection process – Extension was granted, but before

even completion of extended period he was regularized – Said post had fallen vacant due to promotion of one employee whose promotion order was subsequently quashed and he was again posted as driver – Thereafter, by impugned order petitioner was terminated – Although the said employee was again promoted and vacancy has again reoccurred – Held – Since earlier petition filed by the petitioner was disposed of directing the respondent to consider the case of the petitioner for appointment on the post of driver in preference why an advertisement was issued calling the application – It was also not put forth by the respondents that somebody more meritorious was considered and was found fit – Therefore, for the fault on the part of the respondent No. 1 the service career of a young person cannot be put in jeopardy – Petitioner be reinstated on the post of driver and be treated in continuous service for grant of seniority only without back wages : *Bahadur Singh Vs. District & Sessions Judge, I.L.R. (2014) M.P. 2037*

– **State Bar Council M.P. Service Rules, 1975** – Rule 5 – Writ of Mandamus – Termination of extended service – Petitioner attained the age of superannuation on 30th April, 2010 and was granted extension upto 30.04.2011 – On 30.04.2011 his extended service also came to an end and between 30th April, 2011 upto 04.09.2011, there was no order continuing him in service i.e. there was no contract of service subsisting as per law – Held – Once the contract of employment came to an end on 30.04.2011, the resolution of the Bar Council dated 04.09.2011 could not extend the service of the petitioner – The decision of the Council is a nullity and is unsustainable – The petitioner can not be deemed to be in service after 30.04.2011 – There could not be extension of a service which had already come to an end on 30.04.2011 – Court can not issue any mandamus for treating the petitioner to be in service – Petition dismissed : *Rajendra Jain Vs. State Bar Council of M.P., I.L.R. (2012) M.P. 1196*

- **Suppression** - Petitioner applied for post of 'Aganwadi' suppressing the fact that her husband was employed as Assistant Teacher and secured her appointment - Later on, she also took advantage of her experience on the post of 'Aganwadi' worker at the time of her selection to the post of 'Samvida Shala Shikshak' - Termination of petitioner in view of instructions dated 27.05.1996 issued by the State Government can not be said to be either discriminatory, arbitrary or violative of Article 14 and 16 of the Constitution of India : *Basanti Suryawanshi (Smt.) Vs. State of M.P., I.L.R. (2011) M.P. 2727 (DB)*

- **Unauthorized Absence** - The absence of petitioner for a period of 129 days was regularized by granting extraordinary leave under Regulation 180 of Police Regulations - Once, the leave was granted to the petitioner he cannot be subjected to punishment as grant of leave amounts to condonation of absence and therefore, he cannot be treated to be unauthorized absent from duty - Order of termination quashed, however,

petitioner is not entitled for back wages : *Ramesh Singh Jat Vs. State of M.P., I.L.R. (2013) M.P. *38*

- **Unauthorized Absence** - Appellant was a member of Armed Forces - He remained on unauthorized absence for 35 days - Medical certificates produced by him do not show that the illness of the appellant was serious - He could have undergone treatment while on duty in the company - It was incumbent upon him to send atleast an application for extending the leave if he was ill - Disciplinary and Appellate Authorities have taken into account each and every aspect of the matter - Appellant being the member of Armed Forces was supposed to discharge the duties in disciplined manner - Punishment of removal from services cannot be said to be disproportionate - Appeal dismissed : *Badshah Singh Vs. State of M.P., I.L.R. (2012) M.P. 2613 (DB)*

39. Transfer

- **Administrative Exigency or Punishment** - Petitioner posted as Deputy Director of Prosecution - During his tenure of 15 months he has not conducted any trial and has filed only 9 returns and one caveat application before High Court - Show cause notice issued to respondent No.3 is still under consideration - If the cases were not allotted to respondent No.3 then he should have brought this fact to the knowledge of Director of Prosecution - Work performed by respondent No.3 cannot be said to be an efficient work by Deputy Director - Transfer is not only an incident of service but a condition of service as well and is necessary in public interest and efficiency in public administration - Transfer order unless shown to be malafide or in violation of statutory provisions, not open to interference by Court - Whether transfer was in public interest requires adjudication on the basis of facts of each case - Order quashing the transfer of respondent No.3 set aside - Writ appeal allowed : *Arun Kumar Gupta Vs. State of M.P., I.L.R. (2012) M.P. *1 (DB)*

- **Breach of Statutory Provisions** - Transfer order can be assailed where there is some breach of statutory provisions, based on malafide or there is some arbitrariness - Mere fact that in a district, transfer orders affected more than 10% of the employees, can not be a ground to interfere in the transfer order : *Rajendra Kumar Shiv Vs. State of M.P., I.L.R. (2012) M.P. 2901 (DB)*

- **Complaint** - Complaint lodged against the petitioner by the district head of a political party - No other material brought on record to justify that the petitioner derelicted in his duty - Mere complaint cannot be a foundation for transferring an employee from one place to another - Order of transfer being apparently infested with malice cannot be given the stamp of approval - Transfer order quashed - Petition allowed : *K.S. Verma Vs. State of M.P., I.L.R. (2011) M.P. 1720*

– **Judicial Review** – Any order of transfer is to be examined only on three counts, namely the competence of the authority issuing order of transfer, the malafide of authority in actuating the order of transfer and the violation of the statutory rules while issuing the order of transfer : *Mukesh Rana (Subedar Major) Vs. Union of India, I.L.R. (2011) M.P. *96*

– **Policy** – Petitioners joined the services in Forest Department and were promoted as Range Officers and they have been transferred in Working Plan Unit – Held – Aspect of physical fitness of each of the petitioner has also not been examined by the respondent State while issuing the order of transfer – Since the word “retire shortly” has not been explained in the order passed in the earlier round of litigation by this Court and as per the earlier policy the cut off age was 48 years, therefore this Court is of the view that keeping in view the age of retirement is 60 years it will be appropriate to fix the cut off age of 58 years – Petition allowed : *Gend Singh Vs. State of M.P., I.L.R.(2015) M.P.601*

– **Rules** – Beyond the seniority unit – Permissible in absence of any prohibition in rules : *Awadesh Kumar Shrivastava Vs. State of M.P., I.L.R. (2012) M.P. 420*

– **Seniority** - Surplus list of employees was to be prepared in descending order - Petitioner is undisputedly senior to respondent no. 4 - Petitioner cannot be treated as surplus - Her transfer on the ground of being surplus is bad - Transfer order quashed : *Sushila Tiwari Vs. State of M.P., I.L.R. (2012) M.P. 2399*

– **Service Conditions** – Transfer is a condition of service - Order can only be interfered if it violates any statutory provision, proved to be malafide, changes service conditions of an employee to his detriment or is contrary to law : *K.K. Arya Vs. M.P. Madhya Kshetra Vidyut Vitran Company Ltd., I.L.R. (2013) M.P. 780*

- **Service Conditions** - Office order / Memorandum dated 10.02.2006 issued by Central Government regarding transfer of staff of industrial units to the Company - Order/Memorandum challenged on ground that service conditions of the employees have been altered to their detriment without affording any opportunity of hearing to them - Held - The memorandum provides that employees' remuneration, retirement benefits and other service conditions on absorption in the company shall not be in any manner inferior to existing one and their service condition in no manner would be altered to disadvantage of the employees, if they opt to serve in the Corporation - Further, the employees have been given the option either to opt for Government service or the services of the Corporation and majority of the employees have opted to serve in the Corporation which goes to show that their service conditions are in no way being altered to their

disadvantage - Writ petition dismissed : *S.P.M. Employees Union Vs. Union of India, I.L.R. (2011) M.P. 128 (DB)*

- **Stay of Operation of Transfer Order** - Appellant permitted to make representation pointing out his problems to the employer - No interim order till the decision of the representation can be issued as when the Court cannot entertain the writ petition, it cannot grant interim relief : *Karan Singh Vs. State of M.P., I.L.R. (2012) M.P. 2636 (DB)*

- **Stigmatic** - Mere mention of "vigilance directive" in the order can't be construed as pending enquiry transfer was made : *Sanjay Mourya @ S.K. Mourya Vs. Union of India, I.L.R. (2015) M.P. 1138 (DB)*

- **Terms and Conditions in Advertisement** - Appellant transferred from Bhopal to Bhubaneswar - Appellant, though appointed for the post of Regional Director, Bhopal, joined with open eyes that selected officer can be shifted from one regional committee to other on administrative exigency - Candidate applying pursuant to the advertisement will have to abide and will govern by all the terms and conditions given in advertisement - After having selected/appointed cannot renounce other conditions on the pretext that he applied for a particular post - Appeal dismissed : *H.S. Tripathi (Dr.) Vs. National Council for Teachers Education, I.L.R. (2011) M.P. 603 (DB)*

40. Voluntary Retirement

- **Application** - Appellant in his application for voluntary retirement did not raise any specific condition for appointment of his son but simply requested to consider on humanitarian ground - In the light of Rules request for appointment of his son cannot be treated as a condition precedent for his voluntary retirement - Application for voluntary retirement which was in prescribed form was rightly accepted by the authority - Appeal dismissed : *Kamta Prasad Pandey Vs. State of M.P., I.L.R. (2013) M.P. *20 (DB)*

- **Notice** - Notice of voluntary retirement is given, indicating a choice date, the same will become operative from the date mentioned in the notice, acceptance of the same is not necessary by the employer : *S.S. Nafde (Dr.) Vs. State of M.P., I.L.R. (2013) M.P. 572*

- **Withdrawal** - Appellant sought voluntary retirement from service (V.R.S.) - His application was accepted vide order dated 28.11.2001 w.e.f. 7.12.2001 - On 6.12.2001 appellant submitted a letter seeking withdrawal of his proposal of V.R.S. and prayed for giving him an opportunity to serve - Held - Appellant having submitted application seeking withdrawal of his V.R.S. a day prior to his effective date of retirement

- His prayer ought to have been accepted by the employer - Appeal allowed : *Sanjay Victor Vs. State of M.P., I.L.R. (2011) M.P. 598 (DB)*

41. Writ Petition

- **Misjoinder of Parties** – State Bar Council M.P. Service Rules, 1975 – Writ of Mandamus – Termination of extended service – Misjoinder of parties – Chairman terminating the extended service of petitioner – Individual Members of the Bar Council impleaded as party – They were not required to be impleaded – But on said ground the petition can not be dismissed : *Rajendra Jain Vs. State Bar Council of M.P., I.L.R. (2012) M.P. 1196*

- **Non Impleadment of Necessary Party** - Effect - Respondent being aware of the fact that the respondent No.4 was already selected and appointed on the same post, did not consider it necessary to implead the selected candidate as a respondent in the writ petition - Held - Without the impleadment of the said person as a party, no effective relief could have been granted to the respondent No.1 - Appeal partly allowed : *Moulana Azad National Institute of Technology Vs. Ajit Narayan, I.L.R. (2011) M.P. 2694 (DB)*

- **Permission for filing Writ Petition by an employee** - Normally permission ought to have been sought by the respondent from the authorities but when the action itself was intended to be taken by the appellants, there was no question of obtaining prior permission for filing a writ petition - An employee cannot expect a permission from the employer for grant of permission to an employee for filing a writ petition against the employer : *Board of Director M.P. State Warehousing Corporation Vs. Anil Kumar Saxena, I.L.R. (2013) M.P. 21 (DB)*

- **Public Interest Litigation** - Writ petition in nature of *Pro Bono Publico* - Challenging the wrong policies of State Government - Not a case that the candidates who could not appear in earlier examinations on account of alleged wrong policies of Government could not and cannot approach the court - Held - The female candidates cannot qualify as "little Indians" warranting entertaining this petition as PIL : *Paras Vs. State of M.P., I.L.R. (2013) M.P. 308 (DB)*

- **Writ of Quo Warranto** – The Writ of Quo Warranto can be issued only if it is found that a person has been appointed on a public post *dehors* the Rule or in violation of statutory provisions of law – Since nothing is spelt out as to how the appointment of respondent No. 5 is *dehors* the Rules or against the statutory provisions – No case is made out to invoke power by this court to grant a writ of quo warranto : *Dhanraj Singh Pusam Vs. State of M.P., I.L.R. (2014) M.P. 1761*

42. Miscellaneous

– **Caste Certificate** – No employer can take an action of removal of an employee only on the allegation that the same is invalid – Such action can only be taken after getting the Caste or Tribe verified from the High Power Screening Committee : *Dhanraj Singh Pusam Vs. State of M.P., I.L.R. (2014) M.P. 1761*

– **Conditions of Service** – Conditions of service are intended to be construed reasonably and too technical a view can defeat the essential spirit and intent embodied in them : *D. Subrahmanyam (Dr.) Vs. Dr. D.K. Pandey, I.L.R. (2012) M.P. *12 (DB)*

– **Equality** - Judgments - In service Jurisprudence, equality is to be granted in terms of the law laid down by the Courts of law : *Ashok Kumar Chouksey Vs. State of M.P., I.L.R. (2012) M.P. 2675*

– **Experience** – Experience gained before acquiring requisite educational qualification cannot be taken into consideration while determining the period of experience : *Sanjay Ku. Sahu Vs. State of M.P., I.L.R. (2015) M.P. 1189*

– **Penal Rent** - Deduction of - Petitioner retired from service in the year 1990 and occupied the official accommodation till 1996 - If the quarter is not vacated by the employee within the prescribed period, the sum of penal rent could not be directed to be recovered from the terminal benefits which were payable to the employee on the date of retirement : *H.P. Singh Vs. State of M.P., I.L.R. (2013) M.P. 102*

– **Place of Posting** - Revocation of Suspension - Whether employee can claim as a matter of right the place of posting from where he was placed under suspension ? - Held - A Government servant has a statutory right of lien to hold a substantive post and not a place - Govt. servant has no statutory, legal or constitutional right to get reinstated on the same place after revocation of suspension : *Dheer Singh Yadav Vs. State of M.P., I.L.R. (2013) M.P. *28*

– **Public Service** – Deputation can only be on temporary basis and in public interest to meet the exigency of public service – Provisions of Article 166 of the Constitution are only directory in character : *Anil Shrivastava (Dr.) Vs. State of M.P., I.L.R. (2015) M.P. 1749*

– **Repatriation** – Administrative instructions – Do not have any force of law – Since petitioners have continued on deputation for more than 10 years and by the impugned orders they are being posted in rural areas with the object to provide medical facilities to the public in general – There is no infringement of the legal rights of the petitioners in withdrawing their deputation – Petition dismissed : *Anil Shrivastava (Dr.) Vs. State of M.P., I.L.R. (2015) M.P. 1749*

– **Rules** – Relaxation – Power is conferred not for a person but in exigency of service, a factor depending upon the circumstances which may arise giving rise to occasional exercise of power to relax : *Union of India Vs. Shri Devraj Bais, I.L.R. (2012) M.P. 311 (DB)*

SETTLEMENT BEFORE COURT

– **Binding on Parties** – Settlement arrived at between the bank and the borrower will not bind the auction purchaser – Auction purchaser is free to assail the action of the bank in a separate proceedings : *Gaurav Enterprises (M/s.) Vs. State Bank of India, I.L.R. (2012) M.P. 49*

SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION & REDRESSAL) ACT, 2013 (14 OF 2013)

– **Section 11** – See – Constitution – Article 226 : *Ramesh Pal Vs. Union of India, I.L.R. (2015) M.P. 890*

SHASKIYA SEVAK (ADHIVARSHIKI-AYU) ADHINIYAM, M.P. (29 OF 1967)

– **Fundamental Rules** – **Rule 56**, Academy of Administration Services (Gazetted) Recruitment Rules, M.P. 1997, Rule 15 – Age of Superannuation – Rules 1997 have been framed under Article 309 of Constitution of India – Under Article 309 of Constitution of India, Rules can be framed regulating the recruitment and service conditions until provision is made in that behalf by or under an Act of appropriate legislature – Since, Rules 1967 have been framed therefore, they will have overriding effect on Rule 15 of Rules 1997 – Petitioner, a teacher, cannot be made to superannuate at the age of 60 years – Petition allowed : *Pratibha Rajgopal (Dr.) Vs. State of M.P., I.L.R. (2011) M.P. 892*

– **Fundamental Rules - Rule 56** - Age of superannuation of Librarian - By enhancing the age of superannuation of Librarian from 60 to 62 years, it cannot be said that the State Govt. has equated the post of Librarian with that of Teacher - Petition also filed after 19 years of superannuation - Suffers from delay and laches - Petition dismissed : *Hare Krishan Vs. State of M.P., I.L.R. (2013) M.P. *31*

– **Section 2**, Shaskiya Sevak (Adhivarshiki Ayu) Sanshodhan Adhinyam (M.P.) 2011, Public Health and Family Welfare (Gazetted) Service Recruitment (M.P.) Rules

2007, Public Health and Family Welfare Department (Directorate of Health Services) M.P. Class III, Nursing Services Recruitment Rules 1989 and Medical Education (Gazetted) Services Recruitment Rules (M.P.) 1987 Schedule I – The petitioners are school teachers and have not been appointed under the provisions of M.P. Educational Service (Collegiate Branch) Recruitment Rules 1990, or M.P. Technical Education Engineering College (Teaching Cadre) Service (Recruitment) Rules, 2004 or M.P. Technical Education Polytechnic College (Teaching Cadre) Service (Recruitment) Rules 2004 and therefore enhanced age of superannuation as prescribed by Rule 56(1-g),(1-h) and (1-i) of Fundamental Rules is not applicable to them as they are governed by the provisions of Rule 56(1-A) – Superannuation age continues to be 62 years – Rule 56(1-c) does not deal with the age of superannuation of teachers – Order of State Government confirmed – Few petitioners granted liberty to withdraw and challenge the vires of amended provisions – Rest petitions dismissed : *Sikandar Sabana (Ku.) Vs. State of M.P., I.L.R. (2012) M.P. *17*

**SICK INDUSTRIAL COMPANIES (SPECIAL PROVISIONS) ACT,
1985 (1 OF 1986)**

– **Section 13(3)**, Constitution - Article 227 - Appeal dismissed in default - Appeal filed by petitioner before AAIFR against the order of BIFR which was dismissed in default - Petition against dismissal of appeal in default is not maintainable as provisions provide for applicability of Civil Procedure Code to the cases pending before BIFR and its appellate authority - The forum for restoration of appeal is available before the same appellate authority - Held - In such premises of availability of appropriate forum, petition under this article cannot be entertained : *M.P. Madhya Kshetra Vidyut Vitaran Company Ltd. Vs. The Appellate Authority, I.L.R. (2014) M.P. 36 (DB)*

– **Section 15 & 22** – See – Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, Section 13(2), (4) : *Dhar Textile Mills Ltd. Vs. Canara Bank, I.L.R. (2011) M.P. 826 (DB)*

– **Section 22(1)** – Scope of protection of guarantors u/s 22(1) of the SICA – Held – Proceedings can be initiated against the guarantors for recovery even if company being registered under SICA and pending before Board for Industrial and Financial Reconstruction (BIFR) : *Radico Khaitan (M/s.) Vs. M.P. State Industrial Development Corporation Ltd., I.L.R. (2014) M.P. 1488*

– **Section 22(1)** – State Subsidy – That barring the amount towards State Subsidy the respondent is at liberty to recover other amount as mentioned in the Revenue

Recovery Certificate : *Radico Khaitan (M/s.) Vs. M.P. State Industrial Development Corporation Ltd., I.L.R. (2014) M.P. 1488*

SOCIETY REGISTRICKARAN ADHINIYAM, M.P. (44 OF 1973)

– **Section 2**, Prakoshtha Swamitva Adhinyam, M.P. 2000 (15 of 2001), Section 22 & 43(2) – Management & Maintenance by Society – Provisions contained under Section 22 of 2000 Act aims at having that the management and maintenance of Apartments vests with a single association and not with various association – Various groups of association may exist, but if they have not formed a Federal Association as provided under Section 22 of 2000 Act, they cannot claim separate management and maintenance of the apartment – Therefore, same has rightly been vested with Lake View Enclave Apartment Owners Welfare Association : *Ansal Welfare Vs. State of M.P., I.L.R. (2014) M.P. 1798*

– **Section 2**, Prakoshtha Swamitva Adhinyam, M.P. 2000 (15 of 2001), Section 22 & 43(2) – Registration of Society – Where association of persons constitutes the society and get it registered under 1973 Adhinyam to achieve the objects, the same cannot be questioned – Merely because the said society has taken up work of management and maintenance of apartments for the purpose of Act of 2000 and merely because as alleged one association of apartment owners can look after management and maintenance of the apartment ipso facto will not render the registration of Ansal Welfare Society illegal : *Ansal Welfare Vs. State of M.P., I.L.R. (2014) M.P. 1798*

– **Section 31(1) & 32(3)** - If a thing is required to be done in a particular manner in a statute, it has to be done in the same manner or not at all - The other methods which are not in consonance with the statute are forbidden : *Pratap Wahini Samaj Kalyan Sansthan Vs. State of M.P., I.L.R. (2013) M.P. *16*

- **Section 32** - Enquiry and settlement of disputes - Natural Justice - The principles of natural justice are implicit and are required to be read into section 32(4) of the Adhinyam - In cases, whether after supplying the result of the enquiry, the Registrar receives the response of the society and if he intends to pass any order which affects the right of the society in any manner or which may entail civil consequences, the Registrar is bound to follow the principles of natural justice and fair play in action : *Central Homeopathic & Biochemic Association, Gwalior Vs. State of M.P., I.L.R. (2013) M.P. 837*

– **Section 32(2)** – Membership granted by the M.P. Cricket Association to its new members between the period 2008-09 to 2011-12 was held to be void by the impugned order – Assistant Registrar initiated inquiry on the complaint of single member – Held – Section 32(2) of the Act, requires the application together with an affidavit in support of

its contents by a majority of the members of the governing body of the Society – Not less than 1/3 of the total number of members of the Society – Complaint did not satisfy the requirement of Section 32(2) of the Act – Impugned order cannot be sustained, hence quashed : *Madhya Pradesh Cricket Association Vs. Shri B.S. Solanki, I.L.R. (2014) M.P. 1820*

SOVEREIGN FUNCTION

- **What amounts to** - Whether transfer of assets & liabilities of the nine industrial units of Government of India, to the Security Printing and Minting Corporation of India Limited (incorporated as fully owned Government Company w.e.f. 13.01.2006), amounts to transfer of sovereign power and for such transfer sanction of the Parliament is required - Held - No sovereign function has been delegated or transferred to the Corporation, by such transfer - Further there is no statutory provision which requires that approval of the Parliament has to be obtained before transfer : *S.P.M. Employees Union Vs. Union of India, I.L.R. (2011) M.P. 128 (DB)*

SPECIAL POLICE ESTABLISHMENT ACT, M.P. (17 OF 1947)

- **Section 4** - See - Lokayukt Evam Up-Lokayukt Adhiniyam, M.P., 1981, Section 8 : *Ramesh Vs. State of M.P., I.L.R. (2011) M.P. *48 (DB)*

SPECIFIC RELIEF ACT (47 OF 1963)

- **Suit for Declaration** – Suit for declaration of right in joint family property is maintainable without a separate prayer for consequential relief of possession – Bar of Section 34 of Act, 1963 not attracted : *Pheraniya Vs. Maujilal, I.L.R. (2012) M.P. 968*

- **Section 5** - Recovery of Possession - Plaintiff having better possessory title was dispossessed by the defendants having no better title than him - He can sue for the restoration of possession : *Pratap Singh Vs. Mangal Khan, I.L.R. (2011) M.P. 2806*

- **Section 5** - Suit for possession - Plaintiff's name recorded as owner of suit property and adjoining plot recorded in name of State Government - Both plots have separate existence - Plaintiff had acquired title in respect to suit plot by registered sale deed - Respondents failed to file any documentary evidence either to prove their possession or title in respect to suit plot - No material on record to prove that suit plot was recorded in revenue record in name of State Government - Trial Court holding plaintiff to be owner and in possession of suit plot and same does not belong to State Government : *Collector, Jabalpur Vs. Smt. Chandrawati Saraf, I.L.R. (2014) M.P. 189*

– **Section 6** - Resistance - Plaintiff who is in possession of suit property, can resist interference of defendant who has no better title than himself and can get injunction restraining defendant from disturbing his possession : *Gulab Singh Vs. Virendra Singh, I.L.R. (2013) M.P. 1474*

– **Section 6** - Restoration of Possession - Plaintiff who was encroacher having no title over the suit property was in peaceful possession and whose possession was found in the revenue record - Defendant forcibly dispossessed him by taking law in his own hands - Plaintiff can sue the defendant/owner who has forcibly ousted him : *Gulab Singh Vs. Virendra Singh, I.L.R. (2013) M.P. 1474*

– **Section 6** - Suit for possession - Applicant failed to prove that he was ever inducted as tenant in suit shop or was ever dispossessed as claimed by him - In absence of any proof that he was dispossessed within six months from the date of filing the suit, the suit is not maintainable - Revision dismissed : *Kesh Kumar Vs. Raju @ Rajkumar, I.L.R. (2012) M.P. 3102*

– **Section 6** – Suit for recovery of possession – Dismissal – Barred by Time – Plaintiff dispossessed on 27.01.2004 – Suit filed on 14.10.2004 – Knowledge of dispossession shown in October, 2004 – Held – As the report of dispossession lodged on 27.01.2004, itself and the suit has not been filed within 6 months, so the suit is barred by time – Order of trial Court upheld – Revision dismissed : *Chanda Bai Bhura (Smt.) Vs. Inderchand Bhura, I.L.R. (2015) M.P. 2773*

– **Section 6** – Suit for recovery of possession – Factum of possession – Plaintiff's past possession not established – Held – As the past possession of plaintiff is not established, no question of dispossession arises – Revision dismissed : *Chanda Bai Bhura (Smt.) Vs. Inderchand Bhura, I.L.R. (2015) M.P. 2773*

– **Section 6** – Suit for recovery of possession – Plaintiff/respondent claimed title on the basis of an unregistered sale deed – Provisions of Act, 1963, Registration Act, Indian Stamp Act, and Contract Act are not to be ignored – Nothing on record that respondent No.1 was in lawful possession of the property – No decree can be drawn in her favor : *Aruna Gautam (Smt.) Vs. Smt. Arti, I.L.R. (2012) M.P. 1410*

– **Section 6** – Suit for recovery of possession – Provisions of Section 6 are attracted only if a person is dispossessed of immovable property of which he is legal owner or is in possession of the said property by virtue of law : *Aruna Gautam (Smt.) Vs. Smt. Arti, I.L.R. (2012) M.P. 1410*

– **Section 12**, Civil Procedure Code (5 of 1908), Order 39 Rule 1 & 2- Deed of agreement – Nature of – Agreement to sale mentions that Rs. 7 lacs out of 8 lacs have

been paid as advance and the plaintiff/tenant will not pay any amount of rent – Document itself contains that plaintiff/tenant would remain tenant till the execution of sale deed – Further plaintiff/tenant has averred that he had approached the defendants for execution of sale deed which means that he is not claiming himself to be the owner of the suit property - Document is an agreement of sale and not deed of conveyance – As serious disputed questions of facts are involved therefore, Trial Court rightly granted temporary injunction restraining the defendants from alienating the property : *Pushpmala (Smt.) Vs. Mahendra Singh, I.L.R. (2011) M.P. 2016*

– **Section 12** - Specific performance of contract - Registered sale deed dated 11.04.69 for consideration of Rs. 4000 with contemporaneous agreement of resale for the same amount executed - Plaintiff paid Rs. 3000 and fresh agreement executed on 11.09.72 with condition that plaintiff would pay balance of Rs. 1000 within a year and get registered sale deed executed - Held - Agreement dated 11.09.72 is a complete agreement - Non-production of agreement dated 11.04.69, inconsequential - More so, when the same is found to have been returned by plaintiff to defendant : *Ramesh Chandra Vs. Kamal Kishore, I.L.R. (2011) M.P. *15*

– **Section 16** - Readiness and Willingness - Former refers to financial capacity and the later refers to the conduct of the plaintiff wanting performance : *Sita Devi Soni Vs. Sharad Kant Soni, I.L.R. (2012) M.P. 2789*

– **Section 16** - Ready and willing to perform - Plaintiff had already paid 34,500/- on different dates out of total consideration amount of Rs. 36,000/- - It cannot be said that for the remaining meager amount of Rs. 1,500/- the plaintiff was not ready and willing to perform his part of contract - Merely notice was sent by plaintiff after near about 3 years would not mean that he was not ready and willing to perform his part of contract as he had explained in his evidence that he was constantly pursuing the defendant to execute the sale deed - Appeal partly allowed : *Suresh Chandra Mod Vs. Smt. Savitri Bai, I.L.R. (2013) M.P. 2835*

– **Section 16** - Specific Performance of Contract - Agreement to sell mentions that entire consideration amount has been paid and possession has been delivered - However, subsequent power of attorney allegedly executed by executant gives power to holder of power of attorney to receive advance amount, to sign agreements to sell, sale deed or any other document by receiving amount and to deliver the possession on the land - If only sale deed was remained for execution, then there was no need to execute the general power of attorney - Plaintiffs also failed to explain that when the entire consideration amount was already paid and possession was delivered, then executant could have executed the sale deed itself and there was no necessity to take her power of attorney - Holder of power of attorney is brother of one of the plaintiffs and power of

attorney holder in other four suits - Nothing on record that who purchased the stamp paper and who was the scribe of the agreement - No evidence brought to dispel such suspicious circumstances : *Vinod Agrawal Vs. Bharat Kumar Lathi, I.L.R. (2012) M.P. *84*

– **Section 16** - Specific Performance of Contract - Burden of Proof - Burden remains on plaintiff to prove that defendant had executed the agreement and not on the defendant to prove the negative - By taking a plea of impostor or execution of a forged document, the said burden would not shift on the defendant : *Vinod Agrawal Vs. Bharat Kumar Lathi, I.L.R. (2012) M.P. *84*

– **Section 16** - Specific Performance of Contract - Defendant alleged to have approached the plaintiff to sell 5 acres of land on 07.03.1990 and agreement to sell was executed on the same day - Normally intending purchaser will never purchase an immovable property without examining it - Suit property is also adjacent to river and growing good crops - Evidence available on record also shows that defendant was threatened by putting him into fear of his arrest by police and under coercion and undue influence he put his signatures upon the document of agreement of sale - Circumstances available on record clearly show that the agreement to sell was suspicious document - Suit dismissed - Appeal allowed : *Kishan Lal Vs. Ashok Kumar, I.L.R. (2013) M.P. 885*

– **Section 16** - Specific Performance of Contract - Defendant having 21 acres of land deriving profit out of it - No evidence that the defendant wanted to establish a business or was unable to manage the land or was not obtaining profit from the said land - Only 5 acres out of 21 acres of land was agreed to be sold - No evidence that defendant was in need of money - No explanation that why defendant agreed to sell the land to the plaintiff - Agreement of sale surrounded by heavy dark clouds : *Kishan Lal Vs. Ashok Kumar, I.L.R. (2013) M.P. 885*

– **Section 16** - Specific Performance of Contract or loan - Agreement to sell was executed for a consideration of Rs. 36,000/- - Rs. 5000/- were paid by way of advance - Rs. 29,500/- were paid on different dates which were endorsed by defendant by writing on the back side of the agreement - Defendant had also purchased Two N.S.C.s of Rs. 12,500/- out of Rs. 25,000/- paid by plaintiff - Possession of land was also given to the plaintiff - It cannot be said that there was no agreement to sell but it was a loan transaction : *Suresh Chandra Mod Vs. Smt. Savitri Bai, I.L.R. (2013) M.P. 2835*

– **Section 16** - Specific Performance of Contract - Plaintiff is alleged to have agreed to purchase 5 acres of land for a consideration of Rs. 50,000/- - Rs. 45,000 were paid on the date of execution of agreement - When the 90% of the total consideration was already paid then why sale deed was not got executed by paying the entire amount -

Explanation given by plaintiff that defendant was going to his village is not plausible because the agreement to sell was executed in Tehsil Kachehari - Why the sale deed was not executed in the office of sub-registrar which is situated in the same locality is an another circumstance which makes the agreement of sale highly suspicious : *Kishan Lal Vs. Ashok Kumar, I.L.R. (2013) M.P. 885*

– **Section 16** - Specific Performance of Contract - Readiness and Willingness - Framing of issue - It is the statutory requirement and duty of the Court to frame issue and address itself to the issue of readiness and willingness - Even if the defendant has not taken the defence, it is mandatory to the Court to frame issue with reference to Section 16 and decide it - Matter remanded back to trial court to frame the issue and decide the said after the parties are permitted to lead evidence : *Sita Devi Soni Vs. Sharad Kant Soni, I.L.R. (2012) M.P. 2789*

– **Section 16** - Specific performance of contract - Readiness and willingness - No pleading and proof about readiness and willingness on the part of plaintiff - Held - No objection in written statement - No issue raised in the trial Court - Defendants did not move any application to frame any issue on this point - Parties were not at issue on the question of readiness and willingness : *Ramesh Chandra Vs. Kamal Kishore, I.L.R. (2011) M.P. *15*

– **Section 16** - Specific Performance of Contract - Readiness and Willingness - Readiness and willingness is still required to be proved even when the entire consideration amount is paid and possession is delivered - Readiness and willingness to perform ones part of contract and its obligation also includes purchasing of stamp duty and registration charges of sale deed which is incumbent upon vendee as per evidence on record - Plaintiffs have failed to prove their readiness and willingness to perform their part of contract : *Vinod Agrawal Vs. Bharat Kumar Lathi, I.L.R. (2012) M.P. *84*

– **Section 16** – Specific Performance of Contract – Ready and Willingness – Unless and until there is a finding that the plaintiff is not ready and willing to purchase suit property, decree of specific performance of Contract normally should not be denied : *Babu Lal Vs. Hira Lal, I.L.R. (2012) M.P. 480*

– **Section 16** - Specific Performance of Contract - Reasonable time - Agreement was executed on 23.02.1983 - Sale deed was to be executed upto 31.05.1983 - Plaintiff gave notice on 07.08.1985 i.e. after a period of two years and three months - Suit was filed on 04.04.1986 - Suit was not filed within reasonable time : *Umanarayan Vs. Sant Kumar, I.L.R. (2013) M.P. 1137*

– **Section 16** - Specific Performance of Contract - Reasonable Time - In case of specific performance of contract, filing of a suit within a reasonable time to grant the

discretionary relief is having substance to the issue - Alleged agreement to sell was executed on 30.08.1990 - Executant died on 25.12.1992 - Suit filed on 01.05.1995 - Plaintiffs must explain that why the suits were not filed during the life time of executant showing readiness and willingness to get the sale deed executed - Even if time may not be the essence of contract but filing of suit after 4 ½ years is not within reasonable time : *Vinod Agrawal Vs. Bharat Kumar Lathi, I.L.R. (2012) M.P. *84*

– **Section 16** - Specific Performance of Contract - Seller is an old, illiterate lady who is the resident of Sagar - Agreement to sell executed at Bhopal - Burden of proof lies on the intended purchasers to establish execution of the sale agreements after explaining the contents to executant and its genuineness to get decree of specific performance of contract - It is not merely a physical act of the executant, but also the mental act of the person executing the document is of great value : *Vinod Agrawal Vs. Bharat Kumar Lathi, I.L.R. (2012) M.P. *84*

– **Section 16 & 20**, Land Revenue Code, M.P. (20 of 1959), Section 165(6) – Specific Performance of Contract – No pleading by the Defendant that he belongs to aboriginal tribe – Bar as contained under Section 165(6) of Code, 1959 does not apply – Appellate Court can not make out a case which was not pleaded in written statement – Appellant entitled for decree of specific performance of Contract : *Babu Lal Vs. Hira Lal, I.L.R. (2012) M.P. 480*

– **Section 16 & 20** – Readiness and Willingness – Agreement containing a stipulation that to get the sale deed executed it is necessary that plaintiff should obtain permission from the Gram Panchayat for construction and should raise some construction – The plaintiff neither obtained any permission from the Gram Panchayat for construction nor raised any construction on the plot – Nearly after a period of three years from the date of execution of the agreement, the plaintiff for the first time sent a notice – No averment in plaint that plaintiff made any effort for execution of the sale-deed from the date of execution of the agreement till notice was sent – In plaint, the plaintiff has merely stated that he is ready and willing to deposit the balance of amount of sale consideration in the CCD as and when the Court passes an order in this regard – Held – Plaintiff has neither pleaded his readiness and willingness to perform his part of the contract nor has proved the same – Merely because maximum part of the sale consideration has been paid by the plaintiff, it can not be inferred that plaintiff is ready and willing to perform his part of the contract : *Ashish Kumar Vs. Smt. Rukmani Devi, I.L.R. (2012) M.P. 1275*

– **Section 16 & 20** - Readiness & Willingness - Plaintiff deposed that he was ever ready for registry and even today he is ready - He further deposed that during the period of four months as stipulated in agreement defendant sent a letter Ex. P/2 to him and Ex. P/3 to his agent (PW 2) - P.W. 2 supported the version of plaintiff and deposed that he

also wrote a letter to defendant and her husband for execution of sale deed and even he visited their place at Allahabad for this purpose -Considering the letters Ex. P/2, P/3 and Ex. P/4 written by the husband of defendant No. 1, inference can be drawn that before execution of sale deed and registry, defendant No. 1 has to prepare the document like Reen-pusthika and same was got prepared through PW2, mediator/commission agent - Executant of agreement/defendant No.1 though filed written statement of total denial of execution of agreement to sell but she did not appear before the Court to contradict the evidence of plaintiff - There was continuous correspondence between plaintiff and defendant through her husband an advocate by profession - Held - In these circumstances, it can not be said that plaintiff was not ready and willing to perform his part of the contract : *Surendra Kumar Agarwal Vs. Narayan Prasad Agarwal, I.L.R. (2011) M.P. *143*

– **Section 16(c)** - Readiness & Willingness - Plaintiff compelling defendant for closing of windows and ventilators and making partition wall, which was not a part of the contract - Held - The plaintiff was not ready & willing for getting sale deed executed in his favour and he himself was avoiding to perform the agreement by imposing arbitrary conditions : *Kaluram Agarwal Vs. Dinesh Kumar, I.L.R. (2013) M.P. 1689*

– **Section 16(c)** - Specific Performance of Contract - Readiness and willing to perform - There was no clause that the sale deed would be executed after the diversion of land - No such clause was mentioned in the notice - No averment in plaint that diversion was the condition precedent for execution of sale deed however, such averment was incorporated later on by way of amendment - Held - Plaintiff was insisting on the performance of a condition which was not a part of the agreement - Plaintiff was not ready and willing to go ahead with agreement on the terms and conditions stipulated therein - It can be safely inferred that the plaintiff was not ready and willing to perform his part of contract : *Umanarayan Vs. Sant Kumar, I.L.R. (2013) M.P. 1137*

– **Section 16(1)(c)** – Readiness & Willingness – Notice was duly replied by the defendant showing willingness to execute sale deed in terms of agreement which was not replied by the plaintiff – He himself was not willing to perform the contract – As per section 16 of the Specific Relief Act he is not entitled for any relief – Finding of Trial Court is affirmed – Appeal dismissed : *Ashok Kumar Barman Vs. Smt. Kanti Gupta, I.L.R. (2015) M.P. 415*

– **Section 16(1)(c)** – Specific performance of contract – Plaintiff contended that he paid money to defendant and defendant had also made endorsement on the agreement – Plaintiff did not produce original agreement on the ground that defendant is in possession of the same – Money was not paid by cheque nor receipt thereof was obtained – Held – Plaintiff failed to prove payment of money in terms of agreement – Story put

forth by plaintiff does not find place in notice – Plaintiff rightly disbelieved : *Ashok Kumar Barman Vs. Smt. Kanti Gupta, I.L.R. (2015) M.P. 415*

– **Section 20** - Specific Performance of Contract - Decree of specific performance is a discretionary relief and Court is not bound to grant such relief on its asking - Although discretion is to be exercised on the basis of sound and reasonable grounds but the Court should take care to see that it is not used as an instrument of oppression to have unfair advantage to the plaintiff - Value of the house at the time of agreement was more than Rs. 2 lacs and would never fetch the value of Rs. 25,000/- on the date of agreement - Appeal is partly allowed - Decree of Specific Performance of Contract set aside - Plaintiff is entitled to a decree of refund of advance amount of Rs. 22,984/- with interest @ 6% per annum : *Dulari Bai (Smt.) (Dead) Vs. Rameshwar Dayal Shrivastava, I.L.R. (2013) M.P. 1619*

– **Section 20** - Specific Performance of Contract - Discretion of Court - An agreement is read as a whole in order to ascertain true intention of the parties and if it is carved out that description of the property is not certain, the suit of specific performance of contract cannot be decreed : *Kashi Ram Vs. Mitthu Lal, I.L.R. (2013) M.P. 410*

– **Section 20** - Specific performance of contract - The plaintiff himself was avoiding the performance of the contract - He unnecessarily burdened the defendant with conditions, not a part of the contract before execution of sale deed - The trial court committed no mistake in refusing the decree for performance of contract : *Kaluram Agarwal Vs. Dinesh Kumar, I.L.R. (2013) M.P. 1689*

– **Section 20** - Suit for specific performance - Agreement to sell or loan transaction - More than 90% of the sale consideration and that too in odd figures of Rs. 22,984/- is alleged to have been paid at the time of agreement - In agreement it was mentioned that one gentleman is residing in the suit property and the sale deed will be executed after getting it vacated from him - In plaint it was mentioned that as the defendants are not getting the suitable alternative accommodation therefore, time for the execution of sale deed was extended thrice - Plaintiff also admitted that he does not know about the measurements of the house - Conduct of plaintiff in agreeing to purchase a house without inspecting it is highly unnatural - It can be inferred that real intention was not to purchase the house in question and the defendant never intended to sell the house to plaintiff : *Dulari Bai (Smt.) (Dead) Vs. Rameshwar Dayal Shrivastava, I.L.R. (2013) M.P. 1619*

– **Section 22** - Refund of earnest money - Earnest money for part consideration of the contract and mentioned as such in the contract - No clause forfeit for earnest

money made in the contract -The defendant has a duty to refund it to the plaintiff with interest : *Kaluram Agarwal Vs. Dinesh Kumar, I.L.R. (2013) M.P. 1689*

– **Section 28** – Rescission of Contracts, the specific performance of which has been decreed – Decree for specific performance of contract was passed with a direction that Judgment debtor shall execute the sale deed after receiving the remaining consideration amount within one month from the date of decree – Decree holder neither deposited the remaining amount nor filed any application for extension of time – Decree holder failed to perform his part of contract – Matter remanded back to Executing Court for decision on application under Section 28 for rescission of contract afresh : *Murlidhar Pinjani Vs. Satyakam Tandon, I.L.R. (2015) M.P. 3395*

– **Section 34** – Consequential relief – Appellant filed suit for declaration that she is married wife of one Santosh Guru and is entitled for an amount of Rs. 2,80,000/- – No relief that the amount be paid to her was sought – In absence of consequential relief, suit for declaration simpliciter is not maintainable : *Meera Bai (Smt.) Vs. Ramesh Guru, I.L.R. (2015) M.P. 1020*

– **Section 34** - Consequential relief - Finding arrived at by courts below in respect of plaintiff in not seeking consequential relief and the plaint being hit by proviso to Section 34 of the Act cannot be faulted with : *Bhagwati (Smt.) Vs. M.P. Housing Board, I.L.R. (2014) M.P. 441*

– **Section 34** - Declaration of title - Municipality had given the building for running the Higher Secondary School for Girls till separate building is constructed - School was subsequently shifted to newly constructed building however, respondent started claiming ownership of the building on the ground that it has vested in State Govt. - Defendants in various documents admitting the ownership of the plaintiff/Municipality - No document to show that the ownership of the building was ever transferred to the State Govt. - Plaintiff has succeeded in proving its ownership over the building : *Nagar Palika Parishad Vs. State of M.P., I.L.R. (2013) M.P. 1092*

– **Section 34** – Discretion of Court as to declaration of status or right – Plaintiffs not in possession of property – Suit for declaration without claiming relief of possession not maintainable : *Babu Lal Jain (Dead) Vs. Achal Kumar Bhatia, I.L.R. (2011) M.P. *66*

– **Section 34** - Further Relief - If in some revenue proceedings an order has been passed to evict the plaintiffs, unless and until the same is challenged by the plaintiffs and relief is sought for its quashment, the suit is hit u/s 34 of the Act : *Rashid Khan Vs. State of M.P., I.L.R. (2011) M.P. 2801*

– **Section 34** – See – Civil Procedure Code, 1908, Section 100 : *Vijay Bahadur Singh Vs. Rameshwar, I.L.R. (2014) M.P. 1879*

– **Section 34** - Specific Performance of Contract - Decree of specific performance was passed in favour of the plaintiff directing him to pay the balance amount of sale consideration to defendant till 30.10.2004 and in case the said amount is not accepted it may be deposited in the Court - Amount was sent by M.O. on 20.10.2004 - But was refused by defendant - Held - Executing Court cannot go beyond the decree - Permission to deposit the balance amount should have been granted by the executing Court - Impugned order set aside : *Anil Kumar Sahu Vs. Bhoora, I.L.R. (2013) M.P. 2791*

– **Section 34** - Suit for declaration - Consequential relief of possession - Plaintiff filed suit for declaration of her share in the property, for declaration of charge of her maintenance over disputed property and for declaration that the will is void ab-initio - Plaintiff is required to value the suit and pay court fees for every relief - However, if the plaintiff wants to keep the disputed property in joint ownership to maintain the unity of the family then even in absence of prayer for partition and separate possession, the suit could be entertained and adjudicated - Plaintiff may file a suit for possession subsequently after the declaration of her rights - Dismissal of suit for want of consequential relief of possession bad in law - Order set aside : *Jamna Devi (Smt.) Vs. Rajendra Prasad Ji, I.L.R. (2013) M.P. 1004*

– **Section 34** – The suit filed by plaintiff is hit by proviso to Section 34 of Specific Relief Act – Appeals are dismissed : *Vijay Bahadur Singh Vs. Rameshwar, I.L.R. (2014) M.P. 1879*

– **Section 34 & 38**, Criminal Procedure Code, 1973 (2 of 1974), Section 145 – Possession of Receiver – Permanent Injunction – Possession of property taken from plaintiff and given to Supurdgidar under Section 145 of Code – It shall be deemed that plaintiff was in possession of suit property because supurdgidar holds possession for the person who is actually entitled to obtain the possession – Plaintiff not required to seek the relief of possession : *Ganga Bai Vs. Devi Singh, I.L.R. (2012) M.P. 490*

– **Section 38** - After acquisition of land and receiving the compensation, the person whose land was acquisitioned does not have any right or authority to file the suit for perpetual injunction or to sale the same - Purchasers on the strength of such defective title of their predecessor also do not have any right or authority to file a suit for perpetual injunction stating that they are in settled possession of the property : *Mohd. Ashraf Vs. M.P. Housing Board, I.L.R. (2011) M.P. 182*

– **Section 38** - Permanent Injunction - State Government admitting the possession of plaintiff for 12 years prior to the date of the filing of the suit - From the

record it is proved that from 1956-57 to 1963-64 the suit property has been recorded in the name of 'T' - Defendant-State Government has not filed any document in order to show when the suit property came in the ownership of State or when the Bhumiswami rights of 'T' were extinguished - Held - Appellate Court rightly granted the decree of permanent injunction in favour of respondent/plaintiff, holding him not to be a trespasser on the Government land : *State of M.P. Vs. Mangilal, I.L.R. (2011) M.P. 3106*

– **Section 38** - See - Krishi Prayojan Ke Liye Upayog Ki Ja Rahi Dakhal Rahit Bhoomi Par Bhoomiswami Adhikaron Ka Pradan Kiya Jana (Vishesh Upabandh) Adhiniyam, M.P., 1984, Section 3 : *Sharda Prasad Vs. State of M.P., I.L.R. (2011) M.P. 461*

– **Section 38** – See – Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993, Section 107 & 108 : *Shanta Bai (Smt.) Vs. Kundlik, I.L.R. (2014) M.P. 1117*

– **Section 41** – Injunction – No injunction can be granted against any coparcener – Each coparcener is having equal right in the property : *Gajendra Rao Vs. Murti Shri Ganpati Ji Maharaj, I.L.R. (2012) M.P. *4*

– **Section 41** - Perpetual Injunction - Section lays down that when an injunction can not be granted - This section does not prohibit civil Court granting decree for perpetual injunction in the absence of the relief regarding declaration of title : *Municipal Council, Jaora Vs. Chand Khan, I.L.R. (2011) M.P. 2493*

– **Section 41 & 42** – See – Civil Procedure Code, 1908, Order 39 Rule 1 : *Ajay Narang Vs. M/s. Ram Enterprizes, I.L.R. (2011) M.P. 2162*

– **Section 41(b)** – See – Civil Procedure Code, 1908, Order 39, Rule 1 & 2 : *Ram Narayan Vs. Arvind, I.L.R. (2014) M.P. 3201*

– **Section 41(h)** – Injunction should be refused when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust. Plaintiffs are having an efficacious remedy to file necessary application before the Registrar of Company u/s 84 of the Companies Act : *Kamalkant Goyal Vs. M/s. Lupin Laboratories Ltd., I.L.R. (2011) M.P. 2191*

– **Section 42** - Suit for declaration - Respondent filed suit against appellant No.1 only alleging that plaintiff has purchased the property from appellant No.2 and the appellant No.2 now wants to dispossess the plaintiff - Appellant No. 2 was a necessary party however, was impleaded as a defendant at a much later stage - Held - Cause of action accrue on 11.4.1999 therefore, suit against appellant No.2 should have been filed within 3 years from 11.4.1999 - Relief as claimed by respondent could not have been granted without impleadment of appellant No. 2 - As the suit filed by respondent against

the appellant No.2 was barred by time, therefore, the suit filed by respondent is liable to be dismissed : *Vinod Guru Vs. Parul Soni, I.L.R. (2012) M.P. 1911*

STAMP ACT (2 OF 1899)

– **Fiscal Enactment** – Stamp Act is a fiscal enactment intended to secure revenue for the State : *Gurunanak Medical and Surgical Agency (M/s) Vs. Sita Ram Shivhare, I.L.R. (2011) M.P. 1637 (FB)*

– **Section 2** - Application of stamp duty to instruments - Principles governing application of Stamp Act to instrument - Explained : *Radhyshyam Mishra Vs. Prem Narayan Sharma, I.L.R. (2011) M.P. 732*

– **Section 2(5) & (22)** - Bond, Agreement and Promissory Note - Distinction - Explained : *Radhyshyam Mishra Vs. Prem Narayan Sharma, I.L.R. (2011) M.P. 732*

– **Section 2(5) & 40** - Land of respondent acquired by petitioner - In furtherance of stipulations, contained in sale deed, a document called 'Ikrarnama' was executed - The document provides for payment of Rs.5000/- p.m. to dependants having undivided share till they attain 58 years of age - Held - The instrument does not acknowledge pre-existing liability because the circular of State Govt. referred to by petitioner lays down an employment in lieu of purchase of land - Instrument is a bond : *Prism Cement Ltd., Satna Vs. State of M.P., I.L.R. (2011) M.P. 71*

– **Section 2(14) & Entry 1-A(e)** – Instrument – Agreement to sale – Term “instrument” is wide enough to cover a document by which any right or liability is either created or purported to be created, transferred, limited, extended, extinguished or recorded – It covers any “instrument” which is related to the sale of immovable property – Words “relating to the sale of immovable property” are very wide than “Agreement to sale” – Document would fall under entry 1-A(e) of the Act, 1899 and not under 1-A(g) – Court directed to impound the document and send it to Collector for adjudication – Petition allowed : *Rajendra Syal Vs. Hari Prasad Agrawal, I.L.R. (2014) M.P. 1296*

– **Section 2(14)** - Instrument - In order to determine whether any duty is chargeable upon an instrument, the legal rule is that the real and true meaning of the instrument is to be asserted : *Deochand Bhura (Dr.) Vs. State of M.P., I.L.R. (2013) M.P. 1870*

– **Section 4 & Article 5(e)(i) of Schedule 1A** – Agreement to sell – Insufficiently stamped – Admissibility – In agreement to sell, there is recital of handing over the possession and document is not properly stamped – Document cannot be admitted in

evidence for any purpose including collateral purposes : *Kailash Chandra Vs. Dwarkadhees, I.L.R. (2014) M.P. 2295*

– **Section 11**, Stamp Rules, M.P. 1942, Rules 15 & 17 - Apart from the requisite revenue stamp on the promissory note, adhesive stamp also pasted - The document itself cannot be said to be inadmissible in evidence : *Khamir Singh Vs. Radheshyam Bansal, I.L.R. (2011) M.P. 387 (DB)*

– **Section 29** - Liability to pay duty - Bond - Duty shall be borne by person drawing, making or executing such instrument : *Prism Cement Ltd., Satna Vs. State of M.P., I.L.R. (2011) M.P. 71*

– **Section 29 & 48** - Recovery of Stamp Duty/or Penalty - Society purchased the property from its owners by sale deed and subsequently sold it to the appellants - State has no authority to recover the shortage of stamp duty on the sale deed executed in favour of the Society or penalty therefor, from the subsequent purchasers/appellants : *Hemlata (Dr.) Vs. State of M.P., I.L.R. (2011) M.P. 2672 (FB)*

– **Section 31** – Mortgage Deed – Stamp Duty – Instrument of mortgage executed between LIC and petitioner contained two contingencies – First part of mortgage was extended for the fresh loan and second part with regard to the mortgage of the properties for the purposes of securing the outstanding loan – Held – Collector rightly imposed the stamp duty for freshly granted loan as per Article 32(c) of Schedule 1A and for mortgage of the assets of the petitioner security the outstanding loan the stamp duty as per Article 40(c) – Petition dismissed : *Electricity Board, Rampur, Jabalpur (M.P.) Vs. Collector of Stamps Cum District Registrar, Jabalpur, I.L.R. (2012) M.P. *22*

– **Section 31 & 40** – Penalty – While imposing the penalty the Collector of Stamps has not applied its mind that whether the imposition of penalty is just and proper, especially in a case where petitioner himself had approached the authority, as it was the award which was passed by the Arbitrator on a Stamp paper of Rs. 100/- for which the petitioner cannot be held responsible – Impugned order is set aside to the extent whereby penalty has been imposed – Authority is directed to re-decide the imposition of penalty by passing a reasoned order after giving an opportunity of hearing to the petitioner : *Bridge Stone India Pvt. Ltd. Vs. State of M.P., I.L.R. (2014) M.P. 2307*

– **Section 33** – Impounding of document – Stage thereof – The moment a document is produced before an authority and is insufficiently stamped, the same has to be mandatorily impounded : *Sneh Farms & Agro Products Ltd., Indore Vs. Pankaj Agrawal, I.L.R. (2015) M.P. 1191*

– **Section 33** – Impounding of insufficiently stamped document – When it is to be impounded – The moment it is produced before an authority or when the document is tendered in evidence – Held – It is mandatory for an authority to impound a document produced before him or which comes before him in the performance of his function : *Sneh Farms & Agro Products Ltd., Indore Vs. Pankaj Agrawal, I.L.R. (2015) M.P. 1191*

– **Section 33 & 35** – Impounding of insufficiently stamped instrument – When an insufficiently stamped instrument is tendered in the Court, the Court is duty bound to impound the same – Court has the power to admit the document in question on payment of duty with which the instrument is chargeable or amount required to make up the deficiency together with penalty - When the instrument is impounded but has not been admitted in evidence, on payment of penalty and duty, the Court has to send the document to the Collector and the Collector is required to deal with the document in the manner prescribed under Section 40 : *Bhagwati Prasad Vs. Smt. Mathura Devi, I.L.R. (2012) M.P. 726*

– **Section 33(2)(a) & 35** – See – Negotiable Instruments Act, 1881, Section 138 : *Ramesh Giri Vs. Dheeraj Gobhuj, I.L.R. (2015) M.P. 1106*

– **Section 35** - Document neither stamped nor registered - Family settlement cannot be read in evidence, as the same is an unstamped document - Even if the document is treated to be an 'instrument', 'agreement' or 'settlement', the same cannot be read in evidence for any purpose : *Malti Bai (Smt.) Vs. Smt. Khilona Bahu, I.L.R. (2013) M.P. 2904*

– **Section 35** - Registration of document - Document not drawn up on the proper stamp duty and the same is not registered under the prescribed procedure, then such document is inadmissible under the law : *Hargovind Vs. Sagun Bai, I.L.R. (2013) M.P. 401*

– **Section 35** - See - Penal Code, 1860, Section 420 : *Dharmendra Bhura Vs. State of M.P., I.L.R. (2013) M.P. *27*

– **Section 35 & 36** – Admissibility of document – Partition deed got exhibited in previous litigation – Respondent is not estopped by his conduct from raising an objection with regard to admissibility of the partition deed : *Mamta Awasthy (Smt.) Vs. Ajay Kumar Shrivastava, I.L.R. (2011) M.P. 1680*

– **Section 36** - Admissibility of document - Where an instrument has been admitted in evidence, such admission shall not, except as provided in Section 61, be called in question at any stage of the same suit or proceeding on the ground that the instruments has not been duly stamped : *Radhyshyam Mishra Vs. Prem Narayan Sharma, I.L.R. (2011) M.P. 732*

– **Section 47-A** – Opportunity of hearing – Sub-Registrar on being satisfied that sale-deed produced before him does not reflect the market value – He referred the instrument to Collector after conducting spot inspection and assessing market value – No fault can be found in the action of Sub-Registrar – However, Collector before passing order u/s 47-A should afford opportunity to respondent to rebut the market value assessed by the Sub-Registrar – Matter remitted back to Collector : *State of M.P. Vs. Suresh Khandelwal, I.L.R. (2011) M.P. 823 (DB)*

– **Section 48-B** – Limitation of 5 years – Agreement executed on 30/12/2002 on stamp of Rs. 100/- – Complaint filed on 12/09/2008 alleging evasion of stamp duty – Collector of Stamps imposed duty of Rs. 60,529/- and penalty of Rs. 20,000/- – Board of Revenue upheld the order of Collector Stamps – Agreement was executed on 30/12/2002 whereas complaint was made on 12/09/2008 – Complaint was barred by time which was not taken note of by Board of Revenue – Matter remitted back to BOR : *Bank of Rajasthan Ltd. Vs. State of M.P., I.L.R. (2015) M.P. *16*

– **Section 49** – Collateral purpose – Partition deed which is unregistered and unstamped can not be looked into for even collateral purposes : *Mamta Awasthy (Smt.) Vs. Ajay Kumar Shrivastava, I.L.R. (2011) M.P. 1680*

– **Section 54** – Execution of document – If there is any irregularity in the use of stamp then on this ground the document could not be termed as invalid or could not be classified as inadmissible in evidence : *Gurunanak Medical and Surgical Agency (M/s) Vs. Sita Ram Shivhare, I.L.R. (2011) M.P. 1637 (FB)*

– **Article 5, 6 & 33** - Agreement of hypothecation - Agreement of hypothecation was executed on 17-4-2001 - Article 33 came in force on 13-8-2002 - Therefore, Article 5 would apply in the facts of the case and not Article 6 - Trial Court directed to decide the admissibility of documents keeping in view the provisions of Article 5 : *Mahindra & Mahindra Financial Services Ltd. (M/s.) Vs. M/s. Life Care Logistic Solutions, I.L.R. (2012) M.P. 2135*

– **Article 5(d) & Schedule I-A**, Arbitration and Conciliation Act (26 of 1996), Section 11(6) – Appointment of Arbitrator – Clause 19 of the agreement provides that if the dispute arises between the party same can be resolved by appointing one arbitrator each – The aforesaid clause is in contravention of Section 10(1) of the Act which provides that number of arbitrator shall not be an even number – Hon'ble Mr. Justice V.K. Agrawal is appointed sole arbitrator – Parties shall appear before him : *Alfa Constructions (M/s.) Vs. Vinod Kumar Thareja, I.L.R. (2015) M.P. 239*

– **Article 5(d) & Schedule I-A**, Arbitration and Conciliation Act (26 of 1996), Section 11(6) – Requirement under Article 5(d) of Schedule I-A of the 1899 Act – Since there is no stipulation in the agreement that building shall be held jointly or severally by the person other than the owner and remaining part thereof shall be sold jointly or severally by them, agreement is not required to be stamped : *Alfa Constructions (M/s.) Vs. Vinod Kumar Thareja, I.L.R. (2015) M.P. 239*

– **Article 5(e)(ii) & Section 2(23) & 35(b)** - Suit for recovery of money - Petitioner agreed to purchase the flat for a consideration of Rs. 19,50,000/- and paid a sum of Rs. 21,000/- as earnest money - Receipt of Rs. 21,000/- not disputed - Petitioner wants to use the document (agreement dated 22.11.2008) as receipt - Held - Petitioner is permitted to adduce the document Ex.P/1 (agreement dated 22.11.2008) in evidence, which shall be admissible for collateral purpose to prove the receipt of the amount : *Hasmukh Jain (Gandhi) Vs. Smt. Sudha, I.L.R. (2013) M.P. 2820*

– **Article 23** – Schedule I-A – Petition against rejection of application praying that the document dt. 30.05.1993 be impounded and sent to Collector of Stamps – Agreement was on stamp paper of Rs. 10 – There is recital in the agreement relating to possession – Right of ownership was also given – Respondent was also permitted to use the property in its own manner – Held – A party cannot be permitted to approbate and reprobate – One cannot claim the ‘benefits’ under the document – By contending that it is a duly executed document, but at the same time contend that the ‘document’ is not conveyance, respondent cannot escape liability to pay duty and penalty – Court below is directed to impound the document and send it to Collector of Stamp for assessment of duty and penalty if any : *Mohd. Ayyub Khan Vs. Laxman Gawli, I.L.R. (2014) M.P. 2044*

– **Article 55**, Benami Transactions (Prohibition) Act, (45 of 1988), Section 3 & 4 - Stamp - Relinquishment deed - It is the pre-existing right in property which pre-supposes the relinquishment - Respondent is alleged to have admitted that the petitioner had purchased the property in the name of his father in Sahmati Soochak Ikrarnama - In view of Section 3 and 4 of Act, 1988, the petitioner can not claim that he has an exclusive right over the property which stood in the name of the father and after his death, it passed on to the legal representatives - It cannot be said that respondent had no antecedent right, title or interest in suit property - Document was rightly not taken in evidence being inappropriately stamped : *Govind Sharan Vs. Har Govind, I.L.R. (2012) M.P. 1597*

– **Clause (d), Article 45 of Schedule 1-A (State Amendment Act (M.P.), 2002)** - Constitutional Validity - High Court wrongly struck down the provision as ultra vires being arbitrary, unreasonable and irrational without consideration that legislature has sought to curb inappropriate mode of transfer of immovable properties - Provision Intra Vires : *State of M.P. Vs. Rakesh Kohli, I.L.R. (2012) M.P. *83 (SC)*

STAMP RULES, M.P. 1942

– **Rule 3** – Special adhesive stamp be treated as in addition to adhesive stamp not opposed or in contradistinction to adhesive stamp as required for promissory note : *Gurunanak Medical and Surgical Agency (M/s) Vs. Sita Ram Shivhare, I.L.R. (2011) M.P. 1637 (FB)*

– **Rules 15 & 17** - See - Stamp Act, 1899, Section 11 : *Khamir Singh Vs. Radheshyam Bansal, I.L.R. (2011) M.P. 387 (DB)*

– **Rule 17** – Inscription of word Revenue – Special adhesive stamp of Rs. 1/- inscribing the word revenue was never available for use – If it is held that a pronote without affixture of special adhesive stamp inscribing the word revenue is inadmissible in evidence, it would mean an impossibility to be performed because no such adhesive stamp was printed by Security Press : *Gurunanak Medical and Surgical Agency (M/s) Vs. Sita Ram Shivhare, I.L.R. (2011) M.P. 1637 (FB)*

– **Rule 17** – Inscription of word Revenue- Use of revenue has been mentioned with the word and such stamps may be inscribed and the meaning of the aforesaid would not mean that if the word for revenue has not been mentioned with the word stamp which has to be affixed on a promissory note, then the promissory note is inadmissible in evidence, because purpose of Stamp Act and Rules, is to secure revenue for State : *Gurunanak Medical and Surgical Agency (M/s) Vs. Sita Ram Shivhare, I.L.R. (2011) M.P. 1637 (FB)*

– **Rule 17** – Use of word may is an enabling word and implies a discretion – Decision in Ismail Khan and Khamir Singh are not good law : *Gurunanak Medical and Surgical Agency (M/s) Vs. Sita Ram Shivhare, I.L.R. (2011) M.P. 1637 (FB)*

STATE ADMINISTRATIVE SERVICE CLASSIFICATION RECRUITMENT & CONDITION OF SERVICE RULES, M.P., 1975

– **Rule 13(3)** - See - Service Law : *Minakshi Singh (Smt.) Vs. State of M.P., I.L.R. (2013) M.P. 1332*

STATE BACKWARD CLASS COMMISSION ACT, M.P. 1995

– **Section 9 & 10** – Jurisdiction of Commission – Commission has only been entrusted with the task of recommending inclusion or exclusion of communities in the list of backward class and to tender advise regarding reservation for O.B.C. in public service and admission in educational institutions – It has no judicial or adjudicatory powers nor

can it hold the rules framed by State as illegal and direct the State to change the same : *Sanjay Patel Vs. State of M.P., I.L.R. (2011) M.P. 1862 (DB)*

STATE BANK OF INDIA ACT (23 OF 1955)

– **Section 35(1) & 35(2)** - See - Constitution, Article 226 : *All India Bank Officers' Association Vs. State Bank of India, I.L.R. (2011) M.P. *22 (DB)*

– **Section 35(13)** - State Bank of Indore is a banking institution within the meaning of S. 35(13) : *All India Bank Officers' Association Vs. State Bank of India, I.L.R. (2011) M.P. *22 (DB)*

STATE BANK OF INDIA EMPLOYEE'S PENSION FUNDS RULES

- **Rule 5** - Voluntary Retirement - Refusal - Departmental Authorities were intending to initiate the process of disciplinary action against petitioner - Refusal to grant sanction for voluntary retirement cannot be said to be bad in law : *Balak Ram Singh Vs. State Bank of India, I.L.R. (2013) M.P. *2*

- **Rule 15 & 22** - Voluntary Retirement - Unless sanction is granted, an employee cannot claim to retire voluntarily even after completion of 20 years of service - There is no bar prescribed under Rule 22 that sanction would not be necessary as is prescribed under Rule 15 - Both the rules are to be read harmoniously : *Balak Ram Singh Vs. State Bank of India, I.L.R. (2013) M.P. *2*

STATE BAR COUNCIL OF MADHYA PRADESH RULES, 1962

– **Rules 121 & 122-A**, Advocate Act, (25 of 1961), Section 15 - Tenure and Removal of Chairman/Vice-Chairman/Treasurer- Validity of Rules - Rules 121 and 122-A of the Rules are not ultra vires of the provisions including the provisions of Section 15 of the Act and the amended rules have received the approval of the Bar Council of India - Rules would not be invalidated for want of issuance of any notification, as it is not the requirement in terms of Section 15(3) of the Act : *Pratap Chandra Mehta Vs. State Bar Council of M.P., I.L.R. (2011) M.P. *153 (SC)*

STATE BAR COUNCIL SERVICE RULES, M.P. 1975

– **Rule 5** – See – Service Law : *Rajendra Jain Vs. State Bar Council of M.P., I.L.R. (2012) M.P. 1196*

STATE LEGAL SERVICES AUTHORITY RULES, M.P., 1996,

Samaj ke Kamjor Vargon ke liye Vidhik Sahayata Tatha Salah Adhiniyam, M.P., 1976 – Section 16 – Pay Scale of Legal Aid Officer – Board is the appointing authority of the Legal Aid Officers under Section 16 of 1976, Act – However, no regulations have been framed by Board to determine the remuneration and other conditions of Service of the officers and servants – Board in its meeting decided to grant revised pay scale of Rs. 2200-4000 which was approved by State Govt. – However, by amendment in schedule appended to Rules 1996, the pay scale prescribed for Legal Aid Officer was 2000-3500 – Held – As pay scale of 2200-4000 was already granted by Board and approved by State Govt., their vested right by way of an amendment could not have been taken away with retrospective effect – Amendment cannot have retrospective effect : *Vidik Seva Karmik Sangh Vs. State of M.P., I.L.R. (2011) M.P. *91 (DB)*

STATE SERVICES EXAMINATION RULES, M.P. 2008

– **Rule 16(9)** – Petitioner who appeared in examination was alleged to have taken the answer sheet with her and was debarred to appear in the examination for a period of three years – Statements of departmental witnesses were not given nor any opportunity to cross examine them was given – Enquiry report was also not supplied – Opportunity of hearing was not given on the question of punishment – Petition allowed : *Minal Patidar (Smt.) Vs. Chairman, M.P. Public Service Commission, I.L.R. (2014) M.P. *11*

**STHANIYA KSHETRA ME MAL KE PRAVESH PAR KAR
ADHINIYAM, M.P. (52 OF 1976)**

– **Section 3** – See – Constitution – Article 265 : *Vikram Cement Vs. State of M.P., I.L.R. (2015) M.P. 1647 (SC)*

– **Section 69** – Imposition of Penalty – Petitioner declared entire purchases and claimed exemption – Exemption was refused and penalty was imposed – Held – Revisional Authority is required to record the grounds of its satisfaction that the petitioner had concealed the aggregate amount of purchase price or furnished false particulars thereof in the return – There was no concealment of purchases or furnishing of false particulars by petitioner – Taking a legal plea that goods are not taxable would not make the return a false return – Penalty cannot be imposed by condemning the return as a false return : *Ankit Lime & Minerals (M/s.) Vs. Asstt. Commercial Tax Officer, I.L.R. (2012) M.P. 37 (DB)*

– **Entry 14 of Schedule II** - See - Commercial Tax Act, M.P. 1994, Entry 20(ii) of Part IV of Schedule : *Cadila Health Care Ltd. Vs. Additional Commissioner, Commercial Tax, I.L.R. (2011) M.P. 2394 (DB)*

– **Entry 42 & 49 of Schedule II**, - Entry Tax on Glass Shell, Glass Panel, Glass Funnel & Neck Tube - Items in question are neither parts nor accessories of television but they are raw material for manufacturing parts of television - A raw material used for manufacturing a part or accessory can not itself held to be a part or accessory of the main item - Items in question are covered by Entry 42 of Schedule II of the Entry Tax : *Prakash Industries Ltd. Vs. Assistant Commissioner of Commercial Tax, I.L.R. (2013) M.P. 126 (DB)*

SUBORDINATE AGRICULTURAL (MINISTERIAL) SERVICE RECRUITMENT RULES (M.P.), 1972

– **Rules 13 to 17 and Schedule IV** - Petitioner working in Agriculture Department promoted as Auditor - Next promotion of the petitioner would be on the post of Assistant Superintendent/Chief Auditor/Divisional Accountant and not on the post of Head Clerk, which is equivalent to the Post of Auditor : *H.P. Urmaliya Vs. State of M.P., I.L.R. (2013) M.P. *34*

SUCCESSION ACT (39 OF 1925)

– **Section 2(h)** - Will - Will involves transfer after death of person concerned and is infact a legal expression of wish and intention of author of Will - Document which is described as Will may not be a Will at all - By Will, the author of the Will gives the right to title and ownership of her property and for this all her legal heirs have consented - After her death, petitioner will be deemed as Bhumiswami and can get his name entered into all documents - Testator had also executed a power of attorney in favour of petitioner to transfer the property and after her death said power of attorney will become unfruitful in the light of Will - Document is not a simple declaration of intention of testator to give her property on the contrary it is a device and substitute for sale of property or for transfer of immovable property - Document although titled as Vasiyatnama is not a document which can be termed as testamentary document - On the contrary, it is a document which is used as a vehicle for transfer of property - Document has to be assessed for payment of stamp duty : *Deochand Bhura (Dr.) Vs. State of M.P., I.L.R. (2013) M.P. 1870*

– **Section 59 & 63**, Evidence Act (1 of 1872), Section 67 & 68 - Will - Proof - Propounder of will, apart from the statutory requirements is also required to remove all

legitimate suspicions to the satisfaction of the judicial conscience of the Court and whether it is necessary or otherwise to examine the scribe or any other witness apart from the attesting witnesses of the will, would depend on the facts and circumstances of each case : *Sitaram Dubey (Since Deceased) Vs. Manaklal (Since Deceased)*, I.L.R. (2013) M.P. 1406

– **Section 63**, Evidence Act (1 of 1872), Section 68 - Will - Will is to be duly proved in accordance with Section 63 of Act, 1925 and Section 68 of Act, 1872 - All the attending circumstances creating doubt must be made clear so as to satisfy conscience of the Court that the will was duly executed by testator : *Devkaran Vs. Rameshwar*, I.L.R. (2011) M.P. 3135

– **Section 63** - Execution of will - It is the duty of propounder to satisfy the Court by adducing evidence that testator was sound and disposing state of mind, understood the nature and effect of his dispositions at the relevant time and only thereafter he signed the document of his own free will - Attesting witnesses to the will are not the residents of same village - Residents of same village have specifically stated that testator had lost his sight, was unable to walk as well as he was hard of hearing - Testator was old and aged about 70 to 72 years - Testimony of neighbours about the physical condition of testator of will appears to be more reliable - Will was also prepared without preparing any draft and without typing any khasra number of land - Trial Court rightly held that appellants have failed to prove the execution of will beyond suspicion - Appeal dismissed : *Prahlad Vs. Jamuna Bai/Jamnabai (Deceased)*, I.L.R. (2012) M.P. 2153

– **Section 63** - Registration of Will - Registration of Will would not attach presumption as to the correctness or regularity of the attestation and a person claiming through the Will is required to specifically plead and prove through the attesting witness that the requirement of Section 63 of the Act, 1925 and 68 of Evidence Act, 1872 have been complied with : *Ram Narayan Tiwari Vs. Uma Shanker Pacholi*, I.L.R. (2013) M.P. 858

– **Section 63** - Succession - Will - Execution - Burden of proof - Will an unregistered and hand written - Plaintiff has admitted that testator was old and unable to speak and sign - Scribe of will admitted that will was not dictated by testator - No recital in will that it was read over and explained to testator - Attesting witness has also stated that he does not know that who wrote the will - A closer look of will shows that thumb impression of testator was obtained on a plan paper before it was actually written - Defendant was living with testator for the last more than 12 years and the plaintiff was residing separately - Last rites of testator were performed by defendant - It can be safely held that love and affection of testator lay with defendant - Will is encircled by suspicious

circumstances - Judgment and decree passed by Trial Court set aside - Appeal allowed : *Subhash Kumar Tiwari Vs. Shankerlal, I.L.R. (2012) M.P. 3065 (DB)*

– **Section 63** - Will - Execution thereof - Will is a registered document but the Registering officer or any other personnel from the office of Registrar not examined - No endorsement by Registering officer as per Section 58 of Registration Act - No statement to the effect that testator was of sound mind and that will was read over to her and was understood by her - Person who drafted the will not examined nor any endorsement that will was drafted in accordance with the instructions of testator and was read over to her - Testator was aged about 100 years and was extremely sick - Testator also died within 10 days of execution of will - Appellants have failed to dispel the suspicious circumstances surrounding the execution of Will - Appeal partly allowed : *Sitaram Dubey (Since Deceased) Vs. Manaklal (Since Deceased), I.L.R. (2013) M.P. 1406*

– **Section 63** - Will - Proof - It is necessary for the propounder of the Will to prove that the testator signed it, that he understood the nature and effect of the depositions of the Will, and that he had affixed his signatures on the Will knowing what it contains : *Ram Narayan Tiwari Vs. Uma Shanker Pacholi, I.L.R. (2013) M.P. 858*

– **Section 63** - Will - Testator was blind and apparently could not see what was written - Nothing on record to show that the Will was prepared and written on the instructions of the testator, it was typed and read out to the testator to make sure that it was in accordance with the instructions issued by her and as per her wishes, and she understood the same before affixing her thumb impression on the Will - Further after the death of her husband, the testator was never looked after or kept by the propounder of the Will - Her stay in the house of the defendant was only for a very short period - Execution of will not proved : *Ram Narayan Tiwari Vs. Uma Shanker Pacholi, I.L.R. (2013) M.P. 858*

– **Section 63(c)**, Evidence Act (1 of 1872), Section 68 - Proof of Will - Will executed by father in favor of his son - Execution of will admitted by wife and other children (except one) of the Executant - Held - Their admission is to be considered for holding that will has been executed by executant - In absence of any evidence to the effect that Executant was of unsound mind due to ill health or old age at the time of execution of will, it can not be said that findings arrived at by the Courts below are perverse : *Asharfi Devi (Smt.) Vs. Hari Prasad, I.L.R. (2011) M.P. *121*

– **Section 63(c)** – See – Evidence Act, 1872, Section 90 : *Mahaprasad Vs. Badi Bai, I.L.R. (2014) M.P. 1079*

– **Section 63(c)** - Succession - Will - Testator of will claimed herself to be the keep of Tikaram - Testator of will had no right in the property of Tikaram : *Sitaram Dubey (Since Deceased) Vs. Manaklal (Since Deceased), I.L.R. (2013) M.P. 1406*

– **Section 74 & 119** - Succession - Will - Original Will not produced - Name of typist not mentioned - Also not clear that who drafted the Will - Name of one witness was typed but name of another witness was not typed and was written in handwriting - Person who typed the Will not examined - As the name of second attesting witness was not typed reveals the probability that he was not present when the Will was typed - Evidence of first attesting witness not recorded - Second attesting witness deposed that he was not aware of assets or property which was included in Will - He also expressed his ignorance regarding person who typed the Will and the place where it was actually typed - Execution of Will not proved : *Pradumn Singh Vs. Shiv Raj Singh, I.L.R. (2014) M.P. 424*

– **Section 281 & 276** - Verification of petition of probate - Provisions of Section 281 are Directory and not Mandatory - It is not necessary on the part of the applicant who files application to get probate to get the application verified by the attesting witness to the Will : *Ramesh Chandra Vs. Mahendra Kumar Sahu, I.L.R. (2012) M.P. 3054*

– **Section 283 & 284** - Party in a probate case - Unless there is an interest in the estate of the deceased a person cannot be made party in probate proceedings - Public at large being not a person interested in the estate of the deceased could not have been directed to be impleaded as non-applicant - Directing for impleadment of public at large in a probate case is beyond the jurisdiction of the probate judge : *Neena V. Patel (Dr.) Vs. Smt. Jyotsna Ben P. Patel, I.L.R. (2013) M.P. 357*

– **Section 371 & 372** – See – Civil Procedure Code, 1908, Section 15 to 20 : *Jagmohan Tripathi Vs. Baba Annapurna Das Katthiya Baba, I.L.R. (2014) M.P. 2311*

– **Section 372**, Mohemmedan Law, Section 63 & 65 – Succession Certificate – Female died leaving husband and other heirs – Parties governed by Hanafi Law of Inheritance – Husband would be entitled to ½ share and rest ½ share will be devolved in between the mother and other legal heirs treating it as residuary share : *Oliya Begum (Smt.) Vs. Abdul Rashid, I.L.R. (2012) M.P. 1419*

– **Section 372**, Motor Vehicles Act (59 of 1988), Section 166 - Succession Certificate - For release of amount of compensation granted under Motor Vehicles Act, 1988, Succession certificate should not be insisted from the legal heirs on the death of an individual as compensation amount cannot be treated as debt or security : *Chandra (Smt.) Vs. Ranveer Singh Ramavtar, I.L.R. (2012) M.P. 2847*

– **Section 372** - Succession Certificate - Nature of property - Applicants are the legal heirs along with their deceased brother of the original owner - Applicants executed a power of attorney in favour of their deceased brother authorizing him to enter into an agreement with a builder for the purposes of demolition of old building, construction of multi storied building and to enter into the agreement for the purposes of letting out and realization of rent - Deceased brother was collecting rent and was depositing the same in

bank account - Held - There is no evidence that the amount deposited in bank account of deceased brother was his independent income - Material on record shows that it was a Joint Hindu Family property as applicants had never relinquished their right - For entire bank account, succession certificate could not have been granted to the respondents - Revision allowed : *Geeta Choudhary (Smt.) Vs. Smt. Anamika Tiwari, I.L.R. (2012) M.P. 2273*

– **Section 372** - Succession certificate - Second marriage was void as it was performed without obtaining decree of divorce - Subsequent grant of decree of divorce would not validate the second marriage - Order granting succession certificate set aside - Revision allowed : *Deepak Kumar Chouksey Vs. Superintendent, Office of Distt. Ayurvedic Officer, Sagar, I.L.R. (2012) M.P. 3095*

– **Section 372** – Succession Certificate – Validity of marriage – Succession Court is not expected of first directing the party to seek a declaration as to validity of marriage, as the nullity thereof, as the case may be, and then set on to grant certificate : *Surendra Shrivastava Vs. The General Manager, I.L.R. (2012) M.P. 1244*

– **Section 372 & 300**, Testamentary and Intestate Rules, 1956, Rule 8 - Succession certificate - "Whether the succession certificate can be granted by the High Court under the provisions of Indian Succession Act, 1925 read with the Testamentary and Intestate Rules of 1956 original jurisdiction" - Held - High Court can exercise the concurrent jurisdiction as per Section 300(1) of the Indian Succession Act, 1925, while exercising the powers under the Testamentary and Intestate Rules 1956 - High Court be treated as District Court for purpose of Indian Succession Act while exercising such jurisdiction - High Court of M.P. is vested with the powers to grant succession certificate as per rules of 1956 : *Ishan (Late) Vs. Jogesh, I.L.R. (2013) M.P. 2277*

– **Section 372, 383 & 384** – Grant of Succession Certificate – Application under Section 372 of Act must conform strictly to the requirements of the Section and corresponding proceeding is not a proceeding *in rem* – Succession Certificate can not be issued on the basis of an additional prayer made in the application under Section 383 of the Act – Order revoking succession certificate confirmed whereas direction for issuance of succession certificate in favor of respondent set aside – Upon filing a fresh application by respondent, the Court shall issue succession certificate in her favor with regard to the deceased as early as possible : *Santosh Sullere Vs. Smt. Saroj Sullere, I.L.R. (2012) M.P. 785*

– **Section 373** - Succession Certificate - Validity of marriage - Proceedings are summary in nature to decide the right of the parties for certificate - Succession Court is not expected for first directing the parties to seek a declaration as to validity of marriage, as the nullity thereof as the case may be - Further as the order of succession Court has not

been challenged it has attained the finality : *Kanaklata (Mrs.) Vs. Union of India, I.L.R. (2012) M.P. 1606*

– **Section 373, 384**, Coal Mines Provident Fund & Miscellaneous Provisions Act, (46 of 1948), Section 3, Coal Mines Provident Fund, Coal Mines Family Pension & Coal Mines Deposit Linked Insurance Scheme 1948, Clause 64 and Hindu Succession Act, (30 of 1956), Section 8 – Succession certificate – Proviso to sub-clause (ii) of clause 64 – vis-a-vis – Hindu Succession Act, 1956 – Whether provisions of Coal Mines Provident Fund Scheme, 1948 will prevail over statutory law like Hindu Succession Act, 1956 – Held – No, the statutory law will have the overriding effect over the Coal Mines Provident Fund Scheme 1948 : *Regional Commissioner Vs. Bhuria Bai, I.L.R. (2015) M.P. 2777*

– **Section 383** – Revocation of Succession Certificate – Concealment of facts – Petitioners were aware of the status of respondent as the nominee of deceased – Even then she was not made party to the succession proceedings – Succession Certificate was rightly revoked as the same was obtained by concealment of material facts : *Santosh Sullere Vs. Smt. Saroj Sullere, I.L.R. (2012) M.P. 785*

– **Section 387** – Succession Certificate – Civil Suit – Unsuccessful party to a proceeding for succession certificate can file a regular suit in a competent civil court on the same question – Appreciation of evidence in civil revision not at all necessary : *Santosh Sullere Vs. Smt. Saroj Sullere, I.L.R. (2012) M.P. 785*

SUGARCANE (REGULATION OF SUPPLY AND PURCHASE) ACT, M. P. 1958 (1 OF 1959)

– **Section 19 & 20** - See - Krishi Upaj Mandi Adhiniyam, M.P. 1972, Chapter-VI (Regulation of Trading) Section 2, 3, 4, 5, 7, 19, 31, 32, 36, 37, 38, 39, 43 & 44 : *Krishi Upaj Mandi Samiti, Narsinghpur Vs. M/s. Shiv Shakti Khansari Udyog, I.L.R. (2012) M.P. *114 (SC)*

SUITS VALUATION ACT (7 OF 1887)

– **Section 8**, Court Fees Act (7 of 1870), Section 7(iv)(c) – Valuation of Suit – Plaintiff filed suit for declaration that sale-deed is void – Plaintiff not party to sale-deed – Suit valued on the basis of land revenue and not on the basis of consideration amount – Held – That the value for the purpose of jurisdiction of the suit shall be dependent upon the value to be determined for computation of court fees – Plaintiff is required to pay fix court fee – Trial Court has not committed any illegality in accepting the valuation done by plaintiff – Revision dismissed : *Manoj Kushwah Vs. Chhotelal, I.L.R. (2015) M.P. 3063*

– **Section 8**, Court Fees Act (7 of 1870), Section 7(IV)(C) - Court Fees - Suit for declaration of gift deed to be void - Plaintiff is not party to the document as it does not bear the thumb impression of plaintiff - No error in holding (by trial Court) that no ad valorem Court fee is required - Plaintiff is not required to value the suit as per valuation of the document - Petition dismissed : *Santosh Kumar Chopra Vs. State of M.P., I.L.R. (2012) M.P. 1852*

– **Section 8** – See – Court Fees Act, 1870, Section 7(iv)C & D, Article 17 of Schedule II : *A.K. Ghosh Vs. Dhruv Kumar Haryani, I.L.R. (2011) M.P. 2141 (DB)*

– **Section 8** – Suit for partition and possession of 1/7th share of ancestral agricultural land – Proper valuation thereof – Respondent no. 1 filed suit for partition and separate possession of his 1/7th share in the ancestral agricultural land of his Joint Hindu Family property – The applicants have assessed twenty times of the land revenue fixed for the land and suit is valued on his 1/7th share – Held – Suit is rightly valued – A coparcener is at liberty and has a right to value the suit till the extent of his share and ratio out of the total twenty times of the land revenue and bound to pay court fee accordingly : *Gorelal Lodhi Vs. Ratan Lal Lodhi, I.L.R. (2015) M.P. 1861*

– **Section 8** – Suit to declare sale deed executed by power of attorney as ab-initio void – Proper valuation thereof – Petitioner filed suit to declare the sale deed to be ab-initio void which was executed on his behalf by his power of attorney (his real sister) – Under such circumstances it can be inferred that he was party of the impugned sale deed executed by his power of attorney with his consent – The plaintiff/petitioner is bound to value the suit equal to the consideration of sale deed and accordingly bound to pay court fee accordingly : *Harish Patel Vs. Sanjay Kumar, I.L.R. (2015) M.P. 1676*

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TELEGRAPH ACT (13 OF 1885)

– **Section 10** – See – Electricity Act, 2003, Section 164 : *Vijay Agrawal Vs. Power Grid Corporation of India Ltd., I.L.R. (2012) M.P. *39 (DB)*

TENDER

- **Bid Documents** - Negligent mistakes - Mistakes cannot be permitted to be corrected where facts indicate that (i) it was beyond the control of the bidder to correct, (ii) that he was not vigilant, (iii) he did not seek to make corrections at the earliest opportunity : *Glodyne Technoserve Ltd. Vs. State of M.P., I.L.R. (2011) M.P. *7 (DB)*

- **Conditions** - One of the condition was to sign the RFP document on each page - Petitioner having accepted the conditions of tender and having submitted the tender document cannot subsequently come forward to say that signing of each page of RFP document was not an essential condition - RFP document was a document by which the bidder was supposed to provide all the information sought from him and if for such an important document, the respondents have put a condition that it is to be self attested on each page, the non-compliance of the same will certainly entail the rejection of the tender : *Kala Bai Jaiswal (Smt.) Vs. District Collector, Jhabua, I.L.R. (2013) M.P. 50 (DB)*

- **Estoppel** – Bidder participated – Cannot challenge its terms and conditions : *Man Singh Rajpoot Vs. State of M.P., I.L.R. (2015) M.P. 2826 (DB)*

- **Fresh Notice** - First N.I.T was floated for supply of one drill machine - Second N.I.T. was floated for supply of two drill machines - First N.I.T. not being concluded and having been merged with second N.I.T. automatically stood cancelled - Authority inviting offer can withdraw the invitation even after receipt of offer so long as it is not accepted : *L.M.P. Precision Engineering Co. Pvt. Ltd. Vs. Union of India, I.L.R. (2011) M.P. 2347 (DB)*

- **Judicial Review** – Petitioner failed to submit tender within time although he had sufficient time to get himself acquainted with system of e-tendering – Due to his own negligence he did not make proper and timely efforts firstly in getting its registration renewed and secondly in getting the DSC compatible with system adopted by respondent – Held – Petitioner itself being negligent in not getting itself informed at the earliest – No interference is called for – Petition dismissed : *Shriram Switch Gear Pvt. Ltd. Vs. Ujjain Development Authority, I.L.R. (2011) M.P. 1152 (DB)*

- **Experience Certificate** – Non submission – Fatal – Form is defective – Should be rejected at threshold – The requirement is mandatory : *Anuj Associates (M/s.) Vs. National Mineral Development Corporation Ltd., I.L.R. (2015) M.P. 2914 (DB)*

- **Performance Guarantee Clause** - Petitioner in the past had supplied 6 machines out of which 5 machines had failed in achieving their target of 83% within a period of 12 months - Incorporation of performance guarantee clause in N.I.T. is to achieve the best quality machines which are having proven performance so that the production of coal does not suffer - Looking to the object and purpose of incorporation of aforesaid condition, the same by no stretch of imagination can either be said to be arbitrary or unreasonable : *L.M.P. Precision Engineering Co. Pvt. Ltd. Vs. Union of India, I.L.R. (2011) M.P. 2347 (DB)*

- **Rejection** – Giving counter offers to the highest tenderers does not amount to rejection of tenders – Such action of respondents can not be termed as illegal, being not

violative of law relating to tenders – Petition dismissed : *Murtaza Malik Vs. Indore Development Authority, I.L.R. (2012) M.P. *63 (DB)*

– **Requirement in NIT** – To file experience certificate – Alongwith tender form – Whether Mandatory – Yes, because its the proof of experience which touches the issue of eligibility and the same is highlighted by bold letters to attract the attention of all concern : *Anuj Associates (M/s.) Vs. National Mineral Development Corporation Ltd., I.L.R. (2015) M.P. 2914 (DB)*

– **Tender Documents and Bidders Information Sheet** - Section 3 & 7 of tenders documents were amended - However, no corresponding amendment in bidders information sheet - Held - Section 3 & 7 of tenders document have to prevail and merely because there is no amendment in bidders information sheet, is not going to come to the rescue of petitioners : *Glodyne Technoserve Ltd. Vs. State of M.P., I.L.R. (2011) M.P. *7 (DB)*

- **Term of** - Mandatory or directory - Whether a condition is essential or collateral could be ascertained by reference to the consequence of non-compliance thereto - If non-fulfillment results in rejection of tender, then it would be an essential part of tender otherwise, it is only a collateral term : *Glodyne Technoserve Ltd. Vs. State of M.P., I.L.R. (2011) M.P. *7 (DB)*

Termination - Closure of Project - Termination on closure of a project is proper and not illegal - Petitioners were appointed to work in IREP and after the closure of scheme, the petitioners' appointment will automatically come to an end : *Vijay Kumar Bajpayee Vs. M.P. Urja Vikas Nigam Ltd., I.L.R. (2011) M.P. *51*

TESTAMENTARY AND INTESTATE RULES, 1956

– **Rule 8** - See - Succession Act, 1925, Section 372 & 300 : *Ishan (Late) Vs. Jogesh, I.L.R. (2013) M.P. 2277*

THE HINDU LAW OF INHERITANCE (AMENDMENT) ACT (2 OF 1929)

– **Section 2** – See – Hindu Succession Act, 1956, Section 8 : *Virendra Kumar Dwivedi Vs. Tirath Prasad, I.L.R. (2012) M.P. 1286*

TORTS

- **Actionable Negligence** - Well situated in the Mandi premises was covered with slab - Meeting was convened by Mandi Samiti upon the said covered well - Stone slabs fell down resulting in death of several persons on account of drowning - Mandi Samiti

was having domain, control as well as possession over the entire area of Mandi Samiti - No notice was displayed nearby the area that covered area of well should not be used for access or to sit or to convene any meeting - Action of Mandi Samiti comes within the definition of actionable negligence - Principle of strict liability applies to Municipality also - Matter remanded back for deciding the suits and for assessing the compensation : *Santoshdevi (Smt.) Vs. State of M.P., I.L.R. (2012) M.P. 3046 (DB)*

– **Compensation** – Quantum – Age of deceased 24 years – Income 1500/-per month proved through evidence – Having wife and two innocent son – Dependency comes to Rs. 15000/- per year – Multiplier of 18 applied – Compensation of Rs. 2,70,000/- with interest at the rate of Rs. 9% p.a. (from the date of incident) to be paid – If not deposited on or before 31.03.12, interest at the rate of 12% p.a. shall be liable : *Lalita Tripathi (Smt.) Vs. M.P.E.B., I.L.R. (2012) M.P. *25*

- **Death by Electrocutation** - Demise of the deceased was caused due to negligence on the part of the appellants Board in not taking proper care and not following the required standards in maintaining the electricity supply - There was wanton and gross negligence on the part of the Board, which culminated into death - Conclusion of the trial court in holding the Board and its employees negligent for the resultant death of the deceased on account of electrocution on the fateful day is thus found justified - Amount of Rs.1,12,000/-, which included the amount awarded under different heads such as funeral expenses, loss of estate, loss of consortium is rightly concluded by the trial court : *M.P. Electricity Board Vs. Rajendrashri, I.L.R. (2013) M.P. *35*

– **Death due to electrocution** – Death of two minor children due to electrocution – Trial court rightly assessed the amount of compensation to the tune of Rs. 1,10,000/- : *M.P. Electricity Board, Jabalpur Vs. Laxman, I.L.R. (2014) M.P. 1872*

- **Negligence** - Defined : *Santoshdevi (Smt.) Vs. State of M.P., I.L.R. (2012) M.P. 3046 (DB)*

– **Suit for Damages** – Plaintiffs have proved that accident occurred on account of negligent act of the defendants and deceased died due to electrocution, burden of prove is on defendants that preventive measures were taken to stop accidents – No evidence on record that accident occurred even after due care and caution by respondents – Appeal allowed : *Lalita Tripathi (Smt.) Vs. M.P.E.B., I.L.R. (2012) M.P. *25*

- **Strict Liability** - A person or authority undertaking an activity involving hazardous or risky exposure to human life - Liable to compensate for injury suffered irrespective of any negligence or carelessness on the part of the manager of such undertaking : *M.P. State Electricity Board Vs. Girvan Dhakad, I.L.R. (2013) M.P. 868*

TRADE MARKS ACT (47 OF 1999)

– **Section 2(1)** - Trade Mark - Includes Name or Word also : *Wockhardt Limited Vs. D.M. Pharma, I.L.R. (2013) M.P. 390*

– **Section 2(1)h** - Deceptively Similar - Suit has been filed for restraining the respondents from using the word DEXOLAM as it is identical or deceptively similar or resembling to the appellant's registered trade mark DEXOLAC - Held - Predominant factor is that both the products concern public health and ailing public requires protection against use of phonetically similar trade names, injury to appellant cannot be compensated in terms of money and balance of convenience is also in favor of appellant - Respondents restrained from using the trade mark including the trade name DEXOLAM : *Wockhardt Limited Vs. D.M. Pharma, I.L.R. (2013) M.P. 390*

– **Section 29** - Trade Mark - Passing off - Factors required to be seen - Discussed : *Wockhardt Limited Vs. D.M. Pharma, I.L.R. (2013) M.P. 390*

– **Section 91** - Appeal - Application for registration of trade mark was pending on the date when the suit for infringement of trade mark was filed - Suit was maintainable as the right to appeal would arise only after order or decision by the Registrar : *Wockhardt Limited Vs. D.M. Pharma, I.L.R. (2013) M.P. 390*

– **Section 134 & 135** - See - Civil Procedure Code, 1908, Order 39 Rule 1 & 2 : *SKOL Breweries Ltd. Vs. Som Distilleries Ltd. & Breweries Ltd., I.L.R. (2013) M.P. 1589*

TRADE UNIONS ACT (16 OF 1926)

- **Recognition of Representative Trade Union** - Mode - Several Unions - The case where there are several unions in an Industry or establishment, the one with largest membership and fulfilling the conditions mentioned in code of discipline would be recognized as representative Union - As exhaustive procedure for verification of membership has been laid down in code of discipline and as procedure for recognition of representative union is not regulated by any statute, neither the management nor the Union of India can be directed to adhere to the secret vote system for ascertaining the membership of a union to be recognized as representative union - Petition disposed off : *MOIL Jan Shakti Majdoor Sangh Vs. Union of India, I.L.R. (2012) M.P. *102*

– **Section 11** - Registrar de-recognised and cancelled the registration of the Trade Union of the appellant - Order was assailed by appellant-Union by filing first appeal u/s 11 of the Act - Appeal was dismissed by Industrial Court - Second appeal is not permissible before the High Court under the State Amendment to Section 11 of the Act :

Rastriya Soot Mill Mazdoor Sangh Vs. Registrar, Vayavsayik Sangh, M.P., I.L.R. (2011) M.P. 2491

– **Chapter IIIA** - Jurisdiction under -Registrar, Trade Unions, Madhya Pradesh had no jurisdiction to invoke the provisions of Chapter IIIA of the Trade Unions Act, 1926 in respect of the industry viz., the mining industry and the cement industry, which are governed by the provisions of Industrial Disputes Act, 1947 - Impugned order quashed : *Kymore Cement Majdoor Congress (INTUC) Vs. Registrar Office of Registrar Trade Unions Bhopal, I.L.R. (2011) M.P. *139*

TRANSFER OF PROPERTY ACT (4 OF 1882)

– **Section 3** - Decree - Actionable Claim - Decree does not fall within the ambit of 'actionable claim.' : *Devkinandan Vs. State of M.P., I.L.R. (2011) M.P. 2416*

– **Section 3 & 123** – Registration of will – For a valid gift of immovable property, transfer must be affected by a registered instrument signed by or on behalf of donor and attested by at-least two witnesses : *Ramu Singh Vs. Smt. Bandi Bai, I.L.R. (2012) M.P. 121*

– **Section 5** - See - Registration Act, 1908, Section 17 : *Nagar Palika Parishad Vs. State of M.P., I.L.R. (2013) M.P. 1092*

– **Section 41** – Benami Transaction – When the transaction is by registered document, the presumption is in respect of the genuineness of the document – Burden to prove that transaction is benami is on the person who raises such objection : *Akbar Ali Vs. Asgar Ali, I.L.R. (2011) M.P. *64 (DB)*

– **Section 44** – See – Civil Procedure Code, 1908, Order 41 Rule 23A : *Tilak Education Research & Development Society Vs. Smt. Phoolwati, I.L.R. (2015) M.P. 1801*

– **Section 52** - Doctrine of Lis Pendence - In case plaintiff fails to prove his entitlement to get the decree of specific performance, the question of alienation of land in dispute to the subsequent purchaser during the pendency of Trial would be redundant and Court need not to decide the validity of transaction entered between the parties during the pendency of the Civil Suits : *Vinod Agrawal Vs. Bharat Kumar Lathi, I.L.R. (2012) M.P. *84*

– **Section 52** – Principle of lis pendens – Does not apply to a lis pendens transferee, who has made purchase under his pre-existing rights : *Basant Kumar Gaur Vs. Suggamal, I.L.R. (2011) M.P. 1534*

– **Section 52** - Transfer of property pending suit relating thereto - Sale Deed was executed on 05.09.1983 whereas suit for declaration of title was filed on 02.11.1983 - Sale deed was not challenged - Finding that sale deed was executed during the pendency of the suit and is not sustainable in law is perverse - However, as it was held in the previous suit that the property is a joint family property of plaintiff and defendant, therefore, the sale deed executed to the extent of share of the defendant is valid - Plaintiff is entitled to get partition of property and the defendants are under obligation to handover the vacant possession to the plaintiff : *Suresh Kumar Keshwani Vs. Kishan Lal Vishwakarma, I.L.R. (2013) M.P. 383*

– **Section 53-A** - Conditions precedent for applicability - Law Discussed : *Manik Rao Vs. Ramesh, I.L.R. (2012) M.P. 1644*

– **Section 53-A**, Land Revenue Code, M.P. (20 of 1959), Section 190 - Possession - Defendants instead of filing suit for specific performance of contract initiated proceedings before revenue court for acquisition of title - They have also not pleaded the readiness and willingness to perform their part of contract - Defendants are not entitled to benefit of Section 53-A of Transfer of Property Act : *Manik Rao Vs. Ramesh, I.L.R. (2012) M.P. 1644*

– **Section 53-A** - Part performance - Appellants neither proved their case in consonance of ingredients of S. 53-A nor proved their readiness and willingness to get sale deed executed - Plea of defence discarded by Trial Court - This could not be termed to be substantial question of law for admission of appeal : *Jagdish Vs. Achhelal, I.L.R. (2011) M.P. 756*

– **Section 53-A** - Part Performance - Possession - An agreement to sell was executed in favor of respondent and was placed in possession - A person is entitled to protect his possession only when if he is ready and willing to perform his part of contract - Respondent never took any steps for execution of sale deed or paid the balance sale consideration nor filed any suit for specific performance of Contract - As respondent was not ready and willing to perform his part of contract therefore, not entitled to benefit of Section 53-A of Act, 1882 - Appeal allowed : *Bhavuti (Deceased Through LR's) Vs. Alam (Deceased Through LR's), I.L.R. (2013) M.P. 2670*

– **Section 53-A (Proviso)** - Bonafide Purchaser - Defendants No. 2 to 4 pleaded that Defendant No. 1 executed agreement to sell in their favour on 13.10.1983, however defendant DW1 admitted that Khasra number written on the basis of original Reen-pusthika which he got from defendant No. 1/the executant - As per the correspondence between agent PW2 and husband of defendant No. 1, the original Reen-pusthika was prepared in the year 1985 as mentioned in letter dated 03.08.85 - Held - It reveals that this document (agreement dated 13.10.1983) was prepared antedated - Sale deed

executed in favour of appellants/defendants No. 2 to 4 appears to be collusive and defendants No. 2 to 4 are not appear to be bonafide purchasers of the disputed land : *Surendra Kumar Agarwal Vs. Narayan Prasad Agarwal, I.L.R. (2011) M.P. *143*

– **Section 54** - Sale - Minor Transferee - There is no provision in the Act, 1882 which prohibits a minor from being transferee - Minor is not disqualified to be transferee : *Ram Niwas Vs. Jagat Bahadur Singh, I.L.R. (2013) M.P. 2689*

– **Section 54** – Sale – Plea of want of consideration –Recital contained in the registered sale deed dated 02.03.1987 shows the receipt of consideration as well as delivery of possession – The sale deed shows that the sale is complete – Merely because the sale price is not paid, the sale deed can not be held to be invalid – At the most, if the seller who has sold the property and has not received the sale consideration, may sue for recovery of the sale consideration : *Shakuntala Tiwari (Smt.) Vs. Mohd. Ramjan, I.L.R. (2012) M.P. 160*

– **Section 54** - Sale - Registration - Unless and until an immovable property having valuation of Rs. 100 or more is conveyed by a registered document, there cannot be a valid conveyance of sale : *Gulab Singh Vs. Virendra Singh, I.L.R. (2013) M.P. 1474*

– **Section 54 & 55** – Sale - Title – No title is transferred to the purchaser on the basis of a sale deed if the seller is not having any title to transfer the land : *Dev Prakash Gulati Vs. Nand Kumar, I.L.R. (2012) M.P. 495*

– **Section 58** - Mortgage - Sale deed, rent note and document of reconveyance executed on the same day - Transactions are akin to mortgage if not 'mortgage proper' : *Ramesh Chandra Vs. Kamal Kishore, I.L.R. (2011) M.P. *15*

– **Section 58** – See – Civil Procedure Code, 1908, Section 100 : *Muhammad Ayoob Khan (Since Deceased) Through L.Rs. Samsunnisha (Smt.) Vs. Krishnapratap Singh, I.L.R. (2015) M.P. 1788*

– **Section 82** – Attempt to sell suit property – Doctrine of Lis Pendence – Imposes a prohibition of transfer or otherwise dealing of any property during the pendency of a suit – No stay against alienation or creation of third party rights in the suit property, cannot be countenanced – Same is found to be not only against the principle u/s 52 but also an attempt to seek legal recognition of transfer of title by suppression and misrepresentation of facts : *Kulwant Singh Vs. State of M.P., I.L.R. (2014) M.P. 3153*

– **Section 100** - Charge - Liability to pay itself does not create a "charge" over the property - A charge can be created only in two ways, namely (i) by act of parties i.e. by contract or (ii) by operation of law : *Hemlata (Dr.) Vs. State of M.P., I.L.R. (2011) M.P. 2672 (FB)*

– **Section 102** – Lease – Possession – 7000 sq. ft. given on lease however, certain portion in possession of encroachers and nothing on record that possession of entire area has been given to petitioner – Held – As possession of entire leased area not handed over to petitioner, apportionment of premium and yearly rent is to be made by State Govt. by keeping in mind that how much actual area the petitioner is possessing : *Bharat Petroleum Corporation Vs. State of M.P., I.L.R. (2011) M.P. 1211*

– **Section 105**, Easement Act, (5 of 1882), Section 52 – Lease or Licence – Real intention of parties as decipherable from complete reading of document, if any, executed between parties and surrounding circumstances have to be seen - Petitioner was only given right to use the land to run amusement center and I.D.A. retained the possession of the land – Mere right to raise construction on payment of annual rent does not create an interest in property and amounts to merely a right to do something on the land – Deed dated 6-5-1994 was only a licence and not lease : *Mangal Amusement (P) Ltd. Vs. State of M.P., I.L.R. (2011) M.P. 1912 (DB)*

– **Section 105** – Lease – Fixation of Rent – Lease rent payable w.e.f. 1971 fixed by lessor by order dated 11-1-1995 on the basis of the guidelines of the year 1993-1994 – Held – Rent and premium should have been fixed in accordance with the norms of respondents prevailing from time to time from the year 1971 to 1995 : *Bharat Petroleum Corporation Vs. State of M.P., I.L.R. (2011) M.P. 1211*

– **Section 106**, Civil Procedure Code, 1908, Order 29 Rule 1 - Notice of termination of tenancy - Corporate Body - Notice of suit to the Head Office is sufficient compliance of provision - Issuance of notice to Branch of appellant was not necessary : *Dena Bank Vs. Municipal Corporation, Burhanpur, I.L.R. (2011) M.P. 466*

– **Section 106** - Termination of lease - If the suit is filed under the provisions of Transfer of Property Act, then after serving the quit notice on the tenant, the landlord is entitled to get the decree of eviction only on proving the service of such notice : *Dena Bank Vs. Municipal Corporation, Burhanpur, I.L.R. (2011) M.P. 466*

– **Section 106** - Termination of lease - Waiver - Appellant deposited some of the money at the rate of existing rent in the account of respondent which was with the branch office of appellant - Held - It could not be deemed to be waiver of such right - Appellant after termination of tenancy became statutory tenant and therefore, deposit of rent in the account of respondent could not be deemed to have created either a new tenancy or the respondent has waived its right of eviction : *Dena Bank Vs. Municipal Corporation, Burhanpur, I.L.R. (2011) M.P. 466*

– **Section 108(e)** - Rights and Liabilities of Lessee - Godown was let out for storing tendu leaves - Fire broke out as a result of which the tendu leaves kept in godown

were burnt and superstructure of the godown was also burnt - Unless and until, the lessee terminates the lease, he is liable to pay rent - Lessee remained in possession of the land and the superstructure and it was never handed over to the plaintiff by the lessee holding the lease to be void - Since, the lessee did not exercise the right of declaring the lease void, his status continued as lessee - Lessee liable to pay rent - Appeal allowed : *Shankar Prasad Vs. State of M.P., I.L.R. (2013) M.P. 2146*

– **Section 112** – Waiver of forfeiture – Period of lease came to end in the year 1970 – Lessee continued to remain in possession even thereafter and lessor accepted the rent deposited by the lessee – Held – Its status would still remain as a lessee unless and until the lease is determined in accordance with law : *Bharat Petroleum Corporation Vs. State of M.P., I.L.R. (2011) M.P. 1211*

– **Section 114** – See – Wakf Act, 1995, Section 55 : *Akash Jain Vs. Jama Masjid Committee, I.L.R. (2011) M.P. 1051*

– **Section 116** – Renewal of Lease – Lease deed not containing any clause of renewal – Appellant accepted the rent after determination of the lease – The lease is renewed – After determination of the lease, the rent has been deposited in the account of the plaintiff – The plaintiff has failed to state in specific terms that he has not withdrawn any amount which was deposited after determination of the lease in his account : *Manohar Vs. Central Bank of India, I.L.R. (2012) M.P. 991*

– **Section 122 & 123**, Registration Act (16 of 1908), Section 49 – Unregistered and Unstamped gift deed – Trial Court while permitting the admission of unregistered gift deed in evidence for collateral purpose patently committed error of law and thus erred in exercise of jurisdiction vested in it – Impugned order quashed – Petition allowed : *Jayant Kumar (Smt.) Vs. Smt. Vasanti Devi, I.L.R. (2012) M.P. 702*

– **Section 123** – Gift – Receiver should also prove that donor was the absolute owner of the property – Donor died prior to coming into force of Act, 1956, therefore she was having limited interest in the suit property and was not competent to give the suit property to plaintiffs in gift even though registered gift deed has been executed by her in their favour : *Ramu Singh Vs. Smt. Bandi Bai, I.L.R. (2012) M.P. 121*

– **Section 129** - See - Mohammedan Law, Section 145/147 : *Asgar Ali Vs. Tahir Ali, I.L.R. (2013) M.P. 2354*

– **Section 136** - Purchase of decree by counsel - Counsel for the decree holders purchased the decree and his application for substitution of his name in place of original decree holders was allowed by the execution Court - Held - The decree is neither a 'share' nor 'interest' or 'actionable claim', it does not fall within the four corners of Section 136 of the Act - No legal error in passing the impugned order - Petition dismissed : *Devkinandan Vs. State of M.P., I.L.R. (2011) M.P. 2416*

TREASURE-TROVE ACT (6 OF 1878)

– **Section 7 & 8** – Maintainability of Civil Suit – Collector while deciding objection did not adjourn the case with a direction of filing civil suit for declaration of title – Collector after inquiry declared the treasure to be ownerless property – Held – Act, 1878 is a complete code – Unless and until specific direction or observation is given by Collector u/s 8 to approach the Civil Court for getting the title decided, Civil Court has no jurisdiction to entertain the suit – Appeal dismissed : *Azizuddin Qureshi Vs. State of M.P., I.L.R. (2011) M.P. 978*

U

UCHCHA NYAYALAYA (KHAND NYAYPEETH KO APPEAL)
ADHINIYAM, M.P. 2005 (14 OF 2006)

– **Section 2** – Appeal – Suppression of material fact – Material fact not disclosed by appellant in writ appeal – No explanation as to why material fact has not been disclosed in writ appeal – Writ appeal liable to be dismissed on the ground of suppression of material fact : *Dhar Textile Mills Ltd. Vs. Canara Bank, I.L.R. (2011) M.P. 826 (DB)*

– **Section 2** - Grounds - No contention was raised before the Writ Court that consent of Bhumiswami for grant of mining lease were not required - There was no occasion for Writ Court to consider the ground which was neither pleaded nor agitated before Writ Court - Ground which was not raised before Writ Court does not arise for consideration as there is no foundation in Writ Petition : *Trilokinath Agrawal Vs. State of M.P., I.L.R. (2013) M.P. 2331 (DB)*

– **Section 2** - Marksheet of the petitioner of class X was treated as forged as he cannot appear in class X examination conducted by two distinct Boards in the same year - No explanation offered by petitioner as to how and under what circumstances he was compelled to appear in two different examinations conducted by different Boards - Appeal dismissed : *Vijay Singh Tomar Vs. State of M.P., I.L.R. (2014) M.P. 673 (DB)*

– **Section 2** – Whether questions of fact can be allowed to be urged for the first time during the arguments of an intra-Court appeal, if not agitated while arguing the writ petition – Held – No : *Ram Swaroop Pandre Vs. State of M.P., I.L.R.(2015)M.P. 2850 (DB)*

– **Section 2(1)**, Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993 (1 of 1994), Section 85 – Panchayat Karmi – Appointment – Resolution by Gram Panchayat – Less meritorious candidate appointed – Appointment set aside by the Collector – Confirm in Appeal by the Commissioner – State Minister in Revision upheld the Resolution of

Gram Panchayat – Held – Orders of Collector and Commissioner erroneous procedurally – Upheld, as leading to just decision – Appeal dismissed – Order of Single Judge upheld : *Omprakash Meena Vs. State of M.P., I.L.R. (2015) M.P. 1142 (DB)*

– **Section 2(1)** - See - Constitution, Article 226 : *Mohd. Imran Siddique Vs. State of M.P., I.L.R. (2011) M.P. 2699 (DB)*

– **Section 2(1)** - See - Constitution, Article 226 & 227 : *Sadhna Chourasia (Smt.) Vs. Punjab National Bank, I.L.R. (2011) M.P. 61 (DB)*

– **Section 2(1)**, Urban Land (Ceiling and Regulation) Act (33 of 1976), Urban Land (Ceiling and Regulation) Repeal Act (15 of 1999) and General Clauses Act (10 of 1897), Section 6(e) – Order of Additional Commissioner was just and proper as respondent was in possession and notice under Section 10(5) was not properly served – Possession of land was not taken over by the State Government – Single Bench considered all relevant questions and all aspects also inspected original record – No infirmity in the order in writ – Writ appeal dismissed : *State of M.P. Vs. Smt. Munni Bai, I.L.R. (2012) M.P. 847 (DB)*

– **Under Clause 2(1)**, Constitution - Article 227 - Maintainability - Learned Single Judge upon perusal of the order passed by the Labour Court and the Industrial Court, found no jurisdiction error or patent illegality or perversity in orders passed by both the Courts below - Held - Learned Single Judge has chosen not to exercise the original jurisdiction under Article 226/227 of the Constitution of India while not interfering with the finding of Courts below - Besides, the learned Single Judge has also not passed any order on merits, for the reason the respondent Corporation has also filed a writ petition against the order of the Industrial Court, which is pending consideration - Appeal is not maintainable : *Subhash Gupta Vs. The Managing Director, I.L.R. (2014) M.P. 26 (DB)*

UCHHTAR NYAYIK SEVA (BHARTI TATHA SEVA SHARTEN) NIYAM, M.P. 1994

– **Appointment of District Judge (Entry Level)** – Committee of the respondent (High Court) has an authority to fix the cut-off marks for candidates belonging to various categories with a view to short-list the candidates : *Ramesh Kumar Vishwakarma Vs. High Court of M.P., I.L.R. (2011) M.P. 2103 (DB)*

– **Rule 6** – See – Lower Judicial Service (Recruitment and Conditions of Service) Rules, M.P. 1994 –Rule 4, 6 : *Vikash Shukla Vs. High Court of M.P., I.L.R. (2011) M.P. 1852 (DB)*

UNIVERSITY GRANTS COMMISSION ACT (3 OF 1956)

– **Section 2(f), 22 & 23** - University - Right to confer degrees - No Open University without having obtained approval of Distance Education Council and that no Distance Education Centre could have been established by an open university outside the area of its operation or beyond the territorial limit of the State in which it is situated and therefore, the marksheets issued to the petitioners through Distance Education Centers situated in State of M.P. is clearly in violation of law and cannot be recognized for higher education or employment in State Service : *Rashmi Rajak (Smt.) Vs. Union of India, I.L.R. (2012) M.P. *120*

– **Section 12** – Functions of Commission – Act has been promulgated with an object to prescribe an agency to keep a watch on the standards of higher education establishments including prescribing service conditions – If a regulation is made by UGC, after its approval by Central Government and publication in official Gazette, it will become a law – UGC Act would prevail over other enactments : *Ramlala Shukla (Dr.) Vs. State of M.P., I.L.R. (2015) M.P. 1415*

- **Regulations 2009** - Regulations came into force w.e.f. 17-7-2009 - Regulations are prospective in operation - Validity of the degrees/marksheets obtained prior to that date can definitely be examined : *Rashmi Rajak (Smt.) Vs. Union of India, I.L.R. (2012) M.P. *120*

UNIVERSITY GRANTS COMMISSION (MINIMUM QUALIFICATION'S FOR APPOINTMENT OF TEACHERS AND OTHER ACADEMIC STAFF IN UNIVERSITIES AND COLLEGES AND MEASURES FOR THE MAINTENANCE OF STANDARD IN HIGHER EDUCATION), REGULATION, 2010

- **Clause 4.1.0A (ii)** – Appointment to the post of Professor Anthropology – Petitioner working as Assistant Professor and holding Ph.D degree – Found ineligible for the post of Professor – Non-fulfillment of Clause 4.1.0A (ii) of UGC regulation – Held – As the petitioner was not possessing the experience of guiding candidates for research at doctoral level as per Clause 4.1.0A (ii) of UGC regulation, though fulfilling other qualifications, so, the petitioner was rightly held ineligible for presentation – Petition dismissed : *Rajesh Gautam (Dr.) Vs. Hari Singh Gour University, I.L.R. (2015) M.P. 3192*

UNLAWFUL ACTIVITIES (PREVENTION) ACT (37 OF 1967)

– **Section 16 & 18** - See -Penal Code, 1860, Section 302, 201 & 120-B : *Pragya Singh Kushwaha @ Pragya Bharti @ Pappi Didi @ Swami Purna Chetnanand Giri Vs. Union of India, I.L.R. (2012) M.P. *91 (DB)*

URBAN LAND (CEILING AND REGULATION) ACT (33 OF 1976)

– **Section 5** – Transfer of land after appointed day – Land already declared surplus – Subsequent purchaser has no right or authority on the basis of sale deed – Contrary to provisions of section 5 – Transaction is ab initio void : *Madhu Janiyani Vs. State of M.P., I.L.R. (2015) M.P. 1316*

– **Section 5(1)(3), 6, 9 & 10(1)(3)(4)** – See – Constitution, Article 226 : *M.P. Samdariya Vs. State of M.P., I.L.R. (2012) M.P. 70*

– **Section 6 & 10** - Notice to purchasers - Land was purchased by the petitioners by sale deed dated 1-2-1982 - As the transaction took place after the appointed date i.e., 9-9-1976, therefore, the competent authority was neither bound to take notice of such subsequent transactions nor were bound to issue any notice to the petitioners with respect of the proceedings of Ceiling Act : *Kranti Kumar Jain Vs. State of M.P., I.L.R. (2012) M.P. 2701*

– **Section 6(1)** – Return by recorded Bhumi Swami filed after appointed day – Objection dismissed – Land declared as surplus – Notification issued u/s 10(1) of the Act – Notice of surplus land served – Ceiling proceedings never challenged before Appellate authority or any other Court – Proceedings attained finality – State becomes ‘Bhumi Swami’ – State has every right to allot and dispose of such land as per the procedure prescribed : *Madhu Janiyani Vs. State of M.P., I.L.R. (2015) M.P. 1316*

– **Section 8(3)** - Service of notice - When holder acknowledge the service, then mode of service gets diluted - Even if notice is not published in the manner contemplated by law, it will be best a case of irregularity but certainly not a fact striking at the very jurisdiction of the authority passing order : *Rukmani Bai Vs. State of M.P., I.L.R. (2011) M.P. *34*

– **Section 10(5)** - Information of stay order - No material on record to suggest that Tahsildar was ever authorized by State Govt. to take possession - However, Tahsildar was directed to take possession as per the endorsement made by the competent authority in the notice issued under Section 10(5) of the Act, 1976 - If competent authority had directed the Tahsildar to take possession, nothing wrong was done - Stay order was communicated to the competent authority who made endorsement in the original application, directing the Tahsildar not to take possession - However, the said order was never communicated to the Tahsildar - It can not be said that possession was taken while the Tahsildar was aware of the stay order : *Manohar Kumari Daga (Smt.) Vs. State of M.P., I.L.R. (2012) M.P. *88*

– **Section 10(5)** - Information of stay order - Non-communication of interim order - Unless and until the prohibitory order is brought to the knowledge of the executing authority, it can not be said that act done by the said authority is a nullity : *Manohar Kumari Daga (Smt.) Vs. State of M.P., I.L.R. (2012) M.P. *88*

– **Section 10(5)** - Notice of taking possession - Notice although issued in the name of holder of land was served on his minor grand-son - Service of notice on minor grand-son is no service in the eye of law - However, it is clear from the application filed by holder of land for grant of interim stay in revision, that he was aware of the proceedings initiated under Section 10(5) of Act, 1976 therefore, no prejudice is caused due to service of notice on minor grand son and only because of this lapse, the entire action was not to be vitiated at all : *Manohar Kumari Daga (Smt.) Vs. State of M.P., I.L.R. (2012) M.P. *88*

– **Section 33**, Urban Land (Ceiling and Regulation) Repealed Act (15 of 1999), Section 4 – Maintainability of Appeal u/s 33 of Act 1976 – Possession of land was taken pursuant to order passed under 1976 Act – Application u/s 4 of Repealed Act, 1999 was for declaring the proceedings abated was rejected by Competent Authority – Order was challenged by filing Writ Petition – Matter was remanded back and fresh order was passed on 01.09.2011 and application was once again rejected – Petitioner at whose instance earlier petition was filed did not challenge the order dated 01.09.2011 – Petitioner has no locus standi to challenge order dated 01.09.2011 as he was not a party in earlier petition – Further Addl. Commissioner was well within his right to hold that with repealing of Act 1976, forum u/s 33 of 1976 is also not available – Petition dismissed : *Vishun Lal Upadhyay Vs. State of M.P., I.L.R. (2015) M.P. 1469*

URBAN LAND (CEILING AND REGULATION) REPEAL ACT **(15 OF 1999)**

– **Section 3** - Proceedings for compensation - Repeal of 1976 Act by Repealing Act would not affect the proceedings for payment of compensation which had taken place before the coming into force of Repealing Act - Even if such proceedings were not initiated before coming into force of Repealing Act, it can not be said that such proceedings can not be initiated now : *Manohar Kumari Daga (Smt.) Vs. State of M.P., I.L.R. (2012) M.P. *88*

– **Section 4** - Abatement of legal proceedings - Possession - Notice to deliver the possession was issued on 9-9-1996 after declaring the land surplus - Possession was taken by the revenue officials - Neither erstwhile owners, nor any of the petitioners took any objection with respect of any of the aforesaid order, or against the notice issued for

taking over the possession - Panchnama of taking possession itself is sufficient to draw an inference that the possession of the land was taken over on 13-3-1999 - As the possession was already taken therefore, the representation of the petitioners by holding that possession was already taken doesnot call for any interference - Petition dismissed : *Kranti Kumar Jain Vs. State of M.P., I.L.R. (2012) M.P. 2701*

- **Section 4** - Abatement of legal proceedings - Possession – Proceedings for taking possession of surplus land under Act, 1976 remained pending – Various documents show that possession was never taken – All legal proceedings stood abated on enforcement of Repeal Act – Proceedings quashed : *Shanti Bai (Smt.) Vs. State of M.P., I.L.R. (2011) M.P. *88*

– **Section 4** – See – Urban Land (Ceiling and Regulation) Act, 1976, Section 33 : *Vishun Lal Upadhyay Vs. State of M.P., I.L.R. (2015) M.P. 1469*

V

VALUE ADDED TAX ACT, M.P. (20 OF 2002)

– **Section 2(o) & 14** – Rebate of Input Tax – Petitioner purchased material from a registered dealer after payment of VAT – Material was used for making a plant and machinery which was ultimately used for manufacturing final product – Provision of Section 14 is applicable – Matter remitted back for reconsideration in the light of interpretation : *Commercial Engineers & Body Building Company Ltd. (M/s.) Vs. Divisional Dy. Commissioner, I.L.R. (2015) M.P. 2668 (DB)*

– **Section 2(z) & 5** -Turnover and incidence of tax - Turnover u/s 5 has to be work out as per Section 2(z) of Act : *Lilasons Breweries Ltd. (M/s.) Vs. State of M.P., I.L.R. (2011) M.P. *28 (DB)*

– **Section 7, Schedule I** – Interpretation of entries – Commercial Tax Officer while holding that Salt Cake would not fall in Entry No. 35 (Salt) did not make any effort to find out whether salt cake would be covered under various other entries – Held – If there is a conflict between two entries, one leading to an opinion that it comes within the purview of a specific entry and another the residuary entry, the former should be preferred – Recourse to residuary entry should be made as a last resort - Order not in consonance with the requirement of Section 70 – matter remitted back for deciding it afresh : *Mega Enterprises (M/s.) Vs. State of M.P., I.L.R. (2012) M.P. 375 (DB)*

– **Section 46 (8A)**, Value Added Tax Rules, M.P. 2006, Rule 61(4) – Readmission/Rehearing of appeals – Appeal filed by Petitioner u/s 46 of Act 2002 was

dismissed for want of prosecution – Application for rehearing filed under Rule 61(4) of Rules, 2006 was dismissed as limitation for deciding appeal u/s 46(8A) is 12 months and the same has expired – Held – Time limit fixed for deciding appeal will not override the provisions of Rule 61 to invoke provisions of rehearing/readmission of appeal – Order of Appellate Authority set aside – Matter remitted back for deciding application for rehearing the appeal : *Procter & Gamble Hygiene & Health Care Ltd. Vs. Additional Divisional Deputy Commissioner of Commercial Tax, I.L.R. (2014) M.P. 3122 (DB)*

– **Section 54** – Assessing authority in absence of any document held that it could not be held that goods were not for sale in M.P. and were out to out goods – Subsequently after receiving relevant documents petitioner applied for rectification of mistake – Held – As there was no mistake or error apparent on record therefore application was rightly rejected by assessing authority – However, in the interest of justice, as petitioner was not in possession of documents at the relevant time and notice was also issued by assessing authority to the third party to produce the documents, order of assessment is set aside and matter remitted back to assessing officer to decide afresh taking into consideration the documents filed by petitioner : *Adhunik Transport Organization Ltd. (M/s.) Vs. Assistant Commissioner, Commercial Tax, I.L.R. (2014) M.P. 3116 (DB)*

– **Section 55** – Illegal search – Effect – Respondents had seized documents during search – Although Entire Search and seizure was illegal but respondents may proceed on the basis of documents seized by them to find out whether there was any evasion of tax by Petitioner – Authority shall evaluate the evidence with great caution : *SVIL Mines Ltd. Vs. State of M.P., I.L.R. (2012) M.P. 334 (DB)*

– **Section 55** – Search – Letter of Authorization not shown to the officers of Petitioner – Independent witnesses not called during search – Documents seized without recording of reasons by Commissioner and receipt of seizure not issued – Entire Search and seizure vitiated : *SVIL Mines Ltd. Vs. State of M.P., I.L.R. (2012) M.P. 334 (DB)*

– **Section 57(5)(6)(8)(11)** – Petitioner who is goods transporter was carrying goods to deliver – During transportation goods were stopped by Commercial Tax Officer – Due to non-compliance of Section 57(6)(b) of the Act, tankers alongwith goods were detained – Penalty was imposed which was deposited by the petitioner – However, the prayer to release the tankers alongwith the seized goods was not accepted to effect the recovery of tax assessed against seller of the goods – Held – Once the petitioner had paid the penalty imposed against it, it was incumbent upon the Check Post Officer to exercise its power conferred u/s 57(11) of the Act to release the goods seized by it, in favour of the petitioner – Goods could not have been detained for realization of tax assessed against the seller – Action is violative of Section 57(11) of the Act – Same cannot be sustained :

Kabra Bulk Transport Carrier (M/s.) Vs. The Commissioner of Commercial Tax, Indore, I.L.R. (2015) M.P. 66 (DB)

– **Section 70** - Handicrafts - Some goods may be produced partly by machine and partly by hand - In such cases product should be regarded as hand made or handicrafts if the essential character of the product in its finished form is derived from Handcraft aspect of its production : *Diamond Crystal Pvt. Ltd. (M/s.) Vs. State of M.P., I.L.R. (2013) M.P. 2589 (DB)*

– **Section 70** - Mouth Blown hand crafted Glass Article - Entire process from melting to finishing is done by manual process and merely for cutting and polishing on glass, if some hand operated machines are used, it cannot be said that product was not predominantly made by hands or it is made by machines : *Diamond Crystal Pvt. Ltd. (M/s.) Vs. State of M.P., I.L.R. (2013) M.P. 2589 (DB)*

– **Entry 6 of Part II Schedule II** – In common parlance utensils means items of daily household use, generally used for preparing, serving or keeping food or beverages – Restricting the meaning of “utensils” to the items used in the kitchen can not be sustained : *P.K. Plastics Vs. Commissioner of Commercial Tax, I.L.R. (2012) M.P. 1112 (DB)*

– **Entry 84-A (Part II Schedule 2)** - Whether "Kurkure" falls within the definition of traditional namkeen and can be assessed at a lower rate of VAT as per the Circular issued by the Commissioner, Commercial Tax - Held - Kurkure which has been introduced in the year 1990 can not be said to be a traditional item - Only traditional items could have been assessed under this concessional entry of tax - Hence, is assessable under the residuary entry : *Pepsico India Holdings Pvt. Ltd. Vs. State of M.P., I.L.R. (2014) M.P. 812 (DB)*

VALUE ADDED TAX RULES, M.P. 2006

– **Rule 61(4)** – See – Value Added Tax Act, M.P., 2002, Section 46 (8A) : *Procter & Gamble Hygiene & Health Care Ltd. Vs. Additional Divisional Deputy Commissioner of Commercial Tax, I.L.R. (2014) M.P. 3122 (DB)*

VANIJYIK KAR ADHINIYAM, M.P., 1994 (5 OF 1995)

– **Section 2(r)** – Exemption from payment of Entry Tax – If an exemption was granted by the State Government by issuing continuous two notifications, then the aforesaid exemption could not have been withdrawn by the State Government with retrospective effect : *Ambika Refinery (M/s.) Vs. State of M.P., I.L.R. (2012) M.P. 1221 (DB)*

– **Section 33 & 53**, Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act (54 of 2002), Section 13 - First Charge - Property in question was put on auction on "as is where is basis" - Bid of the petitioner was not accepted - Rejection of bid led to negotiation and Petitioner submitted fresh offer specifically mentioning that it wants to take over the assets and liabilities - As the property was not purchased in auction but was purchased subsequently by private negotiation which was only after the petitioner had satisfied himself regarding assets and liabilities incurred on the property - It cannot be assumed that petitioner had no knowledge of property being encumbered by Commercial Tax Liability - As the petitioner had purchased the assets and owned the liability to clear the tax components it cannot wriggle itself out of the liability expressly owned by him - However, the Petitioner would be at liberty to avail the remedy under Section 33(2) of the Act : *Swagatika Impex Pvt. Ltd. (M/s.) Vs. UCO Bank, I.L.R. (2012) M.P. *105*

– **Section 62** – Revision – Duty of Revisional Authority – Original certificates specifying the materials in question as raw material and incidental goods were issued to the petitioner after following the due procedure prescribed under the Act – Subsequently, when the authorities intended to take a different view, then it was necessary for them to pass an order considering all the relevant aspects of the matter and give reasons for reaching to the conclusion as to why the petitioner is not a manufacturer – Impugned orders passed by the respondents can not be sustained and are hereby set aside with liberty to the respondents to pass fresh, reasoned and speaking order after giving proper opportunity of hearing : *Anand Construction (M/s) Vs. Divisional Dy. Commissioner, Commercial Tax, Indore, I.L.R. (2012) M.P. 858 (DB)*

VAN UPAJ VYAPAR (VINIYAMAN) ADHINIYAM, M.P. (9 OF 1969)

– **Section 15(6)** – See – Constitution – Article 227 : *State of M.P. Vs. Ankit Rathore, I.L.R. (2014) M.P. 1015*

VETERINARY COUNCIL ACT (52 OF 1984)

– **Section 2(e)** - See - Service Law : *Shailesh Kumar Patel Vs. State of M.P., I.L.R. (2013) M.P. 2395*

VIDHAN MANDAL SADASYA NIRHATA NIVARAN ADHINIYAM, M.P. (16 OF 1967)

– **Section 3(1)** – See – Representation of the People Act, 1951, Section 87(1) : *Pushpendra Singh Hazari Vs. Lakhani Lal, I.L.R. (2015) M.P. 2942*

VIDHAN SABHA SACHIVALAYA SEVA ADHINIYAM, M.P.
(20 OF 1981)

– **Section 5(4)** – Fundamental Rules, M.P., Rule 56(2) – Compulsory retirement – Respondent had received poor grading in last 15 years out of 20 years – There were adverse remarks with regard to her working and conduct – Physical capacity of employee was also found very poor – Her working during last few years had deteriorated and even her leave record is not good – There are enough material to hold the respondent to be dead wood and to take action as required under F.R. 56 – Order of writ Court set aside – Order of compulsory retirement upheld : *Vidhan Sabha Sachivalaya Vs. Ku. Kamla Yadav, I.L.R. (2015) M.P. 1666 (DB)*

VINIRDISHTA BHRASHTA ACHARAN NIVARAN ADHINIYAM,
M.P. (36 OF 1982)

– **Section 6** – Sanction – Appellants tried for offences punishable under different provisions of Penal Law and Prevention of Corruption Act but convicted under Section 6 of Adhinyam, 1982 – Sanction was granted by competent authority under Section 197 of the Code and Section 19 of P.C. Act – No sanction under Section 6 of Adhinyam, 1982 was sought and granted – Held – State Govt. really intended to launch prosecution for the offence of preparation of false and fictitious muster rolls, absence of specific direction for investigation or mention of offence under Section 6 of Adhinyam, 1982 would not assume any significance, provided that the other mandatory pre-conditions for taking cognizance of the offence are satisfied : *Murlidhar Agarwal Vs. State of M.P., I.L.R. (2011) M.P. *98 (DB)*

– **Section 24, 25 & 26** - Local Area - In order to make out an offence under Section 25 & 26 of Adhinyam, the construction should be made on the land or plot situated in local area - Before granting sanction, the Prescribed Authority ought to have got satisfied that the offence was being committed on the land/plots in local area : *Sewakram Banjare Vs. State of M.P., I.L.R. (2013) M.P. 2697*

– **Section 39** - Cognizance of Offence - A police officer is required to make a report to the Authority for the purposes of investigation - Police Officer did not submit a report to such authority - In absence of such report, Prescribed Authority is not competent to take cognizance of matter and direct investigation - Collector had sought sanction for investigation - Collector clearly acted beyond his jurisdiction - Collector ought to have informed the police officer to make an application before Prescribed Authority putting all facts and then to seek permission for investigation - Cognizance taken by law was void ab-initio : *Sewakram Banjare Vs. State of M.P., I.L.R. (2013) M.P. 2697*

– **Section 39** - Direction of Investigation - Power of State Government - State Government has a huge power to give a sanction or to withdraw the sanction on its own motion - No need of police report for grant of such a sanction by State Government : *S.D. Mishra Vs. State of M.P., I.L.R. (2013) M.P. 713*

– **Section 41, 42 & 43** – Committal of case – Charge sheet was filed in the Sessions Court for offences punishable under Section 13(1)(d) of P.C. Act and under Section 409, 420, 468, 471, 477-A & 120-B of I.P.C. – Appellants acquitted for the said offences but convicted under Section 6 of Adhinyam, 1982 – As the case was not committed to the Court of Special Judge, therefore, he had no jurisdiction to take cognizance of offence under the Adhinyam, 1982 – Convictions are not sustainable and set aside : *Murlidhar Agarwal Vs. State of M.P., I.L.R. (2011) M.P. *98 (DB)*

VISHESH SASHASTRA BAL NIYAM, M.P. 1973

– **Rule 56(3)** – Out of turn promotion – Petitioners saved the life of 30 persons from being immersed into water and life of 6 persons who were surrounded by flood for which Rs. 2,000/- was awarded and appreciation certificate was also issued – Authorities made recommendations for their out of turn promotion – Held – Petitioners have passed only High School examination – Although they appeared in the examination for promotion on the post of Head Constable but they could not succeed – Alongwith petitioners there were 26 employees who performed well and they were also rewarded for their best services – No case for out of turn promotion is made out : *Anokhi Lal Billore Vs. State of M.P., I.L.R. (2015) M.P. 47*

VISHWAVIDYALAYA ADHINIYAM, M.P. (22 OF 1973)

– **Section 2 & 4**, Central Universities Act, (25 of 2009), Section 6 and Vishwavidyalaya Sanshodhan Adhinyam M.P., 2011, Section 3 – Affiliation – Petitioner running B.Ed. courses however, affiliation was not granted by University on the ground that it has now become Central University by virtue of Act, 2009 – New University has been constituted under Sanshodhan Adhinyam, 2011 however, the same has not become functional – Even after formation of Central University, Dr. Harisingh Gaur University granted affiliation to institutions – State Govt. had also requested authorities of Dr. Hari Singh Gaur University to make some interim arrangements – Refusal to grant affiliation to Petitioner bad in law – University directed to pass order of affiliation within 30 days if the petitioner found to have fulfilled all conditions – Result of students who were admitted and whose examination has been taken shall be released – Petition allowed :

*Ekta Shiksha Prasar Samiti, Chhatarpur Vs. Dr. Harisingh Gaur University, I.L.R. (2015) M.P. *6 (DB)*

– **Section 3(xx)** – Teacher – Petitioner working as Director, Physical Education – Cannot be treated as Teacher : *Mohd. Iqbal Quraishi (Dr.) Vs. His Excellency, The Kuladhipati of DAVV, I.L.R. (2015) M.P. 641*

– **Section 4(XX)** - Teacher - Laboratory Technician - Professors, Readers and Lecturers are to be treated as Teachers - Certain persons who are appointed for imparting instructions or conducting research with the approval of Academic Council of University can also be treated as Teachers of University - Since Adhinyam contains specific definition of Teacher, Petitioner cannot get any assistance from any other circular of State Govt. or any other Adhinyam which may be applicable to State Govt. Employees - Laboratory Technicians working in University cannot be treated as Teacher : *Kashiram Kushwaha Vs. State of M.P., I.L.R. (2013) M.P. 2386*

- **Section 12** - Reasonable opportunity of showing cause - Non Supply of the relevant documents and providing no opportunity to lead evidence amounts to denial of reasonable opportunity - Non supply of complaints and no evidence by the other side nor he was permitted to lead any evidence - Amounts to clear violation of natural justice - Impugned order directing the petitioner to relinquish the post of Vice-Chancellor quashed : *Satya Prakash (Prof.) Vs. Jiwaji University, Gwalior, I.L.R. (2013) M.P. 827*

– **Section 22 & 24** - Power of University to impose fine - University granted recognition only for 15 seats in first semester - The institution admitted 13 more students beyond the permission/recognition granted by the University - University decided to impose Rs.25000/- penalty per additional student - Held - It is well within the authority of University and is in consonance with law : *Janta Vidyalaya Shiksha Samiti Vs. Jiwaji University, Gwalior, I.L.R. (2013) M.P. 2137*

– **Section 24** - Power of Executive Council - There is nothing in Adhinyam which warrants that a decision taken by the Executive council has to be approved by the State Government : *Surendra Saraf Vs. Dr. Hari Singh Gaur Vishwavidyalaya, I.L.R. (2011) M.P. 3037*

– **Section 24 & 26, Statute No. 27, Clause 8, 11, 13 & 19** - Power of University to fix seats in a particular course - Petitioner College not mentioning the number of seats in application and State Government while granting affiliation also not fixed number of seats - Held - The university is well within its right in issuing notification (Annexure P-7), fixing the number of seats and the college was bound to follow the same as per the Adhinyam and the Statute : *Janta Vidyalaya Shiksha Samiti Vs. Jiwaji University, Gwalior, I.L.R. (2013) M.P. 2137*

– **Section 24 (x), 18, 20, 35 & 49** – Teacher – Petitioner was appointed as Director, Physical Education – On the recommendation of Executive Council, University passed an order treating him a teacher – Order was modified by impugned order and petitioner was once again treated as Director – Held – No statutory provision of law under Act, 1973 empowers the Chancellor to convert the post of Director to the post of Professor – Petitioner also failed to establish that he is a teacher – No straight jacket formula in respect of principles of natural justice and fair play – Petition dismissed : *Mohd. Iqbal Quraishi (Dr.) Vs. His Excellency, The Kuladhipati of DAVV, I.L.R. (2015) M.P. 641*

VISHWAVIDYALAYA SANSHODHAN ADHINIYAM M.P., 2011

– **Section 3** – See – Vishwavidyalaya Adhiniyam, M.P., 1973, Section 2 & 4 : *Ekta Shiksha Prasar Samiti, Chhatarpur Vs. Dr. Harisingh Gaur University, I.L.R. (2015) M.P. *6 (DB)*

VOLUNTARY DISCLOSURE OF INCOME SCHEME, 1997

– **Section 62(2)(ii) & 68** - Certificate issued under - Cannot be cancelled unless the certificate was issued contrary to the Scheme itself or ignoring the bar contained in Section 62(2)(ii) or where the certificate under the VDIS itself has been obtained practicing fraud : *Siraj Siddique (Shri) Vs. Income Tax Officer, I.L.R. (2013) M.P. *11 (DB)*

– **Section 64 (2)(ii)**, Income Tax Act (43 of 1961), Section 132-Bar-For attracting the provisions of Section 64(2)(ii) there should be direct search initiated u/s 132 - A bar will not be attracted in a case which is interconnected with some search proceedings but where no direct search is initiated or no search warrant is issued u/s 132 - No direct search was initiated against the petitioner - On the basis of the search conducted u/s 132 in respect of a third party the respondents are not justified in attracting the bar of Section 62(2)(ii) : *Siraj Siddique (Shri) Vs. Income Tax Officer, I.L.R. (2013) M.P. *11 (DB)*

VYAVASAYIK PARIKSHA MANDAL ADHINIYAM, M.P. (21 OF 2007)

– **Section 3** – Establishment of Professional Examination Board – Notification – State Govt. has not issued notification to establish Board in exercise of powers under Section 3(1) of Act, 2007 – Earlier Board was constituted vide notification dated 22.01.2004 – Existing Board must continue to function in terms of those Govt. orders/notifications until establishment of new Board upon issuance of notification under

Section 3(1) of Act, 2007 – Upon issuance of notification, existing Board would merge in newly established Board and cease to exist : *Pratibha Singh (Minor) (Ku.) Vs. State of M.P., I.L.R. (2014) M.P. 2514 (DB)*

– **Section 3** – Professional Examination Board – Action against selected students – Computer Experts Committee was constituted – After submission of its opinion further enquiry by Committee of Controllers was constituted which submitted its report – No fault can be found with the decision of Board to proceed only against identified candidates : *Pratibha Singh (Minor) (Ku.) Vs. State of M.P., I.L.R. (2014) M.P. 2514 (DB)*

– **Section 3** – Professional Examination Board – Cancellation of Result – Criminal Prosecution – Opinion of Board officials and reasons recorded in impugned decisions should not prejudice the petitioners in criminal action pending against them in any manner : *Pratibha Singh (Minor) (Ku.) Vs. State of M.P., I.L.R. (2014) M.P. 2514 (DB)*

– **Section 3** – Professional Examination Board – Natural Justice – Where identical pattern of commission of organized unfair means emerges, it would be nothing short of mass copying and therefore, could be dealt with together by a common order and without issuing notice to respective candidate : *Pratibha Singh (Minor) (Ku.) Vs. State of M.P., I.L.R. (2014) M.P. 2514 (DB)*

– **Section 3** – Professional Examination Board – Orders – Orders cancelling the examination were issued under the signatures of Director – However, office notings establishes that Chairperson had approved the proposal and had directed the Director to take follow-up action – No illegality in issuing order under the signature of Director : *Pratibha Singh (Minor) (Ku.) Vs. State of M.P., I.L.R. (2014) M.P. 2514 (DB)*

– **Section 3** – Professional Examination Board – Whether Board becomes *functus officio* by declaration of result – No executive instruction issued by State Govt. to limit the powers of Board – Argument that after declaration of result, the Board ceases to have any authority liable to be negative as obligation to conduct free and fair pre-admission professional examination is fully vested in State Govt. which has been entrusted to Board : *Pratibha Singh (Minor) (Ku.) Vs. State of M.P., I.L.R. (2014) M.P. 2514 (DB)*

W

WAKF ACT (43 OF 1995)

– **Section 3(i)** – Mutawalli – After the death of Mutawalli, petitioner was discharging the functions of Mutawalli and was managing the affairs and property of

Masjid for the last 13 years – Also paying annual contribution to the Board – Petitioner can be treated as Mutawalli : *Haji Abdul Aziz Ansari Vs. M.P. Wakf Board, Bhopal, I.L.R. (2012) M.P. 252*

– **Section 4 to 7 & 85** & M.P. Gazette Notification dated 25.08.1989 – Wakf Land dispute – Maintainability of suit – No notice was given to plaintiff by Survey Commissioner before converting disputed property into Wakf property – Therefore, bar u/s 85 not attracted – Civil Court has jurisdiction to entertain the suit – Setting aside the impugned judgment, case is remanded : *Yashoda Devi (Smt.) Vs. State of M.P., I.L.R. (2015) M.P. 1029*

– **Section 6** - Limitation - By notification issued in the year 1983, certain lands were declared Wakf property however, the land in dispute was not included - C.E.O., by order dated 20.06.2002 declared the disputed property as a Wakf property - The Cause of Action arose on 20.06.2002 therefore, the suit was within jurisdiction : *Panchan Mochiyen Ratlam Vs. Santosh Kumar, I.L.R. (2012) M.P. 1735*

– **Section 54 & 55** - Prescribes a complete methodology and code to remove encroachment on Wakf Property - Wakf Act is a special Central Act which prescribes this methodology - Thus, section 248 cannot be pressed into service against Wakf Property : *Baheed Khan Vs. State of M.P., I.L.R. (2012) M.P. 2385*

– **Section 55**, Transfer of Property Act, 1882, Section 114 - Jurisdiction of Tribunal – Direction to deposit arrears of rent – Suit for eviction filed against applicant after serving quit notice under Transfer of Property Act – Tribunal directed applicant to deposit entire arrears of rent – Held – If some direction to deposit arrears of rent/mesne profit without mentioning any consequence of it has been given by Tribunal, then it could not be said that such order has been passed under any error of jurisdiction – Question regarding forfeiture of lease and pursuant to that the question of his eviction from disputed property can be adjudicated at the time of final hearing of the matter – Revision dismissed : *Akash Jain Vs. Jama Masjid Committee, I.L.R. (2011) M.P. 1051*

– **Section 64** – Removal/appointment of Mutawali – If a Mutawali is to be removed, an enquiry is required to be conducted in the prescribed manner and then a decision is to be taken by majority of not less than 2/3rd members of the Wakf Board : *Managing Committee Dargah Sharif Vs. M.P. Wakf Board, I.L.R. (2012) M.P. 1170*

– **Section 64** – Removal of Mutawalli – Opportunity of Hearing – Inquiry under Section 64 of the Act ought to have been conducted – Petitioner can be said to be aggrieved person : *Haji Abdul Aziz Ansari Vs. M.P. Wakf Board, Bhopal, I.L.R. (2012) M.P. 252*

– **Section 64 & 67** – Appointment of Committee – Committee can be appointed for the Supervision or management of Board – Power can be exercised for suppression of Committee – As removal of petitioner as Mutawalli was in violation of Section 64(5), therefore appointment of Committee also not in accordance with law : *Haji Abdul Aziz Ansari Vs. M.P. Wakf Board, Bhopal, I.L.R. (2012) M.P. 252*

– **Section 68 & 90** – Notice – Proceedings – Section 90 relates only to civil proceeding in a suit or proceeding relating to a title or possession of wakf property – Before initiating proceedings before a Magistrate under Section 68, no notice under Section 90(1) of the Act is required : *Jalil Khan Vs. Sadar Mutaballi, I.L.R. (2011) M.P. *58*

– **Section 83(a)** – Revision – On the date of filing of the suit, it was alleged that the Committee was not having any locus standi to file the suit because the tenure of the Committee was already over on 23.07.2012 and the same was renewed vide order of the respondent No.2 dated 06.02.2013 – Held – The Committee which was functioning during its tenure in the absence of Constitution of new Committee shall be deemed to be continued for such property : *Moin Akhtar Vs. Mutawalli, Committee Chandal Bhata Masjid, I.L.R. (2014) M.P. 1965*

– **Section 83(1)(2) & 85** – See – Civil Procedure Code, 1908, Order 7 Rule 11 : *Kallu Khan Vs. Wakf Intajamiya Committee, I.L.R. (2015) M.P. *7*

– **Section 84 & 83** - Wakf Tribunal - Question of jurisdiction - Can be decided by it, whether it depends on the construction of the provision of Act or investigation of facts : *Zafar Ali Khan Vs. Arif Aquil, I.L.R. (2013) M.P. 2720*

WATER (PREVENTION AND CONTROL OF POLLUTION) ACT (6 OF 1974)

– **Section 25 & 26** – Charge of Offence – It is crystal clear that the allegations alleged by the Pollution board were regarding offence defined in Section 26 – Framing of Charge under Section 25(1) read with Section 44 Act of the Water Pollution and Control Act, 1974 can not be countenanced in law : *Rakesh Kumar Dhingra Vs. M.P. Pollution Control Board, I.L.R. (2012) M.P. 1493*

WILD LIFE (PROTECTION) ACT (53 OF 1972)

– **Section 2, 9, 51, 57 & 58** - Presumption - Presumption can be raised only when the accused is found to be in possession, custody or control of the captive animal, trophy etc. - Dead bodies of monkeys were recovered from tailing dam and there is nothing on

record to suggest that applicant was in any way involved in causing wild animals to fall down in the dam - No averment that applicant is sought to be made liable for unfortunate incident, was in charge of and responsible for the conduct of the business of the company at the relevant point of time - No offence under the Act is made - Complaint quashed : *Debabrata Dey Vs. State of M.P., I.L.R. (2012) M.P. 1777*

WORDS & PHRASES

– **“as far as possible”** – Expression “as far as possible” is interpreted to be not prohibitory in nature but connote a discretion vested in the prescribed authority which can exercise that discretion – And that they are words of limitation and are merely directory : *Ram Lakhan Vs. State of M.P., I.L.R. (2012) M.P. *66*

– **“as far as possible”** – These words give a discretion to the authority concerned – Once the authority exercises its discretion, the Court should not interfere with the said discretion/decision unless it is found to be palpably arbitrary : *Narmada Bachao Andolan Vs. State of M.P., I.L.R. (2011) M.P. *113 (SC)*

– **Date of Knowledge** – It has a definite meaning and connotation – Information, representation or complaint only gives reason which creates doubt – When finding comes after investigation, only then it can be said that the authority gathered knowledge – *Doubt, Reason to believe, and knowledge* have different meaning – *Reason to believe* is a higher level of state of mind – *Knowledge* will be slightly on a higher plane than *reason to believe* – *Reason to believe* is on a higher plane than *doubt* or *suspicion* : *Savina Park Resorts & Tours Pvt. Ltd. Vs. State of M.P., I.L.R. (2012) M.P. 365*

– **Direction** - Direction is in the nature of a command or authoritative instruction which contemplates the performance of certain duty or act by a person upon whom it has been issued - Direction should be specific, simple, clear and just and proper depending upon the facts and circumstances of the case but it should not be vague or sweeping : *Arun Kumar Aggarwal Vs. State of M.P., I.L.R. (2011) M.P. 2951 (SC)*

– **'erroneous decision' and an 'error apparent on the face of record'** - Distinction between - While the first can be corrected by the higher forum, the latter only can be corrected by exercise of the review jurisdiction : *Union of India Vs. Uday Pal, I.L.R. (2013) M.P. 378*

– **Fair Trial** – Includes fair and proper opportunities allowed by law to the accused to prove innocence – Adducing evidence in support of defence is a valuable right and denial of that right means denial of fair trial – Denial of fair trial is crucifixion of human rights : *Rattiram Vs. State of M.P., I.L.R. (2012) M.P. *47 (SC)*

- **Fraud** - Fraud is an act of deliberate deception with design of securing some unfair or undeserved benefit by taking undue advantage of another - Even most solemn proceedings stand vitiated if they are actuated by fraud - Principle of 'finality of litigation' cannot be stretched to the extent of an absurdity that it can be utilized as an engine of oppression by dishonest and fraudulent litigants - Party who secures a decision by fraud cannot be allowed to enjoy its fruits : *Sterlite Technologies Ltd. Vs. Dhar Industries, I.L.R. (2013) M.P. 1381*

- **Fraud** - means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract : (1) the suggestion, as a fact, of that which is not true by one who does not believe it to be true (2) the active concealment of a fact by one having knowledge or belief of the fact (3) a promise made without intention of performing it (4) any other act fitted to deceive (5) any such act or omission as the law specially declares to be fraudulent : *Jagdish Prasad Vs. Sangamlal, I.L.R. (2011) M.P. 3071*

- **Irreparable Loss** - What should be - It should be considered on the facts and circumstances of each case as no definite yardstick in that regard can be drawn : *Ranveer Singh (Dead) Through L.Rs. Vs. State of M.P., I.L.R. (2011) M.P. 1 (FB)*

- **Legal Malice** - State is under obligation to act fairly without ill will or malice, in fact or in law - It means something done without lawful excuse - It is an act done wrongfully and willfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite - It is a deliberate act in disregard to the rights of others : *Arun Kumar Gupta Vs. State of M.P., I.L.R. (2012) M.P. *1 (DB)*

- **Meaning** - Meaning of 'fails to implement' and 'Hostile discrimination' explained : *Indore Development Authority Vs. Burhani Grih Nirman Sahakari Sansthan Maryadit, I.L.R. (2015) M.P. 1145 (DB)*

- **Meaning** - Meaning of 'Personal information' 'Fiduciary', 'Fiduciary relationship', 'Life', 'Physical safety of any person' defined : *Ramesh Vs. Deputy Commissioner, I.L.R. (2015) M.P. 927*

- **Penalty and Damages** - Penalty is a sum of money so stipulated in terrorem, and liquidated damages are a genuine pre-estimate of damages - Whether a particular stipulation in a contract is in the nature of penalty has to be determined against the background of various relevant factors such as character of transaction and its special nature - Relative situation of parties and rights and obligations accruing from such transaction under general law and intention of the parties incorporating in the contract the

particular situation which is contended to be penal in nature : *Sanghvi Foods Private Ltd. (M/s.) Vs. M.P. Electricity Board, I.L.R. (2011) M.P. *154*

– **Per Incuriam** – Per incuriam are those decisions given in ignorance or forgetfulness of some statutory provision or authority binding on the Court or a statement of law caused by inadvertence or conclusion that has been arrived at without application of mind or proceeded without any reason so that in such a case some part of the decision or some step in the reasoning on which it is based, is found on that account to be demonstrably wrong : *Narmada Bachao Andolan Vs. State of M.P., I.L.R. (2011) M.P. *113 (SC)*

- **Phrase "vis major" and phrase "force majeure" - Meaning of** - An event which is out of control of the human being and prevent one or other party from performing their contractual obligation or thereof would amount to "force majeure" - Act of the God, which cannot be prevented by the existence of prudence, diligence and care of human being would call as "vis major" : *Pan Steels Pvt. Ltd. Vs. M.P. State Electricity Board, I.L.R. (2013) M.P. 1822*

– **Precedence** – A judgment of Court is not to be read as a statute, as it is to be remembered that judicial utterances have been made in setting of the facts of a particular case – One additional or different fact may make a world of difference between conclusions in two cases – Disposal of cases by blindly placing reliance upon a decision is not proper : *Narmada Bachao Andolan Vs. State of M.P., I.L.R. (2011) M.P. *113 (SC)*

- **Ratio Decidendi** - Ratio decidendi has the force of law and is binding on all statutory authorities when they deal with similar issues : *State of M.P. Vs. Sanjay Nagayach, I.L.R. (2013) M.P. 1245 (SC)*

– **Res Gestae** – Eye-witness informed ‘B’ about the incident – Information conveyed by eye-witness to ‘B’ is admissible as part of res-gestae : *Ramdas Kachhi Vs. State of M.P., I.L.R. (2012) M.P. 207 (DB)*

- **Revenue Entries** – Mutation proceedings are much more in the nature of fiscal inquiries – Mutation of a property in the revenue record does not create or extinguish title, nor has it any presumptive value of title – It only enables a person in whose favor the mutation is entered to pay the land revenue in question : *Narmada Bachao Andolan Vs. State of M.P., I.L.R. (2011) M.P. *113 (SC)*

– **Waiver** - Meaning - Waiver is voluntary relinquishment or abandonment, express or implied, of a legal right or advantage - Party alleged to have waived a right must have had both knowledge of the existing right and the intention of forgoing it : *Saroj Lalwani (Smt.) Vs. Shri Kishan Lal, I.L.R. (2014) M.P. 197*

– **Weed Science** – Weed is a plant that is objectionable and interfere with the activities and welfare of man – They are no separate group of plants : *D. Subrahmanyam (Dr.) Vs. Dr. D.K. Pandey, I.L.R. (2012) M.P. *12 (DB)*

– **Wholly Dependent** – It has to be understood in the context in which it is used keeping in view the object of the particular Rules, where it is contained and it would include both financial & physical dependence : *Prashant Singh Baghel Vs. State of M.P., I.L.R. (2015) M.P. 857*

WORK CHARGED AND CONTINGENCY PAID EMPLOYEES PENSION RULES, M.P., 1979

– **Scope and Application** – Rules would be applicable to the work-charged and contingency paid employee, who comes within the definition of 'service' of the Recruitment Rules of 1977 : *Mamta Shukla (Smt.) Vs. State of M.P., I.L.R. (2011) M.P. 1807 (FB)*

– **Rules 2(b), (h), (e) & 6** – Petition for declaring him as Permanent Work Charged & Contingency Paid Employee – Petitioner initially engaged on daily wages – Continuous service of 25 years – Held – Only when a worker is appointed as per the stipulation contained in the Rules of 1979 and against a vacant post, then only he is entitled to be declared as Permanent Work Charged & Contingency Paid Employee – Petition dismissed : *Iqbal Ahmad Vs. State of M.P., I.L.R. (2015) M.P. 2367*

– **Rule 2(C)** – Proviso (As amended by notification dated 08.02.1980) – Benefit of the amendment could be availed by employees who were in service as on 01.04.1981 and had completed 10 years of service on or after 01.01.1974 – Respondent/employee having retired on 31.05.1974, is not entitled to the benefit of the amended Rule : *State of M.P. Vs. Motilal, I.L.R. (2014) M.P. 1222 (DB)*

– **Rule 2(h) & (b)** - Entitlement of Pension - Petitioner was never engaged as a contingency or a work charged employee nor was he recruited in accordance with the procedure prescribed under the M.P. Work Charged Contingency Paid Employees Recruitment and Conditions of Service Rules of 1977 - He does not fall within the definition of work charged employee or contingency paid employee nor can he be categorized as a permanent employee - He is not entitled to any pension : *Rambhau Vishwakarma Vs. State of M.P., I.L.R. (2011) M.P. 2789*

- **Rule 4A** - Family Pension - Entitlement - Deceased was employed as Jeep Driver in the office of Horticulture Department, on daily wages, thereafter, was appointed as Jeep Driver on Regular Work Charged Establishment - Before his death, the deceased qualified the qualifying service as "permanent employee" by virtue of Rule 2(c) - Widow

of the deceased would be entitled for family pension : *Sampat Bai (Smt.) Vs. State of M.P., I.L.R. (2013) M.P. 806*

– **Rule 6** – Pension – Petitioner appointed as Gangman in the Public Works Department in March 1957 and retired on 31.12.1997 – Petitioner can not be made to suffer on account of inaction or delayed action on the part of the respondents – The case of the petitioner is covered by the earlier Division Bench judgment of this Court in the matter of State of M.P. Vs. Mohd. Sadiq (2010(4) MPLJ 367) and he is also entitled to the same benefit as has been extended in that case –Petitioner is entitled for the pension : *Hari Narayan Sharma Vs. State of M.P., I.L.R. (2012) M.P. 865 (DB)*

– **See** - Service Law : *Kala Bai Prajapati (Smt.) Vs. State of M.P., I.L.R. (2011) M.P. 2319 (DB)*

**WORKING JOURNALISTS AND OTHER NEWSPAPER
EMPLOYEES (CONDITIONS OF SERVICE) AND
MISCELLANEOUS PROVISIONS ACT, (45 OF 1955)**

– **Section 17** – See – Industrial Disputes Act, 1947, Section 33 C(2) : *Patrakar Prakashan (P) (M/s.) Vs. Smt. Vanadana Awasthy, I.L.R. (2012) M.P. *15 (DB)*

WORKMEN'S COMPENSATION ACT (8 OF 1923)

– **Insurance Policy** - Insurance Policy not produced by Insurance Company but only cover note produced in which no terms and conditions mentioned - If the consumer is not given any intimation about the limitations of the Insurance Company, then it cannot be said that such limitations were agreed between the parties : *National Insurance Co. Ltd. Vs. Lalaram, I.L.R. (2013) M.P. 1962*

– **Section 3** - See - Motor Vehicles Act, 1988, Section 166 : *Shabbir Vs. Samsu Bhai Kaliya Bhai Dangi, I.L.R. (2014) M.P. 144*

– **Section 3 & 12** - Workman Employer Relationship - Owner of tractor residing at Distt. Alwar whereas incident took place in Distt. Khandwa - Evidence of claimant that tractor fitted with thresher was being brought in Madhya Pradesh from time to time for last 8-9 years acceptable - Employment of claimant with respondent No. 2 and owner established : *National Insurance Co. Ltd. Vs. Lalaram, I.L.R. (2013) M.P. 1962*

– **Section 3(5) & 19**, Civil Procedure Code (5 of 1908), Section 9 - Jurisdiction of Civil Court - Suit for compensation for injury sustained by plaintiff during the course and business of duty - Civil Court was having jurisdiction and if claimant has chosen the forum of Civil Court, it can not be said that his claim is not maintainable in the Civil

Court and is maintainable only under Compensation Act : *Jairam Vs. Jaswant Singh alias Fakirchand, I.L.R. (2011) M.P. 2464*

– **Section 4** - Compensation - Claimant's case that he was getting Rs. 150 per day for working on thresher not denied by respondents No. 2 and 3 by entering into witness box - Evidence of claimant liable to be accepted : *National Insurance Co. Ltd. Vs. Lalaram, I.L.R. (2013) M.P. 1962*

– **Section 4A** - Date from which interest is payable - On the date of incident, F.I.R. was lodged , M.L.C. was performed and claim form was submitted to the insurance company through employer - Admittedly the liability of employer is indemnified by insurance company - No amount was paid by the insurance company within a month - In absence of payment of compensation within one month, the interest as specified under Section 4(A)(3)(a) of the Act, shall be payable by Insurance Company - Interest on the amount of compensation shall be payable after one month from the date of accident @ 12% per annum till its realization : *National Insurance Company Ltd. Vs. Ramesh Kumar Burman, I.L.R. (2011) M.P. 3112*

– **Section 4A** - Penalty - If there is a dispute about the relationship of employee and employer then the liability to pay compensation arises only after the claim is ascertained if compensation is not paid within 30 days thereafter without any justification, employer is liable to pay penalty - Since the claim after being ascertained has been paid within 30 days, no penalty should have been imposed : *Rajendra Prasad Mishra Vs. Mamta, I.L.R. (2014) M.P. 415*

– **Section 4(c)(i) Part -II of Schedule I** - Permanent Partial Disability - Non examination of Doctor- Respondent suffered amputation of left thumb and index finger of left hand became unworkable due to injuries sustained by him - Such injuries falls at serial No. 5 and 27 of Part II of Schedule I of Act - In case of permanent partial disablement resulted from injury under Section 4(c)(i) of the Act, the statement of medical practitioner assessing the loss of earning capacity not required - Statement of Medical Practitioner to record a finding with respect to loss of earning capacity comparable to injuries is necessary only when the injuries of the injured falls under Section 4(c)(ii) : *National Insurance Company Ltd. Vs. Ramesh Kumar Burman, I.L.R. (2011) M.P. 3112*

– **Section 10**, Motor Vehicles Act (59 of 1988), Section 166 – Res-judicata – Claimants filed claim petition before Motor Accident Claims Tribunal which was dismissed with finding that as driver/son of claimants himself was at fault therefore they are not entitled for compensation – Further liberty was given by Tribunal that of claimants want they can approach Commissioner under Workmen’s Compensation Act as

MACT does not have any jurisdiction in matter – Commissioner dismissed the claim as barred by principle of Res-judicata – Held – Commissioner committed error by holding that order passed by MACT amounts to Res-judicata – Claim was maintainable : *Mahabir Sen Vs. Vijay Singh, I.L.R. (2014) M.P. 2365*

– **Section 10(1) & 22A** – Statement regarding fatal accident and further deposit in cases of fatal accident – Appellant has failed to establish the applicability of these provisions in the case in hand – Employer having due notice of the accident and death having preceded the payment of compensation – Provisions of Section 10(1) and 22A are not attracted : *Executive Engineer, M.P.P.K.V.V.C.L. Vs. Smt. Malti Bai, I.L.R. (2015) M.P. 1332*

– **Section 21** - Claim Petition - Territorial Jurisdiction - Appellant did not bring it to the notice of the Commissioner that it has no territorial jurisdiction - On the contrary it submitted the jurisdiction of the Court below by submitting the written statement and by leading evidence - As appellant has led evidence, therefore, no prejudice has been caused to the appellant - Claim of claimants cannot be defeated only on the ground of lack of territorial jurisdiction : *Oriental Insurance Co. Ltd. Vs. Takshashila, I.L.R. (2013) M.P. 1109*

– **Section 21** - Driving License - Driver was killed by terrorists in Nepal while he was driving the truck - Whether the deceased was having valid driving license to drive the vehicle at Nepal or not makes no difference as the incident is not the outcome of the negligent driving of deceased - Appeal dismissed : *Oriental Insurance Co. Ltd. Vs. Takshashila, I.L.R. (2013) M.P. 1109*

– **Section 30** - Compensation - Claimant was working as Conductor - Doctor has stated that claimant has suffered 40% disability but on account of fracture of hip bone, workmen is totally disable to discharge the work of conductor - Permanent disability of the workmen is 100% as he cannot discharge the work of conductor : *National Insurance Co. Ltd. Vs. Ramkishore Mishra, I.L.R. (2012) M.P. *119*

– **Section 30** - Employer admitted that the deceased was earning Rs. 4000/- per month - Insurance Company pleaded ignorance - In view of clear admission of employer, the monthly income of the deceased is assessed at Rs. 4000/ - Deceased was aged about 20 years therefore, relevant factor would be 224.00 - Compensation would come to Rs. 4,03,200/- with interest at the rate of 12% from the date of incident - Appeal allowed : *Lalman Soni Vs. Shri Rupinder Singh Gill, I.L.R. (2013) M.P. 1088*

– **Section 30** – Entitlement to file an appeal – Precondition of deposit – Appellant has certainly not at all deposited the interest and there is no certificate on record issued by

the Commissioner – Appellant has not complied with the statutory provisions as contained u/s 30 of the Act – Appeal dismissed : *Ramesh Goyal Vs. Gayatri, I.L.R. (2014) M.P. 3197*

– **Section 30** – Interest awarded at the rate of 12% from the date of application – Held – It is not open to contend that the payment of compensation would fall due only after the Commissioner's order – Appeal is dismissed : *Oriental Insurance Co. Ltd. Vs. Smt. Bindiya, I.L.R. (2015) M.P. 162*

– **Section 30** - Interest - Compensation amount deposited within 30 days from the date of award - Interest was granted on compensation from the date of award till realization - Only a small amount would have accrued - It is hypertechnical to say that such small amount was not deposited therefore, the appeal is required to be thrown - Appeal cannot be dismissed : *National Insurance Co. Ltd. Vs. Lalaram, I.L.R. (2013) M.P. 1962*

– **Section 30 Third Proviso** - Amount payable under the order appealed against - Amount payable include the interest awarded - As only principal amount has been deposited and not the amount of interest, appeal is not maintainable in view of bar envisaged under Section 30 : *National Insurance Co. Ltd. Vs. Ramkishore Mishra, I.L.R. (2012) M.P. *119*

– **Section 30 Third Proviso** - Liability of Insurer - Insurer Company found liable to pay compensation jointly and severally - As the vehicle was insured whatever the liability was fastened upon the employer was also fastened upon the Insurance Company - Third Clause is applicable to the insurer also : *National Insurance Co. Ltd. Vs. Ramkishore Mishra, I.L.R. (2012) M.P. *119*

– **Section 30, 10(1) & Section 22A** – Penalty – Workman died within 24 hours of sustaining injuries – Compensation amount was not deposited within one month though the employee sustained injury in discharge of duty – Award is assailed on the ground that the Commissioner committed grave error in imposing penalty without causing notice u/s 10(1) and 22A of the Act – Held – As provided u/s 4A of the Act it is the statutory liability of the employer to pay compensation as soon as it falls due – Since appellant has failed to give any justification for not depositing the compensation within one month, Commissioner has rightly imposed the interest and penalty : *Executive Engineer, M.P.P.K.V.V.C.L. Vs. Smt. Malti Bai, I.L.R. (2015) M.P. 1332*

WORKMEN COMPENSATION RULES, 1924

- **Rule 41**, Civil Procedure Code (5 of 1908), Order 9 Rule 13-Setting aside ex-parte award-While setting aside ex-parte award, the Commissioner directed for deposit

of 50% of the award amount-Held-Provisions of Order 9 Rule 13 are applicable to proceedings-Proviso to Rule 41 gives discretion to Commissioner to construe and to make alteration without affecting the substance of procedure -Discretion exercised by Commissioner in directing payment of 50% of amount can not be termed as illegal or erroneous - Petition dismissed : *Kehar Singh Vs. Durjan Singh Gond, I.L.R. (2012) M.P. 1625*

WORKS CONTRACT

- **Release of Security Amount** - In terms of Works Contract, petitioner was required to maintain roads for five years - 50% of security amount was to be released after completion of three years - Rest of 50% of security amount was to be released after completion of five years - Petitioner completed the work - 50% of security amount was released on completion of three years - But, even after maintenance and expiry of the period of five years remaining 50% of security amount was not released because some dues are to be realised under another contract - Held - No clause in the contract empowering respondents to recover amount due under any other contract from security of the contract in question - Dispute about some other contract is pending before the M.P. Arbitration Tribunal - Respondents were directed to release the security amount expeditiously - Writ Petition allowed : *Biaora Infrastructure Pvt. Ltd. (M/s.) Vs. M.P. Gramin Sadak Vikas Pradhikar, I.L.R. (2013) M.P. 2526 (DB)*

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ZILA SAHKARI KENDRIYA BANK KARMCHARI SEVA NIYOJAN NIBANDHAN TATHA UNKI KARYA STHITI NIYAM, M.P. 1982

- **Rule 72(1)** - Compulsory Retirement - Petitioner compulsorily retired on the basis of certain allegations which amounts to misconduct - Overall service record of the petitioner was not adjudged - Since the order is passed without providing any opportunity principle of natural justice are violated - It is passed to avoid disciplinary proceedings which is impermissible - Same is set aside : *Shantimal Bhandari Vs. State of M.P., I.L.R. (2014) M.P. 2841*

PERSONAL NOTES
