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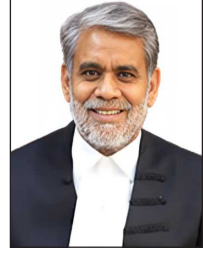
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the Governor of M.P., Madhya Pradesh Shasan, Bhopal.**

Justice Suresh Kumar Kait

**Chief Justice
High Court of Madhya Pradesh**



21st January, 2025

MESSAGE

It is a matter of immense pleasure and pride that I announce the release of the Indian Law Reports Madhya Pradesh Series Yearly Digest for the year 2024, a compilation of significant legal developments of the past year.

To my mind, there occurs no doubt about the significance of the Yearly Digest, having an objective of serving as a repository of important judgments and keeping the legal fraternity updated with the evolving legal landscape.

In the words of Dr. B.R. Ambedkar, who is one of the greatest architects of our constitution: *"Justice has always evoked ideas of equality, of proportion of compensation. In short, Justice is another name of liberty, equality and fraternity."* As the legal fraternity navigates through the laws, the above words must be kept in mind which underline the sentiments that the legal system is the foundation upon which the edifice of social justice is built.

I hope for the successful second edition of the Yearly Digest 2024 which would eventually go on to help the advocates and the inquisitive students of law. The team of Indian Law Reports Madhya Pradesh Series has made a top notch of an effort in the timely publication of the Digest for which their efforts cannot go unnoticed.

With thoughts many, I dedicate this publication to the pursuit of Justice in the spirit of Dr. Ambedkar's vision of a society full of dignity, liberty, equality, justice, fairness, humanity and impartiality to the citizens.

(Justice Suresh Kumar Kait)

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



FOREWORD

I feel delighted in introducing the second edition of the Yearly Digest 2024 of the Indian Law Reports (M.P.) Series. The Digest is actually symbolic of the name as it suggests, i.e., providing a gist of important legal developments which happened in the last one year.

The Digest is going to be extremely beneficial for the old and the new in the field of law, which is all about updating oneself. The same can be realized in the famous latin maxim, i.e., 'ignorantia juris non excusat,' or 'ignorance of the law is no excuse,' which implies that the Court presumes that every party is aware of the law and hence cannot claim ignorance of the law as a defence to escape liability.

Today, the law is evolving at an extreme pace and everyday is a new day, where a new law is propounded through various judgments & orders. In that regard, this Digest will be remarkably useful for the legal fraternity. The vision regarding imparting legal education should be inclusive and there is no denying the fact that the Yearly Digest would fulfill the same in the truest form.

I extend my cordial congratulations to the team of the Indian Law Reports (M.P.) Series for their superlative efforts in getting the digest published timely. I hope the Yearly Digest 2024 would continue to flourish under the constant support and guidance of Hon'ble Shri Justice Suresh Kumar Kait, Chief Justice of the High Court of Madhya Pradesh and aid the eager beavers of the field of law.

(Justice Gurbal Singh Ahluwalia)

**THE HIGH COURT OF MADHYA PRADESH, JABALPUR
AS ON 01.01.2025**

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**YEARLY DIGEST OF
THE INDIAN LAW REPORTS M.P. SERIES
2024**

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

A

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

SYNOPSIS

- 1. Bonafide Requirement/
Alternate Accommodation**
- 2. Denial of Title**
- 3. Landlord Tenant Relationship**
- 4. Rent Note**
- 5. Service of Notice**

1. Bonafide Requirement/Alternate Accommodation

– **Section 12(1)(f)** – Bonafide Requirement – Alternate Accommodation – Suitability – Held – Although landlord admitted that he has an open terrace of 2000 sqft above suit premises but when suit premises is on ground floor at main road, it will not be appropriate for plaintiff to construct the first floor and also plaintiff cannot even be directed for this purpose: *Hakimuddin Vs. Kamal Chand Nahar, I.L.R. 2024 M.P. 2101*

– **Section 12(1)(f)** – Bonafide Requirement – Availability of Residential Accommodation – Averments – Held – Apex Court concluded that if landlord seeking eviction u/S 12(1)(f) of tenant from premises let for non-residential purpose, he is not obliged to aver in his plaint that he is in occupation of residential accommodation and that is not suitable for non-residential purpose: *Hakimuddin Vs. Kamal Chand Nahar, I.L.R. 2024 M.P. 2101*

– **Section 12(1)(f)** – Bonafide Requirement – Held – No evidence on record that plaintiff filed the suit with any oblique motive – Appellant tenant has not adduced any evidence to show that plaintiff has suitable alternate accommodation for opening medical clinic for his son – Apex Court concluded that landlord is the best judge of his own requirement for residential or business purposes and has complete freedom in the matter – Judgement and decree affirmed – Appeal dismissed: *Hakimuddin Vs. Kamal Chand Nahar, I.L.R. 2024 M.P. 2101*

– **Section 12(1)(f)** – Bonafide Requirement – Legal Representatives of Plaintiff – Held – Suit was filed only for *bonafide* need of original plaintiff – It is not the case of plaintiff that apart from him, his son or other family members also need the disputed shop for business – When original plaintiff died he was not having a decree of eviction in his favour – Decree of eviction on the ground of *bonafide* need cannot be granted in favour of legal representative of plaintiff as they have not amended the plaint or came forward with a prayer that the disputed shop is required *bonafidely* for their business – Appeal dismissed: *Ram Kishan Sharma (Dead) Through LRs. Vs. Pankaj Kumar Ahuja, I.L.R. 2024 M.P. 2121*

– **Section 12(1)(f) & 18** and Municipal Corporation Act, M.P. (23 of 1956), Section 310 – Shop in dilapidated Condition – Held – Only on basis of photocopy of a notice alleged to have sent by Municipal Corporation, it is not proved that disputed shop is 150 years old and in a dilapidated condition because if shop was in such a bad condition then municipal corporation ought to have acted u/S 310 of the 1956 Act – Trial Court also failed to comply with provisions of Section 18 of 1961 Act – First appellate Court rightly held that plaintiff failed to prove that disputed shop is situated in a dilapidated condition – Appeal dismissed: *Ram Kishan Sharma (Dead) Through LRs. Vs. Pankaj Kumar Ahuja, I.L.R. 2024 M.P. 2121*

– **Section 12(1)(f) & 23-A(b)** – Bonafide Requirement – Term "or" – Held – Apex Court concluded that the word "or" is at times used to join terms when either one or the other or both are indicated – Contention of applicant is that since one suit for requirement of son is pending therefore another suit for requirement of daughter is not maintainable – Held – No restraint has been imposed with respect to institution of some other suit therefore said restriction cannot be read into the law, which would amount to creation of a new restraint upon landlord – Suits are maintainable – Revisions dismissed: *Kishan Chand (M/s) Vs. Smt. Sangita Jain, I.L.R. 2024 M.P. 524*

– **Section 23-A(b) & 23-D(3)** – Bonafide Requirement – Presumption – Held – Due to death of husband of respondent, there is no dispute about her to be landlord of special category – For personal need of respondent, first of all there is a presumption of *bonafide* requirement u/S 23-D(3) and applicant tenant failed to

rebut it by adducing cogent evidence to the effect that respondent and her son and daughter are already engaged in other business or they have no *bonafide* requirement of shops: *Kishan Chand (M/s) Vs. Smt. Sangita Jain, I.L.R. 2024 M.P. 524*

2. Denial of Title

– **Sections 12(1)(a), 12(1)(c) & 12(1)(o)** – Denial of Title of Landlord – Held – Tenant admitted execution of rent note in favour of plaintiff and accepted him as landlord – Tenant started giving rent to D-3 (his own son) on the premise that plaintiff has adopted D-3 – For receiving rent, there was no attornment in favour of D-3 by plaintiff – It amounts to denial of title to plaintiff – Adoption deed was challenged by plaintiff whereby the same was declared void – Tenant also changed the use of tenanted premises – There is a clear collusion between tenant and D-3 (son of tenant) to defeat the cause of plaintiff – Fraud vitiates all solemn proceedings – Suit rightly decreed u/S 12(1)(a), 12(1)(c) & 12(1)(o) of 1961 Act – Appeal dismissed: *Kailash Narayan Vs. Smt. Shyamlat, I.L.R. 2024 M.P. 1196*

3. Landlord Tenant Relationship

– **Sections 12(1)(a), (c) & (f)** – Landlord Tenant Relationship – Proof – Held – No documentary evidence on record regarding relationship of landlord and tenant nor there is any receipt of rent paid by defendant tenant to plaintiff – After purchase of suit property by the plaintiff, defendants never paid rent to plaintiff – Mere sale deed cannot be made basis for recording finding on the question of landlord tenant relationship – Mutation entries have no relevance about landlord tenant relationship – Eviction decree cannot be passed in favour of plaintiff – Suit dismissed – Liberty granted to plaintiff to file suit for possession against defendant on basis of their ownership – Appeal allowed: *Jawahar Sen Vs. Smt. Santosh Chadda (Dead) Thr. LRs., I.L.R. 2024 M.P. 2087*

4. Rent Note

– **Sections 12(1)(a), 12(1)(c) & 12(1)(o)** – Rent Note not Exhibited – Effect – Held – D-1, tenant in his pleading and deposition admitted that rent note was executed between him and plaintiff and tenancy was created – Such admission does not require any document to be exhibited: *Kailash Narayan Vs. Smt. Shyamlat, I.L.R. 2024 M.P. 1196*

5. Service of Notice

– **Sections 23-B, 23-C & 23-D** and Civil Procedure Code (5 of 1908), Order 5 Rule 17 – Service of Notice – Procedure – Held – After refusal of service of notice, process server did not follow the procedure prescribed under Order-5 Rule 17

CPC but returned the summons unserved – RCA without understanding the meaning of endorsement of process server (*Notice Adam Tamil Pesh*) treated the service of summons good – Impugned order of eviction set aside – Matter remanded back to RCA for decision afresh after following procedure u/S 23-C & D of the Act: *Omkar Singh Thakur Vs. Smt. Sarita Sharma, I.L.R. 2024 M.P. *33*

ADARSH SEWA NIYAM

– **Rule 12(1)(6)** – See – Civil Services (Leave) Rules, M.P., 1977, Rule 6: *Sheetal Soni (Dr.) Vs. State of M.P., I.L.R. 2024 M.P. 219*

ADMINISTRATIVE TRIBUNALS ACT (13 OF 1985)

– **Section 3(q) & 14** – Scope & Jurisdiction – Held – Petitioner is challenging the validity of acquisition policy which certainly do not fall within definition of recruitment and matters concerning recruitment – Acquisition policy provided for giving job to a family member of land owner without any further requirement – Central Administrative Tribunal has no jurisdiction to decide the controversy of present petition: *Shobhit Patel Vs. Union of India, I.L.R. 2024 M.P. *41*

ADVERSE POSSESSION

SYNOPSIS

1. Documentary Evidence 2. Trespasser

1. Documentary Evidence

– **Documentary Evidence** – Held – No sale deed has been produced before trial Court – Documents filed by plaintiff shows that their possession was entered in revenue records from the year 2015-16, thus they failed to prove that their possession is in continuity or in publicity for a period of more than 30 years – It was rightly held that plaintiff failed to prove adverse possession – Appeal dismissed: *Prem Singh Vs. Mangilal, I.L.R. 2024 M.P. *186*

– **Proof & Pleadings** – Held – A person claiming title by adverse possession must show that his possession is adequate in continuity, in publicity and in extent and a plea is required at the least to show that when possession becomes adverse so that the starting point of limitation against the party affected can be found: *Babulal Vs. Amra, I.L.R. 2024 M.P. *204*

2. Trespasser

– **Trespasser/Long Possession** – Held – The possession as trespasser is not an adverse possession nor long possession is synonym with adverse possession: *Babulal Vs. Amra, I.L.R. 2024 M.P. *204*

ADVOCATES ACT, (25 OF 1961)

– **Section 2(h) & 24** – See – Judicial Service (Recruitment and Conditions of Service) Rules, M.P. 1994, Rule 7(g): *Devansh Kaushik Vs. State of M.P., I.L.R. 2024 M.P. 621 (DB)*

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

– **Section 16 & 21**, Civil Procedure Code (5 of 1908), Order 26 Rule 10A and Constitution – Article 25, 29 & 49 – Determination of Character/Nature of Premise – Held – It is statutory duty of ASI u/S 16 to ascertain the nature, character and original form of the place of worship – It is only thereafter the protection of said place from misuse, pollution or desecration can happen at the instance of ASI – Director ASI directed for complete scientific investigation, survey and excavation of the premises alongwith other directions issued in this order and file expert report before the Court – Interim application is allowed: *Hindu Front for Justice Vs. Union of India, I.L.R. 2024 M.P. 1542 (DB)*

ARBITRATION AND CONCILIATION ACT (26 OF 1996)

SYNOPSIS

- | | |
|---------------------------------------|------------------------------------|
| 1. Interim Relief | 2. Lease Agreement |
| 3. Maintainability of Petition | 4. Scope & Jurisdiction |
| 5. Territorial Jurisdiction | 6. Miscellaneous |

1. Interim Relief

– **Section 9** – Interim Relief – Extension of Period of Contract due to Covid-19 – Railway station parking contract – Held – A right has already been created in favour of a different contractor and the said party is not impleaded in this appeal – Any interim order will have adverse impact on new contractor – It will also have a huge financial repercussion on Railways because next contract is for a much higher

value – However, if appellant succeeds in arbitration proceedings he may perhaps be compensated in terms of money – Appeal dismissed: *Lahere Traders (M/s.) Vs. Union of India, I.L.R. 2024 M.P. 1026 (DB)*

– **Section 9** – Interim Relief – Public Interest – Held – “Public interest” is also a relevant factor for purpose of considering a prayer for interim relief: *Lahere Traders (M/s.) Vs. Union of India, I.L.R. 2024 M.P. 1026 (DB)*

– **Section 9** – Interim Relief – Relevant Factors – Held – Apex Court concluded that for the purpose of grant of interim relief/measure u/S 9, the relevant factors are availability of (i) good *prima facie* case (ii) balance of convenience in favour of grant of interim relief and (iii) irreparable injury/loss to applicant: *Lahere Traders (M/s.) Vs. Union of India, I.L.R. 2024 M.P. 1026 (DB)*

2. Lease Agreement

– **Section 9 & 11** – Lease Agreement – Held – Lease agreement will supersede the subsequent so called possession document – All subsequent applications are liable to be filed under the lease agreement under which application u/S 9 was initially filed – Arbitrator is liable to be appointed under the arbitration agreement: *Carnival Films Entertainment Pvt. Ltd. Vs. M/s. MP Entertainment and Developers Pvt. Ltd., I.L.R. 2024 M.P. 139*

3. Maintainability of Petition

– **Section 16** and Constitution – Article 226 & 227 – Maintainability of Petition – Held – Petition under Article 226 or 227 can be filed against the order of Arbitral Tribunal dismissing application u/S 16 of 1996 Act only if there is a patent lack in inherent jurisdiction – Jurisdiction of arbitrator is challenged precisely on ground that agreement containing arbitration clause is unstamped – Arbitrator has been appointed by this Court – No patent lack of inherent jurisdiction: *Suncity Dhoot Colonizers Pvt. Ltd. Vs. Ram Chandra Patidar, I.L.R. 2024 M.P. 911 (DB)*

4. Scope & Jurisdiction

– **Sections 16, 34 & 37** – Scope & Jurisdiction – Held – Any challenge to the jurisdiction of arbitrator necessarily has to be determined by arbitrator in first instance and then it can only be challenged u/S 34 after passing of the final award: *Suncity Dhoot Colonizers Pvt. Ltd. Vs. Ram Chandra Patidar, I.L.R. 2024 M.P. 911 (DB)*

– **Sections 16, 34 & 37** and Constitution – Article 226 & 227 – Scope & Jurisdiction – Held – Writ petition under Article 226 or 227 is not maintainable against every order passed by Arbitral Tribunal or Sole Arbitrator until and unless

exceptional circumstances or "bad faith" of opposite party has been shown in the petition – Petitioner would be at liberty to wait until the award is pronounced and thereafter avail the remedy of appeal available u/S 34 or 37 of 1996 Act – Petition dismissed: *Suncity Dhoot Colonizers Pvt. Ltd. Vs. Ram Chandra Patidar, I.L.R. 2024 M.P. 911 (DB)*

5. Territorial Jurisdiction

– **Sections 9, 11 & 42** – Territorial Jurisdiction – Held – The so-called possession document is neither a notarized nor a stamped document, such document cannot be considered u/S 11 of the Act for initiation of arbitration proceeding – Division Bench rightly ignored the subsequent proceedings initiated by non-applicant under the so-called possession document and held that proceeding initiated u/S 9 are the first proceedings initiated under the lease agreement and therefore application u/S 11(5) is maintainable – Arbitrator is liable to be appointed u/S 11(6) of the Act under the lease agreement carrying arbitration clause – Arbitrator appointed – Matter disposed: *Carnival Films Entertainment Pvt. Ltd. Vs. M/s. MP Entertainment and Developers Pvt. Ltd., I.L.R. 2024 M.P. 139*

6. Miscellaneous

– **Section 11(6)** – See – Madhyastham Adhikaran Adhinyam, M.P., 1983 Section 7-B(2-A): *M.P. Madhya Kshetra Vidyut Vitran Co. Ltd. Vs. PSR AMRCL (JV), I.L.R. 2024 M.P. 1328 (DB)*

– **See** – Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002, Sections 11, 14, 35 & 37: *Umesh Kumar Gupta Vs. The Collector, I.L.R. 2024 M.P. 1149 (DB)*

ARMS ACT (54 OF 1959)

– **Section 25(1B)(b)** – Independent Witness – Held – As per prosecution case, a sword was seized from possession of accused – Independent witness has not supported the prosecution case regarding seizure of sword – Accused rightly acquitted of the charge: *Premchand Vs. State of M.P., I.L.R. 2024 M.P. *14*

– **Section 25(1-B)(A)** – See – Penal Code, 1860, Sections 302, 307, 324, 323, 147 & 148: *Ramsingh @ Rama Vs. State of M.P., I.L.R. 2024 M.P. *72 (DB)*

– **Section 25(1-B)(B)** – See – Penal Code, 1860, Sections 302, 394, 394/397: *Anil Patel Vs. State of M.P., I.L.R. 2024 M.P. *79 (DB)*

– **Section 25/27** – See – Penal Code, 1860, Section 302: *Surajpal Vs. State of M.P., I.L.R. 2024 M.P. 1407 (DB)*

– **Section 25/27 & 25(1-B)(a)** – See – Penal Code, 1860, Section 302: *Surajpal Vs. State of M.P., I.L.R. 2024 M.P. 1407 (DB)*

AYURVIGYAN PARISHAD ADHINIYAM, M.P. 1987

(11 OF 1990)

– **Section 24** – See – Penal Code, 1860, Section 420: *Arun Sinha Vs. State of M.P., I.L.R. 2024 M.P. *173*

– **Section 24** – See – The Indian Medical Council Act, 1956, Section 15: *Nitishchandra Dhar Vs. State of M.P., I.L.R. 2024 M.P. *64*

B

BANKERS' BOOKS EVIDENCE ACT (18 OF 1891)

– **Section 4** – See – Negotiable Instruments Act, 1881, Section 138: *Krishnapal Vs. Hari Singh, I.L.R. 2024 M.P. *256*

BAR COUNCIL OF INDIA RULES, 1975

– **Rule 2(vi) & 4** – See – Judicial Service (Recruitment and Conditions of Service) Rules, M.P. 1994, Rule 7(g): *Devansh Kaushik Vs. State of M.P., I.L.R. 2024 M.P. 621 (DB)*

BEER & WINE RULES, M.P., 2002

– **Rule 12** and Foreign Liquor Rules, M.P., 1996, Rule 9 – Registration of Labels – Held – Only those manufactory whose labels are registered under Rule 12 of M.P. Beer & Wine Rules or under Rule 9 of Rules 1996, may raise objections in respect of registration of labels on ground of similarity or resemblance – Petitioner has no manufactory in M.P. and has no registration of labels under Rule 12 of M.P. Beer & Wine Rules by Excise Commissioner – Petitioner has no locus to challenge the order – Petition dismissed: *Inbrew Beverages Pvt. Ltd. Vs. Excise Commissioner, I.L.R. 2024 M.P. *158*

BENAMI TRANSACTIONS (PROHIBITION) ACT (45 OF 1988)

– **Section 24 & 26** – See – Constitution – Article 226: *Santosh Bhadoriya Vs. Union of India, I.L.R. 2024 M.P. *170 (DB)*

BHARATIYA NAGARIK SURAKSHA SANHITA (46 OF 2023)**SYNOPSIS: Section 483****1. Bail – Cultivation of Opium 2. Bail - Doctrine of Merger****3. Bail - Grounds****1. Bail – Cultivation of Opium**

– **Section 483** and Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Sections 2(xvii)(a), 8, 18(c) & 37 – Cultivation of Opium Plants – Held – Since small and commercial quantity is not prescribed for opium poppy and cultivation of opium plants is covered u/S 18(c), therefore, Section 37 of 1985 Act will not be attracted in the case – Bail application allowed: *Vishram Vs. State of M.P., I.L.R. 2024 M.P. 2650*

2. Bail - Doctrine of Merger

– **Section 483** – Doctrine of Merger – Applicability – Held – Special leave to appeal which is not admitted and dismissed *in limine* by the Supreme Court will not attract the doctrine of merger and same will not be substituted in place of order under challenge – Thus, there is no bar before Court to consider repeat application for grant of bail: *Kamlesh Sahu Vs. State of M.P., I.L.R. 2024 M.P. 2440*

3. Bail - Grounds

– **Section 483** – Grounds – Held – Applicant is in jail for last 11 months – Investigation is complete and charge-sheet has also been filed – Applicant deposited Rs. 1 crore in bank of Zila Panchayat which is more than the amount alleged to have been embezzled – Applicant is secretary of Gram Panchayat therefore there is no likelihood of his absconding from law – Co-accused has already been released on bail – Bail application allowed: *Kamlesh Sahu Vs. State of M.P., I.L.R. 2024 M.P. 2440*

- – **Section 528** – See – Criminal Procedure Code, 1973, Section 311: *Mukesh Pandey Vs. State of M.P., I.L.R. 2024 M.P. 2641*

**BHU-RAJASWA SANHITA (BHU ABHILEKHON MAIN
NAMANTARAN) NIYAM, 2018**

– **and Evidence Act (1 of 1872), Section 67 & 68** – Mutation on Basis of Will – Jurisdiction of Revenue Authorities – Held – Unless and until Will is duly

proved, it cannot be acted upon – Revenue authorities have no jurisdiction to decide authenticity, correctness, genuineness of a Will which can only be done by Civil Court – Rule of 2018 which permits mutation on basis of Will has to be interpreted that name of beneficiary can be mutated provided the Will is duly proved and for that purpose beneficiary has to approach Civil Court for declaration of title – Petition dismissed: *Vijay Singh Yadav Vs. Smt. Krishna Yadav*, I.L.R. 2024 M.P. 1492

BHUMI VIKAS RULES, M.P., 2012

SYNOPSIS

1. Applicability

2. Miscellaneous

1. Applicability

– **Rule 12 & 103** and Indore Development Plan 2021, Clause 6.20 & 6.3 – Applicability – Held – Provisions of Rule 103 provides for overriding effect to development plan – Provisions of development plan shall override the Rules/Regulations applicable in plan area – Land/building use or occupancy use has to be as per development plan: *Ritika Hasanandani (Smt.) Vs. Commissioner Indore Municipal Corporation*, I.L.R. 2024 M.P. 899

– **Rule 23 & 25** – Applicability – Held – Rule 23 deals with duration of sanction under which sanction once accorded shall remain valid upto 3 years – It has nothing to do with building permission: *A and A Real Estate Pvt. Ltd. Vs. State of M.P.*, I.L.R. 2024 M.P. 78

2. Miscellaneous

– **Rules 5(2), 12, 31(2)(g) & (h)** – See – Nagar Tatha Gram Nivesh Adhinyam, M.P., 1973, Section 16: *Ritika Hasanandani (Smt.) Vs. Commissioner Indore Municipal Corporation*, I.L.R. 2024 M.P. 899

– **Rule 42** – See – Nagar Tatha Gram Nivesh Adhinyam, M.P., 1973, Sections 29, 30(1)(c) & 32: *Oceanic Developers Pvt. Ltd. Vs. State of M.P.*, I.L.R. 2024 M.P. 1511

BINDING PRECEDENT

– **Concept** – Held – A singular different fact may change the precedential value of a judgment: *Telecommunications Consultants India Ltd. Vs. Rajendra Singh Kiledar Construction Pvt. Ltd.*, I.L.R. 2024 M.P. 1174 (DB)

– **Consideration of Earlier Judgment** – Held – Full Bench has concluded that if in the later judgment of equal strength of Bench, the previous judgment has not been considered, then the previous judgment shall be binding on the co-ordinate Bench: *Bhaskar @ Balkishan Sonone Vs. State of M.P., I.L.R. 2024 M.P. 424*

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

– **Sections 39, 46, 47, 48, 50, 54 & 55** and Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Rules, M.P., 2002, Rule 49 & 210 – Cognizance of Offence – Limitation – Held – Mere order of forwarding of notice does not mean that Labour Commissioner had knowledge about the incident on same day – There is no evidence that the notice was received on the same day by Labour Commissioner – Notice was issued on 24.05.12 and complaint was filed on 05.06.12 – Complaint was within limitation – Revision dismissed: *Rajesh Agrawal Vs. State of M.P., I.L.R. 2024 M.P. 166*

**BUILDING AND OTHER CONSTRUCTION WORKERS
(REGULATION OF EMPLOYMENT AND CONDITIONS OF
SERVICE) RULES, M.P., 2002**

– **Rule 49 & 210** – See – Building and Other Construction Workers’ (Regulation of Employment and Conditions of Service) Act, 1996, Sections 39, 46, 47, 48, 50, 54 & 55: *Rajesh Agrawal Vs. State of M.P., I.L.R. 2024 M.P. 166*

C

CENTRAL CIVIL SERVICES (CONDUCT) RULES, 1964

– **Rules 5(12), 5(12A) & 5(13)** and Constitution – Article 13(3)(a), 14 & 19 – Banned Organizations – Participation of Central Government Employees – Rashtriya Swayamsevak Sangh – Held – Voluntary membership of a national and internationally famed organization like RSS for activities other than political in nature, like religious, social philanthropic and educational cannot be proscribed through executive instructions – It is an infringement of fundamental rights of not only the central government employees but also members and office bearers of the organization – The moratorium on joining RSS ought to have been done only through duly enacted law – Official Memorandum do not constitute a "law" issued under Article 13(3)(a) of

Constitution – Petition disposed: *Purushottam Gupta Vs. Union of India*, I.L.R. 2024 M.P. 2549 (DB)

– **Rule 5(12), 5(12A) & 5(13)** and Constitution – Article 13(3)(a), 14 & 19 – Misconduct – Rashtriya Swayamsevak Sangh – Participation of Central Government Employees – Held – Discretion to classify any organization as a "don't join" organization for central government employees, must be through rules of reasons, fair play and justice, not according to subjective opinions of those in power – It should be guided by law and not humour or preconceived prejudice against such organization – Now, once the government has decided to remove the name of RSS from the litany of banned organizations, its continuation should not be dependant only on vagaries, mercy and pleasure of the government of the day: *Purushottam Gupta Vs. Union of India*, I.L.R. 2024 M.P. 2549 (DB)

CENTRAL EXCISE ACT (1 OF 1944)

– **Sections 11(B), 11(BB), 35(F) & 35(FF)** – Interest on Refund Amount – Held – Tribunal concluded that respondent is entitled for interest on the amount of refund sanctioned @ 12% p.a. to be calculated from date of payment till date of disbursement – Aggrieved by the same, Revenue has filed this appeal – Appeal is covered by judgments in case of *M/s Green Valley* (Meghalaya High Court) and in case of *M/s Riba Textiles* (High Court of Punjab and Haryana) – No substantial question of law arises for consideration – Appeal dismissed: *CGST and Central Excise, Commissioner Vs. M/s. Indore Treasure Market City Pvt. Ltd.*, I.L.R. 2024 M.P. *206 (DB)

CENTRAL EXCISE RULES, 2017

– **Rule 27** – See – Central Goods and Services Tax Act, 2017, Section 67(3): *Elora Tobacco Co. Ltd. (M/s.) Vs. Union of India*, I.L.R. 2024 M.P. *227 (DB)

CENTRAL GOODS AND SERVICES TAX ACT (12 OF 2017)

SYNOPSIS

- 1. Principle of Natural Justice**
- 2. Return of Documents**
- 3. Show Cause Notice**

1. Principle of Natural Justice

– **Section 67(3)** and Central Excise Rules, 2017, Rule 27 – Cross-Examination of Witnesses – Principle of Natural Justice – Held – Right of fair hearing and personal hearing requires that petitioner be given right to cross-examine

witnesses whose evidence has been relied upon in the show cause notice – Principle of natural justice are required to be adhered to while conducting adjudication proceedings: *Elora Tobacco Co. Ltd. (M/s.) Vs. Union of India, I.L.R. 2024 M.P. *227 (DB)*

– **Section 73(1)** – Show Cause Notice & Order of Demand – Reasonable Opportunity of Hearing – Held – Though no time period is stipulated in Section 73 but it is obvious that statute contemplates affording of reasonable opportunity to reply and that ought to be 30 days – Notice issued on 03.09.2022 and order passed on 12.09.2022, only 8 days was granted – Impugned notice and order are set aside – Petition allowed: *Raymond Limited Vs. Union of India, I.L.R. 2024 M.P. 243 (DB)*

– **Section 75(4)** – Opportunity of Personal Hearing – Held – Whether or not petitioners have specifically asked for personal hearing, fact remains that adverse decision was contemplated against them – It was obligatory and mandatory on part of respondents to provide the petitioners an opportunity of personal hearing which was not given – Decision making process is vitiated and is contrary to principles of natural justice – Impugned proceedings after the stage of reply of show cause notices are set aside – Respondents directed to afford opportunity of personal hearing to petitioners – Petitions disposed: *Technosys Security System Pvt. Ltd. (M/s.) Vs. Commissioner, Commercial Taxes, I.L.R. 2024 M.P. *148 (DB)*

2. Return of Documents

– **Section 67(3)** and Central Excise Rules, 2017, Rule 27 – Return of Documents – Held – Besides the certified copies of relied documents which are necessary for filing reply and preparing defence, petitioner is entitled to receive original copies of non-relied documents – Fair hearing requires that petitioner is given due opportunity to raise all defences which are available to him under the law on the basis of documents, facts and circumstances – Respondents directed to handover all original documents to petitioner which has been seized by them and not relied on by respondents – Petition allowed: *Elora Tobacco Co. Ltd. (M/s.) Vs. Union of India, I.L.R. 2024 M.P. *227 (DB)*

3. Show Cause Notice

– **Section 73(2)** – Show Cause Notice – Contents – Held – Show cause notice not only falls short of mentioning the minimum period of 30 days to afford reasonable opportunity to noticee to respond but also appears to be lacking in material particulars – Show cause notice set aside: *Raymond Limited Vs. Union of India, I.L.R. 2024 M.P. 243 (DB)*

– **Section 73(2)** and Constitution – Article 226 – Show Cause Notice – Adequate Material – Held – Any show cause notice whether u/S 73 or otherwise can withstand the test of judicial scrutiny only when the same contains enough and adequate material which motivated the notice issuing authority to take a *prima facie* view against noticee – If contents of show cause notice are lacking in material particulars or are vague then such notice becomes vulnerable to judicial review: *Raymond Limited Vs. Union of India, I.L.R. 2024 M.P. 243 (DB)*

CENTRAL RESERVE POLICE FORCE RULES, 1955

– **Rule 27(6)(ccc)** – Termination – Acquittal from Criminal Case – Effect – Held – Charges against petitioner in disciplinary enquiry was mishandling of weapon which is rifle whereas charge in criminal case was death of “K” on account of negligence – Charges framed in criminal trial and departmental enquiry were not identical – In criminal trial, petitioner was given benefit of doubt and it was not a clear acquittal – Rule 27(6)(ccc) will not come to rescue petitioner – Sufficient material available to prove guilt of petitioner – No error in the order of punishment – Petition dismissed: *Vishnu Kumar Mishra Vs. Union of India, I.L.R. 2024 M.P. *106*

CENTRAL VIGILANCE COMMISSION ACT (45 OF 2003)

– **Section 8(1)(f) & 8(1)(g)** – See – Prevention of Corruption Act, 1988, Sections 19: *Shashikant Mishra Vs. Union of India, I.L.R. 2024 M.P. 1428 (DB)*

CHILD AND ADOLESCENT LABOUR (PROHIBITION AND REGULATION) ACT (61 OF 1986)

– **Section 2(ii)** – See – Motor Vehicles Act, 1988, Section 173: *The New India Assurance Ltd. Vs. Kamalsingh Sisodiya, I.L.R. 2024 M.P. *247*

CIVIL PRACTICE

– **Evidence of Power of Attorney Holder** – Held – A power of attorney holder cannot depose in place of principle i.e. the plaintiff or defendant – Factum of delivery of actual possession voluntarily by defendant to plaintiff could not have been proved by power of attorney holder and it was for the plaintiff himself to depose in support of his case: *Vinay Kumar Vs. Yaseen Mohammad Through LRs, I.L.R. 2024 M.P. *103*

CIVIL PROCEDURE CODE (5 OF 1908)

– **Section 2(11)** – See – Motor Vehicles Act, 1988, Section 173: *Cholamandalam MS General Insurance Vs. Hajarilal, I.L.R. 2024 M.P. 1215*

– **Sections 3, 5 & Order 7 Rule 11** – See – Panchayats (Election Petitions, Corrupt Practices and Disqualification for Membership) Rules, M.P. 1995, Rule 11: *Rabindra Kumar Upadhyay Vs. The Sub-Divisional Officer (Revenue), I.L.R. 2024 M.P. *118*

– **Section 9 & Order 7 Rule 11** – See – Land Revenue Code, M.P., 1959, Sections 44, 248 & 257(w-i): *Olpherts Pvt. Ltd. Vs. Sarla Devi Mahila Mandal, I.L.R. 2024 M.P. 1676*

SYNOPSIS: Section 10

1. Applicability

2. Principle of Res-Judicata

3. Scope of Suit

1. Applicability

– **Section 10** – Stay of Suit – Held – Apex Court concluded that Section 10 applies to suit instituted in civil Court and it cannot apply to proceedings of other nature instituted under any other statute: *Gayatriraje Puar (Smt.) Vs. Smt. Shailjaraje Puar, I.L.R. 2024 M.P. 277*

2. Principle of Res-Judicata

– **Section 10** – Stay of Suit – Held – Present dispute between plaintiff/petitioner and defendant/respondent is not the subject matter of the earlier pending suit in which they both are co-defendants and where they cannot file counter claim against each other – Present suit is maintainable and not liable to be stayed – Impugned order set aside – Petition allowed: *Arvind Kumar Vs. Trilok Kumar, I.L.R. 2024 M.P. 1809*

– **Section 10** – Stay of Suit – Res-Judicata – Held – Apex Court concluded that the test for applicability of Section 10 CPC is whether on a final decision being reached in the previously instituted suit, such decision would operate as *res-judicata* in the subsequent suit: *Arvind Kumar Vs. Trilok Kumar, I.L.R. 2024 M.P. 1809*

3. Scope of Suit

– **Section 10** and Succession Act, Indian (39 of 1925), Section 276 & 278 – Suit for Title & Application for Probate – Held – Scope of suit is distinct from scope of probate proceedings – Reliefs in the suit, the proceedings and the parties are also different – When the scope of two proceedings are different and distinct, the suit need not to be stayed – Probate proceedings will conclude the validity of will only whereas title of the testator over suit properties will only be decided by Civil Court on evidence – Application u/S 10 CPC rightly rejected – Petition dismissed: *Gayatriraje Puar (Smt.) Vs. Smt. Shailjaraje Puar, I.L.R. 2024 M.P. 277*

- – **Section 11** – See – Constitution – Article 227: *Hindu Front for Justice Vs. Union of India, I.L.R. 2024 M.P. 1542 (DB)*

– **Section 20 & Order 7 Rule 10** – Territorial Jurisdiction – Held – Negotiations took place in Delhi – None of the defendants has ever had any negotiations or agreement at Mhow – Plaintiff received certain e-mails and phone calls at Mhow – E-mails do not create any cause of action regarding negotiation – Court at Mhow has no territorial jurisdiction to try the suit – Impugned order set aside – Trial Court directed to return the plaint to respondents: *Sunil Lulla (Mr.) Vs. Nirmala Janki Cinemas Pvt. Ltd., I.L.R. 2024 M.P. *203*

– **Section 24(5)** – Grounds & Considerations – Held – Mere suspicion by a party that he will not get justice would not justify transfer of a case – There must be reasonable apprehension to that effect – A judicial order made by a Judge legitimately cannot be made foundation for a transfer of a case – Apprehension of bias or prejudice must be *bonafide* and reasonable: *Mahesh Prasad Sen (Napit) Vs. Dhannulal Namdeo, I.L.R. 2024 M.P. 935*

– **Section 24(5)** – Transfer of Case – Grounds – Held – Allegation of bias by mere fact of an adverse order passed by presiding Judge against petitioner in some other case is not sufficient to justify transfer unless it is substantiated/proved by relevant material – Grounds taken by petitioner are vague and wholly unsubstantiated – District Judge rightly dismissed the application – Petition dismissed: *Mahesh Prasad Sen (Napit) Vs. Dhannulal Namdeo, I.L.R. 2024 M.P. 935*

– **Section 47** – Execution of Partition – Powers of Executing Court – Held – In suit of partition of agricultural land, Civil Court has only power to declare shares of parties and after exercising that power, Court becomes *functus officio* – Initial application for an order for execution has to be made in Civil Court, who will send requisite papers to Collector/Revenue authority – Actual execution by effecting partition and delivery of possession is to be made only by Collector/Revenue authority – Civil Court has no power to do this exercise even if the parties agree to it

– Impugned order set aside – Petition allowed: *Ushabai (Smt.) Vs. Sarubai, I.L.R. 2024 M.P. 946*

– **Section 51, Order 21 Rule 37 & 40(1)** – Civil Prison – Enquiry – Held – Executing Court after issuing show cause notice did not hold any enquiry as contemplated in O-21 R-40(1) CPC nor has complied the conditions laid down in proviso to Section 51 CPC so as to record its reasons after its satisfaction for detaining or sending the judgment debtor in civil prison – Impugned order set aside – Executing Court directed to decide application afresh – Petition allowed: *Sadkik Akaram Vs. Kuldeep, I.L.R. 2024 M.P. 1338*

– **Section 51, Order 21 Rule 37 & Order 21 Rule 40(1)** – Execution Proceeding – Civil Prison – Held – Before ordering detention of judgment debtor in civil prison, Court has to record reasons in writing of its satisfaction of existence of any of the conditions enumerated in clauses (a), (b) or (c) of the proviso to Section 51 – Procedure laid down in O-21 R-40(1) has to be followed and enquiry has to be conducted – Impugned order passed without following the mandatory provisions and is thus quashed – Matter remanded back to executing Court – Petition allowed: *Jeevan Singh Vs. Jagdish, I.L.R. 2024 M.P. 1578*

– **Section 80 & 80(2) & Order 7 Rule 11** – Notice – Held – Plaintiff had made a prayer for grant of leave u/S 80(2) which is still pending – Objection in respect of Section 80 cannot be decided prior to decision of the pending application u/S 80(2) CPC – Trial Court directed to consider the objection at appropriate stage: *Abhishek Dubey Vs. Pyare Lal, I.L.R. 2024 M.P. 153*

– **Section 89 & Order 23 Rule 3** – Lawful Voluntary Compromise – Held – When a decree for possession was already passed in favour of plaintiff against judgment debtors then why plaintiff would agree to make a payment of Rs. 11 lacs to defendant in lieu of vacant possession – Compromise was not beyond the element of doubt – Appellate Court has not considered as to whether compromise was lawful or not – Impugned order set aside – Application for review is allowed – Petition allowed: *Amhad Raja (Died) Thr. L.Rs. Vs. Heeradas Mahananda, I.L.R. 2024 M.P. 929*

– **Section 96** – Scope of Interference – Discussed and explained: *Hakimuddin Vs. Kamal Chand Nahar, I.L.R. 2024 M.P. 2101*

– **Section 96 & 115** – Converting Revision into Appeal – Limitation – Permissibility – Held – Division Bench of this Court concluded that a revision can be converted into an appeal and an appeal can be converted into a revision if the same is filed within time and there is no impediment of limitation – Limitation must

be construed from the date of filing of revision petition or appeal – Instant revision was filed within limitation – Instant civil revision directed to be converted into a first appeal u/S 96 CPC: *Surendra Kumar Sharma Vs. Balu, I.L.R. 2024 M.P. 301*

– **Section 100** – Concurrent Findings of Fact – Held – In second appeal, concurrent findings based on oral and documentary evidence until found to be perverse cannot be reversed: *Ram Kishan Sharma (Dead) Through LRs. Vs. Pankaj Kumar Ahuja, I.L.R. 2024 M.P. 2121*

– **Section 100** – Concurrent Findings of Fact – Scope of Interference – Held – Apex Court concluded that High Court in second appeal should not disturb the concurrent findings of fact unless the findings recorded by the Courts below are perverse being based on no evidence or that on the evidence on record, no reasonable person could have come to that conclusion – Solely because another view is possible, High Court not entitled to exercise jurisdiction u/S 100 CPC: *Dayaram Vs. State of M.P., I.L.R. 2024 M.P. 1343*

– **Section 100 & Order 22 Rule 10-A** – Abatement of Appeal – Held – Second Appeal is not abated because it came in hearing within a period of 33 days of death of appellant – Duly engaged counsel for deceased appellant not having discharged his duty to inform the Court of the death and continued to plead/argue second appeal, L.Rs. of appellant are bound by order passed in second appeal – No adverse effect on the order passed in second appeal – Review petition dismissed: *D.F. Dias (Dead) Through LRs. Vs. Shrimurti Parasnath Digambar Jain Bada Mandir Trust, I.L.R. 2024 M.P. *132*

– **Section 108, Order 41 & Order 43** – Order of Remand – Held – Considering the provisions of O-41, O-43 and Section 108 CPC, it appears that provisions of O-41 would apply in O-43 also to the extent where remand is made: *Ramnath Vs. Raghunath Singh, I.L.R. 2024 M.P. 102*

SYNOPSIS: Section 114

- 1. Alternative View**
- 2. Grounds**
- 3. Scope**

1. Alternative View

– **Section 114 & Order 47 Rule 1** – Review – Alternative View/Two Views – Held – Apex Court concluded that as long as the point sought to be raised in review application has already been dealt with and answered, parties are not entitled to challenge the impugned judgment only because an alternative view is possible – In exercise of review jurisdiction, Court cannot re-appreciate the evidence to arrive

at a different conclusion even if two views are possible in the matter: *Govind Khandelwal Vs. Shri Suresh Khandelwal, I.L.R. 2024 M.P. 1818 (DB)*

2. Grounds

– **Section 114 & Order 47 Rule 1** – Review – Grounds – Held – Apex Court concluded that in order to seek review, it has to be demonstrated that the order suffers from an error contemplated under O-47 R-1 CPC which is apparent on the face of record and not an error which is to be fished out and searched – A decision or order cannot be reviewed merely because it is erroneous: *Govind Khandelwal Vs. Shri Suresh Khandelwal, I.L.R. 2024 M.P. 1818 (DB)*

3. Scope

– **Section 114 & Order 47 Rule 1** – Review – Scope – Held – Under the garb of review petition, party cannot be permitted to repeat old and overruled arguments for re-opening the conclusions arrived at in a judgment – Power of review is not to be confused with appellate power which enables the superior Court to correct errors committed by a subordinate Court: *Govind Khandelwal Vs. Shri Suresh Khandelwal, I.L.R. 2024 M.P. 1818 (DB)*

SYNOPSIS: Section 115

- | | |
|------------------------------------|---------------------------|
| 1. Amendment | 2. Maintainability |
| 3. Scope & Jurisdiction | 4. Miscellaneous |

1. Amendment

– **Section 115** and Constitution – Article 227 – Amendment – Scope & Jurisdiction – Held – If any decree or order which is not interim/interlocutory and is final whereby suit/other proceeding is disposed of and is not appealable u/S 96, 100, 104 and O-43 R-1 CPC, still recourse to challenge such decree/order is available u/S 115 CPC – Against such decree or interim/interlocutory order against which remedy of civil revision is not available or has been curtailed by present amendment, remedy under Article 227 of Constitution can be availed: *Roshanlal Tiwari (Died) Thr. L.Rs. Vs. Pannalal Tiwari, I.L.R. 2024 M.P. *73*

2. Maintainability

– **Section 115** – Revision – Maintainability – Held – Trial Court dismissed the suit as abated – Order of trial Court holding that the right to sue upon death of plaintiff No.2 does not survive upon plaintiff No.1, amounts to a decree and thus revision would not be maintainable and an appeal against the same would be

maintainable – Revision disposed of: *Surendra Kumar Sharma Vs. Balu, I.L.R. 2024 M.P. 301*

3. Scope & Jurisdiction

– **Section 115** – Revision – Exercise of Jurisdiction – Held – Impugned order passed by trial Court is perfectly legal and justified – Earlier order dated 09.03.2021 was apparently illegal though the same was not challenged by plaintiff but only for the said reason the impugned order cannot be faulted with – Setting aside the impugned order on the ground of earlier order not having been challenged would be like permitting an illegal order to stand which would not be proper exercise of jurisdiction u/S 115 CPC: *Abbas Vs. Tafajjul, I.L.R. 2024 M.P. 148*

– **Section 115** – Revision – Scope & Jurisdiction – Powers of Court – Discussed and explained: *Abbas Vs. Tafajjul, I.L.R. 2024 M.P. 148*

– **Section 115(2)** – Scope of Interference – Held – Section 115(2) provides that High Court shall not interfere where the order or decree is appealable either to High Court or to any Court subordinate thereto: *Roshanlal Tiwari (Died) Thr. L.Rs. Vs. Pannalal Tiwari, I.L.R. 2024 M.P. *73*

4. Miscellaneous

– **Section 115** – See – Constitution – Article 227: *Pushpshree Hospitals & Research Centre Vs. Kothari Chemist, I.L.R. 2024 M.P. 955 (DB)*

• – **Section 141 & Order 2 Rule 2** – See – Constitution – Article 226: *Satish Kumar Vs. State of M.P., I.L.R. 2024 M.P. *145 (DB)*

– **Section 141, Order 9 Rule 9, Order 9 Rule 13 & Order 43 Rule 1(c)** – Miscellaneous Appeal – Maintainability – Held – Against dismissal of application under O-9 R-9 CPC which was filed for restoration of MJC/application under O-9 R-13, miscellaneous appeal under O-43 R-1(c) is maintainable – Impugned orders set aside – Application under O-9 R-13 CPC directed to be restored to its original number: *Babulal Vs. Hira Kalar, I.L.R. 2024 M.P. *81*

– **Section 152 & Order 2 Rule 2** – Correction in Order/Judgement/Decree – Scope – Held – In the suit pleadings, in place of Khasra No. 165, it was mentioned as Khasra No. 265 – There is no dispute with regard to identity of the land/property, hence correction of Khasra number can be effected u/S 152 CPC – Documents produced in the suit also mentions Khasra No. 165 – Due to mistake occurred on account of accidental slip Khasra No. 265 was mentioned in the suit – Impugned order set aside – Revision allowed: *Butto Bai Vs. Dumri, I.L.R. 2024 M.P. 1888*

– **Order 1 Rule 10** – Agreement to Sale – Proper/Necessary Party – Held – Mere agreement of sale does not confer any title on the person in whose favour the agreement has been executed and it gives right only for filing the suit of specific performance and for any other relief for which he is entitled – R-13 has not even filed any suit for specific performance based on the sale agreement – In the suit filed by petitioner for partition and separate possession, R-13 is not a proper or necessary party – Impugned order set aside – Petition allowed: *Laxman More (Dead) Through LRs. Vs. Smt. Rani, I.L.R. 2024 M.P. 1569*

– **Order 1 Rule 10** – Non-Joinder of Necessary Party – Held – Appellants did not implicate the deity or concerned jagirdar as a party who is the actual owner of the said temple – Suit suffers from non-joinder of necessary party and thus is not maintainable: *Rampuri Thr. LRs. Mahendrapuri Vs. State of M.P., I.L.R. 2024 M.P. 2357*

– **Order 1 Rule 10** – See – Constitution – Article 226: *Satish Kumar Vs. State of M.P., I.L.R. 2024 M.P. *145 (DB)*

– **Order 2 Rule 2, Order 7 Rule 11 & Order 14 Rule 2** – Applicability – Held – So far as the suit being barred by any law is concerned, for that application under O-7 R-11 CPC is maintainable and not application under O-14 R-2 CPC – As far as jurisdiction of Court is concerned, that is not covered under O-2 R-2 CPC which was a plea taken in application under O-14 R-2 CPC – Application under O-14 R-2 CPC was rightly dismissed by trial Court – Petition dismissed: *Brajvasilal Patel Vs. Jagdish, I.L.R. 2024 M.P. *131*

– **Order 5 Rule 1 & Order 8 Rule 1 & 10** – See – Commercial Courts Act, 2015, Section 15(4): *Telecommunications Consultants India Ltd. Vs. Rajendra Singh Kiledar Construction Pvt. Ltd., I.L.R. 2024 M.P. 1174 (DB)*

– **Order 5 Rule 17** – See – Accommodation Control Act, M.P., 1961, Sections 23-B, 23-C & 23-D: *Omkar Singh Thakur Vs. Smt. Sarita Sharma, I.L.R. 2024 M.P. *33*

– **Order 6 Rule 2(3) & Order 7 Rule 11** – Expression of Dates and Numbers in Words – Held – Requirement of expression of dates, sums and numbers into figures as well as in words has been provided in O-6 R-2(3) CPC, but for want of compliance of this provision, plaint cannot be rejected under O-7 R-11 CPC – If pleadings are defective, Court should insist on their being improved and if party does not comply the said provision, he later on would not be able to take plea of typographical error in pleadings: *Abhishek Dubey Vs. Pyare Lal, I.L.R. 2024 M.P. 153*

SYNOPSIS: Order 6 Rule 17

1. Adjudication in Appeal
2. Scope of Amendment
3. Stage of Proceeding

1. Adjudication in Appeal

– **Order 6 Rule 17 & Order 41 Rule 27** – Adjudication in Appeal – Held – If any application under O-6 R-17 CPC for amendment in the pleadings or an application under O-41 R-27 CPC is filed in the appeal, then it should be decided at the time of final hearing of the appeal and not before that – Impugned order set aside – Petition allowed: *Bhura Vs. Smt. Kiran Singh, I.L.R. 2024 M.P. *30*

2. Scope of Amendment

– **Order 6 Rule 17 & Order 41 Rule 23 - A Proviso** – Remand – Scope of Amendment – Held – The relief for amendment in pleadings cannot be asked at a later stage when the relief was available earlier and not asked for – No application seeking amendment in plaint was filed – Despite this fact, lower appellate Court permitted the plaintiff to amend the plaint which is *per se* illegal – Impugned order set aside – Lower appellate Court directed to decide the appeal on merits – Appeal allowed: *Nihal Singh Vs. Savitri Bai, I.L.R. 2024 M.P. 283*

3. Stage of Proceeding

– **Order 6 Rule 17** – Amendment – Stage of Proceeding – Held – Initially suit was filed for declaration and permanent injunction, the relief of partition and possession was not claimed, thus amendment application was moved – When specific pleadings are there in plaint, such relief can be claimed vide amendment – It does not change the nature of suit and no new fact is inserted – Application was rightly allowed because it will avoid multiplicity of litigation and was necessary for proper adjudication of dispute – Petition dismissed: *Devendra Sadho Vs. Smt. Pramila Kumar, I.L.R. 2024 M.P. 54*

– **Order 6 Rule 17 Proviso** – Amendment – Commencement of Trial – Held – The proviso appended with provision is not conclusive, mandatory and puts specific bar for allowing the application after commencement of trial – It is directory and if Court is satisfied that amendment is necessary for proper adjudication of case and also to resolve the dispute between parties, same can be allowed: *Devendra Sadho Vs. Smt. Pramila Kumar, I.L.R. 2024 M.P. 54*

- – **Order 7 Rule 3** – Identity of Survey Number – Jurisdiction of Court – Held – When there is no identity of survey number then Court is not within jurisdiction to consider the document whereas mandate of O-7 R-3 CPC provides that unless identification of property is clearly mentioned, Court cannot draw inference in regard of the identity: *Nagar Parishad Kailaras Vs. M/s. Banmore Cements Works Limited, I.L.R. 2024 M.P. 2335*

SYNOPSIS: Order 7 Rule 11

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| 1. Aims & Objects | 2. Bar of Civil Suit |
| 3. Cause of Action | 4. Consequential Relief |
| 5. Considerations | 6. Limitation |
| 7. Misjoinder/Non-Joinder of Party | 8. Non-filing of Title Documents |
| 9. Reliefs Sought/Notice | 10. Stage of Trial |
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1. Aims & Objects

– **Order 7 Rule 11** – Aims & Objects – Discussed and explained: *Pushpa Patel (Smt.) Vs. Smt. Neelima Tiwari, I.L.R. 2024 M.P. 1671*

2. Bar of Civil Suit

– **Order 7 Rule 11(d)** and Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act (54 of 2002), Section 17 & 34 – Bar of Civil Suit – Held – Plaintiff is not making claim regarding any measures taken or proposed to be taken u/S 17 of 2002 Act – Suit is maintainable: *Aavas Financiers Ltd. Vs. Smt. Bhagwanti Mahawar, I.L.R. 2024 M.P. 535*

– **Order 7 Rule 11(d)** and Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act (54 of 2002), Section 34 – Bar of Civil Suit – Held – Plaintiff specifically pleaded fraud and deceit played upon her for the purpose of usurping the suit house – Apex Court concluded that to a very limited extent, jurisdiction of civil Court can also be invoked, where for example, the action of secured creditor is alleged to be fraudulent – Suit is maintainable – Revision dismissed: *Aavas Financiers Ltd. Vs. Smt. Bhagwanti Mahawar, I.L.R. 2024 M.P. 535*

3. Cause of Action

– **Order 7 Rule 11(a)** – Cause of Action – Held – It was the duty of trial Court to see before registration of plaint, whether any cause of action has arisen or not in favour of plaintiff – On the date of filing of suit there was no cause of action in favour of plaintiff – Trial Court did not consider provisions of O-7 R-11(a) CPC – Application under O-7 R-11 CPC allowed and suit is dismissed – Revision allowed: *Reliance Cement Co. Pvt. Ltd. (M/s.) Vs. Manminder Singh, I.L.R. 2024 M.P. 1031*

4. Consequential Relief

– **Order 7 Rule 11** and Court Fees Act (7 of 1870), Section 7(4)(c) – Consequential Relief – Held – The amount towards the retiral dues of late employee is being claimed by plaintiff/petitioner for himself – Relief of injunction is not a consequential relief to the said relief of declaration – Trial Court rightly held that relief of declaration and injunction needs to be valued separately and *ad valorem* Court fees is required to be paid – Petition dismissed: *Bhagwanlal Sharma Vs. Government Kamla Nehru Kanya Uchchatar Mahavidyalaya, I.L.R. 2024 M.P. 1179*

5. Considerations

– **Order 7 Rule 11** – Consideration – Held – Apex Court concluded that while deciding application under O-7 R-11 CPC, trial Courts have to consider the averments made in the plaint only: *Pushpshree Hospitals & Research Centre Vs. Kothari Chemist, I.L.R. 2024 M.P. 955 (DB)*

– **Order 7 Rule 11** – Considerations – Held – While considering application under O-7 R-11 CPC, only plaint allegations and the documents filed can be seen – Plaint allegations have to be taken as true at this stage: *Aavas Financiers Ltd. Vs. Smt. Bhagwanti Mahawar, I.L.R. 2024 M.P. 535*

6. Limitation

– **Order 7 Rule 11** and Limitation Act (36 of 1963), Article 59 – Limitation to File Suit – Sale deed executed on 17.11.2014 and suit filed on 03.07.2018 – Held – Plaintiff's allegation is that he had never executed a sale deed and has only signed an agreement to sale – Sale deed was to be executed later on after payment of remaining consideration – When cheques were dishonoured he made queries and acquired knowledge of execution of sale deed on 29.05.2018 only – It is on that day that the facts which entitles him to institute an action became known to him – Suit is within time – Trial Court rightly dismissed application under O-7 R-11 CPC – Revision dismissed: *Shankheshwar Developers Vs. Kirhsna Kalota, I.L.R. 2024 M.P.*

7. Misjoinder/Non-Joinder of Party

– **Order 7 Rule 11** – Misjoinder/ Non-Joinder of Party – Held – The defects of non-joinder and misjoinder of necessary parties cannot be considered for rejection of plaint: *Abhishek Dubey Vs. Pyare Lal, I.L.R. 2024 M.P. 153*

8. Non-filing of Title Documents

– **Order 7 Rule 11** – Non-filing of title Documents – Held – Non-filing of title documents in support of pleas taken in the plaint, cannot be ground to reject the plaint at the stage of O-7 R-11 CPC: *Abhishek Dubey Vs. Pyare Lal, I.L.R. 2024 M.P. 153*

9. Reliefs Sought/Notice

– **Order 7 Rule 11** and Municipal Corporation Act, M.P. (23 of 1956), Section 401 – Notice – Held – Although there are some allegations against Municipal Corporation but no relief against Municipal Corporation has been claimed in the suit – Therefore for want of notice to Municipal Corporation, plaint cannot be rejected: *Abhishek Dubey Vs. Pyare Lal, I.L.R. 2024 M.P. 153*

– **Order 7 Rule 11**, Specific Relief Act (47 of 1963), Section 34 and Transfer of Property Act (4 of 1882), Section 53-A – Maintainability of Suit – Held – Suit filed after 22 years of entering into agreement of sale – Necessary ingredients to claim relief u/S 53-A of 1882 Act are absent in the plaint – Suit filed by plaintiff seeking relief of permanent injunction without claiming relief of specific performance of agreement is not maintainable – Trial Court erred in rejecting application under O-7 R-11 CPC – Suit is rejected – Revision allowed: *Pushpa Patel (Smt.) Vs. Smt. Neelima Tiwari, I.L.R. 2024 M.P. 1671*

10. Stage of Trial

– **Order 7 Rule 11** – Stage of Trial – Jurisdiction of Court – Held – Apex Court concluded that application under O-7 R-11 CPC can be decided at any stage of the suit – The power can be exercised even prior to registration of plaint or even after issuing summons to defendants and at any time before conclusion of trial – Apex Court has not held that if an application under O-7 R-11 CPC is filed, then Court ceases to have jurisdiction to decide any other application till decision of that application: *Bhuribai (Smt.) Vs. Ramratan, I.L.R. 2024 M.P. 1814*

11. Valuation of Suit/Court Fee

– **Order 7 Rule 11** – Valuation of Suit & Court Fee – Held – Objection in respect of valuation and payment of court fee can be decided only after framing of issue and after recording evidence – Plaintiffs are neither party nor are bound by sale

deed in question, therefore they are not required to value the suit or to pay *ad-valorem* Court fee on the basis of sale consideration mentioned therein: *Abhishek Dubey Vs. Pyare Lal*, I.L.R. 2024 M.P. 153

– **Order 7 Rule 11** and Court Fees Act (7 of 1870), Section 7(4)(c) – Valuation of Suit & Determination of Court Fee by Court – Trial Court directed plaintiff to value the suit and directed to pay *ad valorem* court fee – Plaintiff moved application for amendment clarifying existing valuation of suit, which was dismissed – Suit was also dismissed for want of proper valuation – Trial Court neither determined the valuation of suit nor court fee – Held – In absence of such determination, trial Court had no jurisdiction to dismiss the suit for want of proper valuation and payment of court fee – Impugned orders set aside – Suit restored to its original number – Appeal allowed: *Suresh Chand Vs. Shiv Vishal Through LRs.*, I.L.R. 2024 M.P. 2617

– **Order 7 Rule 11** and Court Fees Act (7 of 1870), Section 7(xi)(cc) – Recovery of Arrears of Rent – Court Fees – Held – If plaintiff prays for relief in respect of arrears of rent, he is required to value the suit for that purpose and has to pay requisite/*ad valorem* court fee on the amount of arrears of rent claimed – No valuation has been made in respect of arrears of rent – Trial Court erred in dismissing application under O-7 R-11 CPC – Impugned order set aside – Matter remanded back to trial Court for decision afresh – Petition allowed: *Raj Jaiswal Vs. Shri Gopal Lal Ji Maharaj Trust*, I.L.R. 2024 M.P. *163

12. Miscellaneous

– **Order 7 Rule 11** – See – Commercial Courts Act, 2015, Section 2(1)(c)(vii) & 6: *Bhopal Fracture Hospital (M/s.) Vs. Savitri Devi Vijaywargiya*, I.L.R. 2024 M.P. 1894

– **Order 7 Rule 11** – See – Commercial Courts Act, 2015, Sections 2(1)(c-xviii), 6 & 12-A: *Pushpshree Hospitals & Research Centre Vs. Kothari Chemist*, I.L.R. 2024 M.P. 955 (DB)

– **Order 7 Rule 11** – See – Commercial Courts Act, 2015, Section 12-A: *Pushpshree Hospitals & Research Centre Vs. Kothari Chemist*, I.L.R. 2024 M.P. 955 (DB)

– **Order 7 Rule 11** – See – Court Fees Act, 1870, Section 7(vi-a) & 7(v): *Ramchandra Banarsi Vs. Radhabai @ Devkabai*, I.L.R. 2024 M.P. *121

– **Order 7 Rule 11** – See – Land Revenue Code, M.P., 1959, Section 32 & 129: *Kanchan Motiani (Smt.) Vs. State of M.P.*, I.L.R. 2024 M.P. *235

– **Order 7 Rule 11** – See – Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993, Section 122: *Ravindra Kumar Upadhyay Vs. State of M.P.*, I.L.R. 2024 M.P. *217

– **Order 7 Rule 11** – See – Specific Relief Act, 1963, Section 10: *Star Agronomics Ltd. Vs. Rio Tinto India Pvt. Ltd.*, I.L.R. 2024 M.P. *244

• – **Order 7 Rule 14(3)** – Additional Documents – Delay – Held – Apex Court concluded that if documents are relevant and necessary for arriving at a just decision in the suit, should not be refused only on the ground of delay: *Babita Vishwakarma Vs. Rajendra Kumar Vishwakarma (Dead) Through Legal Heirs*, I.L.R. 2024 M.P. *80

– **Order 8 Rule 1(A) & Order 7 Rule 14(3)** – Additional Documents – Held – After closure of evidence of plaintiff, when defendants themselves prayed for taking documents on record by way of an application, then plaintiff was also having right to file documents in rebuttal – Court below allowed the application of defendant but erred in dismissing plaintiff's application on ground of delay – Plaintiff's application under O-7 R-14(3) CPC allowed – Petition allowed: *Babita Vishwakarma Vs. Rajendra Kumar Vishwakarma (Dead) Through Legal Heirs*, I.L.R. 2024 M.P. *80

– **Order 8 Rule 1A(4)** – See – Hindu Marriage Act, 1955, Section 13: *Sumit Vs. Smt. Priya Balecha*, I.L.R. 2024 M.P. 743

– **Order 8 Rule 6** and Succession Act, Indian (39 of 1925), Section 372 – Counter Claim – Permissibility – Held – Respondents are also claiming succession and are entitled to file separate application u/S 372 of 1925 Act – In order to avoid multiplicity of proceedings, Court below has not committed any error by entertaining the counter claim in the pending succession proceedings – In one proceeding, there may be number of applicants and the judgment is liable to be passed on their respective claim on merits – Petition dismissed: *Nayan Raichandani Vs. Shriman Prabandhak Mahoday*, I.L.R. 2024 M.P. 254

– **Order 8 Rule 6-A** – Counter Claim – Stage of Suit – Limitation – Held – Although issues have been framed but there is no substantial progress in the suit as only one witness of plaintiff has filed an affidavit under O-18 R-4 CPC and cross-examination has not yet begun – In order to avoid multiplicity of suit and conflict of verdict, suit and counter claim both are liable to be decided together – No infirmity in impugned order – Petition dismissed: *Shri Krishna Ginning Factory Vs. State of M.P.*, I.L.R. 2024 M.P. 1334

– **Order 8 Rule 6-A to G & Order 7 Rule 1** – Substitution of LRS in Counter Claim – Held – After making substitution/addition in the plaint, there is no need to substitute/add the legal representatives of plaintiff or defendant or additionally added parties, in the counter claim also – Parties to the suit are treated parties to the counter claim also – Revision dismissed: *Mazid Beg (Dead) Thr. Arkey Investment Pvt. Ltd. Vs. Smt. Subhashini Pandey, I.L.R. 2024 M.P. *12*

– **Order 9 Rule 9** and Limitation Act (36 of 1963), Section 5 – Application for Condonation of Delay – Held – Despite sufficient material explaining the delay of 10 days available on record, Court below dismissed application under O-9 R-9 CPC for want of application u/S 5 of Limitation Act – Reason for non-appearance in MJC proceedings and for non-filing of application under O-9 R-9 CPC within time is almost on same averments, thus it could have been considered even in absence of application u/S 5 of Limitation Act: *Babulal Vs. Hira Kalar, I.L.R. 2024 M.P. *81*

– **Order 13 Rule 4, Order 14 Rule 2, Order 17 Rule 1 & 2** and Evidence Act (1 of 1872), Section 59 – Procedure – Preliminary Issue – Held – The issue of jurisdiction of Court and the issues of a bar to the suit created by any law for the time being in force can only be decided as preliminary issues that too when such issues do not require evidence: *Union of India Vs. M/s. Man Transport Company, I.L.R. 2024 M.P. 2312*

– **Order 14 Rule 1 & 5** – Additional Issue – Pleadings – Held – Apex Court concluded that it is neither desirable nor required for the Court to frame an issue not arising on the pleadings – Court below has taken a plausible view that in absence of pleadings, it is not necessary/desirable to frame additional issues – Petition dismissed: *Vipin Kumar Samaiya (Shri) Vs. Smt. Varsha Samaiya, I.L.R. 2024 M.P. *104*

– **Order 14 Rule 1 & 5** – Application – Held – Trial Court can appoint Commissioner without application being preferred by the parties: *Uma Bhardwaj (Smt.) Vs. Maniram, I.L.R. 2024 M.P. 940*

– **Order 14 Rule 1 & 5** – Appointment of Commissioner – Revenue Officers – Held – Revenue officers are equipped with advanced machines which are linked to satellites which can bring exact “coordinates” to facilitate the truth thus ignoring such valuable evidence and resorting to witnesses who may or may not be trustworthy, would not be in the interest of justice: *Uma Bhardwaj (Smt.) Vs. Maniram, I.L.R. 2024 M.P. 940*

– **Order 14 Rule 2** – Procedure – Preliminary Issues – Held – After deciding the preliminary issues, trial Court ought to have proceeded further with the suit for final adjudication after recording evidence – Plaintiff and defendant did not adduce

any evidence – Suit could not have been decreed by trial Court – Overall procedure adopted by trial Court is unknown to the settled law – Impugned judgement and decree set aside – Suit is dismissed – Appeals allowed: *Union of India Vs. M/s. Man Transport Company, I.L.R. 2024 M.P. 2312*

– **Order 19 Rule 1 & 2 and Order 39 Rule 1 & 2** – Temporary Injunction – Affidavit – Cross-examination of Deponent – Held – Any fact or facts including the facts about temporary injunction can also be proved through examination of deponent who filed affidavit in support of certain facts – Evidence on affidavit and cross-examination of deponent can bring the truth about any particular fact – Cross-examination would be limited for the purpose for which deponent is called – Parties directed to appear before trial Court for cross-examination of plaintiff for the purpose of temporary injunction – Impugned order is set aside – Petition allowed: *Ramji Rai Vs. Smt. Champa Rai, I.L.R. 2024 M.P. 2075*

– **Order 21 Rule 10 & 11(2)** – Execution Application – Locus –Held – The decreeholder “S” expired – Execution application filed by “D” who is the power of attorney holder of “R” (Legal heir of deceased decreeholder) – “R” has also signed the execution application – Merely for non-mentioning the date of death of “S”, the execution application would not be vitiated in any manner – Execution proceedings have been properly instituted – Petition dismissed: *Rajesh Verma Vs. Late Shobhna Trivedi, I.L.R. 2024 M.P. *200*

– **Order 21 Rule 11 & Rule 32** – Recovery of Possession – Requirement of Fresh Suit – Held – When a decree of permanent prohibitory injunction is violated and judgement debtor gain possession of the decree-holder's property forcefully by violating the decree, the judgement debtors may be expelled by the executing court by exercising powers under O-21 R-32 CPC – It would not be necessary for decreeholder to take any proceedings for seeking recovery of possession or to institute a fresh suit and the same can very well be done in the proceedings instituted by decree-holders by the executing Court itself – Impugned order set aside – Matter remanded back to executing Court – Revision allowed: *Kailash Through LRs. Vs. Rajrani, I.L.R. 2024 M.P. *255*

– **Order 21 Rule 11(2)** – Execution Application – Locus –Held – Execution application can be filed not only by the decree holder but also by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case: *Rajesh Verma Vs. Late Shobhna Trivedi, I.L.R. 2024 M.P. *200*

– **Order 21 Rule 16** – Execution of Decree by Assignee – Notice – Held – As per O-21 R-16 CPC, where interest of a decree holder in the decree is transferred by assignment, the transferee may apply for execution of the decree – As per

proviso, notice of execution application shall be given to the transferor and judgment debtor and decree shall not be executed until the Court has heard their objection to its execution: *Abdul Shakur Through LRs. Vs. Purushhottam, I.L.R. 2024 M.P. 2303*

– **Order 21 Rule 16** – Execution of Decree by Assignee – Notice – Held – Notice of execution application has to be given to transferor and judgment debtor and decree shall not be executed until the Court has heard their objection – O-21 R-16 CPC does not say that prior to filing execution application, assignee decree holder is required to obtain permission of executing Court to file the same and notice be issued to judgment debtor to enable him to file objection which is then to be heard and only thereafter execution is to be proceeded – No error with the impugned order – Petition dismissed: *Abdul Shakur Through LRs. Vs. Purushhottam, I.L.R. 2024 M.P. 2303*

– **Order 21 Rule 23(2)** and Limitation Act (36 of 1963), Article 136 – Execution of Preliminary Decree – Limitation – Held – After modification in the decree in second appeal by this Court, it was the duty of the trial Court to draw the final decree which is yet not done – Question of limitation does not arise – Executing Court rightly held the application to be within limitation – Revision dismissed: *Rajdhar Vs. Smt. Dhokiya, I.L.R. 2024 M.P. *15*

– **Order 21 Rule 29** – Pending Civil Suit – Stay on Execution Proceedings – Held – *Prima facie*, the second civil suit has been filed by the respondent/decreeholder – Petitioner/Judgment Debtor could not show that any civil suit has been filed by him – Provisions of O-21 R-29 CPC cannot be pressed into service – Application was not maintainable – Petitioner can file appropriate application before executing Court regarding maintainability of execution proceedings – Petition dismissed: *Farookh Ahmed Vs. Pramendra Shrivastava, I.L.R. 2024 M.P. 460*

– **Order 21 Rule 37** – Civil Prison – Procedure – Held – When application is made for arrest and detention of judgment debtor in civil prison, the executing Court has to issue firstly, instead of a warrant for his arrest, a notice calling upon him to appear before Court to show cause why he should not be committed to civil prison – After his appearance, Court has to proceed to hear the decree holder and take all such evidence produced by him and then has to give an opportunity to judgment debtor of showing cause as to why he should not be committed to civil prison – An enquiry is contemplated prior to committing the judgment debtor to civil prison: *Jeevan Singh Vs. Jagdish, I.L.R. 2024 M.P. 1578*

– **Order 22 Rule 3 & Order 22 Rule 9** and Limitation Act (36 of 1963), Section 5 – Substitution of LRs – Delay – Held – While considering applications

under O-22 R-3 as well as u/S 5 of Limitation Act, if Court was of opinion that application under O-22 R-9 CPC needs to be filed, then before proceeding further it ought to have afforded opportunity to applicants to file the same – Court should not have dismissed the application for substitution for want of application under O-22 R-9 CPC – Matter remanded back – Applicants are free to move application under O-22 R-9 CPC – Revision allowed: *Roshanlal Tiwari (Died) Thr. L.Rs. Vs. Pannalal Tiwari, I.L.R. 2024 M.P. *73*

– **Order 22 Rule 4 & Order 23 Rule 1(3)** – Suit against Dead Person – Formal Defect – Held – A suit filed against dead person believing him to be alive but later on being discovered that he has expired, is a nullity since the very inception – It is formal defect – Substitution of legal representatives is also not permissible since suit was against dead person – Suit is at the very initial stage and trial has not even begun – Impugned order set aside – Application for withdrawal of suit is allowed with liberty to file fresh suit – Revision allowed: *Laxminarayan Vs. Jankibai, I.L.R. 2024 M.P. *88*

– **Order 22 Rule 4 & 9** and Limitation Act (36 of 1963), Section 5 – Condonation of Delay – Liberal Approach – Held – First appellate Court has interpreted the provision in a strict view – Apex Court concluded that the expression "sufficient cause" within meaning of Section 5 of Limitation Act or O-22 R-9 or any other similar provision should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of *bonafide* is imputable to a party – Impugned order set aside – Appellate Court directed to take legal representatives of deceased respondent on record – Appeal allowed: *Bano Bee Vs. Yusuf, I.L.R. 2024 M.P. *224*

– **Order 22 Rule 4 & 9** and Limitation Act (36 of 1963), Section 5 – Limitation – Held – If legal representatives of deceased are not brought on record within 90 days of his death then suit shall be abated – Thereafter application for setting aside abatement of appeal is to be filed within 90 days and if said application is not filed then application under O-22 R-9 CPC alongwith application for condonation of delay u/S 5 of Limitation Act is to be filed: *Bano Bee Vs. Yusuf, I.L.R. 2024 M.P. *224*

– **Order 22 Rule 9** and Limitation Act (36 of 1963), Section 5 – Non-Filing of Application – Effect – Held – Apex Court concluded that if explanation of delay is available on record then even without filing application under O-22 R-9, prayer for setting aside abatement can be considered and allowed – Fault of not filing application is not attributable to applicants but it was legal duty of their counsel to file it – Litigant should not be made to suffer for the fault of counsel: *Roshanlal Tiwari (Died) Thr. L.Rs. Vs. Pannalal Tiwari, I.L.R. 2024 M.P. *73*

– **Order 22 Rule 9(2)** – Application – Term “made” – Held – Reading provision of O-22 R-9(2) makes it clear that an application is to be made and not to be filed – The word “made” shows that the application can be orally made: *Roshanlal Tiwari (Died) Thr. L.Rs. Vs. Pannalal Tiwari, I.L.R. 2024 M.P. *73*

– **Order 23 Rule 1(3) and Order 7 Rule 11** – Withdrawal of Suit – Permissibility – Held – If it is found that suit is likely to fail on account of some formal defect or there are sufficient grounds for allowing plaintiff to institute a fresh suit, power under O-23 R-1(3) CPC can very well be exercised by Court which will not be arrested or denuded from Court merely because of pendency of an application under O-7 R-11 CPC – It would be totally permissible for trial Court to consider application for withdrawal filed by plaintiff within four corners of the provisions of O-23 R-1(3) CPC – Petition dismissed: *Bhuribai (Smt.) Vs. Ramratan, I.L.R. 2024 M.P. 1814*

– **Order 23 Rule 1(4)** – Institution of Suit – Held – The bar contained in O-23 R-1(4) CPC would not operate to the instant/second suit because previous suit was withdrawn even prior to its registration and such suit cannot be considered to be duly instituted suit – Appellate Court has not committed any illegality in passing the judgment and decree of remand – Appeal dismissed: *Mohd. Sarvar Khan Vs. Dr. Rajdeep Kapoor, I.L.R. 2024 M.P. *243*

SYNOPSIS: Order 26 Rule 9

1. Demarcation

2. Jurisdiction of Appellate Court

3. Requirement of Application

1. Demarcation

– **Order 26 Rule 9** – Demarcation – Appointment of Commissioner – Held – Dispute of encroachment, location of suit property, area, identity, boundaries and survey numbers cannot be decided without appointment of commissioner: *Rajaram Mali Vs. Smt. Ganga Bai (Dead), I.L.R. 2024 M.P. *119*

– **Order 26 Rule 9** and Land Revenue Code, M.P. (20 of 1959), Section 129 – Appointment of Commissioner – Held – Where dispute is in respect of encroachment/demarcation/boundary dispute etc., trial Court must appoint Commissioner/Revenue Officer for obtaining commission report – Trial Court erred in dismissing application under O-26 R-9 CPC – Impugned order set aside – Petition allowed: *Uma Bhardwaj (Smt.) Vs. Maniram, I.L.R. 2024 M.P. 940*

– **Order 26 Rule 9** and Land Revenue Code, M.P. (20 of 1959), Section 250 – Demarcation of Land – Remand of Case – Held – There is no dispute of title, the main dispute is about demarcation of land – Appellate Court has not committed any illegality in directing demarcation of land but for that purpose only, matter is not required to be remanded for deciding the suit afresh – Impugned judgment of remand is set aside – Appellate Court directed that it shall itself decide the appeal after issuing a commission to ascertain the exact location of land, its number and necessary details – Appeal allowed: *Devesh Vs. Ratibai, I.L.R. 2024 M.P. *51*

2. Jurisdiction of Appellate Court

– **Order 26 Rule 9** – Demarcation – Appointment of Commissioner – Jurisdiction of Appellate Court – Held – Impugned judgment of remand passed only upon requirement of demarcation of suit property is not sustainable because the exercise of getting suit property demarcated can be done by first appellate Court itself – Impugned order set aside with a direction to first appellate Court to issue a commission to ascertain the exact location, number and necessary details of suit property: *Rajaram Mali Vs. Smt. Ganga Bai (Dead), I.L.R. 2024 M.P. *119*

3. Requirement of Application

– **Order 26 Rule 9** – Appointment of Commissioner – Application – Held – If necessary, the commission can be issued even without any application under O-26 R-9 CPC: *Rajaram Mali Vs. Smt. Ganga Bai (Dead), I.L.R. 2024 M.P. *119*

- – **Order 26 Rule 10A** – See – Ancient Monuments and Archaeological Sites and Remains Act, 1958, Section 16 & 21: *Hindu Front for Justice Vs. Union of India, I.L.R. 2024 M.P. 1542 (DB)*

– **Order 30 Rule 1** and Partnership Act (9 of 1932), Section 69 – Suing of Partners in name of Firm – Held – If plaintiff no. 2 being a partner wants to sue the remaining two partners (D-1 & D-2), he has to sue them in name of the firm – Firm cannot sue or to be sued through one partner – Two or more partners can represent the firm – If sale deed is challenged by plaintiff no. 2 in which vendor is the firm through D-1 & D-2, therefore D-1 & D-2 are liable to be sued in the name of the firm by plaintiff no. 2 – Impugned order set aside – Revision allowed: *Jagdish Vs. M/s. Siddhi Vinayak Developers, I.L.R. 2024 M.P. 1422*

– **Order 37 Rule 3(5)** – Leave to Defend – Considerations – Held – Whether the defence of defendants is actually proved by them is not a matter to be considered at present stage but only after appreciation of evidence to be led by the parties – Defendants only had to show that if facts alleged by them are duly proved, they will afford a good or even a plausible answer to plaintiff's claim – Trial Court illegally

rejected the application by holding that defendants have not produced any documents in support of defence – Impugned order set aside – Leave to defend granted unconditionally – Petition allowed: *Satish Gehlot Vs. M/s. Krishna Irrigation India Pvt. Ltd., I.L.R. 2024 M.P. 257*

– **Order 38 Rule 5** – Security for Production of Property – Permissibility – Held – Trial Court itself recorded a categorical finding that plaintiff has not proved that defendants with intent to obstruct or delay the execution of decree that may be passed against them, are attempting to sell their property and only on basis of assumption, attachment before judgment cannot be directed – Trial Court had no jurisdiction to direct defendants to furnish solvent surety – Impugned order set aside – Petition allowed: *Kirti Gupta Vs. Akash Potbhare, I.L.R. 2024 M.P. 99*

SYNOPSIS: Order 39 Rule 1 & 2

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| 1. Application by Plaintiff/Defendant | 2. Burden of Proof |
| 3. Term “Otherwise” | 4. Miscellaneous |

1. Application by Plaintiff/Defendant

– **Order 39 Rule 1 & 2** – Application by Defendant – Held – Defendant for limited purpose as provision mandates can move an application under O-39 R-1 CPC – Application preferred by D-2(a) for temporary injunction under O-39 R-1(a) CPC is maintainable to that extent: *Ramnath Vs. Raghunath Singh, I.L.R. 2024 M.P. 102*

– **Order 39 Rule 1 & 2** – Application by Plaintiff & Defendant – Held – Matter has been remanded back mainly on ground that both applications were not heard analogously – One application was decided on 27.06.22 and another was decided on 13.09.22 – This created anomalous situation – It is required that both applications ought to be heard analogously – Petitioner is not prejudiced in any manner, his interest has been secured in remand order whereby for the time being alienation, transfer or sale has been injuncted – Petition dismissed: *Ramnath Vs. Raghunath Singh, I.L.R. 2024 M.P. 102*

2. Burden of Proof

– **Order 39 Rule 1 & 2** – Injunction – Criteria – Burden of Proof – Held – It is for the party to prove his case who is asking for injunction – A party who seeks injunction has to prove that he has made out a *prima facie* case, balance of convenience is also in his favour and will suffer irreparable loss if injunction is not granted to him: *Anil Malewar Vs. Smt. Sarla Bothra, I.L.R. 2024 M.P. *249*

3. Term “Otherwise”

– **Order 39 Rule 1** – Term “Otherwise” – Held – Term “otherwise” used in Rule 1 of Order 39 indicates that any fact can be proved by affidavit or any other method other than it – That method can be by way of calling deponent – Word “otherwise” also leads to proposition that deponent (of affidavit) can be called for cross-examination to prove particular facts: *Ramji Rai Vs. Smt. Champa Rai, I.L.R. 2024 M.P. 2075*

4. Miscellaneous

– **Order 39 Rule 1 & 2** – See – Trade Marks Act, 1999, Sections 2(m), 15, 17(2) & 28(1): *Pernod Ricard India Pvt. Ltd. Vs. Karanveer Singh Chhabra, I.L.R. 2024 M.P. 964 (DB)*

– **Order 39 Rule 4** – Prima Facie Case – Held – Sale deed is the sole foundation of the plaintiff's right – Unless plaintiffs satisfy the Court about their right and title over the suit property, it is difficult to ascertain that they have a *prima facie* case – Identity and locus of the seller is not established – *Prima facie*, the sale deed appears to be a fraudulent document – Title of plaintiffs is under shadow – Plaintiff cannot get benefit of the weakness of the case of defendants – No case made out in favour of plaintiffs to grant injunction – Petition dismissed: *Anil Malewar Vs. Smt. Sarla Bothra, I.L.R. 2024 M.P. *249*

- – **Order 41 Rule 3-A** and Limitation Act (36 of 1963), Section 5 – Condonation of Delay – Conduct of Parties – Held – Appellant filed first appeal after lapse of about 4 years and 2 months in 2014 on ground of accident but document produced in support of the same was of year 1993 which was much prior to trial court litigation – Appellant also appeared in executing Court in the year 2011 and signed the order sheets, thus he had knowledge of the judgement passed by trial Court in the year 2010 – No satisfactory reasons provided by appellant for the delay – Appeal dismissed: *Kunjilal Vs. Ramakant, I.L.R. 2024 M.P. *177*

– **Order 41 Rule 3-A** and Limitation Act (36 of 1963), Section 5 – Condonation of Delay – Sufficient Cause – Held – It is true that while considering application for condonation of delay, liberal approach should be adopted by Courts but while adopting liberal approach, Court cannot ignore the principle of law that law comes to rescue only diligent litigants – This Court earlier concluded that if sufficient cause is not shown and it is not found to the satisfaction of the Court, then application for condonation of delay should be dismissed: *Kunjilal Vs. Ramakant, I.L.R. 2024 M.P. *177*

– **Order 41 Rule 22** – See – Motor Vehicles Act, 1988, Section 173: *United Insurance Co. Ltd. Vs. Raksingh Bhilala, I.L.R. 2024 M.P. *127*

– **Order 41 Rule 23-A** – Remand – Reasoning – Consequential Relief – Held – First appellate Court has not given any finding that re-trial is necessary – Unless and until there is a finding that re-trial is necessary, the case cannot be remanded back – First appellate Court had no jurisdiction to remand the case and allow plaintiff to claim consequential relief without even asking for the same: *Nihal Singh Vs. Savitri Bai, I.L.R. 2024 M.P. 283*

– **Order 41 Rule 27** – See – Hindu Marriage Act, 1955, Section 13(1)(i-a): *Prashant Kumar Jha Vs. Smt. Sadhna Jha, I.L.R. 2024 M.P. 1000 (DB)*

– **Order 41 Rule 27** and Evidence Act (1 of 1872), Section 76 – Delay – Public Document – Held – Documents filed after 23 years of filing of this appeal – No explanation for delay – Documents not issued by any Public Officer u/S 76 of Evidence Act thus cannot be considered as public documents – Application not *bonafide* and no sufficient ground for acceptance of the documents – Application dismissed: *Rampuri Thr. LRs. Mahendrapuri Vs. State of M.P., I.L.R. 2024 M.P. 2357*

– **Order 41 Rule 27 & Order 26 Rule 9** – Remand of Case – Held – Appellate Court found the additional documents to be material and necessary for proper adjudication of the suit – Reason as to why it could not be filed during trial was found acceptance by first appellate Court – In order to enable the parties to have fair trial in civil suit and with a view to do substantial justice, first appellate Court was justified in remanding the suit to trial Court to decide the suit afresh by framing additional issues – Appeal dismissed: *Raghunath Vs. Baijnath, I.L.R. 2024 M.P. *262*

– **Order 41 Rule 33** – See – Motor Vehicles Act, 1988, Section 173: *United Insurance Co. Ltd. Vs. Anil Kumar Gour, I.L.R. 2024 M.P. 1367*

– **Order 43 Rule 1** – Order of Remand – Applicability – Held – Miscellaneous appeal against the order of remand can only be preferred on substantial question of law: *Ramnath Vs. Raghunath Singh, I.L.R. 2024 M.P. 102*

– **Order 47 Rule 1** – Review – Grounds & Maintainability – Held – First Appellate Court decided the appeal and gave finding which suffers from misconception of law and facts and not interpreting the provisions of Section 208 of Contract Act and its impact properly – Court had given weightage to oral evidence than documentary evidence – Mistake apparent on the face of record is committed by First Appellate Court – Power of review can be exercised – Impugned order recalled – Petition allowed: *Mohd. Imaan (Mohd. Rumman) Vs. Chinta Singh, I.L.R. 2024 M.P. *238*

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

SYNOPSIS

- | | |
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| <p>1. Applicability</p> <p>3. Dismissal/Departmental Enquiry</p> <p>5. Disproportionate Punishment</p> <p>7. Moral Turpitude</p> <p>9. Recovery against Dead Person</p> <p>11. Miscellaneous</p> | <p>2. Common/Joint Enquiry</p> <p>4. Dismissal/Judicial Review</p> <p>6. Minor Penalty/ Departmental Enquiry</p> <p>8. Recording of Reasons</p> <p>10. Suspension on Direction of Minister</p> |
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1. Applicability

– **Rule 14 to 18 & 19** – Applicability – Held – Rule 19 specifically provides that provisions of Rule 14 to 18 would not apply where the penalty is imposed on government servant on the ground of conduct which has led to his conviction on a criminal charge: *Manoj Choure Vs. State of M.P., I.L.R. 2024 M.P. 1095*

2. Common/Joint Enquiry

– **Rule 18** and Police Regulations, M.P. – Common/Joint Enquiry – Permission from Competent Authority – Held – No mechanism for joint enquiry is provided in Police Regulations, thus for that purpose Rule 18 of CCA Rules are to be borrowed which contemplates common proceedings – If petitioner is a constable and his joint enquiry is held alongwith other employees (SI & ASI) without permission from competent authority then enquiry is vitiated: *Santosh Sharma Vs. State of M.P., I.L.R. 2024 M.P. 1534*

3. Dismissal/Departmental Enquiry

– **Rule 10** and Constitution – Article 311(2)(b) – Dismissal – Dispensing with Regular Departmental Enquiry – Held – Reason assigned by authority that petitioners being police constables, it is every possibility that they may temper with evidence and witnesses and looking to the nature of misconduct and crime

committed by them, there is no justification for conducting a regular departmental enquiry – Reasons assigned for not conducting regular departmental enquiry and applying provisions of Article 311(2)(b) are not only unreasonable but are also unjustified: *Sumit Baghel Vs. State of M.P., I.L.R. 2024 M.P. 1560*

– **Rule 10** and Constitution – Article 311(2)(b) – Dismissal – Regular Departmental Enquiry – Held – Major punishment like dismissal from service can be inflicted after conducting regular departmental enquiry as per Rule 14 of 1966 Rules – In present case, reasons assigned by authority for dispensing with departmental enquiry and applying Article 311(2)(b) of Constitution is not satisfactory – Impugned order of dismissal set aside – Liberty granted to respondents for regular departmental enquiry – Petition allowed: *Sumit Baghel Vs. State of M.P., I.L.R. 2024 M.P. 1560*

– **Rule 10(9) & 19** and Sewa (Niyojan, Nibandhan Tatha Karya Sthiti) Niyam, Rules 23, 25 & 28 – Termination – Departmental Enquiry – Held – There is no provision under Sewa Niyam for dispensation of enquiry as provided under Rule 19 of 1966 Rules – As per Niyam 28, employee for major misconduct shall not be punished unless it is proved by departmental enquiry – Even if there is admitted major misconduct but still competent authority is required to decide appropriate punishment, even if employee has been convicted by criminal Court, because Niyam 25 provides 4 types of punishment for major misconduct – Impugned order quashed – Matter remanded back to initiate procedure as per Niyam 23 – Writ petitions allowed: *Sanjay Vs. State of M.P., I.L.R. 2024 M.P. *97*

4. Dismissal/Judicial Review

– **Rule 10** and Constitution – Article 226 & 311(2)(b) – Dismissal – Judicial Review – Held – Apex Court concluded that dismissal without conducting departmental enquiry on the ground of being not reasonably practicable, is open for judicial review – Objection that the impugned order is appealable, is not sustainable in eyes of law: *Sumit Baghel Vs. State of M.P., I.L.R. 2024 M.P. 1560*

5. Disproportionate Punishment

– **Rule 19(1)** – Dismissal – Conviction – Disproportionate Punishment – Petitioner convicted u/S 324 IPC – Department imposed punishment of removal from service – Held – There is no iota of reason assigned in impugned order as to why punishment of "removal" from service was found to be adequate for committing offence u/S 324 IPC – Authority was required to examine gravity of conduct which led to conviction on principle of proportionality – No finding that the conduct was so grave that no such other punishment would be commensurate to the offence/conduct – Impugned order set aside – Respondent directed to re-consider

the punishment on anvil of proportionality: *Dinesh Kumar Bilthare Vs. State of M.P., I.L.R. 2024 M.P. *52*

6. Minor Penalty/Departmental Enquiry

– **Rule 10 & 16** – Minor Penalty – Departmental Enquiry – Held – When petitioner replied to the show cause notice, his contention was considered by the authority and thereafter minor penalty was inflicted – No injury caused to petitioner while non-holding the departmental enquiry – Petitioner was rightly punished for his misconduct – Petition dismissed: *Roop Singh Bhadoriya Vs. M.P. Madhya Kshetra Vidyut Vitaran Co. Ltd., I.L.R. 2024 M.P. 70*

– **Rule 10 & 16** – Minor Penalty – Departmental Enquiry – Requirement – Held – It is discretion of authority in the given fact situation whether in a case of minor penalty when employee denies the charges, then departmental enquiry is required or not – Holding of departmental enquiry is not automatic and it is not required to be conducted in every case of minor penalty – However the said discretion is to be exercised reasonably and objectively and it should not be guided by arbitrariness: *Roop Singh Bhadoriya Vs. M.P. Madhya Kshetra Vidyut Vitaran Co. Ltd., I.L.R. 2024 M.P. 70*

7. Moral Turpitude

– **Rule 19** and Constitution – Article 311(2) – Conviction – Dismissal – Moral Turpitude – Held – Petitioner allured honest and innocent investors to invest in a company and the company misappropriated an amount of Rs. 2.5 Crore and amount of innocent investors were never returned back – Petitioner was convicted for offence involving moral turpitude – Conviction has not been suspended – Merely because sentence has been suspended would not mean that his conviction has also been stayed – Dismissal cannot be said to be illegal – Petition dismissed: *Manoj Choure Vs. State of M.P., I.L.R. 2024 M.P. 1095*

– **Rule 19** and Constitution – Article 311(2) – Conviction – Moral Turpitude – Departmental Enquiry – Held – Dismissal of petitioner upon his conviction for offence u/S 420, 409/120B & 109 IPC is permissible without holding any departmental enquiry: *Manoj Choure Vs. State of M.P., I.L.R. 2024 M.P. 1095*

8. Recording of Reasons

– **Rule 15(1) & 15(2)** – Dismissal – Discordant Note – Reasoning – Held – Both the enquiry officer found that charges are not proved – Disciplinary authority recorded his disagreement and proceeded under Rule 15(2) – Discarded note

contains only conclusions of disciplinary authority without referring to the reasons and without mentioning the basis of any evidence on record – This runs contrary to principle of natural justice and statutory mandate ingrained in Rule 15(2) of 1966 Rules – Punishment order set aside – Petition allowed: *Balendra Singh Vs. State of M.P., I.L.R. 2024 M.P. *29*

– **Rule 15(3)** – Recording of Reasons – Non-speaking Order – Held – Contents of petitioner's representation against enquiry report was not considered – Disciplinary authority has simply written in order of penalty that he agrees with findings of enquiry officer – Administrative orders should mention reasons – Impugned orders are non-speaking in nature, not containing reasons required to be recorded in writing by disciplinary authority in terms of Rule 15(3) of 1966 Rules – Impugned orders set aside – Matter relegated to disciplinary authority for decision afresh – Petition allowed: *Shivhari Shrivastava Vs. State of M.P., I.L.R. 2024 M.P. 2277*

9. Recovery against Dead Person

– **Rule 10** – Recovery against Dead Person – Held – Employee died on 02.02.2016 and audit conducted on 22.11.2016 – Since recovery has been made on ground of causing loss to State Government, which is a minor penalty under Rule 10, therefore after the death of employee, same cannot be done – Authorities directed to immediately release the withheld amount – As no enquiry was conducted and entire responsibility was put on the shoulder of dead person, Collector directed to conduct an enquiry to find out the responsible persons – Petition disposed: *Veena Dhurvey (Smt.) Vs. State of M.P., I.L.R. 2024 M.P. *22*

10. Suspension on Direction of Minister

– **Rule 9** – Suspension on Direction of Minister – Held – Employee was placed under suspension on direction by the Minister – An employee cannot be placed under suspension in a routine manner as a suspension syndrome – None of the charges are of the nature which requires the step of ordering suspension of a Principal – Authority has not taken the decision independently within framework of Rule 9 of CCA Rules – Suspension order is set aside – Petition allowed: *Rashmi Rekha Mishra (Dr.) Vs. State of M.P., I.L.R. 2024 M.P. 828*

11. Miscellaneous

– **See** – Constitution – Article 226: *Manoj Singh Tomar Vs. State of M.P., I.L.R. 2024 M.P. *195 (DB)*

CIVIL SERVICES (CONDUCT) RULES, M.P., 1965**SYNOPSIS**

- 1. Compulsory Retirement**
- 2. Conduct of Police**
- 3. Departmental/Criminal Proceedings**
- 4. Second Marriage**
- 5. Unauthorized Absence**

1. Compulsory Retirement

– **Rule 23(c) & (d)** and Police Regulations, M.P., Regulation 64(2) – Compulsory Retirement – Moral Turpitude – Principle of Preponderance of Probability – Held – Petitioner was on duty at the time of incident – Doctor deposed that petitioner was under influence of liquor and was not able to walk properly – If breath analyser not used or blood sample not taken, it will not cause any dent to prosecution story – Doctor has no enmity with petitioner, his statement cannot be discarded merely because aforesaid tests were not conducted – Such statement fulfills the requirement of principle of preponderance of probability – It cannot be said that findings of enquiry officer was based on no evidence or perverse in nature – Petition dismissed: *Shravan Kumar Balone Vs. State of M.P., I.L.R. 2024 M.P. 417*

2. Conduct of Police

– **Rule 23(c) & 23(d)** and Police Regulations, M.P., Regulation 64(2) – Scope & Applicability – Conduct of Police – Duty Hours – Held – Police force is a disciplined force – Even if police officer is not on duty, as per Conduct Rules, he is expected to maintain discipline and for this purpose, Rule 23(c) & (d) were inserted in statute – Rule 23(c) covers the conduct of police personnel even beyond his duty hours: *Shravan Kumar Balone Vs. State of M.P., I.L.R. 2024 M.P. 417*

3. Departmental/Criminal Proceedings

– **Rule 3(3)** and Police Regulations, M.P., Regulation 64(4) – Departmental & Criminal Proceedings – Held – Since allegations made in criminal case are completely different from the charges leveled in departmental enquiry – The very purpose of both the cases is different – The degree of required proof is also different – Criminal proceedings as well as departmental proceedings can proceed simultaneously, no case made out warranting interference – Petition dismissed: *Rakesh Gokhle Vs. State of M.P., I.L.R. 2024 M.P. *94*

4. Second Marriage

– **Rule 22** – Second Marriage – Held – Government servant who has a wife living cannot contract second marriage without first obtaining permission of government, even if it is permissible under the personal law: *Khursheed Bano (Smt.) Vs. Smt. Rukhsana Bano, I.L.R. 2024 M.P. 768*

5. Unauthorized Absence

– **Rule 3(1)(ii) & (iii)** – Removal from Service – Unauthorised Absence – Held – Petitioner was removed from service after full fledged departmental enquiry – Petitioner has not pointed out any procedural lapse in the departmental enquiry – Police force is a disciplined force in uniform – Unauthorised absence amounts to desertion of service – No interference warranted – Petition dismissed: *Daulat Singh Markam Vs. State of M.P., I.L.R. 2024 M.P. 1267*

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

– **Rules 6(6)** – Disqualification – More than Two Children – Held – As per Rule 6(6), no candidate shall be eligible for appointment who has more than two living children, one of whom is on or after 26.01.2001 – Petitioner cannot be treated to be eligible for appointment because admittedly two children of petitioner were born after 26.01.2001 – Petitioner certainly falls in the clutches of this embargo/impediment – Petitions dismissed: *Sunil Vs. State of M.P., I.L.R. 2024 M.P. *20*

– **Rule 8(6) & 12(4)** and Employees State Insurance Services (Gazetted) Recruitment Rules, M.P., 1981 – Pension – Senior Pay Scale – Period of Adhoc Service – Held – Services rendered on adhoc basis are liable to be counted for granting senior pay scale from the date of initial appointment – After regularization/confirmation, the entire adhoc services are liable to be counted for all purposes – R-4 & R-5 are unnecessarily insisting on changing the date for grant of senior pay scale after 13 years, that too after retirement – Petition allowed with cost of Rs. 25,000: *Sanjive Kumar Naik Vs. State of M.P., I.L.R. 2024 M.P. 894*

– **Rule 12(1)(d)** – Seniority List – Held – Juniors were promoted on 23.10.2010 and petitioner was not promoted because his ACR was not available, later he was promoted on 04.11.2023 in Review DPC – In terms of Section 12(1)(d), petitioner is entitled to compute his seniority on the said post w.e.f. the date when his juniors were promoted and relative seniority is to be made in the feeder cadre –

Petition allowed with cost of Rs. 10,000: *Santosh Kumar Shrivastava Vs. M.P. Power Management Co. Ltd., I.L.R. 2024 M.P. *171*

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

– **Rule 6** and Adarsh Sewa Niyam, Rule 12(1)(6) – Study Leave – Held – Conjoint reading of Rule 6 of 1977 Rules and the "Niyam" makes it clear that leave cannot be claimed as a matter of right – Competent authority has discretion to grant or refuse the leave – In the rejection letter, it was made clear that in view of criteria fixed by Commission, study leave cannot be granted considering paucity of teachers – Recognition of Medical College could be at stake – This reason talks about interest of institution in particular and public interest in general – Petition dismissed: *Sheetal Soni (Dr.) Vs. State of M.P., I.L.R. 2024 M.P. 219*

– **Rule 38(c)** – Child Care Leave – Foreign Travel – Permissibility – Held – In leave rules, there is no such specific restriction for not to travel abroad for government employee during the leave – Petitioner is a teacher and for teachers the CCL cannot be granted for maximum 730 days in one spell – Petitioner is granted CCL for complete 2 years in one spell – Respondents directed to consider both applications i.e. one for the grant of CCL and another for permission to travel abroad – Petition disposed: *Pratigya Tiwari (Smt.) Vs. State of M.P., I.L.R. 2024 M.P. *198*

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

SYNOPSIS

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| 1. Applicability of Act | 2. Computation of Qualifying Service |
| 3. Conviction/Provisional Pension | 4. Disciplinary Proceedings |
| 5. Entitlement | 6. Interest on Delayed Payment |
| 7. Recovery | 8. Restoration of Pension |

1. Applicability of Act

– **Rule 2(ii)(g)** – Applicability of Act – Date of Appointment – Held – Condition mentioned in appointment order specifies that if within 30 days of receipt of order, if candidate does not assume charge, then appointment order shall

automatically stand cancelled – Appointing authority has appointed the candidate with immediate effect because outer limit of 30 days is mentioned in order – Order of appointment has taken force from 16.12.2004 itself – Petitioner is covered under the 1976 Rules – Petition allowed: *Harsha Naugarhiya (Smt.) Vs. State of M.P.*, I.L.R. 2024 M.P. 2271

2. Computation of Qualifying Service

– **Rules 2, 12(2), 15 & 22** – Computation of Qualifying Service – Period of Apprenticeship – Held – An apprentice appointed under Apprentice Act, 1961 is considered as learner rather than an employee, he does not have right to regular employment or absorption after completing apprenticeship – Petitioner was appointed as Technician Apprentice, he cannot be held to be appointed to a civil service and post – Period rendered as apprenticeship cannot be included as qualifying service for the purpose of pension – Petition dismissed: *Durgaprasad Vs. M.P. Power Plant Transmission Co. Ltd.*, I.L.R. 2024 M.P. 2570

– **Rule 3(p) & 12(2)** – Daily Wagers – Computation of Qualifying Service – Held – Qualifying service starts from the date when a person joins a pensionable service – Joining of a daily wage employment being not a pensionable service, will not fall within the realm of qualifying service – Further, petitioner was not appointed against any post as a daily wager – Petitioner not entitled for any relief – Petition dismissed: *Motilal Dhar Dwivedi Vs. State of M.P.*, I.L.R. 2024 M.P. 2544

3. Conviction/Provisional Pension

– **Rule 64** – Conviction – Provisional Pension – Held – Petitioner convicted under PC Act – Merely filing of appeal against conviction would not automatically apply as a stay of conviction – If appeal is pending, it would not mean that he is not required to face disqualification attached on account of his conviction – Apex Court concluded that in a matter arising out of PC Act, conviction should not be stayed – There is a distinction between conviction and sentence – Since petitioner has been dismissed on account of his conviction, he is not entitled for provisional pension – Petition disposed: *Heeralal Awasthi Vs. State of M.P.*, I.L.R. 2024 M.P. 1110

– **Rule 64(1)(b)** – Termination – Conviction – Provisional Pension – Held – Petitioner convicted under provisions of Prevention of Corruption Act – In appeal, sentence was only stayed and conviction was not stayed – When there is no stay of conviction then the disqualifications attached to conviction must follow – Merely because an appeal is pending, for purpose of Rule 64, it cannot be said that judicial proceedings have not come to an end – Further, petitioner was terminated in 2014 and petition has been filed in 2023 – Petitioner not entitled for provisional pension: *Badelal Pathak Vs. State of M.P.*, I.L.R. 2024 M.P. *28

4. Disciplinary Proceedings

– **Rule 9(2)(b)** – Retired Employee – Disciplinary Proceedings – Held – As per prohibitions contained in Rule 9(2)(b), issuance of charge-sheet cannot be for an event/misconduct which took place more than 4 years before institution of disciplinary proceedings – Charge-sheet in present case was issued for an event which took place 6 years, 4 years and 10-11 years back in respect of P-1, P-2 & P-3 respectively – Charge-sheet is hit by bar contained in Rule 9(2)(b) and is thus quashed with cost – Petition allowed: *Rakesh Kumar Shrivastava Vs. State of M.P.*, I.L.R. 2024 M.P. 85

– **Rule 9(2)(b)** – Retired Employee – Disciplinary Proceedings – Held – If a competent authority wants to issue a charge-sheet against a retired government servant then it has to satisfy the test laid down in all 3 clauses of Rule 9(2)(b) – Non-satisfaction of even a single clause would vitiate the initiation/conduction of inquiry against him: *Rakesh Kumar Shrivastava Vs. State of M.P.*, I.L.R. 2024 M.P. 85

5. Entitlement

– **Rules 2(e), (f) & (g)** and Fundamental Rule, M.P. Rule 2 & 3 – Samvida Shala Shikshak/Shiksha Karmi – Entitlement of Pension – Held – Shiksha Karmi or Samvida Shala Shikshak or Adhyapak Samvarg is a category of persons which were meant for teaching in schools under control of Zila/Janpad Panchayat – They are not under control of State Government and cannot be said to be civil servants in terms of definition of Rule 2 & 3 of Fundamental Rules – They being not a civil servant, Pension Rules of 1976 will not be applicable to them – Their claim for grant of pension cannot be accepted – Petitions dismissed: *Tribal Welfare Teachers Association Vs. State of M.P.*, I.L.R. 2024 M.P. 1980

– **Rule 2(g)** and Constitution – Article 243-I & J – Panchayat Employees – Entitlement of Pension – Held – Though some grants or considerations may be rolled out to Panchayats by State Govt., but their financial autonomy was sought to be kept intact by the framers of Constitution – It cannot be said that Panchayat have subrogated their authority and have merged their identity with State Govt. – Since their identity is not merged with State Govt., their employees cannot seek benefit of Pension: *Tribal Welfare Teachers Association Vs. State of M.P.*, I.L.R. 2024 M.P. 1980

6. Interest on Delayed Payment

– **Rule 9(4)** and Interest Act (14 of 1978), Section 3 & 4 – Restoration of Pension – Computation of 2 years – Interest on Delayed Payment – Held – If

computation of 2 years is taken from date of charge-sheet i.e. 08.11.2005 then date would come as 08.11.2007 but at that time petitioner was in service, he resigned on 31.08.2009, therefore 2 years period will be reckoned only from date of retirement i.e. 31.08.2009 – Petitioner entitled for restoration of pension on 01.09.2011 – Only those emoluments which are to be paid as arrears accumulated till date shall carry interest @ 6% p.a. – Petition allowed: *Alok Shukla Vs. State of M.P., I.L.R. 2024 M.P. 390*

7. Recovery

– **Rule 65** – Recovery – Ascertainable Government Dues – Held – Recovery has two connotations, one is recovery on account of incorrect pay fixation etc. which results in excess payment and another is on account of enforceable claims against the employees – Dues of the State government like arrears of house rent, water and electricity charges and cost of missing articles are ascertainable government dues and can be adjusted/deducted from the gratuity payable to petitioner – Petition dismissed: *Bal Krishna Dwivedi Vs. State of M.P., I.L.R. 2024 M.P. *205*

– **Rule 65** – Recovery of Excess pay – Undertaking by Employee – Permissibility – Held – Recovery can be effected from pensionary benefits or from the salary based on the undertaking or the indemnity bond given by employee before the grant of benefit of pay re-fixation – Question of hardship of a government servant has to be taken note of in pursuance to the Apex Court judgment in *Syed Abdul Qadir* case – Time period fixed in case of *Rafiq Masih* requires to be followed – However, no recovery can be made in pursuance to Rule 65 towards revision of pay which has been extended to a government servant much earlier – In such cases recovery can be made in above terms: *State of M.P. Vs. Jagdish Prasad Dubey, I.L.R. 2024 M.P. 575 (FB)*

– **Rule 65 & 66** – Recovery of Excess pay – Procedure – Held – Recovery can be made towards excess payment made in terms of Rule 65 & 66 provided that the entire procedures contemplated in Chapter VIII of 1976 Rules are followed by the employer: *State of M.P. Vs. Jagdish Prasad Dubey, I.L.R. 2024 M.P. 575 (FB)*

8. Restoration of Pension

– **Rule 9(4)** – Word "Shall" – Interim Orders of Court – Held – Rule 9(4) nowhere contemplates that restoration of pension after 2 years would be subject to any interim order of any Court of law – Word "shall" in clause B of Rule 9(4) mandates about compulsive nature of restoration of pension and since these rules are in respect of pension of govt. employees/civil servants, therefore it has to be read in tandem with the very object of concept of pension and Pension Rules: *Alok Shukla Vs. State of M.P., I.L.R. 2024 M.P. 390*

COMMERCIAL COURTS ACT, 2015 (4 OF 2016)

SYNOPSIS

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|---|--------------------------------|
| <p>1. Commercial Dispute</p> <p>3. Written Statement/Time Limit</p> | <p>2. Pre-Mediation</p> |
|---|--------------------------------|

1. Commercial Dispute

– **Section 2(1)(c)(i)** – Commercial Dispute – Held – As per Section 2(1)(c)(i), commercial dispute means a dispute arising out of ordinary transactions of merchants, bankers, financiers and traders such as those relating to mercantile documents whereas in present case plaintiff leased out/rented her property for running hospital and suit was filed for getting vacant possession and for arrears of rent under provisions of M.P. Accommodation Control Act 1961 – Such dispute does not come within the purview of Section 2(1)(c) (i) of 2015 Act: *Bhopal Fracture Hospital (M/s.) Vs. Savitri Devi Vijaywargiya, I.L.R. 2024 M.P. 1894*

– **Section 2(1)(c)(vii) & 6** and Civil Procedure Code (5 of 1908), Order 7 Rule 11 – Commercial Dispute – Held – A commercial dispute indicates something more than a simple landlord tenant dispute – Plaintiff leased out/rented her property for running hospital and suit was filed for getting vacant possession and for arrears of rent under provisions of M.P. Accommodation Control Act 1961 – Dispute involved in instant case does not come within the purview of "commercial dispute" as defined u/S 2(1)(c)(vii) of 2015 Act –Application under O-7 R-11 CPC rightly dismissed – Revision dismissed: *Bhopal Fracture Hospital (M/s.) Vs. Savitri Devi Vijaywargiya, I.L.R. 2024 M.P. 1894*

– **Sections 2(1)(c-xviii), 6 & 12-A** and Civil Procedure Code (5 of 1908), Order 7 Rule 11 – “Commercial Dispute” – Held – Plaintiff is a chemist and defendant is a hospital, thus trial Court rightly held that both parties being business entities, have business transactions and such dispute between them falls under category u/S 2(1)(c-xviii) of 2015 Act: *Pushpshree Hospitals & Research Centre Vs. Kothari Chemist, I.L.R. 2024 M.P. 955 (DB)*

2. Pre-Mediation

– **Section 12-A** and Civil Procedure Code (5 of 1908), Order 7 Rule 11 – Pre-Mediation – Held – Declaration by which Section 12-A has been made mandatory before filing any commercial suit shall be brought into effect from 20.08.2022 – Present suit cannot be rejected for non-compliance of Section 12-A as

the same was filed on 26.03.2021 which is prior to 20.08.2022 – Petition dismissed: *Pushpshree Hospitals & Research Centre Vs. Kothari Chemist, I.L.R. 2024 M.P. 955 (DB)*

3. Written Statement/Time Limit

– **Section 15(4)** and Civil Procedure Code (5 of 1908), Order 5 Rule 1 & Order 8 Rule 1 & 10 – Transfer of Case – Time Limit to File Written Statement – Held – After transfer of matter to Commercial Court, the case management hearing needs to be applied and for that purpose, Court is obliged to prescribe a new time line or issue further directions – Court below erred in declining the written statement without prescribing a new time line as per Section 15(4) – Impugned order set aside – Petition allowed: *Telecommunications Consultants India Ltd. Vs. Rajendra Singh Kiledar Construction Pvt. Ltd., I.L.R. 2024 M.P. 1174 (DB)*

COMMISSIONER OF OATH'S RULES, M.P., 1976

– **Rule 2(b), 2(d), 5 & 8** – See – Panchayat Raj Evam Gram Swaraj Adhinyam, M.P. 1993, Section 122: *Rabindra Kumar Upadhyay Vs. The Sub-Divisional Officer (Revenue), I.L.R. 2024 M.P. *118*

COMPANIES ACT (1 OF 1956)

– **Section 446(2)** – See – Recovery of Debts Due to Banks and Financial Institutions Act, 1993, Sections 17, 18 & 34: *Anil Kumar Khandelwal Vs. Lakhani Foot Care Pvt. Ltd., I.L.R. 2024 M.P. *3 (DB)*

COMPANIES ACT (18 OF 2013)

– **Section 212** and Insolvency and Bankruptcy Code (31 of 2016), Section 66 – Double Jeopardy – Held – Once the Liquidator and authorities have taken action u/S 66 of Insolvency and Bankruptcy Code and the application is pending before NCLT, there is no question of SFIO carrying out investigation with respect to same transaction and same cause of action, more particularly on ground of public interest which will otherwise amount to double jeopardy: *Madanlal Juharmal Goyal Vs. Union of India, I.L.R. 2024 M.P. 2026 (DB)*

– **Section 212(1)(c)** – Sanction Order for Investigation – Public Interest – Held – There is no question of public interest in relation to any transaction with respect to company as the company itself is a private limited company – Transaction between company and IDBI Bank is a private commercial transaction – Such transaction would not qualify to prejudice public interest for purpose of Section

212(1)(c) of the Act: *Madanlal Juharmal Goyal Vs. Union of India, I.L.R. 2024 M.P. 2026 (DB)*

– **Section 212(1)(c)** – Sanction Order for Investigation – Requirements – Held – There has to be extraordinary circumstances made out, an opinion formed by Central Government based on material and relevant documents and such extraordinary circumstances that investigation by SFIO is required against a company – Impugned sanction is absolutely without any reason, is non-speaking, evidences non-application of mind and has been passed in mechanical manner – Sanction order is solely based on suspicion raised by Liquidator and Transaction Audit Report – There is no independent opinion formed by central government as mandated u/S 212 of the Act – Order of sanction is vitiated and is thus set aside – Petition allowed: *Madanlal Juharmal Goyal Vs. Union of India, I.L.R. 2024 M.P. 2026 (DB)*

CONSTITUTION

– **Article 12 & 226** – State Tourism Development Corporation – Held – Although MPSTDC is a company registered under the Companies Act, 1956 but undisputedly, this is incorporated and fully owned by State of M.P. – Entire MPSTDC is funded by State Government, therefore it is an extended arm of State Government and hence amenable to writ jurisdiction of the High Court – Writ petition is maintainable – Appeal allowed: *Dhiraj Kumar Sharma Vs. State of M.P., I.L.R. 2024 M.P. *251 (DB)*

– **Article 13(3)(a), 14 & 19** – See – Central Civil Services (Conduct) Rules, 1964, Rules 5(12), 5(12A) & 5(13): *Purushottam Gupta Vs. Union of India, I.L.R. 2024 M.P. 2549 (DB)*

– **Article 14** – See – Government Servants (Temporary and Quasi-Permanent Service) Rules, M.P. 1960, Rule 3: *Sher Bahdur Singh Chouhan Vs. State of M.P., I.L.R. 2024 M.P. *187*

– **Article 14 & 16** – See – Police Regulations, M.P., Regulation 214 & 217: *Ravindra Kumar Rajnegi Vs. State of M.P., I.L.R. 2024 M.P. *37*

– **Article 14, 16 & 19(1)(g)** – See – Judicial Service (Recruitment and Conditions of Service) Rules, M.P. 1994, Rule 7(g), proviso: *Devansh Kaushik Vs. State of M.P., I.L.R. 2024 M.P. 621 (DB)*

– **Article 14, 16 & 226** – Withdrawal of Officiating Charge – Judicial Review – Held – Withdrawal of officiating charge can be a subject matter of judicial

review on the anvil of Article 14 & 16 of Constitution: *Ayesha Ali Vs. State of M.P.*, I.L.R. 2024 M.P. *190

– **Article 14 & 226** – Negative Equality – Held – The principle of negative equality has no place in Article 14 of Constitution: *Leeladhar Vishwakarma Vs. State of M.P.*, I.L.R. 2024 M.P. *10

– **Article 14 & 226** – Recruitment – Age Relaxation – Entitlement – Held – Recruitment process is going on for the colleges and not for the universities, thus age relaxation was provided by State for guest faculty in Colleges – Petitioner is a guest faculty working in university, she cannot seek relaxation in recruitment of regular position in government college as she has never worked in govt. colleges and is working in govt. university – Classification made by State do not hit by Article 14 of Constitution – Petition dismissed: *Jyoti Choubey (Dr.) Vs. State of M.P.*, I.L.R. 2024 M.P. 2059

– **Article 14 & 226** – Suspension – Alternate Remedy – Held – If impugned order of suspension is arbitrary which hits Article 14 of Constitution, this itself can be a reason to interfere in it by the Court without relegating the employee to avail the remedy of appeal: *Rashmi Rekha Mishra (Dr.) Vs. State of M.P.*, I.L.R. 2024 M.P. 828

– **Article 19(1)(a)** – See – Penal Code, 1860, Section 188 & 505(2): *Monu Upadhyay Vs. State of M.P.*, I.L.R. 2024 M.P. 1061

– **Article 20(1)** – See – Prevention of Corruption Act, 1988, Sections 13, 13(1)(b) & 13(2): *Arvind Pandey Vs. State of M.P.*, I.L.R. 2024 M.P. 363 (DB)

– **Article 20(1)** – See – Prevention of Corruption Act, 1988, Section 13(1)(d): *U.S. (Upjeet Singh) Arora Vs. State of M.P.*, I.L.R. 2024 M.P. 570 (DB)

– **Article 21** – Right to Speedy Trial – Held – Right to speedy trial extends equally to all criminal prosecution and is not confined to any particular category of cases – Right to access justice is not confined to accused only but is also available for complainant/informant: *Vijendra Singh Sikarwar Vs. State of M.P.*, I.L.R. 2024 M.P. 349

– **Article 21, 32 & 226** – Writ of Habeas Corpus – Held – Apex Court concluded that there is a difference between a writ of habeas corpus under Article 32 and under Article 226 of Constitution – Writ of habeas corpus under Article 32 in Supreme Court is available in case of violation of fundamental rights guaranteed under Article 21 but it does not relate to interference with personal liberty by a private citizen, however High Court under Article 226 has jurisdiction to issue writ of habeas corpus not only for violation of fundamental rights of freedom but also for

other purposes – High Court can issue such writ against a private person also: *Vatsalyapuram Jain Welfare Society Vs. State of M.P.*, I.L.R. 2024 M.P. 1153 (DB)

– **Article 25 & 29** – Ancient Monuments – Protection – Held – Every government has constitutional obligation to ensure preservation and protection of not only ancient monuments and structures including temples of archaeological and historical importance but also of *sanctum sanctorum* as well as the deity of spiritual importance: *Hindu Front for Justice Vs. Union of India*, I.L.R. 2024 M.P. 1542 (DB)

– **Article 25, 29 & 49** – See – Ancient Monuments and Archaeological Sites and Remains Act, 1958, Section 16 & 21: *Hindu Front for Justice Vs. Union of India*, I.L.R. 2024 M.P. 1542 (DB)

– **Article 51A(j)** – See – Judicial Service (Recruitment and Conditions of Service) Rules, M.P. 1994, Rule 7(g): *Devansh Kaushik Vs. State of M.P.*, I.L.R. 2024 M.P. 621 (DB)

– **Article 64(4) & 16(6)** – Reservation – Held – Article 16(6) deals with reservation for economically weaker section – Reservation for economically weaker sections of citizens is only available in those cases which are not covered in clause (4) of Article 16 – Reservation for economically weaker section is available only for General category and excludes SC, ST and OBC category – Petitions dismissed: *Pushpendra Singh Rajpoot Vs. State of M.P.*, I.L.R. 2024 M.P. 2460

– **Article 161** – Dismissal – Conviction – Grant of Pardon by Governor – Held – Power of clemency is to be exercised cautiously and in appropriate cases, which in effect, mitigates the sentence of punishment awarded and which does not, in any way, wipe out the conviction – Conviction being maintained despite the pardon and only sentence is wiped out, petitioner not entitled for reinstatement in service – Petition dismissed: *Ram Dayal Mishra Vs. Union of India*, I.L.R. 2024 M.P. *242

SYNOPSIS: Article 226

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| 1. Allotment of Place in High Court | 2. Alternate Remedy |
| 3. Appointment/Recruitment | 4. Change of Land Use |
| 5. Circular | 6. Competent Authority |
| 7. Contractual/Government Employee | 8. Delay & Laches |
| 9. Departmental Enquiry/ Proceedings | 10. Disputed Question of Facts |

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| 11. Doctrine of Impossibility | 12. Doctrine of Legitimate Expectation |
| 13. Doctrine of <i>Per Incuriam</i> | 14. Education/Domicile Certificate |
| 15. Exemption of Electricity Charges | 16. Habeas Corpus |
| 17. Locus Standi | 18. Malafide/Impleadment of Party |
| 19. Medical Negligence | 20. Obiter Dictum |
| 21. Pleadings & Practice | 22. Policy Decision |
| 23. Principle of <i>Audi Alteram Partem</i>/Natural Justice | 24. Principle of “Issue Estoppel” |
| 25. Public Contracts/Tender | 26. Public Interest Litigation |
| 27. Quashment of FIR | 28. Reasoned Order |
| 29. Scope & Jurisdiction | 30. Second Review |
| 31. Suspension | 32. Termination/Dismissal |
| 33. Termination of Dealership | 34. Validity of Judgement/Precedent |
| 35. Writ of Quo Warranto | 36. Writ Appeal/Maintainability |
| 37. Miscellaneous | |

1. Allotment of Place in High Court

– **Article 226** – Allotment of Place in High Court Premises – Equitable Right – Held – Plea of the respondents that they are in possession of the space since 2006-07 and have invested lakhs of rupees will not create any equitable right unless they are able to show that the cannons of principles of law were observed and followed before granting any benefit in their favour – M.P. High Court Advocates Bar Association cannot enjoy the patronage of High Court as a separate distinct legal entity: *Amit Patel Vs. High Court of M.P.*, I.L.R. 2024 M.P. 2476 (DB)

– **Article 226** – Allotment of Place in High Court Premises – Permissibility – Held – In exercise of discretion, grant of license/allotment of space made by High Court authorities in favour of M.P. High Court Advocates Bar Association

(unrecognized from State Bar Council of M.P.) sans the norms, standards & procedures and is also violative of principles of natural justice and being arbitrary, cannot be given a seal of approval – Former Chief Justices could not have allotted as such without calling applications from interested parties, thus they were in error in not following the procedures – License granted is revoked – Petition allowed: *Amit Patel Vs. High Court of M.P., I.L.R. 2024 M.P. 2476 (DB)*

– **Article 226** – Allotment of Place in High Court Premises – PIL – Locus Standi – Held – A lawyer affected by the so called discrimination has come to this Court – It cannot be said that he has no *locus* to challenge the decision of the authorities – Space allotted is a public property – Petition is maintainable in the name and style of PIL: *Amit Patel Vs. High Court of M.P., I.L.R. 2024 M.P. 2476 (DB)*

– **Article 226** – Allotment of Place in High Court Premises – Rules & Procedure – Held – It is admitted by counsel for High Court that neither there was any Rule for allotment nor there is any procedure prescribed before exercising the discretion of allotment of space and High Court being not above the rule of law, such action cannot be given seal of approval – Discretion must be exercised following the principles of Rules and adopting a transparent procedure and not by whim or fancy or caprice of the authority: *Amit Patel Vs. High Court of M.P., I.L.R. 2024 M.P. 2476 (DB)*

– **Article 226** – Allotment of Place in High Court Premises – Transparency & Fairness – Held – When action of the High Court authorities fails to pass the test of selflessness, objectivity, accountability, openness, honesty and leadership, the decision of allotment of space cannot be said to be a sound decision covering the cannons of transparency and fairness – Nothing shown by High Court that the decision of allotment was taken by the then Chief Justices fulfilling any requirements of discussions, negotiations considerations of objections etc: *Amit Patel Vs. High Court of M.P., I.L.R. 2024 M.P. 2476 (DB)*

2. Alternate Remedy

– **Article 226** – Alternate Remedy – Exceptional Case – Held – Mere availability of alternate remedy of appeal or revision would not oust the jurisdiction of High Court and render a writ petition not maintainable – Pure question of law is involved in the case – Petitioner has carved an exceptional case – Petition is maintainable: *Kusum Jagdishchandra Singh (Smt.) Vs. LIC Housing Finance Ltd., I.L.R. 2024 M.P. *257 (DB)*

– **Article 226** – Alternate Remedy – Held – Availability of an alternative remedy is self-imposed bar created by Courts themselves and under given facts and

circumstances of the case, the availability of alternative remedy can be ignored: *Vivek Tiwari Vs. State of M.P.*, I.L.R. 2024 M.P. 841

– **Article 226** – Alternate Remedy – Held – Power of High Court under Article 226 is extraordinary – In extra ordinary circumstances, High Court can exercise this power despite availability of alternate remedy – Not entertaining writ petition where alternate remedy is available, is a rule of convenience and discretion: *Jai Krishan Choubey Vs. State of M.P.*, I.L.R. 2024 M.P. 1141

– **Article 226** – Alternative Remedy – Maintainability – Held – Impugned orders has been challenged on ground of jurisdiction, competency and not following principle of natural justice, therefore petition is maintainable despite availability of alternate remedy – Petition maintainable: *Vinay Upadhyay Vs. State of M.P.*, I.L.R. 2024 M.P. 1529

– **Article 226** and Cooperative Societies Act, M.P. 1960 (17 of 1961), Section 55(2) – Alternative Remedy – Held – Deputy Registrar has already directed the Administrator to take disciplinary action but did not propose any punishment – Only the Society/Bank is competent to conduct departmental enquiry not Deputy Registrar – If any dispute raised, Deputy Registrar will remand back to disciplinary authority – Plea of alternative remedy is rejected: *Sanjay Vs. State of M.P.*, I.L.R. 2024 M.P. *97

– **Article 226** and Excise Act, M.P. (2 of 1915), Sections 34(2), 47(B) & 47(C) – Alternate Remedy – Held – Apex Court concluded that if order is patently illegal, arbitrary and violative of statutory provisions, there is no absolute bar for exercising writ jurisdiction on account of availability of alternative remedy: *Bhaskar @ Balkishan Sonone Vs. State of M.P.*, I.L.R. 2024 M.P. 424

3. Appointment/Recruitment

– **Article 226** – Appointment – Advertisement – Scope of Interference – Held – While exercising jurisdiction under Article 226 of Constitution, the Court is not expected to add or subtract contents in a given document to facilitate/enforce its own perspective, particularly while reading the terms of the advertisement or rules having legal sanction: *Sandeep Kulshrestha Vs. Manoj Pratap Singh Yadav*, I.L.R. 2024 M.P. 1 (DB)

– **Article 226** – Appointment – Delay & Laches – Held – There cannot be any fixed formula for deciding the aspect of delay – It depends on facts and circumstances of each case – Measurement of delay can be based on the time limit prescribed for civil suit which can be filed for similar relief – 3 years is the limitation to file suit seeking annulment of an order like the impugned one – In

instant case delay is little more than 3 years – Petition cannot be dismissed on ground of delay & laches – Petition maintainable: *Pramod Kumar Verma Vs. State of M.P.*, I.L.R. 2024 M.P. *67

– **Article 226** – Appointment – Locus – Writ of Quo Warranto/Certiorari – Held – Petitioner is ousted employee of IITTM and was habitual in making complaint against appellant, beside uploading obnoxious material against IITTM on Facebook – He was not a candidate to the post in question – CV of appellant was supported by relevant certificates, scrutinized by screening committee and BOG – Vigilance division commented to CVC for closure of complaint against appellant – Selection of appellant is challenged after more than 13 yrs. – Single Judge erred in substituting his opinion over that of expert body that too while exercising extraordinary jurisdiction under *quo warranto* – Appeal allowed: *Sandeep Kulshrestha Vs. Manoj Pratap Singh Yadav*, I.L.R. 2024 M.P. 1 (DB)

– **Article 226** – Recruitment – Educational Qualification – Scope of Interference – Held – The Court or Tribunal is not a substitute for expert or academic bodies constituted for the specific purpose of deciding the equivalence of degree – Apex Court concluded that for the eligibility qualification for recruitment in service, it is not for Courts to decide whether a particular educational qualification should or should not be accepted as equivalent to the qualification prescribed by the authority: *Ateesh Rai Vs. State of M.P.*, I.L.R. 2024 M.P. 606

– **Article 226** and Prevention of Corruption Act (49 of 1988), Section 13(1)(d)(ii) & (iii) – Appointment – Held – It is a case of appointment through selection committee approved by Board of Governors and done by Chairman – No offence under 1988 Act made out: *Sandeep Kulshrestha Vs. Manoj Pratap Singh Yadav*, I.L.R. 2024 M.P. 1 (DB)

4. Change of Land Use

– **Article 226** – Lease Agreement – Change of Land Use – Held – Agreement is for the purpose of manufacturing – Other activities like construction of administrative building, godown etc is supplemental to the main purpose of manufacturing – Presently petitioner is using the leased property for purpose of warehousing – Once the main purpose has failed then for ancillary purposes, industrial plot cannot be retained – Petition dismissed: *Oswal Agro Mills Limited Vs. State of M.P.*, I.L.R. 2024 M.P. *65

– **Article 226** and Industrial Promotion Policy 2018 – Scope – Held – Policy of 2018 may have an objective of promoting certain business including logistic and warehousing but that does not mean that the policy permits use of industrial plots for

the said purpose – They may have a close nexus but they are not supplemental to each other, so to permit use of industrial plot for purpose of warehousing: *Oswal Agro Mills Limited Vs. State of M.P., I.L.R. 2024 M.P. *65*

5. Circular

– **Article 226** – Stacking Charges – Circular – Held – Clause 7.8 of Master circular provides that once advance stacking permission has been granted, cancellation of indents will not be permissible upto 15 days – In case, rail user cancels the indent within aforesaid period, stacking charges will be levied for whole period of stacking – Indent booked on 26.09.19, stacking permitted from 27.10.19 to 29.10.19 – On 29.10.19 at 14:30 pm indent was cancelled – In absence of challenge to the policy/circular by petitioners, stacking charges rightly levied by railway authorities – Petition dismissed: *Singhla Trading Company Vs. Union of India, I.L.R. 2024 M.P. *17*

6. Competent Authority

– **Article 226** – Competency of Authority – Scope & Jurisdiction – Held – If any order is without jurisdiction, same can be assailed at any point of time – Merely because petitioner has implemented the impugned transfer order, does not mean that he is precluded to challenge it – Court is only considering the competency of the authority who passed the impugned order – Petition is maintainable: *Rajesh Henry Vs. State of M.P., I.L.R. 2024 M.P. *120*

7. Contractual/Government Employee

– **Article 226** and Civil Services (Classification, Control and Appeal) Rules, M.P., 1966 – Contractual Employees – Applicability – Held – Appellant is a contractual employee and not a civil or government servant therefore provisions of 1966 Rules would not be attracted with full force: *Manoj Singh Tomar Vs. State of M.P., I.L.R. 2024 M.P. *195 (DB)*

8. Delay & Laches

– **Article 226** – Delay & Laches – Held – Resignation was accepted on 10.06.1994 – Application for reinstatement was filed after 16 years on 09.07.2010 – Writ petition was filed in 2013 – Petition hopelessly barred by limitation: *Madhav Prasad Pandey Vs. State of M.P., I.L.R. 2024 M.P. *89*

– **Article 226** and Land Acquisition Act (1 of 1894), Section 4 & 6 – Delay & Laches – Held – Notification issued in 1994 and till date no steps taken by Housing Board and therefore delay and laches will not come in way of appellants – Delay condoned: *Satish Kumar Vs. State of M.P., I.L.R. 2024 M.P. *145 (DB)*

9. Departmental Enquiry/Proceedings

– **Article 226** – Departmental Enquiry – Degree of Proof – Held – Strict degree of proof is not required in departmental enquiry – If finding is based on preponderance of probabilities then this Court in exercise of power under Article 226 cannot substitute its own findings: *Vishnu Kumar Mishra Vs. Union of India*, I.L.R. 2024 M.P. *106

– **Article 226** – Departmental Enquiry – Scope of Interference – Held – Apex Court concluded that writ Courts must be slow in interfering with findings of fact recorded by departmental authority on basis of evidence – Court can interfere if findings are unsupported by evidence, order passed in violation of natural justice, authority has not applied its mind or authority has not assigned any reason for its conclusions: *Vishnu Kumar Mishra Vs. Union of India*, I.L.R. 2024 M.P. *106

– **Article 226** – Disciplinary Enquiry – Charge-Sheet – Scope of Interference – Held – At the stage of issuance of charge-sheet, exercise of power under Article 226 is very limited – Charge-sheet is not an order – If allegations mentioned in charge-sheet are admitted in totality and yet no misconduct is made out interference can be made – Interference can also be made if it is issued by incompetent authority, if it is highly belated and there is no justifiable explanation of delay: *Ashish Mahajan Vs. State of M.P.*, I.L.R. 2024 M.P. *111

– **Article 226** – Disciplinary Enquiry – Scope of Interference – Held – Court can interfere in the matter of disciplinary proceeding, if it finds that findings of disciplinary authority is not supported by any evidence and whatsoever finding given is unreasonably arrived at – Findings based on no evidence is no finding and punishment inflicted upon the delinquent can be interfered by the Court: *Nishant Yadav Vs. Bank of Baroda*, I.L.R. 2024 M.P. 1319

– **Article 226** – Disciplinary Proceedings – Scope of Judicial Review – Held – Scope of judicial review in case of disciplinary proceedings is limited – Court is basically concerned with the decision making process – Court cannot re-appreciate the evidence to take a different view: *Shravan Kumar Balone Vs. State of M.P.*, I.L.R. 2024 M.P. 417

10. Disputed Question of Facts

– **Article 226** – Disputed Question of Facts – Held – Disputed question of fact cannot be gone into in a writ petition: *Goel Cargo Pvt. Ltd. Vs. Commissioner of Income Tax (TDS)*, I.L.R. 2024 M.P. *155 (DB)

– **Article 226** – Disputed Question of Facts – Held – The dispute raised by appellant is a factual dispute which in a proceeding under Article 226 of

Constitution cannot be entertained as it involves complicated disputed question of facts: *A.P. Shukla Vs. State of M.P.*, I.L.R. 2024 M.P. 2207 (DB)

11. Doctrine of Impossibility

– **Article 226** and Co-operative Societies Act, M.P. 1960 (17 of 1961), Section 47-A – Constitution of Inquiry Board – Apex Society – Doctrine of Impossibility –Held – Central Co-operative Bank is a Central Society of which the primary societies are members and Apex Society is the M.P. State Co-operative Bank in which Central Co-operative Banks are members – Enquiry can be conducted/concluded by appointing in Enquiry Board, the members of M.P. State Co-operative Bank which is the Apex Society of the employer bank of the petitioner, thus R-2 is directed to constitute the Enquiry Board accordingly – Petition disposed: *Subhash Pachori Vs. State of M.P.*, I.L.R. 2024 M.P. *245

12. Doctrine of Legitimate Expectation

– **Article 226** – Study Leave – Doctrine of "Legitimate Expectation" – Held – Petitioner was never given to understand while granting her permission, that it will follow with grant of study leave and permission to take admission – Legitimate expectation theory cannot be pressed into service in this case: *Sheetal Soni (Dr.) Vs. State of M.P.*, I.L.R. 2024 M.P. 219

13. Doctrine of *Per Incuriam*

– **Article 226** – Doctrine of *Per Incuriam* – Held – Doctrine of *per incuriam* merely takes away the precedent value of a decision but in no manner dilutes or affects the binding nature of the decision on the parties *inter se*: *Vaishali Wadhvani Vs. State of M.P.*, I.L.R. 2024 M.P. *44

14. Education/Domicile Certificate

– **Article 226** – Domicile Certificate – Held – For B.Ed admission, there was no requirement that only a M.P. domicile is eligible to take admission – Certificate has not been prepared by petitioner to take undue advantage – Competent authority has also not rejected the certificate during counselling – After 7 years, on basis of complaint by RTI activist (R-5), petitioner, a senior citizen and his wife were unnecessarily harassed by R-3 – State directed to examine the conduct of R-3 and initiate disciplinary action against him – Cost of Rs. 2 lacs imposed on R-3 & R-5 – Petition allowed: *Ashok Verma (Dr.) Vs. State of M.P.*, I.L.R. 2024 M.P. 1515

15. Exemption of Electricity Charges

– **Article 226** – Bar Association Building – Exemption of Electricity Charges –Held – Petitioners, who are representatives of an intellectual body are in no way

entitled to claim benefit of State Largesse at par with Suitor's shed or free electricity given to marginalized farmers or under privileged section of society as they are by their profession and education forms a different class which cannot be termed as under privileged section of society: *High Court Advocates Bar Association Vs. State of M.P.*, I.L.R. 2024 M.P. 2511 (DB)

– **Article 226** and Electricity Act (36 of 2003), Section 65 – Bar Association Building – Electricity Charges –Held – There cannot be any free electricity as far as distribution company is concerned – Proceedings of *Wakeel Panchayat* reveals that free electricity was never promised to the lawyers for Bar rooms but it was only promised for needy litigants in Suitor's shed – Further, any public announcement by Chief Minister is an executive instruction which has no statutory force and cannot override statutory provisions contained in 2003 Act – Prayer for refund of electricity bills is not justified – Petition dismissed: *High Court Advocates Bar Association Vs. State of M.P.*, I.L.R. 2024 M.P. 2511 (DB)

16. Habeas Corpus

– **Article 226** – Habeas Corpus – Held – Corpus is produced by police, she submitted that she was taken by son of one Amritlal and now she wants to live with her parents – Shaurya Didi appointed for the corpus, she would guide and encourage the corpus to do something good in life including studies and will submit a report after 6 months about the overall status of the corpus – Petition disposed: *Harchand Gurjar Vs. State of M.P.*, I.L.R. 2024 M.P. 2547 (DB)

– **Article 226** – Habeas Corpus – Stockholm Syndrome – Concept of “Shaurya Didi” – Discussed and explained: *Harchand Gurjar Vs. State of M.P.*, I.L.R. 2024 M.P. 2547 (DB)

17. Locus Standi

– **Article 226** and Cooperative Societies Act, M.P., 1960 (17 of 1961), Section 2(a-ii) – Locus Standi – Held – Petitioner is a person who may be eligible for being appointed as an Administrator and was representative of Consumer Co-operative Society and is an interested person, therefore he has *locus standi* to prefer this writ petition: *Jai Krishan Choubey Vs. State of M.P.*, I.L.R. 2024 M.P. 1141

18. Malafide/Impleadment of Party

– **Article 226** – Impleadment of Party – Held – Petitioner alleged that he was suspended to accommodate somebody else and it is a *malafide* exercise of power – No person has been impleaded *eo nomine* and therefore question of examining the

aspect of *malafide* does not arise: *Manoj Kumar Khare Vs. State of M.P.*, I.L.R. 2024 M.P. *60

– **Article 226** – Plea of Malafides – Impleadment – Held – In order to attribute biases or *malafide* action, petitioner is not only required to plead the same specifically in writ petition but the authorities in personal capacity is also required to be impleaded: *Leeladhar Vishwakarma Vs. State of M.P.*, I.L.R. 2024 M.P. *10

19. Medical Negligence

– **Article 226** – Medical Negligence – Prosecution of Doctor – Permissibility – Held – Unless and until the committee constituted as per the directions given by Apex Court in Jacob Mathew’s case gives its report about the medical negligence of the doctors, the doctors should not be prosecuted – Petitioner has not approached the committee of experts to prove medical negligence of doctors – No relief can be granted to petitioner – Petition dismissed: *Sandeep Singh Yadav Vs. State of M.P.*, I.L.R. 2024 M.P. 38

20. Obiter Dictum

– **Article 226** – Obiter Dictum – Held – Apex Court concluded that obiter dictum is mere observation or remark made by Court while deciding the actual issue before it – The 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 Court and have no authoritative value: *Tulsa Bai Gond (Smt.) Vs. State of M.P.*, I.L.R. 2024 M.P. 1290

21. Pleadings & Practice

– **Article 226** – Pleadings & Practice – Held – Writ petitions should not be drafted in a very casual and reckless manner – “Cut and Paste” attitude must stop – Advocates are expected to at least read their petitions before they file the same – Term “atrocious” is used in the petition – Court did not appreciate such intemperate language used by the counsel Shri Siddharth R. Gupta, while challenging the notification – Only because petitioners are entitled to challenge the notification, does not mean that such kind of language could be used in a court of law – Appropriate language has to be used in the pleadings – Counsel is advised to refrain from using such terminology: *Devansh Kaushik Vs. State of M.P.*, I.L.R. 2024 M.P. 621 (DB)

22. Policy Decision

– **Article 226** – Delegation of Work – Change of Employer – Policy Decision – Held – With a view to concentrate on core health services, National

Health Mission has decided to hive off the work of ancillary nature in favour of Rogi Kalyan Samiti – It is their discretion and is a policy decision taken by the National Health Mission, thus does not call for interference in the hands of this Court: *Darvari Singh Sareyam Vs. State of M.P.*, I.L.R. 2024 M.P. *153

23. Principle of *Audi Alteram Partem*/Natural Justice

– **Article 226** – Principle of “*Audi Alteram Partem*” & “*Nemo Juxed In Causa sua*” – Discussed and explained: *Satish Kumar Vs. State of M.P.*, I.L.R. 2024 M.P. *145 (DB)

– **Article 226** – Principle of *Audi Alteram Partem* – Held – Principle of *Audi Alteram Partem* has its own sanctity but the said principle of natural justice is not always put in straitjacket formula – Natural justice is not an unruly horse – Its applicability has to be adjudged regard being had to the effect and impact of the order and the person who claims to be affected and that is where the concept of necessary party becomes significant: *Saroj Yadav (Smt.) Vs. State of M.P.*, I.L.R. 2024 M.P. 232

– **Article 226** – Principle of Natural Justice – Prejudice – Held – Violation of principle of natural justice by itself is not sufficient to quash the proceedings unless and until the aggrieved party successfully points out the prejudice which may be caused to him: *Leeladhar Vishwakarma Vs. State of M.P.*, I.L.R. 2024 M.P. *10

24. Principle of “Issue Estoppel”

– **Article 226** – Dismissal of Civil Suit – Maintainability of Petition – Principle of “Issue Estoppel” – Held – Appellant has already availed of the remedy of filing a suit claiming the same relief as prayed for in the writ petition – Thus, subsequent writ petition on the same ground and seeking the same relief is barred by the principle of issue estoppel – Appeal dismissed: *A.P. Shukla Vs. State of M.P.*, I.L.R. 2024 M.P. 2207 (DB)

– **Article 226** – Principle of “Issue Estoppel” & “Res Judicata” – Discussed and explained: *A.P. Shukla Vs. State of M.P.*, I.L.R. 2024 M.P. 2207 (DB)

25. Public Contracts/Tender

– **Article 226** – Public Contracts – Held – Apex Court concluded that for public contracts, fair play is the necessary concomitant for administrative body in an administrative sphere or quasi administrative sphere – Decision must not only be tested by application of Wednesbury Principle of reasonableness but must be free of arbitrariness not affected by bias or actuated by *malafides*: *Balaji Security Services Pvt. Ltd. Vs. State of M.P.*, I.L.R. 2024 M.P. 1302 (DB)

– **Article 226** – Tender/Contract – Dropping of Entire Tender Procedure – Principle of Natural Justice – Held – Petitioner was not at any stage declared as successful bidder – If upon completion of verification of documents of petitioner, R-1 & R-2 felt that it would be more appropriate to drop entire tender process and to issue a fresh tender, it cannot be said that they acted illegally/arbitrarily – No necessity or requirement for issuance of any notice or affording any opportunity of hearing to petitioner – R-1 & R-2 acted well within their rights as conferred upon them under tender clauses itself – Petition dismissed: *MS Power Solutions Vs. M.P. Paschim Kshetra Vidyut Vitran Co. Ltd.*, I.L.R. 2024 M.P. 1087 (DB)

– **Article 226** – Tender/Contract – Rights of Bidder – Held – As per tender clause 39.1, R-1 & R-2 have right to accept/reject any bid and to annul the bidding process at any time prior to award of contract – Only financial bid was open where petitioner was found L-1 bidder but no agreement was executed nor he was declared as successful bidder – Apex Court concluded that the right to refuse the lowest or any other tender or to cancel tender process and float a fresh tender is always available to government – So long as bid has not been accepted, bidder acquires no vested right – Petition dismissed: *MS Power Solutions Vs. M.P. Paschim Kshetra Vidyut Vitran Co. Ltd.*, I.L.R. 2024 M.P. 1087 (DB)

– **Article 226** – Tender Clauses – Held – Impugned tender arbitrarily provides that the tie-breaking clause would call for choosing L-1 on basis of maximum number of manpower supplied by such bidder not in any financial year or years but specifically in the calendar year obtained through only single work order – Such incorporation is apparently made to accommodate R-3 – Work order was issued in violation of clause 37.3 of the tender document – Clause 39 is discriminatory – Arbitrary action of R-2 is not liable to be sustained – Impugned tender quashed – Petition allowed: *Balaji Security Services Pvt. Ltd. Vs. State of M.P.*, I.L.R. 2024 M.P. 1302 (DB)

26. Public Interest Litigation

– **Article 226** – Public/Personal Interest – Held – When there is a conflict between personal interest and institutional/public interest, public interest must outweigh the legitimate expectation of a person – Merely because the expression "public interest" is not used in the rejection letter, it cannot be said that the said decision was not taken in institutional/public interest: *Sheetal Soni (Dr.) Vs. State of M.P.*, I.L.R. 2024 M.P. 219

27. Quashment of FIR

– **Article 226** – Quashment of FIR – Civil Dispute – Held – If agreement to sell alleged to have been executed by petitioner in favour of company and its terms

have been violated by petitioner, then aggrieved party seeking implementation of the same or for claiming damages should have filed a civil suit but that has not been done – From contents of FIR, it is not clear that from very inception, the intention of petitioner was to cheat the company – No offence u/S 420 & 406 r/w 34 IPC made out – Dispute is purely civil in nature – FIR and consequential proceedings quashed – Petition allowed: *Rahul Agarwal Vs. State of M.P.*, I.L.R. 2024 M.P. 2528

– **Article 226** – Quashment of FIR – Opportunity of Hearing – Malafide Intention – Held – If allegations made against the suspect make out a *prima facie* cognizable offence then *malafides* of complainant/informant becomes secondary – A suspect has no right of pre-audience – Defence of petitioner was not required to be considered before lodging FIR – Apex Court concluded that Court cannot supervise the investigation – FIR cannot be quashed – Petition dismissed: *Tulsiram Parte Vs. State of M.P.*, I.L.R. 2024 M.P. *102

28. Reasoned Order

– **Article 226** – Judicial Order – Assigning Reasons – Held – Assigning of reasons is minimum requirement of law: *Radha Gupta Vs. State of M.P.*, I.L.R. 2024 M.P. 2224

29. Scope & Jurisdiction

– **Article 226** – Academic Matters – Expert Opinion – Scope of Interference – Held – Apex Court concluded that in academic matters, Courts have a very limited role particularly when no malafides have been alleged against the experts constituting the Selection Committee: *Yadvendra Prasad Dubey (Dr.) Vs. Principal Secretary, Higher Education Department*, I.L.R. 2024 M.P. *189

– **Article 226** – Administrative Decisions – Possibility of Another View – Scope – Held – Scope of interference on administrative decision in exercise of power under Article 226 is limited – Another view is possible, is not a ground for interference: *Sheetal Soni (Dr.) Vs. State of M.P.*, I.L.R. 2024 M.P. 219

– **Article 226** – Appointment – Writ of Certiorari – Scope of Interference – Held – *Certiorari* jurisdiction can be exercised only at instance of an aggrieved person who is qualified to the post and who is candidate for the post: *Sandeep Kulshrestha Vs. Manoj Pratap Singh Yadav*, I.L.R. 2024 M.P. 1 (DB)

– **Article 226** – Appointment in Academic Field – Decision of Experts – Scope of Interference – Held – So far as educational qualifications are concerned, it is the job of Committee of experts and this Court in exercise of power under Article 226 cannot assume the charge of experts to hold as to whether B.Tech in Electrical & Electronics is equivalent to B. Tech in Electronics & Communication – Unless

and until some *malafides* are alleged, recommendations of expert committee cannot be challenged – Since petitioner has not done B.Tech from Electronic & Communication as per the advertisement, no case is made out – Petition dismissed: *Sudhanshu Tripathi (Dr.) Vs. Union of India, I.L.R. 2024 M.P. *76*

– **Article 226** – Scope & Jurisdiction – Held – Courts are obliged to interfere on ground of arbitrariness and violation of principle of natural justice confining itself to the judicial restraint – Courts have to keep in mind the larger public interest in order to decide whether intervention is called for or not: *Balaji Security Services Pvt. Ltd. Vs. State of M.P., I.L.R. 2024 M.P. 1302 (DB)*

– **Article 226** – Scope of Judicial Review – Held – Scope of judicial review in a writ petition is limited – Ordinarily, Court is not obliged to examine the correctness of the decision, instead, the Court is obliged to examine the decision making process: *Goel Cargo Pvt. Ltd. Vs. Commissioner of Income Tax (TDS), I.L.R. 2024 M.P. *155 (DB)*

– **Article 226** – Show Cause Notice – Scope of Interference – Held – Apex Court concluded that unless the High Court is satisfied that show cause notice was totally *non est* in the eyes of law for absolute want of jurisdiction of the authority, writ petitions should not be entertained for the mere asking and as a matter of routine – Petitioner be directed to respond to show cause notice and take all stands highlighted in writ petition: *Santosh Bhadoriya Vs. Union of India, I.L.R. 2024 M.P. *170 (DB)*

– **Article 226** and Benami Transactions (Prohibition) Act (45 of 1988), Section 24 & 26 – Show Cause Notice – Provisional Attachment Order – Held – The scope of interference by this Court against the show cause notice is limited – The provisional attachment order as name suggests, is provisional in nature – Adjudicating authority is best suited to decide the question of benami nature of the property and whether petitioners are liable for any action under 1988 Act – Petitioner can avail remedies under the 1988 Act and take all possible factual and legal grounds before the adjudicating authority – Petitioner can avail the statutory alternative remedy available – Petition disposed: *Santosh Bhadoriya Vs. Union of India, I.L.R. 2024 M.P. *170 (DB)*

– **Article 226** and Civil Procedure Code (5 of 1908), Section 141 & Order 2 Rule 2 – Scope & Jurisdiction – Procedural Limitations – Held – Nature of relief sought in writ proceedings is different from that of civil suits, making application of certain procedural provisions such as O-2 R-2 CPC incongruous – Single Judge erred in dismissing writ petition by applying principle of O-2 R-2 CPC: *Satish Kumar Vs. State of M.P., I.L.R. 2024 M.P. *145 (DB)*

– **Article 226** and Civil Procedure Code (5 of 1908), Order 1 Rule 10 – Scope & Jurisdiction – Held – Writ jurisdiction cannot be invoked under O-1 R-10 CPC and cannot be made applicable on basis of mere agreements – An agreement does not give any right to agreement holder, except to file a suit for specific performance which can only be filed within 3 years from date of execution of agreement: *Satish Kumar Vs. State of M.P., I.L.R. 2024 M.P. *145 (DB)*

30. Second Review

– **Article 226** – Second Review – Maintainability – Held – Petitioner has already exhausted the remedy of writ petition, writ appeal, review and SLP – Permitting the parties to reopen the concluded judgments by filing repeated interlocutory applications is clearly an abuse of process of law – Under the garb of review, petitioner cannot be permitted to re-argue the matter again and again, which would be against the doctrine of finality – Apex Court only granted liberty to approach the High Court and have not granted liberty to file second review petition after dismissal of first review petition by High Court – Second review petition is not maintainable – Petition dismissed: *Sadashiv Joshi Vs. State of M.P., I.L.R. 2024 M.P. 1184 (DB)*

31. Suspension

– **Article 226** – Suspension – Judicial Review – Held – Merely because the authority is competent to issue suspension order, the suspension order will not be beyond the scope of judicial review – If it suffers from serious non-application of mind or palpably arbitrary, it can be interfered with – Decision making process and its propriety can become subject matter of judicial review: *Rashmi Rekha Mishra (Dr.) Vs. State of M.P., I.L.R. 2024 M.P. 828*

32. Termination/Dismissal

– **Article 226** – Termination – Alternate Remedy of Appeal – Held – Only show cause notice was issued after the reply filed by the petitioner, no enquiry was conducted – Thus petitioner cannot be relegated to Appellate Authority – Petitioner assailed the impugned order on the ground of jurisdiction of competent authority – Writ Petition is maintainable: *Mamta Soni (Smt.) Vs. State of M.P., I.L.R. 2024 M.P. *11*

– **Article 226** – Termination – Opportunity of Hearing – Held – Show-cause notice was issued to appellant whereby he filed reply and thereafter impugned order was passed – Appellant participated in enquiry where the committee concluded about the culpability of appellant – Thereafter, again show-cause notice was issued to appellant before taking final decision – Sufficient opportunities of hearing was

provided before passing the impugned order – Appeal dismissed: *Manoj Singh Tomar Vs. State of M.P.*, I.L.R. 2024 M.P. *195 (DB)

– **Article 226** and Prathmik Krishi Saakh Sahkari Sanstha Ke Karamchhari Seva Niyam, Rule 27 – Dismissal – Enquiry – Principle of Natural Justice – Held – Services of petitioner (employee) were terminated by President of society without serving any show cause notice and without holding any enquiry – No opportunity of hearing was provided to petitioner and order was passed without following service rules and principle of natural justice – Impugned orders quashed: *Vinay Upadhyay Vs. State of M.P.*, I.L.R. 2024 M.P. 1529

33. Termination of Dealership

– **Article 226** – Termination of Petroleum Dealership – “Critical Irregularities” – Held – Seal of metering unit was found tampered in dispensing unit and the totalizer seal was also found tampered which comes under the category of “critical irregularities” for which only one action is provided in guidelines i.e. termination of dealership at the first instance – Guidelines are binding on petitioner which are not challenged in present petition – There is no scope for any lesser punishment as per guidelines – Petition dismissed: *Kanhaiyalal and Company (M/s) Vs. Indian Oil Corporation Ltd.*, I.L.R. 2024 M.P. *55

34. Validity of Judgement/Precedent

– **Article 226** – Judgement under Reference – Validity – Even if a Judgement is under Reference, still it would hold the field unless and until it is set aside – Merely because some judgement has been referred to Larger Bench, it cannot be said that the judgement under reference has lost its efficacy: *Vijay Singh Yadav Vs. Smt. Krishna Yadav*, I.L.R. 2024 M.P. 1492

– **Article 226** – Precedent – Held – A little difference in facts or additional facts may make a lot of difference in the precedential value of decision: *Sheetal Soni (Dr.) Vs. State of M.P.*, I.L.R. 2024 M.P. 219

35. Writ of Quo Warranto

– **Article 226** – Appointment – Writ of Quo Warranto – Directions of CBI Enquiry – Held – Said directions by a writ Court exercising *quo warranto* jurisdiction are explicitly far in excess of constitutional jurisdiction – Jurisdiction of writ Court has been reduced to investigation through roving enquiry – Direction to CBI to conduct investigation was not warranted either on facts or in law: *Sandeep Kulshrestha Vs. Manoj Pratap Singh Yadav*, I.L.R. 2024 M.P. 1 (DB)

– **Article 226** – Appointment – Writ of Quo Warranto – Recovery of Salary – Held – Apex Court concluded that while issuing a writ of *quo warranto* there cannot be any direction for recovery of the sum – Single judge erred in directing appellant to refund the difference of salary: *Sandeep Kulshrestha Vs. Manoj Pratap Singh Yadav*, I.L.R. 2024 M.P. 1 (DB)

– **Article 226** – Appointment – Writ of Quo Warranto – Scope of Interference – Held – Jurisdiction of High Court to issue a writ of *quo warranto* is a limited one – It will only lie when appointment is contrary to statutory provisions – Whether or not a candidate possesses requisite qualifications and/or experience, should better be left to educational institutions, particularly when it is supported by expert committee – Writ of *quo warranto* should be refused when it is outcome of malice/ill will – A writ of *quo warranto*, being in the nature of public interest litigation is not maintainable at the instance of a person who is not un-biased and the forum cannot be chosen to settle personal scores: *Sandeep Kulshrestha Vs. Manoj Pratap Singh Yadav*, I.L.R. 2024 M.P. 1 (DB)

36. Writ Appeal/Maintainability

– **Article 226** and Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhinyam, M.P. 2005 (14 of 2006), Section 2(1) – Direction in Contempt Petition – Maintainability of Appeal – Held – Impugned order was passed in contempt petition and was not passed in exercise of jurisdiction under Article 226 – Section 2 nowhere provides that if an order passed under some proceedings other than writ proceedings can be treated to be an order under Article 226 then also an appeal would be maintainable – Appeal dismissed being not maintainable: *Anurag Nagar Griha Nirman Sahakari Sanstha Maryadit Vs. Indore Development Authority*, I.L.R. 2024 M.P. *5 (DB)

– **Article 226** and Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhinyam, M.P. 2005 (14 of 2006), Section 2(1) – Interlocutory Orders – Scope of Appeal – Held – Full Bench of this Court has held that if an interlocutory order has the tenets of being final in nature and it affects the rights of parties permanently or the parties are left at an irretrievable position then such order can be challenged in an appeal: *Anurag Nagar Griha Nirman Sahakari Sanstha Maryadit Vs. Indore Development Authority*, I.L.R. 2024 M.P. *5 (DB)

37. Miscellaneous

– **Article 226** – See – Central Goods and Services Tax Act, 2017, Section 73(2): *Raymond Limited Vs. Union of India*, I.L.R. 2024 M.P. 243 (DB)

– **Article 226** – See – Employees' State Insurance Act, 1948, Section 45AA: *Gyan Singh Parmar Vs. Employee State Insurance Corporation, I.L.R. 2024 M.P. 2462*

– **Article 226** – See – Income Tax Act, 1961, Section 148 & 148A(d): *Laxminarayan Patidar Vs. Income Tax Officer, I.L.R. 2024 M.P. 614 (DB)*

– **Article 226** – See – Juvenile Justice (Care and Protection of Children) Act, 2015, Section 37: *Vatsalyapuram Jain Welfare Society Vs. State of M.P., I.L.R. 2024 M.P. 1153 (DB)*

– **Article 226** – See – Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993, Section 122: *Rajalbai Vs. Panchayat and Rural Development Department, I.L.R. 2024 M.P. 1136*

– **Article 226** – See – Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002, Sections 13, 14 & 17: *Virendra Rathore Vs. Tehsildar Distt. Mandsaur, I.L.R. 2024 M.P. 2244 (DB)*

– **Article 226 & 227** – Necessary Party – Held – The authorities or the Tribunals who in law are entitled to defend the orders passed by them, are necessary parties and if they are not arrayed as parties, writ petition can be treated to be not maintainable – Petition suffers from defect of non-joinder of necessary parties: *Hiralal Vs. Lakshmibai, I.L.R. 2024 M.P. 463*

– **Article 226 & 227** – Principle of Natural Justice – Held – In each and every case, violation of principle of natural justice and not giving an opportunity to be heard, does not vitiate the proceedings and it is also not required to remit the matter to authority to follow the same unless it causes any prejudice to the party: *Rakesh Manocha Vs. Era Construction (M/s), I.L.R. 2024 M.P. 378*

– **Article 226 & 227** – Scope & Jurisdiction – Held – Proceedings under Article 226 are in exercise of original jurisdiction of High Court whereas proceedings under Article 227 are supervisory in nature – Power of superintendence conferred on High Court is a power that is restricted to the Court and Tribunal in relation to which it exercises jurisdiction: *Hiralal Vs. Lakshmibai, I.L.R. 2024 M.P. 463*

– **Article 226 & 227** – See – Arbitration and Conciliation Act, 1996, Section 16: *Suncity Dhoot Colonizers Pvt. Ltd. Vs. Ram Chandra Patidar, I.L.R. 2024 M.P. 911 (DB)*

– **Article 226 & 227** – See – Arbitration and Conciliation Act, 1996, Sections 16, 34 & 37: *Suncity Dhoot Colonizers Pvt. Ltd. Vs. Ram Chandra Patidar, I.L.R. 2024 M.P. 911 (DB)*

– **Article 226 & 227**, High Court of Madhya Pradesh Rules, 2008, Chapter II, Rule 30 & 30-B and Land Revenue Code, M.P. (20 of 1959), Section 131 – Order of Revenue Authority – Held – Revenue authorities are not subordinate Court or Tribunal to the High Court – Orders passed under provisions of 1959 Code are liable to be challenged only by writ petition filed under Article 226 and not by way of misc. petition under Article 227 of Constitution – Present petition filed under Article 227 is not maintainable and is hereby dismissed: *Hiralal Vs. Lakshmibai*, I.L.R. 2024 M.P. 463

– **Article 226 & 300A** – See – Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013: *Jagdish Prasad Shukla Vs. State of M.P.*, I.L.R. 2024 M.P. 428

– **Article 226 & 311(2)(b)** – See – Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rule 10: *Sumit Baghel Vs. State of M.P.*, I.L.R. 2024 M.P. 1560

SYNOPSIS: Article 227

- | | |
|-------------------------------------|------------------------------------|
| 1. Alternate Remedy | 2. Conditional Award |
| 3. Principle of Res-Judicata | 4. Scope & Jurisdiction |
| 5. Miscellaneous | |

1. Alternate Remedy

– **Article 227** and Civil Procedure Code (5 of 1908), Section 115 – Alternate Remedy – Held – Supervisory jurisdiction needs to be exercised for sake of justice – Apex Court concluded that when a civil revision lies before High Court and petition under Article 227 is filed by party, in such case, High Court ought to have converted the writ petition into revision petition u/S 115 CPC rather than permitting the petitioner to file fresh revision petition: *Pushpshree Hospitals & Research Centre Vs. Kothari Chemist*, I.L.R. 2024 M.P. 955 (DB)

2. Conditional Award

– **Article 227** – Conditional Award – Jurisdiction of Tribunal – Claims Tribunal awarded Rs. 8 lacs alongwith condition that appellants can only withdraw 10%-10% of their share and remaining amount will be kept in fixed deposits for 8 yrs. – Held – Tribunal has no such jurisdiction in case where claimants are major, who are none other than parents of deceased – Claimants are nearer to age of 50 yrs. and have every right to utilize the amount in any manner, as they like – Imposed

condition set aside – Petition allowed: *Panchamlal Patel Vs. Union of India, I.L.R. 2024 M.P. 109*

3. Principle of *Res-Judicata*

– **Article 227** – Principle of *Res-Judicata* – Conditions – Held – There are 5 conditions which must be satisfied before a plea of *res-judicata* can be pressed to oust any plaintiff/petitioner in any civil proceedings at the threshold – Conditions discussed by Apex Court referred: *Hindu Front for Justice Vs. Union of India, I.L.R. 2024 M.P. 1542 (DB)*

– **Article 227** and Civil Procedure Code (5 of 1908), Section 11 – Principle of *Res-Judicata* – Held – Objection regarding *res-judicata* cannot be decided as a preliminary issue or an issue to be dealt at the threshold for determining maintainability of proceedings – It is mixed question of facts and law – Determination of the form, nature and character of site/ premise and question of territorial jurisdiction was not the subject involved in the previous proceedings – Present proceedings cannot be said to be barred by *res-judicata*: *Hindu Front for Justice Vs. Union of India, I.L.R. 2024 M.P. 1542 (DB)*

4. Scope & Jurisdiction

– **Article 227** – Scope & Jurisdiction – Held – Jurisdiction under Article 227 cannot be exercised to correct all errors of subordinate Courts within its limitation – It can be exercised where the order is passed in grave dereliction of duty and flagrant abuse of the fundamental principle of law and justice: *Gayatriraje Puar (Smt.) Vs. Smt. Shailjaraje Puar, I.L.R. 2024 M.P. 277*

– **Article 227** – Scope of Interference – Held – Scope of interference under Article 227 of the Constitution is limited – Interference can be made if order impugned suffers from palpable procedural impropriety or manifest illegality – Another view is possible, is not a ground of interference: *Vipin Kumar Samaiya (Shri) Vs. Smt. Varsha Samaiya, I.L.R. 2024 M.P. *104*

5. Miscellaneous

– **Article 227** – See – Civil Procedure Code, 1908, Section 115: *Roshanlal Tiwari (Died) Thr. L.Rs. Vs. Pannalal Tiwari, I.L.R. 2024 M.P. *73*

- – **Article 233 & 234** – See – Judicial Service (Recruitment and Conditions of Service) Rules, M.P. 1994, Rule 7: *Devansh Kaushik Vs. State of M.P., I.L.R. 2024 M.P. 621 (DB)*

– **Article 243** and Mahatma Gandhi National Rural Employment Guarantee (Appointment, Powers and Duties of the Ombudsman) M.P. Rules, 2013, Rule 7(xx)

– Social Audit – Democratic accountability of office bearers – Discussed and explained: *Saroj Yadav (Smt.) Vs. State of M.P., I.L.R. 2024 M.P. 232*

– **Article 243-D** and Representation of the People Act (43 of 1951), Section 5 – Caste Certificate –Held – By virtue of Section 5 of 1951 Act, a person shall be disqualified, if he is not belonging to the SC or ST category of that State – Candidate should be belonging to SC category of that State where he wants to contest the election – At the time of contesting the election, petitioner was having caste certificate issued by competent authority from State of Rajasthan and not the State of M.P. – Election of petitioner on the post of Sarpanch was rightly set aside – Petition dismissed: *Jasraj Vs. The Specified Officer, I.L.R. 2024 M.P. *208*

– **Article 243-I & J** – See – Civil Services (Pension) Rules, M.P., 1976, Rule 2(g): *Tribal Welfare Teachers Association Vs. State of M.P., I.L.R. 2024 M.P. 1980*

– **Article 300-A** – See – Payment of Gratuity Act, 1972, Section 7: *Sohagvati (Smt.) (Dead) Thr. LRs. Vs. Upkshetriya Prabandhak, I.L.R. 2024 M.P. *146*

– **Article 300A** – See – Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013: *Jagdish Prasad Shukla Vs. State of M.P., I.L.R. 2024 M.P. 428*

– **Article 311(2)** – See – Civil Services (Classification, Control and Appeal) Rules, M.P., 1966, Rule 19: *Manoj Choure Vs. State of M.P., I.L.R. 2024 M.P. 1095*

– **Article 311(2)(b)** – See – Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rule 10: *Sumit Baghel Vs. State of M.P., I.L.R. 2024 M.P. 1560*

– **Article 338, 338A & 338B** – See – Judicial Service (Recruitment and Conditions of Service) Rules, M.P. 1994, Rule 7: *Devansh Kaushik Vs. State of M.P., I.L.R. 2024 M.P. 621 (DB)*

CONTEMPT OF COURTS ACT (70 OF 1971)

– **Section 2(c), 10 proviso, 12 & 15** and Penal Code (45 of 1860), Section 228 – Applicability – Held – For the alleged conduct of contemnor, Court has already directed proceedings u/S 228 IPC which are pending – Any findings recorded by this Court may prejudice the defence of the contemnor in the pending trial – On basis of the same material and by virtue of proviso to Section 10 of 1971 Act, present reference is liable to be dropped – Contempt Reference disposed: *In Reference Vs. Jai Kishore Rajoriya, I.L.R. 2024 M.P. 2625 (DB)*

– **Section 10 proviso** and Penal Code (45 of 1860), Section 228 – Applicability – Held – No High Court shall take cognizance of contempt alleged to have been committed in respect of the Court subordinate to it where such contempt is an offence punishable under the Indian Penal Code: *In Reference Vs. Jai Kishore Rajoriya, I.L.R. 2024 M.P. 2625 (DB)*

– **Section 12** – Contempt Court – Scope & Jurisdiction – Held – Jurisdiction of contempt Court is limited to an extent of finding out as to whether there has been a willful disobedience or not – Contempt Court cannot go into re-appreciation of facts or law or grant extension of time or to pass any other order – Single Judge has gone into the facts and law in quite a details which was beyond the jurisdiction of contempt Court – Impugned order set aside – Contempt petition dismissed – Appeal allowed: *Guneeta Kaur (Miss) Vs. V.M. Singh, I.L.R. 2024 M.P. 375 (DB)*

CONTRACT ACT (9 OF 1872)

– **Section 16(3) & 19A** – Contract under Undue Influence – Burden of Proof – Held – Where one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other, then such a contract would be a contract induced by undue influence – The burden of proof that contract was not induced by undue influence shall lie upon the person, who is in a position to dominate the will of the other: *Manoj Kumar Prajapati Vs. State of M.P., I.L.R. 2024 M.P. 1481*

– **Section 16(3) & 19A** – See – Wild Life (Protection) Act, 1972, Section 24(2)(b): *Manoj Kumar Prajapati Vs. State of M.P., I.L.R. 2024 M.P. 1481*

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

– **Section 2(a-ii)** – Definition of Administrator – Word “any” – Held – Not only representative of society but any member of society is eligible for being appointed as Administrator, if he is eligible for election to the post of representative – Any person who is member of society who may not be a representative but if he is eligible for contesting election of representative then he can be appointed as an Administrator – R-6 is alleged not be a member of society, thus very fundamental requirement is missing – Impugned order set aside – Matter remanded back to Joint Registrar to determine eligibility accordingly – Petition disposed: *Jai Krishan Choubey Vs. State of M.P., I.L.R. 2024 M.P. 1141*

– **Section 2(a-ii)** – See – Constitution – Article 226: *Jai Krishan Choubey Vs. State of M.P., I.L.R. 2024 M.P. 1141*

– **Section 47-A** – See – Constitution – Article 226: *Subhash Pachori Vs. State of M.P., I.L.R. 2024 M.P. *245*

– **Section 55(2)** – See – Constitution – Article 226: *Sanjay Vs. State of M.P.*, *I.L.R. 2024 M.P. *97*

– **Section 64** – Registration of FIR – Competent Authority – Locus – Held – Apex Court concluded that anyone can set or put the criminal law into motion except where the statute enacting or creating an offence indicates to the contrary – Counsel could not show any provision of law which requires that in financial offences committed by employee of cooperative society, FIR can be lodged only by an officer not below a particular rank – Locus of complainant is not a relevant factor for setting criminal agency in motion: *Devmani Tiwari Vs. State of M.P.*, *I.L.R. 2024 M.P. 861*

– **Section 64** – Registration of FIR – Opportunity of Hearing – Held – Apex Court concluded that accused has no right of opportunity of hearing before initiation of criminal proceedings – Contention of petitioner that direction to lodge FIR has been issued without giving him any opportunity of hearing is misconceived and is rejected: *Devmani Tiwari Vs. State of M.P.*, *I.L.R. 2024 M.P. 861*

– **Section 64** – Registration of FIR – Scope & Jurisdiction – Held – In absence of any bar under the 1960 Act, it cannot be said that no FIR can be lodged even if a cognizable offence is made out – Recovery of loss u/S 64 operates in a different field – Contention of petitioner that Act of 1960 is a complete code in itself therefore no FIR can be lodged is misconceived and is rejected – Petition dismissed: *Devmani Tiwari Vs. State of M.P.*, *I.L.R. 2024 M.P. 861*

COURT FEES ACT (7 OF 1870)

SYNOPSIS

- 1. Mandatory Injunction**
- 2. Relief of Partition/
Possession**
- 3. Miscellaneous**

1. Mandatory Injunction

– **Section 7(4)(c)** – Suit for Mandatory Injunction – Ad Valorem Court fees – Held – In a suit for mandatory injunction directing delivery of possession of disputed property, *ad valorem* court fees on market value of the property is not liable to be paid, if claim is instituted promptly after termination of license – License of defendant was terminated by notice dated 23.09.2019 which was served on 03.10.2019 and suit was promptly filed on 16.10.2019 – Plaintiff not required to value his claim for possession on basis of market value of property and to pay *ad*

valorem court fee thereupon – Revision dismissed: *Abbas Vs. Tafajjul*, I.L.R. 2024 M.P. 148

2. Relief of Partition/Possession

– **Section 7(vi-a) & 7(v)**, Suits Valuation Act (7 of 1887), Section 4 & 8 and Civil Procedure Code (5 of 1908), Order 7 Rule 11 – Relief of Partition/Possession – Held – Where relief of possession of land, house and garden is sought then valuation would be as per Section 7(v) of Court fees Act and when coupled with the relief of partition, then provision of Section 7(vi-a) would apply – If a decree of partition of house/shop/garden is sought, then valuation would be certainly based on market value of suit property but as per Section 7(v), Court fees is liable to be paid on basis of 20 times of the land revenue for relief of possession: *Ramchandra Banarsi Vs. Radhabai @ Devkabai*, I.L.R. 2024 M.P. *121

3. Miscellaneous

– **Section 7(4)(c)** – See – Civil Procedure Code, 1908, Order 7 Rule 11: *Bhagwanlal Sharma Vs. Government Kamla Nehru Kanya Uchchatar Mahavidyalaya*, I.L.R. 2024 M.P. 1179

– **Section 7(4)(c)** – See – Civil Procedure Code, 1908, Order 7 Rule 11: *Suresh Chand Vs. Shiv Vishal Through LRs.*, I.L.R. 2024 M.P. 2617

– **Section 7(xi)(cc)** – See – Civil Procedure Code, 1908, Order 7 Rule 11: *Raj Jaiswal Vs. Shri Gopal Lal Ji Maharaj Trust*, I.L.R. 2024 M.P. *163

CRIMINAL LAW (AMENDMENT) ORDINANCE, 1944

– **Section 8 & 11** – Application for Interim Custody – Furnishing of Security – Held – In the application filed by appellant there was no offer made of furnishing security thus application was not complete in terms of Section 8 – Liberty granted to appellant to file appropriate application u/S 8 alongwith furnishing adequate security – Appeal disposed: *Girja Devi Tiwari (Smt.) Vs. State of M.P.*, I.L.R. 2024 M.P. 515 (DB)

– **Section 8 & 11** – Interim Attachment – Interim Custody – Held – When an order of interim attachment is made awaiting the same to become absolute, the person who is adversely affected by the same can make an application u/S 8 furnishing security to District Judge who in turn is empowered to assess the sufficiency of said security and thereafter pass appropriate order for *ad interim* custody subject to final attachment: *Girja Devi Tiwari (Smt.) Vs. State of M.P.*, I.L.R. 2024 M.P. 515 (DB)

CRIMINAL PRACTICE/TRIAL

SYNOPSIS

- | | |
|---|---------------------------------------|
| 1. Adverse Remarks | 2. Age of Prosecutrix |
| 3. Chance Witness | 4. Circumstantial Evidence |
| 5. Defective Investigation | 6. Defence of Accused |
| 7. Evidence – Contradiction & Omission | 8. Evidence of Police Officer |
| 9. Eye Witness | 10. Findings of Civil Court |
| 11. Hostile Witness | 12. Independent Witness |
| 13. Injured Witness | 14. Interested/Related Witness |
| 15. Maxim "<i>Falsus in Uno Falsus in Omnibus</i>" | 16. Non-Mention of Name in FIR |
| 17. Plea of Alibi | 18. Previous Enmity |
| 19. Remand/Re-trial | 20. Sentence/Fine |
| 21. Stay of Trial/Proceedings | 22. Two Possible Views |

1. Adverse Remarks

– **Adverse Remarks** – Held – Authenticity of order of demolition of house was not the subject matter of trial – Applicant was acting in discharge of his official duties in good faith – Courts should be slow and conscious enough while passing adverse remarks against parties involved, unless and until it is essential to do complete justice – Directions given by trial Judge were unwarranted and without jurisdiction – Directions to authorities to criminally prosecute the applicant and also to proceed against him departmentally are set aside – Application allowed: *Anand Singh Parihar Vs. State of M.P., I.L.R. 2024 M.P. *2*

– **Adverse Remarks in Order** – Opportunity of Hearing – Held – Before passing adverse remarks against applicant, trial Court has not given an opportunity to explain or defend – Trial Court has casted a serious aspersion on applicant affecting his character and reputation and which may ultimately affect his image – Principle of natural justice is violated – Impugned remarks expunged: *Gopal Krishna Gehlot Vs. State of M.P., I.L.R. 2024 M.P. 549*

2. Age of Prosecutrix

– **Age of Prosecutrix** – Held – There is no absolute rule that two years have to be added to the age determined by the Doctor – Whether margin of error of two years is to be taken depends on facts and circumstances of each case and whether such margin is to be taken on the lower side or on the higher side would also depend on facts and circumstances of the case: *Hiramani Singh Vs. State of M.P.*, I.L.R. 2024 M.P. 1016

3. Chance Witness

– **Chance Witness** – Held – Although the evidence of a chance witness is acceptable in India, yet the chance witness has to reasonably explain the presence at that particular point, more so when his deposition is being assailed as being tainted: *Takdeer Shah Vs. State of M.P.*, I.L.R. 2024 M.P. *125 (DB)

4. Circumstantial Evidence

– **Circumstantial Evidence** – Panchsheel Principle – Enumerated and explained: *Anil Patel Vs. State of M.P.*, I.L.R. 2024 M.P. *79 (DB)

5. Defective Investigation

– **Defective Investigation** – Held – In cases of defective investigation, Court has to be circumspect in evaluating the evidence but it would not be proper to acquit the accused solely on ground of the defect and to do so would tantamount to playing into the hands of investigating officer if the investigation is designed defective: *Anil Patel Vs. State of M.P.*, I.L.R. 2024 M.P. *79 (DB)

6. Defence of Accused

– **Defence of Accused** – Proof – Held – When statement of defence is not proved by the defence, chance of reliability of prosecution case increases because such type of falsity of defence is generally recorded as additional link of circumstances towards conviction: *Balu Vs. State of M.P.*, I.L.R. 2024 M.P. *49

7. Evidence – Contradiction & Omission

– **Statement of Witness** – Minor Contradiction & Omission – Held – In case of contradictions and omissions, it has to be checked that whether the evidence is cogent and credible – Slight contradiction and omission in statement does not cast shadow on the story of prosecution: *Bajasingh Vs. State of M.P.*, I.L.R. 2024 M.P. *113

– **Statement of Witnesses** – Minor Variations – Effect – Held – Memory of human being cannot be photographic in nature – When statements are recorded after quite some time, variations bound to take place – Such variation will not cause any

dent to prosecution story: *Rajeshwar @ Pappu Tiwari Vs. State of M.P., I.L.R. 2024 M.P. *142 (DB)*

8. Evidence of Police Officer

– **Evidence of Police Officer** – Corroboration – Held – Apex Court concluded that there is no rule of law that the evidence of police officers are not reliable if they are not supported by independent witnesses – It is presumed that police officers perform their duties with honesty and impartiality – If a police officer investigates the matter honestly and without prejudice and he has no *malafides* against appellant then his evidence is reliable without corroboration of independent witnesses: *Anil Patel Vs. State of M.P., I.L.R. 2024 M.P. *79 (DB)*

– **Testimony of Police Officers** – Credibility – Held – Apex Court concluded that evidence of police officers cannot be discarded merely because they are police officers – If their evidence is found unrebutted and without *malafide*, then they must be reliable: *Ganesh Balai Vs. State of M.P., I.L.R. 2024 M.P. *252 (DB)*

– **Testimony of Police Officials** – Held – Testimony of police officials regarding disclosure statement and seizure memo could not be discarded merely on account that independent witnesses have not supported the seizure and memorandum statement disclosed by accused to investigating officer – Apex Court concluded that evidence of official witnesses cannot be distrusted and disbelieved merely on account of their official status: *Shivnarayan Vs. State of M.P., I.L.R. 2024 M.P. *98*

9. Eye Witness

– **Eye Witness** – Held – Apex Court concluded that conviction can be based on evidence of solitary eye witness: *Takdeer Shah Vs. State of M.P., I.L.R. 2024 M.P. *125 (DB)*

– **Eye Witness** – Related/Interested Witness – Held – Testimony of eye-witnesses cannot be disbelieved merely on the ground of their relations with the deceased, though their testimony are to be scrutinized with care and circumspection: *Gopal Vs. State of M.P., I.L.R. 2024 M.P. *229 (DB)*

10. Findings of Civil Court

– **Findings of Civil Court** – Held – Findings of Civil Court are not binding on Criminal Court: *Neeraj Kumar Saraf Vs. State of M.P., I.L.R. 2024 M.P. 2630*

11. Hostile Witness

– **Hostile Seizure Witnesses** – Effect – Held – These days it is not difficult to gain over a witness by money power or giving him any other allurence or giving out threats to his life and/or property at the instance of persons, in/or close to powers

and muscle men or their associates – Therefore, if panch witnesses are hostile, it does not mean that such documents are unreliable: *Anil Patel Vs. State of M.P., I.L.R. 2024 M.P. *79 (DB)*

– **Hostile Witness** – Held – If the witness does not support the prosecution, he has to be declared hostile by the prosecution or else the prosecution will be bound by the Statement of such witness: *Kalu Vs. State of M.P., I.L.R. 2024 M.P. *115*

12. Independent Witness

– **Independent Witness** – Held – No criminal case can be overboarded due to non-availability of independent prosecution witnesses – On basis of non-examination of independent witness, prosecution case cannot be thrown out, especially when the testimony of witnesses inspires confidence: *Ramsnehi Vs. State of M.P., I.L.R. 2024 M.P. *166*

13. Injured Witness

– **Injured Witness** – Held – Testimony of injured witness has special status in the eyes of law: *Ramsnehi Vs. State of M.P., I.L.R. 2024 M.P. *166*

– **Injured Witness** – Held – Witness was grievously injured in the incident – Testimony of injured witness have special status in law: *Suklu Vs. State of M.P., I.L.R. 2024 M.P. *100*

– **Testimony of Injured Witness** – Held – Testimony of injured witness has special status in the eyes of law: *Akram @ Akka Vs. State of M.P., I.L.R. 2024 M.P. *110*

14. Interested/Related Witness

– **Interested Witness** – Held – Although deceased, injured witness, other policemen were working in police department as constable, but they were performing their official duty at the time of incident, they have no common intention to falsely implicate the appellants – They cannot be considered as interested witnesses: *Takdeer Shah Vs. State of M.P., I.L.R. 2024 M.P. *125 (DB)*

– **Related Witness** – Credibility – Held – Evidence of witnesses cannot be discarded merely because they are relatives of the deceased – Relationship is not a factor to ascertain credibility of a witness, however a close scrutiny is required before accepting their evidence: *Lalit Kumar Vs. State of M.P., I.L.R. 2024 M.P. *56*

– **Related Witness** – Credibility – Held – Merely because the witnesses may be related to victim/deceased, their testimony may not be rejected – It is not natural for related witnesses to implicate a person falsely leaving aside the actual culprit: *Kalu Vs. State of M.P., I.L.R. 2024 M.P. *115*

– **Related Witness** – Held – A relative witness cannot be said to be an interested witness as merely by virtue of being a relative of the victim – In many cases, it is often that offence is witnessed by close relative of victim whose presence on the spot would be natural – Evidence of such witness cannot automatically be discarded by leveling them as interested witnesses: *Suklu Vs. State of M.P., I.L.R. 2024 M.P. *100*

– **Related Witness** – Held – Apex Court concluded that the evidence as a whole having a ring of truth cannot be discarded merely because the maker is a related witness: *Takdeer Shah Vs. State of M.P., I.L.R. 2024 M.P. *125 (DB)*

– **Related Witness** – Held – Statements of related witnesses cannot be brushed aside on the ground that they are related to deceased though their statements are to be scrutinized with circumspection: *State of M.P. Vs. Jagdish, I.L.R. 2024 M.P. *265 (DB)*

– **Related/Interested Witness** – Held – Statement of interested witness should not be discarded merely because they are relatives of victim: *Gowardhan Vs. State of M.P., I.L.R. 2024 M.P. 125 (DB)*

– **Related/Interested Witness** – Held – Testimony of related or interested witness cannot be discarded on the sole ground of them being relative of victim: *Abdul Razaque Vs. State of M.P., I.L.R. 2024 M.P. *77*

– **Related/Interested Witnesses** – Held – Apex Court concluded that if the witness is related to the deceased, his evidence has to be accepted if found reliable and believable because he would *inter-alia* be interested in ensuring that real culprits are punished: *Gyanisingh Gurjar Vs. State of M.P., I.L.R. 2024 M.P. *156*

15. Maxim "*Falsus in Uno Falsus in Omnibus*"

– "*Falsus in Uno Falsus in Omnibus*" – Held – Principle of "*falsus in uno falsus in omnibus*" is not applicable to criminal trial – A witness may be partly truthful and partly false in the evidence he gives before Court – Role of each accused has to be seen in criminal case and testimony of a witness cannot be disregarded in totality – Judgement cannot be interfered with on the ground that prosecution version was found false against other co-accused persons: *Surajpal Vs. State of M.P., I.L.R. 2024 M.P. 1407 (DB)*

16. Non-Mention of Name in FIR

– **Non-Mention of Name in FIR** – Effect – Held – FIR cannot be an encyclopedia containing minute details of everything – There is no rule of thumb

that a person cannot be held guilty despite availability of legal evidence against him merely because his name was not mentioned in FIR – Apex Court concluded that it is no hard and fast rule that FIR must always contain the names of all persons who were involved in commission of an offence – Very often, the names of culprits surface at the stage of investigation: *Ravi Kushwaha Vs. State of M.P.*, I.L.R. 2024 M.P. *143 (DB)

17. Plea of Alibi

– **Plea of Alibi** – Held – If a plea of *alibi* has been taken by accused that must be proved by the accused himself and if he fails it will be taken as another incriminating circumstances in favour of prosecution case: *Ramsnehi Vs. State of M.P.*, I.L.R. 2024 M.P. *166

18. Previous Enmity

– **Previous Enmity** – Held – Mere existence of previous dispute will not demolish the case of prosecution – Apex Court concluded that enmity is a double edged weapon – Existence of motive may be held to be a reason for committing crime, the same may also lead to false implication: *Farid Khan Vs. State of M.P.*, I.L.R. 2024 M.P. *154

– **Previous Enmity** – Motive – Held – Apex Court concluded that enmity is a double edged weapon – Existence of a motive on part of accused may be held to be the reason for committing crime, the same may also lead to false implication – Mere existence of previous dispute will not demolish the case of prosecution, if the prosecution is otherwise able to prove its case on merits: *Nageshwar Vs. State of M.P.*, I.L.R. 2024 M.P. *63

19. Remand/Re-trial

– **Remand of Case for Re-trial** – Held – In trial Court, appellants themselves engaged private advocates of their choice – It is not a case where on account of indigency, poverty, illiteracy or any other possible factor, they could not engage a counsel of their choice – Merely because advocate's performance was not to the expectation of learned senior counsel here, on mere asking, matter cannot be remanded back for re-trial: *Ravi Kushwaha Vs. State of M.P.*, I.L.R. 2024 M.P. *143 (DB)

20. Sentence/Fine

– **Sentence** – Principle – Held – An adequate sentence is always required to protect the society from miscreants: *Shivnarayan Vs. State of M.P.*, I.L.R. 2024 M.P. *98

– **Sentence in Default of Fine/Penalty** – Reduction – Appellant was convicted for offence u/S 8/18(B) of NDPS Act and was sentenced to 10 years R.I. with fine of Rs. 1 lakh and in default of fine, a further 2 years R.I. was imposed – Held – Sentence of penalty is distinct from the main sentence of imprisonment and therefore even where minimum sentence is prescribed, the sentence in default of penalty may be minimized to any extent – Default sentence reduced from 2 years R.I. to 2 months R.I. – Appeal partly allowed: *Keshuram Vs. State of M.P.*, I.L.R. 2024 M.P. *236

21. Stay of Trial/Proceedings

– **Stay of Trial/Proceedings** – Powers of Trial Court – Held – In CRPC there is no provision or power conferred to trial Court to stay proceedings of trial – Once charge-sheet is filed then accused either can be discharged or convicted by trial Court – Impugned order passed by trial Court is beyond its jurisdiction and is thus set aside – Application allowed: *Jayraj Choubey Vs. Dinesh Pujari*, I.L.R. 2024 M.P. *54

22. Two Possible Views

– **Two Possible Views** – Held – Apex Court concluded that prosecution has to prove the guilt of accused beyond all reasonable doubt – However strong a suspicion may be, it cannot take place of proof beyond reasonable doubt – If two views are possible on the evidence adduced, one pointing to guilt of accused and the other towards his innocence, the view which is favourable to accused should be adopted: *State of M.P. Vs. Jagdish*, I.L.R. 2024 M.P. *265 (DB)

– **Two Possible Views** – Held – Apex Court concluded that where two views are possible, appellate Court should not interfere with finding of acquittal recorded by the Court below: *Premchand Vs. State of M.P.*, I.L.R. 2024 M.P. *14

– **Two Possible Views** – Held – Where two views are possible then view pointing to the innocence of accused should be adopted: *Surajpal Vs. State of M.P.*, I.L.R. 2024 M.P. 1407 (DB)

CRIMINAL PROCEDURE CODE, 1973 (2 OF 1974)

– **Section 2(wa) & 439(2)** – Locus of Applicant – Inherent Jurisdiction of Court – Held – High Court has inherent jurisdiction to cancel the bail which has wrongly been granted – It has ample power to correct the wrong done in an order in interest of justice – It can take *suo motu* cognizance on any illegality committed in grant of bail when the same has been brought to its notice – Applicant is not a victim u/S 2(wa) Cr.P.C. but question of locus of applicant will not come in way of High Court for cancellation of bail order: *Anand Kumar Mishra Vs. State of M.P.*, I.L.R. 2024 M.P. 310

– **Section 29(2)** – Jurisdiction of Magistrate – Held – As per Section 29(2), JMFC has been empowered to pass a sentence of imprisonment for a term not exceeding 3 years or of fine not exceeding Rs. 10,000 or of both: *Bablu Vs. State of M.P., I.L.R. 2024 M.P. *112*

– **Sections 29(2), 248, 325 & 360** – Sentence – Jurisdiction– Held – When from records, it appears to Magistrate that accused may have to be given a heavier sentence than what he/she could impose, it would not be proper for Magistrate to straightway act u/S 325 of Code and forward the case to CJM without forming an opinion that the accused is guilty – Provisions of Section 325 would come into play after a finding regarding guilt has been recorded – Impugned order set aside – Application allowed: *Shiv Pal Singh Chouhan Vs. State of M.P., I.L.R. 2024 M.P. 784*

– **Section 29(2) & 386 Second Proviso** – Enhancement of Fine – Held – If JMFC has jurisdiction to try the offence in question, Appellate Court could not have passed the sentence more than the one which can be passed by respective JMFC for that offence – Therefore, enhancement of fine amount exceeding the jurisdiction of Magistrate by Appellate Court is not sustainable – Fine amount reduced from Rs. 25,000 to Rs. 10,000 – Revision partly allowed: *Bablu Vs. State of M.P., I.L.R. 2024 M.P. *112*

– **Section 71 & 222** – See – Penal Code, 1860, Section 326 & 307: *Shravan Vs. State of M.P., I.L.R. 2024 M.P. 2370*

– **Section 82 & 438** – Proclaimed Offender – Held – Apex Court concluded that normally when the accused is absconding and declared as proclaimed offender u/S 82 Cr.P.C., he is not entitled for anticipatory bail: *Vikas Vs. State of M.P., I.L.R. 2024 M.P. *220*

– **Section 82(1)** – Proclamation Order – Time Period for Appearance – Held – Order was passed on 07.08.2023 and applicants were directed to appear on 25.08.23 – The aspect of 30 days time is totally absent in the order – It is apparent error on the face of record – Procedure provided in Section 82 Cr.P.C. not duly followed – Impugned order set aside – JMFC directed to pass order in accordance with law – Application disposed: *Sanjay Asati Vs. State of M.P., I.L.R. 2024 M.P. 1059*

– **Sections 107, 110, 122(1)(b) & 482** – Violation of Bond Conditions – Held – Proceedings against applicant was u/S 110 Cr.P.C. and not u/S 107 Cr.P.C., meaning thereby that bond was executed only for maintaining good behavior and not for keeping peace – Section 122(1)(b) Cr.P.C. could not have been invoked against petitioner – There is no provision in respect of violation of bond executed for

maintaining good behaviour except to forfeit the bond – Impugned order set aside – Applicant directed to be released – Application allowed: *Pradeep @ Baba Vs. State of M.P., I.L.R. 2024 M.P. 2201*

SYNOPSIS: Section 125 to 127

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| 1. Adultery | 2. Agreement to Live Separately |
| 3. Awarding more than Claim Amount | 4. Change in Circumstances |
| 5. Enhancement | 6. Expression “Unable to Maintain Herself” |
| 7. Illegitimate Wife/Child | 8. Income/Quantum |
| 9. Interim Maintenance/ Quantum | 10. Legally Wedded Wife |
| 11. Major Son | 12. Nature of Proceedings |
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1. Adultery

– **Section 125** and Evidence Act (1 of 1872), Section 41 – Relevancy – Held – Judgment and decree passed in case of divorce on the ground of adultery is relevant in the case filed u/S 125 Cr.P.C: *Vijendra Vs. Smt. Rekhabai @ Pappi, I.L.R. 2024 M.P. *268*

– **Section 125(4)** – Adultery – Held – Adultery u/S 125(4) Cr.P.C. has to be continuous and liability to prove the same is upon the husband in order to debar wife from getting maintenance – Wife can be denied maintenance only when she is actually "living in adultery" at or around the time of application u/S 125 Cr.P.C: *Ravi Kiran Arigela Vs. D. Asha, I.L.R. 2024 M.P. 1697*

– **Section 125(4)** – Words “Living in Adultery” – Held – “Living in adultery” means only continuous and repeated acts of adultery – On substratum of the single instance in living in adultery, the wife could not be eschewed from getting the maintenance u/S 125(4) Cr.P.C. – Trial Court rightly granted maintenance – No

interference warranted – Revision dismissed: *Vijendra Vs. Smt. Rekhabai @ Pappi*, I.L.R. 2024 M.P. *268

– **Section 125(4)**, Family Courts Act (66 of 1984), Section 14 and Evidence Act (1 of 1872), Section 65-B – Adultery – Photographs – Pleadings & Proof – Held – To prove photographs, compliance of certification u/S 65-B of Evidence Act is not mandatory but in present case, there is no specific pleading of husband in respect of adulterous life of wife as well as there is lack of evidence adduced by husband – Husband during cross-examination of wife has not even dare to ask any question regarding issue of adultery – Merely on basis of photographs, it cannot be assumed that wife is living in adultery – Wife was rightly granted maintenance – Revision dismissed: *Ravi Kiran Arigela Vs. D. Asha*, I.L.R. 2024 M.P. 1697

2. Agreement to Live Separately

– **Section 125(4)** – Agreement to Live Separately – Entitlement– Held – Wife agreed to live separately on basis of promise made in agreement therefore it cannot be said that she was living separately by mutual consent – She was victim of conspiracy and believing the said agreement she was living separately – Husband directed to pay maintenance to wife and children alongwith arrears – Revision allowed: *Nagina Bano (Smt.) Vs. Mohd. Naeem Ali*, I.L.R. 2024 M.P. 1425

3. Awarding more than Claim Amount

– **Section 125** – Awarding Maintenance more than the Claim – Held – At the time of filing of application u/s 125 CrPC, income of husband was Rs. 8000/- p.m. and now Rs. 24,000/- p.m. – In changed circumstances, maintenance was rightly awarded more than the claim amount: *Deepa (Smt.) Vs. Harish Railwani*, I.L.R. 2024 M.P. 1044

4. Change in Circumstances

– **Section 127** – Change in Circumstances – Held – It is settled principle of law that at any stage, the application u/S 127 Cr.P.C. is well maintainable and any aggrieved party can knock the portal of trial Court at any point of time in this regard: *Mamta @ Dimple Vs. Manish*, I.L.R. 2024 M.P. 538

5. Enhancement

– **Section 125 & 127** – Quantum – Enhancement – From Date of Order/Application – Held – Petition for enhancement from Rs. 3000 p.m. to Rs. 10,000/- p.m. was filed on 26.04.2014 – Husband is into the business of mining – Trial Court on basis of evidence and other circumstances awarded Rs. 15,000/- p.m.

subject to adjusting the maintenance amount in other proceedings – Trial Court rightly considered the socio-economic standard of wife as per standard of her husband and rightly used its discretion to award maintenance from date of order – No interference called for – Revisions dismissed: *Mamta @ Dimple Vs. Manish*, I.L.R. 2024 M.P. 538

6. Expression “Unable to Maintain Herself”

– **Section 125** – Expression "Unable to Maintain Herself" – Held – Apex Court concluded that wife should be in a position to maintain standard of living which is neither luxurious nor penurious but what is consistent with status of the family – Expression "unable to maintain herself" does not mean that wife must be absolutely destitute before she can apply for maintenance u/S 125 Cr.P.C: *Mamta @ Dimple Vs. Manish*, I.L.R. 2024 M.P. 538

7. Illegitimate Wife/Child

– **Section 125** – Illegitimate Wife & Child – Entitlement – Held – An illegitimate child is entitled for maintenance but an illegitimate wife is not entitled for maintenance – Maintenance can only be granted in favour of legally wedded wife: *Kewalsingh Vs. Durgabai*, I.L.R. 2024 M.P. *210

– **Section 125** – Illegitimate Wife/Son – Entitlement – Held – An illegitimate child is entitled to get maintenance but an illegitimate wife is not entitled to get maintenance – Maintenance can only be granted to legally wedded wife: *Shrikrishna Vs. Smt. Sunita Bai*, I.L.R. 2024 M.P. *264

– **Section 125** – Second Marriage – Illegitimate Wife – Entitlement – Held – Wife should be "legally wedded wife" for claiming maintenance from her husband – An illegitimate child is entitled to get maintenance but an illegitimate wife is not entitled to get maintenance – In present case wife has not got divorced from her earlier husband and she has entered into second marriage – Wife not entitled to get maintenance from second husband: *Sangeeta Rathore (Smt.) Vs. Naresh Rathore*, I.L.R. 2024 M.P. *39

8. Income/Quantum

– **Section 125** – Quantum – Family Court granted Rs. 5000 as maintenance to wife – Held – It is admitted that husband is a retired bank manager aged about 63 years and is getting pension of Rs. 25,321 p.m. – Husband is also paying Rs. 5000 p.m. to wife as interim maintenance in other matrimonial case – Apex Court observed that wife should be awarded 25% as maintenance from net salary of husband – Maintenance of Rs. 5000 p.m rightly granted – Revision dismissed: *Madhulika Bhate (Smt.) Vs. Santosh Kumar*, I.L.R. 2024 M.P. *211

– **Section 125** – Quantum – Financial Status of Parties – Held – Apex Court concluded that it is bounden duty of Courts to advance cause of social justice – Wife is entitled to a financial status equivalent to that of her husband – U/S 125 Cr.P.C. the test is whether wife is in a position to maintain herself in the way she was used to live with her husband: *Mamta @ Dimple Vs. Manish, I.L.R. 2024 M.P. 538*

– **Section 125 & 127** – Reduction of Maintenance Amount – Qualification of Wife – Effect – Held – Statement of wife that she is not working and she had no means of income and she is dependent on her father, is not rebutted in cross-examination – After desertion, if wife earns little bit income, it cannot be a reason to reject maintenance – Wife having M.Phil degree itself cannot be regarded as a source of income – Even if husband has left the job he will be liable to maintain his wife and child – Revision dismissed: *Sandeep Kumrawat Vs. Smt. Antima Kumrawat, I.L.R. 2024 M.P. *96*

9. Interim Maintenance/Quantum

– **Section 125** – Interim Maintenance – Date of Filing Affidavit – Held – Wife filed application for maintenance in November 2021 and filed affidavit on 25.04.2023 – Trial Court rightly awarded maintenance from 25.04.2023: *Mahima (Smt.) Vs. Ved Prakash Patel, I.L.R. 2024 M.P. *237*

– **Section 125** – Interim Maintenance – Income of Husband – Held – As per affidavit filed by husband, his salary is Rs. 29,561 p.m. – He has shown his parents as dependants and there is no other liability on him – Apex Court concluded that 25% of net salary of husband would be just and proper to be awarded as maintenance to wife – Maintenance award of Rs. 3,500 p.m. enhanced to Rs. 7000 p.m. – Revision partly allowed: *Mahima (Smt.) Vs. Ved Prakash Patel, I.L.R. 2024 M.P. *237*

– **Section 125** – Interim Maintenance – Quantum – Held – No document or other material filed by wife to show the income of the petitioner – Without evaluating the appropriate income of husband, interim maintenance of Rs. 10,000 pm was awarded – Petitioner is a healthy man and he is liable to maintain respondents – Interim maintenance awarded is on a higher side, thus reduced to Rs. 7,500 pm – Revision partly allowed: *Akeel Shekh Vs. Smt. Bushra, I.L.R. 2024 M.P. 2145*

10. Legally Wedded Wife

– **Section 125** – Legally Wedded Wife – Held – Wife should be a legally wedded wife for claiming maintenance – A women having solemnized second marriage to another person is only entitled to get maintenance from that person, when her first marriage has been declared either null and void or she has obtained a

divorce decree from her first husband – An illegitimate child is entitled for maintenance but an illegitimate wife is not entitled to get maintenance: *Rajkumar Agrawal Vs. Sarika, I.L.R. 2024 M.P. *71*

– **Section 125** – Legally Wedded Wife – Living together for Considerable Long Time – Held – Since applicant and non-applicant were residing as husband and wife for a considerable long period and in absence of any specific finding by trial Court that non-applicant is not a legally wedded wife of the applicant, maintenance u/S 125 Cr.P.C. rightly awarded – Application dismissed: *Shailesh Bopche Vs. Anita Bopche, I.L.R. 2024 M.P. 2407*

11. Major Son

– **Section 125** – Son Attaining Majority – Revisional Jurisdiction – Held – During pendency of this revision, son has attained the age of majority, but on this ground revisional Court cannot interfere with original order of maintenance – Husband/father can approach trial Court under relevant provision: *Deepa (Smt.) Vs. Harish Railwani, I.L.R. 2024 M.P. 1044*

12. Nature of Proceedings

– **Section 125** – Nature of Proceeding – Hyper Technical Approach – Held – Proceedings u/S 125 is summary in nature where it is not necessary for Court to ascertain as to who is wrong and the minute details of the matrimonial dispute need not be gone into – Hyper technical approach cannot be adopted in such proceedings – Destitute wife who is unable to maintain herself cannot be victimized only on basis of her fault: *Sandeep Kumrawat Vs. Smt. Antima Kumrawat, I.L.R. 2024 M.P. *96*

13. Principle of Res-Judicata

– **Section 125** – Principle of *Res-judicata* – Held – Earlier application filed by wife u/s 125 CrPC was dismissed as withdrawn and was not decided on merits – Principle of *res-judicata* is not applicable in subsequent application: *Deepa (Smt.) Vs. Harish Railwani, I.L.R. 2024 M.P. 1044*

14. Proof of Income

– **Section 125** – Quantum – Income of Husband & Wife – Proof – Held – Husband alleged that wife is earning from tuitions and beauty parlour but he has not produced any document nor examined any witness who takes services from wife which would prove the same – Husband working in Railway department and have sufficient source of income – He has legal and moral obligation to maintain his wife and child – Maintenance awarded is reasonable – Revision petitions dismissed: *Deepa (Smt.) Vs. Harish Railwani, I.L.R. 2024 M.P. 1044*

15. Second Marriage

– **Section 125** – Second Marriage – Claim from Second Husband – Held – A woman having solemnized second marriage to another person, is only entitled to get maintenance from that person when the first marriage has been declared either *null* and *void* or she has obtained divorce decree from her first husband: *Kewalsingh Vs. Durgabai, I.L.R. 2024 M.P. *210*

– **Section 125** – Second Marriage – Entitlement – Held – A woman having solemnized second marriage to another person is only entitled to get maintenance from that person when the first marriage has been declared either null and void or she has obtained a divorce decree from her first husband – Petitioner could not get divorce from her earlier husband, she would not be entitled to get maintenance from her second husband – Revision dismissed: *Sangeeta Rathore (Smt.) Vs. Naresh Rathore, I.L.R. 2024 M.P. *39*

– **Section 125** – Second Marriage – Entitlement – Held – When first marriage was consummated by custom of Hindu Saptpadi, then it cannot be divorced by a Rajinama/ Panchnama – Wife has not taken divorce from first husband from any court of law and has performed second marriage with present applicant – She is not legitimate wife and thus not entitled for maintenance from second husband – Application of wife was rightly dismissed: *Kewalsingh Vs. Durgabai, I.L.R. 2024 M.P. *210*

– **Section 125** – Second Marriage – Validity of Marriage – Held – A woman, having solemnized second marriage to another person is only entitled to get maintenance from that person, when her first marriage has been declared either *null* and *void* or she has obtained divorce decree from her first husband – Respondent has not obtained divorce from first husband and has entered second marriage – Wife not entitled for maintenance – Liberty granted to respondent to seek other remedy like compensation u/S 22 of Domestic Violence Act – Impugned order set aside – Revision allowed: *Shrikrishna Vs. Smt. Sunita Bai, I.L.R. 2024 M.P. *264*

– **Section 125** – Second Wife – Entitlement – Held – Wife could not file any proof of getting divorce from her first husband – She would not be entitled for maintenance from second husband – Wife has the liberty to avail other remedies available – Trial Court erred in granting maintenance – Impugned order set aside – Revision allowed: *Rajkumar Agrawal Vs. Sarika, I.L.R. 2024 M.P. *71*

– **Section 125** – Second Wife – Validity of Marriage – Held – During existence of first marriage, without getting divorce from first husband, second marriage cannot be considered to be lawful – From photographs and legal notice it cannot be said that applicant is legally married wife of respondent – Trial Court

rightly held the applicant not entitled for maintenance from respondent – Revision dismissed: *Krishna (Smt.) Vs. Omprakash, I.L.R. 2024 M.P. *192*

16. Sufficient Grounds to Live Separately

– **Section 125** – Sufficient Grounds to Live Separately – Entitlement for Maintenance – Held – Wife along with son living separately on ground of dowry demands and harassment – Wife had sufficient ground to live separately from husband: *Deepa (Smt.) Vs. Harish Railwani, I.L.R. 2024 M.P. 1044*

17. Void Marriage

– **Section 125** and Hindu Marriage Act (25 of 1955), Section 5(iii) & 11 – Void Marriage – Wife submitted that she was minor at the time of first marriage therefore that marriage was void – Held – The condition mentioned in Section 5(iii) pertaining to age of bride has not been mentioned in Section 11 – First marriage is not void: *Kewalsingh Vs. Durgabai, I.L.R. 2024 M.P. *210*

18. Miscellaneous

– **Section 125** – See – Protection of Women from Domestic Violence Act, 2005, Section 23: *Bhupendra Singh Rajawat Vs. Smt. Ranjeeta Rajawat, I.L.R. 2024 M.P. 1037*

- – **Sections 156(3), 190(1)(a) & 202** – Police Investigation – Power of Magistrate – Held – Power to order police investigation u/S 156(3) is exercisable at pre-cognizance stage, before Magistrate takes cognizance of offence – Once he takes cognizance u/S 190(1)(a) Cr.P.C. he is not competent to switch back to pre-cognizance stage and avail of Section 156(3) Cr.P.C. – Section 202 comes in at a stage when some evidence has been collected by Magistrate and same is deemed insufficient to take a decision – Section 202 Cr.P.C. is to assist the Magistrate in completing proceedings already instituted upon a complaint before him: *Arun Kumar Gupte Vs. Arvind Kumar, I.L.R. 2024 M.P. 2392*

– **Section 156(3) & 202** and Penal Code (45 of 1860), Sections 467, 468 & 471 – Police Investigation – Held – The power to direct police investigation is available to Magistrate u/S 156(3) but not u/S 202 Cr.P.C. when the case is exclusively triable by Session Judge – Offence u/S 467, 468 & 471 IPC are exclusively triable by Session Judge thus Magistrate wrongly passed the order for police investigation u/S 202 Cr.P.C. – Impugned order set aside – Matter remanded back for consideration afresh – Application allowed: *Arun Kumar Gupte Vs. Arvind Kumar, I.L.R. 2024 M.P. 2392*

– **Section 167** – Production of Accused – Held – Physical production is mandatory so long as the accused is in police custody – Superintendent of jail are required to produce the accused through virtual mode – Judges are also expected to procure presence of accused lodged in jail through virtual mode if physical production is not possible for any reason – Direction issued to all Courts/Magistrates and Superintendent of Jail and DG (Prison): *Abdul Jamil Vs. State of M.P., I.L.R. 2024 M.P. *108*

– **Section 167(2)** – Default Bail – Entitlement – Held – Charge-sheet was already prepared and tendered in the Court as per rojnamcha within 90 days and charge-sheet was filed on 31.07.2023 before tea break and application for default bail was filed after filing of the charge-sheet – No indefeasible right is accrued u/S 167(2) Cr.P.C. in favour of applicant to claim default bail – Application dismissed: *Rajendra Singh Bhati Vs. State of M.P., I.L.R. 2024 M.P. 566*

– **Section 167(2)** and Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Section 22(b) & 36(A) – Period to File Charge-sheet – Held – Offence u/S 22(b) has been alleged against applicant for which sentence may extend to 10 years – When maximum punishment is not death, life imprisonment or imprisonment not less than 10 years then Section 167(2)(a)(ii) Cr.P.C. will apply and accused will be entitled for default bail after 60 days in case charge-sheet is not filed – Quantity seized from applicant is less than commercial quantity, provision of Section 36(A) will not apply – Impugned order set aside – Default bail granted – Revision allowed: *Brijesh Kumar Mishra Vs. State of M.P., I.L.R. 2024 M.P. 1233*

– **Section 167(2)(b)** and Unlawful Activities (Prevention) Act (37 of 1967), Section 43-D – Default Bail – Application for Remand – Presence of Accused – Held – Applicants cannot be released on default bail merely because they were not produced before Court on some dates when application of prosecution for extension of judicial remand was considered and there is non-compliance of provision of producing through video linkage or physical appearance – Applicants never filed any application u/S 167(2) Cr.P.C. seeking default bail before trial Court – Application dismissed: *Abdul Jamil Vs. State of M.P., I.L.R. 2024 M.P. *108*

– **Section 167(2)(b)** and Unlawful Activities (Prevention) Act (37 of 1967), Section 43-D – Default Bail – Filing of Charge-Sheet – Held – If applicants even after acquiring the right for grant of statutory/default bail failed to exercise their right before the charge-sheet was filed, they lost their right to such benefit once the charge-sheet is filed: *Abdul Jamil Vs. State of M.P., I.L.R. 2024 M.P. *108*

– **Sections 177, 179 & 482** – See – Penal Code, 1860, Section 323 & 498-A: *Aliya (Smt.) Vs. State of M.P., I.L.R. 2024 M.P. *221*

– **Section 190 & 482** – Plea of Alibi – Consideration – Held – *Plea of alibi* cannot be considered or determined at the stage of taking cognizance – Apex Court concluded that plea of alibi has to be proved by accused at the stage of defence: *Devi Singh Meena Vs. State of M.P., I.L.R. 2024 M.P. 1942*

– **Section 190 & 482** and Penal Code (45 of 1860), Section 302 – Cognizance – Opportunity of Hearing – Held – There is no provision in Cr.P.C. which provides for grant of opportunity of hearing to the persons against whom the Magistrate is inclined to take cognizance u/S 190 Cr.P.C: *Devi Singh Meena Vs. State of M.P., I.L.R. 2024 M.P. 1942*

– **Section 190(a),(b) & 482** and Penal Code (45 of 1860), Section 302 – Cognizance – Considerations – Held – FIR was lodged promptly where name of applicants are mentioned – FIR and statement of eye-witnesses recorded u/S 161 & 164 Cr.P.C. are consistent – Even if investigating authority is of the view that no case has been made out against accused, Magistrate can apply his mind independently to the material contained in police report and take cognizance – Application dismissed: *Devi Singh Meena Vs. State of M.P., I.L.R. 2024 M.P. 1942*

– **Sections 193, 209 & 482** – See – Drugs and Cosmetics Act, 1940, Sections 17(b)(e), 18(a)(iv), 18(B), 27(c), 27(d), 28-A, 32 & 36-AB: *Ipcan Generic Health Care Pvt. Ltd. (M/s.) Vs. State of M.P., I.L.R. 2024 M.P. *232*

– **Section 195(1)(a)** – See – Penal Code, 1860, Section 188 & 505(2): *Monu Upadhyay Vs. State of M.P., I.L.R. 2024 M.P. 1061*

– **Section 195(1)(a)(1) & 222(4)** – See – Penal Code, 1860, Section 186 & 353: *Raghuvir Singh Vs. State of M.P., I.L.R. 2024 M.P. *213*

– **Section 195(1)(b)(i) & 482** – See – Penal Code, 1860, Section 193: *Gopal Krishna Gehlot Vs. State of M.P., I.L.R. 2024 M.P. 549*

– **Section 195-A** and Penal Code (45 of 1860), Section 195-A – Scope – Held – Section 195-A Cr.P.C. does not bar lodging of FIR u/S 195-A IPC: *Abdul Razzak Vs. State of M.P., I.L.R. 2024 M.P. 1067*

– **Section 195-A & 482** and Penal Code (45 of 1860), Section 195-A – FIR – Maintainability – Held – Part I and II of Section 195-A IPC are to be read separately as purpose and intent of each part is different – Act of threatening a person to speak lie in Court to get acquittal or threat to a person not to give evidence in Court will be covered under Part I of Section 195-A IPC – FIR maintainable – Application dismissed: *Abdul Razzak Vs. State of M.P., I.L.R. 2024 M.P. 1067*

– **Section 197** – Sanction – Stage of Proceedings – Held – Apex Court concluded that the question of sanction can be considered at any stage of

proceedings even for the first time before the appellate Court: *Hemraj Pawar (ASI) Vs. Abdul Rasheed Sheikh, I.L.R. 2024 M.P. *85*

– **Section 197** – Sanction – Stage of Trial – Held – Issue of sanction for prosecution u/S 197 Cr.P.C. for cognizance of offence against public servant can be raised at any stage of trial – Magistrate without previous sanction took cognizance of private complaint – Impugned order set aside – Liberty granted to applicants to raise issue of sanction before Magistrate who shall decide the same before taking cognizance – Petition allowed: *Hemraj Pawar (ASI) Vs. Abdul Rasheed Sheikh, I.L.R. 2024 M.P. *85*

– **Section 197 & 482**, Penal Code (45 of 1860), Sections 323, 294, 506, 342 & 34 and Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (33 of 1989), Sections 3(1)(r)(s), 3(2)(va) & 3(2)(ii) – Quashment of FIR – Sanction – Held – Section u/S 197 Cr.P.C. applies to act committed by a public servant in the cloak of his official position in the colour of office – Allegations are pertaining to beating and making remarks of caste and wrongful confinement and these acts cannot be regarded as official acts – Hence on the basis of not getting sanction u/S 197 Cr.P.C., FIR cannot be quashed at this stage – Applications dismissed: *Jagdish Mandloi Vs. State of M.P., I.L.R. 2024 M.P. *207*

– **Sections 200, 202 & 231** – Evidence – Admissibility – Held – Handwriting expert’s report was already on record before Magistrate and same was considered while taking cognizance – At the time of committal of case, copy of same was supplied to accused and in list of prosecution witnesses, handwriting expert was shown as witness – Trial Court not justified in discarding handwriting expert’s report and his evidence on the ground that it is inadmissible in evidence – Accused shall have all rights to cross-examine the expert and to produce his evidence in rebuttal – Impugned order set aside – Application allowed: *Kuman Vs. State of M.P., I.L.R. 2024 M.P. *86*

– **Sections 200, 202 & 231** – Words “All Such Evidence” – Held – Words “*all such evidence*” clearly signifies that the right of prosecution extends to production of such persons as its witnesses during course of trial which have not been named in complaint/charge-sheet or whose statements have not been recorded u/s 200 or 202 CrPC: *Kuman Vs. State of M.P., I.L.R. 2024 M.P. *86*

– **Section 202 & 231** – Evidence – Admissibility – Held – It is not correct to say that u/s 231 CrPC only those witnesses can be examined who had been produced in inquiry u/s 202 CrPC – Sessions Court has to examine all witnesses mentioned in the list given by prosecution subject to condition that evidence of witnesses is relevant with facts of case: *Kuman Vs. State of M.P., I.L.R. 2024 M.P. *86*

– **Section 216 & 482** – See – Prevention of Corruption Act, 1988, Sections 13, 13(1)(b) & 13(2): *Arvind Pandey Vs. State of M.P., I.L.R. 2024 M.P. 363 (DB)*

SYNOPSIS: Section 227 & 228

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| 1. Alteration of Charge | 2. Considerations |
| 3. Grave Suspicion | 4. Miscellaneous |

1. Alteration of Charge

– **Section 227 & 228** – Alteration of Charge – Held – Apex Court observed that it is always open for the Courts to alter the charge at any stage of proceedings depending upon the evidence: *Rajendra Vs. State of M.P., I.L.R. 2024 M.P. *92*

– **Section 227 & 228** – Framing of Charge – Alteration – Held – If in course of trial it comes to the conclusion that the evidence produced makes out a lesser offence than the one for which charges have been framed, it shall always be open for it to convict the accused for a lesser offence based on evidence adduced before it – Framing of charge u/S 304 & 308 IPC would not cause any prejudice to applicant – Hence it will be best left to be decided by trial Court to alter or modify the charges at appropriate stage – Revision disposed: *Rajendra Vs. State of M.P., I.L.R. 2024 M.P. *92*

2. Considerations

– **Section 227 & 228** – Considerations – Held – While framing charges, Court must apply its judicial mind on the material placed on record and must be satisfied that there subsist strong possibility that accused has committed the offence – Court has to *prima facie* examine whether there is sufficient ground for proceedings against accused – Court is not required to evaluate or analyse the findings in order to arrive at a conclusion that the material furnished by prosecution are sufficient to convict the accused or not: *Pawan @ Premchand Rathore Vs. State of M.P., I.L.R. 2024 M.P. *13*

– **Section 227 & 228** – Framing of Charge – Considerations – Held – Apex Court concluded that at the time of framing of charges, the probative value of material on record cannot be gone into and the material brought by prosecution has to be accepted as true – Whether accused committed the offence or not, can only be decided in the trial – Court must apply its judicial mind on the available material and must be satisfied that commission of offence by accused is possible: *Sukhendra Chaturvedi Vs. State of M.P., I.L.R. 2024 M.P. *19*

– **Section 227 & 228** – Framing of Charge – Considerations – Held – At the stage of framing of charge, Court will presume the documents to be correct and has to be considered whether these documents *prima facie* disclose offence against accused persons on record – Court is not expected to go deep into the probative value of the material available on record – Statement of witnesses are not required to be examined minutely at this stage – Objections raised by applicant can be decided on merits – On ground of objections raised, applicant cannot be discharged at this stage – Application dismissed: *National Steel & Agro Industries Ltd. Vs. M.P. Pollution Control Board, I.L.R. 2024 M.P. 305*

– **Section 227 & 228** – Scope – Held – Apex Court concluded that at the stage of framing of charge, it is not obligatory for Judge to consider in detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of accused or not – Strong suspicion is sufficient to frame charge: *Pushpa Goyal (Smt.) Vs. State of M.P., I.L.R. 2024 M.P. *34 (DB)*

– **Section 227 & 228** and Penal Code (45 of 1860), Sections 294, 302, 323 & 506(II) – Framing of Charge – Considerations – Held – Apex Court concluded that at the stage of framing of charges, Court has to consider the material only with a view to find out if there is ground for “presuming” that accused has committed an offence and not for the purpose of arriving at the conclusion that it is not likely to lead to conviction – Sufficient documentary as well as oral evidence available on record to frame charge u/S 302 IPC – Revision dismissed: *Baga @ Bhagirath Vs. State of M.P., I.L.R. 2024 M.P. 1243*

– **Section 227 & 228** and Penal Code (45 of 1860), Section 302 & 201 – Framing of Charge – Considerations – Held – Injuries were found on the body of deceased and death was homicidal – Incident took place inside the house – Though there is no direct evidence but strong chain of circumstances is present against applicant – Charge rightly framed against applicant – Revision dismissed: *Sohan Kohli Vs. State of M.P., I.L.R. 2024 M.P. *188*

– **Section 227 & 228** and Penal Code (45 of 1860), Section 306/34 – Framing of Charge – Considerations – Held – Perusal of statement of prosecution witnesses u/S 161 Cr.P.C., it appears that deceased committed suicide within 7 years of marriage and after marriage applicants used to keep her in continuous harassment and cruelty as she was unable to bear a child – Sufficient material to frame charge against applicants – *Prima facie* it appears that applicants abetted deceased to commit suicide – Charge rightly framed against applicants – Revision dismissed: *Ganesh Vs. State of M.P., I.L.R. 2024 M.P. 1907*

3. Grave Suspicion

– **Section 227 & 228** – Framing of Charge – Grave Suspicion – Held – In case of grave suspicion that a person might have committed an offence, the trial Court is still within its right to frame the charge: *Rishabh Khare Vs. State of M.P.*, I.L.R. 2024 M.P. 1935

4. Miscellaneous

– **Section 227** – See – Notaries Act, 1952, Section 13: *Ramayan Prasad Kacher Vs. State of M.P.*, I.L.R. 2024 M.P. 544

– **Section 227 & 228** – See – Prevention of Corruption Act, 1988, Sections 13(d), 13(2) & 20: *Pushpa Goyal (Smt.) Vs. State of M.P.*, I.L.R. 2024 M.P. *34 (DB)

– **Section 227 & 228** – See – Prevention of Corruption Act, 1988, Section 13(1)(d) & 13(2): *U.S. (Upjeet Singh) Arora Vs. State of M.P.*, I.L.R. 2024 M.P. 570 (DB)

– **Sections 227, 228 & 482** – See – Penal Code, 1860, Section 498-A: *Sukhendra Chaturvedi Vs. State of M.P.*, I.L.R. 2024 M.P. *19

- – **Section 243** – Counter Case – Defence Evidence – Scheme of Section 243 Cr.P.C. indicates that defence/accused can produce his evidence and it nowhere bars the Investigating Officer of counter case to appear on behalf of accused in the case in which he is complainant so that truth can come to the fore as it would help the cause of justice to the extent where his act vicarious or individual or the extent of role would be determined: *Veer Singh Vs. State of M.P.*, I.L.R. 2024 M.P. *150

– **Section 243 & 311** – Counter Case – Recall of Witness – Held – Petitioner intends to bring witness to substantiate his position in the case whereby exact nature of individual role or motive or nature of allegation may get some factual benefits whereby he is facing trial as accused – By this process truth may come about the exact nature of incident – No prejudice would be caused – In order to prevent miscarriage of justice, impugned order is quashed – Trial Court directed to call relevant witness as sought by petitioner – Application allowed: *Veer Singh Vs. State of M.P.*, I.L.R. 2024 M.P. *150

– **Section 256** – See – Negotiable Instruments Act, 1881, Section 138: *Heeralal Vs. Badrilal*, I.L.R. 2024 M.P. *84

SYNOPSIS: Section 311

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| 1. Change of Counsel | 2. Grounds |
| 3. Hostile Witness | 4. Powers of Court |

5. Proof of Age**6. Stage of Trial****7. Miscellaneous****1. Change of Counsel**

– **Section 311** – Change of Counsel – Held – Apex Court concluded that mere change of counsel cannot be a ground to recall of witness: *Ravi Kushwaha Vs. State of M.P., I.L.R. 2024 M.P. *143 (DB)*

– **Section 311** – Recall of Witness – Ground – Held – Previous counsel for applicant/accused has cross-examined the witnesses effectively and elaborately and it does not appear to be ineffective – No just cause to recall the witnesses for further cross-examination – Application dismissed: *Arvind Vs. State of M.P., I.L.R. 2024 M.P. *129*

2. Grounds

– **Section 311** – Recall of Witnesses – Grounds – Held – Widest of the powers have been vested with the Courts when it comes to the question of summoning a witness or to recall or re-examine any witness already examined – Court must necessarily consider and ensure that such recall and re-examination of any person, appears in the view of the Court to be essential for the just decision of the case – Exercise of such power should be made judicially and also with extreme care and caution and not arbitrarily: *Ashish Kumar Mishra Vs. State of M.P., I.L.R. 2024 M.P. 2443*

– **Section 311** and Juvenile Justice (Care and Protection of Children) Act, 2015 (2 of 2016), Section 94 - Birth Certificate – Held – Educational document appear to be forged and suspicious as Adarsh Vidhya Mandir from where document was issued is 100 kms away from the place where prosecutrix and his mother resides – Date of birth of prosecutrix has been proved by prosecution by filing birth certificate issued only after two months of the birth of prosecutrix by Registrar (births and deaths) – In such situation as per Section 94 of 2015 Act, such other evidence cannot be seen: *Shahrukh Khan Vs. State of M.P., I.L.R. 2024 M.P. 171*

– **Section 311**, Penal Code (45 of 1860), Sections 363, 376(2)(n) & 506 and Protection of Children from Sexual Offences Act (32 of 2012), Section 5/6 - Recall of Witness – Birth Certificate – Held – It is a case where minor prosecutrix and her mother appears to have been won over by accused by hook or crook – So called educational certificate appears to have been got prepared just to get over the evidence of witnesses who have already been examined and cross-examined a year

back fully, to resile from their earlier evidence – Application dismissed: *Shahrukh Khan Vs. State of M.P., I.L.R. 2024 M.P. 171*

– **Section 311 & 482** – Recall of Witnesses – Grounds – Held – In absence of any concrete proof, affidavit or complaint by witnesses themselves before the Court or police, that the evidence which they had tendered earlier was not out of their own free will and volition but was due to threat and coercion at the instance of accused persons, trial court was not justified to allow the application of prosecution filed u/S 311 Cr.P.C. – Impugned order set aside – Application allowed: *Ashish Kumar Mishra Vs. State of M.P., I.L.R. 2024 M.P. 2443*

3. Hostile Witness

– **Section 311** – Recall of Witness – Evidence of complainant and injured witness were recorded in which they were declared hostile and now they are praying to get their statements re-recorded – They stated that they turned hostile due to threat, coercion and allurement by accused – Held – Re-examination would not amount to filling up of lacuna in prosecution case and would also not cause any prejudice to accused – It would be in consonance with the cardinal principle that truth must prevail – Impugned order set aside – Application allowed: *Tejpal Singh Vs. State of M.P., I.L.R. 2024 M.P. *149*

4. Powers of Court

– **Section 311** – Powers of Court – Held – Court has been vested with power to summon any person as a witness at any stage, be it a inquiry trial or other proceeding – Power is given to ensure justice by bringing up best evidence on record for just decision: *Arvind Vs. State of M.P., I.L.R. 2024 M.P. *129*

– **Section 311** – Scope & Intent – Powers of the Court – Discussed and explained: *Ansar Ali @ Badkawa Vs. State of M.P., I.L.R. 2024 M.P. 1474*

5. Proof of Age

– **Section 311**, Penal Code (45 of 1860), Sections 363, 376(2)(n) & 506 and Protection of Children from Sexual Offences Act (32 of 2012), Section 5/6 - Recall of Witness – Proof of Age – Aadhar Card – Held – Aadhar Card cannot be used as a proof of date of Birth, this document is only for the purpose of identification of a particular person: *Shahrukh Khan Vs. State of M.P., I.L.R. 2024 M.P. 171*

6. Stage of Trial

– **Section 311**, Bharatiya Nagarik Suraksha Sanhita (46 of 2023), Section 528 and Evidence Act (1 of 1872), Section 165 – Recall of Witnesses – Stage of

Trial –Held – Right of prosecution to adduce evidence has been closed by the Court which was never challenged before higher Courts – Further application filed by prosecution u/S 311 Cr.P.C. or u/S 165 of Evidence Act could not have been allowed – Court cannot exercise powers u/S 165 of Evidence Act when the right to adduce evidence by prosecution has been closed – Permitting the same will amount to review of the earlier order under the garb of Section 165 of Evidence Act – Impugned order quashed – Application allowed: *Mukesh Pandey Vs. State of M.P.*, I.L.R. 2024 M.P. 2641

7. Miscellaneous

– **Section 311** – See – Penal Code, 1860, Section 90, 375 Fourthly & 376: *Ansar Ali @ Badkawa Vs. State of M.P.*, I.L.R. 2024 M.P. 1474

• – **Section 313** – See – Evidence Act, 1872, Section 106: *Ganesh Balai Vs. State of M.P.*, I.L.R. 2024 M.P. *252 (DB)

– **Section 319** – Additional Accused – Grounds – Held – A person can only be summoned as an accused, if trial Court strongly feels that there is sufficient and overwhelming evidence available and it is expedient for justice to summon him as accused – Apex Court concluded that power u/S 319 should not be exercised routinely and existence of more than a *prima facie* case is *sin qua non* for summoning an additional accused: *Majid @ Bablu Vs. State of M.P.*, I.L.R. 2024 M.P. *194

– **Section 319** – Additional Accused – Pronouncement of Judgment – Held – 7 accused are acquitted and 2 have been convicted, thus it is a case of joint result i.e. conviction and acquittal – Trial Court should have passed the order u/S 319 Cr.P.C. before passing the order of acquittal which was not done in present case – Order passed u/S 319 Cr.P.C. is set aside – Revision allowed: *Majid @ Bablu Vs. State of M.P.*, I.L.R. 2024 M.P. *194

– **Section 319** – Additional Accused – Specific Reasoning – Held – Reasoning that police authority is deliberately trying to save applicants from allegation of offence is not a ground to summon them as accused – No specific and cogent reasons assigned by trial Court and it wrongly observed that role of applicants is suspicious – Such vague and obscure finding is not sufficient: *Majid @ Bablu Vs. State of M.P.*, I.L.R. 2024 M.P. *194

– **Section 319** – Additional Accused – Stage of Trial – Held – When a person is emerged as an accused at belated stage of trial, a separate trial can be initiated: *Majid @ Bablu Vs. State of M.P.*, I.L.R. 2024 M.P. *194

– **Section 320** – See – Penal Code, 1860, Section 326 & 307: *Shravan Vs. State of M.P., I.L.R. 2024 M.P. 2370*

– **Section 320** – See – Penal Code, 1860, Section 354 & 376: *Ramesh Keshu Vs. State of M.P., I.L.R. 2024 M.P. *95*

– **Section 320 & 482** – See – Penal Code, 1860, Sections 307, 376 & 452: *Farukh Vs. State of M.P., I.L.R. 2024 M.P. *228*

– **Section 320 & 482** – See – Penal Code, 1860, Section 376: *Sanjay Singhania Vs. State of M.P., I.L.R. 2024 M.P. *169*

– **Section 320 & 482** – See – Penal Code, 1860, Section 498-A: *Mahendra Vs. State of M.P., I.L.R. 2024 M.P. *59*

– **Section 320 & 482** and Penal Code (45 of 1860), Sections 467, 468 & 471 – Quashment of FIR – Compromise – Held – Apex Court after considering provisions of Section 320 & 482 Cr.P.C. concluded that compounding can be permitted in non-compoundable offences – Jurisdiction u/S 482 Cr.P.C. can be exercised because parties have amicably settled the dispute and case did not pertain to offence of moral turpitude or grave offences like rape and murder – Cases where offence u/S 419, 420, 465, 468, 469, 471, 472, 474 r/w 34 IPC are attracted, FIR can be quashed u/S 482 r/w 320 Cr.P.C. – FIR and consequent proceedings against applicant quashed on basis of compromise: *Ritesh Kumar Vs. State of M.P., I.L.R. 2024 M.P. *144*

– **Section 320(2) & 482** – See – Penal Code, 1860, Sections 294, 323, 506 & 34: *Sachin Singh Bhadouriya Vs. State of M.P., I.L.R. 2024 M.P. 1718*

– **Section 329** and Penal Code (45 of 1860), Section 302 – Insanity – Term "Appear" – Held – It is the Court/Magistrate which has to feel that accused is suffering from insanity – Only raising objection or contention in this regard is not sufficient to satisfy the Court – After examining accused if it does not appear to Court that he is "insane"/suffering from unsoundness of mind, Court can reject application u/S 329 Cr.P.C. outrightly – Only on instruction of applicant's counsel, Court is not required to start elaborate inquiry – As per report of jail superintendent neither applicant is taking medicine for insomnia nor he is kept with insane prisoners – His behavior in jail is as usual – Revision dismissed: *Ashutosh Shrivastava Vs. State of M.P., I.L.R. 2024 M.P. 1902*

– **Section 340** and Penal Code (45 of 1860), Sections 192 to 196 – False Evidence before Court – Held – Where the Court decides to exercise its power u/S 340 Cr.P.C., the *prima facie* satisfaction of Court that the person has committed an offence punishable u/S 192 to 196 IPC is sufficient – No preliminary enquiry is

required and a direction can be given to file a complaint: *Anand Singh Parihar Vs. State of M.P., I.L.R. 2024 M.P. *2*

– **Section 362 & 482** – Professional Misconduct by Advocate – Jurisdiction of Court – Held – Apex Court concluded that question of professional misconduct by an advocate is within the exclusive jurisdiction of the Bar Council – Applicant has already filed a complaint before the State Bar Council – Once the matter is pending before the State Bar Council, then any word here and there will prejudice the parties – Application dismissed with liberty to applicant to revive the same after the guilt of earlier counsel is established in Bar Council: *Rahul Jain Vs. Neha Jain, I.L.R. 2024 M.P. 1079*

– **Section 378(4)** – Acquittal – Leave to Appeal – Scope – Held – Unless the judgment of acquittal is palpably wrong or grossly unreasonable and unrealistic, interference in the application for leave to appeal is not called for: *Krishnapal Vs. Hari Singh, I.L.R. 2024 M.P. *256*

– **Section 389** – Suspension of Conviction – Grounds – Held – Appellant “M” convicted u/S 307 IPC on three counts and is aspirant for assembly election, seeking suspension of conviction – Power of suspension of conviction should be exercised only in exceptional circumstances where failure to stay conviction would lead to injustice and irreparable consequences – Right to contest election is a statutory right and not a fundamental right – Appellant is a habitual offender having 8 criminal cases – Application dismissed: *Mayank Jat Vs. State of M.P., I.L.R. 2024 M.P. *32*

– **Section 397** – Acquittal – Revisional Jurisdiction – Held – Revisional powers can be exercised only if there is a flagrant miscarriage of justice in the sense that the findings are against evidence and facts but where the acquittal is recorded after due appreciation of evidence, interference by revisional court normally is not warranted: *Kamlesh Vs. Aman Singh, I.L.R. 2024 M.P. 2153 (DB)*

– **Section 397** – Revisional Jurisdiction – Scope – Discussed and explained: *Ashutosh Shrivastava Vs. State of M.P., I.L.R. 2024 M.P. 1902*

– **Section 397** and High Court of Madhya Pradesh Rules, 2008, Rule 48 – Confinement of Accused – Maintainability – Held – There is no requirement of surrendering before Court and to be confined or in jail for preferring criminal revision before High Court – If accused is not in confinement then also criminal revision is maintainable – While passing orders for summoning records for examination, High Court may direct execution of sentence or order to be suspended – If accused is not in jail then Court may order him to furnish bail bonds for his

appearance before High Court when required – Applicant directed to furnish bail bonds: *Sanjay Nagayach Vs. State of M.P., I.L.R. 2024 M.P. 1688*

– **Section 397 & 401** – Revision – Scope & Jurisdiction – Held – Revisional jurisdiction of High Court cannot be equated with appellate jurisdiction – In revisional jurisdiction, High Court can examine the records of any proceedings for satisfying itself as to the correctness, legality or propriety of any finding, sentence or order – There has to be perversity or unreasonableness, complete misreading of records, when alone High Court would exercise its revisional jurisdiction to set aside such order/judgment: *Rajesh Agrawal Vs. State of M.P., I.L.R. 2024 M.P. 166*

– **Section 397 & 401** – Revisional Jurisdiction – Held – Jurisdiction of revisional Court has a limited scope, it can interfere with the order of subordinate Court only when it is unjust and unfair – In case where order of subordinate Court does not suffer from any infirmity/illegality merely because of equitable considerations, Revisional Court has no jurisdiction to reconsider the matter and pass a different order in a routine manner – Jurisdiction of Revisional Court is not that of an appellate Court which is free to reach its own conclusion on evidence: *Pawan @ Premchand Rathore Vs. State of M.P., I.L.R. 2024 M.P. *13*

– **Section 397/401** – Scope of Interference – Held – The scope of revision is limited – High Court in revision, exercise supervisory jurisdiction of a restricted nature – It cannot re-appreciate the evidence as second appellate Court for the purposes of determining whether concurrent finding of fact by the Courts below was correct: *Vikram Singh Aanjana Vs. Prakashchandra Solanki, I.L.R. 2024 M.P. 1711*

– **Section 397 (1)** – Sentence to run Concurrently – Discretion of Court – Held – Division Bench of this Court has mandated that this Court can exercise its discretion u/s 397(1) CrPC and direct the sentence awarded in a subsequent trial to run concurrently with the sentence awarded in previous trial., even after the appeals or revision have been dismissed: *Shivnarayan Vs. State of M.P., I.L.R. 2024 M.P. *98*

– **Sections 397(1), 427(1) & 482** – Powers of High Court – Held – High Court can exercise the power u/S 427(1) in appeal as well as in revision and even then if it is required, High Court can order for concurrent imprisonment under its inherent jurisdiction enshrined u/S 482 Cr.P.C: *Radheshyam Vs. Smt. Veena Soni, I.L.R. 2024 M.P. *261*

– **Section 397 (2)** – See – Prevention of Money Laundering Act, 2002, Section 65 & 71: *Directorate of Enforcement Vs. Vinod Bhandari (Dr.), I.L.R. 2024 M.P. *114*

– **Section 407** – Transfer of Case – Grounds – Held – Assurance of fair trial is the main criteria for exercise of power u/S 407 Cr.P.C. – Petitioner seeking transfer of case for personal convenience – Litigant cannot choose the Bench/Court of his choice – Convenience alone is not a ground for transfer – Application dismissed: *Archana Lunawat Vs. State of M.P.*, I.L.R. 2024 M.P. *27 (DB)

– **Section 427** – Sentence in Default of Deposit of Fine – Concurrently/Consecutively – Held – Virtually the provisions of Section 427 Cr.P.C. pertains only to substantive sentence rather a sentence for default – Sentence imposed in default in each 4 case would not be concurrent – If applicant fails to deposit the compensation amount, he will suffer default sentence in all 4 cases consecutively: *Radheshyam Vs. Smt. Veena Soni*, I.L.R. 2024 M.P. *261

– **Section 427** and Negotiable Instruments Act (26 of 1881), Section 138 – Sentence to run Concurrently/Consecutively – Held – Exercise of discretion to the benefit of accused in cases where prosecution is based on a single transaction can be applied in appropriate cases – It would be irrespective of the fact that different complaints had been filed involving dishonour of cheques issued by the borrower towards repayment of single loan to the creditor: *Radheshyam Vs. Smt. Veena Soni*, I.L.R. 2024 M.P. *261

– **Section 427** and Negotiable Instruments Act (26 of 1881), Section 138 – Sentence to run Concurrently/Consecutively – Held – Offence is related to financial default and no physical violence is involved – Power u/S 427 can be exercised by trial Court as well as by Appellate Court at any time and even after decision of merits – Offence u/s 138 of NI Act has maximum punishment of 2 years therefore no one should be punished for four offences consecutively – Sentence awarded in all 4 cases shall run concurrently – Revision disposed: *Radheshyam Vs. Smt. Veena Soni*, I.L.R. 2024 M.P. *261

– **Section 427(1)** – Stage of Proceedings – Jurisdiction of Court – Held – Power enshrined u/s 427(1) CrPC can be exercised by trial Court as well as by appellate Court at any time and even after decision of merits in the case: *Shivnarayan Vs. State of M.P.*, I.L.R. 2024 M.P. *98

– **Section 437(6) & 482** – See – Penal Code, 1860, Section 420: *Arun Sinha Vs. State of M.P.*, I.L.R. 2024 M.P. *173

– **Section 438** and Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Sections 8/15, 25 & 29 – Anticipatory Bail – Absconder – Held – Although applicants have been implicated as accused on basis of disclosure statement of other co-accused and no recovery was effected from them, but looking to gravity of offence and nature of crime and the fact that applicants are absconded, they do not

deserve anticipatory bail – Application dismissed: *Vikas Vs. State of M.P.*, I.L.R. 2024 M.P. *220

– **Section 438** and Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Sections 8/15, 25 & 29 – Anticipatory Bail – Grounds – Held – Case is related to NDPS Act, hence only on basis of the fact that co-accused has been granted regular bail or co-accused persons have been acquitted by trial Court, applicants cannot be released on anticipatory bail: *Vikas Vs. State of M.P.*, I.L.R. 2024 M.P. *220

– **Section 438** and Nikshepakon Ke Hiton Ka Sanrakshan Adhiniyam, M.P., 2000 (16 of 2001), Section 14 – Anticipatory Bail – Bar – Held – Bar u/S 14 would not apply in cases where no *prima facie* material exists warranting arrest and where complaint does not make out a *prima facie* case – Court has power and jurisdiction to consider application for anticipatory bail in appropriate case of exceptional nature – Anticipatory bail application is maintainable: *Pramod Sethi Vs. State of M.P.*, I.L.R. 2024 M.P. 182

– **Section 438**, Penal Code (45 of 1860), Sections 420, 406 & 34 and Nikshepakon Ke Hiton Ka Sanrakshan Adhiniyam, M.P., 2000 (16 of 2001), Section 14 – Anticipatory Bail – Held – There are specific allegations against applicant in FIR as well as in statement of complainant recorded u/S 161 Cr.P.C. – There is *prima facie* material available against applicant relating to cheating of huge amount of more than 4 crores by getting deposits from complainants – Applicant is facing another criminal case on similar charges – Applicant is absconding since long – Not a fit case for anticipatory bail – Application dismissed: *Pramod Sethi Vs. State of M.P.*, I.L.R. 2024 M.P. 182

– **Section 439** – Merits of Case – Consideration – Held – It is a Rule that bail applications shall not be decided on merits of the case – High Court will not appreciate evidence adduced in trial and same is work of trial Court – Discussing evidence of prosecution will not amount to decide case on its merits, thus deposition filed in Court is not considered: *Guppi @ Bhupendra Kushwaha Vs. State of M.P.*, I.L.R. 2024 M.P. *135

– **Section 439** [Now Bharatiya Nagarik Suraksha Sanhita (46 of 2023), Section 483] – See – Prevention of Money Laundering Act, 2002, Sections 3, 4, 19, 45 & 70: *Pushpendra Singh Vs. Director of Enforcement*, I.L.R. 2024 M.P. *241

– **Section 439** – See – Excise Act, M.P., 1915, Section 34(1) & 34(2): *Pawan Mankar Vs. State of M.P.*, I.L.R. 2024 M.P. 1727

– **Section 439** – See – Narcotic Drugs and Psychotropic Substances Act, 1985, Sections 8/15, 29 & 37, Standing Order No. 1/89: *Hoshiyarsingh Vs. State of M.P.*, I.L.R. 2024 M.P. *8

– **Section 439** – See – Narcotic Drugs and Psychotropic Substances Act, 1985, Sections 8/20, 25, 27, 29 & 67: *Vijay Kisan Mohite @ Biju Beldar @ Bhau Vs. State of M.P.*, I.L.R. 2024 M.P. 2195

– **Section 439** and Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Sections 2(viia), 8/21, 22, 29 & 37 – Commercial Quantity – Held – The quantity as per panchnama is shown to be 10 gms of MDMA which is prescribed as commercial quantity, but as per definition u/S 2(viia), it should be greater than the quantity specified by Central Government – Thus, the quantity seized is non-commercial quantity – Bar u/S 37 would not apply – Investigation is complete, charge-sheet is filed – No criminal records of NDPS against applicant except one case of gambling – Bail granted – Application allowed: *Manoj Vs. State of M.P.*, I.L.R. 2024 M.P. *159

– **Section 439** and Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Section 8/15 – Commercial Quantity – Held – One quintal and 92 kgs poppy straw recovered from applicant which is a huge quantity as well as commercial quantity – Earlier application was dismissed on merits and there is no material change in circumstance except custody period – Looking to the nature and gravity of allegation, seventh bail application dismissed: *Prahlad Chouhan Vs. State of M.P.*, I.L.R. 2024 M.P. *185

– **Section 439** and Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Section 8/15 & 37 – Custody Period – Held – Apex Court concluded that the length of period of custody or the fact that charge-sheet has been filed and trial has commenced are by themselves not considerations that can be treated as grounds for granting relief u/S 37 of the Act: *Prahlad Chouhan Vs. State of M.P.*, I.L.R. 2024 M.P. *185

– **Section 439(2)** – Cancellation of Bail – Allegation of Threat to Victim – Held – Prosecutrix has already been examined and cross-examined long back on 22.06.2023 whereas complaint of threat was lodged on 10.10.2023 & 13.10.2023, thus the allegation that accused is threatening her and her parents for changing their version, does not inspire confidence – Nothing on record to show that accused has misused the liberty granted by this Court – Application for cancellation of bail is without any logic and reason – Application dismissed: *Victim A Vs. State of M.P.*, I.L.R. 2024 M.P. *248

– **Section 439(2)** – Cancellation of Bail – Considerations – Held – Once the bail is granted to an accused, the same can only be cancelled if it is shown that the bail order suffers from infirmities or the accused while on bail has misused his liberty and has acted in such a manner which is prejudicial to the case of prosecution – Cancellation of bail is a harsh order, as it interferes with the liberty of individual and thus cannot be restored to lightly: *Victim A Vs. State of M.P., I.L.R. 2024 M.P. *248*

– **Section 439(2)** – Cancellation of Bail – Grounds – Held – Cancellation of bail cannot be limited to the occurrence of supervening circumstances or overwhelming evidence against accused: *Jitendra Vs. State of M.P., I.L.R. 2024 M.P. *176*

– **Section 439(2)** – Cancellation of Bail – Sexual Offence – Held – A minor girl of 13 years was sexually assaulted by accused (*bade Papa*) by tearing her clothes and touching her private parts with brutal intention of committing rape upon her – Accused is a 42 years old matured person – Pain of minor child is beyond imagination – Looking to nature and gravity of offence and statement of prosecutrix recorded u/S 164 of Cr.P.C., impugned order granting bail to accused is erroneous and is thus set aside – Application allowed: *Jitendra Vs. State of M.P., I.L.R. 2024 M.P. *176*

– **Section 439(2)** and Penal Code (45 of 1860), Sections 408, 409, 420, 467, 468, 471, 120-B & 34 – Cancellation of Bail – Grounds – Held – Bail has been granted on the ground that accused is ready to deposit the embezzled amount of Rs. 14,75,000 but the actual amount embezzled was Rs. 2,75,12,450 – Relevant material i.e audit report available on record has been ignored – Embezzlement was done in case of 47 members of society – Offence is serious in nature and punishable upto imprisonment of life or with 10 yrs. Imprisonment – Bail cancelled – Application allowed: *Anand Kumar Mishra Vs. State of M.P., I.L.R. 2024 M.P. 310*

– **Section 451 & 457** and Excise Act, M.P. (2 of 1915), Sections 34(2), 47-A(3) & 47-D – Release of Seized Vehicle – Intimation of Confiscation Proceeding – Held – If intimation of confiscation proceedings of seized vehicle is received by the Court u/S 47-A(3), clause A, the jurisdiction of the Court to release the vehicle is barred – In present case, intimation was not received in prescribed form from the Collector – Letter was given by S.P. which was sent to District Magistrate – Intimation was not in consonance of Section 47-A – Seized vehicle was rightly released on *supurdginama* to registered owner of vehicle – Revision dismissed: *State of M.P. Vs. Jafar, I.L.R. 2024 M.P. 1693*

– **Section 451 & 457** and Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Section 8/15 & 52(A)(ii) – Interim Custody of Seized Vehicle – Held – There is no provision in NDPS Act to restrict the power of trial Court to release the vehicle in interim custody – Applicant is registered owner of vehicle, conclusion of trial is likely to take sufficient time – No purpose would be served to keep the vehicle parked in police station – Condition of vehicle is deteriorating day-by-day as it is lying open to sky and under the heat of sun and rains – Vehicle is losing its value due to lack of maintenance and natural wear and tear – Vehicle released on deposit of security and imposing terms and conditions – Revision allowed: *Manakram Vs. State of M.P., I.L.R. 2024 M.P. *141*

– **Section 451 & 457** and Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Section 60 – Interim Custody of Seized Vehicle – Held – This Court has earlier concluded that interim custody should not be denied to the owner of the vehicle simply because it is liable to be confiscated u/S 60 of the 1985 Act – Vehicle can be released in interim custody in appropriate cases: *Manakram Vs. State of M.P., I.L.R. 2024 M.P. *141*

– **Sections 451, 457 & 482** – See – Mineral (Prevention of Illegal Mining, Transportation and Storage) Rules, M.P., 2022, Rule 18(4) & 21: *Prince Patel Vs. State of M.P., I.L.R. 2024 M.P. 806*

– **Sections 451, 457 & 482** and Govansh Vadh Pratishedh Adhiniyam, M.P. (6 of 2004), Section 4/9 & 6/9 and Prevention of Cruelty to Animals Act (59 of 1960), Section 11(D) – Interim Custody of Vehicle – Jurisdiction of Magistrate – Held – Judicial Magistrate has no seisin over property seized under the 2004 Adhiniyam – District Magistrate has to decide the question of confiscation independently – Magistrate will not have any jurisdiction to pass order u/S 451 or u/S 457 CrPC for interim custody of vehicle seized under 2004 Adhiniyam – Application dismissed: *Mo. Imran Vs. State of M.P., I.L.R. 2024 M.P. 366*

– **Section 451 & 482** – See – Excise Act, M.P., 1915, Sections 34(2), 47-A(3) & 47-D: *Altaf Vs. State of M.P., I.L.R. 2024 M.P. *78*

SYNOPSIS: Section 482

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|---|------------------------------------|
| 1. Civil Dispute | 2. Delay in FIR |
| 3. Delay in Trial | 4. Medical Negligence |
| 5. Professional Misconduct by Advocate | 6. Quashment/Considerations |

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|------------------------------------|-------------------------------------|
| 7. Scope & Jurisdiction | 8. Stage of Trial |
| 9. Stay of Investigation | 10. Supervisory Jurisdiction |
| 11. Miscellaneous | |

1. Civil Dispute

– **Section 482** and Penal Code (45 of 1860), Sections 405, 406, 419, 420, 467 & 468/34 – Quashment of FIR – Civil Dispute – Held – Complainant has now filed a civil suit against applicant seeking compensation and damages arising out of breach of contract or in alternative specific performance of contract – When civil suit is pending it is clear that issues are civil in nature which cannot be given a criminal colour – Criminal prosecution is malicious and ill-motivated: *Neeraj Shrivastava Vs. State of M.P., I.L.R. 2024 M.P. 316*

2. Delay in FIR

– **Section 482** – Delay in FIR – Duty of Court – Held – Although delay is not always the vital ground on which complaint can be discarded but once such inordinate delay occurred then Court has to be circumspect about the allegations and its nature as surfaced in the evidence, so that innocent people may not suffer: *Major Amit Pathak Vs. State of M.P., I.L.R. 2024 M.P. 2413*

3. Delay in Trial

– **Section 482** – Delay in Trial – Held – Date of incident was 19.12.2018 and cognizance taken on 15.03.2019 – More than 4 yrs. have elapsed and all eye-witness have been examined and only official and formal/departmental witnesses are yet to be examined – Because of non-appearance of some witnesses case is lingered on – Petitioner specifically alleged threatening/tampering of witnesses therefore matter becomes more serious – Creation of WhatsApp group in phases suggested so that witnesses may be served and trial may conclude at the earliest – Applications allowed: *Vijendra Singh Sikarwar Vs. State of M.P., I.L.R. 2024 M.P. 349*

4. Medical Negligence

– **Section 482** – Medical Negligence – Report of Expert Committee – Held – Unless and until the expert committee, gives its report about medical negligence of the doctor, the doctors should not be prosecuted – Complainant has not approached the committee of experts to prove the negligence of applicant – Prosecution cannot be allowed to continue – Proceedings quashed – Liberty granted to complainant to

approach Expert Committee – Application allowed: *Rajesh Batra (Dr.) Vs. State of M.P., I.L.R. 2024 M.P. 1911*

5. Professional Misconduct by Advocate

– **Section 482** – Professional Misconduct by Advocate – Necessary Party – Held – Applicant is alleging professional misconduct by his earlier counsel – Applicant has not impleaded his earlier counsel and in his absence no allegation made against him can be considered: *Rahul Jain Vs. Neha Jain, I.L.R. 2024 M.P. 1079*

6. Quashment/Considerations

– **Section 482** – Quashment – Consideration of Defence – Held – Applicant filed many documents which cannot be considered at this stage u/S 482 CrPC but the same may be considered at the time of evidence before trial Court – Apex Court concluded that Court shall not consider the defence and its material at the stage of quashment of FIR, framing of charges etc – Only in rare and exceptional case, defence or its material can be considered: *Rajesh Jain Vs. State of M.P., I.L.R. 2024 M.P. *70*

– **Section 482** – Quashment of FIR – Consideration – Held – Where a criminal proceeding is manifestly attended with *malafide* and or is maliciously instituted with ulterior motive or wrecking vengeance on accused and with a view of spite him due to private and personal grudge, FIR can be quashed: *Umang Singhar Vs. State of M.P., I.L.R. 2024 M.P. 790*

– **Section 482** – Quashment of FIR – Considerations – Held – Whether FIR discloses commission of cognizable offence or not, Court has to take allegations as it is on their face value – Court cannot look into defence of suspect – It is for the suspect to prove his defence in trial – Looking to allegations made in FIR as well as the inquiry report, it is clear that triable allegations have been made against petitioner – FIR cannot be quashed in exercise of power u/s 482 CrPC or under Article 226 of Constitution: *Meera Yadav Vs. State of M.P., I.L.R. 2024 M.P. *61*

– **Section 482** – Quashment of FIR – Malafide of Informant – Held – If the complaint made against suspect makes out a cognizable offence, then malafide of informant would be of secondary importance – It would be erroneous on part of Court to assess the material before trial is initiated and concluded: *Meera Yadav Vs. State of M.P., I.L.R. 2024 M.P. *61*

– **Section 482** – Quashment of FIR – Scope of Interference – Held – If from bare perusal of FIR or the complaint, it appears that it does not disclose any offence or it appears that it is frivolous, collusive or oppressive from the face of it, Court

may exercise its inherent power to secure the ends of justice: *Monu Upadhyay Vs. State of M.P., I.L.R. 2024 M.P. 1061*

– **Section 482** and Penal Code (45 of 1860), Section 313 – Miscarriage – Motive & Intention – Held – What was the condition of woman and what was her physical appearance at that stage cannot be guessed by presumption, it will require evidence before trial Court that whether her pregnancy was apparent from seeing her – If pregnancy was apparent and then also petitioners physically assaulted her then offence u/S 313 IPC will be made out – At this stage charge u/S 313 cannot be quashed: *Bhupnath Tiwari Vs. State of M.P., I.L.R. 2024 M.P. 345*

– **Section 482** and Penal Code (45 of 1860), Section 316 – Quick Unborn Child – Held – Victim suffered miscarriage – Quick Child means when fetus start moving in womb – Quickening is the first movement in pregnancy which is felt by mother usually in 4–5 months pregnancy – Victim was 2 months pregnant and was not quick with child – Offence u/S 316 not made out: *Bhupnath Tiwari Vs. State of M.P., I.L.R. 2024 M.P. 345*

– **Section 482** and Penal Code (45 of 1860), Section 324 – Held – Petitioners were armed with dangerous weapon – There is no allegation of assaulting the victim by dangerous weapon – There is allegation that tractor was used to dash one of the victim due to which she fell down but tractor cannot be said to be a dangerous weapon – Offence u/S 324 IPC not made out: *Bhupnath Tiwari Vs. State of M.P., I.L.R. 2024 M.P. 345*

– **Section 482** and Penal Code (45 of 1860), Sections 405, 406, 419, 420, 467 & 468/34 – Quashment of FIR – Framing of Charge – Scope & Jurisdiction – Held – Where a criminal proceeding is manifestly attended with *malafide* and/or where proceeding is maliciously instituted with ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge, the power can be exercised and FIR can be quashed even after framing of charge: *Neeraj Shrivastava Vs. State of M.P., I.L.R. 2024 M.P. 316*

– **Section 482** and Penal Code (45 of 1860), Sections 405, 406, 419, 420, 467 & 468/34 – Quashment of FIR – Ingredients of Offence – Held – Mere violation of any terms of loan agreement by parties cannot give rise to criminal prosecution for cheating, breach of trust unless fraudulent or dishonest intention or misappropriation of property entrusted is shown right at the beginning of transaction – It is the intention which is the gist of offence – Ingredients of having a dishonest or fraudulent intend and making false document is absent – Offence u/S 405, 406, 419, 420, 467 & 468 IPC not made out – FIR and criminal proceeding quashed – Application allowed: *Neeraj Shrivastava Vs. State of M.P., I.L.R. 2024 M.P. 316*

– **Section 482** and Penal Code (45 of 1860), Sections 405, 406, 419, 420, 467 & 468/34 – Quashment of FIR – Unregistered Agreement – Misuse of Criminal Prosecution – Held – In respect of an unregistered agreement, parties initiates criminal prosecution for putting pressure on other party to enter into settlement because they cannot invoke civil remedy for reason that agreement is unregistered and is inadmissible in evidence and no rights can be claimed – The tendency of misusing criminal proceedings for claiming enforcement of civil rights by indirect method cannot be appreciated by Courts: *Neeraj Shrivastava Vs. State of M.P., I.L.R. 2024 M.P. 316*

– **Section 482** and Penal Code (45 of 1860), Sections 464, 467 & 468 – Ingredients of Offence – Non – Seizure of Forged Document – Held – The alleged forged document is not in existence and has not been seized by police during investigation – For want of such document, filing of charge-sheet for offence u/S 467 & 468 IPC is a clear cut abuse of process of Court because u/S 464 the one who makes a false document can be held liable under aforesaid provision – When document itself is not available, no offence u/S 467 & 468 IPC made out: *Neeraj Shrivastava Vs. State of M.P., I.L.R. 2024 M.P. 316*

– **Section 482** and Prevention of Corruption Act (49 of 1988), Section 13(1)(d) & 13(2) – Quashment of FIR – Held – No irregularity found in departmental enquiry against applicant and he was exonerated from the charges in 2018 – In 2020, the Lokayukta also after a detailed enquiry ordered for closure of the enquiry – On 30.06.2023, SPE has registered the impugned FIR on the similar complaint received in 2014 after a period of almost 9 years without assigning any reasonable cause for the delay – Enquiry conducted by Lokayukta is having binding effect on complaint received by SPE – FIR quashed – Application allowed: *Vikas Rajoria Vs. State of M.P., I.L.R. 2024 M.P. 1749 (DB)*

– **Section 482** – Quashment of Criminal Proceeding – Scope – Discussed and explained: *Vikas Rajoria Vs. State of M.P., I.L.R. 2024 M.P. 1749 (DB)*

7. Scope & Jurisdiction

– **Section 482** – Scope & Jurisdiction – Defence of Accused – Held – While exercising power u/S 482 Cr.P.C., this Court cannot consider the defence of accused and can quash the proceedings only if uncontroverted allegations do not make out an offence: *Chandramohan Dubey Vs. State of M.P., I.L.R. 2024 M.P. 2398*

– **Section 482** – Scope of Interference – Discussed and explained: *Jagdish Mandloi Vs. State of M.P., I.L.R. 2024 M.P. *207*

– **Section 482** – Scope of Interference – Held – Apex Court concluded that a detailed and meticulous appreciation of evidence at the stage of 482 Cr.P.C. is not permissible and should not be done: *Alka Sharma Vs. State of M.P.*, I.L.R. 2024 M.P. 1922

– **Section 482** – College Ragging – Effect & Measures – Discussed and explained: *Sachin Singh Bhadouriya Vs. State of M.P.*, I.L.R. 2024 M.P. 1718

– **Section 482** – Scope of Interference – Held – Apex Court concluded that where the allegations made in FIR or complaint, even if that are taken at their face value and accepted in their entirety, do not *prima facie* constitute any offence or make out a case against accused, power u/s 482 are required to be exercised: *Prafulla Kumar Jaiswal Vs. State of M.P.*, I.L.R. 2024 M.P. 555

– **Section 482** – Scope of Interference – Held – This Court u/S 482 Cr.P.C. has to consider uncontroverted allegations only and cannot embark upon an enquiry or cannot dwell upon the defence taken by accused persons: *Mahendra Nagpure Vs. State of M.P.*, I.L.R. 2024 M.P. 2159

8. Stage of Trial

– **Section 482** – Quashment – Stage of Trial – Powers of High Court – Held – High Court has power u/s 482 to interdict a proceeding either at threshold or at an intermediate stage of trial – There is no bar on powers of High Court to exercise its inherent jurisdiction even after framing of charge – Petition u/s 482 CrPC is maintainable also at an advance stage of trial: *Rajendra Chakravati Vs. State of M.P.*, I.L.R. 2024 M.P. *68

– **Section 482** – Quashment of FIR – Stage of Trial – Held – This Court had earlier concluded that petition u/S 482 Cr.P.C. is maintainable also even when trial is at advance stage: *Mahendra Nagpure Vs. State of M.P.*, I.L.R. 2024 M.P. 2159

– **Section 482** – Scope of Interference – Stage of Trial – Held – Jurisdiction of this Court u/S 482 Cr.P.C. can be invoked at any stage of trial if it furthers the cause of justice: *Virendra Singh Rana Vs. State of M.P.*, I.L.R. 2024 M.P. 1458

9. Stay of Investigation

– **Section 482** – Stay of Investigation – Held – Apex Court deprecated the practice of staying the investigation or directing not to take coercive action against accused pending petition u/S 482 Cr.P.C. – Guidelines referred: *Jagdish Mandloi Vs. State of M.P.*, I.L.R. 2024 M.P. *207

10. Supervisory Jurisdiction

– **Section 482** – Supervisory Jurisdiction – Directions to Trial Court – Held – Matter relates to offence u/S 376 IPC – In 2019, this Court by interim order stayed the trial and it remained under suspended animation for more than 5 years – Charge-sheet filed in 2018 and more than 6 years have passed – Speedy trial is not only a fundamental right of accused but also of the victim – Case falls within exceptional circumstances – This Court committed no mistake in directing trial Court to conclude trial within 3 months – This Court has not directed that in case if trial is not concluded then accused shall stand acquitted – Trial Court was merely directed to expedite and conclude the trial – No interference warranted – Application dismissed: *Ansar Ali @ Badkawa Vs. State of M.P., I.L.R. 2024 M.P. 1474*

11. Miscellaneous

– **Section 482** – See – Excise Act, M.P., 1915, Section 34(2): *Sonu Raghuvanshi Vs. State of M.P., I.L.R. 2024 M.P. 1074*

– **Section 482** – See – Forest Act, 1927, Sections 2(4)(b), 33(1)(b) & 52: *Ankush Pandey Vs. State of M.P., I.L.R. 2024 M.P. 1739*

– **Section 482** – See – Narcotic Drugs and Psychotropic Substances Act, 1985, Section 8/18 & 29: *Bherulal Vs. State of M.P., I.L.R. 2024 M.P. *130*

– **Section 482** – See – Negotiable Instruments Act, 1881, Sections 118, 138 & 139: *Dheeraj Kumar Verma Vs. Sachin, I.L.R. 2024 M.P. 2643*

– **Section 482** – See – Negotiable Instruments Act, 1881, Section 138: *K. V. Vijayvargiya Vs. Sanjay Nagpal, I.L.R. 2024 M.P. 1471*

– **Section 482** – See – Negotiable Instruments Act, 1881, Section 138: *Tasneem Sabir Vs. Mohd. Aadil, I.L.R. 2024 M.P. *43*

– **Section 482** – See – Negotiable Instruments Act, 1881, Section 138 & 142: *Mahindra & Mahindra Financial Services Ltd. (M/s.) Vs. Kamdhenu Company Pvt. Ltd., I.L.R. 2024 M.P. 180*

– **Section 482** – See – Penal Code, 1860, Section 294: *Prafulla Kumar Jaiswal Vs. State of M.P., I.L.R. 2024 M.P. 555*

– **Section 482** – See – Penal Code, 1860, Sections 294, 323, 376(2)(n), 377, 498-A & 506: *Umang Singhar Vs. State of M.P., I.L.R. 2024 M.P. 790*

– **Section 482** – See – Penal Code, 1860, Sections 294, 323, 506 r/w 34: *Dinesh Vs. State of M.P., I.L.R. 2024 M.P. *53*

– **Section 482** – See – Penal Code, 1860, Sections 304-A, 337 & 338: *Ramsingh Modavat Vs. State of M.P., I.L.R. 2024 M.P. *122*

– **Section 482** – See – Penal Code, 1860, Section 323 & 498-A: *Aliya (Smt.) Vs. State of M.P., I.L.R. 2024 M.P. *221*

– **Section 482** – See – Penal Code, 1860, Section 323 & 498-A: *Rajan Vs. State of M.P., I.L.R. 2024 M.P. *35*

– **Section 482** – See – Penal Code, 1860, Section 337 & 338: *Harish Suryavanshi Vs. State of M.P., I.L.R. 2024 M.P. *136*

– **Section 482** – See – Penal Code, 1860, Sections 354-A, 354-B, 354-C & 354-D: *Indu Bora (Smt.) Vs. State of M.P., I.L.R. 2024 M.P. *231*

– **Section 482** – See – Penal Code, 1860, Sections 376, 376(2n) & 506: *Rajendra Chakravati Vs. State of M.P., I.L.R. 2024 M.P. *68*

– **Section 482** – See – Penal Code, 1860, Section 376(2)(n) & 506-II: *Sandeep Kumar Soni Vs. State of M.P., I.L.R. 2024 M.P. 2148*

– **Section 482** – See – Penal Code, 1860, Section 377: *Major Amit Pathak Vs. State of M.P., I.L.R. 2024 M.P. 2413*

– **Section 482** – See – Penal Code, 1860, Sections 409, 420 & 120-B: *Rajesh Jain Vs. State of M.P., I.L.R. 2024 M.P. *70*

– **Section 482** – See – Penal Code, 1860, Section 420: *Chandramohan Dubey Vs. State of M.P., I.L.R. 2024 M.P. 2398*

– **Section 482** – See – Penal Code, 1860, Section 420: *Dinesh Sharma Vs. State of M.P., I.L.R. 2024 M.P. *83*

– **Section 482** – See – Penal Code, 1860, Section 498-A: *Neeraj Kumar Saraf Vs. State of M.P., I.L.R. 2024 M.P. 2630*

– **Section 482** – See – Penal Code, 1860, Sections 498-A, 323, 294 & 506/34: *Mahendra Nagpure Vs. State of M.P., I.L.R. 2024 M.P. 2159*

– **Section 482** – See – Penal Code, 1860, Section 498-A & 506: *Varsha Singh (Smt.) Vs. State of M.P., I.L.R. 2024 M.P. 2189*

– **Section 482** – See – Penal Code, 1860, Sections 498-A, 506 & 34: *Mool Kawar Mehta (Smt.) Vs. State of M.P., I.L.R. 2024 M.P. 1730*

– **Section 482** – See – Penal Code, 1860, Section 498-A & 506/34: *Alka Sharma Vs. State of M.P., I.L.R. 2024 M.P. 1922*

– **Section 482** – See – Penal Code, 1860, Section 498-A & 506/34: *Avijit Sharma Vs. State of M.P., I.L.R. 2024 M.P. 2173*

– **Section 482** – See – Penal Code, 1860, Section 506 P-II: *Prafulla Kumar Jaiswal Vs. State of M.P., I.L.R. 2024 M.P. 555*

– **Section 482** – See – Penal Code, 1860, Section 509: *Indu Bora (Smt.) Vs. State of M.P., I.L.R. 2024 M.P. *231*

– **Section 482** – See – Prevention of Corruption Act, 1988, Sections 7, 13(2) & 19: *Shashikant Mishra Vs. Union of India, I.L.R. 2024 M.P. 1428 (DB)*

– **Section 482** – See – Prevention of Corruption Act, 1988, Section 19(3): *Shashikant Mishra Vs. Union of India, I.L.R. 2024 M.P. 1428 (DB)*

D

DELAY & LACHES

– **Effect** – Held – Against the order dated 10.12.2015, present petition is filed in the year 2022 i.e almost after 6½ years without any sufficient and proper explanation – Courts have consistently declined to condone the delay and denied relief to litigants who are guilty of laches – Present petition is barred by delay and laches – Petition dismissed: *Madhav Singh Vs. Brajmohan Singh, I.L.R. 2024 M.P. *139*

DOWRY PROHIBITION ACT (28 OF 1961)

– **Section 3 & 4** – See – Penal Code, 1860, Sections 498-A, 323, 294 & 506/34: *Mahendra Nagpure Vs. State of M.P., I.L.R. 2024 M.P. 2159*

– **Section 3 & 4** – See – Penal Code, 1860, Section 498-A & 506/34: *Alka Sharma Vs. State of M.P., I.L.R. 2024 M.P. 1922*

– **Section 3 & 4** – See – Penal Code, 1860, Section 498-A & 506/34: *Avijit Sharma Vs. State of M.P., I.L.R. 2024 M.P. 2173*

– **Section 3/4** – See – Penal Code, 1860, Section 323 & 498-A: *Aliya (Smt.) Vs. State of M.P., I.L.R. 2024 M.P. *221*

– **Section 3/4** – See – Penal Code, 1860, Section 498-A: *Sukhendra Chaturvedi Vs. State of M.P., I.L.R. 2024 M.P. *19*

– **Section 3/4** – See – Penal Code, 1860, Section 498-A & 506: *Varsha Singh (Smt.) Vs. State of M.P., I.L.R. 2024 M.P. 2189*

– **Section 3/4** – See – Penal Code, 1860, Sections 498-A, 506 & 34: *Mool Kavar Mehta (Smt.) Vs. State of M.P., I.L.R. 2024 M.P. 1730*

DRUGS AND COSMETICS ACT (23 OF 1940)

– **Sections 17(b)(e), 18(a)(iv), 18(B), 27(c), 27(d), 28-A, 32 & 36-AB** and Criminal Procedure Code, 1973 (2 of 1974), Sections 193, 209 & 482 – Cognizance – Committal of Case – Held – No cognizance of offence punishable under the 1940 Act, can be taken by Special Court/Session Court without committal of the case by the respective Magistrate – Order of Session Court taking cognizance is passed without committal of the case and therefore same is set aside – Matter sent back to Session Court – Application allowed: *Ipcan Generic Health Care Pvt. Ltd. (M/s.) Vs. State of M.P., I.L.R. 2024 M.P. *232*

E

EASEMENT ACT (5 OF 1882)

– **Section 15** – Government Land – Held – If disputed land belongs to government then for accrual of easementary right, 60 years period would be required – No easementary right accrued in favour of appellant – Appeal dismissed: *Dayaram Vs. State of M.P., I.L.R. 2024 M.P. 1343*

EDUCATIONAL INSTITUTION

– **Indiscipline** – Held – Impugned order of suspension of petitioner (student) is based upon the recommendation of the Advisory Committee of Senate – Investigation was carried out by the authorities and involvement of petitioner was found in the matter – It is not a matter of imposition of punishment against petitioner rather is a matter of discipline to be followed in the institute – Involvement of such student who may be an academically good student but cannot be permitted to act in such a violent and indiscipline manner – No interference warranted – Petition dismissed: *Prince Raj Vs. State of M.P., I.L.R. 2024 M.P. 1171 (DB)*

ELECTION SYMBOLS (RESERVATION AND ALLOTMENT) ORDER, 1968

– **Paragraph 2(1)(h) & 3** – See – Representation of the People Act, 1951, Sections 2(1)(f), 29-A & 33(1) Proviso: *Jai Lok Party Vs. State of M.P., I.L.R. 2024 M.P. 241*

ELECTRICITY ACT (36 OF 2003)

– **Section 2(15) & 2(77)** – See – Vidyut Shulk Adhinyam, M.P., 2012, Section 2(1)(B): *Ultra Tech Cement Ltd. (M/s.) Vs. State of M.P., I.L.R. 2024 M.P. *267*

– **Section 65** – See – Constitution – Article 226: *High Court Advocates Bar Association Vs. State of M.P., I.L.R. 2024 M.P. 2511 (DB)*

EMPLOYEES' PROVIDENT FUND APPELLATE TRIBUNAL (PROCEDURE) RULES, 1997

– **Rule 7(2)** – See – Employees' Provident Funds and Miscellaneous Provisions Act, 1952, Section 7(1): *Divisional Railway Manager, Jabalpur Vs. Regional Provident Fund Commissioner, I.L.R. 2024 M.P. 1572*

EMPLOYEES' PROVIDENT FUNDS AND MISCELLANEOUS PROVISIONS ACT (19 OF 1952)

– **Section 7(1)**, Employee's Provident Fund Appellate Tribunal (Procedure) Rules, 1997, Rule 7(2) and Limitation Act (36 of 1963), Section 5 – Delay in Filing Appeal – Limitation – Held – As per Rule, the limitation to file appeal is 60 days which can be extended to further 60 days subject to sufficient cause being shown – When a special Act itself provides for period of limitation and also the extended period of limitation, application of provisions of Limitation Act 1963 cannot be invoked and is barred – Appeal was filed with a delay of 10 years – Tribunal rightly dismissed the appeal on ground of limitation – Petition dismissed: *Divisional Railway Manager, Jabalpur Vs. Regional Provident Fund Commissioner, I.L.R. 2024 M.P. 1572*

– **Sections 7(A), 7(I), 7(O) & 14(B)** – Stay of Recovery Proceedings – Pre-deposit of Certain Amount – Discretionary Power of Tribunal – Held – Although there is no provision for staying the order of recovery during pendency of appeal by the Tribunal, but it exercises its discretionary power to stay the recovery initiated u/S 14(B) – Tribunal is also having discretion to stay the same on any condition or stay the order in absolute or in part and it is permissible – Looking to poor financial status of petitioner, condition of deposit of 40% amount reduced to 25% – Petition disposed: *The Center for Entrepreneurship Development (M/s.) Vs. Regional Provident Commissioner, I.L.R. 2024 M.P. 2286*

EMPLOYEES' STATE INSURANCE ACT (34 OF 1948)

– **Section 45AA** and Limitation Act (36 of 1963), Section 29(2) – Condonation of Delay – Jurisdiction of Appellate Authority – Held – Section 29(2) of

1963 Act is applicable to suit, appeal or application to be filed before Courts only and not before Authorities or Tribunal – In absence of any provision for condonation of delay, Court cannot compel Appellate Authority to decide the application for condonation of delay – Application rightly dismissed on ground of maintainability – Petition dismissed: *Gyan Singh Parmar Vs. Employee State Insurance Corporation*, I.L.R. 2024 M.P. 2462

– **Section 45AA**, Limitation Act (36 of 1963), Section 29(2) and Constitution – Article 226 – Condonation of Delay – Scope & Jurisdiction – Held – Constitutional Court cannot legislate and if Court directs the Appellate Authority to consider the application for condonation of delay even in absence of any provision of law, then it would amount to legislation which cannot be done: *Gyan Singh Parmar Vs. Employee State Insurance Corporation*, I.L.R. 2024 M.P. 2462

EMPLOYEES STATE INSURANCE SERVICES (GAZETTED) **RECRUITMENT RULES, M.P., 1981**

– **See** – Civil Services (General Conditions of Service) Rules, M.P., 1961, Rule 8(6) & 12(4): *Sanjive Kumar Naik Vs. State of M.P.*, I.L.R. 2024 M.P. 894

EVIDENCE ACT (1 OF 1872)

– **Section 3** – **See** – Panchayats (Election Petitions, Corrupt Practices and Disqualification for Membership) Rules, M.P. 1995, Rule 11: *Rabindra Kumar Upadhyay Vs. The Sub-Divisional Officer (Revenue)*, I.L.R. 2024 M.P. *118

– **Sections 3, 107 & 108** – Date of Presumed Death – Determination – Held – Army Court of Inquiry already accepted that "S" was missing since 25.07.2010 and thereafter he was untraceable – Considering the fact that "S" was not under any distress/disability nor was he in a situation wherefrom he could not contact his family members – He has not contacted his family members at all since 25.07.2010 – "S" must have died on 25.07.2010 or soon thereafter – Date of filing suit would not be considered as date of death – Date of death held to be 25.07.2010 – Appeal partly allowed: *Chhaya Vs. Public at Large*, I.L.R. 2024 M.P. 1845

– **Section 27** – Discovery of Fact – Held – Only that information which distinctly relates to the discovery of fact is admissible in evidence – Unless there is discovery of fact, statement u/s 27 has no evidentiary value: *Sonu Raghuvanshi Vs. State of M.P.*, I.L.R. 2024 M.P. 1074

– **Section 27** – Recovery from Open Place – Admissibility of Statement – Held – Apex Court concluded that there is nothing in section 27 which renders

statement of accused inadmissible if recovery of articles was made from any place which is “open or accessible to others” – It would not vitiate the evidence u/S 27 – Any object can be concealed in places which are open or accessible to others – Discovery of fact as referred in section 27 is not the object recovered but the fact embraces the place from where object is recovered and the knowledge of the accused as to it: *Anil Patel Vs. State of M.P., I.L.R. 2024 M.P. *79 (DB)*

– **Section 27** – Recovery of Weapon – Term “Open & Accessible to Others” – Held – Apex Court concluded that there is nothing in Section 27 which renders the statement of accused inadmissible if recovery of articles was made from any place which is “open & accessible to others”: *Ravi Kushwaha Vs. State of M.P., I.L.R. 2024 M.P. *143 (DB)*

– **Section 27** – See – Excise Act, M.P., 1915, Section 34(2): *Sonu Raghuvanshi Vs. State of M.P., I.L.R. 2024 M.P. 1074*

– **Section 27** – See – Narcotic Drugs and Psychotropic Substances Act, 1985, Section 8/18 & 29: *Bherulal Vs. State of M.P., I.L.R. 2024 M.P. *130*

– **Section 27** – See – Penal Code, 1860, Sections 302, 307, 324, 323 & 450: *Ravi Kushwaha Vs. State of M.P., I.L.R. 2024 M.P. *143 (DB)*

– **Section 32** – Dying Declaration Recorded by I.O. – Held – No principle of law laid down by Apex Court that dying declaration recorded by investigating officer will vitiate the declaration or cannot become basis of conviction – Dying declaration can be relied upon even if it was recorded by the I.O.: *Ravi Kushwaha Vs. State of M.P., I.L.R. 2024 M.P. *143 (DB)*

– **Section 32** – Multiple Dying Declaration – Held – There is no strait jacket formula for the purpose of accepting a dying declaration – There is no hard and fast rule as to which dying declaration will prevail – Court needs to examine the dying declarations carefully and then decide which dying declaration inspires confidence: *Sanjay Ahirwar Vs. State of M.P., I.L.R. 2024 M.P. *168 (DB)*

– **Section 32** – See – Penal Code, 1860, Section 302: *Rajeshwar @ Pappu Tiwari Vs. State of M.P., I.L.R. 2024 M.P. *142 (DB)*

– **Section 32** – See – Penal Code, 1860, Section 302: *Sanjay Ahirwar Vs. State of M.P., I.L.R. 2024 M.P. *168 (DB)*

– **Section 35** – See – Juvenile Justice (Care and Protection of Children) Act, 2015, Section 94: *Shakeel Vs. State of M.P., I.L.R. 2024 M.P. 1706*

– **Section 41** – See – Criminal Procedure Code, 1973, Section 125: *Vijendra Vs. Smt. Rekhabai @ Pappi, I.L.R. 2024 M.P. *268*

– **Section 59** – See – Civil Procedure Code, 1908, Order 13 Rule 4, Order 14 Rule 2, Order 17 Rule 1 & 2: *Union of India Vs. M/s. Man Transport Company, I.L.R. 2024 M.P. 2312*

– **Section 65-B** – See – Criminal Procedure Code, 1973, Section 125(4): *Ravi Kiran Arigela Vs. D. Asha, I.L.R. 2024 M.P. 1697*

– **Section 65B** – See – Penal Code, 1860, Sections 307, 364 & 201: *Akash Vs. State of M.P., I.L.R. 2024 M.P. *109*

– **Section 67 & 68** – See – Bhu-Rajaswa Sanhita (Bhu Abhilekhon main Namantaran) Niyam, 2018: *Vijay Singh Yadav Vs. Smt. Krishna Yadav, I.L.R. 2024 M.P. 1492*

– **Section 67 & 68** – Will – Burden of Proof – Jurisdiction of Revenue Authorities – Held – In order to take advantage of Will for getting his name mutated in revenue records, beneficiary must prove that Will was a genuine one and must remove all suspicious circumstances which are attached to it by examining at least one of the attesting witnesses as well as by proving the mental status of testator, willingness of testator, understanding of testator etc. – All these findings cannot be given by Revenue Authorities: *Vijay Singh Yadav Vs. Smt. Krishna Yadav, I.L.R. 2024 M.P. 1492*

– **Section 68** and Succession Act, Indian (39 of 1925), Section 63(c) – Registered Will – Onus of Proof – Held – Apex Court concluded that even if a Will is a registered one, same by itself would not mean that the statutory requirements of proving the Will need not be complied with – Propounder of Will must prove its execution by examining one or more attesting witnesses: *Vijay Singh Yadav Vs. Smt. Krishna Yadav, I.L.R. 2024 M.P. 1492*

– **Section 74** – Public Document – Held – Copy of a plaint or reply cannot be treated as a public document without formally proved: *Khursheed Bano (Smt.) Vs. Smt. Rukhsana Bano, I.L.R. 2024 M.P. 768*

– **Section 76** – See – Civil Procedure Code, 1908, Order 41 Rule 27: *Rampuri Thr. LRs. Mahendrapuri Vs. State of M.P., I.L.R. 2024 M.P. 2357*

– **Section 90** – Contents of Document – Jurisdiction of Court – Held – Section 90 of Evidence Act only applies about its execution when the document is genuine and original – It does not confer jurisdiction upon Court for drawing presumption in regard of the correctness of contents: *Nagar Parishad Kailaras Vs. M/s. Banmore Cements Works Limited, I.L.R. 2024 M.P. 2335*

– **Sections 101, 102 & 111** – See – Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955, Section 17(2): *Dainik Bhaskar Vs. State of M.P.*, *I.L.R. 2024 M.P. 2575*

– **Section 106** – See – Motor Vehicles Act, 1988, Section 173: *New India Assurance Com. Ltd. Vs. Shri Punam Chandra Kesharwani*, *I.L.R. 2024 M.P. 981*

– **Section 106** and Criminal Procedure Code, 1973 (2 of 1974), Section 313 – Human Blood on Seized Articles – Matching of Blood Group –Held – As per Section 106 of Evidence Act, it is the duty of appellant to disclose as to how and why human blood was found on his clothes which was worn by him at the time of incident and the knife which was recovered from him – Appellant was unable to rebut this fact in defence and he has not stated a single word about it in his statement u/S 313 Cr.P.C. – Even if blood group is not mentioned in FSL report, the same will not help the appellant – Conviction upheld: *Ganesh Balai Vs. State of M.P.*, *I.L.R. 2024 M.P. *252 (DB)*

– **Section 107 & 108** – Date of Presumed Death – Burden of Proof – Held – Apex Court concluded that exact time of death is not a matter of presumption but of evidence and the onus on proving that death lies upon the person who claims a right to the establishment of which that fact is essential: *Chhaya Vs. Public at Large*, *I.L.R. 2024 M.P. 1845*

– **Section 107 & 108** – Date of Presumed Death –Held – Provisions of Section 107 & 108 are very clear as to rising of presumption, but these sections do not throw light upon the date on which a person can be presumed to be dead – The moment it is established that a person has not been heard of for 7 years, the presumption death arises – Presumption under Evidence Act is confined only to factum of death but it is silent in respect of actual date of death or presumed death: *Chhaya Vs. Public at Large*, *I.L.R. 2024 M.P. 1845*

– **Section 112** – Presumption – DNA Test – Held – Direction for conducting DNA test is violative of privacy of a individual – Apex Court concluded that Courts in India cannot order blood test as a matter of course – There must be a strong *prima facie* case to the effect that husband had not access in order to dispel presumption arising u/S 112 of Evidence Act – Court must carefully examine as to what would be the consequences, whether it will have effect of branding a child as illegitimate child or mother as an unchaste women – Application for DNA Test rejected – Petition allowed: *Seenu Tripathi (Smt.) Vs. Saurabh Tripathi*, *I.L.R. 2024 M.P. 746*

– **Section 112** – See – Hindu Marriage Act, 1955, Section 11 & 12: *Rahul Sharma Vs. Smt. Reetu Sharma*, *I.L.R. 2024 M.P. 1392 (DB)*

– **Section 112** – See – Hindu Marriage Act, 1955, Section 12: *Rahul Sharma Vs. Smt. Reetu Sharma, I.L.R. 2024 M.P. 1392 (DB)*

– **Section 113-A** – See – Penal Code, 1860, Section 306: *Sumanbai @ Datta Bai Vs. State of M.P., I.L.R. 2024 M.P. 1397*

– **Section 113(A)** – See – Penal Code, 1860, Section 306 & 498-A: *Pawan @ Premchand Rathore Vs. State of M.P., I.L.R. 2024 M.P. *13*

– **Section 113-B** – See – Penal Code, 1860, Section 304-B & 498-A: *Lalit Kumar Vs. State of M.P., I.L.R. 2024 M.P. *56*

– **Section 114** – See – Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955, Section 17(2): *Dainik Bhaskar Vs. State of M.P., I.L.R. 2024 M.P. 2575*

– **Section 118** – Age of Witness – Held – Section 118 envisages that all persons shall be competent to testify unless Court considers that they are prevented from understanding the questions put to them or from giving rational answers to these questions, because of tender age, extreme old age, disease of mind or any other cause of same kind: *Ganesh Balai Vs. State of M.P., I.L.R. 2024 M.P. *252 (DB)*

– **Section 118** – Child Witness – Held – Evidence Act does not prescribe any particular age as a determinative factor to treat a witness to be competent one – A child of tender age can be allowed to testify if he has intellectual capacity to understand questions and give rational answers thereto – Evidence of child witness is not required to be rejected per se, but Court as a rule of prudence considers such evidence with close scrutiny and only on being convinced about the quality thereof and reliability, can record conviction based thereon: *Ganesh Balai Vs. State of M.P., I.L.R. 2024 M.P. *252 (DB)*

– **Section 134** – Non-examination of Injured – Held – As per Section 134, the quantity of witnesses are not important, what is important is the quality of their deposition – Non-examination of one injured person is not fatal to prosecution case: *Ravi Kushwaha Vs. State of M.P., I.L.R. 2024 M.P. *143 (DB)*

– **Section 134** – Number of Witnesses – Held – As per Section 134 of Evidence Act, no particular number of witnesses shall in any case be required for the proof of any fact: *Ramsnehi Vs. State of M.P., I.L.R. 2024 M.P. *166*

– **Section 134** – Sole Witness – Held – Even number of witnesses have not supported the prosecution case, conviction can be based on sole testimony of a single witness – It is quality of evidence to be considered while appreciating the available evidence: *Akram @ Akka Vs. State of M.P., I.L.R. 2024 M.P. *110*

– **Section 138** – See – Penal Code, 1860, Sections 302, 307, 324, 323, 147 & 148: *Ramsingh @ Rama Vs. State of M.P., I.L.R. 2024 M.P. *72 (DB)*

– **Section 165** – See – Criminal Procedure Code, 1973, Section 311: *Mukesh Pandey Vs. State of M.P., I.L.R. 2024 M.P. 2641*

EXCISE ACT, M.P. (2 OF 1915)

Excise Act, M.P. (2 of 1915) – Sections 2(4), 36-A & 36-B – Common Drinking House – Ingredients – Held – There is no whisper in the entire charge-sheet that drinking of liquor in the farmhouse was being done for profit/gain of any person including petitioners or the owner, occupier or the person having the care and management of such farmhouse – Essential ingredients for terming the farmhouse to be a common drinking house are wholly absent – Charge u/S 36-A & B of 1915 Act not made out – FIR and charge-sheet quashed – Application allowed: *Rajveer Singh Vs. State of M.P., I.L.R. 2024 M.P. *215*

SYNOPSIS: Section 34

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| <p>1. Bail</p> | <p>2. Confiscation of Vehicle</p> |
| <p>3. Interim Custody of Seized Vehicle</p> | <p>4. Memorandum of Co-Accused</p> |
| <p>5. Miscellaneous</p> | |

1. Bail

– **Section 34(1) & 34(2)** and Criminal Procedure Code, 1973 (2 of 1974), Section 439 – Bail – 63 bulk litres of liquor seized from applicant – Held – There is no previous conviction of applicant u/S 34(1) of 1915 Act, no offence may be made out u/S 34(2) of Excise Act – Bail granted – Application allowed: *Pawan Mankar Vs. State of M.P., I.L.R. 2024 M.P. 1727*

– **Section 34(2) & 59-A(II)** – Bail – Bar – Held – As per Section 59-A(II), bail shall not be granted in cases where accused was found in possession of 50 bulk litres of liquor without licence unless public prosecutor has been given an opportunity to oppose the bail application and if bail is opposed then Court shall not grant bail unless satisfied that there are reasonable grounds for believing that accused is not guilty – Section 59-A(II) does not create any bar on grant of bail, the only requirement is opportunity of hearing to be given to public prosecutor: *Pawan Mankar Vs. State of M.P., I.L.R. 2024 M.P. 1727*

2. Confiscation of Vehicle

– **Section 34 & 47-A(2)** – Confiscation – Powers of Collector – Held – Pendency of trial will not preclude the Collector from passing an order of confiscation – Petition dismissed: *Madduri Nagendra Vs. State of M.P., I.L.R. 2024 M.P. 83*

– **Section 34(2) & 47-A** – Acquittal – Confiscation of Vehicle – Held – For confiscation of vehicle, satisfaction of Collector is the paramount consideration – Nothing to show that order of confiscation would be subject to conviction of accused in criminal trial – Since order of confiscation and outcome of criminal trial are independent to each other, conviction is not *sine qua non* for directing confiscation of intoxicants, conveyance etc. – Merely because accused is acquitted would not *ipso facto* render the order of confiscation bad – Petition dismissed: *Radha Gupta Vs. State of M.P., I.L.R. 2024 M.P. 2224*

– **Sections 34(2), 47(d) & 47(A)(2)** – Confiscation of Vehicle – Words "Offence has been Committed" – Held – The words "offence has been committed" has to be interpreted that unless trial is concluded and offence u/S 34(2) is proved, the order for confiscation cannot be passed by Collector – Impugned order of confiscation of vehicle is quashed – Petitioner can file application for custody of vehicle before the Collector – Petition allowed: *Bhaskar @ Balkishan Sonone Vs. State of M.P., I.L.R. 2024 M.P. 424*

3. Interim Custody of Seized Vehicle

– **Sections 34(2), 47-A(3) & 47-D** and Criminal Procedure Code, 1973 (2 of 1974), Section 451 & 482 – Interim Custody of Seized Vehicle – Jurisdiction of Court – Held – If intimation is given to criminal Court u/S 47-A(3) about initiation of proceedings by Collector regarding confiscation then criminal Court has no jurisdiction to pass any order for interim custody of vehicle – No error in impugned orders – Application dismissed: *Altaf Vs. State of M.P., I.L.R. 2024 M.P. *78*

4. Memorandum of Co-Accused

– **Section 34(2)**, Evidence Act (1 of 1872), Section 27 and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Memorandum of Co-accused – Held – Applicant is neither named in secret information nor in FIR – No contraband/liquor recovered from his possession – Neither he is owner of seized vehicle nor he was present in the vehicle at the time of incident – He was made accused on basis of memorandum of co-accused u/S 27 of Evidence Act – Such disclosure statement is legally not admissible in evidence – FIR, charge-sheet and all

consequential proceedings against applicant quashed – Application allowed: *Sonu Raghuvanshi Vs. State of M.P., I.L.R. 2024 M.P. 1074*

5. Miscellaneous

– **Sections 34(2), 47-A(3) & 47-D** – See – Criminal Procedure Code, 1973, Section 451 & 457: *State of M.P. Vs. Jafar, I.L.R. 2024 M.P. 1693*

– **Sections 34(2), 47(B) & 47(C)** – See – Constitution – Article 226: *Bhaskar @ Balkishan Sonone Vs. State of M.P., I.L.R. 2024 M.P. 424*

EXPLOSIVE SUBSTANCES ACT (6 OF 1908)

– **Section 4** – See – Penal Code, 1860, Section 324: *Lalit Lajras Vs. State of M.P., I.L.R. 2024 M.P. 518*

– **Section 4 & 7** – Sanction – Held – Prosecution has not obtained sanction from competent authority and filed charge-sheet – This is a fundamental error which invalidated the framing of charge as it is without jurisdiction – In absence of sanction trial Court erred in convicting the accused u/S 4 of 1908 Act: *Lalit Lajras Vs. State of M.P., I.L.R. 2024 M.P. 518*

EX-SERVICEMEN (RESERVATION OF VACANCIES IN THE STATE CIVIL SERVICES AND POSTS CLASS III & IV) RULES, M.P. 1985

– **Rule 4(3)** – Recruitment – Applicability – Horizontal/Vertical Reservation – Held – There is neither any implied repeal nor any conflict in the scheme of examination and the Rule of 1985 – Rule of 1985 has no application for filling up of vacancy on basis of an open competitive examination and thus, the question of implied repeal will not be applicable – There cannot be any carry forward of post meant for horizontal reservation: *Paroksh Kumar Sen Vs. State of M.P., I.L.R. 2024 M.P. 2214*

F

FAMILY COURTS ACT (66 OF 1984)

– **Section 14** – Inadmissible Evidence – Consideration – Held – Family Court can take evidence on record, which otherwise would be irrelevant or inadmissible as per provision of Evidence Act, if the same assist it to deal with the dispute effectively: *Ravi Kiran Arigela Vs. D. Asha, I.L.R. 2024 M.P. 1697*

– **Section 14** – See – Criminal Procedure Code, 1973, Section 125(4): *Ravi Kiran Arigela Vs. D. Asha, I.L.R. 2024 M.P. 1697*

FINANCIAL CODE, M.P.

– **Rule 85** – Correction in Date of Birth – Held – As per Rule 85, date of birth recorded in service book can be corrected only on an objection raised within 6 months from date of recording the same: *Rajdev Mishra Vs. State of M.P., I.L.R. 2024 M.P. *263*

FOREIGN LIQUOR RULES, M.P., 1996

– **Rule 9** – See – Beer & Wine Rules, M.P., 2002, Rule 12: *Inbrew Beverages Pvt. Ltd. Vs. Excise Commissioner, I.L.R. 2024 M.P. *158*

FOREST ACT (16 OF 1927)

– **Sections 2(4)(b), 33(1)(b) & 52** and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Confiscation of Seized Vehicle – Held – Tractor trolley seized on allegation of illegal transportation of sand, which was subsequently confiscated – Defence of the applicants is that they were not aware of the misdeed of their driver – When applicants are the owner then they cannot run away from their liabilities – Illegal transportation of sand has to be dealt with all seriousness to avoid ecological imbalance – Tractor was not having any registration number, this also indicates guilty mind of applicants – Tractor trolley rightly confiscated – Application dismissed: *Ankush Pandey Vs. State of M.P., I.L.R. 2024 M.P. 1739*

FREEDOM OF RELIGION ACT, M.P. (5 OF 2021)

– **Section 5** – Sentence – Held – There is no criminal record of appellant – Appellant faced trial for one and half years – Sentence reduced from 2 years to one year with fine of Rs. 25,000 – Appeal partly allowed: *Reehan Vs. State of M.P., I.L.R. 2024 M.P. *123*

– **Section 5** – Testimony of Prosecutrix – Held – Testimony of Prosecutrix should be regarded as the one given by an injured witness of the case, which, in criminal jurisprudence carry great weightage – Such testimony comes with a in-built guarantee of truth, specially when it is a case of sexual assault which is also related to forcible change of religion – Such witness cannot spare the actual culprit in order to foist an innocent person – Testimony of such witness cannot be wiped out for trivial contradictions – Conviction upheld: *Reehan Vs. State of M.P., I.L.R. 2024 M.P. *123*

FUNDAMENTAL RULE, M.P.

– **Rule 2 & 3** – See – Civil Services (Pension) Rules, M.P., 1976, Rules 2(e), (f) & (g): *Tribal Welfare Teachers Association Vs. State of M.P.*, I.L.R. 2024 M.P. 1980

– **Rule 9(10)** – Appointment & Joining – Held – The M.P. Fundamental Rules also treat joining as different from appointment – As per Rule 9(10), joining time means the time allowed to a government servant to join a new post or to travel to or from a station to which he is posted: *Harsha Naugarhiya (Smt.) Vs. State of M.P.*, I.L.R. 2024 M.P. 2271

– **Rule 22-A** – See – Government Servants (Temporary and Quasi-Permanent Service) Rules, M.P. 1960, Rule 3: *Sher Bahdur Singh Chouhan Vs. State of M.P.*, I.L.R. 2024 M.P. *187

– **Rule 56(1-A), Explanation** – See – Panchayat Adhyapak Samvarg (Employment & Conditions of Services) Rules, M.P., 2008, Rule 8(d): *Ramkumar Charmakar Vs. State of M.P.*, I.L.R. 2024 M.P. *36

G

GENERAL CLAUSES ACT (10 OF 1897)

– **Section 27** and High Court of Madhya Pradesh Rules, 2008, Rule 11(1) Chapter XV – Deemed Service of Notice – Held – In this application, notice was sent to complainant by RAD, however service report has not been returned back – In light of provisions of Section 27 of General Clauses Act and Rule 11(1) Chapter XV of High Court Rules, complainant is treated to be deemed served: *Rajesh Batra (Dr.) Vs. State of M.P.*, I.L.R. 2024 M.P. 1911

GOVANSH VADH PRATISHEDH ADHINIYAM, M.P.

(6 OF 2004)

– **Section 4/9 & 6/9** – See – Criminal Procedure Code, 1973, Sections 451, 457 & 482: *Mo. Imran Vs. State of M.P.*, I.L.R. 2024 M.P. 366

GOVERNMENT SERVANTS (TEMPORARY AND QUASI-PERMANENT SERVICE) RULES, M.P. 1960

– **Rule 3**, Fundamental Rules, Rule 22-A and Constitution – Article 14 – Reduction of Pension – Benefit of Pay Protection – Held – Petitioner attained quasi-permanent status by putting more than 3 years of service as Craft Teacher in

temporary post before joining on post of Commercial Tax Inspector – Post of Craft Teacher and Commercial Tax Inspector were in same pay scale – Petitioner’s initial pay in Commercial Tax department should not be less than the pay other than special pay, personal pay or emoluments which he drew on the last such occasion – Authorities were not justified in refusing the benefit of pay protection to petitioner – Impugned decision to withdraw benefit of pay quashed – Petition allowed: *Sher Bahdur Singh Chouhan Vs. State of M.P., I.L.R. 2024 M.P. *187*

GRIHA NIRMAN MANDAL ADHINIYAM, M.P., 1972

(3 OF 1973)

– **Sections 4, 33, 34, 49(1) & 98** – Land Acquisition – Approval of Scheme – Held – As per Section 98, it is mandatory for Board to comply with directions given by State government – Circular of Housing Board stipulates that as per Section 49(1), approval of Scheme from Board is mandatory before applying for land acquisition – Executive Engineer in utter violation of the order has made requisition for land acquisition: *Satish Kumar Vs. State of M.P., I.L.R. 2024 M.P. *145 (DB)*

– **Section 33 & 34** – See – Land Acquisition Act, 1894, Section 4 & 6: *Satish Kumar Vs. State of M.P., I.L.R. 2024 M.P. *145 (DB)*

GUARDIANS AND WARDS ACT (8 OF 1890)

– **Section 10** and Hindu Minority and Guardianship Act (32 of 1956), Sections 2, 6, 9 & 13 – Custody of Minor Child – Held – Petitioner is biological father of the child and his natural guardian u/S 9 of 1956 Act – Petitioner father is educated man and is gainfully employed in a job, he has his own 2 houses and having a good financial status with sufficient bank balance and his parents are also residing with him – Respondents, the maternal grandparents are illiterate, old aged labour persons not having sound financial and social status – Respondents directed to handover custody of child to petitioner – Respondents will have visiting rights – Petition allowed: *Umesh Kaithwas Vs. Rajendra Borasi, I.L.R. 2024 M.P. 2083*

H

HIGH COURT OF MADHYA PRADESH RULES, 2008

– **Chapter II, Rule 30 & 30-B** – See – Constitution – Article 226 & 227: *Hiralal Vs. Lakshmibai, I.L.R. 2024 M.P. 463*

– **Rule 11(1) Chapter XV** – See – General Clauses Act, 1897, Section 27: *Rajesh Batra (Dr.) Vs. State of M.P., I.L.R. 2024 M.P. 1911*

– **Rule 48** – See – Criminal Procedure Code, 1973, Section 397: *Sanjay Nagayach Vs. State of M.P., I.L.R. 2024 M.P. 1688*

HINDU ADOPTIONS AND MAINTENANCE ACT (78 OF 1956)

– **Section 11** – Compassionate Appointment – Conditions of Valid Adoption – Held – Handing over and taking over the actual custody of child is essential – In the adoption deed it is not mentioned that on what date petitioner was adopted and when the actual custody of petitioner was handed over by his biological parents – No documents on record like marksheet etc. to show that name of deceased employee was recorded as father of petitioner – Adoption deed is not valid – Petitioner not entitled for compassionate appointment – Petition dismissed: *Ram Pratap Vs. State of M.P., I.L.R. 2024 M.P. 1281*

HINDU LAW

– **Marriage** – Agreement – Held – Under Hindu Law Marriage is not a contract and marriage cannot be performed by executing the agreement of marriage: *Daulat Singh Markam Vs. State of M.P., I.L.R. 2024 M.P. 1267*

HINDU MARRIAGE ACT (25 OF 1955)

– **Section 5(iii) & 11** – See – Criminal Procedure Code, 1973, Section 125: *Kewalsingh Vs. Durgabai, I.L.R. 2024 M.P. *210*

– **Sections 7, 13 & 19** – Ceremonies – Territorial Jurisdiction – Saptapadi is the ceremony where marriage becomes complete and it was performed at Ajamgarh (U.P.), thus marriage was solemnized at Ajamgarh and prior or subsequent ceremonies performed at Bhopal are not material – It is not the case of appellant that lastly both parties resided at Bhopal – As per Section 19, Bhopal Court has no jurisdiction – Appeal dismissed: *Niklesh Barwe Vs. Sudha Jaiswal, I.L.R. 2024 M.P. 298 (DB)*

– **Section 9** – Wife Living Separately – Sufficient Cause – Held – Witnesses of plaintiff husband supported his case in *toto* and submitted that after 6 months of marriage, wife left the house of husband and despite various efforts she did not come back to plaintiff to live jointly and without any sufficient cause she is living separately – No rebuttal evidence adduced by wife – Allegation of cruelty against husband is not proved by wife – Decree of restitution of conjugal rights rightly passed by trial court – Appeal dismissed: *Trapti (Smt.) Vs. Anil Kumar, I.L.R. 2024 M.P. 2353 (DB)*

– **Section 11** – Void Marriage –Held – No evidence on record to prove that prior to marriage, respondent wife was already married to one Vivek – There is no proof that the consent of appellant husband was taken by deceiving and applying fraud upon him – Marriage cannot be said to be a void marriage: *Rahul Sharma Vs. Smt. Reetu Sharma, I.L.R. 2024 M.P. 1392 (DB)*

– **Section 11 & 12** – Void/Voidable Marriage – Held – It is alleged that prior to marriage, wife was already married to one Vivek and from him she became pregnant and after 7 months of present marriage with appellant, she gave birth to a boy – Document filed by appellant husband is neither a certificate of the primary health centre nor it has been proved by producing any birth register nor any doctor was got examined – Merely stating that child was born within 7 months of marriage would not indicate that wife was already pregnant before marriage – It is not established that child was born out of cohabitation of respondent and the said Vivek – Appeal dismissed: *Rahul Sharma Vs. Smt. Reetu Sharma, I.L.R. 2024 M.P. 1392 (DB)*

– **Section 11 & 12** and Evidence Act (1 of 1872), Section 112 – Legitimacy of Child – Presumption –Held – Once the validity of marriage is proved, there is strong presumption about the legitimacy of the children born from the wedlock – This presumption can only be displaced by a strong preponderance of evidence and not by a mere balance of probabilities – Person who says that child is illegitimate, has the burden of proving it – Over disputes of maternity, this section has no application: *Rahul Sharma Vs. Smt. Reetu Sharma, I.L.R. 2024 M.P. 1392 (DB)*

– **Section 12** and Evidence Act (1 of 1872), Section 112 – Voidable Marriage – Burden of Proof – Held – The fact that the child was legitimate or illegitimate, the burden lie upon the appellant husband which has not been discharged by him by adducing proper evidence – Merely stating that he had no physical relation with wife cannot be accepted – It cannot be said that wife was pregnant from some other man at the time of marriage which has rendered the marriage voidable u/S 12 of the Act: *Rahul Sharma Vs. Smt. Reetu Sharma, I.L.R. 2024 M.P. 1392 (DB)*

SYNOPSIS: Section 13

- | | |
|---|--------------------------------|
| 1. Cross-examination of Wife | 2. Cruelty |
| 3. Desertion by Wife | 4. Ground of Settlement |
| 5. Irretrievable Breakdown of Marriage | 6. Love Affair |
| 7. Mental Cruelty | 8. Subsequent Events |

1. Cross-examination of Wife

– **Section 13** – Cross-Examination of Wife – Relevant Questions – In cross-examination wife was asked that why husband used to assault her whereby trial Court disallowed the question – Held – No statutory provision brought to the notice of this Court which prohibits the husband to ask a question, whether or not that question is directly connected with previous question or it is independent in nature – Note put by trial Court disallowing the question is also set aside: *Sumit Vs. Smt. Priya Balecha, I.L.R. 2024 M.P. 743*

– **Section 13** and Civil Procedure Code (5 of 1908), Order 8 Rule 1A(4) – Documents for Cross-Examination – Held – A document filed for purpose of cross-examining a plaintiff's witness can be taken into account and used for his/her cross-examination – Trial Court mechanically rejected the application and put the note below the question asked – Said note is set aside – Court below directed to proceed from relevant stage – Petition disposed: *Sumit Vs. Smt. Priya Balecha, I.L.R. 2024 M.P. 743*

2. Cruelty

– **Section 13(1)(i-a)** – Cruelty – Held – Cruelty can never be defined with exactitude – What is cruelty will depend upon facts and circumstances of each case: *Karandeep Singh Chawla (Shri) Vs. Smt. Gurshish Karandeep Chawla, I.L.R. 2024 M.P. 1601 (DB)*

– **Section 13(1)(i-a)** – Cruelty – Lodging False Complaints by Wife – Held – Wife knowingly and intentionally filed false complaint against husband and his family members calculated to embarrass and harass him and his parents – Husband and his family members are acquitted from criminal Court – Such conduct of wife unquestionably constitutes cruelty – Impugned judgment set aside – Divorce decree granted in favour of husband – Appeal allowed: *Prashant Kumar Jha Vs. Smt. Sadhna Jha, I.L.R. 2024 M.P. 1000 (DB)*

– **Section 13(1)(ia)** – Cruelty by Wife – Held – Husband is a Judicial Officer – Wife harassed her husband by doubting his character, blaming him of being drunkard, womanizer, a person of loose character, assaulting him, lodging criminal cases for demand of dowry, filed writ petitions and also made complaints to his higher authorities for disciplinary action so that he may be terminated from service and sent to jail – Above acts of wife looking to status and society of parties constitute cruelty – Long period has lapsed since 2012 – Divorce decree granted – Appeal allowed: *Avinash Kumar Tripathi Vs. Smt. Priyanka Tripathi, I.L.R. 2024 M.P. 475 (DB)*

3. Desertion by Wife

– **Section 13** – Desertion by Wife – Held – Appellant himself pleaded that he reached Bhopal on 23.07.2006 and thereafter left on 28.07.2006 to USA – Wife was left at matrimonial house by appellant and he has not made any arrangement for taking her to USA – As per FIR, wife was subjected to cruelty by husband and his parents and they tried to kill her, thus she left the matrimonial house – It cannot be said that she deserted the husband without any reason – Case of desertion by wife not made out: *Sudepto Saha Vs. Moumita Saha, I.L.R. 2024 M.P. 490 (DB)*

– **Section 13(1)(i-b)** – Desertion by Wife – Animus Deserendi – Held – *Animus deserendi* is apparent from fact that wife lodged a complaint under Domestic Violence Act wherein she prayed for issuance of direction to husband to live with her separately in Jabalpur, which proves that she had no intention to go back to her matrimonial home though husband issued notice for restitution – Wife never filed any application for restitution of conjugal rights – Wife left matrimonial home without reasonable cause and without consent of her husband or against the will of her spouse without any reasonable cause and living separately since last more than 9 years – Husband entitled and is granted divorce on ground of desertion u/S 13(1)(i-b) of 1955 Act – Appeal allowed: *Karandeep Singh Chawla (Shri) Vs. Smt. Gurshish Karandeep Chawla, I.L.R. 2024 M.P. 1601 (DB)*

– **Section 13(1)(i-b)** – Desertion by Wife – Reasonable Cause – Held – Wife deserted husband just after 5 months of marriage only for living in Jabalpur and lodged complaint under Domestic Violence Act whereas husband issued notice for restitution – Wife did not react on notice and filed cases one after the another – Family Court observed that there was no serious dispute between parties when she left matrimonial home – Wife started litigation with a prayer for issuance of direction to husband to live with her in Jabalpur, meaning thereby that wife left matrimonial home without there being any reasonable cause: *Karandeep Singh Chawla (Shri) Vs. Smt. Gurshish Karandeep Chawla, I.L.R. 2024 M.P. 1601 (DB)*

4. Ground of Settlement

– **Section 13** – Ground of Settlement – Held – Husband pleaded that there was a settlement between him and his wife and wife signed the divorce petition and he paid Rs.10 lacs to her as permanent alimony – No petition was filed – Decree of divorce can be granted only in a situation when both parties are present before the Court and they confirm the settlement and jointly prays for decree of divorce by mutual consent – In absence thereof, no decree of divorce can be granted only on pleading of settlement: *Sudepto Saha Vs. Moumita Saha, I.L.R. 2024 M.P. 490 (DB)*

5. Irretrievable Breakdown of Marriage

– **Section 13** – Irretrievable Breakdown of Marriage – Held – Decree of divorce can be granted on any of the grounds enumerated in section 13 – Section 13 does not provide any ground for grant of decree of divorce in a situation of irretrievable breakdown of marriage: *Sudepto Saha Vs. Moumita Saha, I.L.R. 2024 M.P. 490 (DB)*

6. Love Affair

– **Section 13** – Love Affair of Wife – Held – It is not the case of husband that wife had made physical relation with any other person than her husband – By simply leveling allegation that wife was having a boy friend, no decree of divorce can be granted: *Sudepto Saha Vs. Moumita Saha, I.L.R. 2024 M.P. 490 (DB)*

7. Mental Cruelty

– **Section 13(1)** – Mental Cruelty – Conviction & Sentence – Held – Although under the 1955 Act, there is no such provision for grant of divorce on account of conviction of husband or wife, for life imprisonment, but there is provision of grant of divorce on ground of mental cruelty – Conviction of husband u/S 302 IPC and sentence of life imprisonment amounts to mental cruelty towards the wife which entails her getting the divorce from her husband – Appeal allowed: *Deepa Tomar (Smt.) Vs. Ajay @ Leeladhar Singh Tomar, I.L.R. 2024 M.P. *250 (DB)*

– **Section 13(1)(i-a)** – Mental Cruelty – Held – There can never be any straight jacket formula or fixed parameters for determining mental cruelty in matrimonial matters – The prudent and appropriate way to adjudicate the case would be to evaluate it on its peculiar facts and circumstances while taking relevant factors in consideration: *Sudepto Saha Vs. Moumita Saha, I.L.R. 2024 M.P. 490 (DB)*

– **Section 13(1)(i-a)** – Mental Cruelty – Held – Wife tried to rope all family members & close relatives of husband and lodged FIRs against them, filed complaint under Domestic Violence Act making reckless and defamatory allegations, lowering their reputation in society – Later, younger brothers, uncles and aunty of husband were discharged by Courts – She leveled allegations of character against her minor brother-in-law wherein proceedings were dropped by Court – Wife living separately for more than 9 years and she tried to keep away husband from minor daughter and tutored her to speak against her own father – This definitely caused mental cruelty to husband – Husband entitled and is granted divorce on ground of mental cruelty u/S 13(1)(i-a) of 1955 Act: *Karandeep Singh Chawla (Shri) Vs. Smt. Gurshish Karandeep Chawla, I.L.R. 2024 M.P. 1601 (DB)*

– **Section 13(1)(i-a)** – Mental Cruelty – Long Period of Continuous Separation – Held – Apex Court concluded that if there is a long period of continuous separation, it may be concluded that matrimonial bond is beyond repair and marriage becomes affliction though supported by a legal tie – In such like situations, it may be linked to mental cruelty – In present case, wife is living separately since more than 9 years without any reasonable cause – This may be considered as a cause for reaching to the conclusion of mental cruelty: *Karandeep Singh Chawla (Shri) Vs. Smt. Gurshish Karandeep Chawla, I.L.R. 2024 M.P. 1601 (DB)*

– **Section 13(1)(i-a)** – Mental Cruelty by Wife – Held – Unilateral refusal to have sexual intercourse for considerable period without any physical incapacity or valid reason can amount to mental cruelty – Wife denied consummation of marriage from the date of marriage and marriage was never consummated – This fact is unrebutted as wife never appeared in the case despite notice – Apex Court concluded that non-appearance of wife in the case filed by husband itself amounts to cruelty – Divorce decree granted in favour of husband – Appeal allowed: *Sudepto Saha Vs. Moumita Saha, I.L.R. 2024 M.P. 490 (DB)*

8. Subsequent Events

– **Section 13(1)(ia)** – Divorce Case – Subsequent Events – Held – Events subsequent to filing of divorce petition can be taken into consideration: *Avinash Kumar Tripathi Vs. Smt. Priyanka Tripathi, I.L.R. 2024 M.P. 475 (DB)*

– **Section 13(1)(i-a)** and Civil Procedure Code (5 of 1908), Order 41 Rule 27 – Subsequent Event – Consideration – Held – Judgment of acquittal of husband and his family members is a subsequent event which can be considered by this Court: *Prashant Kumar Jha Vs. Smt. Sadhna Jha, I.L.R. 2024 M.P. 1000 (DB)*

– **Section 13-B** – Video Conferencing – Held – Petitioner is permanent resident of U.S.A. and due to her visa conditions she is not able to come to Indore for personally recording her evidence – Exceptional circumstances has been pointed out – Family Court directed not to insist upon petitioner's presence before Court and for reconciliation proceedings would adopt any technology available for video conferencing – Petition allowed: *Rucha Vs. Kush Dewoo Manjrekar, I.L.R. 2024 M.P. 961*

– **Section 13-B(2)** – Statutory Period of Six Months – Held – There is no provision u/S 13-B(2) for waiving of statutory period of 6 months – Apex Court concluded that in appropriate case after considering and satisfying the requirement of waiving the cooling period, Court dealing with the matter may accept the prayer of parties to waive statutory period of 6 months: *Archana Kanojiya Vs. Vijay Kanojiya, I.L.R. 2024 M.P. 1838 (DB)*

– **Section 13-B(2)** – Statutory Period of Six Months – Jurisdiction of Court – Held – The jurisdiction of Court to pass a decree of divorce by mutual consent is limited, Court has to pass a decree upon satisfaction of requirement of law and after expiry of specified waiting period – If Court is permitted to waive the statutory cooling/waiting period, it will amount to depriving the parties from exercising his/her option to withdraw consent, thus it cannot be permitted: *Archana Kanojiya Vs. Vijay Kanojiya, I.L.R. 2024 M.P. 1838 (DB)*

– **Section 13-B(2)** – Statutory Period of Six Months – Power to Waive off – Held – Application for divorce with mutual consent filed on 01.11.2022, statements at first motion were recorded on same day itself – Mediation held on 15.11.2022 – Court on its own, waiving off the statutory period of 6 months fixed the case for second motion on 13.01.2023, recorded statements of parties and on same day passed the judgment and decree of divorce – Fixing of case at an early date without any application/request of parties amounts to violation of provision of law – Judgment and decree set aside – Appeal allowed: *Archana Kanojiya Vs. Vijay Kanojiya, I.L.R. 2024 M.P. 1838 (DB)*

- – **Section 23(1)(b)** – Withdrawal of Earlier Divorce Petition – Effect – Held – Section 23(1)(b) prohibits grant of decree of divorce on ground of cruelty, only if petitioner in any manner condoned the cruelty – Withdrawal of earlier petition without liberty does not amount to condonation of cruelty and effect of such withdrawal would be to the extent of non-consideration of allegations of cruelty leveled by husband committed during stay of wife in matrimonial home as alleged in earlier petition – In present petition/appeal only subsequent event of cruelty and desertion is to be considered: *Karandeep Singh Chawla (Shri) Vs. Smt. Gurshish Karandeep Chawla, I.L.R. 2024 M.P. 1601 (DB)*

– **Section 25** – Permanent Alimony – Demand – Separate Application – Held – Atleast there must be a demand of permanent alimony by wife, that may be either in written statement or by separate application – In absence thereof, trial Court would not have granted permanent alimony – Further, Court below without discussing/ascertaining income, liability, employment and financial status of husband, granted Rs. 4 lacs as permanent alimony – Grant of permanent alimony is quashed – Decree modified accordingly: *Kuldeep Rai Vs. Smt. Rita, I.L.R. 2024 M.P. *116 (DB)*

HINDU MINORITY AND GUARDIANSHIP ACT (32 OF 1956)

– **Sections 2, 6, 9 & 13** – See – Guardians and Wards Act, 1890, Section 10: *Umesh Kaithwas Vs. Rajendra Borasi, I.L.R. 2024 M.P. 2083*

HINDU SUCCESSION ACT (30 OF 1956)

– **Sections 14(1), 14(2), 15 & 16** – Property of Female Hindu – Held – Smt. “R” was allotted certain joint family property by way of her share in partition – She had a pre-existing right/share in property – She acquired her property not by way of a restricted estate but by way of absolute ownership – Upon her death the same would not devolve as per the conditions stipulated in partition deed but would devolve by way of succession u/S 15 & 16 of 1956 Act, since no will or any other testamentary instrument was executed by her during her lifetime – No error in findings of lower appellate Court – Appeal dismissed: *Jagdish Chandra Vs. Chandrakant, I.L.R. 2024 M.P. 761*

– **Section 14(2)** – Property of Female Hindu – Held – When property is acquired by Hindu female at a partition or in lieu of maintenance, it is in virtue of pre-existing right and such acquisition would not be within scope and ambit of Section 14(2) of the Act even if the instrument allotting the property prescribes a restricted estate in the property – She would be deemed to have the full ownership: *Jagdish Chandra Vs. Chandrakant, I.L.R. 2024 M.P. 761*

HOUSING AND INFRASTRUCTURE DEVELOPMENT BOARD (ORGANIZATIONAL STRUCTURE AND RECRUITMENT) REGULATIONS, M.P., 2016

– **Schedule IV-A** – Equivalent Degree – Held – Petitioners do not have the degree of MBA as required according to advertisement and rules – Neither in advertisement nor in service rules there is any provision for acceptance of an equivalent degree like MBA for the post in question – It is neither in the hands of MPPSC nor the Housing Board to amend the advertisement and rules – Petition dismissed: *Ateesh Rai Vs. State of M.P., I.L.R. 2024 M.P. 606*

I

IMMORAL TRAFFIC (PREVENTION) ACT (104 OF 1956)

– **Section 5 & 6** – Procurement of Girl – Held – There is a specific allegation that the girl was procured by applicant for purpose of prostitution – If the word "procure" is considered in light of the context in which it has been made in Section 5 of 1956 Act, it has to be held that even the customer who was found on the spot is liable to be prosecuted u/S 5 of the Act – Charges rightly framed – Application dismissed: *Rishabh Khare Vs. State of M.P., I.L.R. 2024 M.P. 1935*

INCOME TAX ACT (43 OF 1961)

– **Sections 2(31), 147 & 148A(d)** – Reassessment – Non-Existing Entity – Held – Reassessment proceedings initiated against petitioner for assessment year 2018–19 which had indeed ceased to exist with effect from 01.04.17 based upon amalgamation, whereafter, it cannot be regarded as a person u/S 2(31) – Mere activation of PAN does not give right to respondent to issue notice – Apex Court concluded that if company has ceased to exist as a result of approved amalgamation, notice issued by its name would be fundamentally illegal and without jurisdiction – Impugned notices and orders quashed – Petitions allowed: *Jhansi Baran Pathways Pvt. Ltd. Vs. Office of the Income Tax Officer, I.L.R. 2024 M.P. 90 (DB)*

– **Section 28 & 143(3)** – Assessment – Income from House Property/Business & Profession – Held – The main object of the assessee and from which income has been derived by it, is the business of constructing, owning, acquiring, developing, managing, running, hiring, letting out, selling out or leasing multiplex, cineplex, cinema hall, theatre, shop, shopping mall etc. – It is not a case that sub-leasing of the premises was only a part of its predominant object of assessee – It was rightly held that such income is liable to be categorized as “income from business” – No substantial question of law is involved – Appeal dismissed: *The Principal Commissioner of Income Tax Vs. M/s. M.P. Entertainment and Developers Pvt. Ltd., I.L.R. 2024 M.P. 2387 (DB)*

– **Sections 147, 148, 148A(b), 148A(d) & 159** – Reassessment – Notice against Dead Person – Held – Notice issued to a dead person for reopening of assessment of a dead person is null and void and is not enforceable in eyes of law – Notice and all consequential proceedings arising therefrom in the name of deceased assessee are not sustainable and thus quashed – Petition allowed: *Meet Lalwani Vs. Income Tax Officer, I.L.R. 2024 M.P. *62 (DB)*

– **Section 148 & 148A(d)** and Constitution – Article 226 – Escaped Assessment – Show Cause Notice – Opportunity of Hearing – Held – The question of going into the veracity and genuineness of the material/evidence forming opinion of the Assessing Officer suggesting that income of petitioner has escaped assessment ought not to be gone into while exercising writ jurisdiction under Article 226 of Constitution – Writ Court should not interfere at such premature stage when proceedings are yet to be concluded by statutory authorities – Petitioner may avail alternate statutory remedy – Petition dismissed: *Laxminarayan Patidar Vs. Income Tax Officer, I.L.R. 2024 M.P. 614 (DB)*

– **Section 148A** – Show Cause Notice – Enquiry – Held – Inquiry contemplated in Section 148A cannot be interpreted to mean a detailed inquiry

where both sides can seek and adduce evidence/ material (documentary/ocular) – Detailed inquiry is not required: *Laxminarayan Patidar Vs. Income Tax Officer, I.L.R. 2024 M.P. 614 (DB)*

– **Section 246** and Constitution – Article 226 – Alternative Remedy – Held – When order is without jurisdiction and passed in blatant exercise of powers and the same is against principle of natural justice, then question of availability of alternative remedy does not come in way of exercising jurisdiction under Article 226 of Constitution: *Jhansi Baran Pathways Pvt. Ltd. Vs. Office of the Income Tax Officer, I.L.R. 2024 M.P. 90 (DB)*

– **Section 260A** – Substantial Question of Law – Findings of Fact – Held – Appellant has raised all question of facts and have disputed the fact findings of Tribunal in the garb of substantial questions of law which is not permitted by the statute itself – Tribunal being a final fact finding authority, in absence of demonstrated perversity in its finding, no interference required – No substantial question of law arises – Appeal dismissed: *Pr. Commissioner of Income Tax Vs. Surya Infracore P. Ltd., I.L.R. 2024 M.P. *182 (DB)*

– **Section 260A** – Substantial Question of Law – Held – A finding of fact may give rise to a substantial question of law when the findings are based on no evidence and/or while arriving at such finding, relevant admissible evidence is not been considered or inadmissible evidence has been considered or legal principles is not applied in appreciating the evidence or when the evidence has been misread: *Pr. Commissioner of Income Tax Vs. Surya Infracore P. Ltd., I.L.R. 2024 M.P. *182 (DB)*

INCOME TAX RULES, 1962

– **Rule 28-AA** – Procedure – “Satisfaction”– Held – The “satisfaction” needs to be recorded/determined by A.O. after taking into consideration the four factors mentioned in Rule 28-AA(2) – It is not the subjective satisfaction of A.O. but an objective satisfaction which must be based on clauses (i) to (iv) of Rule 28-AA(2) – Impugned orders passed in clear violation of Rule 28-AA without considering the relevant factors – Decision making process is faulty and runs contrary to requirement of law and is thus set aside – Mater remitted back to R-2 to pass afresh detailed and speaking order – Petition disposed: *Goel Cargo Pvt. Ltd. Vs. Commissioner of Income Tax (TDS), I.L.R. 2024 M.P. *155 (DB)*

INDORE DEVELOPMENT PLAN 2021

– **Clause 6.20 & 6.3** – See – Bhumi Vikas Rules, M.P., 2012, Rule 12 & 103: *Ritika Hasanandani (Smt.) Vs. Commissioner Indore Municipal Corporation, I.L.R. 2024 M.P. 899*

– **Clause 6.20 & 6.3** – See – Nagar Tatha Gram Nivesh Adhinyam, M.P., 1973, Section 16: *Ritika Hasanandani (Smt.) Vs. Commissioner Indore Municipal Corporation, I.L.R. 2024 M.P. 899*

– **See** – Nagar Tatha Gram Nivesh Adhinyam, M.P., 1973, Sections 29, 30(1)(c) & 32: *Oceanic Developers Pvt. Ltd. Vs. State of M.P., I.L.R. 2024 M.P. 1511*

INDUSTRIAL DISPUTES ACT (14 OF 1947)

SYNOPSIS

- | | |
|---------------------------------------|--------------------------------|
| 1. Compensation in Cash | 2. Departmental Enquiry |
| 3. Interest on Delayed Payment | 4. Limitation |
| 5. Termination/Retrenchment | 6. Miscellaneous |

1. Compensation in Cash

– **Section 25-F(b)** – Compensation in Cash – Held – Apex Court concluded that whenever service of an employee is terminated, he should not be called to collect the compensation on any future date and if the order of termination is either verbal or in writing, then it should be accompanied by compensation – It is nowhere held by the Apex Court that compensation should be paid in cash and not by cheque – Compensation alongwith one month salary is paid to respondent through cheque – Provision of Section 25(F)(b) duly complied – Impugned order quashed – Petition allowed: *Commissioner M.P. Housing Board Vs. Haricharan, I.L.R. 2024 M.P. 2603*

2. Departmental Enquiry

– **Section 10(8)** – Departmental Enquiry – Death of Employee – Effect – Held – Apex Court concluded that if workman dies in a pending enquiry the reference does not abate and Tribunal does not become *functus officio* – Enquiry may be continued and at the same time one more opportunity is granted to petitioner to cross-examine the witnesses produced by management – Petition partly allowed: *Shiv Das (Deceased) By His LRs. Vs. South Eastern Coalfield Ltd., I.L.R. 2024 M.P. *16*

3. Interest on Delayed Payment

– **Section 2(k) & 7, Second & Third Schedule** – Arrears of Increments & Pay Fixation – Interest on Delayed Payment – Held – Payment of revised salary and increments is a customary privilege to an employee from the date when it is made affective – Delay in payment will definitely comes within provisions contained in

clause 4 & 6 to Second Schedule – Petitioners entitled to payment of interest @ 9% on amount of delayed payment of arrears of increments and pay fixation – Respondents will be entitled to recover the same from delinquent employee responsible for it – Impugned order set aside – Petition allowed: *Kailash Sharma Vs. Mukhya Mahaprabandhak, I.L.R. 2024 M.P. 1147*

4. Limitation

– **Section 33(C)(2)** – Limitation – Held – There is no provision for limitation in maintaining application u/S 33(C)(2) of the Act – When there is no provision for limitation, Court can refuse or mould the relief by taking into consideration the unexplained delay in moving such application – Respondent took 19 years to approach Labour Court for application u/S 33(C)(2) only after attaining age of superannuation – Labour Court should have refused to grant relief – Order passed by Labour Court set aside – Petition allowed: *The Secretary, Krishi Upaj Mandi Samiti Vs. Shatrudaman Singh, I.L.R. 2024 M.P. *101*

5. Termination/Retrenchment

– **Section 11A** – Termination – Indiscipline – Assault to Employer – Held – Conduct of workmen comes under category of indiscipline which is a major misconduct, irrespective of the fact that minor injuries were caused by them – It is a matter of defamation, civil or criminal, of the reputation and dignity of those executives of employers who were attacked by these workmen – Where the charges of assault and causing injury is proved, direction of reinstatement is not justified – Amount of Rs.2.5 lacs directed to be paid in lieu of reinstatement with 50% backwages – Impugned award modified: *D and H Secheron Electrodes Pvt. Ltd. Vs. Dinesh, I.L.R. 2024 M.P. 2068*

– **Section 25-F** and Contract Labour (Regulation and Abolition) Act (37 of 1970) – Retrenchment – Employer–Employee Relationship – Held – Respondents admitted that it was the contractor under whom they were working – Termination of the workmen was also done by the contractor and not by petitioner – No employer–employee relationship between petitioner and respondents – Tribunal erred in treating the removal of respondents as retrenchment – Directing respondents absorption in petitioner establishment is contrary to law – Impugned order set aside – Petition allowed: *Food Corporation of India Vs. Preetam Singh Kirar, I.L.R. 2024 M.P. *31*

– **Section 33 & 33-A** – Maintainability – Held – Case was pending before the Labour Court and during such pendency, without obtaining any permission from the Court, employer has terminated the services of employee – Employee was having right to approach labour Court u/S 33 & 33-A of 1947 Act complaining that service

condition has been changed without obtaining leave or permission of Court – Labour Court has power to entertain and decide the issue – Application was maintainable: *Birla Corporation Limited (M/s.) Vs. Algoo Rai, I.L.R. 2024 M.P. *225*

6. Miscellaneous

– **Section 10 & 12** – See – Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955, Section 17(2): *Dainik Bhaskar Vs. State of M.P., I.L.R. 2024 M.P. 2575*

INDUSTRIAL PROMOTION POLICY 2018

– **See** – Constitution – Article 226: *Oswal Agro Mills Limited Vs. State of M.P., I.L.R. 2024 M.P. *65*

INSOLVENCY AND BANKRUPTCY CODE (31 OF 2016)

– **Section 66** – See – Companies Act, 2013, Section 212: *Madanlal Juharmal Goyal Vs. Union of India, I.L.R. 2024 M.P. 2026 (DB)*

INTEREST ACT (14 OF 1978)

– **Section 3 & 4** – Interest on Delayed Payment – Held – Apex Court concluded that in cases where delay in disbursement of due amount to government servant is caused then it is to be saddled with interest: *Alok Shukla Vs. State of M.P., I.L.R. 2024 M.P. 390*

– **Section 3 & 4** – See – Civil Services (Pension) Rules, M.P. 1976, Rule 9(4): *Alok Shukla Vs. State of M.P., I.L.R. 2024 M.P. 390*

INTERPRETATION OF STATUTE

– **Construction** – Held – Construction leading to confusion, hardship, absurdity, serious inconvenience or anomaly or gives unworkable and impracticable results, must be avoided – Court has not only to take a pragmatic view while interpreting a statutory provision but must also consider the practical aspect of it: *Rashmi Chaudhary (Dr.) Vs. State of M.P., I.L.R. 2024 M.P. *167*

– **Non-Obstante Clause** – Effect – Held – A *non-obstante* clause is a legislative device employed by competent legislature to give overriding effect in case of any conflict or inconsistency over provision of same Act or other Acts – Its purpose is to provide the way for full operation of enacting provision without any

impediment or obstruction of any provisions of same Act or any other Act – Its main object is to provide full operation of the Act: *Ketan Vs. State of M.P., I.L.R. 2024 M.P. 118*

– **Practice & Procedure** – Held – It is trite that if a statute prescribes a thing to be done in a particular manner, it has to be done in the same manner and other methods are forbidden: *Mukesh Khampariya Vs. State of M.P., I.L.R. 2024 M.P. 411*

– **Term “and” & “or”** – Held – Apex Court concluded that the word “or” is normally disjunctive and the word “and” is normally conjunctive – At times, they are read as vice versa to give effect to the manifest intention of the legislature as disclosed from the context: *Divisional Manager United India Insurance Co. Ltd. Vs. Ankur @ Ankul Patel, I.L.R. 2024 M.P. 473*

J

JUDICIAL SERVICE (RECRUITMENT AND CONDITIONS OF SERVICE) RULES, M.P. 1994

– **Rule 5(3) & (4)**, Lok Seva (Anusuchit Jatiyon, Anusuchit Jan Jatiyon aur Anya Pichhade Vargon Ke Liye Arakshan) Adhiniyam, M.P. (21 of 1994), Section 4(4-A) and Lok Seva (Anusuchit Jatiyon, Anusuchit Jan Jatiyon Aur Anya Pichhade Vargon Ke Liye Arakshan) Rules, M.P. 1998, Rule 4-A – Relaxation in Qualifying Marks – Held – Not only in the Act of 1994 but even in the Rules of 1998, relaxation in qualifying marks has been provided only to Scheduled Caste and Scheduled Tribes and not to OBC candidates: *Devansh Kaushik Vs. State of M.P., I.L.R. 2024 M.P. 621 (DB)*

– **Rule 5(7)** – Judicial Service – Examination by Public Service Commission – Held – Examination for Civil Judges is conducted by High Court and High Court selects the suitable candidates to be appointed as Civil Judges and the same is done on basis of order passed by Supreme Court (2008)17 SCC 703: *Devansh Kaushik Vs. State of M.P., I.L.R. 2024 M.P. 621 (DB)*

– **Rule 7** – Amendment – Validity – Clarification from Supreme Court – Held – Rule does not make it mandatory for a candidate to have 3 years practice – At the same time it does not debar a candidate who has 3 years practice at the Bar – Further, impugned amendment has not debarred fresh law graduates from competing in the exam – Rule is in tune with para 32 and does not violate para 40 of Supreme

Court Judgment (2002) 4 SCC 247 – No clarification from Supreme Court was required: *Devansh Kaushik Vs. State of M.P., I.L.R. 2024 M.P. 621 (DB)*

– **Rule 7** – Reservation – Preliminary Stage – Held – Preliminary stage of any examination is only a qualifying examination – There can be no reservation at qualifying stage – Those who can appear for main examination are strictly governed by reservation – Non providing reservation at qualifying stage cannot be said to be unconstitutional: *Devansh Kaushik Vs. State of M.P., I.L.R. 2024 M.P. 621 (DB)*

– **Rule 7** and Constitution – Article 233 & 234 – Amendment – Appointment of District Judges – Competent Authority – Held – District judiciary is under control of High Court – Authority to provide reservation and the extent thereof vests with High Court – Further, Rules do not provide for reservation to EWS (Economic weaker section) of society, thus same cannot be provided in advertisement – Amended rules is not contrary to Rules of 1994: *Devansh Kaushik Vs. State of M.P., I.L.R. 2024 M.P. 621 (DB)*

– **Rule 7** and Constitution – Article 338, 338A & 338B – Consultation with Statutory Commissions – Held – It is only on major policy matters affecting SC, ST & OBC community that respective Commissions should be consulted – Reservation provided to OBC, SC and ST is not affected by impugned amendment – Article 338, 338A and 338B has not been violated: *Devansh Kaushik Vs. State of M.P., I.L.R. 2024 M.P. 621 (DB)*

– **Rule 7(g)** – “Brilliant Academic Career” – Held – Outstanding law graduate with brilliant academic career implies consistency throughout his academic career – If a candidate obtains high marks only in final year exam, he cannot be said to be possessing a brilliant academic career – Requirement of having 70% marks in aggregate would act as an indicator of the brilliance of candidate: *Devansh Kaushik Vs. State of M.P., I.L.R. 2024 M.P. 621 (DB)*

– **Rule 7(g)** – Conditions of Advertisement – Continuous Practice for 3 years – Held – Condition of proof of practice of 3 years cannot be said to be mandatory and production of six order sheets should not be the sole criteria to determine practice of a candidate for 3 years – Such requirement is not mandatory but only directory – Candidate must produce some material to justify his claim of 3 years practice which would be considered by concerned authority at relevant point of time: *Devansh Kaushik Vs. State of M.P., I.L.R. 2024 M.P. 621 (DB)*

– **Rule 7(g)** – Higher Qualification – Eligibility – Held – There is no rule that mandates that if a person has a higher qualification, he is exempt from meeting the basic eligibility qualification – Requirement of minimum qualification cannot be substituted with over qualification – Enactment of recruitment rules is a policy

matter – No interference is called for: *Devansh Kaushik Vs. State of M.P., I.L.R. 2024 M.P. 621 (DB)*

– **Rule 7(g)** – Judicial Service – Requirement of 70% Marks in Aggregate – Determination of Merit – Held – So far as examination for Civil Judge is concerned, merit of candidate is relevant and marks of the candidate is certainly a criteria to assess his merit to determine potential of a candidate to become a good judge: *Devansh Kaushik Vs. State of M.P., I.L.R. 2024 M.P. 621 (DB)*

– **Rule 7(g)** – Requisite Qualification – Nexus – Held – Object of amendment is to ensure that outstanding law graduates with brilliant academic career are entitled to appear in the exam with the object of ensuring that the best of the best are allowed to compete – Distinction is based on marks of candidates – Object sought to be achieved of qualitative dispensation of justice has a direct nexus with impugned amendment: *Devansh Kaushik Vs. State of M.P., I.L.R. 2024 M.P. 621 (DB)*

– **Rule 7(g)** – Requisite Qualification – Object & Intention – Held – Intention of High Court is to raise the bar in order to ensure that finest of law graduates would become Judges – Intention of High Court is quality-centric and in interest of litigants – It is only when one is an outstanding law graduate with a brilliant academic career that he may turn out to be an excellent judge whereas the interest of the petitioners are personal – When objects is in the interest of society, same cannot be said to be bad in law only because it affects the prospects of petitioners: *Devansh Kaushik Vs. State of M.P., I.L.R. 2024 M.P. 621 (DB)*

– **Rule 7(g)** – Requisite Qualification – Right of Employer – Held – Employer is the right person to decide the eligibility criteria – It is not for Court to determine whether 70% marks is appropriate or 60% or 50% or 40% – Eligibility criteria cannot be thrust upon by the Court on employer and to direct him to accept a lower eligibility criteria – Apex Court concluded that it is for employer to choose what is the requirement of a particular job – Fixation of requirements by employer is not arbitrary: *Devansh Kaushik Vs. State of M.P., I.L.R. 2024 M.P. 621 (DB)*

– **Rule 7(g)** and Constitution – Article 51A(j) – Duty of State – Held – It is the duty of State to ensure excellence in all spheres of individual and collective activities so that the nation constantly rise to higher levels of endeavor and achievements – Thus, requirement of securing 70% marks in aggregate in first attempt is in tune with Article 51A(j) of Constitution: *Devansh Kaushik Vs. State of M.P., I.L.R. 2024 M.P. 621 (DB)*

– **Rule 7(g)**, Advocates Act, (25 of 1961), Section 2(h) & 24 and Bar Council of India Rules, 1975, Rule 2(vi) & 4 – Law Graduate – 3/5 years Course –

Held – Definition of “law graduate” does not make distinction between a law graduate who has completed a 3 years or 5 years degree course – In terms of Advocates Act as well as Bar Council of India Rules, there is no distinction made between law graduates who has undergone 3 years or 5 years course – Thus it cannot be said that there is a difference between graduates who completed 5 years and 3 years course in law: *Devansh Kaushik Vs. State of M.P., I.L.R. 2024 M.P. 621 (DB)*

– **Rule 7(g), proviso** – Qualification – Three Years Practice – Validity – Held – Earlier vide Notification dated 5/11/05, Rules of 1994 was amended and requirement of having practiced as an advocate for 3 years on last date fixed for submission of application for appointment, was deleted – Consequently each and every law graduate was entitled to compete for exam – Law graduates who managed to just pass the law degree were also appearing in exam – This was neither the intent nor the purport of the directions given by Supreme Court – Recommendations of Shetty Commission was that young and brilliant law graduates with brilliant academic career should also be permitted to participate in exams – Impugned amendment was brought in to effectively implement para 32 of Supreme Court judgment: *Devansh Kaushik Vs. State of M.P., I.L.R. 2024 M.P. 621 (DB)*

– **Rule 7(g), proviso** and Constitution – Article 14, 16 & 19(1)(g) – Requirement of 70% Marks in Aggregate in First Attempt – Ultra Vires – Held – Option given to candidates is twofold, they could either be an advocate who practiced for 3 years or an outstanding law graduate with brilliant academic career – Requirement of obtaining 70% marks in aggregate is to ensure the desired object of enhancing quality in justice delivery system which is just and fair classification – Relaxation in marks is granted for SC and ST category to ensure equality and a level playing field – Equal opportunity has not been denied to petitioners – Amendment does not violate Article 14, 16 or 19(1)(g) of Constitution and is purely in accordance with law – Amendment is not *ultra vires* the Constitution – Petitions dismissed: *Devansh Kaushik Vs. State of M.P., I.L.R. 2024 M.P. 621 (DB)*

JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT (56 OF 2000)

– **Section 49** and Penal Code (45 of 1860), Section 376 – Age of Juvenile – Determination – Held – What a Court is required to see is the date when the last of such incident which is alleged was committed – Accused attained the age of 18 years on 09.07.2020 and admittedly offence of rape has been alleged even in year 2021 – Trial Court wrongly sent the case to Juvenile Justice Board – Matter remitted back to Session Court – Revision allowed: *Victim X Vs. State of M.P., I.L.R. 2024 M.P. *45*

**JUVENILE JUSTICE (CARE AND PROTECTION OF
CHILDREN) ACT, 2015 (2 OF 2016)**

SYNOPSIS

- | | |
|-----------------------------------|----------------------------------|
| 1. Child Welfare Committee | 2. Determination of Age |
| 3. Illegal Detention | 4. Preliminary Assessment |
| 5. Writ of Habeas Corpus | 6. Miscellaneous |

1. Child Welfare Committee

– **Section 27(9)** – Powers of Committee – Held – While passing orders, the Committee exercises the power of Judicial Magistrate: *Vatsalyapuram Jain Welfare Society Vs. State of M.P., I.L.R. 2024 M.P. 1153 (DB)*

– **Section 37(1)** – Powers & Functions of Child Welfare Committee – Held – Welfare/safety of child in need of care and protection is the legal responsibility of the Board/Child Welfare Committee – Committee on being satisfied through inquiry that the child before Committee is a child in need of care and protection, may on consideration of social investigation report submitted by child welfare officer and considering the child’s wish in case child is sufficiently mature to take a view, pass one or more orders as mentioned in Section 37(1)(a) to (h) of 2015 Act: *Vatsalyapuram Jain Welfare Society Vs. State of M.P., I.L.R. 2024 M.P. 1153 (DB)*

2. Determination of Age

– **Section 9(2)** – Determination of Age – Inquiry & Evidence – Held – When the plea of juvenility is raised before a Court, other than a Juvenile Board, it must undertake an inquiry and take evidence if any, as per mandate of Section 9(2) before rendering any decision on the application – Trial Court without conducting any inquiry dismissed the application on the ground that Court has no authority to transfer the case to Juvenile Board – Impugned order set aside – Trial Court directed to inquire on the application – Revision allowed: *Vikas Vs. State of M.P., I.L.R. 2024 M.P. 1703*

– **Section 94**, Juvenile Justice (Care and Protection of Children) Rules, M.P., 2022, Rule 65 and Evidence Act (1 of 1872), Section 35 – Determination of Age – Held – If a birth certificate is found to be suspicious and not a genuine document, then school record and scholar register would prevail for determination of age of accused – Documents are admissible in evidence u/S 35 of Evidence Act – Revision dismissed: *Shakeel Vs. State of M.P., I.L.R. 2024 M.P. 1706*

3. Illegal Detention

– **Sections 27, 29, 30 & 37** – Illegal Detention – Held – An illegal or irregular exercise of jurisdiction by Magistrate or Child Welfare Committee appointed u/S 27, sending the victim to Women Protection Home/Nari Niketan/Juvenile Home/Child Care Home cannot be treated an illegal detention – Such orders can be cured by filing appropriate proceedings before competent appellate or revisional forum: *Vatsalyapuram Jain Welfare Society Vs. State of M.P.*, I.L.R. 2024 M.P. 1153 (DB)

4. Preliminary Assessment

– **Section 15 & 94** – Preliminary Assessment – Held – When the case of prosecution is that accused is an adult person more than 18 years of age and the same is established and proved then the preliminary assessment u/S 15 would not be required and the Board has to make assessment on basis of documentary evidence: *Shakeel Vs. State of M.P.*, I.L.R. 2024 M.P. 1706

5. Writ of Habeas Corpus

– **Section 37** and Constitution – Article 226 – Writ of Habeas Corpus – Maintainability – Held – If the corpus is in custody as per judicial orders passed by Judicial Magistrate or a Court of competent jurisdiction or a Child Welfare Committee under the 2015 Act, such order cannot be challenged or set aside in a writ of habeas corpus – Petition dismissed being not maintainable: *Vatsalyapuram Jain Welfare Society Vs. State of M.P.*, I.L.R. 2024 M.P. 1153 (DB)

6. Miscellaneous

– **Section 94** – See – Criminal Procedure Code, 1973, Section 311: *Shahrukh Khan Vs. State of M.P.*, I.L.R. 2024 M.P. 171

JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) RULES, M.P., 2022

– **Rule 65** – See – Juvenile Justice (Care and Protection of Children) Act, 2015, Section 94: *Shakeel Vs. State of M.P.*, I.L.R. 2024 M.P. 1706

K

KRISHI UPAJ MANDI ADHINIYAM, M.P. 1972 (24 OF 1973)

– **Section 19(4) & 19-B(1)** – Imposition of Penalty – Held – U/S 19-B(1), Mandi Samiti could have demanded interest for 20 days @ 24% p.a., but could not

have imposed penalty u/S 19(4) which is applicable in a case where the parties tried to avoid the payment of market fee and did not pay the market fee as per provisions of Section 19-B(1) of the Act: *Ashu Industries (M/s.) Vs. State of M.P., I.L.R. 2024 M.P. 2230*

– **Sections 19(4), 19-B(1) & 19-B(2)** – Payment of Market Fee – Penalty – Cheques given by petitioner for market fee were dishonoured which was later paid by Bankers Cheque – Held – Imposition of 5 times penalty was illegally imposed within 7 days from date of issuance of permit whereas petitioner could have pay the market fee within 14 days as per Section 19-B(1) of the Act – Restriction to trade was also wrongly imposed exercising powers u/S 19-B(2) within period of 7 days from issuance of license – Impugned communication quashed – Petition allowed: *Ashu Industries (M/s.) Vs. State of M.P., I.L.R. 2024 M.P. 2230*

– **Section 19(4) & 19-B(2)** – Imposition of Restriction – Held – U/S 19-B(2) no restriction could be imposed within a period of one month whereas restriction was imposed on petitioner within 7 days – Within one month the market fee was paid through bankers cheque – No order could be passed u/S 19-B(2) of the Act: *Ashu Industries (M/s.) Vs. State of M.P., I.L.R. 2024 M.P. 2230*

L

LAND ACQUISITION ACT (1 OF 1894)

– **Section 4** – Notification – Contents – Held – In notification neither there is any mention of details of land which was supposed to be acquired nor the Patwari Halka of land nor any specific locality of village was written – Even survey numbers were not prescribed and names of landowners were also missing – Non-compliance of mandatory provisions renders the notification to be *void-ab-initio* and *non-est* in the eyes of law since inception: *Satish Kumar Vs. State of M.P., I.L.R. 2024 M.P. *145 (DB)*

– **Section 4 & 6** – Approval & Permission – Competent Authority – Held – Neither Executive Engineer before filing requisition obtained any formal approval from Housing Board for any formally approved Scheme nor the Board obtained any approval for land acquisition from State government till date – There was no formal request made by Board regarding acquisition of land, instead it was solely the Executive Engineer who without any authority wrote letter to Land Acquisition Officer seeking acquisition of land: *Satish Kumar Vs. State of M.P., I.L.R. 2024 M.P. *145 (DB)*

– **Section 4 & 6** – Possession of Acquired Land – Notice & Panchnama – Held – No notice ever served to the dwellers of house and shops or to cultivators for obtaining possession – No physical possession was ever obtained from appellants – Panchnama produced is a mere paper work – Board has not laid a single brick over the land even after expiry of 29 years from date of notification – Failing to comply with mandatory statutory procedure, possession held not to be obtained: *Satish Kumar Vs. State of M.P., I.L.R. 2024 M.P. *145 (DB)*

– **Section 4 & 6** – See – Constitution – Article 226: *Satish Kumar Vs. State of M.P., I.L.R. 2024 M.P. *145 (DB)*

– **Section 4 & 6** – Validity of Notification – Jurisdiction – Held – Land Acquisition Officer i.e. Collector while issuing notification lacks jurisdiction as the requisition was not backed by mandatory government approval – Vide circular also, it was specifically directed that no development authority/Housing Board shall initiate any land acquisition proceedings in relation to ceiling affected land – Due to lack of jurisdiction, notification is *void-ab-initio* and *non-est* since inception – Entire land acquisition proceeding quashed – Appeals allowed with cost: *Satish Kumar Vs. State of M.P., I.L.R. 2024 M.P. *145 (DB)*

– **Section 4 & 6** and Griha Nirman Mandal Adhiniyam, M.P., 1972 (3 of 1973), Section 33 & 34 – Land Acquisition – Budget – Spot Inspection – Held – In absence of any budgetary provisions, Board was not able to deposit compensation even after 6 years of passing of Award – Skipping all process and without any spot inspection, direct requisition for land acquisition was made by Executive Engineer, even no NOC was there by Town and Country Planning department – Non-compliance of statutory provisions made the acquisition proceedings illegal and nullified: *Satish Kumar Vs. State of M.P., I.L.R. 2024 M.P. *145 (DB)*

– **Section 34** – See – Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013: *Jagdish Prasad Shukla Vs. State of M.P., I.L.R. 2024 M.P. 428*

LAND REVENUE CODE, M.P. (20 OF 1959)

SYNOPSIS

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|--|---|
| <ol style="list-style-type: none"> 1. Bar for Civil Suit 3. Demarcation 5. Execution of Orders 7. Land of Aboriginal Tribe | <ol style="list-style-type: none"> 2. Bhumiswami 4. Encroachment 6. Jurisdiction of Civil Court 8. Mutation |
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|--|---|
| 9. Principle of <i>Res-Judicata</i> | 10. Recording of Evidence |
| 11. Revision | 12. Transaction & Possession |
| 13. Transfer of Lease Property | 14. Miscellaneous |

1. Bar for Civil Suit

– **Sections 44, 248 & 257(w-i)** and Civil Procedure Code (5 of 1908), Section 9 & Order 7 Rule 11 – Bar for Civil Suit – Held – There is no bar of civil suit under the Code to challenge the order passed u/S 248 of the Code for the purpose of establishing title – If a person aggrieved by order passed u/S 248 of Code, wishes to file a suit for declaration of his right/title, he is not required to avail the alternative/statutory remedy of appeal available under the Code and he can file civil suit directly for establishing his title – Filing of civil suit during pendency of revenue appeal has not adverse effect – Trial Court rightly rejected application under O-7 R-11 CPC – Revision dismissed: *Olpherts Pvt. Ltd. Vs. Sarla Devi Mahila Mandal, I.L.R. 2024 M.P. 1676*

2. Bhumiswami

– **Section 57** and Madhya Bharat Land Revenue and Tenancy Act, Samvat 2007 (66 of 1950) – Pujari of Temple – Status – Held – Pujari is not a Kashtkar Morushi or a Govt, lessee or an ordinary tenant of Muafi lands, he is only appointed to manage property of deity – He cannot be treated as Bhumiswami – Apex Court concluded that if pujari claims proprietary rights over the property of temple, it is an act of mismanagement and he is not fit to remain in possession or to continue as a pujari – He has no right which could be protected under the 1959 Code – Impugned Judgments and decree affirmed – Appeal dismissed: *Rampuri Thr. LRs. Mahendrapuri Vs. State of M.P., I.L.R. 2024 M.P. 2357*

– **Section 158** – Bhumiswami – Cause of Action – Limitation – Held – Right to sue accrue when there is clear and unequivocal threat to infringe the right – In present case, right to sue occurred in 2003 when Collector gave notice to plaintiff – Trial Court erred in ignoring the issue of limitation – Court was duty bound to examine the question of limitation – Suit was barred by limitation: *Nagar Parishad Kailaras Vs. M/s. Banmore Cements Works Limited, I.L.R. 2024 M.P. 2335*

– **Section 158** – Bhumiswami – Held – To prove ownership R-1 produced Exp-3 which is certified copy of translated copy of document – Original copy is not available – Exp-3 is also incomplete because its annexures having details of assets are not enclosed with it – In absence of original document, translated version has no value – It is also not proved that disputed land belonged to the then King i.e Scindia and was given to predecessor of R-1 – It is not proved that R-1/plaintiff is the

Bhumiswami of disputed land, even his possession is also not proved – Impugned Judgement and decree set aside – Suit of plaintiff is dismissed – Appeal allowed: *Nagar Parishad Kailaras Vs. M/s. Banmore Cements Works Limited, I.L.R. 2024 M.P. 2335*

– **Section 158** – Bhumiswami – Khasra Entry – Held – Merely on basis of some khasra entries of the name of the company in some khasra does not create any title of the land – Without proving the source of title, khasra entry do not prove the ownership: *Nagar Parishad Kailaras Vs. M/s. Banmore Cements Works Limited, I.L.R. 2024 M.P. 2335*

3. Demarcation

– **Section 32 & 129** and Civil Procedure Code (5 of 1908), Order 7 Rule 11 – Demarcation Proceedings – Objection – Held – Naib Tehsildar wrongly closed the proceedings initiated u/S 129 on an objection raised by respondents – Respondents have only right to remain present during the demarcation proceedings and they may submit objection at the stage of Section 129(4) & 129(5) of Code – At the stage of Section 129(1) & 129(2), they have no right to object before Naib Tehsildar – Impugned order set aside – Demarcation proceedings restored – Petition allowed: *Kanchan Motiani (Smt.) Vs. State of M.P., I.L.R. 2024 M.P. *235*

– **Section 127 & 129** – Scope – Held – U/S 127 demarcation is not carried out but only the boundary marks as per findings arrived at in proceedings u/S 129 are affixed – Section 127 is in effect a sequel to Section 129: *Prahlad Vs. Sub Division Officer (Revenue), I.L.R. 2024 M.P. 2563*

– **Sections 127, 129 & 129(5)** – Scope – Held – Application filed by R-3 was specifically for demarcation of the road on both its sides for ascertaining the exact extent and location of road and the lands of the holders on both the sides – This was undoubtedly an application u/S 129 and not u/S 127 – Objection of petitioners filed u/S 129(5) is maintainable and was illegally rejected by SDO – Impugned order set aside – Petition allowed: *Prahlad Vs. Sub Division Officer (Revenue), I.L.R. 2024 M.P. 2563*

– **Section 129 & 250** – Limitation – Held – Limitation of filing application for dispossession u/s 250 starts from the date of order of demarcation – In instant case, application was filed within 2 yrs from date for demarcation – Application cannot be dismissed on the ground that there was no disclosure about date of dispossession – Petition dismissed: *Santram Yadav Vs. Nathu Prasad Yadav, I.L.R. 2024 M.P. 921*

– **Section 129(4) & 129(5)** – Demarcation Proceedings – Opportunity of Hearing – Held – Upon receipt of demarcation report from Revenue Inspector or Patwari or Nagar Sarvekshak, it was mandatory and imperative for Naib Tehsildar to issue notice to petitioner, R-1 and any other person interested in dispute – Procedure not adopted by Naib Tehsildar – Demarcation report could not have been accepted without giving opportunity of hearing to interested parties – Order accepting demarcation report set aside – Matter remanded back for adjudication afresh – Petition allowed: *Antar Singh Vs. Subhash, I.L.R. 2024 M.P. 2567*

– **Section 250** – Adjoining Survey Number – Held – Petitioners have not shown any survey number of their ownership – In documents of demarcation, Revenue officers have also not shown any adjoining survey numbers – Before completing demarcation process, Revenue officer has to issue notice to owner of adjoining survey number – Unless adjoining survey number is mentioned in report/panchnama, how it can be gathered that encroacher is owner of adjoining survey number or is a person having no ownership on adjoining survey number: *Neetu Singh (Smt.) Vs. Raghuvar Singh, I.L.R. 2024 M.P. *239*

4. Encroachment

– **Section 248** – Encroachment – Held – Petitioner was granted NOC to use government land with restriction to carry out any construction – In order to avoid any accident and water retention during rains, petitioner laid an underground pipeline and covered the land by paver blocks – This cannot be termed as “pakka construction” or an encroachment by petitioner – Impugned order is beyond jurisdiction and thus quashed – Writ petition allowed with cost of Rs. 10,000/-: *Munira Vs. State of M.P., I.L.R. 2024 M.P. *161*

5. Execution of Orders

– **Section 32** – Inherent Powers – Execution of Order of Revenue Courts – Tehsildar passed order to remove the encroachers from land of petitioner – Held – Once order has been passed while considering principles of natural justice in which other party was also given opportunity then it is the duty of Revenue Courts especially Collector to ensure compliance of such order else those orders would be an empty formality – Collector directed to ensure appropriate proceedings for execution of the order passed – Petition disposed: *Mansingh Vs. State of M.P., I.L.R. 2024 M.P. 603*

6. Jurisdiction of Civil Court

– **Section 170-B & 257** – Jurisdiction of Civil Court – Held – In view of Section 257 of the Code, Civil Court has no jurisdiction to decide the controversy

which was otherwise to be decided by SDO u/S 170-B of the Code – Subject matter which is duly covered by provisions of 1959 Code, cannot be agitated before the Civil Court – Judgement and decree passed by Civil Court was without jurisdiction and thus it is a nullity: *Narmada Prasad Sahu (Dead) Thr. LRs. Vs. State of M.P.*, I.L.R. 2024 M.P. 1992

– **Section 248(3) & 257** – Jurisdiction of Civil Court – Held – Although Section 248(3) was omitted in the year 2000 but no amendment was made in Section 257 of the Code barring jurisdiction of civil Courts regarding establishment/decision of/about title over disputed property – It cannot be said that omitting sub-Section (3) of Section 248 has effect of excluding jurisdiction of civil Court: *Olpherts Pvt. Ltd. Vs. Sarla Devi Mahila Mandal*, I.L.R. 2024 M.P. 1676

7. Land of Aboriginal Tribe

– **Section 165(6) & 170(1)** – Land of Aboriginal Tribe – Held – Collector u/S 165(6) declared the sale of land as illegal and directed SDO to take possession – Held – U/S 165(6), there only a prohibition on the transfer or sale of land in the scheduled area and land belonging to an aboriginal tribe as the case may be – U/S 165(6) such a sale cannot be declared void and no direction could be issued to SDO for taking possession – Such powers are vested with the Collector u/S 165(6-a) & (6-b) of the Code – R-4 was required to filed application within limitation provided in clause (i) & (ii) of Section 170(1) – Impugned order and show cause notice are set aside – Petitions allowed: *Aishwarya Verma Vs. State of M.P.*, I.L.R. 2024 M.P. *25

– **Section 170-B** – Requirement – Held – In order to invoke provisions of Section 170-B, the only requirement is as to whether a person is in possession of land belonging to aboriginal tribe between period commencing on 02.10.59 and ending on date of commencement of Amendment Act, 1980 – Respondents failed to justify their possession on 02.10.59 – Authorities rightly held that the original owner R-7 was wrongly dispossessed and further directed to revert back the land in dispute to R-7 – Appeal dismissed: *Narmada Prasad Sahu (Dead) Thr. LRs. Vs. State of M.P.*, I.L.R. 2024 M.P. 1992

8. Mutation

– **Section 109 & 110** – Mutation – Opportunity of Hearing – Held – As per terms of registered agreement petitioner and R-1 were entitled to sell the plots of their respective shares and if R-1 sold plot of his share to R-2, petitioner is not required to be heard during mutation proceedings and he cannot be said to be a necessary party – Petition dismissed: *Rakesh Manocha Vs. Era Construction (M/s)*, I.L.R. 2024 M.P. 378

– **Section 109 & 110** – Mutation – Validity of Sale Deed – Held – If validity of a sale deed is to be questioned then same can be answered only by competent Court i.e Civil Court but not by the revenue authority – Civil suit is pending and impugned order observes that revenue entries will be governed with the final decision of the Civil Court – No interference called for: *Rakesh Manocha Vs. Era Construction (M/s)*, I.L.R. 2024 M.P. 378

– **Section 109 & 110** – Mutation on Basis of "Will" – Jurisdiction of Revenue Authority – Held – Revenue authorities have no jurisdiction to decide genuineness of "Will" and it is only for Civil Court to decide that whether "Will" was executed or not or whether it is right or wrong – If beneficiary wants to take advantage of a "Will", he has to crystalise his right from the Civil Court of competent jurisdiction – Revenue authorities have no jurisdiction to mutate the name on basis of "Will" – Impugned orders set aside – Petition allowed: *Baiyant Singh Vs. Paramjeet Kaur*, I.L.R. 2024 M.P. *151

9. Principle of *Res-Judicata*

– **Section 248** – *Res-judicata* – Held – Proceedings u/S 248 of the Code are summary proceedings and so far as question of title is concerned, such proceedings do not have the effect of *res-judicata*: *Olpherts Pvt. Ltd. Vs. Sarla Devi Mahila Mandal*, I.L.R. 2024 M.P. 1676

10. Recording of Evidence

– **Section 250** – Interim & Final Order – Evidence – Held – While passing interim order, Tehsildar is not required to record evidence of parties but for passing final order, he is required to record evidence necessarily: *Neetu Singh (Smt.) Vs. Raghavar Singh*, I.L.R. 2024 M.P. *239

– **Section 250** – Nature of Proceeding – Evidence – Held – Upon service of notice/summons, petitioners filed reply denying the allegations, thereupon Tehsildar was required to hold enquiry, but even without fixing the case for evidence and without giving any opportunity of cross-examination and to adduce evidence in rebuttal and further without marking exhibit on documents, just on basis of oral submissions of rival parties passed the impugned order – Mainly on basis of demarcation report, impugned order of dispossession of petitioner was passed – Impugned orders set aside – Matter remanded back for adjudication afresh – Petition allowed: *Neetu Singh (Smt.) Vs. Raghavar Singh*, I.L.R. 2024 M.P. *239

– **Section 250** – Summary Proceeding – Held – Although the enquiry contemplated u/S 250 of the Code is of a summary nature but objective of summary

enquiry is to ensure that justice is delivered swiftly but without compromising on the principle of natural justice and fair trial: *Neetu Singh (Smt.) Vs. Raghuvar Singh*, I.L.R. 2024 M.P. *239

11. Revision

– **Section 50 & 165(6)** – Suo Motu Revision – Limitation – Held – Section 165(6-b) provides limitation of 3 years for exercising the power by Collector in his own motion and pass orders ratifying the transfer or refusing to ratify the transfer – Power has been exercised beyond period of 3 years – Names were mutated in revenue record by the orders of revenue authority – Plea of respondents that orders were not in knowledge, cannot be accepted for taking *suo motu* action – Impugned order quashed – Petition allowed: *Moin Khan Vs. State of M.P.*, I.L.R. 2024 M.P. *160

– **Section 50(2)(c)** – Revision against an Order passed in Revision – Term “Order” – Held – If there has not been any expression of any decision in the order, the same would not be an “order” and revision against it would be maintainable – Revision preferred by petitioner is against an order whereby the matter was fixed for final hearing – Such order is an interim order and an alleged procedural irregularity – Revision maintainable – Impugned order set aside – Petition allowed: *Dilshad Patel Vs. Additional Commissioner (Revenue)*, I.L.R. 2024 M.P. 2267

12. Transaction & Possession

– **Section 170-A & 170-B** – Word "Transaction" & "Possession" – Held – The word used in a Statute must be given literal meaning in case if the same is not defined in a definition clause – If word "possession" is read as "date of transaction", it would make the provisions of Section 170-B of the Code as a redundant provision: *Narmada Prasad Sahu (Dead) Thr. LRs. Vs. State of M.P.*, I.L.R. 2024 M.P. 1992

13. Transfer of Lease Property

– **Section 165** – Transfer of Lease Property – Sanction of Collector – Held – Property was given to respondent on lease by State – Petitioner purchased the land by way of registered sale deed and his name was mutated in revenue record by order of Tehsildar – Petitioner’s name was deleted from land record on the ground that it was not purchased with previous sanction of Collector and name of respondent was restored in land records – If transfer was in contravention of Section 164 of 1959 Code, land should have been vested in favour of State but Tehsildar did not do so in the instant case: *Musav Singh Vs. Dauja*, I.L.R. 2024 M.P. *162

14. Miscellaneous

– **Section 129** – See – Civil Procedure Code, 1908, Order 26 Rule 9: *Uma Bhardwaj (Smt.) Vs. Maniram, I.L.R. 2024 M.P. 940*

– **Section 131** – See – Constitution – Article 226 & 227: *Hiralal Vs. Lakshmibai, I.L.R. 2024 M.P. 463*

– **Section 250** – See – Civil Procedure Code, 1908, Order 26 Rule 9: *Devesh Vs. Ratibai, I.L.R. 2024 M.P. *51*

LEGAL MAXIM

– **“falsus in uno falsus in omnibus”** – Applicability – Held – The maxim “falsus in uno falsus in omnibus” has no application in India: *Shivnarayan Vs. State of M.P., I.L.R. 2024 M.P. *98*

– **“generalia specialibus non derogant”** – Held – It means that general provisions never derogate from the special ones and that general provisions must always give way to the special provisions – This principle is applied in the context of either two different conflicting/overlapping enactments or two provisions overlapping/conflicting with each other under the same enactment: *Virendra Rathore Vs. Tehsildar Distt. Mandsaur, I.L.R. 2024 M.P. 2244 (DB)*

– **“Lex Non Cogit Ad Impossibilia”** – Doctrine of Impossibility – Held – The maxim means that the law does not force a person to perform impossible act: *Subhash Pachori Vs. State of M.P., I.L.R. 2024 M.P. *245*

LIFE INSURANCE CORPORATION OF INDIA (STAFF)

RULES, 1960

– **Rule 39(1)(d)** – Penalty – Term "Lower" & "Minimum" – Held – The word "lower" employed in the relevant regulation is enough to place the employee to the "minimum" of the scale – Such "minimum" will certainly be "lower" to the existing scale, which is being enjoyed by the delinquent employee before imposition of punishment – Punishment imposed falls within four corners of Regulation 39(1)(d) – Impugned order set aside – Appeal allowed: *Life Insurance Corporation of India Vs. Yeshwant Singh Garewal, I.L.R. 2024 M.P. 1247 (DB)*

LIMITATION ACT (36 OF 1963)

– **Section 4 to 24** – See – Municipalities Act, M.P., 1961, Section 20(3): *Anjali Jaiswal Vs. Chief Election & Returning Officer, I.L.R. 2024 M.P. *26*

– **Sections 4 to 24 & 29(2)** – Applicability – Held – Section 29(2) *inter alia* stipulates that if special law does not expressly exclude the application of Section 4 to 24 of Limitation Act, then these provisions shall apply *qua* all causes raised under the special law: *Aniruddh Singh Vs. Authorized Officer, ICICI Bank Ltd., I.L.R. 2024 M.P. 754 (DB)*

– **Section 5** – Condonation Application – Held – Apex Court concluded that if there is some delay in filing appeal and the appeal is not accompanied with application u/S 5 of Limitation Act, Court should not dismiss the appeal as not maintainable but it should give further opportunity for filing application u/S 5 of Limitation Act: *Roshanlal Tiwari (Died) Thr. L.Rs. Vs. Pannalal Tiwari, I.L.R. 2024 M.P. *73*

– **Section 5** – Condonation of Delay – Approach of Court – Held – Apex Court concluded that Court must take a just oriented approach while considering application for condonation of delay – Court in view of larger public interest should take lenient view in such situation, condone the delay, however, huge may be the delay and decided the case on merits unless the case is hopelessly without merit: *Musav Singh Vs. Dauja, I.L.R. 2024 M.P. *162*

– **Section 5** – Condonation of Delay – Considerations – Held – Appeal was filed with a delay of 55 days alongwith application u/S 5 of Limitation Act – Appeal should have been heard on merits and application for condonation of delay should have been allowed unless otherwise – Rejection of application is not fair – Impugned order set aside – Application u/S 5 of Limitation Act allowed – Matter remanded back for adjudication on merits after providing sufficient opportunity of hearing to parties: *Musav Singh Vs. Dauja, I.L.R. 2024 M.P. *162*

– **Section 5** – Condonation of Delay – Held – Delay of 578 days in filing the appeal – Longer the delay, the heavier is the burden on party to prove that he was prevented by sufficient cause from approaching the Court earlier – Ordinarily Courts have to take a liberal view in such matters but where parties fail to give plausible or convincing explanation, they do not deserve any indulgence by the Court – Appellant had knowledge of award on 13.12.2022 whereas he filed appeal on 17.12.2023 – Negligent attitude or casual approach is not expected to be entertained – Application dismissed: *Mohd. Saleem Vs. Gopal Mawasi, I.L.R. 2024 M.P. 2613*

– **Section 5** – Condonation of Delay – Sufficient Cause – Held – The expression "sufficient cause" is an elastic term and each day's delay need not be explained in strict sense – Approach to be applied for condonation of delay would depend upon the cause shown – When sufficient cause is shown, the relief sought can be granted: *Mohd. Saleem Vs. Gopal Mawasi, I.L.R. 2024 M.P. 2613*

– **Section 5** – See – Civil Procedure Code, 1908, Order 9 Rule 9: *Babulal Vs. Hira Kalar, I.L.R. 2024 M.P. *81*

– **Section 5** – See – Civil Procedure Code, 1908, Order 22 Rule 3 & Order 22 Rule 9: *Roshanlal Tiwari (Died) Thr. L.Rs. Vs. Pannalal Tiwari, I.L.R. 2024 M.P. *73*

– **Section 5** – See – Civil Procedure Code, 1908, Order 22 Rule 4 & 9: *Bano Bee Vs. Yusuf, I.L.R. 2024 M.P. *224*

– **Section 5** – See – Civil Procedure Code, 1908, Order 41 Rule 3-A: *Kunjilal Vs. Ramakant, I.L.R. 2024 M.P. *177*

– **Section 5** – See – Employees' Provident Funds and Miscellaneous Provisions Act, 1952, Section 7(1): *Divisional Railway Manager, Jabalpur Vs. Regional Provident Fund Commissioner, I.L.R. 2024 M.P. 1572*

– **Section 5** – See – Motor Vehicles Act, 1988, Section 173: *Chhaya Shivhare Vs. Ravikant Mishra, I.L.R. 2024 M.P. 2131*

– **Section 5** – See – Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, Section 74: *Land Acquisition Officer Vs. Purushottam, I.L.R. 2024 M.P. *193*

– **Section 5 & 29(2)** – See – Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, Section 17(1): *Aniruddh Singh Vs. Authorized Officer, ICICI Bank Ltd., I.L.R. 2024 M.P. 754 (DB)*

– **Section 14** – Limitation – Exclusion of Time Spent in Other Forum – Held – Application filed u/S 14 for exclusion of time spent in prosecuting bonafidely in Court without jurisdiction should be decided on basis of peculiar facts and circumstances of each case and approach of the Court must be liberal at the time of deciding the application u/S 14: *M.P. Madhya Kshetra Vidyut Vitran Co. Ltd. Vs. PSR AMRCL (JV), I.L.R. 2024 M.P. 1328 (DB)*

– **Section 14** – Scope & Applicability – Held – Section 14 is wide in its application – It is not confined in its applicability only to cases of defect of jurisdiction but it is applicable also to cases where the prior proceedings were failed on account of other causes or like nature – Any circumstance, legal or factual, which inhabits entertainment or consideration by Court of the dispute on merits comes within the scope of this Section: *M.P. Madhya Kshetra Vidyut Vitran Co. Ltd. Vs. PSR AMRCL (JV), I.L.R. 2024 M.P. 1328 (DB)*

– **Section 14** – See – Madhyastham Adhikaran Adhiniyam, M.P., 1983, Section 7-B(2-A): *M.P. Madhya Kshetra Vidyut Vitran Co. Ltd. Vs. PSR AMRCL (JV), I.L.R. 2024 M.P. 1328 (DB)*

– **Section 29(2)** – See – Employees' State Insurance Act, 1948, Section 45AA: *Gyan Singh Parmar Vs. Employee State Insurance Corporation, I.L.R. 2024 M.P. 2462*

– **Article 59** – See – Civil Procedure Code, 1908, Order 7 Rule 11: *Shankheshwar Developers Vs. Kirhsna Kalota, I.L.R. 2024 M.P. *75*

– **Article 65** – Adverse Possession – Held – Under Article 65, suit can be filed based on title for recovery of possession within 12 years of the start of adverse possession, if any, set up by the defendant – Otherwise right to recover possession based on title is absolute irrespective of limitation in absence of adverse possession by defendant for 12 years: *Babulal Vs. Amra, I.L.R. 2024 M.P. *204*

– **Article 65** – Expression "title" – Held – The expression "title" would include the title acquired by plaintiff by way of adverse possession: *Babulal Vs. Amra, I.L.R. 2024 M.P. *204*

– **Article 136** – Compromise Decree – Execution – Limitation – Held – A compromise decree is as good as decree passed on merits – As per Article 136, limitation to execute decree of possession is 12 years – If plaintiff did/could not execute the decree, then after expiry of such period, he cannot be permitted to file civil suit for restoration of possession of same property taking false plea of delivery of possession by defendant voluntarily – Civil suit was rightly dismissed – Appeal dismissed: *Vinay Kumar Vs. Yaseen Mohammad Through LRs, I.L.R. 2024 M.P. *103*

– **Article 136** – See – Civil Procedure Code, 1908, Order 21 Rule 23(2): *Rajdhar Vs. Smt. Dhokiya, I.L.R. 2024 M.P. *15*

– **Schedule Part II, Clause 54** – See – Specific Relief Act, 1963, Section 34: *Suleman Vs. Narendra Kumar, I.L.R. 2024 M.P. 112*

LOK PARISAR (BEDAKHALI) ADHINIYAM, M.P. (46 OF 1974)

– **Section 5** – Unauthorized Allotment – Payment of Rent – Held – Once the allotment made by Gram Panchayat is found to be unauthorized and also without following due process, the factum of regularly paying rent to Gram panchayat is of no consequence and nothing turns in favour of petitioners: *Akhilesh Kumar Vs. State of M.P., I.L.R. 2024 M.P. 1519 (DB)*

– **Sections 5, 6(1) & (2)** – Goods & Belongings – Notice – Held – No notice for vacating shops of which possession has been taken, has been issued u/S 6 – Respondents directed to grant one opportunity to petitioners to take out their goods and belongings from the shops by issuing a notice in one newspaper and grant 14 days time – If petitioners fails to avail such opportunity, respondent shall be free to proceed in accordance with Section 6(2): *Akhilesh Kumar Vs. State of M.P.*, I.L.R. 2024 M.P. 1519 (DB)

**LOK SEVA (ANUSUCHIT JATIYON, ANUSUCHIT JAN
JATIYON AUR ANYA PICHHADE VARGON KE LIYE
ARAKSHAN) ADHINIYAM, M.P. (21 OF 1994)**

– **Section 4(4-A)** – See – Judicial Service (Recruitment and Conditions of Service) Rules, M.P. 1994, Rule 5(3) & (4): *Devansh Kaushik Vs. State of M.P.*, I.L.R. 2024 M.P. 621 (DB)

**LOK SEVA (ANUSUCHIT JATIYON, ANUSUCHIT JAN
JATIYON AUR ANYA PICHHADE VARGON KE LIYE
ARAKSHAN) RULES, M.P. 1998**

– **Rule 4-A** – See – Judicial Service (Recruitment and Conditions of Service) Rules, M.P. 1994, Rule 5(3) & (4): *Devansh Kaushik Vs. State of M.P.*, I.L.R. 2024 M.P. 621 (DB)

**LOKAYUKT EVAM UP-LOKAYUKT ADHINIYAM, M.P.
(37 OF 1981)**

– **Sections 7, 12 & 13(3)** and Special Police Establishment Act, M.P. (17 of 1947), Section 4 – Scope of Work – Held – M.P. Special Police Establishment is established for investigation of certain offences affecting public administration, under the supervision, direction and control of Lokayukta – Unless there is consent or approval u/S 4 of 1947 Act, any act of SPE at variance with the decision of Lokayukta or in absence thereof, shall be contrary to the provisions of Section 7, 12 & 13 of 1981 Act and Section 4 of 1947 Act and is thus unsustainable: *Vikas Rajoria Vs. State of M.P.*, I.L.R. 2024 M.P. 1749 (DB)

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MADHYA BHARAT LAND REVENUE AND TENANCY ACT, SAMVAT 2007 (66 OF 1950)

– See – Land Revenue Code, M.P., 1959, Section 57: *Rampuri Thr. LRs. Mahendrapuri Vs. State of M.P., I.L.R. 2024 M.P. 2357*

MADHYASTHAM ADHIKARAN ADHINIYAM, M.P. (29 OF 1983)

– **Section 7-B(2-A)**, Arbitration and Conciliation Act (26 of 1996), Section 11(6) and Limitation Act (36 of 1963), Section 14 – Limitation – Exclusion of Time Spent in Other Forum – Terminated Contract – Held – Respondent as per the clauses of Contract, invoked the remedy of arbitration u/S 11(6) before this Court within limitation – After decision of larger Bench of Apex Court, liberty was granted to petitioner to approach the Tribunal – As matter was pending before Apex Court, it cannot be said that respondent acted under the provisions of 1996 Act without due diligence or good faith – Tribunal rightly excluded the period spent in prosecuting the other remedy – Petition dismissed: *M.P. Madhya Kshetra Vidyut Vitran Co. Ltd. Vs. PSR AMRCL (JV), I.L.R. 2024 M.P. 1328 (DB)*

MAHATMA GANDHI CHITRAKOOT GRAMODAYA VISHWAVIDHYALAYA ADHINIYAM (9 OF 1991)

– **Section 2(1)** – Teachers – Held – The expression used is “appointed for imparting instruction or conducting research” – Petitioner was never “appointed” for said purpose – Memorandum shows that because of paucity of teachers, petitioner’s help was taken in educational activities – This temporary arrangement does not bring petitioner within ambit of “Teacher of University” and thus he cannot claim the age of retirement applicable to a “teacher” – Petitioner entitled to continue only upto age of 62 years – Petition dismissed: *Virendra Kumar Gupta Vs. State of M.P., I.L.R. 2024 M.P. *105*

MAHATMA GANDHI NATIONAL RURAL EMPLOYMENT GUARANTEE (APPOINTMENT, POWERS AND DUTIES OF THE OMBUDSMAN) M.P. RULES, 2013

– **Rules 3(g), 3(i), 7 & 8** – Complaint against Sarpanch – Held – As per Rule 3(i), Scheme Worker or Authority is defined as persons entrusted with powers and

duties under the scheme – This definition takes Sarpanch, up-sarpanch, Panchayat Secretary or Gram Rojgar Sahayak into its fold because all these persons are entrusted with powers and duties under the scheme: *Saroj Yadav (Smt.) Vs. State of M.P., I.L.R. 2024 M.P. 232*

– **Rule 5(3)** – Adverse Inference – Powers of Ombudsman – Held – Despite continuous requisition being made for more than 4 yrs. from the CEO, Janpad Panchayat about his opinion and to requisition the record, but he did not bother to bring the record before the Ombudsman – Adverse inference rightly drawn by Ombudsman – Petition dismissed: *Saroj Yadav (Smt.) Vs. State of M.P., I.L.R. 2024 M.P. 232*

– **Rule 7(xx)** – See – Constitution – Article 243: *Saroj Yadav (Smt.) Vs. State of M.P., I.L.R. 2024 M.P. 232*

MAJITHIA WAGE BOARD

– **Clause 20(j)** – See – Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955, Section 17(2): *Dainik Bhaskar Vs. State of M.P., I.L.R. 2024 M.P. 2575*

MEDICAL TERMINATION OF PREGNANCY ACT (34 OF 1971)

– **Section 3** – Period of Pregnancy – Apex Court in a case has permitted the termination of pregnancy even when the minor was in the 30th week of her pregnancy, however, subsequently the decision was taken by the minor and her parents not to put the child at risk: *A Minor Through Her Grandmother G Vs. State of M.P., I.L.R. 2024 M.P. 1769 (DB)*

– **Section 3** – Rape Victim – Period of Pregnancy – Pregnancy of over 28 weeks – Held – A conscious decision has been taken by guardian of minor as also the minor girl to proceed further with termination of pregnancy – An offence of rape has been committed on minor – Guardian of minor is an aged woman of 60 years who is solely taking care of minor and she states that she would not be able to take care of the minor and the baby – Termination of pregnancy allowed with certain conditions – Appeal allowed: *A Minor Through Her Grandmother G Vs. State of M.P., I.L.R. 2024 M.P. 1769 (DB)*

MINERAL (PREVENTION OF ILLEGAL MINING, TRANSPORTATION AND STORAGE) RULES, M.P., 2022

– **Rule 18(4)** – Final Release of Vehicle – Held – Rule 18(4) relates to final release of fortified vehicles, machines, tool etc. – It means that guilt of offender is determined and he was found guilty therefore, after payment of compounding fees

and payment for penalty, vehicle is to be released at the time final decision: *Prince Patel Vs. State of M.P., I.L.R. 2024 M.P. 806*

– **Rule 18(4), 19(6) & 21** – Word “Seized”, “Forfeiture” & “Confiscation” – Discussed and explained: *Prince Patel Vs. State of M.P., I.L.R. 2024 M.P. 806*

– **Rule 18(4) & 21** and Criminal Procedure Code, 1973 (2 of 1974), Sections 451, 457 & 482 – Interim Custody of Seized Vehicle – Held – In case of vehicle or article which has been seized under 2022 Rules, no case is pending before JMFC and the authorized officer is Collector or any officer not below rank of Deputy Collector – Vehicle is not produced before JMFC, he will not have any power/jurisdiction to release the seized vehicle u/s 451/457 CrPC – Court below erred in entertaining application u/s 451/457 CrPC – Application dismissed: *Prince Patel Vs. State of M.P., I.L.R. 2024 M.P. 806*

– **Rule 19(3) & 19(6)** – Responsibility of Owner of Vehicle – Held – Word “forfeiture” used in 2022 Rules is to be read as “confiscation” – If any vehicle which is used in commission of crime irrespective of the fact that owner is innocent, vehicle will be forfeited by State as owner is held responsible for illegal transportation of minor minerals: *Prince Patel Vs. State of M.P., I.L.R. 2024 M.P. 806*

– **Rule 21** – Interim Release of Vehicle – Requirements – Held – While release of vehicle under Rule 21, requirement is receipt of amount of vehicle, machinery as prescribed in schedule I: *Prince Patel Vs. State of M.P., I.L.R. 2024 M.P. 806*

– **Rule 21** – Interim Release of Vehicle – Word “Forfeited” & “Seized” – Held – Word forfeited vehicle has wrongly been used in Rule 21 – Forfeiture is by way of penalty to the owner of vehicle – Once guilt is established only then vehicle is forfeited and not during the interim stage or at stage of investigation – Word “forfeited” used in Rule 21 is to be read as “seized” vehicle: *Prince Patel Vs. State of M.P., I.L.R. 2024 M.P. 806*

MINIMUM WAGES ACT (11 OF 1948)

– **Sections 4, 13 & 23** – See – Motor Vehicles Act, 1988, Section 173: *Dalsingh Vs. Mohd. Gulfam, I.L.R. 2024 M.P. *133*

– **Section 13 & 14** – See – Motor Vehicles Act, 1988, Section 91: *Chief Executive Officer/Director Ziqitza Health Care Ltd. Vs. 108 Ambulance Karmachari Sangh M.P., I.L.R. 2024 M.P. 1585 (DB)*

MINIMUM WAGES RULES, M.P., 1958

– **Rule 25** – Held – Rule 25 provides that working day of an adult worker shall be so arranged that inclusive of the intervals of rest, if any, it should not spread over more than 12 hrs. on any day – This Court has earlier held that period of duty above and in excess of 8 hrs. upto 12 hrs. cannot be considered as overtime – Resting period of 4 hrs. cannot be termed as overtime: *Chief Executive Officer/Director Ziqitza Health Care Ltd. Vs. 108 Ambulance Karmachari Sangh M.P., I.L.R. 2024 M.P. 1585 (DB)*

MOTOR TRANSPORT WORKERS ACT (27 OF 1961)

– **Section 2(f) & 38** – See – Motor Vehicles Act, 1988, Section 91: *Chief Executive Officer/Director Ziqitza Health Care Ltd. Vs. 108 Ambulance Karmachari Sangh M.P., I.L.R. 2024 M.P. 1585 (DB)*

MOTOR VEHICLES ACT (59 OF 1988)

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1. Acquittal in Criminal Case

– **Section 166** – Acquittal in Criminal Case – Effect – Held – Tribunal is not binded by the findings of acquittal in criminal case – Coordinate Bench of this Court has concluded that acquittal of accused in criminal trial does not absolve him from liability of compensation – Registration of offence and police investigation is not a condition precedent for awarding the claim: *Branch Manager HDFC Ergo General Insurance Company Ltd. Vs. Smt. Laxmi Nath, I.L.R. 2024 M.P. *82*

– **Section 173** – Acquittal in Criminal Case – Held – This Court earlier concluded that acquittal of accused in criminal trial does not absolve him from liability of compensation – Tribunal is not bound by the findings of acquittal in criminal case – Registration of offence and police investigation is not a condition precedent for awarding the claim: *National Insurance Co. Ltd. Vs. Tasleem Bi, I.L.R. 2024 M.P. *212*

2. Adverse Inference

– **Section 166** – Adverse Inference – Held – Driver of offending vehicle was present before the tribunal during trial but he did not dare to adduce evidence and rebut the evidence of claimant, so presumption was rightly drawn against him – Appeal dismissed: *Branch Manager HDFC Ergo General Insurance Company Ltd. Vs. Smt. Laxmi Nath, I.L.R. 2024 M.P. *82*

3. Ambulance

– **Section 91**, Motor Transport Workers Act (27 of 1961), Section 2(f) & 38 and Minimum Wages Act (11 of 1948), Section 13 & 14 – Ambulance – "Hours of Work" – Held – Only for purpose of counting "Hours of Work" of any person engaged in Ambulance service, provisions of 1961 Act should be made applicable and for any other liability arising out of the said Act, Ambulances are exempted u/S 38 of the Act – Even maximum working hour in both the Acts is prescribed as 12 hrs. which includes 8 hrs. of working hours and 4 hrs. of spread over period: *Chief Executive Officer/Director Ziqitza Health Care Ltd. Vs. 108 Ambulance Karmachari Sangh M.P., I.L.R. 2024 M.P. 1585 (DB)*

– **Section 91**, Motor Transport Workers Act (27 of 1961), Section 2(f) & 38 and Minimum Wages Act (11 of 1948), Section 13 & 14 – "Hours of Work" – Overtime Wages – Held – It was burden of employees to prove that they have worked for more than 8 hrs., excluding 4 hrs. of spread over period, which they have failed to do by leading no evidence – In absence of any evidence for hours of work, Tribunal erred in granting overtime wages to R-1 employees – Impugned order set aside – Petition allowed: *Chief Executive Officer/Director Ziqitza Health Care Ltd. Vs. 108 Ambulance Karmachari Sangh M.P.*, I.L.R. 2024 M.P. 1585 (DB)

4. Assessment of Disability

– **Section 173** – Assessment of Disability – Held – Tribunal has assessed 50% disability with regard to entire body whereas doctor stated 70% disability only in regard to right leg – Assessment of tribunal cannot be said to be erroneous: *Somti Bai Vs. Chhablal @ Chhabilal Patel (Dead)*, I.L.R. 2024 M.P. *147

– **Section 173** – Disability – Assessment – Held – Injured sustained several injuries and she was operated and was examined by Expert body who assessed her disability to 40% – Tribunal ought to have accepted the said assessment certified by the expert body – Tribunal ignored the loss of disability while assessing compensation: *Nikita Raghuwanshi Vs. Amzed Shah*, I.L.R. 2024 M.P. *181

– **Section 173** – Disability Percentage – Assessment – Held – When the competent Medical Board after examining the appellant assessed his disability to be 25%, Tribunal ought to have accepted the said assessment certified by expert body, instead of scaling down the percentage of disability to 10% by guess work without giving any proper reason: *Ramesh Sahu Vs. Deepak Kumar Sahu*, I.L.R. 2024 M.P. 1351

5. Attendant/Medical Expenses

– **Section 166 & 173** – Attendant Charges – Held – Claimant sustained fracture and remained admitted for nearly about 40 days and thereafter at least he took bed rest for 2 months, he must have required an attendant at that time – Attendant may also sustain loss of earnings – Claimant is entitled for compensation under the head of attending charges: *Sudesh Pandey Vs. Sudhir Kumar*, I.L.R. 2024 M.P. 2109

– **Section 166 & 173** – Medical Expenses – Held – Claimant suffered serious injury i.e fracture on his left leg ankle – He was an unskilled labour and was hospitalized for nearly 40 days – Compensation under the head of medical expenses enhanced from Rs. 10,000 to Rs. 50,000: *Sudesh Pandey Vs. Sudhir Kumar*, I.L.R. 2024 M.P. 2109

– **Section 173** – Attendant Charges, Transport & Special Diet – Held – Tribunal awarded a meager amount of Rs. 10,000 – Accident occurred in 2019 and when she was examined by doctor in 2021, she was suffering with severe pain, she was not able to walk or sit comfortably and having several fractures – She cannot move alone unless assisted by attendant – Compensation of Rs. 10,000 enhanced to Rs. 1 lakh: *Nikita Raghuwanshi Vs. Amzed Shah, I.L.R. 2024 M.P. *181*

– **Section 173** – Travelling Expenses, Special Diet & Attendant – Held – Tribunal has awarded a meager amount of Rs. 7,000/- in the head of travelling expenses, special diet and attendant – Amount enhance to Rs. 15,000: *Somti Bai Vs. Chhablal @ Chhablal Patel (Dead), I.L.R. 2024 M.P. *147*

6. Commercial use of Vehicle

– **Sections 2(14), 149(2)(a) & 173** – "Goods Carriage" – Commercial use of Tractor Trolley – Held – Merely because tractor trolley was carrying sand would not mean that tractor was being used for commercial purpose – No suggestion was put by counsel for insurance company to witnesses that the vehicle was being used for other than agricultural purpose or was used for hire and reward – A tractor fitted with a trolley may or may not answer the definition of "goods carriage" – Tribunal not justified in directing that compensation be paid by insurance company first and thereafter company will recover the same from owner and driver of vehicle – Direction to recover the compensation from driver and owner is set aside – Appeal allowed: *Dharmendra Kumar Vs. Smt. Durga Bai, I.L.R. 2024 M.P. 1385*

– **Section 166 & 173** – Goods/Commercial Vehicle – Gratuitous Passenger – Determination – Parameters enumerated and explained: *IFFCO Tokio General Insurance Co. Ltd. Vs. Imrat Sonkar, I.L.R. 2024 M.P. 2137*

– **Section 166 & 173** – Goods/Commercial Vehicle – Gratuitous Passenger – Liability of Insurance Company – Held – At the time of accident, injured/deceased were travelling in offending vehicle as gratuitous passenger after paying fare and not as owner/representative of goods in the cabin of vehicle – Insurance company is not liable to pay compensation – In instant case, principle of pay and recover also cannot be applied – Owner and driver are liable to pay compensation – Impugned award set aside – Revision allowed: *IFFCO Tokio General Insurance Co. Ltd. Vs. Imrat Sonkar, I.L.R. 2024 M.P. 2137*

– **Section 166 & 173** – Goods/Commercial Vehicle – Minor Child – Liability of Insurance Company – Held – Injured was a minor on the date of accident and he was travelling in goods carrying/commercial vehicle – He is not the owner/representative of goods, thus for injuries sustained by the child, insurance

company is not liable to pay compensation: *IFFCO Tokio General Insurance Co. Ltd. Vs. Imrat Sonkar, I.L.R. 2024 M.P. 2137*

– **Section 173** – Breach of Insurance Policy – Burden of Proof – Held – Burden of proof that owner and driver breached the terms and conditions of insurance policy firstly lies upon the insurance company – Tractor was insured for agricultural purpose – As per FIR and statement of witness of insurance company, trolley was carrying Morram at the time of incident – Now burden shifts upon the owner and driver to establish that tractor was used for agricultural purpose and if the same is not established by the owner, adverse inference can be drawn against him: *Mahendra Prasad Pandey Vs. Ramdas Gupta, I.L.R. 2024 M.P. *90*

– **Section 173** – Breach of Insurance Policy – Held – Tractor was insured for agricultural purpose – As per FIR, trolley was carrying Morram at the time of incident and was being used for commercial purpose – Owner was unable to prove that offending vehicle was used for agricultural purpose at the time of incident – Tribunal did not err in exonerating the liability of insurance company – Appeal dismissed: *Mahendra Prasad Pandey Vs. Ramdas Gupta, I.L.R. 2024 M.P. *90*

7. Compensation/Determination

– **Section 166** – Quantum – Held – Claimant suffered 20% permanent disability and under this head Tribunal granted only Rs. 20,000 which is not just and proper – Claimant was a young person of 35 years – Amount of compensation enhanced by a sum of Rs. 1,00,000 – Appeal filed by claimant is partly allowed: *Yadorao Vs. Ashok, I.L.R. 2024 M.P. *107*

– **Section 166 & 173** – Determination of Compensation – Fundamental Parameters – Discussed and explained: *Sushila Dhurve (Smt.) Vs. Sukhlal Dhurve, I.L.R. 2024 M.P. *266*

– **Section 166 & 173** – Determination of Compensation – Grounds – Discussed and explained: *Sudesh Pandey Vs. Sudhir Kumar, I.L.R. 2024 M.P. 2109*

– **Section 166 & 173** – Determination of Income of Injured/Deceased – Held – Claimant did not produce any documentary proof of income – Accident occurred in 2004 and during that period, notional income of labour/coolie was Rs. 4500 p.m. – Tribunal erred in fixing income @ Rs. 2000 p.m. – Income of appellant should be taken as Rs. 4500 p.m.: *Sudesh Pandey Vs. Sudhir Kumar, I.L.R. 2024 M.P. 2109*

– **Section 173** – Award – More than Claim Amount – Held – Apex Court concluded that there is no restriction that compensation could be awarded only upto the amount claimed by the claimant – In appropriate cases where from the evidence if Tribunal/Court considers that claimant is entitled to get more compensation than

claimed, Tribunal may pass such award – It is obligatory for the Tribunal/Court to award "just compensation": *Ramesh Sahu Vs. Deepak Kumar Sahu, I.L.R. 2024 M.P. 1351*

– **Section 173** – Award Amount more than Claim Amount – Held – There is no restriction that compensation could be awarded only upto the amount claimed by claimants – In appropriate case, where from the evidence brought on record, if Tribunal/Court considers that claimant is entitled to get more compensation than what he has claimed, Tribunal can grant more compensation to claimant: *United Insurance Co. Ltd. Vs. Anil Kumar Gour, I.L.R. 2024 M.P. 1367*

– **Section 173** – Awarding more than Claim Amount – Jurisdiction – Held – In appropriate cases, where from the evidence, if Tribunal/Court considers that claimant is entitled to get more compensation than claimed, Tribunal may pass such award – There is no restriction that compensation could only be awarded upto the claim amount – Claimant is entitled to more compensation though she might have not claimed the same at the time of filing of this appeal: *Nikita Raghuvanshi Vs. Amzed Shah, I.L.R. 2024 M.P. *181*

– **Section 173** – Consortium – Entitlement – Held – Consortium can be claimed under the head of “spousal consortium”, “parental consortium” and “filial consortium” @ Rs. 40,000 – If there are wife, son and mother then each one of them is entitled to receive consortium of Rs. 40,000 – Grand parents, sister and brother are not entitled for consortium: *Dalsingh Vs. Mohd. Gulfam, I.L.R. 2024 M.P. *133*

– **Section 173** – Consortium – Held – Appellants entitled to get compensation under the head of consortium in all heads i.e. spousal consortium, parental consortium and filial consortium – Appellants are wife, children and parents, each one is entitled to get consortium @ Rs.44,000: *Hakku (Smt.) Vs. Garvar Singh, I.L.R. 2024 M.P. *191*

– **Section 173** – Enhancement of Compensation – Deduction of Personal Expenses – Held – On the date of incident, parents of deceased use to do agricultural work, thus they were not exclusively dependent upon deceased – Tribunal rightly deducted 1/3rd part for personal expenses: *Datinder Kaur Vs. Mohanlal, I.L.R. 2024 M.P. *7*

– **Section 173** – Enhancement of Compensation – Future Prospects – Held – Apex Court concluded that if deceased was self employed and was having a fixed salary then addition of 40% of established income would be warranted where the deceased was below the age of 40 yrs: *Datinder Kaur Vs. Mohanlal, I.L.R. 2024 M.P. *7*

– **Section 173** – Enhancement of Compensation – Income Tax Return – Held – Accident occurred on 14.07.2007 whereas income tax return was filed on 27.07.2007 – Return has been filed by some other person after the death of deceased – Same cannot be taken into consideration as possibility of them being filed by inflating the income cannot be ruled out – Tribunal rightly discarded the income tax return for assessing income of deceased: *Datinder Kaur Vs. Mohanlal, I.L.R. 2024 M.P. *7*

– **Section 173** – Filial Consortium & Loss of Love and Affection – Held – Father and mother of deceased are entitled for loss of consortium under the head of "filial consortium" for the loss of parental aid, protection, affection, society, discipline, guidance and training instead of compensation under the head of "loss of love and affection" – Parents entitled "filial consortium" @ Rs. 40,000 each: *United Insurance Co. Ltd. Vs. Anil Kumar Gour, I.L.R. 2024 M.P. 1367*

– **Section 173** – Filial Consortium & Parental Consortium – Tribunal has not awarded any filial consortium to parents of deceased and not awarded any parental consortium to children and also not properly awarded consortium to wife of deceased – Rs. 40,000 on each heads awarded: *Mayabai (Smt.) Vs. Neelu, I.L.R. 2024 M.P. *180*

– **Section 173** – Future Medical Expenses – Held – Tribunal has not awarded any amount for future medical expenses – In view of the injuries, she will be required to remove the implants and screws from her hip bone which needs further treatment – She might require special mattress which will have to be changed frequently – In future, she may face many other medical issues because of injuries suffered – Keeping in view of her young age and assuming she would live another 40 to 50 years, Rs. 1,50,000 awarded for future medical expenses: *Nikita Raghuwanshi Vs. Amzed Shah, I.L.R. 2024 M.P. *181*

– **Section 173** – Grievous Injury – Pain & Sufferings – Held – Tribunal awarded only Rs. 10,000/- in the head of pain & sufferings and not awarded any amount under the head of grievous injury – Amount enhanced to Rs. 40,000/-: *Somti Bai Vs. Chhablal @ Chhabilal Patel (Dead), I.L.R. 2024 M.P. *147*

– **Section 173** – Loss of Amenities of Life – Held – Injured is a young girl of 28 years – Person who has suffered 40% disability cannot lead a normal life – She was fractured in left femur bone and neck, commutated 4 screws fixation in left hip and she is not able to walk and sit squarely – She cannot enjoy pleasures of marital life – Rs. 1,50,000 awarded for loss of amenities of life: *Nikita Raghuwanshi Vs. Amzed Shah, I.L.R. 2024 M.P. *181*

– **Section 173** – Loss of Amenities – Held – Injured was 45 years old on date of accident – His left hand has been amputated from elbow on account of injuries sustained – Appellant entitled for Rs. 2 lacs for loss of amenities: *Mubarak Khan Vs. Smt. Sukko Bai Kol, I.L.R. 2024 M.P. 1642*

– **Section 173** – Loss of Estate & Funeral Expenses – Held – Tribunal awarded a meager amount of Rs. 2000 towards funeral expenses and Rs. 2500 towards loss of estate – Amount enhance to Rs. 15,000 in both heads: *Mayabai (Smt.) Vs. Neelu, I.L.R. 2024 M.P. *180*

– **Section 173** – Loss of Estate, Consortium & Funeral Expenses – Held – Apex Court concluded that responsible figures on conventional heads, namely loss of estate, loss of consortium and funeral expenses should be Rs. 15,000, Rs. 40,000 and Rs. 15,000 respectively – These amounts should be enhanced at the rate of 10% in every three years: *Savitri Singh Rajput (Smt.) Vs. Shah Coal Pvt. Ltd., I.L.R. 2024 M.P. *202*

– **Section 173** – Loss of Future Earnings – Held – Appellant's left hand has been amputated from elbow on account of injuries sustained – At the time of accident, he was working as a labourer – Functional disability/loss of future earning capacity is determined as 75%: *Mubarak Khan Vs. Smt. Sukko Bai Kol, I.L.R. 2024 M.P. 1642*

– **Section 173** – Pain & Suffering – Held – Tribunal awarded a meager amount of Rs. 10,000 – It is not possible for the Court to make precise assessment of the pain and trauma suffered by the person whose hip bone was fractured and suffered disability of 40% due to accident – Injured will have to struggle and face different challenges and she was handicapped – Compensation of Rs. 10,000 enhanced to Rs. 1,50,000: *Nikita Raghuwanshi Vs. Amzed Shah, I.L.R. 2024 M.P. *181*

– **Section 173** – Pain & Sufferings – Held – Injured suffered with serious injuries and he was not able to bend his right leg completely – Sufferance cannot be compensated in terms of money – Compensation under the head of "pain and sufferings" enhanced from Rs.7000 to Rs.1,00,000: *Ramesh Sahu Vs. Deepak Kumar Sahu, I.L.R. 2024 M.P. 1351*

8. Contributory Negligence

– **Section 173** – Contributory Negligence – Evidence – Held – Suggestion of counsel for Insurance Company was denied by the witness that deceased driven the car negligently and accident occurred due to his negligence – Offending vehicle hit the car when it was parked on the road side – Finding of Tribunal that there was

contributory negligence of deceased to the extent of 30% is based on presumption and is thus set aside: *Archana Tiwari (Smt.) Vs. Darbarilal, I.L.R. 2024 M.P. *47*

– **Section 173** – Contributory Negligence – Held – Respondents have not adduced any evidence regarding deceased's contribution towards negligence to cause accident or any wrongful act of deceased which contributed to the accident or to the nature of injuries sustained – Reduction of 20% by Tribunal towards contributory negligence is set aside: *United Insurance Co. Ltd. Vs. Anil Kumar Gour, I.L.R. 2024 M.P. 1367*

9. Deduction of Medical Insurance Amount

– **Section 166** – Deduction of Medical Insurance Amount – Tribunal deducted the amount received under medi-claim policy – Held – Whenever a person takes medi-claim insurance policy, he has to deposit annual/monthly premium – Amount received under medi-claim insurance cannot be deducted from medical expenses: *Mamta Yadav (Smt.) Vs. Amrat Singh, I.L.R. 2024 M.P. 986*

10. Definition of Motor Vehicle

– **Sections 2(28), 165 & 166** – Maintainability – Definition of Motor Vehicle – Held – Application u/S 166 is only maintainable when accident involving death or bodily injury of a person arising out of use of motor vehicles – Offending vehicle which is a chain mounted excavator caterpillar does not come within purview of motor vehicle as defined in the 1988 Act – Application u/S 166 was not maintainable – Impugned award set aside – Appeal allowed: *Future Generali India Ins. Co. Ltd. Vs. Smt. Santoshi, I.L.R. 2024 M.P. *175*

11. Determination of Age

– **Section 173** – Age of Injured – Held – Tribunal assessed the age of injured as 16 years without any cogent evidence whereas in MLC report age is mentioned as 15 years – In claim petition, claimant herself has mentioned her age as 15 years on the date of incident – Claimant's age will be considered to be 15 years for assessment of award: *Somti Bai Vs. Chhablal @ Chhabilal Patel (Dead), I.L.R. 2024 M.P. *147*

– **Section 173** and Child and Adolescent Labour (Prohibition and Regulation) Act (61 of 1986), Section 2(ii) – Age of Deceased – Determination of Income – Held – As per Section 2(ii) of 1986 Act, Child means a person who has not completed 14 years of age – Deceased was 16-17 years of age, thus he was more than 16 years of age and does not come within purview of “child” – In our country persons who are more than 16 years of age are capable to do labour work – Tribunal

rightly held the deceased to be an unskilled labour – Appeal dismissed: *The New India Assurance Ltd. Vs. Kamalsingh Sisodiya, I.L.R. 2024 M.P. *247*

12. Determination of Dependency

– **Section 166** – Earning Widow – Dependency – Determination – Held – Widow of deceased is an earning lady and she is not totally dependant upon earnings of deceased – She is entitled for compensation but her dependency would be one half of the earnings of deceased: *Aysha Be Vs. Mohinder, I.L.R. 2024 M.P. 466*

13. Driving License

– **Section 39 & 173** – Transport Driving License – Held – As per evidence, driver of the offending vehicle had license to drive light motor vehicle – No separate endorsement on license is required to drive transport vehicle: *National Insurance Co. Ltd. Vs. Smt. Chanda Bai, I.L.R. 2024 M.P. 1347*

– **Section 166 & 173** – Valid Driving License – Held – Insurance company has taken a plea that driver was not having a valid driving license but insurer has not taken any steps for summoning the transport authority to produce the particulars in this regard – No witness was examined and no documentary evidence produced to substantiate the said plea – Insurance company cannot escape from his liability to pay compensation: *Sudesh Pandey Vs. Sudhir Kumar, I.L.R. 2024 M.P. 2109*

– **Section 173** – Valid Driving Licence – Breach of Policy – Burden of Proof – Held – Issue of breach of policy is to be proved by insurance company but firstly it is the duty of owner and driver of offending vehicle to produce driving licence then burden shifts on insurance company to rebut that the driving licence produced was not valid and effective on date of incident – No driving licence produced before Tribunal, thus company had no source to verify the same – There is a breach of Policy – Claimant not entitled to get compensation from insurance company – Appeal allowed: *Branch Manager Oriental Insurance Co. Ltd. Vs. Smt. Aarti, I.L.R. 2024 M.P. 1381*

– **Section 173** – Valid Driving Licence – Liability of Insurance Company – Held – Apex Court concluded that mere production of valid insurance certificate in respect of offending vehicle is not enough for owner to make insurance company liable – Insurance company can be fastened with liability on basis of valid insurance policy only after establishing the fact by owner of offending vehicle that vehicle is not only insured but also driven by an authorized person having a valid driving licence: *Branch Manager Oriental Insurance Co. Ltd. Vs. Smt. Aarti, I.L.R. 2024 M.P. 1381*

– **Section 173** and Evidence Act (1 of 1872), Section 106 – Driving License – Burden of Proof – Held – As per Section 106 of Evidence act, it is the duty of driver to produce driving license before Tribunal when he has appeared before it and filed written statement but he did not produce driving license – Adverse interference shall be drawn against him because it is the fact which is within his personal knowledge therefore it was for him to disclose the fact that he has a driving license – Insurance company entitled to recover the compensation from owner of vehicle – Appeal allowed: *New India Assurance Com. Ltd. Vs. Shri Punam Chandra Kesharwani*, I.L.R. 2024 M.P. 981

14. False Implication of Vehicle

– **Section 173** – False Implication of Vehicle – Eye Witness – Held – FIR was lodged promptly – There is a eye witness in the case and driver of the offending vehicle did not dare to enter the witness box to rebut the evidence of eye witness – Evidence of the eye witness remained intact during cross-examination – It is established that offending vehicle was not falsely implicated: *ICICI Lombard General Insurance Co. Ltd. Vs. Rukmani Bai*, I.L.R. 2024 M.P. *137

– **Section 173** – False Implication of Vehicle – Held – Police registered FIR and filed charge-sheet against driver of offending vehicle but owner and driver had not dared to adduce any evidence in rebuttal of criminal documents before the Tribunal – Presumption must be drawn against them in this regard – It is not established that it is a case of false implication of vehicle: *Oriental Insurance Co. Ltd. Vs. Kankudi*, I.L.R. 2024 M.P. *240

– **Section 173** – False Implication of Vehicle – Held – There are similarities between number and model of vehicle, there could be confusion/mistake in recording number – Partially wrong number was disclosed in FIR as MP-11 BO-304 (TVS-CHAMP) but after investigation charge-sheet was filed disclosing number of offending vehicle as MP-11 AA 304 (TVS XL) – Accident was caused to a 10 years old girl, it was not expected from her to give correct description of motorcycle and its number – Claim was wrongly rejected – Compensation of Rs. 25,000 granted – Appeal allowed: *Laxmi Vs. Jagdishchandra*, I.L.R. 2024 M.P. *178

– **Section 173** – False Implication of Vehicle – Liability of Driver – Held – Investigating officer was also examined by claimant and he specifically stated that after investigation he found that driver of offending vehicle caused the accident and charge-sheet was filed against driver – Driver has submitted written complaint to higher authorities of police, which is not sufficient to prove that driver of the vehicle has not caused the accident – Nothing has been done with regard to the written

complaint – Appellant failed to prove that offending vehicle was falsely implicated: *National Insurance Co. Ltd. Vs. Tasleem Bi, I.L.R. 2024 M.P. *212*

– **Section 173** – False Involvement of Vehicle – Held – In FIR details of driver and number of motor cycle were not mentioned – If FIR was an afterthought to falsely involve offending vehicle, number of motor cycle and name of driver would have been mentioned – False involvement of vehicle is not proved – Appeal filed by insurance company dismissed: *United Insurance Co. Ltd. Vs. Raksingh Bhilala, I.L.R. 2024 M.P. *127*

15. FIR/Delayed FIR

– **Section 166** – Delayed FIR – Effect – FIR lodged after 11 days of accident – Held – Although lodging of FIR is vital in deciding motor accident claim cases, delay in lodging the same should not be treated as fatal for such proceedings, if claimant has been able to demonstrate satisfactory and cogent reasons for it: *Branch Manager HDFC Ergo General Insurance Company Ltd. Vs. Smt. Laxmi Nath, I.L.R. 2024 M.P. *82*

– **Section 166** – FIR Not Lodged – Effect – Held – Coordinate Bench of this Court has concluded that registration of offence and police investigation is not a condition precedent for awarding the claim – Claim petition cannot be dismissed simply because FIR is not lodged – Even after registration of offence, the papers of such investigation cannot be treated as substantial piece of evidence for claim case – Appeal filed by insurance company is dismissed: *Yadorao Vs. Ashok, I.L.R. 2024 M.P. *107*

– **Section 173** – Delay in FIR – Date of Accident – Held – In medical documents the date of incident is not the same as mentioned in the written report – There is delay of 2 months and 13 days in lodging FIR which was properly explained and proved – Claimant failed to establish her case: *Branch Manager Oriental Insurance Co. Ltd. Vs. Smt. Aarti, I.L.R. 2024 M.P. 1381*

– **Section 173** – Delay in FIR – Effect – Held – Although lodging of FIR is vital in deciding motor accident claim cases, the delay in lodging the same should not be treated as fatal for such proceedings, if claimant has been able to demonstrate satisfactory and cogent reasons for it – Accident occurred on 19.02.18, merg was registered on same date, naksha panchayatnama was prepared on same date in which witness stated that death has occurred due to accident – FIR was registered on 05.03.18 after due investigation and charge-sheet was filed against driver of offending vehicle – Delay properly explained: *Oriental Insurance Co. Ltd. Vs. Kankudi, I.L.R. 2024 M.P. *240*

– **Section 173** – Delay in FIR – Effect – Held – Delay in filing FIR is not fatal either in criminal case or claim case provided that sufficient and cogent reason for delay in filing the FIR is given – Accident occurred on 13.02.2016, information was immediately sent to police from hospital, police wrote it in Roznamcha and after investigating registered the case in respect of offending vehicle – Delay is sufficiently explained: *The Divisional Manager, The Oriental Insurance Co. Ltd. Vs. Naeem Khan, I.L.R. 2024 M.P. *172*

– **Section 173** – Delay in FIR – Held – Although lodging of FIR is vital in deciding motor accident claim cases, delay in lodging the same is not fatal for such proceedings, if claimant has been able to demonstrate satisfactory and cogent reasons for it – Date of accident is 06.01.2017 and information was sent to police by hospital on same day, merg was registered, postmortem was done on same date and then FIR was lodged on 23.01.2017 – No delay in lodging FIR – Claim case cannot be discarded on ground of delay in FIR: *National Insurance Co. Ltd. Vs. Tasleem Bi, I.L.R. 2024 M.P. *212*

16. Fitness of Vehicle

– **Section 39 & 173** – Certificate of Fitness of Vehicle – Breach of Policy Conditions – Held – Witness of insurance company admitted that in policy there is no specific mention that fitness certificate is necessary – No violation of terms and condition of the policy: *National Insurance Co. Ltd. Vs. Smt. Chanda Bai, I.L.R. 2024 M.P. 1347*

– **Section 173** – Fitness of Vehicle – Held – It is undisputed that at the time of accident, offending vehicle was being used for commercial purpose and was not having fitness certificate – Insurance company is not jointly and severally liable for compensation – Insurance company directed to pay compensation with liberty to recover the same from owner of vehicle: *The New India Assurance Ltd. Vs. Bhagwanlal, I.L.R. 2024 M.P. *218*

17. Future Prospects

– **Section 166** – Age & Future Prospects – Held – If age of deceased was 40-50 yrs, addition towards future prospects would be 30% of the income of deceased and if age of the deceased was 50-60 yrs, it would be 15% of the income of deceased: *Aysha Be Vs. Mohinder, I.L.R. 2024 M.P. 466*

– **Section 173** – Age & Future Prospects – Held – Apex Court concluded that if age of deceased is below 40 years, then 40% of income is to be added towards future prospects: *Archana Tiwari (Smt.) Vs. Darbarilal, I.L.R. 2024 M.P. *47*

– **Section 173** – Age & Income – Loss of Future Prospects – Held – On the date of incident, age of claimant was 15 years and she was a student – Since she had no earning, loss of income during treatment and loss of future prospects could not be assessed as per Minimum Wages Act – Income of the claimant should be assessed as Rs. 30,000/- p.a: *Somti Bai Vs. Chhablal @ Chhabilal Patel (Dead)*, I.L.R. 2024 M.P. *147

– **Section 173** – Future Prospects – Held – Apex Court concluded that in case of self employed or fixed salary, if age is below 40 years, then 40% would be applicable for future prospects and if age is between 40-50, 25% will be applicable and if age is between 50-60 then 10% would be applicable – Deceased was 50 years of age, thus Tribunal rightly applied 25% towards future prospects – Appeal dismissed: *ICICI Lombard General Insurance Co. Ltd. Vs. Rukmani Bai*, I.L.R. 2024 M.P. *137

– **Section 173** – Future Prospects – Held – Deceased was 30 years old at the time of accident – There is nothing to show that deceased was not having a permanent job in the company and was temporarily employed – Tribunal rightly awarded 50% as future prospects: *Gayatri Devi (Smt.) Vs. Roop Narayan*, I.L.R. 2024 M.P. *134

– **Section 173** – Future Prospects – Held – Tribunal erred in not adding any amount towards future prospects – Deceased was 47 years old at the time of accident thus 25% of assessed income should be added under the head of future prospects: *Mayabai (Smt.) Vs. Neelu*, I.L.R. 2024 M.P. *180

– **Section 173** – Government/Permanent Job – Future Prospects – Held – Apex Court concluded that if a person is in such a job wherein his salary is increased periodically/receives annual increment etc, then such person would be treated as being in "permanent job" – It is not correct that only government servant would be treated as being in "permanent job" – Deceased was Assistant Professor in private college and his salary was subject to periodical revision/hike etc, thus he would be treated as being in "permanent job" – Claimants entitled for 15% addition for future prospects instead of 10% – Appeal partly allowed: *Anjum Ansari (Smt.) Vs. R. Rajesh Rao*, I.L.R. 2024 M.P. 2365

– **Section 173** – Loss of Future Prospects – Held – Deceased was in a permanent job since 1991 and was about 49 years of age – 30% addition should be made towards loss of future prospects: *Savita Mishra Vs. Vashim Khan*, I.L.R. 2024 M.P. *201

18. Gratuitous Passenger

– **Section 39 & 173** – Gratuitous Passenger – Held – Son of deceased stated that his father was working as a labourer in offending vehicle for loading and unloading of goods – In this regard, insurance company has not put a single question to this witness – Evidence of this witness is un rebutted – Claimants proved that deceased was sitting in offending vehicle as a labourer and not gratuitous passenger: *National Insurance Co. Ltd. Vs. Smt. Chanda Bai, I.L.R. 2024 M.P. 1347*

– **Section 173** – Goods Carrying Vehicle – Gratuitous Passengers – Liability of Insurance Company – Held – Offending vehicle was a goods carrying vehicle and it has sitting capacity of only two persons, driver and helper – Deceased were travelling in offending vehicle as gratuitous passengers and they were not travelling as a labourer/helper – Insurance company not liable to pay compensation – Amount awarded by Tribunal be recovered from owner and driver of offending vehicle – Appeals allowed: *Branch Manager National Insurance Co. Ltd. Vs. Aghan Singh Meravi, I.L.R. 2024 M.P. *174*

– **Section 173** – Gratuitous Passengers – Coverage of Policy – Held – In insurance policy, when there is no coverage for gratuitous passengers travelling in a goods carrying vehicle which had capacity of only 2 persons i.e. driver and one more, and 3 persons were admittedly travelling beside the driver, then a direction to pay and recover cannot be sustained in eyes of law – While maintaining award, finding of pay and recover is set aside: *Cholamandalam MS General Ins. Co. Ltd. Vs. Abdul Karim Khan, I.L.R. 2024 M.P. *50*

– **Section 173** – Gratuitous Passenger – Held – Coordinate Bench of this Court concluded that if death of the passenger travelling on the mudguard of tractor met with accident due to its rash & negligent driving, Insurance Company cannot be fastened liability as sitting capacity of tractor is only one person i.e driver and no premium is paid for carrying passenger by the side of driver: *Leela Vs. Kunwar Lal, I.L.R. 2024 M.P. *57*

– **Section 173** – Passenger/Labour – Held – Deceased was sitting in the trolley and travelling as a passenger or labour and there is no premium taken by insurance company for labour or passenger travelling in the trolley – Finding of Tribunal that deceased was 3rd party is erroneous and is thus set aside – Insurance company is exonerated – Claimants entitled to recover awarded compensation from tractor owner and driver: *Leela Vs. Kunwar Lal, I.L.R. 2024 M.P. *57*

– **Section 173** – Unauthorized Gratuitous Passenger – Held – Apex Court concluded that in goods carrying vehicle, passenger who is owner of the goods is

permissible and his risk is covered under the insurance policy – Deceased was sitting in the offending vehicle with his goods (*dhaan ki bori*) – Wife of deceased also stated that her husband was sitting with his goods and he had not paid any rent – Deceased was not a gratuitous passenger: *Cholamandalam MS General Insurance Co. Ltd. Vs. Smt. Budhni Bai, I.L.R. 2024 M.P. 1192*

19. Income & Deductions

– **Section 166 & 173** – Actual Income of Deceased – Deductions – Held – If income of deceased is in taxable range, then appropriate amount is to be deducted under the head of income tax and only after such deduction, remaining amount can be treated to be actual income of deceased – From the income of the deceased, amount of professional tax as well as income tax is liable to be deducted: *Sushila Dhurve (Smt.) Vs. Sukhlal Dhurve, I.L.R. 2024 M.P. *266*

– **Section 166 & 173** – Deductions – Just Compensation – Held – Tribunal has deducted amount of family pension but has not deducted any amount for compassionate appointment of claimant in place of deceased – Compensation cannot be a bonanza/windfall/source of profit and claimant cannot be doubly benefited – Compensation requires to be calculated by adding family pension in income of deceased – A lower multiplier of 9 will be applicable without adding future prospects: *Sushila Dhurve (Smt.) Vs. Sukhlal Dhurve, I.L.R. 2024 M.P. *266*

– **Section 166 & 173** – Personal & Living Expenses – Held – There are 7 dependants of deceased – 1/5th is to be deducted for personal and living expenses: *Sushila Dhurve (Smt.) Vs. Sukhlal Dhurve, I.L.R. 2024 M.P. *266*

– **Section 173** – Deduction for Personal Expenses – Held – Deceased left behind 4 dependents – Tribunal erred in deducting 1/3rd towards personal expenses – Deduction of 1/4th towards personal expenses would be applicable: *Savitri Singh Rajput (Smt.) Vs. Shah Coal Pvt. Ltd., I.L.R. 2024 M.P. *202*

– **Section 173** – Deduction of Personal Expenses – Held – Deceased was unmarried and was survived by parents and unmarried sister – Number of dependant family members are three – 50% of the income of deceased should be deducted towards his personal and living expenses: *United Insurance Co. Ltd. Vs. Anil Kumar Gour, I.L.R. 2024 M.P. 1367*

– **Section 173** – Deduction of Personal Expenses – Held – 1/3rd amount should be deducted towards deceased's personal expenses if less than 3 persons are dependant on him – In present case, there are more than 4 persons dependant upon deceased so 1/4th amount must be deducted: *Rakhi (Smt.) Vs. Sunil, I.L.R. 2024 M.P. *165*

– **Section 173** – Deductions for Personal Expenses – Held – Apex Court concluded that where family members dependent on deceased exceeded 6 then 1/5th to be deducted for personal expenses: *The Oriental Insurance Co. Ltd. Vs. Smt. Dalibai, I.L.R. 2024 M.P. *219*

– **Section 173** – Determination of Income – Deductions – Held – Once deceased is held as agriculturist and after deduction of personal expenses from gross income, the net income should have been taken as income available for the family as dependency – Tribunal erred in again deducting 1/3rd amount on ground that deceased only supervised the agricultural work – Such finding is perverse in absence of evidence and is set aside: *Seema Bai (Smt.) Vs. Kamalkant Shukla, I.L.R. 2024 M.P. *124*

– **Section 173** – Determination of Income – Deductions – Held – The tax payable should be deducted for the purpose of assessing monthly income – Further, the amount paid in the head of medical allowance, transport allowance, attendance bonus and overtime should be deducted from gross salary of deceased: *Savita Mishra Vs. Vashim Khan, I.L.R. 2024 M.P. *201*

– **Section 173** – Determination of Income – Held – As per guidelines of Labour Department, the minimum wages of an unskilled labour at the time of accident was Rs. 7950/- pm – Tribunal erred to hold income of deceased as Rs.6000/- pm – Income of deceased determined to be Rs. 7950/- pm: *Hakku (Smt.) Vs. Garvar Singh, I.L.R. 2024 M.P. *191*

– **Section 173** – Determination of Income – Held – Witness, who is the employer of deceased has proved the salary certificate of deceased – Trial Court erred in not accepting the salary certificate of deceased according to which his salary was Rs. 11,500 pm and determined the salary as Rs. 5000 pm – Finding of Tribunal set aside – Income of deceased determined to be Rs. 11,500 pm: *Rakhi (Smt.) Vs. Sunil, I.L.R. 2024 M.P. *165*

– **Section 173** – Income – Bonus – Held – From documentary as well as oral evidence it is not proved that any bonus payable to deceased was either part of salary or amount of bonus was fixed – As per evidence bonus was performance based – It will not be just and proper to add bonus while calculating/computing monthly salary of deceased: *Gayatri Devi (Smt.) Vs. Roop Narayan, I.L.R. 2024 M.P. *134*

– **Section 173** – Income – Inclusions & Exclusions – Held – While calculating income/salary, HRA, Education allowance, supervisory allowance, CCA and medical allowance needs to be included but washing allowance, conveyance allowance and statutory deductions such as professional tax have to be excluded: *Gayatri Devi (Smt.) Vs. Roop Narayan, I.L.R. 2024 M.P. *134*

– **Section 173** – Income of Deceased – Computation – Allowances – Held – Apex Court concluded that allowances like travelling (conveyance) allowance, newspaper/periodicals allowance, telephone, servant, club fee, car maintenance etc. by virtue of vocation need not be included in salary while computing net earnings of deceased: *The Oriental Insurance Co. Ltd. Vs. Smt. Dalibai, I.L.R. 2024 M.P. *219*

– **Section 173** – Income of Deceased – Determination – Held – It was pleaded that deceased was an Anganwadi worker and also use to run beauty parlour but no documentary evidence filed in that regard – Apex Court assessed the income of a non-working housewife at Rs. 5,000 pm – Income of the deceased is to be taken as Rs.5000 p.m: *Pragya Tiwari Vs. Anwar Khan, I.L.R. 2024 M.P. *183*

– **Section 173** – Income of Deceased – Determination – Held – No documentary proof on record regarding income of deceased – In claim petition, it was mentioned that deceased was a transporter and contractor but no license in this regard was produced – It was not pleaded that deceased was owner of a truck which was used in his business, nor any registration certificate of truck was produced – Deceased was having a driving license of heavy transport vehicle, thus he can be considered as skilled labour – Incident took place in 2020, income of deceased ought to be taken as Rs. 10,000 p.m. instead of Rs. 6000 p.m. as taken by Tribunal: *Savitri Singh Rajput (Smt.) Vs. Shah Coal Pvt. Ltd., I.L.R. 2024 M.P. *202*

– **Section 173** – Income of Deceased – Held – Apex Court fixed notional income of a Coolie worker in 2010 @ Rs. 7,500 pm – Accident occurred in 2014 – Taking incremental addition of Rs. 500 in every subsequent year, notional income of deceased can safely be fixed @ Rs.9,500 pm in 2014: *United Insurance Co. Ltd. Vs. Anil Kumar Gour, I.L.R. 2024 M.P. 1367*

– **Section 173** – Income of Deceased – Held – Deceased was a semi skilled labour and Tribunal has assessed the income of the deceased as per notification of Labour Department, Government of Madhya Pradesh – Income of deceased was rightly assessed: *ICICI Lombard General Insurance Co. Ltd. Vs. Rukmani Bai, I.L.R. 2024 M.P. *137*

– **Section 173** – Income of Deceased – Held – Tribunal assessed the income of deceased to be Rs. 4,500 pm but at the relevant time Collector rate of unskilled labour was Rs. 7,950 p.m. – Tribunal erred in assessing the income of the deceased – Award amount enhanced accordingly – Appeal partly allowed: *Cholamandalam MS General Insurance Co. Ltd. Vs. Smt. Budhni Bai, I.L.R. 2024 M.P. 1192*

– **Section 173** – Income of Deceased – Proof – Held – It was the case of claimants that deceased had agricultural land and a dairy business – They filed document in respect of agricultural land but not filed and document which shows the

income/earning from agricultural land or dairy business – Income was not duly proved: *Leela Vs. Kunwar Lal, I.L.R. 2024 M.P. *57*

– **Section 173** – Income of Deceased – Proof – Held – Witness produced an office order where it was mentioned that deceased was working as a manager in a firm and was earning Rs. 8000 pm, but there was no document or bank statement to show that deceased received Rs. 8000 pm as salary – Income of Rs. 8000 pm is not duly established: *Archana Tiwari (Smt.) Vs. Darbarilal, I.L.R. 2024 M.P. *47*

– **Section 173** – Income of Injured – Determination – Held – Apex Court concluded that there would be incremental enhancement in the case of even self-employed individuals in unorganized sector – Notional income of the worker has been fixed in 2010 at Rs. 7,500 p.m. and it can safely be assumed that even a worker would be eligible for incremental addition of at least Rs. 500 in every subsequent year – Accident took place in 2019 and thus, from 2011 to 2019 it comes to Rs. 4,500 – Notional income of the injured can safely be fixed as $7,500 + 4,500 = 12,000$ p.m. in the year of accident: *Nikita Raghuwanshi Vs. Amzed Shah, I.L.R. 2024 M.P. *181*

– **Section 173** – Income of the Injured – Held – On the date of accident, as per the notification of the Labour Ministry, per month income of unskilled labour was Rs. 6,575 – Claimant was only 16 years old and he was a student, he was not doing any labour work – Assessment of income of claimant as Rs. 5000 p.m. by the Tribunal is correct: *The Divisional Manager, The Oriental Insurance Co. Ltd. Vs. Naeem Khan, I.L.R. 2024 M.P. *172*

– **Section 173** – Personal Expenses – Jurisdiction of Court – Held – Tribunal erred in not deducting any amount towards personal expenses – Though there is no cross-appeal/cross-objection by insurance company but this Court is not debarred from its right to exercise its jurisdiction in examining any legal position for or against the parties – Since appellant is the sole dependant on deceased hence 1/2 is to be deducted towards personal expenses: *Pragya Tiwari Vs. Anwar Khan, I.L.R. 2024 M.P. *183*

– **Section 173** – Personal Living Expenses – Deductions – Held – There are 5 dependants of the deceased i.e. wife, mother, father and 2 sons – Insurance company failed to prove that claimants no. 2 & 3 are not totally dependant upon income of deceased – Apex Court concluded that in case if there are more than 4 dependants, deduction should be made by taking 1/4th of income – Tribunal rightly assessed the deductions: *ICICI Lombard General Insurance Co. Ltd. Vs. Rukmani Bai, I.L.R. 2024 M.P. *137*

– **Section 173** – Personal Expenses – Held – Deceased was 47 years old and left behind his wife, sons and parents – Looking to the number of dependents 1/5 should be deducted towards personal expenses: *Mayabai (Smt.) Vs. Neelu, I.L.R. 2024 M.P. *180*

20. Income of Claimant

– **Section 166** – Income of Claimant – Determination – Held – Tribunal assessed the income of claimant to be Rs. 5,000 p.m. – Notification issued by Labour Commissioner under the Minimum Wages Act shows that on the date of accident minimum wages of a skilled labour was Rs. 8,735 p.m. – Claimant is a teacher, her income cannot be assessed less than that of a skilled labour – It would be just and proper to determine claimant's income as Rs. 8500 pm: *Mamta Yadav (Smt.) Vs. Amrat Singh, I.L.R. 2024 M.P. 986*

– **Section 173** – Notional Income – Incremental Addition – Held – There is an incremental addition in the case of even self-employed/individual in the unorganized sector and with respect of unspecified job of a coolie or running auto – Considering the increase in cost of living and economic advancements over the years, it can safely be assumed that even a coolie would be eligible for incremental addition of atleast Rs.500 in every subsequent years: *Ramesh Sahu Vs. Deepak Kumar Sahu, I.L.R. 2024 M.P. 1351*

– **Section 173** and Minimum Wages Act (11 of 1948) – Proof of Income – Determination – Held – Where there is no documentary evidence or insufficient oral/documentary evidence to prove income, it can be determined on basis of minimum wages duly notified under Minimum Wages Act, 1948 for determining compensation under 1988 Act: *Dalsingh Vs. Mohd. Gulfam, I.L.R. 2024 M.P. *133*

– **Section 173** and Minimum Wages Act (11 of 1948), Sections 4, 13 & 23 – Determination of Income – Minimum Wages – Held – Minimum wages consist of minimum basic pay and dearness allowance – Monthly minimum wages fixed in relevant notification are to be used and applied for determining compensation under 1988 Act – Annual income has to be calculated by multiplying minimum monthly wages by 12 months: *Dalsingh Vs. Mohd. Gulfam, I.L.R. 2024 M.P. *133*

21. Investigation Officer

– **Section 166** – Evidence of Investigating Officer – Held – Application of the claimants to summon the investigating officer who could have thrown light as on what basis charge-sheet was filed against R-1, who remained *ex-parte* before the Tribunal, has erroneously been dismissed – Investigating Officer is necessary witness, without examining him no correct findings can be recorded regarding

accident – Impugned award set aside – Matter remanded back to Tribunal to afford opportunity to parties to lead their respective evidence – Appeal disposed: *Must. Devkaliya @ Devkali Vs. Dharmendra Singh, I.L.R. 2024 M.P. 1667*

22. Legal Representative

– **Section 166** – Widow/Legal Representative – Dependent – Held – Section 166 nowhere uses the word “dependent” so also it is not defined in Act – When a person falls under category of “legal representative”, he can be a claimant – Appellant is widow of deceased – She may be an earning lady, but when both spouses are earning, there is reasons to believe that both must be contributing towards family expenses – Finding of Tribunal that as appellant is an earning widow, she is not dependent upon deceased, is erroneous: *Aysha Be Vs. Mohinder, I.L.R. 2024 M.P. 466*

– **Section 166 & 173** – Major Son – Entitlement – Held – Even if legal heir of deceased is not dependent on deceased, still such legal heir is entitled to receive compensation – Apex Court concluded that even a married daughter is a legal representative and is entitled to claim compensation – On the date of accident, A-5 & A-6 were major sons of deceased but there is nothing to show that they had independent source of income – Major sons are to be treated as dependant on deceased for the purpose of entitlement of compensation: *Sushila Dhurve (Smt.) Vs. Sukhlal Dhurve, I.L.R. 2024 M.P. *266*

– **Section 166(1)(c)** – Major/Married Sons – Entitlement – Held – Apex Court concluded that major sons of deceased who are married and gainfully employed or earning, can claim compensation – Their claim would be maintainable u/s 166(1)(c) – However, quantum of compensation would depend on the extent of their dependency on deceased parent: *Aysha Be Vs. Mohinder, I.L.R. 2024 M.P. 466*

– **Section 173** – Legal Representative /Dependents – Brother and Sisters – Held – Apex Court concluded that even major married and earning sons of deceased being legal representatives have a right to apply for compensation irrespective of whether they were fully dependent on deceased or not: *Cholamandalam MS General Insurance Vs. Hajarilal, I.L.R. 2024 M.P. 1215*

– **Section 173** – Married Daughters – Filial Consortium – Held – Married daughters are also entitled for filial consortium: *The Oriental Insurance Co. Ltd. Vs. Smt. Dalibai, I.L.R. 2024 M.P. *219*

– **Section 173** – Married Daughters – Legal Representatives – Held – Subsequent marriage of daughters during pendency of claim petition ought not to be a reason for reduction of compensation – Apex Court concluded that even major

married and earning sons of deceased being legal representatives have a right to apply for compensation and it is bounden duty of Tribunal to consider their application irrespective of whether they were fully dependent on deceased or not: *The Oriental Insurance Co. Ltd. Vs. Smt. Dalibai, I.L.R. 2024 M.P. *219*

– **Section 173** and Civil Procedure Code (5 of 1908), Section 2(11) – Legal Representative/Dependents – Brother and Sisters – Held – Deceased was unmarried and his parents have already died, therefore, brothers and sisters are his legal representatives and dependent on the deceased – Two younger sisters of deceased are entitled for compensation of their deceased brother but the claimant (brother) has not impleaded them as legal representative – Matter remanded for consideration afresh after impleading both sisters of deceased – Appeal disposed: *Cholamandalam MS General Insurance Vs. Hajarilal, I.L.R. 2024 M.P. 1215*

23. Multiplier

– **Section 166** – Age & Multiplier – Held – Age of the deceased was between 50-60 yrs, multiplier of 7 would be applicable: *Aysha Be Vs. Mohinder, I.L.R. 2024 M.P. 466*

– **Section 166 & 173** – Loss of Future Earnings – Multiplier – Held – Claimant was 31 years of age and 20% permanent disability was established – 20% of the annual income prior to accident will be considered for loss of future earnings and multiplier of 16 will be applicable: *Sudesh Pandey Vs. Sudhir Kumar, I.L.R. 2024 M.P. 2109*

– **Section 166 & 173** – Multiplier – Held – Apex Court concluded that a multiplier less than what is provided in Schedule could be applied in the special facts and circumstances of a case: *Sushila Dhurve (Smt.) Vs. Sukhlal Dhurve, I.L.R. 2024 M.P. *266*

– **Section 173** – Age & Multiplier – Held – If age of deceased is between 31-35 yrs, multiplier of 16 would be applicable: *Archana Tiwari (Smt.) Vs. Darbarilal, I.L.R. 2024 M.P. *47*

– **Section 173** – Age & Multiplier – Held – Since the age of claimant was 15 years on the date of incident, multiplier of 18 will be applied: *Somti Bai Vs. Chhablal @ Chhabilal Patel (Dead), I.L.R. 2024 M.P. *147*

– **Section 173** – Enhancement of Compensation – Multiplier – Held – If claimant/deceased is around 21-25 yrs. of age at the time of accident, multiplier of 18 would apply – Tribunal wrongly applied multiplier of 17 because age of deceased was around 24 yrs: *Datinder Kaur Vs. Mohanlal, I.L.R. 2024 M.P. *7*

– **Section 173** – Future Prospects & Multiplier – Age of deceased was 35 years at the time of accident – 40% needs to be added for future prospects – Looking to the age, multiplier of 16 should be applied: *Rakhi (Smt.) Vs. Sunil, I.L.R. 2024 M.P. *165*

– **Section 173** – Future Prospects & Multiplier – Held – At the time of accident deceased was 22 years old and he was an unskilled labour – Claimants entitled to get 40% of income as future prospects and multiplier of 18 would be applicable: *Dalsingh Vs. Mohd. Gulfam, I.L.R. 2024 M.P. *133*

– **Section 173** – Future Prospects & Multiplier – Held – At the time of accident deceased was 27 years old and he was an agriculturist – Claimants entitled to get 40% of income as future prospects and multiplier of 17 would be applicable: *Seema Bai (Smt.) Vs. Kamalkant Shukla, I.L.R. 2024 M.P. *124*

– **Section 173** – Future Prospects & Multiplier – Held – Injured was a Mason and was 45 years old on date of accident – His left hand has been amputated from elbow on account of injuries sustained – 25% has to be added as future prospects and multiplier of 14 is to be applied: *Mubarak Khan Vs. Smt. Sukko Bai Kol, I.L.R. 2024 M.P. 1642*

– **Section 173** – Multiplier – Held – Age of deceased was between 24-25 years – Since deceased was a labourer and was unmarried and as he is between age group of 21-25 years on date of accident, multiplier of 18 would be applicable: *United Insurance Co. Ltd. Vs. Anil Kumar Gour, I.L.R. 2024 M.P. 1367*

– **Section 173** – Multiplier & Future Prospects – Held – Age of the deceased was 35 years at the time of accident – Multiplier of 16 should be applied and 40% under the head of future prospects should be added in assessed income: *Pragya Tiwari Vs. Anwar Khan, I.L.R. 2024 M.P. *183*

– **Section 173** – Notional Income & Multiplier – Held – Deceased was under 15 years of age and a student of IV Class – Notional income is to be assessed to be Rs. 30,000 and multiplier of 15 is to be applied – Cross-objection filed by claimant partly allowed: *United Insurance Co. Ltd. Vs. Raksingh Bhilala, I.L.R. 2024 M.P. *127*

24. Nature of Proceedings

– **Sections 166, 185, 203, 204 & 205** – Nature of Proceedings – Nature of Evidence – Held – Section 185, 203, 204 & 205 relates to criminal offence/criminal liability and it is required to be proved beyond reasonable doubt whereas application u/S 166 is civil in nature, it has to be decided on basis of preponderance of

probability – Proceedings u/S 166 are essentially summary in nature: *Mubarak Khan Vs. Smt. Sukko Bai Kol, I.L.R. 2024 M.P. 1642*

– **Section 173** – Cross-Objection – Limitation – Held – Claimants have been served in between 30.10.2007 to 29.07.2009 and they filed cross-objection on 01.11.2011 – In absence of any appeal/cross-objection by claimants, compensation cannot be enhanced – Cross-objection cannot be considered and is dismissed as time barred: *United India Insurance Co. Ltd. Vs. Poonamchand, I.L.R. 2024 M.P. *126*

– **Section 173** – Defence of Owner of Vehicle – Burden of Proof – Held – Appellant (owner of vehicle) took a defence that the injured claimant was driving rashly and negligently and dashed his JCB which was stationed on roadside – Burden of proof is on appellant to prove this fact but he has not produced a single evidence nor cross-examined the claimant on this point – Appellant failed to prove his defence – Appeal dismissed: *Vijay Kumar Sharma Vs. Pradeep Kumar, I.L.R. 2024 M.P. 1598*

– **Section 173** – Driver of Offending Vehicle – Presumption – Held – If police registers the case against the offending vehicle after investigation, files charge-sheet before Magistrate, then Tribunal presume guilty of driver of the offending vehicle – Driver of offending vehicle accepted that he did not produce any document in which he made complaint before higher officer of police for lodging false case against him – Tribunal rightly held him guilty: *Vijay Kumar Sharma Vs. Pradeep Kumar, I.L.R. 2024 M.P. 1598*

– **Section 173** – Eye Witness – Principle of "Res Ipsa Loquitur" – Discussed and explained: *Oriental Insurance Co. Ltd. Vs. Kankudi, I.L.R. 2024 M.P. *240*

– **Section 173** and Civil Procedure Code (5 of 1908), Order 41 Rule 33 – Enhancement of Compensation – Held – O-41 R-33 CPC empowers Appellate Court to grant relief to a person who is neither appealed nor filed any cross-objections – Object of this provision is to do complete justice between parties – Appellate Court has power to enhance the compensation even in absence of any cross-objection: *United Insurance Co. Ltd. Vs. Anil Kumar Gour, I.L.R. 2024 M.P. 1367*

– **Section 173** and Limitation Act (36 of 1963), Section 5 – Condonation of Delay – Held – There is a delay of almost 7 years and 3 months – It is pleaded that appellant is a poor lady and did not have any knowledge about law – No reasonable explanation with sufficient cause has been given – Entire explanation depicts a casual approach – When there is a long delay and there is no proper explanation, laches would also come into play – Appeal is hopelessly barred by limitation – Appeal dismissed: *Chhaya Shivhare Vs. Ravikant Mishra, I.L.R. 2024 M.P. 2131*

– **Section 173**, Motor Vehicles Rules, M.P. 1994, Rule 242 and Civil Procedure Code (5 of 1908), Order 41 Rule 22 – Cross-objection – Maintainability – Held – Apex Court concluded that when appeal filed by insurance company is restricted only to denial of its liability to make payment of compensation, even in such cases, cross-objection on behalf of claimants is maintainable: *United Insurance Co. Ltd. Vs. Raksingh Bhilala, I.L.R. 2024 M.P. *127*

25. Principle of Pay & Recover

– **Section 173** – Liability of Insurance Company – Principle of "Pay & Recover" – Held – It is proved that offending vehicle was being driven without a valid permit and driver was not having a valid driving license – Tribunal erred in completely exonerating the Insurance company – Insurance company is liable to first pay the claimants and then recover from the owner of the vehicle: *Mayabai (Smt.) Vs. Neelu, I.L.R. 2024 M.P. *180*

– **Section 173** – Liability of Insurance Company – Principle of Pay and Recover – Held – No premium has been paid for any passenger travelling in tractor/trolley or employee or representative etc. – Premium was paid for own damage as well as for third party – At the time of accident, deceased was sitting in the trolley – Insurance company is not liable for any compensation – Principle of pay and recover cannot be applied in instant case – Appeal allowed: *United India Insurance Co. Ltd. Vs. Poonamchand, I.L.R. 2024 M.P. *126*

– **Section 173** – Liability of Owner of Vehicle – Held – Owner of offending vehicle nowhere deposed and has not produced any evidence to establish that before employing the driver, he verified the skills of driver and satisfied himself that driver is competent to drive the vehicle – Nothing on record to show that when the driver was employed and since when he was driving the vehicle, prior to the date of accident – Tribunal rightly applied the principle of pay and recover – Appeal dismissed: *Pradeep Singh Parihar Vs. Smt. Rubina, I.L.R. 2024 M.P. 2094*

26. Proof of Accident

– **Section 166** – Proof of Accident – Medical Evidence – Held – In the discharge summary "Fall at home" is mentioned which is not challenged by the appellant by cross-examining the concerned doctor – Son of appellant also stated that he has not seen the accident and he did not ask his father as to how he fell down – It is not established that injury of appellant was the result of accident – Tribunal rightly dismissed the claim – Appeal dismissed: *Madhorao Vs. Rattasingh, I.L.R. 2024 M.P. 487*

27. Terms & Conditions of Policy

– **Section 166 & 173** – Insurance Policy – Terms & Conditions – Held – An insurance policy is a contract and thus any liability under the policy is to be determined essentially as per/in accordance with its terms and conditions and not on any other grounds: *Mubarak Khan Vs. Smt. Sukko Bai Kol, I.L.R. 2024 M.P. 1642*

– **Section 173** – Insurance Policy – Coverage – Term “and” & “or” – Held – In the terms and conditions, IMT is mentioned which includes legal liability to paid Driver and/or Conductor and/or cleaner employed in connection with operation of insured vehicle – When and/or is used, then it is not disjunctive but conjunctive – Claimant is a cleaner and not a gratuitous passenger – Tribunal rightly awarded compensation – Appeal dismissed: *Divisional Manager United India Insurance Co. Ltd. Vs. Ankur @ Ankul Patel, I.L.R. 2024 M.P. 473*

– **Section 173** – Vehicle Not Insured – Held – Officer of insurance company stated that the cheque which was given for payment of premium was dishonoured therefore there is no valid insurance and this fact of dishonour and cancellation of insurance policy was intimated to owner/driver of vehicle – Information by bank was given on 26.12.2001 and accident took place on 19.05.2002 – Apex Court concluded that even for a third party liability which is not rising out of contract, liability cannot be enforced – Insurance company exonerated from paying compensation – Appeal allowed: *United India Insurance Co. Ltd. Vs. Bulla, I.L.R. 2024 M.P. 2621*

– **Sections 185, 203, 204 & 205** – Driving by Drunken Person – Amount/Extent of Alcohol – Liability of Insurance Company – Held – In terms and conditions there is no reference to Section 185, 203 to 205 of the Act and therein, no minimum content/amount of alcohol in blood is mandatory so as to attract application of above clause for excluding/exempting/exonerating insurance company from liability to pay compensation – For determining liability to pay compensation, it is immaterial that the content/amount/extent of consumption of alcohol is not established: *Mubarak Khan Vs. Smt. Sukko Bai Kol, I.L.R. 2024 M.P. 1642*

– **Sections 185, 203, 204 & 205** – Driving by Drunken Person – Liability of Insurance Company – Held – There is no breath analyser/blood alcohol concentration (BAC) report on record – Doctor examined the driver within 2 hours of accident and in MLC, he mentioned that smell of alcohol was coming out of his mouth – Doctor was not cross-examined on this point – Driver has not entered the witness box, adverse inference has to be drawn against him that he was intoxicated at the time of accident, which is a breach of terms and conditions of the policy – Insurance company is not liable to pay compensation: *Mubarak Khan Vs. Smt. Sukko Bai Kol, I.L.R. 2024 M.P. 1642*

28. Valid Permit

– **Sections 2(33), 2(35), 2(47), 66(1), 66(3)(i) & 173** – Valid Permit – Goods/Passenger Vehicle – Held – It is condition of policy that vehicle must hold a valid permit – Alleged vehicle is an auto rickshaw which is a passenger carrying vehicle therefore weight of vehicle had no meaning – Section 66(3)(i) only relates to "goods" vehicle and not for passenger carrying vehicle – Tribunal erred in holding that since weight of auto rickshaw is not more than 3000 Kgs., therefore permit was not required – Insurance company directed to pay awarded amount and recover it from owner – Appeal disposed: *The Manager, Oriental Insurance Co. Ltd. Vs. Jitendra, I.L.R. 2024 M.P. 1209*

– **Section 173** – Invalid Permit of Vehicle – Liability of Insurance Company – Held – Even if the vehicle was not having valid permit the primary liability to pay compensation is on the insurance company – Insurance company shall be at liberty to recover the same from the owner and driver of the offending vehicle: *Hakku (Smt.) Vs. Garvar Singh, I.L.R. 2024 M.P. *191*

– **Section 173** – Valid Permit – Apex Court concluded that in case offending vehicle was not having permit on date of incident then insurer will not be liable for compensation: *The Manager, Oriental Insurance Co. Ltd. Vs. Jitendra, I.L.R. 2024 M.P. 1209*

MOTOR VEHICLES RULES, M.P. 1994

– **Rule 242** – See – Motor Vehicles Act, 1988, Section 173: *United Insurance Co. Ltd. Vs. Raksingh Bhilala, I.L.R. 2024 M.P. *127*

MUNICIPAL (ACHAL SAMPATTI ANTRAN) RULES, M.P., 2016

– **Rule 17** – Non-Renewal of Lease – Demolition – Held – Land was given to father of petitioner on lease, so initial possession of petitioner was as per law – If lease was not renewed, still petitioner had an opportunity to apply for the same with delay fee as per Rule 17 – Construction demolished within 24 hrs. of issuance of notice – No finding by Revenue authorities that petitioner had made some encroachments – No explanation to justify the hurry or requirement for demolition – Impugned notices quashed – Municipal Council directed to reconstruct the building – Enquiry directed – Petition allowed with cost of Rs.1 Lac: *Mahesh Vs. State of M.P., I.L.R. 2024 M.P. *91*

– **Rule 17** – Non-Renewal of Lease – Demolition – Notice Period – Held – 24 hrs. time is too short to avail the remedy available under the law – Construction

was demolished even before expiry of 24 hrs. – Before starting demolition at least 7 days time has to be granted to alleged encroachers: *Mahesh Vs. State of M.P., I.L.R. 2024 M.P. *91*

**MUNICIPAL (COMPOUNDING OF OFFENCE OF
CONSTRUCTION OF BUILDINGS, FEES AND CONDITIONS)
RULES, M.P., 2016**

– **Rule 5, proviso** – Compounding of Illegal Construction – Requirements – Held – As per proviso to Rule 5, if construction has been made beyond permissible FAR or more than 10% of permissible FAR, compounding shall be made only after removing additional construction – For compounding the illegal construction, the illegal construction is required to be removed first – Without demolishing/removing the illegally constructed area, compounding cannot be done at all: *Leeladhar Vishwakarma Vs. State of M.P., I.L.R. 2024 M.P. *10*

MUNICIPAL CORPORATION ACT, M.P. (23 OF 1956)

– **Section 307** – Illegal Construction – Interim Order of Protection – Held – Merely because demolition was stayed by a Co-ordinate bench of this Court in relation to some other case involving different factual aspects, the same cannot be cited as a precedent: *Leeladhar Vishwakarma Vs. State of M.P., I.L.R. 2024 M.P. *10*

– **Section 307** – Illegal Construction – Notice – Held – Petitioner himself admitted that he has no building permission and no sanctioned map and his entire construction is illegal as well as the Colony where house has been constructed is also an illegal Colony – It is clear that contrary to rules, construction was made – No triable disputed issues are involved in present case requiring any adjudication on facts – Petition dismissed: *Leeladhar Vishwakarma Vs. State of M.P., I.L.R. 2024 M.P. *10*

– **Section 307(2) & (3)** – Illegal Construction – Deposit of Property Tax – Effect – Held – Merely because petitioner deposited property tax, it would not confer any title or would not legalize his illegal action – He himself admitted that he has no building permission and no sanctioned map and his entire construction is illegal as well as the Colony where house has been constructed is also an illegal Colony – Deposit of property tax will not come to the rescue of petitioner: *Leeladhar Vishwakarma Vs. State of M.P., I.L.R. 2024 M.P. *10*

– **Section 307(2) & (3)** – Illegal Construction – Held – Since there is no requirement that a particular period has to be given to wrongdoer for filing reply or an order u/S 307(3) can be issued only after a particular period, therefore, after having admitted that the construction has been raised without seeking any building permission or sanctioned map at all, no infirmity is found in impugned order: *Leeladhar Vishwakarma Vs. State of M.P., I.L.R. 2024 M.P. *10*

– **Section 308A** – Violation of Sanctioned Map – Compounding – Held – No material on record to permit petitioner to convert one of the floors meant for parking for any other use – Compounding is not to be done when violations are deliberate, designed, reckless or motivated – Such violation of sanctioned map is neither compoundable nor there is any provision for such deliberate act – Such deliberate illegalities cannot be regularized by Court shaking the faith of citizens in the machinery of town planning and administration of municipal laws – Petition dismissed: *A and A Real Estate Pvt. Ltd. Vs. State of M.P., I.L.R. 2024 M.P. 78*

– **Section 310** – See – Accommodation Control Act, M.P., 1961, Section 12(1)(f) & 18: *Ram Kishan Sharma (Dead) Through LRs. Vs. Pankaj Kumar Ahuja, I.L.R. 2024 M.P. 2121*

– **Section 401** – See – Civil Procedure Code, 1908, Order 7 Rule 11: *Abhishek Dubey Vs. Pyare Lal, I.L.R. 2024 M.P. 153*

MUNICIPALITIES ACT, M.P. (37 OF 1961)

– **Section 20(3)** and Limitation Act (36 of 1963), Section 4 to 24 – Election Petition – Limitation – Held – Act of 1961 is a self contained Code and it excludes the operation of Section 4 to 24 of Limitation Act – Thus, Section 5 of Limitation Act does not apply to filing of an election petition – Trial Court had no authority to entertain application u/S 5 of 1963 Act and to condone delay in election petition – Trial Court rightly rejected election petition as barred by time – Revision dismissed: *Anjali Jaiswal Vs. Chief Election & Returning Officer, I.L.R. 2024 M.P. *26*

MUSLIM WOMEN (PROTECTION OF RIGHTS ON MARRIAGE) ACT (20 OF 2019)

– **Sections 2(c), 3 & 4** – Talaq-e-ahsan & Talaq-e-biddat – Held – Talaq-e-biddat is also commonly known as Triple Talaq whereas talaq-e-ahsan can be revoked before it becomes operative – The only difference is that talaq-e-biddat will come in operation instantaneously whereas talaq-e-ahsan will become operative after three menstrual cycle of wife: *Javed Naseem Vs. State of M.P., I.L.R. 2024 M.P. 1931*

– **Sections 2(c), 3 & 4** – Talaq-e-ahsan & Talaq-e-biddat – Triple Talaq – Held – As per *Talaq-e-ahsan* sent by applicant, it was in nature of instantaneous talaq by putting pressure on complainant to come back otherwise talaq would take its effect – Merely because applicant sent *talaq-e-ahsan* with aforesaid condition would not take his case out of purview of Section 2(c) because applicant has already expressed his intention to grant irrevocable talaq to wife – It is contrary to reasons and objects of 2019 Act – Further, applicant went to parental house of wife and gave *talaq-e-biddat* by pronouncing talaq thrice – Offence made out – Application dismissed: *Javed Naseem Vs. State of M.P., I.L.R. 2024 M.P. 1931*

– **Section 3 & 4** – Applicability – Held – Section 3 & 4 applies only against Muslim husband – Petitioners who are mother-in-law and sister-in-law cannot be prosecuted for the offence of pronouncement of triple Talaq under the 2019 Act – Offence registered against petitioners under 2019 Act is quashed – Application partly allowed: *Aliya (Smt.) Vs. State of M.P., I.L.R. 2024 M.P. *221*

MUTATION

– **Pending Litigation** – Held – When the matter has not been finalized so far and is pending in Second Appeal, therefore the Tehsildar or any other revenue authority had no jurisdiction to entertain any application for mutation on basis of judgment and decree passed by Civil Judge: *Bheekam Singh Vs. Gautam Mallah, I.L.R. 2024 M.P. 263*

N

NAGAR TATHA GRAM NIVESH ADHINIYAM, M.P.

(23 OF 1973)

– **Section 16** and Bhumi Vikas Rules, M.P., 2012, Rules 5(2), 12, 31(2)(g) & (h) and Indore Development Plan 2021, Clause 6.20 & 6.3 – Change of Land Use – Competent Authority – Deemed Permission – Held – Clause 6.20 & 6.3 of Indore Development Plan 2021 confers power on competent authority i.e. Director, Town & Country Planning for change of land/building use or occupancy use – Petitioner filed application before Building Officer who is not the competent authority, thus application was not maintainable – No deemed permission on said application – Further, as per development plan, building in question is freezed for residential use – Petition dismissed: *Ritika Hasanandani (Smt.) Vs. Commissioner Indore Municipal Corporation, I.L.R. 2024 M.P. 899*

– **Sections 29, 30(1)(c) & 32**, Bhumi Vikas Rules, M.P., 2012, Rule 42 and Indore Development Plan 2021 – Height of Building – Permissibility – Held – Petitioner had a total land of 1390 sq.mts out of which constructed area is 929.33 sq.mts and open area for future widening of road is 460.67 sq.mts – As per 2021 plan, height more than 12.5 mts of building is not permissible on plot area less than 1000 sq.mt. – For determination of height of building, construction area has to be considered and not the open area – Permission for 12.5 mts height of building was rightly granted and prayer for increase of height of 18 mts rightly rejected – Petition dismissed: *Oceanic Developers Pvt. Ltd. Vs. State of M.P., I.L.R. 2024 M.P. 1511*

NAGREEYA NIKAY ADHYAPAK SAMVARG (EMPLOYMENT AND CONDITIONS OF SERVICES) RULES, M.P., 2008

– **Rule 5 & 9** and Panchayat Adhyapak Samvarg (Employment & Conditions of Services) Rules, M.P., 2008, Rule 5 & 9 – Migration & Absorption – Permissibility – Held – In both the Rules, there is no provision for migration from Panchayat to Municipality and Municipality to Panchayat – Executive powers can be exercised only within domain of the Rules, it cannot be exercised by State Government to club two provisions and permit migration from one set of nikay to another set of nikay – Executive orders are not in consonance with the powers conferred under Rule 9 – Migration cannot be permitted by issuance of executive orders – Petitions dismissed: *Suresh Kumar Mishra Vs. State of M.P., I.L.R. 2024 M.P. *246*

NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT (61 OF 1985)

SYNOPSIS

- | | |
|-----------------------------|----------------------------------|
| 1. Bail | 2. Possession |
| 3. Primary Evidence | 4. Quantity of Contraband |
| 5. Quashment | 6. Statement of Accused |
| 7. Testing of Sample | 8. Miscellaneous |

1. Bail

– **Sections 8/20, 25, 27, 29 & 67** and Criminal Procedure Code, 1973 (2 of 1974), Section 439 – Bail – Statement of Co-Accused – 1376.07 Kgs of Ganja seized – Held – Union of India submitted that applicant has criminal antecedents and 2 criminal cases of likewise offence are also registered against him at Indore and Amalner (Maharashtra) and he is a habitual offender – It is also submitted that as per

call details, at the relevant time, he was in regular contact with co-accused person – Considering the huge commercial quantity of narcotics substance, *prima facie* it does not appear that applicant is not guilty – Not a fit case to grant bail – Application dismissed: *Vijay Kisan Mohite @ Biju Beldar @ Bhau Vs. State of M.P.*, *I.L.R. 2024 M.P. 2195*

2. Possession

– **Sections 2(viii), 8(C), 9(1)(a)(va), 21 & 29** and Narcotic Drugs and Psychotropic Substances Rules 1985, Rule 52A(3) – Possession of Essential Narcotic Drug – Cough Syrups – Held – Rule 52A mentions codeine and its salts as essential narcotic drugs and it prohibits any person from possessing any essential narcotic drugs – Apex Court concluded that dealing in narcotic drugs and psychotropic substance for medical and scientific purpose does not by itself lift the embargo created u/S 8(c) and such a dealing must be in manner and extent provided by provisions of Act and Rules made thereunder – Application dismissed: *Dubraj Singh Patel Vs. State of M.P.*, *I.L.R. 2024 M.P. 1053*

3. Primary Evidence

– **Section 8(C)/20(b)(ii)(B) & 52-A** – Primary Evidence – Held – As per Section 52-A, inventory, photographs of psychotropic substances, list of sample drawn and certified by Magistrate is to be treated as primary evidence in the case: *Vishal Shahni Vs. State of M.P.*, *I.L.R. 2024 M.P. 1856*

4. Quantity of Contraband

– **Sections 8/15, 29 & 37**, Standing Order No. 1/89 and Criminal Procedure Code, 1973 (2 of 1974), Section 439 – Bail – Quantity of Contraband – Held – This Court earlier concluded that whether the procedure laid down under NDPS Act is complied or not, the same cannot be looked into at the time of grant of bail and can be decided at the time of trial as the same is question of fact – 451 Kgs of poppy straw seized from applicants – Case is related to huge quantity of contraband – Bail rejected – Application dismissed: *Hoshiyarsingh Vs. State of M.P.*, *I.L.R. 2024 M.P. *8*

5. Quashment

– **Section 8/18 & 29**, Evidence Act (1 of 1872), Section 27 and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Quashment of FIR – Implication on basis of Memorandum Statement – Held – Evidence u/S 27 of Evidence Act is admissible only to extent of recovery or discovery made through memorandum and nothing more – Implicating applicant as accused merely on basis of memorandum statement u/S 27 without any evidence is not lawful – FIR and charge-sheet quashed – Application allowed: *Bherulal Vs. State of M.P.*, *I.L.R. 2024 M.P. *130*

6. Statement of Accused

– **Section 67** – Statement of Accused – Admissibility – Held – Apex Court concluded that statement recorded u/S 67 of NDPS Act is not admissible in evidence and the same cannot be taken into account in order to convict an accused as well as cannot be used as confessional statement in the trial under NDPS Act: *Vijay Kisan Mohite @ Biju Beldar @ Bhau Vs. State of M.P., I.L.R. 2024 M.P. 2195*

7. Testing of Sample

– **Section 8/20 & 52-A** – Retesting of Samples – Permissibility – Held – FSL report revealed detention of Uria substance and no MDMA drug was found – State filed application for retesting of sample, which was rejected – Challenge to – Held – In extremely exceptional circumstances, for cogent reasons to be recorded, application for retesting can be considered provided application is filed within 15 days of the receipt of the test report – State filed the application within time – Application allowed: *State of M.P. Vs. Sonam, I.L.R. 2024 M.P. *18*

– **Section 8(C)/20(b)(ii)(B) & 52-A** and Narcotic Drugs and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022, Rule 13 – Dispatch of Sample for Testing – Procedure – Held – As per Rule 13, samples after being certified by Magistrate, shall be sent to one of jurisdictional laboratory for testing – Samples which were sent to State Forensic Laboratory were drawn by investigation officer and were not drawn before Magistrate – There is non-compliance of Rule 13 – Conviction and sentence set aside – Appeal allowed: *Vishal Shahni Vs. State of M.P., I.L.R. 2024 M.P. 1856*

8. Miscellaneous

– **Sections 2(viia), 8/21, 22, 29 & 37** – See – Criminal Procedure Code, 1973, Section 439: *Manoj Vs. State of M.P., I.L.R. 2024 M.P. *159*

– **Sections 2(xvii)(a), 8, 18(c) & 37** – See – Bharatiya Nagarik Suraksha Sanhita, 2023, Section 483: *Vishram Vs. State of M.P., I.L.R. 2024 M.P. 2650*

– **Section 8/15** – See – Criminal Procedure Code, 1973, Section 439: *Prahlad Chouhan Vs. State of M.P., I.L.R. 2024 M.P. *185*

– **Sections 8/15, 25 & 29** – See – Criminal Procedure Code, 1973, Section 438: *Vikas Vs. State of M.P., I.L.R. 2024 M.P. *220*

– **Section 8/15 & 37** – See – Criminal Procedure Code, 1973, Section 439: *Prahlad Chouhan Vs. State of M.P., I.L.R. 2024 M.P. *185*

– **Section 8/15 & 52(A)(ii)** – See – Criminal Procedure Code, 1973, Section 451 & 457: *Manakram Vs. State of M.P., I.L.R. 2024 M.P. *141*

– **Section 22(b) & 36(A)** – See – Criminal Procedure Code, 1973, Section 167(2): *Brijesh Kumar Mishra Vs. State of M.P., I.L.R. 2024 M.P. 1233*

– **Section 60** – See – Criminal Procedure Code, 1973, Section 451 & 457: *Manakram Vs. State of M.P., I.L.R. 2024 M.P. *141*

NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES

RULES 1985

– **Rule 52A(3)** – See – Narcotic Drugs and Psychotropic Substances Act, 1985, Sections 2(viia), 8(C), 9(1)(a)(va), 21 & 29: *Dubraj Singh Patel Vs. State of M.P., I.L.R. 2024 M.P. 1053*

NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES

(SEIZURE, STORAGE, SAMPLING AND DISPOSAL)

RULES, 2022

– **Rule 13** – See – Narcotic Drugs and Psychotropic Substances Act, 1985, Section 8(C)/20(b)(ii)(B) & 52-A: *Vishal Shahni Vs. State of M.P., I.L.R. 2024 M.P. 1856*

NARMADA JHABUA GRAMIN BANK (OFFICERS & EMPLOYEES) SERVICE REGULATIONS, 2010

– **Regulation 61 & 67** – Compulsory Retirement – Lapse of Leave – Held – Punishment was compulsory retirement with forfeiture of Gratuity – There is no termination of service forfeiting retiral benefits – Regulation 67 deals with future leave and not past leaves – As per proviso of Regulation 61 leave accumulated in service shall be paid to employee or his legal representatives – Leave encashment rightly granted by writ Court – Writ Appeal dismissed: *M.P. Gramin Bank Vs. Kakasingh Chhabra, I.L.R. 2024 M.P. 825 (DB)*

NATIONAL HOUSING BANK ACT (53 OF 1987)

– **Section 2(d) & 29-A** – See – Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002, Section 2(1)(m)(iv), 2(zd): *Virendra Rathore Vs. Tehsildar Distt. Mandsaur, I.L.R. 2024 M.P. 2244 (DB)*

NEGOTIABLE INSTRUMENTS ACT (26 OF 1881)

SYNOPSIS

- | | |
|--|----------------------------------|
| 1. Amendment in Pleadings | 2. Cheque Return Memo |
| 3. Complaint Dismissed in Default | 4. Liability of Directors |
| 5. Presumption | 6. Quashment |
| 7. Territorial Jurisdiction | 8. Miscellaneous |

1. Amendment in Pleadings

– **Section 138 & 142** – Amendment in Pleadings – Permissibility – Held – Date of cheques wrongly mentioned in the notice, complaint and even in the affidavit – Same cannot be said to be simple or curable infirmity but relates to substantial infirmity – Trial Court has taken cognizance in the matter, summons have been issued and accused has appeared before Court – Amendment would change the entire nature of complaint and it would cause prejudice to accused – Amendment is not based on subsequent events – Amendment at this stage of proceeding cannot be allowed – Impugned order set aside – Application allowed: *Anil Kumar Vs. Balwantsingh Sethi, I.L.R. 2024 M.P. 1743*

2. Cheque Return Memo

– **Section 138** and Bankers' Books Evidence Act (18 of 1891), Section 4 – Cheque Return Memo – Seal/ Signature – Held – Cheque return memo had no seal of the bank nor signature of the authority, thus it is in violation of the RBI guidelines dated 25.07.2011 – This Court earlier held that memo of bank without seal has no evidentiary value as a public document and it would be treated only a mere piece of paper – Respondent rightly acquitted – Leave to appeal dismissed: *Krishnapal Vs. Hari Singh, I.L.R. 2024 M.P. *256*

3. Complaint Dismissed in Default

– **Section 138** and Criminal Procedure Code, 1973 (2 of 1974), Section 256 – Complaint dismissed in Default – Acquittal of Accused – Complaint was dismissed in default in absence of complainant and his counsel – Held – Trial Court has already taken cognizance and also summoned the accused and he has been enlarged on bail – In absence of complainant normally Court should have adjourned the case instead of dismissing it and acquitting the accused – Court has not exercised its discretion properly and judicially – Impugned order set aside – Appeal allowed: *Heeralal Vs. Badrilal, I.L.R. 2024 M.P. *84*

4. Liability of Directors

– **Section 138 & 141** – Liability of Directors – Signatory of Cheques – Held – A-4 being a Director has signed and issued the cheques – At the relevant time, A-2 & A-3 were directors of the company, thus they are also vicariously liable for act of A-1/Company – Trial Court rightly took cognizance against petitioners – Application dismissed: *Asian Smile Consultancy Ventures India Pvt. Ltd. Vs. Ajit Club & Resorts Pvt. Ltd., I.L.R. 2024 M.P. *48*

– **Section 138 & 141** – Liability of Directors – Signatory of Cheques – Held – Every person who, at the time the offence was committed, was in charge of and responsible to, the affairs of business of such company shall be guilty alongwith the Company – If such person proves that the said offence was committed without his knowledge or he had exercised all due diligence to prevent the commission of such offence, he shall not be held liable for such offence: *Asian Smile Consultancy Ventures India Pvt. Ltd. Vs. Ajit Club & Resorts Pvt. Ltd., I.L.R. 2024 M.P. *48*

5. Presumption

– **Sections 118, 138 & 139** – Legal Enforceable Debt – Presumption – Held – Accused has admitted and has not disputed his signature on the cheque – Once the signature is admitted, it is required to be presumed that cheque was issued towards consideration for legally enforceable debt – Accused is required to rebut this presumption during trial by presenting evidence: *Dheeraj Kumar Verma Vs. Sachin, I.L.R. 2024 M.P. 2643*

– **Sections 118, 138 & 139** – Legally Recoverable Debt – Presumption – Held – Once the legally recoverable debt is established by complainant, presumption u/S 118-A & 139 attracts – Applicant neither filed any reply to the legal notice nor has disputed his signature on the cheque nor he lead any evidence to rebut the presumption – Applicant rightly convicted – Revision dismissed: *Vikram Singh Aanjana Vs. Prakashchandra Solanki, I.L.R. 2024 M.P. 1711*

6. Quashment

– **Sections 118, 138 & 139** and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Quashment of Complaint – Legal Enforceable Debt – Held – The question of debt being time barred or not can be decided only after the evidence is adduced by parties as it is a mixed question of law and fact, thus at this stage powers u/S 482 Cr.P.C. cannot be exercised – Question of limitation in a legal enforceable debt is not a subject matter of Section 482 Cr.P.C. – Application dismissed: *Dheeraj Kumar Verma Vs. Sachin, I.L.R. 2024 M.P. 2643*

– **Section 138** and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Quashment – Signatory of Cheque – Held – Questioned cheque was not issued by applicant/accused No. 2 and also not signed by her – Cheque was issued by accused No. 1 (husband of applicant) – Applicant cannot be prosecuted u/S 138 N.I. Act – Proceeding against applicant is quashed – Application allowed: *Tasneem Sabir Vs. Mohd. Aadil, I.L.R. 2024 M.P. *43*

– **Section 138** and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Quashment of Proceedings – Drawer/Signatory of Cheque – Held – Cheque was drawn and signed by accused no. 1 and not by applicant (accused no. 2) – Liability u/S 138 can be fastened only upon the drawer of the cheque even if the said cheque was drawn for discharging liability of two or more persons – Proceedings against applicant is quashed – Application allowed: *K. V. Vijayvargiya Vs. Sanjay Nagpal, I.L.R. 2024 M.P. 1471*

7. Territorial Jurisdiction

– **Section 138 & 142** and Criminal Procedure Code, 1973 (2 of 1974), Section 482 - Territorial Jurisdiction – Held – Applicant is PAN India Company having its branches all over India – PAN India Company cannot be given liberty to present cheques at any place in India according to their will and get arrest warrants/summons issued to respondents, who will have great difficulty in contesting the case – Though Court at Bhopal has jurisdiction to hear the case but no transactions of applicant company has taken place at Bhopal but has taken place at Kolkata – Applicant cannot be allowed to file complaint at Bhopal only because cheque has been presented at Bhopal – Application dismissed: *Mahindra & Mahindra Financial Services Ltd. (M/s.) Vs. Kamdhenu Company Pvt. Ltd., I.L.R. 2024 M.P. 180*

8. Miscellaneous

– **Section 138** – See – Criminal Procedure Code, 1973, Section 427: *Radheshyam Vs. Smt. Veena Soni, I.L.R. 2024 M.P. *261*

NIKSHEPAKON KE HITON KA SANRAKSHAN ADHINIYAM, M.P., 2000 (16 OF 2001)

– **Section 2(c)** and RBI Circular, 2014 – Financial Establishment – Scope of Activities – Held – Petitioner was engaged in the function of mobilizing credits, thus it is not outside the purview of the definition of “financial establishment” as given in section 2(c) of adhiniyam of 2000 – In terms of the RBI Circular 2014, the transactions carried out by petitioner are covered under the “scope of activities” – Petition dismissed: *Bharat Financial Inclusion Limited Vs. State of M.P., I.L.R. 2024 M.P. 455*

– **Section 14** – See – Criminal Procedure Code, 1973, Section 438: *Pramod Sethi Vs. State of M.P., I.L.R. 2024 M.P. 182*

NOTARIES ACT (53 OF 1952)

– **Section 8** and Notaries Rules, 1956, Rule 11(2) & 11(8) – Proof of Due Execution of Will – Appreciation of Evidence – Held – Will executed on 25.12.94 and testator died on 26.12.94 – Perusal of overleaf of first page of Will shows that notary has kept two places earmarked for thumb impression of testator but no thumb impression was affixed by testator at that place and this fact was not clarified and no reason assigned by plaintiff or attesting witnesses – Circumstances create manifold suspicion about due execution and attestation of Will – Plaintiff failed to remove all suspicions – Suit of plaintiff dismissed – Appeal allowed: *Rameshwar Prasad Dwivedi Vs. Rajkumar, I.L.R. 2024 M.P. 1829*

– **Section 8** and Notaries Rules, 1956, Rule 11(2) & 11(8) – Proof of Notarized Will – Held – Notarization is not the guarantee of the document's validity/legality – A notarized document is not presumed to be proved without examining the Notary – Notary's role is limited to attesting the execution of document and verifying the identity of signatory – In case of dispute about execution of a notarized document requirement of examination of Notary is crucial to prevent fraud and ensure the authenticity of document: *Rameshwar Prasad Dwivedi Vs. Rajkumar, I.L.R. 2024 M.P. 1829*

– **Section 13** – Cognizance of Offence – Written Complaint – Held – Section 13 is mandatory in nature – Court shall take cognizance of offence done in exercise of function under Notaries Act on written complaint made by authorized officer by State or Central Government and not otherwise – If offence is not connected with notarial function and consist of acts in addition to notarial function then cognizance can be taken otherwise also, without written complaint of authorized officer: *Ramayan Prasad Kacher Vs. State of M.P., I.L.R. 2024 M.P. 544*

– **Section 13**, Notaries Rules, 1956, Rule 13, Penal Code (45 of 1860), Sections 420, 467, 468 & 471 and Criminal Procedure Code, 1973 (2 of 1974), Section 227 – Cognizance of Offence – Scope – Held – Notary will only be responsible for forged document, if he has identified the deponent in affidavit and not otherwise – Deponent has been identified by some advocate and not by notary – Notary cannot be held liable for creating forged documents – Impugned order quashed – Petitioner is discharged – Petition allowed: *Ramayan Prasad Kacher Vs. State of M.P., I.L.R. 2024 M.P. 544*

NOTARIES RULES, 1956

– **Rule 3 & 7(3)** – Local Residents – Held – Under Rule 3, there is no such qualification that the person should be a resident of a place where posts are to be filled/advertised, but Rule 7(3) mandates that the competent authority shall give due regard as to whether applicant ordinarily resides in an area where he proposes to practice as notary – There is distinction between permanent residents & ordinary residents – If there is more than one applicant then while recommending the name, competent authority should give due weightage to Rule 7(3)(a) of 1956 Rules: *Harikrishan Mishra Vs. Sandeep Kumar Garg, I.L.R. 2024 M.P. *253 (DB)*

– **Rule 3 & 7(3)** – Recommendation – Held – District and Sessions Judge after character verification sent all the names to State Government without recommending or preparing the order of recommendation – Competent authority is required to recommend for appearance of applicant before Interview Board – State Government did not constitute the Interview Board – Writ Court rightly set aside appointment of R-3 & R-4 – Even otherwise original term of 5 years has also expired – State directed to issue fresh process to fill vacant post – Appeals dismissed: *Harikrishan Mishra Vs. Sandeep Kumar Garg, I.L.R. 2024 M.P. *253 (DB)*

– **Rule 11(2) & 11(8)** – See – Notaries Act, 1952, Section 8: *Rameshwar Prasad Dwivedi Vs. Rajkumar, I.L.R. 2024 M.P. 1829*

– **Rule 13** – Scope – Held – Rule 13 only talks about professional misconduct and not in respect of offence, therefore same will not be applicable in respect of offence: *Ramayan Prasad Kacher Vs. State of M.P., I.L.R. 2024 M.P. 544*

– **Rule 13** – See – Notaries Act, 1952, Section 13: *Ramayan Prasad Kacher Vs. State of M.P., I.L.R. 2024 M.P. 544*

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PANCHAYAT ADHYAPAK SAMVARG (EMPLOYMENT & CONDITIONS OF SERVICES) RULES, M.P., 2008

– **Rule 5 & 9** – See – Nagreeya Nikay Adhyapak Samvarg (Employment and Conditions of Services) Rules, M.P., 2008, Rule 5 & 9: *Suresh Kumar Mishra Vs. State of M.P., I.L.R. 2024 M.P. *246*

– **Rule 8(d)** and Fundamental Rules, Rule 56(1-A), Explanation – Sahayak Adhyapak – Age of Retirement – Held – The "Explanation" shows that it covers all Govt. teachers by whatever designation called except those who are covered under sub Rules (1–g), (1–h) and (1–i) and apart from that, other teachers working on administrative posts were also included – Condition of engagement for 20 yrs. in teaching is applicable to such teacher who are appointed to administrative post by promotion or otherwise – There was no requirement for petitioner, a *Sahayak Adhyapak* to render 20 yrs. of service as per "Explanation" – Petitioner's age of retirement would be 62 yrs. and not 60 yrs. – Petition allowed: *Ramkumar Charmakar Vs. State of M.P., I.L.R. 2024 M.P. *36*

**PANCHAYATS (ELECTION PETITIONS, CORRUPT
PRACTICES AND DISQUALIFICATION FOR MEMBERSHIP)
RULES, M.P., 1995**

– **Rules 3, 5, 7 & 8** – See – Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993, Section 122: *Rajesh Kumar Vs. Manakchand, I.L.R. 2024 M.P. 2044*

– **Rule 5 & 8** – See – Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993, Section 122: *Rabindra Kumar Upadhyay Vs. The Sub-Divisional Officer (Revenue), I.L.R. 2024 M.P. *118*

– **Rule 7** – Security Deposit – Mode – Held – Apex Court concluded that Rule 7 provides deposit of security alongwith election petition which is mandatory – Mode and manner is irrelevant – Only requirement is to present the proof of payment of security deposit alongwith election petition: *Rangoli Rajak (Smt.) Vs. State of M.P., I.L.R. 2024 M.P. 48*

– **Rule 7** – See – Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993, Section 122: *Rangoli Rajak (Smt.) Vs. State of M.P., I.L.R. 2024 M.P. 48*

– **Rule 7 & 8** – See – Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P., 1993, Section 122: *Arshpreet Kaur @ Arshdeep Vs. State of M.P., I.L.R. 2024 M.P. *223*

– **Rule 7 & 8** – See – Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993, Section 122: *Ravindra Kumar Upadhyay Vs. State of M.P., I.L.R. 2024 M.P. *217*

– **Rule 11** – See – Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993, Section 122: *Rabindra Kumar Upadhyay Vs. The Sub-Divisional Officer (Revenue), I.L.R. 2024 M.P. *118*

– **Rule 11**, Evidence Act (1 of 1872), Section 3 and Civil Procedure Code (5 of 1908), Sections 3, 5 & Order 7 Rule 11 – Nature of Proceedings – Powers of Specified Officer – Held – Since CPC is being applicable to election proceedings as per Rule 11, therefore it makes the proceedings like civil suit – Revenue Officer once vested with powers to conduct proceedings under Rules of 1995 as specified Officer then it acquired the status of a Civil Court or Election Tribunal – When specified officer has powers to examine witnesses and identical powers under CPC, then he exercises the power of Civil Court for all practical purposes: *Rabindra Kumar Upadhyay Vs. The Sub-Divisional Officer (Revenue)*, I.L.R. 2024 M.P. *118

PANCHAYAT NIRVACHAN NIYAM, M.P., 1995

– **Rule 31-A & 32-A(2)** – Administration of Oath – Authority – Held – Rule 31-A provides that affidavit shall be sworn before Notary, Competent Magistrate or Commissioner of Oaths: *Rabindra Kumar Upadhyay Vs. The Sub-Divisional Officer (Revenue)*, I.L.R. 2024 M.P. *118

– **Rule 32-A(2)** – See – Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993, Section 122: *Rabindra Kumar Upadhyay Vs. The Sub-Divisional Officer (Revenue)*, I.L.R. 2024 M.P. *118

– **Rule 40-A** – Caste Certificate – Affidavit – Held – Copy of caste certificate in case of candidate of reserved category is mandatorily to be filed alongwith nomination and in any event before the fixed date and time for scrutiny – Affidavit can be accepted only from those reserved category candidates who have otherwise filed caste certificates and then objections are raised as to their caste status – Nomination form of petitioner was not proper and was illegal & defective being filed without caste certificate – Petition dismissed: *Brajesh Singh Vs. Ram Prasad Deharia*, I.L.R. 2024 M.P. 1119

– **Rule 40-A** – Caste Certificate – Enquiry – Held – Requirement of Rule 40-A starts at the time of scrutiny and not at the time of accepting nomination – If at the time of scrutiny a question arises on caste status of candidate, then Rule 40-A merely bars the Returning Officer from conducting an enquiry into the fact of caste status – To avoid starting of enquiry as to caste status at the stage of nomination, this provision seems to be engrafted – This Rule does not operate that what will be the requirement of a valid nomination: *Brajesh Singh Vs. Ram Prasad Deharia*, I.L.R. 2024 M.P. 1119

– **Rule 40-A** – Caste Certificate – Executive Instructions – Held – Executive instructions cannot override the statutory law – Executive instructions contrary to law cannot operate and an instruction not authorized by law is not binding even on

the authority issuing it – No power has been vested to State Election Commission to dilute any provision of the Act and the Rules framed thereunder: *Brajesh Singh Vs. Ram Prasad Deharia, I.L.R. 2024 M.P. 1119*

– **Rule 40-A** – Caste Certificate – Jurisdiction of Election Tribunal – Held – The question whether a particular person belongs to a genuine SC category or not has to be decided on case to case basis – Findings of the Election Tribunal regarding genuineness of Bagri caste people is the transgression of jurisdiction by the Tribunal – Findings of Tribunal in this respect is quashed: *Brajesh Singh Vs. Ram Prasad Deharia, I.L.R. 2024 M.P. 1119*

– **Rule 80** – See – Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993, Section 122: *Pradeep Kumar Rai Vs. The Returning Officer, I.L.R. 2024 M.P. 191*

– **Rule 84** – See – Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P., 1993, Section 122: *Kamal Patel Vs. State of M.P., I.L.R. 2024 M.P. *234*

PANCHAYAT RAJ EVAM GRAM SWARAJ ADHINIYAM, M.P. **1993 (1 OF 1994)**

SYNOPSIS

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| 1. Competent Authority | 2. Departmental Enquiry/Procedure |
| 3. Disqualification of Sarpanch | 4. Election of Sarpanch |
| 5. Election Petitions/Procedure | 6. FIR/Preliminary Enquiry |
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1. Competent Authority

– **Section 5-A & 65** and Panchayat (Transfer of Immovable Property) Rules, M.P., 1994, Rule 4 & 5 – Allotment of Shops – Competent Authority – Held – Shops were got constructed by Janpad Panchayat and Gram Panchayat was only the construction agency – It is only the Janpad Panchayat which is having competence and authority to allot the shops – Gram Panchayat or Gram Sabha had no authority to allot shops to petitioners – Findings given in impugned orders are justified – Petition dismissed: *Akhilesh Kumar Vs. State of M.P., I.L.R. 2024 M.P. 1519 (DB)*

2. Departmental Enquiry/Procedure

– **Section 40 & 92** – Departmental Enquiry – Principle of Natural Justice – Recording of Evidence – Held – After receipt of complaint, a 2 member committee was formed, report was obtained, show cause notice was issued wherein all allegations were levelled in detail – Petitioner filed reply and thereafter opportunity of personal hearing was granted to him – No violation of principle of natural justice – Petitioner himself accepted the charge of embezzlement of funds and redeposited the amount in bank account of Gram Panchayat, thus there was no need to record oral evidence in this regard – No interference required – Petition disposed: *Ratiram Vs. State of M.P., I.L.R. 2024 M.P. *216*

3. Disqualification of Sarpanch

– **Section 36(2) & 36(3)** – Competent Authority – Disqualification of Sarpanch on account of conviction u/S 307/34 IPC – Held – Issue regarding disqualification of the office bearer of Panchayat is liable to be decided by following conditions mentioned in Section 36(2) of Adhiniyam – Competent authority shall be Collector in respect of Gram Panchayat and Janpad Panchayat – Even otherwise, election of R-4 has already been challenged which has been dismissed and against which writ petition is pending – No interference warranted – Petition dismissed: *Ankit Vs. Collector Distt. Dewas (M.P.), I.L.R. 2024 M.P. *4*

4. Election of Sarpanch

– **Section 122** and Constitution – Article 226 – Election of Sarpanch – Objections – Held – At the time of submission of election form, no objection was raised by petitioner and other voters that R-13 is Vinita and not Anita – All objections came when petitioner lost the election and R-13 won the election by a huge margin – As per records there was no impersonation and misrepresentation – Petition is misconceived and hence dismissed: *Rajalbai Vs. Panchayat and Rural Development Department, I.L.R. 2024 M.P. 1136*

– **Section 122** and Constitution – Article 226 – Writ of Quo Warranto – Maintainability – Held – Writ petition in the nature of *quo warranto* would have been maintainable if facts were not disputed by respondents – Therefore, election petition was the appropriate remedy available to the petitioner to challenge the election of Sarpanch: *Rajalbai Vs. Panchayat and Rural Development Department, I.L.R. 2024 M.P. 1136*

5. Election Petitions/Procedure

– **Section 122** – Election Petition – Framing of Issue & Recording of Evidence – Held – It is the bounden duty of SDO to call witnesses and take evidence

if the parties to the *lis* pray for the same – Parties are at liberty to lead evidence in accordance with law: *Rabindra Kumar Upadhyay Vs. The Sub-Divisional Officer (Revenue)*, I.L.R. 2024 M.P. *118

– **Section 122** – Framing of Issues – Held – Although issue has not been framed by Election Tribunal but both parties were fully aware of the issue involved in the case because it was a solitary issue as to whether recounting of votes can be ordered – During pendency of election petition, petitioner travelled to the High Court and also filed writ appeal but never raised any objection regarding non-framing of issue – Non-framing of issue does not prejudice the petitioner – Order of Tribunal cannot be set aside only on this ground: *Pradeep Kumar Rai Vs. The Returning Officer*, I.L.R. 2024 M.P. 191

– **Section 122** and Panchayats (Election Petitions, Corrupt Practices and Disqualification for Membership) Rules, M.P. 1995, Rules 3, 5, 7 & 8 – Election Petition – Presentation in Person – Held – Just because SDO did not obtain signature of R-1 (election petitioner) in the order sheet, it cannot be assumed that election petition was not personally presented – Rules do not provide that election petitioner would also have to sign the order sheet or anywhere else in record to prove his personal presence: *Rajesh Kumar Vs. Manakchand*, I.L.R. 2024 M.P. 2044

– **Section 122** and Panchayats (Election Petitions, Corrupt Practices and Disqualification for Membership) Rules, M.P. 1995, Rules 3, 5, 7 & 8 – Security Deposit – Held – Security deposit was made by petitioner prior to presentation of election petition – There is no prohibition that security deposit cannot be made prior to presentation of the petition – Mandatory requirement is that the Election Tribunal would have jurisdiction to entertain election petition only when on date of presentation of petition, security amount has been deposited – Petition dismissed: *Rajesh Kumar Vs. Manakchand*, I.L.R. 2024 M.P. 2044

– **Section 122** and Panchayats (Election Petitions, Corrupt Practices and Disqualification for Membership) Rules, M.P. 1995, Rule 5 & 8 – Procedure – Verification by Oath Commissioner – Held – Rule 8 nowhere attaches any fatality in respect of non-compliance of Rule 5 – Contents of petition verified by Oath Commissioner is either, not at all a defect or is a curable defect as per 1995 Rules – Legislative intent does not permit to incorporate Rule 5 into Rule 8 and same is not permissible on ground of strict interpretation of election laws: *Rabindra Kumar Upadhyay Vs. The Sub-Divisional Officer (Revenue)*, I.L.R. 2024 M.P. *118

– **Section 122** and Panchayats (Election Petitions, Corrupt Practices and Disqualification for Membership) Rules, M.P. 1995, Rule 7 – Election Petition – Security Deposit – Intention of Statute – Held – Intention of statute is not such that

amount should be deposited and be given to specified officer but the object was to satisfy the specified officer about deposit of security amount at the time of presentation of election petition and if specified officer is satisfied with submission of details of deposit made, then it can very well be treated to be sufficient compliance of Rule 7 of 1995 Rules: *Rangoli Rajak (Smt.) Vs. State of M.P., I.L.R. 2024 M.P. 48*

– **Section 122** and Panchayats (Election Petitions, Corrupt Practices and Disqualification for Membership) Rules, M.P. 1995, Rule 7 – Election Petition – Security Deposit – Mode – Held – The election petition contained copy of challan showing deposit of Rs. 500 towards security deposit – It can be termed as sufficient compliance of Rule 7 of 1995 Rules – No interference warranted – Petition dismissed: *Rangoli Rajak (Smt.) Vs. State of M.P., I.L.R. 2024 M.P. 48*

– **Section 122** and Panchayats (Election Petitions, Corrupt Practices and Disqualification for Membership) Rules, M.P. 1995, Rule 7 & 8 – Deposit of Security Amount – Delay – Effect – Held – Election petition was filed on 25.07.2022 and security amount was deposited on 26.07.2022 – Security amount has to be mandatorily deposited on same day of presenting the election petition – Apex Court concluded that delay in deposit of security amount cannot be condoned – Rigors of Rule 7 & 8 of 1995 Rules would come into play to the detriment of election petitioner – Election petition dismissed – Petition allowed: *Arshpreet Kaur @ Arshdeep Vs. State of M.P., I.L.R. 2024 M.P. *223*

– **Section 122**, Panchayats (Election Petitions, Corrupt Practices and Disqualification for Membership) Rules, M.P. 1995, Rule 7 & 8 and Civil Procedure Code (5 of 1908), Order 7 Rule 11 – Deposit of Security Amount – Specified Officer – Held – Election petition filed on 10.08.22 and security amount was also deposited on 10.08.22 but before Tehsildar and not before the Specified Officer – SDO was Specified Officer and he directed R-2 (election petitioner) to deposit security amount before Tehsildar and the same was deposited by R-2 on the same day – It is not a case of delay of deposit of security amount – Mode of deposit can be different – SDO rightly dismissed the application under O-7 Rule 11 CPC – Petition dismissed: *Ravindra Kumar Upadhyay Vs. State of M.P., I.L.R. 2024 M.P. *217*

– **Section 122**, Panchayats (Election Petitions, Corrupt Practices and Disqualification for Membership) Rules, M.P. 1995, Rule 7 & 8 and Civil Procedure Code (5 of 1908), Order 7 Rule 11 – Res-Judicata – Held – Earlier petitioner filed application under Rule 8 of 1995 Rules which was rejected by Specified Officer – Under the garb of O-7 R-11 CPC application is preferred on same set of facts – Application suffers from principle of *res-judicata*: *Ravindra Kumar Upadhyay Vs. State of M.P., I.L.R. 2024 M.P. *217*

– **Section 122** and Panchayat Nirvachan Niyam, M.P. 1995, Rule 80 – Irregularities – Personal Knowledge of Election Petitioner – Held – Merely because election petitioner was not present in counting centre but information was conveyed to him by his agent and those information became his personal knowledge, thus in verification column he stated that whatever pleaded in petition is of his personal knowledge – Such verification and averments fulfills the requirement of proper pleading: *Pradeep Kumar Rai Vs. The Returning Officer, I.L.R. 2024 M.P. 191*

– **Section 122** and Panchayat Nirvachan Niyam, M.P. 1995, Rule 80 – Irregularities – Specific/Sufficient Pleadings – Held – It is pleaded that some irregularities have been committed during course of counting of votes and objection regarding same was raised and application was moved for recount but that application was not accepted by Returning Officer – There was sufficient pleading as per Rule 80 of 1995 Niyam – Petition dismissed: *Pradeep Kumar Rai Vs. The Returning Officer, I.L.R. 2024 M.P. 191*

– **Section 122** and Panchayat Nirvachan Niyam, M.P. 1995, Rule 84 – Arithmetical Mistakes or Error – Held – Even if there was a mistake in Form 17, that could have been corrected only by District Election Officer, after following the procedure prescribed under Rule 84 of 1995 Niyam and that too by passing an order in writing – There is no such order by District Election Officer for changing the votes in Form 17: *Kamal Patel Vs. State of M.P., I.L.R. 2024 M.P. *234*

– **Section 122**, Representation of the People Act (43 of 1951), Section 83, Panchayat Nirvachan Niyam, M.P. 1995, Rule 32-A(2), Panchayats (Election Petitions, Corrupt Practices and Disqualification for Membership) Rules, M.P. 1995, Rule 11 and Commissioner of Oath's Rules, M.P., 1976, Rule 2(b), 2(d), 5 & 8 – Election Petition – Affidavit verified by Oath Commissioner – Validity – Held – Definition of Commissioner of Oaths includes Officer appointed by any other Court which the State government has generally or specifically empowered in this behalf and that officer may administer the oath to the deponent – Oath Commissioner can verify the affirmations of deponent (of affidavit) in election petition before SDO – Application under Order 7 Rule 11 CPC was rightly dismissed – Petition dismissed: *Rabindra Kumar Upadhyay Vs. The Sub-Divisional Officer (Revenue), I.L.R. 2024 M.P. *118*

6. FIR/Preliminary Enquiry

– **Section 89 & 92** – Absence of Preliminary Enquiry – FIR – Held – Apex Court concluded that scope of preliminary enquiry is not to verify the veracity and otherwise of the information received but to ascertain whether the information reveals any cognizable offence or not – Non-holding of preliminary enquiry will not

vitiating the FIR – Allegations made against petitioner makes out a cognizable offence – In absence of any bar under 1993 Adhiniyam, it cannot be said that FIR could not have been lodged – FIR cannot be quashed – Petition dismissed: *Meera Yadav Vs. State of M.P., I.L.R. 2024 M.P. *61*

– **Section 89 & 92** – FIR – Locus – Held – For registration of FIR, commission of cognizable offence is necessary and locus of complainant has no relevance – Anybody can set criminal agency in motion: *Meera Yadav Vs. State of M.P., I.L.R. 2024 M.P. *61*

– **Section 89 & 92** – FIR – Permissibility – Held – Allegations made against petitioner shows that cognizable offence is made out – No case for quashment of FIR or quashment of direction to lodge FIR – Petition disposed: *Sanjeev Kumar Ghosh Vs. State of M.P., I.L.R. 2024 M.P. *74*

7. Nature of Proceedings

– **Section 89 & 92** – Joint Proceeding – Opportunity of Hearing – Held – If authority has undertaken proceedings u/S 89 r/w 92 of Adhiniyam jointly, even then it does not prejudice the cause of petitioners, if reasonable opportunity of hearing is given to them – When petitioners themselves admitted their misconduct and deposited certain amount in Nodal account and when adequate opportunity of hearing was given in earlier proceeding u/S 89 also, no case of interference made out – Petition dismissed: *Lakhan Singh Vs. State of M.P., I.L.R. 2024 M.P. *258*

– **Section 89 & 92** – Nature of Proceedings – Held – Section 89 & 92 are interrelated in a manner that Section 89 ascertains the liability of Panch/Panchayat Secretary for loss/misappropriation caused to Panchayat and Section 92 is in the nature of execution of the said recovery order u/S 89: *Lakhan Singh Vs. State of M.P., I.L.R. 2024 M.P. *258*

– **Section 89 & 92** – Provisions of CrPC & IPC – Applicability – Held – Merely because procedure is provided u/s 89 & 92 for recovery of civil liability, it cannot be said that provisions of CrPC & IPC have been ousted: *Meera Yadav Vs. State of M.P., I.L.R. 2024 M.P. *61*

8. Recounting of Votes

– **Section 122** and Panchayat Nirvachan Niyam, M.P. 1995, Rule 84 – Recounting of Votes – Forgery – Held – Valid votes can be made invalid but invalid votes cannot be made valid – These valid votes were earlier shown in Form 17 against the name of petitioner, later on the Form was changed and “R” has been shown securing 122 votes – In order to maintain winning of “D”, they were made invalid and rejected – This is nothing but a forgery and fraud with Constitution of

India – Election set aside – Collector directed to get FIR registered against election officers – Petition allowed: *Kamal Patel Vs. State of M.P.*, I.L.R. 2024 M.P. *234

9. Recovery

– **Section 89 & 92** – Recovery – Enquiry – Held – Before directing for recovery, respondent must conduct an enquiry u/S 89 and petitioner is entitled for an opportunity of hearing and thereafter a finding shall be given as to whether any civil liability can be fastened on petitioner or not: *Sanjeev Kumar Ghosh Vs. State of M.P.*, I.L.R. 2024 M.P. *74

10. Transfer of Property/Lease

– **Section 65(1)** and Transfer of Property Act (4 of 1882), Section 54 – Transfer of Property – Lease – Held – Giving the shop on monthly rent for 35 months is certainly a "lease" and lease is one of the mode of transfer of property as per Transfer of Property Act, 1881 – Even Section 65(1) of 1993 Adhinyam while dealing with the transfer of immovable property mentions "lease" as one of the mode: *Akhilesh Kumar Vs. State of M.P.*, I.L.R. 2024 M.P. 1519 (DB)

PANCHAYAT SERVICE (DISCIPLINE AND APPEAL) RULES, M.P. 1999

– **Rule 4(1) & (2)** – Second Suspension – Permissibility – Held – If a case in respect of criminal offence involving moral turpitude is under investigation, inquiry or trial, an employee can be placed under suspension – Since petitioner is facing grave charges in a trial relating to corruption under PC Act, no fault can be found in impugned order of suspension – Apex Court concluded that an employee can be placed under suspension for the second time – Petition dismissed: *Manoj Kumar Khare Vs. State of M.P.*, I.L.R. 2024 M.P. *60

PANCHAYAT (TRANSFER OF IMMOVABLE PROPERTY) RULES, M.P., 1994

– **Rule 4 & 5** – Auction – Period of Lease – Held – Even though lease in favour of petitioners is for 35 months which is less than 3 years, still the requirement of auction was mandatory – Allotment in favour of petitioners without public auction is bad in law: *Akhilesh Kumar Vs. State of M.P.*, I.L.R. 2024 M.P. 1519 (DB)

– **Rule 4 & 5** – See – Panchayat Raj Evam Gram Swaraj Adhinyam, M.P. 1993, Section 5-A & 65: *Akhilesh Kumar Vs. State of M.P.*, I.L.R. 2024 M.P. 1519 (DB)

– **Rule 4 & 5(1)** – Auction – Sanction of State Government – Period of Lease – Held – Even after receipt of sanction of state government under Rule 4 to make allotment by lease for a period exceeding 3 years, the requirement of public auction is mandatory – Public auction can be dispensed with only under proviso to rule 5(1), in terms of a specific and separate sanction by state government to that effect – That is irrespective of tenure of lease: *Akhilesh Kumar Vs. State of M.P.*, I.L.R. 2024 M.P. 1519 (DB)

PANCHAYAT (UP-SARPANCH, PRESIDENT AND VICE PRESIDENT) NIRVACHAN NIYAM, M.P., 1995

– **Rule 16(6)(ii)(b)** – Mark on Ballot Paper – Held – Presiding Officer who was present throughout voting and counting was satisfied that the mark was put in front of the name of petitioner by a seal of round arrow given by him although mark was not completely embossed, the satisfaction of the officer should not be overturned by prescribed authority in election petition – Petitioner entitled for benefit of doubt – Impugned order set aside – Election of petitioner is restored – Petition allowed: *Mayaram Barbe Vs. State of M.P.*, I.L.R. 2024 M.P. 1298

PARTNERSHIP ACT (9 OF 1932)

– **Section 69** – See – Civil Procedure Code, 1908, Order 30 Rule 1: *Jagdish Vs. M/s. Siddhi Vinayak Developers*, I.L.R. 2024 M.P. 1422

PAYMENT OF GRATUITY ACT (39 OF 1972)

– **Sections 4(a), 4(6), 7(2) & 7(3)**, Payment of Gratuity (Central) Rules, 1972, Rule 7 and Payment of Gratuity (Madhya Pradesh) Rules, 1973, Rule 7 – Limitation – Forfeiture of Gratuity – Held – Payment of gratuity is not dependant on the claim of employee but it is duty of employer himself to pay gratuity and in default of payment he has to pay interest after expiry of 30 days – Act does not provide any limitation – If Rules framed, provides for any time limit to submit claim, that would not over-ride the provisions of Act – Time limit for submitting claim is only procedural in nature – Authorities mechanically held the claim of petitioner as time barred, which is contrary to Section 7(2) – Impugned orders quashed – Authorities directed to pay gratuity along with interest: *Sohagvati (Smt.) (Dead) Thr. LRs. Vs. Upkshetriya Prabandhak*, I.L.R. 2024 M.P. *146

– **Section 4(6)(b)** – Forfeiture of Gratuity – Discretion of Employer – Held – The use of word ”may” makes it clear that discretion is cast on employer and he is bound to pass a specific order of forfeiture of gratuity – There cannot be any

automatic forfeiture of gratuity in terms of Section 4(6)(b) – Employer has not passed any specific order – Right of petitioners to receive gratuity stands fully matured: *Sohagvati (Smt.) (Dead) Thr. LRs. Vs. Upkshetriya Prabandhak, I.L.R. 2024 M.P. *146*

– **Section 7** – Deductions – Penal Rent for Quarter – Held – There is no such order of ascertainment of penal rent for quarter nor the 1972 Act contains any provision for deduction of any amount payable to the employer by the employee – Employee dismissed 36 years back – Employer not entitled to make any deduction of penal rent – Employer can get the quarter vacated and recover penal rent etc. by resorting to other proceedings: *Sohagvati (Smt.) (Dead) Thr. LRs. Vs. Upkshetriya Prabandhak, I.L.R. 2024 M.P. *146*

– **Section 7** and Constitution – Article 300-A – Retiral Dues/Gratuity – Held – Retiral dues are recognized as property under Article 300 of Constitution – In absence of enabling provision, employees cannot be deprived from their right of gratuity which is flowing from Article 300-A of the Constitution: *Sohagvati (Smt.) (Dead) Thr. LRs. Vs. Upkshetriya Prabandhak, I.L.R. 2024 M.P. *146*

– **Section 7(4)(a)** – Dispute in Claim of Gratuity – Held – Section 7(4)(a) provides that in case of dispute as to admissibility of claim of gratuity, employer shall deposit the amount of gratuity with the Controlling Authority of the quantum, which the employer admits: *Sohagvati (Smt.) (Dead) Thr. LRs. Vs. Upkshetriya Prabandhak, I.L.R. 2024 M.P. *146*

PAYMENT OF GRATUITY (CENTRAL) RULES, 1972

– **Rule 7** – See – Payment of Gratuity Act, 1972, Sections 4(a), 4(6), 7(2) & 7(3): *Sohagvati (Smt.) (Dead) Thr. LRs. Vs. Upkshetriya Prabandhak, I.L.R. 2024 M.P. *146*

PAYMENT OF GRATUITY (MADHYA PRADESH) RULES, 1973

– **Rule 7** – See – Payment of Gratuity Act, 1972, Sections 4(a), 4(6), 7(2) & 7(3): *Sohagvati (Smt.) (Dead) Thr. LRs. Vs. Upkshetriya Prabandhak, I.L.R. 2024 M.P. *146*

PENAL CODE (45 OF 1860)

– **Section 90, 375 Fourthly & 376** and Criminal Procedure Code, 1973 (2 of 1974), Section 311 – Consent – Misconception of Fact – Recall of Witness – Held – If consent of R-2 was obtained by misconception of fact then in light of Section 90

IPC, such consent is not a free consent and accused would be liable for conviction u/S 376 IPC in light of provisions of Section 375 Fourthly IPC – It appears that earlier R-2 turned hostile, thereafter she moved application u/S 311 Cr.P.C. for her recall on ground that earlier she deposed under pressure of applicant – R-2 has made out the grounds for her recall: *Ansar Ali @ Badkawa Vs. State of M.P., I.L.R. 2024 M.P. 1474*

– **Section 90 & 376(2)(n)** – Consent on the Pretext of Marriage – Held – Prosecutrix herself is 30 years old major lady and working in government department – She met appellant on her wish and started whatsapp chatting and video calls – She produced her ID before the hotel staff and continuously visited the said room of the hotel for 3 days – No sign of forcible relations on record – No alarm or crying sound raised – She had not made complaint to her parents or anyone else before lodging FIR – It is not safe to conclude that she made relations only on basis of promise of marriage or on account of misconception – Even appellant has not clearly declined to marry her – Conviction set aside – Appeal allowed: *Harionm Shrivastava Vs. State of M.P., I.L.R. 2024 M.P. *157*

– **Section 97** – Right of Private Defence – Held – Apex Court concluded that when it is found that complainant party was the aggressor and land is in possession of the accused then accused party while stopping the complainant party has a right of defence by causing injuries to them: *Kamlesh Vs. Aman Singh, I.L.R. 2024 M.P. 2153 (DB)*

– **Sections 104, 307, 148, 149 & 441** – Right to Private Defence of Property – Held – Disputed land was in settled possession of accused party – Complainant party without adopting due procedure of law, tried to dispossess the accused party and started to construct a hut on the said land – Complainant party has committed criminal trespass and caused annoyance u/S 441 IPC to accused party giving rise to the right of private defence of property u/S 104 IPC – Such act of accused persons do not fall in definition of alleged offence – Conviction set aside – Appeal allowed: *Baboo Khan (Died) Vs. State of M.P., I.L.R. 2024 M.P. 1006*

– **Section 107 & 306** – Abetment – Informal Social Control – Held – Calling parents for counseling was a mechanism which could have given lesson to erring students and calling parents cannot be inferred as abetment – Role of petitioners is confined to causing reprimand or scolding the boy for his act which was their duty – Three students were scolded but deceased appeared to be over sensitive, therefore committed suicide whereas other two students remained grounded – No sign of physical violence or injury – FIR and consequential proceedings quashed – Application allowed: *Virendra Singh Rana Vs. State of M.P., I.L.R. 2024 M.P. 1458*

– **Section 107 & 306** – Instigation – Mens Rea – Held – Instigation on the part of the accused should be active and proximate to the incident – To constitute “instigation” person who instigates another person has to provoke, incite, urge or encourage doing an act by the other by “goading” or “urging forward” – Mere statement of suggesting the deceased to end his life without any *mens rea* would not come under purview of abetment to suicide – Abetment to suicide would be constituted only when such abetment is found intentional: *Virendra Singh Rana Vs. State of M.P., I.L.R. 2024 M.P. 1458*

– **Sections 147, 148, 302/149 & 307** – Acquittal – Appreciation of Evidence – Held – Statement of eye witnesses are full of contradictions, omissions and exaggerations on material particulars which render their testimony doubtful and not worthy of credence – Gun which was allegedly used in crime was deposited in Agrawal Gun House 3 days prior to the incident thus it was not possible for accused to use that gun – Trial Court rightly given benefit of doubt to accused persons – Appeal dismissed: *State of M.P. Vs. Jagdish, I.L.R. 2024 M.P. *265 (DB)*

– **Section 148 & 149** – Applicability – Held – Apex Court concluded that if there is an acquittal from charge u/s 148, then there cannot be a conviction u/s 149 IPC – In instant case, no previous enmity of appellant “P” with deceased has been established – Appellant deserves to be acquitted: *Ramsingh @ Rama Vs. State of M.P., I.L.R. 2024 M.P. *72 (DB)*

– **Sections 148, 307/149 & 324** – Acquittal – Private Defence – Held – There was previous enmity between parties – Place of incident is the field of accused party and they acted in their defence while stopping the complainant party to pass tractor through their field and to avoid encroachment of complainant party – Injuries on complainant party were found simple in nature – Ocular and medical evidence do not establish that it is a case of attempt of murder – No illegality in the judgment of acquittal – Revision dismissed: *Kamlesh Vs. Aman Singh, I.L.R. 2024 M.P. 2153 (DB)*

– **Section 186 & 353** and Criminal Procedure Code, 1973 (2 of 1974), Section 195(1)(a)(1) & 222(4) – Cognizance – Held – No criminal Court can pass judgment of conviction u/s 172 to 188 IPC without a written complaint of the respective public servant or other public servant to whom he is administrative subordinate – Further, charge sheet was filed u/s 353 IPC but trial Court convicted the applicant u/s 186 IPC, such conviction in minor offence is also vitiated because it has been passed in clear violation of Section 222(4) Cr.P.C. – Conviction set aside – Revision allowed: *Raghuvir Singh Vs. State of M.P., I.L.R. 2024 M.P. *213*

– **Section 188 & 505(2)**, Criminal Procedure Code, 1973 (2 of 1974), Section 195(1)(a) and Constitution – Article 19(1)(a) – Social Media Post – Freedom of Speech & Expression – Held – If doubt is raised by anybody in relation to conduct of free and fair election, it is not an offence u/S 505(2) IPC – Social media post of applicant is not creating/promoting enmity, hatred or ill-will between different classes of society or public mischief is caused as provided u/S 188 IPC – There is no disobedience to any order promulgated by public servant nor there is any written complaint by him – FIR quashed – Petition allowed: *Monu Upadhyay Vs. State of M.P.*, I.L.R. 2024 M.P. 1061

– **Sections 192 to 196** – See – Criminal Procedure Code, 1973, Section 340: *Anand Singh Parihar Vs. State of M.P.*, I.L.R. 2024 M.P. *2

– **Section 193** and Criminal Procedure Code, 1973 (2 of 1974), Section 195(1)(b)(i) & 482 – Complaint by Competent Authority – Held – If offence is punishable u/S 193 IPC for giving false evidence in Court, no Court shall take cognizance except on the complaint in writing by that Court or by Officer of the Court authorized by that Court – Trial Court in place of filing complaint directed Police to lodge FIR against applicant, which is not permissible in law – FIR quashed – Application allowed: *Gopal Krishna Gehlot Vs. State of M.P.*, I.L.R. 2024 M.P. 549

– **Sections 195 & 172 to 188** – Maintainability of FIR – Jurisdiction of Court – Held – According to Section 195 Cr.P.C., no Court shall take cognizance of offence u/S 172 to 188 IPC except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate – Directly FIR cannot be registered at police station as it is barred: *Monu Upadhyay Vs. State of M.P.*, I.L.R. 2024 M.P. 1061

– **Section 195-A** – See – Criminal Procedure Code, 1973, Section 195-A: *Abdul Razzak Vs. State of M.P.*, I.L.R. 2024 M.P. 1067

– **Section 195-A** – See – Criminal Procedure Code, 1973, Section 195-A & 482: *Abdul Razzak Vs. State of M.P.*, I.L.R. 2024 M.P. 1067

– **Section 228** – See – Contempt of Courts Act, 1971, Section 2(c), 10 proviso, 12 & 15: *In Reference Vs. Jai Kishore Rajoriya*, I.L.R. 2024 M.P. 2625 (DB)

– **Section 228** – See – Contempt of Courts Act, 1971, Section 10 proviso: *In Reference Vs. Jai Kishore Rajoriya*, I.L.R. 2024 M.P. 2625 (DB)

SYNOPSIS: Section 294

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|----------------------------|-------------------------|
| 1. Abusive Language | 2. Annoyance |
| 3. Ingredients | 4. Miscellaneous |

1. Abusive Language

– **Section 294** – Abusive Language – Held – In colloquial language, such type of abuses are often used and therefore they cannot be accepted in their literal sense – These type of abuses are used in general parlance and altercations between rustic people, they only delineate the enraged state of mind: *Akram @ Akka Vs. State of M.P., I.L.R. 2024 M.P. *110*

– **Section 294** & Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Obscene Words – Annoyance – Held – Allegation is that applicant abused the complainant – It is not clear that as to what obscene words were stated by applicant – Mere saying that “गाली गलौच की” is not sufficient to attract section 294 IPC – In absence of allegations of annoyance and alleged stated words to be obscene words, charge u/s 294 IPC not attracted – Apex Court concluded that allegation that accused has abused the complainant does not satisfy ingredients of section 294 IPC – FIR and Charge-sheet quashed – Application allowed: *Prafulla Kumar Jaiswal Vs. State of M.P., I.L.R. 2024 M.P. 555*

– **Section 294** and Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (33 of 1989), Section 3(1)(s) – Abusing – Annoyance – Abusing word in the name of mother and sister – Held – This Court earlier held that these types of abuses are uttered in general parlance in altercations between rustic people – Annoyance is the main substance of offence punishable u/S 294 IPC – Virtually, in colloquial language such type of abuses are often used, therefore they cannot be accepted in their literal sense – Since no prosecution witness deposed before the Court anything about causing annoyance, prosecution failed to prove that accused committed obscene act by abusing complainant which annoyed others: *Premchand Vs. State of M.P., I.L.R. 2024 M.P. *14*

2. Annoyance

– **Section 294** – Annoyance – Held – Causing of annoyance to others is *sine qua non* for commission of offence u/s 294 IPC – Two witnesses in their statements recorded u/s 161 CrPC nowhere stated that any word stated by applicant caused any annoyance to both of them and others: *Prafulla Kumar Jaiswal Vs. State of M.P., I.L.R. 2024 M.P. 555*

– **Section 294** – Annoyance – Held – Virtually in colloquial language such type of abuses are often used and therefore they cannot be accepted in their literal sense – No literal significance can be attached to the abuses – Annoyance is the main substance of offence punishable u/S 294 IPC – Since no prosecution witness deposed anything about causing annoyance, thus conviction u/S 294 IPC is set aside: *Ramsnehi Vs. State of M.P., I.L.R. 2024 M.P. *166*

3. Ingredients

– **Section 294** – Ingredients – Held – Complainant/injured stated that accused abused her but she has not substantially stated as to what words are used by accused – Annoyance is main substance to offence u/S 294 IPC – Prosecution failed to establish that accused has committed an obscene act in public by which other persons were annoyed – Accused acquitted from charge for offence u/S 294 IPC: *Akram @ Akka Vs. State of M.P., I.L.R. 2024 M.P. *110*

– **Section 294/34** – Ingredients – Held – Allegation is that applicants used abusive language in email – Obscene act was not done in any public place or near public place – E-mail was not addressed to anyone though it was send to e-mail ID of complainant – In e-mail nothing was stated directly in respect of complainant – Words were not obscene and act of accused persons did not cause annoyance to others – Necessary ingredients of Section 294 IPC missing – Proceedings quashed: *Nikhil Juneja Vs. State of M.P., I.L.R. 2024 M.P. *259*

4. Miscellaneous

– **Sections 294, 302, 323 & 506(II)** – See – Criminal Procedure Code, 1973, Section 227 & 228: *Baga @ Bhagirath Vs. State of M.P., I.L.R. 2024 M.P. 1243*

– **Sections 294, 323, 376(2)(n), 377, 498-A & 506** and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Quashment of FIR – Held – Husband and wife both hold political posts in same political party – Their relationship became estranged after some time of marriage – Husband filed a suit for damages and thereafter wife lodged present FIR without disclosing any specific date, time and place of committing alleged offence – There is no allegation of demand of dowry – It is a malicious prosecution filed by wife as there was *inter se* dispute between husband and wife – FIR and subsequent proceedings quashed – Application allowed: *Umang Singhar Vs. State of M.P., I.L.R. 2024 M.P. 790*

– **Sections 294, 323, 506 & 34** and Criminal Procedure Code, 1973 (2 of 1974), Section 320(2) & 482 – College Ragging – Compromise – Held – Petitioner is a young boy and has regrets for his alleged deviant behaviour and intends to perform community services – Father of applicant alongwith applicant appeared and

tendered unconditional apology – Application filed u/S 320(2) by both the parties stands allowed – FIR quashed – Petitioner directed to perform 7 days community service in library of University: *Sachin Singh Bhadouriya Vs. State of M.P.*, I.L.R. 2024 M.P. 1718

– **Sections 294, 323, 506 r/w 34**, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (33 of 1989), Section 3(1)(r), 3(1)(s) & 3(2)(va) and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Quashment – Held – As per FIR and other evidence of charge-sheet, *prima facie* case is made out against applicants – It would not be proper to embark upon the appreciation of evidence as the FIR *prima facie* discloses commission of cognizable offence – Objections regarding pendency of civil suit and cross FIR by applicant is a matter of evidence – Application dismissed: *Dinesh Vs. State of M.P.*, I.L.R. 2024 M.P. *53

• – **Section 300 & 302** – Nature of Injury – Intention – Held – Deceased sustained as many as 10 injuries, 3 were on vital parts caused by sharp cutting object and other 7 injuries were also grievous in nature – Deceased sustained fracture on the 3rd, 4th, 5th & 6th ribs of right side and fracture on 3rd, 4th, 5th, 6th & 7th ribs of left side – Lungs, liver and kidney were also ruptured – Deceased was beaten brutally by accused persons with common intention – None of the exceptions of Section 300 IPC attracted – Appellant rightly convicted and sentenced – Appeal dismissed: *Gopal Vs. State of M.P.*, I.L.R. 2024 M.P. *229 (DB)

SYNOPSIS: Section 302

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| 1. Appreciation of Evidence | 2. Child Witness |
| 3. Circumstantial Evidence | 4. Conduct of Accused |
| 5. Death Sentence | 6. Dying Declaration |
| 7. Human Blood on Weapon | 8. Injury/Intention |
| 9. Injury/Medical Evidence | 10. Recovery/Seizure |
| 11. Test Identification Parade | 12. Miscellaneous |

1. Appreciation of Evidence

– **Section 302** – Visibility in Spot of Incident – Source of Light – Held – Incident occurred at around 9 pm – Witness clearly deposed that there is no street light in village – Witness is not a private witness but is a responsible officer of State owned electricity company – Conviction cannot be based on mere presumption and

possibilities – The source of light being in doubt, there is serious doubt created over the prosecution version and identification of present appellant – Appellant acquitted of offence u/s 302 by giving benefit of doubt – Appeal partly allowed: *Surajpal Vs. State of M.P., I.L.R. 2024 M.P. 1407 (DB)*

– **Sections 302, 307, 324, 323, 147 & 148** and Arms Act (54 of 1959), Section 25(1–B)(A) – Appreciation of Evidence – Held – On basis of faulty investigation, seizure of wrong arm, no ballistic report and no blood found on arms recovered from accused no findings as to who caused injuries to which injured person, conviction u/s 302 & 307 cannot be upheld – Appellants entitled for benefit of doubt – Appellants liable to be convicted u/s 148, 323/149 & 324/149 and they are acquitted for offence u/s 302 & 302/149 IPC – Appeals partly allowed: *Ramsingh @ Rama Vs. State of M.P., I.L.R. 2024 M.P. *72 (DB)*

– **Sections 302, 307, 324, 323, 147 & 148** and Arms Act (54 of 1959), Section 25(1–B)(A) – General Allegations of Assault – Held – Entire conviction based on evidence of PW-1 & examination-in-chief of PW-2 – In evidence, PW-1 & PW-2 has not named the appellants “N” & “K” – There are general allegations that all accused persons have assaulted the deceased, no overt act has been attributed to these appellants – Appellants “N” & “K” liable to be acquitted: *Ramsingh @ Rama Vs. State of M.P., I.L.R. 2024 M.P. *72 (DB)*

– **Sections 302, 307, 324, 323, 147 & 148** and Arms Act (54 of 1959), Section 25(1–B)(A) – Spot Map – Held – Even from ocular evidence as well as spot map, the place where the dead body was lying are all together different – There is no spot map on record in respect of the incident said to have taken place in front of house of “S” and investigation in this regard is also missing: *Ramsingh @ Rama Vs. State of M.P., I.L.R. 2024 M.P. *72 (DB)*

– **Sections 302, 307, 324, 323, 147 & 148** and Arms Act (54 of 1959), Section 25(1–B)(A) and Evidence Act (1 of 1872), Section 138 – Testimony of Witnesses – Credibility – Held – Entire conviction based on evidence of PW-1 & examination-in-chief of PW-2 – PW-1 supported the prosecution case but cannot said to be reliable witness because of so many omissions and contradictions in his evidence – He is also having criminal record and had enmity with accused persons, political rivalry and association with liquor licensees – PW-2 in his examination-in-chief supported the prosecution case but in cross-examination he has not supported it – He was not even further examined or cross-examined by public prosecutor – No compliance of section 138 of Evidence Act – Testimony cannot be relied: *Ramsingh @ Rama Vs. State of M.P., I.L.R. 2024 M.P. *72 (DB)*

2. Child Witness

– **Section 302** – Child Witness – Credibility – Held – Child witness is a 8 years old daughter of appellant and deceased – She totally narrated the incident and was substantially intact in her cross-examination – She is not a tutored witness but she is the sole witness of the incident – Conviction upheld – Appeal dismissed: *Ganesh Balai Vs. State of M.P., I.L.R. 2024 M.P. *252 (DB)*

3. Circumstantial Evidence

– **Sections 302, 376(2)(cha), 363, 364, 366 & 201** – Circumstantial Evidence – Theory of Last Seen Together – Held – Victim was not seen by anyone after she was last seen with appellant – Time duration between missing of the girl and her dead body being found is very less – There is no possibility that girl was with somebody else – It is established that offence has been committed by none other than appellant – Conviction upheld – Appeal dismissed: *Gowardhan Vs. State of M.P., I.L.R. 2024 M.P. 125 (DB)*

– **Sections 302, 394, 394/397** and Arms Act (54 of 1959), Section 25(1-B)(B) – Circumstantial Evidence – Held – Appellant was the driver of IIM Indore – Appellant was well known to deceased and he had knowledge that deceased was living alone at her house in IIM campus – Appellant's finger prints found on the almirah placed on the spot of crime – Blood stained knife and clothes and stolen ornaments were recovered from appellant – Chain of circumstantial evidence is complete – Conviction upheld – Appeal dismissed: *Anil Patel Vs. State of M.P., I.L.R. 2024 M.P. *79 (DB)*

4. Conduct of Accused

– **Section 302 & 304 Part I** – Conduct of Accused – Held – A sudden quarrel took an ugly shape where appellant poured kerosene and set the victim (wife) ablaze – Offence u/S 302 IPC not made out – Conviction of appellant u/S 302 IPC is converted into one u/S 304 P-I IPC – Appeal partly allowed: *Sanjay Ahirwar Vs. State of M.P., I.L.R. 2024 M.P. *168 (DB)*

– **Section 302 & 304 Part I** – Conduct of Accused – Held – Appellant knew that his wife was at the advanced stage of pregnancy – Despite that, he poured petrol and set her ablaze – Child in the womb also died – Appellant has taken undue advantage and acted in a very cruel, unusual and barbaric manner – Offence falls within ambit of murder – Appellant rightly convicted u/S 302 IPC – Appeal dismissed: *Rajeshwar @ Pappu Tiwari Vs. State of M.P., I.L.R. 2024 M.P. *142 (DB)*

5. Death Sentence

– **Sections 302, 307, 324, 323 & 450** – Death Sentence – Aggravating & Mitigating Circumstances – Held – Appellants do not have any criminal record of conviction, they are aged about 35, 24 and 23 years, they belong to lower strata/middle class of society – It cannot be said that there is no possibility of their reformation or rehabilitation – Crime was not committed to terrorize or harm a particular or large section of society – Not a fit case for inflicting capital/death penalty – Death Sentence altered to life imprisonment for remainder of their life – Appeal partly allowed: *Ravi Kushwaha Vs. State of M.P., I.L.R. 2024 M.P. *143 (DB)*

6. Dying Declaration

– **Section 302** and Evidence Act (1 of 1872), Section 32 – Dying Declaration – Degree of Burns – Effect – Held – Victim suffered 100% burn injuries – Doctor who recorded her dying declaration stated that victim was in a fit state of mind to depose the statement – Apex Court opined that dying declaration cannot be disbelieved merely because victim suffered burn injuries to the extent of 100%: *Rajeshwar @ Pappu Tiwari Vs. State of M.P., I.L.R. 2024 M.P. *142 (DB)*

– **Section 302** and Evidence Act (1 of 1872), Section 32 – Dying Declaration – Read over to Victim – Held – Dying declaration cannot be discarded merely because it was not read over to victim: *Rajeshwar @ Pappu Tiwari Vs. State of M.P., I.L.R. 2024 M.P. *142 (DB)*

– **Section 302** and Evidence Act (1 of 1872), Section 32 – Multiple Dying Declaration – Held – Deceased made the statement when she was in expectation of death – Dying declaration was made at the earliest possible opportunity and followed by few more dying declarations – All dying declarations are in the same line, minor contradictions are liable to be ignored – Since the declarations were recorded by Executive Magistrate, Doctor and Constable, there is no reason to disbelieve them – Little variation in time etc. will not cause any serious dent to the dying declarations: *Sanjay Ahirwar Vs. State of M.P., I.L.R. 2024 M.P. *168 (DB)*

7. Human Blood on Weapon

– **Sections 302, 307, 324, 323, 147 & 148** and Arms Act (54 of 1959), Section 25(1-B)(A) – Seizure of Weapon – Blood Stains – Held – In none of the weapons like *lathi, fersi, sword etc.*, the blood was not found – Only one seizure witness was examined who completely denied the seizure in his presence – Prosecution failed to prove recovery of articles from appellants: *Ramsingh @ Rama Vs. State of M.P., I.L.R. 2024 M.P. *72 (DB)*

– **Sections 302, 307, 324, 323 & 450** – Absence of Human Blood on Weapons – Held – There is no straitjacket formula that an accused person can be held guilty only when human blood is found on the weapon allegedly used in commission of crime – Ocular evidence, medical evidence and circumstances lead to only one conclusion that appellants and only appellants were responsible for the overt act and hence they can certainly be held guilty for the offences: *Ravi Kushwaha Vs. State of M.P., I.L.R. 2024 M.P. *143 (DB)*

– **Sections 302, 394, 394/397** and Arms Act (54 of 1959), Section 25(1-B)(B) – Recovery of Blood Stained Articles – Burden of Proof – Held – Blood stained knife, clothes and shocks recovered from appellant duly proved by evidence of investigating officer – Burden lies upon accused to explain as to how and why human blood was present on the articles recovered from him: *Anil Patel Vs. State of M.P., I.L.R. 2024 M.P. *79 (DB)*

8. Injury/Intention

– **Section 302 & 304 Part I** – Intention & Injury – Held – Appellant caused 4 injuries on hand and leg, but no injury caused on any vital part of the body – It cannot be said that appellant had any intention to cause death of deceased – If appellant had intended to cause death of deceased then he could have attacked on vital part of the body – Conviction modified from offence u/S 302 to one u/S 304 Part-I IPC – Appeal partly allowed: *Bhuru Vs. State of M.P., I.L.R. 2024 M.P. *152 (DB)*

9. Injury/Medical Evidence

– **Section 302** and Arms Act (54 of 1959), Section 25/27 & 25(1-B)(a) – Gunshot Injury – Medical Jurisprudence – Held – As per medical jurisprudence, blackening can occur from the distance of 3 feet with standard 12 bore gun and one feet with country made pistol – Medical reports mentions blackening and burning on margins of entry wound of gunshot injury – As per prosecution, distance was about 14-15 feet – Doctor opined that injury cannot be caused in such manner, if gun is fired from a distance of more than 3 feet – Ballistic report creates serious doubt on prosecution version – Appellant acquitted of offence u/S 27 of Arms Act but since country made pistol is recovered from appellant he is convicted u/S 25(1-B)(a) of Arms Act: *Surajpal Vs. State of M.P., I.L.R. 2024 M.P. 1407 (DB)*

– **Sections 302, 376(2)(cha), 363, 364, 366 & 201** – Medical Evidence – FSL Report – Diatom Test – Held – Injuries were found on the body of the victim – Doctor has opined regarding suggestive of vaginal penetration and suggested for diatom test – Diatom test was got conducted by police authorities which was found positive – Appellant failed to explain the recovery of clothes of deceased at his

instance and presence of sperm on the clothes as per FSL – These aspects goes strongly against appellant: *Gowardhan Vs. State of M.P., I.L.R. 2024 M.P. 125 (DB)*

10. Recovery/Seizure

– **Section 302** and Arms Act (54 of 1959), Section 25/27 – Recovery of Cartridges – Held – As per prosecution, 5 to 6 rounds were fired during incident in night but police failed to recover any other bullet from the spot apart from the only metal slug found in the body of deceased – Not a single spent cartridge was recovered from the spot – This creates serious gap in the prosecution version: *Surajpal Vs. State of M.P., I.L.R. 2024 M.P. 1407 (DB)*

– **Sections 302, 307, 324, 323, 147 & 148** and Arms Act (54 of 1959), Section 25(1-B)(A) – Seizure of Arm – Held – SHO deposed that he seized the gun from house of “B” but in the cross-examination he admits that the gun belongs to one “M” – So far as recovery of other arms from co-accused persons, Court has found that their seizure has not been legally proved – There is no test fire report or ballistic report of the country made pistols – All recoveries are doubtful: *Ramsingh @ Rama Vs. State of M.P., I.L.R. 2024 M.P. *72 (DB)*

– **Sections 302, 307, 324, 323 & 450** and Evidence Act (1 of 1872), Section 27 – Recovery of Weapon – Term “Open Space” – Held – Section 27 of Evidence Act nowhere talks about “open space” – Statement of I.O. makes it clear that weapons were although recovered from open space but hidden inside a bush – Evidence is not vitiated u/S 27: *Ravi Kushwaha Vs. State of M.P., I.L.R. 2024 M.P. *143 (DB)*

11. Test Identification Parade

– **Sections 302, 307, 324, 323 & 450** – Non-Conduction of TIP – Effect – Held – Prosecution witness stated that appellants were his distant relatives – Witnesses identified all the assailants while deposing in Court, thus, non-conduction of TIP will not be fatal to prosecution case: *Ravi Kushwaha Vs. State of M.P., I.L.R. 2024 M.P. *143 (DB)*

12. Miscellaneous

– **Section 302** – See – Criminal Procedure Code, 1973, Section 190 & 482: *Devi Singh Meena Vs. State of M.P., I.L.R. 2024 M.P. 1942*

– **Section 302** – See – Criminal Procedure Code, 1973, Section 190(a),(b) & 482: *Devi Singh Meena Vs. State of M.P., I.L.R. 2024 M.P. 1942*

– **Section 302** – See – Criminal Procedure Code, 1973, Section 329: *Ashutosh Shrivastava Vs. State of M.P., I.L.R. 2024 M.P. 1902*

– **Section 302 & 201** – See – Criminal Procedure Code, 1973, Section 227 & 228: *Sohan Kohli Vs. State of M.P., I.L.R. 2024 M.P. *188*

• – **Sections 304-A, 337 & 338** and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Proof of Negligence – Held – Machine fell into the well on account of soil sinking around the well which resulted into death of two persons – It cannot be held that there was any negligence or rashness on part of applicant in performance of his duties which he ought to have performed – Even if it is assumed that there was some negligence, it cannot be said to be the direct or proximate cause of death – FIR, charge-sheet and entire consequential proceedings quashed – Application allowed: *Ramsingh Modavat Vs. State of M.P., I.L.R. 2024 M.P. *122*

– **Section 304-B** – Ingredients– Discussed and explained: *Lalit Kumar Vs. State of M.P., I.L.R. 2024 M.P. *56*

– **Section 304-B** – Nature of Death – Held – Section 304-B IPC does not categorize death as homicidal, suicidal or accidental: *Lalit Kumar Vs. State of M.P., I.L.R. 2024 M.P. *56*

– **Section 304-B** – Words "Soon Before" – Held – The interpretation of the words "soon before" is to be construed in liberal manner and if done otherwise in literal sense, it would lead to miscarriage of justice and failure of the intent of legislature for which the law was passed – Interpretation of the term "soon before" varies from case to case – Apex Court concluded that no straitjacket formula can be applied to define the term "soon before": *Lalit Kumar Vs. State of M.P., I.L.R. 2024 M.P. *56*

– **Section 304-B & 498-A** and Evidence Act (1 of 1872), Section 113-B – Presumption – Held – It is established that deceased died within 7 years of her marriage being subject to cruelty by husband, father- in-law and brother-in-law in connection with demand of dowry – Death was caused by burns, otherwise than normal circumstances in her matrimonial home and soon before her death she was subjected to cruelty – Presumption u/s 113-B of Evidence Act goes against appellants which they failed to rebut – Conviction upheld – Appeal dismissed: *Lalit Kumar Vs. State of M.P., I.L.R. 2024 M.P. *56*

SYNOPSIS: Section 306

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|---------------------------------|----------------------------------|
| 1. Alternate Conviction | 2. Dying Declaration |
| 3. Hypersensitive Person | 4. Ingredients of Offence |
| 5. Instigation | 6. Presumption |
| 7. Sentence | 8. Miscellaneous |

1. Alternate Conviction

– **Section 306 & 498-A** – Charge – Held – Even if charge has not been framed for offence u/S 498-A IPC and if the offence is made out against appellant, she may be convicted u/S 498-A instead of Section 306 IPC: *Sumanbai @ Datta Bai Vs. State of M.P., I.L.R. 2024 M.P. 1397*

2. Dying Declaration

– **Section 306 & 498-A** – Dying Declaration – Abetment – Held – As per dying declaration of deceased, her mother-in-law subjected her to cruelty – Deceased never stated anything regarding abetment for committing suicide – She never said that appellant told her that she does not deserve to be alive or she should die – Appellant has though committed cruelty with deceased, she need to be convicted u/S 498-A in place of Section 306 IPC – Appeal partly allowed: *Sumanbai @ Datta Bai Vs. State of M.P., I.L.R. 2024 M.P. 1397*

3. Hypersensitive Person

– **Section 306 & 107** – Abetment to Suicide – Harassment by Wife – Held – As per suicide note, wife and her family members were mentally harassing the deceased (husband) and use to give threat that he and his family members would be implicated in a false case – Suicide note does not reveal any type of abetment and instigation by accused persons compelling deceased to commit suicide – Deceased might be a hypersensitive person and without availing other alternative remedies committed suicide – Order framing charge u/S 306 IPC set aside – Revision allowed: *Anju Raidas Vs. State of M.P., I.L.R. 2024 M.P. *222*

4. Ingredients of Offence

– **Section 306 & 498-A** – Quashment of Charge – Ingredients of Offence – Held – In suicide note deceased wrote that she is leaving the world due to her own trouble and she herself is only liable for her death – Petitioners are in-laws of deceased and deceased committed suicide within 2½ yrs. of her marriage and specific allegations regarding cruelty and harassment and ingredients of abetment are evident from statement of witnesses recorded u/S 161 Cr.P.C. – No interference warranted – Revision dismissed: *Pawan @ Premchand Rathore Vs. State of M.P., I.L.R. 2024 M.P. *13*

5. Instigation

– **Section 306 & 107** – Abetment – Held – Apex Court concluded that abetment involves a mental process of instigating a person or intentionally aiding a

person in doing of a thing – Without a positive act on part of accused to instigate or aid in committing suicide, conviction cannot be sustained: *Nisha Saket Vs. State of M.P., I.L.R. 2024 M.P. 2376*

– **Section 306 & 107** – Instigation – Conduct of Accused – Held – Not preparing food in time, compelling husband to do the work of mopping, cleaning as well as washing clothes, dancing in the marriage of her own brother, compelling deceased to immediately go back to their place of residence and going to market with other persons for shopping purposes, cannot be said to be an abetment – Allegations are trivial in nature which generally took place in every house – It cannot be said that there was an instigation on part of applicant – Order framing charge u/S 306 IPC set aside – Revision allowed: *Nisha Saket Vs. State of M.P., I.L.R. 2024 M.P. 2376*

– **Section 306 & 107** – Instigation – Held – Apex Court concluded that a word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation: *Nisha Saket Vs. State of M.P., I.L.R. 2024 M.P. 2376*

6. Presumption

– **Section 306** and Evidence Act (1 of 1872), Section 113-A – Presumption of Abetment – Held – Where deceased lady committed suicide within 7 years of marriage and her husband or such relatives of husband had subjected her to cruelty, the Court is not bound to presume that suicide has been abetted by her husband and such relatives of husband – Only on basis of Section 113-A of Evidence Act, appellant cannot be convicted u/S 306 IPC – Conviction u/S 306 set aside: *Sumanbai @ Datta Bai Vs. State of M.P., I.L.R. 2024 M.P. 1397*

– **Section 306 & 498-A** and Evidence Act (1 of 1872), Section 113(A) – Presumption – Held – Wife committed suicide within a period of 7 yrs. from date of marriage – Court may presume having regard to all other circumstances of the case, that such suicide had been abetted by her husband or by such relatives of her husband – Charge rightly framed: *Pawan @ Premchand Rathore Vs. State of M.P., I.L.R. 2024 M.P. *13*

7. Sentence

– **Section 306 & 498-A** – Sentence – Held – Appellant is more than 70 years old and was in custody for 304 days and suffered ordeal of trial since 1998 and also completed incarceration period of more than 10 months – Sentence reduced to the

period already undergone – Appeal partly allowed: *Sumanbai @ Datta Bai Vs. State of M.P., I.L.R. 2024 M.P. 1397*

8. Miscellaneous

– **Section 306/34** – See – Criminal Procedure Code, 1973, Section 227 & 228: *Ganesh Vs. State of M.P., I.L.R. 2024 M.P. 1907*

SYNOPSIS: Section 307

- | | |
|------------------------------------|--|
| 1. Appreciation of Evidence | 2. Blood Grouping |
| 3. Compromise | 4. Independent Witness |
| 5. Injured Witness | 6. Nature of Injury & Intention |

1. Appreciation of Evidence

– **Sections 307, 364 & 201** – Contradictions and Omissions – Held – Incident took place on 07.01.18 – Injured was admitted in hospital from 12.01.18 to 05.02.18 – He had fractures in skull and jaw, thus his case diary statement was recorded on 27.03.18 – His statement was recorded before Court after more than 8 months – Minor contradictions and omissions are natural which cannot affect credibility of the witness – Conviction affirmed – Appeals dismissed: *Akash Vs. State of M.P., I.L.R. 2024 M.P. *109*

– **Sections 307, 364 & 201** and Evidence Act (1 of 1872), Section 65B – Electronic Records – Admissibility in Evidence – Held – Certificate u/S 65B is mandatory to prove electronic record and such certificate shall be issued by authorized person, as prescribed u/S 65B(4) of 1872 Act – Sub-Inspector himself prepared the certificate whereas as per law it can be issued by a responsible official person in relation to operation of relevant device or management of relevant activities – Copy of electronic record in form of DVD is not admissible in evidence: *Akash Vs. State of M.P., I.L.R. 2024 M.P. *109*

2. Blood Grouping

– **Section 307** – Seized Weapon – Blood Grouping – Held – Blood Grouping of blood found on articles could not be performed, thus it is not established that seized knife and farsi were used in the incident – But prosecution case is based upon statement of injured and eye-witness therefore case of prosecution is not affected adversely: *Kalu Vs. State of M.P., I.L.R. 2024 M.P. *115*

3. Compromise

– **Sections 307, 376 & 452** and Criminal Procedure Code, 1973 (2 of 1974), Section 320 & 482 – Quashment of FIR – Compromise – Held – Concept of compromise for offence of rape cannot be accepted in a routine manner – Offence of rape is a serious offence and heinous in nature and affects the society – It is not appropriate to quash FIR for such kind of offence despite settlement between the parties – Application dismissed: *Farukh Vs. State of M.P., I.L.R. 2024 M.P. *228*

4. Independent Witness

– **Section 307** – Independent Witness – Held – No criminal case can be overboarded due to non-availability of independent prosecution witnesses – Incident happened in midnight in house of appellant – It cannot be expected from prosecution to furnish eye-witness in this regard specially when father is beating his child – Presence of eye witness on the spot is next to impossible: *Balu Vs. State of M.P., I.L.R. 2024 M.P. *49*

5. Injured Witness

– **Section 307** – Injured Child Witness – Creditability – Held – Evidence of child witness should be accepted with care and caution but no corroboration is required, if testimony of child inspires confidence, specially when testimony is of the daughter of accused – She is the sole eye witness who was tried to be killed by her own father but she could survive – She is not only daughter of appellant but also grievously injured witness, hence her statement is accorded special status in law: *Balu Vs. State of M.P., I.L.R. 2024 M.P. *49*

– **Section 307** – Statement of Injured Eye Witness – Held – Statement of injured witness duly supported by medical evidence – On basis of minor and trivial omission, contradiction and exaggeration, statement of injured and eye-witnesses cannot be discarded – FIR was lodged within 40 minutes of incident without any delay – Appellant rightly convicted and sentenced u/S 307 IPC: *Bajesingh Vs. State of M.P., I.L.R. 2024 M.P. *113*

6. Nature of Injury & Intention

– **Section 307** – Injury & Intention – Appreciation of Evidence – Held – Statement of witness is supported by FIR which was lodged promptly without any delay – No omission and contradiction in statement of injured person in this respect – Statement of injured is also supported by medical evidence – Accused “R” stabbed knife twice on stomach of injured and caused grievous injury, with intent to kill him – Accused “K” was wrongly convicted, thus the same is set aside – Conviction of appellant “R” is upheld: *Kalu Vs. State of M.P., I.L.R. 2024 M.P. *115*

– **Section 307** – Intention – Determination – Held – Apex Court concluded that in order to determine the intention of accused, all the circumstances including the nature of weapon used, manner in which it was used, motive of the crime, severity of the blow, the part of body where the injury is inflicted and other factors, as the case may be, must be seen rather than mere consequence: *Bajesingh Vs. State of M.P., I.L.R. 2024 M.P. *113*

– **Section 307** – Intention – Held – Appellant attacked the victim with an axe on her stomach, chest and near left ear – Doctor opined that injuries were dangerous to life – Looking to the nature of weapon, nature of injury on vital organ, the intensity of blow and evidence of doctor, it can be gathered that appellant inflicted the injuries with intention to cause death – Act of appellant comes within purview of section 307 IPC – Appeal dismissed: *Suklu Vs. State of M.P., I.L.R. 2024 M.P. *100*

– **Section 307** – Intention – Nature of Injury – Held – Appellant used a knife and had chosen vital part of the body i.e. stomach to stab, thus it is clear that appellant had intention to kill the injured – Doctor stated that injuries were grievous in nature and fatal to life – Conviction upheld – Appeal dismissed: *Bajesingh Vs. State of M.P., I.L.R. 2024 M.P. *113*

– **Section 307** – Nature of Injury – Intention – Held – Intention of accused has to be unearthed from circumstances and nature of injuries inflicted by accused – Accused assaulted his child with electric wire – In ordinary course of nature, the said electrocuting may cause death of injured especially when child was 6 years old – Such type of injury is always sufficient to cause death – Act of appellant comes under purview of Section 307 IPC – Conviction affirmed – Appeal dismissed: *Balu Vs. State of M.P., I.L.R. 2024 M.P. *49*

• – **Section 313** – See – Criminal Procedure Code, 1973, Section 482: *Bhupnath Tiwari Vs. State of M.P., I.L.R. 2024 M.P. 345*

– **Section 316** – See – Criminal Procedure Code, 1973, Section 482: *Bhupnath Tiwari Vs. State of M.P., I.L.R. 2024 M.P. 345*

– **Section 320 & 326** – Nature of Injury – Held – Accused assaulted complainant on her both cheeks by means of blades – Her testimony finds support from statement of scribe of FIR – Doctor stated that injury was grievous in nature and it can cause disfiguration of face – Injury was referred for plastic surgery – Conviction u/S 326 affirmed: *Akram @ Akka Vs. State of M.P., I.L.R. 2024 M.P. *110*

– **Sections 323, 294, 506, 342 & 34** – See – Criminal Procedure Code, 1973, Section 197 & 482: *Jagdish Mandloi Vs. State of M.P., I.L.R. 2024 M.P. *207*

– **Section 323 & 498-A** and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Misuse of Law – Powers of Court – Held – Nowadays there is a package of 5 cases against the husband and his family members under IPC, Hindu Marriage Act and Domestic Violence Act – In most of cases, Section 498–A is being misused, it is lodged only to settle matrimonial disputes – On general and omnibus allegations, family members and distant relatives are being roped in a case u/S 498–A IPC – Where there is apparent misuse of Section 498–A, High Court should exercise power u/S 482 to protect the relatives of husband in order to do complete justice and prevent misuse of process of law: *Rajan Vs. State of M.P., I.L.R. 2024 M.P. *35*

– **Section 323 & 498-A** and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Quashment – Held – Only oral allegation of assault, no MLC on record – Allegation of demand of dowry by applicants are general in nature – Delay of one year in lodging FIR is unexplained – Presently both husband and wife are settled in Australia – Parents of husband are being harassed by way of criminal case in India – General allegations have been leveled against "jethani", she has been unnecessarily dragged in FIR – As per FIR husband was not even in India at the time of commission of offence – It is a case of reverse cruelty upon them – Criminal proceedings quashed: *Rajan Vs. State of M.P., I.L.R. 2024 M.P. *35*

– **Section 323 & 498-A** and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Quashment – Territorial Jurisdiction – FIR lodged in Indore – Held – Only the marriage was solemnized at Indore – No material to support that wife/her father is ordinary resident of Indore – As per FIR, none of the offences are said to have been committed in Indore, demand of dowry and commission of atrocities were taken place in matrimonial home in Gurgaon – Applicants are permanent resident of Gurgaon and parents of complainant are permanent resident of Navi Mumbai – FIR at Indore has wrongly been registered – FIR quashed – Application allowed: *Rajan Vs. State of M.P., I.L.R. 2024 M.P. *35*

– **Section 323 & 498-A**, Dowry Prohibition Act (28 of 1961), Section 3/4 and Criminal Procedure Code, 1973 (2 of 1974), Sections 177, 179 & 482 – Quashment of FIR – Territorial Jurisdiction – Held – Apex Court concluded that Courts in the location where the wife seeks refuge after fleeing or being driven from matrimonial home due to acts of cruelty committed by husband or his relatives also have jurisdiction to hear a complaint alleging commission of offence u/S 498-A IPC: *Aliya (Smt.) Vs. State of M.P., I.L.R. 2024 M.P. *221*

– **Section 323 & 498-A**, Dowry Prohibition Act (28 of 1961), Section 3/4 and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Quashment of FIR – Delay in FIR – Held – It is a case of matrimonial dispute and complainant herself

mentioned in FIR that as she wants to live with her husband and does not want to spoil her marital life, therefore she did not lodge FIR earlier – Apex Court concluded that mere delay in filing FIR cannot by itself be a ground to quash FIR and proceedings: *Aliya (Smt.) Vs. State of M.P., I.L.R. 2024 M.P. *221*

– **Section 324** – See – Criminal Procedure Code, 1973, Section 482: *Bhupnath Tiwari Vs. State of M.P., I.L.R. 2024 M.P. 345*

– **Section 324** and Explosive Substances Act (6 of 1908), Section 4 – Held – There is inconsistencies in statement of witnesses regarding time of incident – Witness also stated that there was no illumination at the time of incident – PW-1, 2 & 4 are admittedly inimical to the accused and appears to be planted witness – When there is reasonable amount of doubt, appellant cannot be convicted – Conviction set aside – Appeal allowed: *Lalit Lajras Vs. State of M.P., I.L.R. 2024 M.P. 518*

– **Section 325** – Sentence – Mitigating Circumstances – Held – The fact that appellant has suffered ordeal of this case since 2009 i.e. approx 14 years, is to be considered as mitigating circumstances – Sentence of 2 years R.I. u/S 325 IPC reduced to 6 months by enhancing the fine amount from Rs. 10,000 – Appeal partly allowed: *Ramsnehi Vs. State of M.P., I.L.R. 2024 M.P. *166*

– **Section 326** – Grievous Injury – Held – As per medical evidence, injured received 9 injuries on his body including one lacerating wound on head and 5 fractures – It is clear that the injured received grievous injuries on his body: *Gyanisingh Gurjar Vs. State of M.P., I.L.R. 2024 M.P. *156*

– **Section 326** – Seized Weapon (lathi) – Chemical Examination – Held – Statement of injured witness is supported by medical evidence – Case depends on testimony of injured and eye witnesses – Non-production of *lathi* before Doctor for his opinion and lack in sending it for chemical examination causes no dent to prosecution story – Conviction upheld – Appeal dismissed: *Gyanisingh Gurjar Vs. State of M.P., I.L.R. 2024 M.P. *156*

– **Section 326 & 307** and Criminal Procedure Code, 1973 (2 of 1974), Section 71 & 222 – Punishment for Grave Offence – Held – As per law when only one person is injured, charge can be framed only under grave section and conviction can also be passed only in grave section – Trial Court convicted and passed punishment order in both the sections – If accused caused grievous injury by sharp weapon to injured with intention to cause death, he would be convicted only u/S 307 IPC and not u/S 326 IPC, but if attempt to murder is not established, he may be convicted u/S 325 or 326 IPC – Attempt to murder is established thus accused cannot be convicted for lesser offence u/S 326 – Conviction and sentence u/S 326 is

not sustainable and is thus set aside: *Shravan Vs. State of M.P., I.L.R. 2024 M.P. 2370*

– **Section 326 & 307** and Criminal Procedure Code, 1973 (2 of 1974), Section 320 – Non-Compoundable Offence – Compromise – Permissibility – Held – It is not possible to pass order of acquittal on basis of compromise but such compromise can be taken into account for reduction of sentence – Sentence reduced to period already undergone – Fine amount enhanced from Rs. 2000 to Rs. 10,000 – Appeal partly allowed: *Shravan Vs. State of M.P., I.L.R. 2024 M.P. 2370*

– **Section 326 & 452** – Appreciation of Evidence – Held – Accused after entering into house of complainant caused injury by means of blade which shows that he entered the house with preparation to cause injury – Since offence u/S 326 IPC is proved, appellant liable for the offence u/S 452 IPC – Conviction u/S 452 upheld: *Akram @ Akka Vs. State of M.P., I.L.R. 2024 M.P. *110*

– **Section 328** – Delay & Medical Evidence – Held – Incident was reported by complainant after 3 days of incident – No medical evidence that complainant got unconscious due to consumption of intoxicating substance – No attempt to recover stolen suitcase containing Rs. 70,000 – Only ocular statement of complainant and his wife is not sufficient to convict the appellant – Conviction set aside – Appeal allowed: *Rajendra Prasad Vs. State of M.P., I.L.R. 2024 M.P. *164*

– **Section 337 & 338** and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Quashment – Held – Applicant told complainant to climb the electricity pole for repairing electricity line – It is not the case of prosecution that applicant was aware that electricity current was flowing in the line and yet he asked complainant to climb the pole as a result of which his safety was jeopardized – Said negligence/omission is not attributed to applicant – Act of applicant cannot be said to be a reckless act attracting criminal liability – No offence made out – FIR, Charge-sheet and criminal proceedings quashed – Application allowed: *Harish Suryavanshi Vs. State of M.P., I.L.R. 2024 M.P. *136*

SYNOPSIS: Section 354

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|---|------------------------------------|
| 1. Age of Prosecutrix/
Determination | 2. Compromise |
| 3. Sexual Intention/
Presumption | 4. Testimony of Prosecutrix |
| 5. Word “Man” | |

1. Age of Prosecutrix/Determination

– **Section 354** and Protection of Children from Sexual Offences Act (32 of 2012), Section 7/8 – Determination of Age – Held – Scholar register or admission register would be taken into account for deciding the age of the prosecutrix – Apex Court concluded that admission register of school in which a candidate first attended, is a relevant piece of evidence for determining the date of birth: *Farid Khan Vs. State of M.P., I.L.R. 2024 M.P. *154*

– **Section 354 & 506** and Protection of Children from Sexual Offences Act (32 of 2012), Section 7/8 – Age of Prosecutrix – Relevant Document – Held – The Scholar Register or admission register can be taken into account for deciding the age of prosecutrix – As per Scholar Register, date of birth of prosecutrix is 06.03.2006, therefore at the time of incident i.e 15.11.2020, the age of prosecutrix is 14 years and 8 months which is less than 18 years: *Nageshwar Vs. State of M.P., I.L.R. 2024 M.P. *63*

2. Compromise

– **Section 354 & 376** and Criminal Procedure Code, 1973 (2 of 1974), Section 320 – Reduction of Sentence – Compromise – Applicability – Held – Reduction of sentence in these kind of cases cannot be used in a routine manner and shall be used sparingly – Looking to the tender age of prosecutrix when she was subjected to sexual offence, it would not be justified to accept compromise application and reduction of sentence – At the relevant time Section 354 was compoundable therefore compromise application is accepted for Section 354 IPC – Appeal partly allowed: *Ramesh Keshu Vs. State of M.P., I.L.R. 2024 M.P. *95*

3. Sexual Intention/Presumption

– **Section 354 & 363** and Protection of Children from Sexual Offences Act (32 of 2012), Section 9(M)/10 & 20 – Sexual Intention – Presumption – Held – Appellant took the prosecutrix aged 6 years in his closed room, took her into his lap and was rubbing hands on her thigh and wanted to give her a bite – Appellant has used criminal force to outrage her modesty – Act and conduct of appellant is sufficient to gather his sexual intention – Appeal dismissed: *Prahalad Gujar Vs. State of M.P., I.L.R. 2024 M.P. *184*

– **Section 354 & 506** and Protection of Children from Sexual Offences Act (32 of 2012), Section 7/8 & 30(1) – Sexual Instinct – Held – At the time of incident, appellant was 22 years old, he pulled clothes of prosecutrix and put his hand on her shoulder – This conduct clearly signified the sexual instinct of appellant: *Nageshwar Vs. State of M.P., I.L.R. 2024 M.P. *63*

4. Testimony of Prosecutrix

– **Section 354** and Protection of Children from Sexual Offences Act (32 of 2012), Section 7/8 – Testimony of Prosecutrix – Held – Testimony of prosecutrix should be regarded as one of the injured witness – In criminal jurisprudence evidence of injured person carry great weightage – Such testimony comes with a in-built guarantee of truth, specially when it is a case of molestation or sexual assault – Such witness cannot spare the actual culprit in order to foist an innocent person: *Farid Khan Vs. State of M.P., I.L.R. 2024 M.P. *154*

– **Section 354 & 376** – Statement of Prosecutrix – Minor Contradiction & Omission – Held – Statement of Prosecutrix is supported by FIR and statement of her mother – Mother of prosecutrix is illiterate and prosecutrix was of a tender age, below 13 years – Both belonged to rural background – Minor discrepancies in statement of minor child are natural – Testimony of prosecutrix cannot be discarded – Conviction upheld: *Ramesh Keshu Vs. State of M.P., I.L.R. 2024 M.P. *95*

– **Section 354 & 506** and Protection of Children from Sexual Offences Act (32 of 2012), Section 7/8 – Testimony of Prosecutrix – Held – Testimony of prosecutrix should be regarded as that of the injured witness of the case – Criminal jurisprudence attaches great weightage to the evidence of injured witness – Such a testimony comes with a in-built guarantee of truth, specially when it is a case of molestation or sexual assault – Such type of witness cannot spare the real culprit in order to foist an innocent person: *Nageshwar Vs. State of M.P., I.L.R. 2024 M.P. *63*

5. Word “Man”

– **Sections 354-A, 354-B, 354-C & 354-D** and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Quashment of FIR – Word "Man" – Held – All these sections refer to commission of offence by any man – When applicant is a woman and acted throughout in capacity of HOD and no *mens rea* was found in allegations regarding offence u/S 354-A IPC then keeping the trial pending for petitioner to face wrath of trial, would itself be a punishment – FIR and Charge-sheet against applicant are quashed – Application allowed: *Indu Bora (Smt.) Vs. State of M.P., I.L.R. 2024 M.P. *231*

- – **Section 363** and Protection of Children from Sexual Offences Act (32 of 2012), Section 9(M)/10 – Age of Prosecutrix – Determination and considerations enumerated and explained: *Prahalad Gujar Vs. State of M.P., I.L.R. 2024 M.P. *184*

– **Section 363** and Protection of Children from Sexual Offences Act (32 of 2012), Section 9(M)/10 – Age of Prosecutrix – Held – The scholar register as well as

admission card are sufficient to prove the age of prosecutrix: *Prahalad Gujar Vs. State of M.P., I.L.R. 2024 M.P. *184*

– **Section 363 & 366** – Age of Prosecutrix – Medical Evidence – Held – Medical Officer who examined X-Ray stated that age of prosecutrix is above 16 years and below 18 years – Dental Surgeon also stated that none of her molars were present nor any evidence visible which proves that she was less than 17 years – If margin of error of 2 years is calculated, age of prosecutrix may be more than 18 years at the time of incident – Benefit of uncertainty must go to accused – Trial Court wrongly held that age of the prosecutrix was below 18 years at the time of incident: *Hiramani Singh Vs. State of M.P., I.L.R. 2024 M.P. 1016*

– **Section 363 & 366** – Appreciation of Evidence – Held – Prosecutrix admitted that she wrote several letters to appellant and expressed her love and affection towards appellant – She want to elope with appellant by taking her father's money and she also wants to marry him but due to fear of her father, she could not do so – Prosecutrix herself left the house and went with appellant – Kidnapping/Abduction not proved – Conviction and sentence is set aside – Appeal allowed: *Hiramani Singh Vs. State of M.P., I.L.R. 2024 M.P. 1016*

– **Sections 363, 376(2)(n) & 506** – See – Criminal Procedure Code, 1973, Section 311: *Shahrukh Khan Vs. State of M.P., I.L.R. 2024 M.P. 171*

– **Section 375, Exception 2 & 376(2)(n)** – Husband & Wife – Held – Prosecutrix alleged that rape was committed on her prior to marriage – Intercourse under false promise of marriage happened between parties prior to marriage – Applicant will not fall within the exception 2 of Section 375 IPC: *Sandeep Kumar Soni Vs. State of M.P., I.L.R. 2024 M.P. 2148*

– **Section 375 fourthly** – Consent – Held – A man is said to have committed rape even with consent of prosecutrix, when he knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married: *Lakhan Ahirwar Vs. State of M.P., I.L.R. 2024 M.P. *87*

– **Section 375, Fourthly** – Validity of Marriage – Held – Petitioner belongs to a Tribe and marriage was solemnized as per customs of tribe under which second marriage is legally permissible – R-2 (wife) also stated that marriage was solemnized as per tribes' custom – Clause of Section 375 is not attracted: *Umang Singhar Vs. State of M.P., I.L.R. 2024 M.P. 790*

– **Section 375 & 377** – Amendment – Unnatural Sex – Held – As per amended definition of Section 375, if offender and victim is husband and wife, then

consent is immaterial – Section 375 includes all possible parts of penetration of penis by a husband to his wife – In view of the amended definition of Section 375, offence of Section 377 between husband and wife has no place and as such it is not made out – Apex Court concluded that if unnatural offence is done with consent then offence u/S 377 is not made out: *Umang Singhar Vs. State of M.P., I.L.R. 2024 M.P. 790*

– **Section 376** – See – Juvenile Justice (Care and Protection of Children) Act, 2000, Section 49: *Victim X Vs. State of M.P., I.L.R. 2024 M.P. *45*

– **Section 376** and Criminal Procedure Code, 1973 (2 of 1974), Section 320 & 482 – Compromise – Prosecutrix filed compromise application – Held – By simply entering into compromise, charges cannot be said to have been mitigated or quashed as the offence is against dignity of women as well as public interest – Application for compromise cannot be allowed – Application dismissed: *Sanjay Singhania Vs. State of M.P., I.L.R. 2024 M.P. *169*

– **Sections 376, 376(2n) & 506** and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Quashment – Held – Prima facie view has been taken by trial Court that offence are made out and trial is at advance stage – Accused persons have not challenged the framing of charge by the trial Court – No interference warranted – Application dismissed: *Rajendra Chakravati Vs. State of M.P., I.L.R. 2024 M.P. *68*

– **Section 376(2)(n) & 506-II** and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Quashment of FIR – Sexual Intercourse on Pretext of Marriage – Held – Prosecutrix is major aged more than 31 years and she was in relationship with applicant for more than 5 years – Despite alleged forceful rape by applicant repeatedly for long time, prosecutrix did not lodge FIR against him, on the contrary she married the applicant – In MLC, no bodily injury was found on prosecutrix – It is clear that there is no case that she surrendered to applicant under false promise of marriage – FIR and chargesheet quashed – Revision allowed: *Sandeep Kumar Soni Vs. State of M.P., I.L.R. 2024 M.P. 2148*

– **Section 377** and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Delay in FIR – Charges of unnatural sex against husband – Held – As per allegations, offence of unnatural sex was committed in 2018 and complaint was made in 2021 on which FIR was registered – Wife took 2 years and 9 months to lodge FIR u/S 377 IPC – During this period, she never told anyone about such incident – It is difficult to assume that a lady who is so proactive about her disposition, never raised her voice: *Major Amit Pathak Vs. State of M.P., I.L.R. 2024 M.P. 2413*

– **Section 377** and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Quashment of FIR – Medical Evidence – Charges of unnatural sex against husband – Held – Husband and wife got separated 5 months back and in charge-sheet, there is no evidence of their re-union – No injuries found over wife's person/personal parts but interestingly male semen/sperms found in vaginal and anal swab as well as over her clothes – In all studies, no sperm can be found over clothes, anal/vaginal swab more than some days and certainly not remain in existence for 5 months – No legally admissible evidence exists – It appears that petitioner has been implicated on false pretext – No offence made out u/S 377 IPC – FIR quashed: *Major Amit Pathak Vs. State of M.P., I.L.R. 2024 M.P. 2413*

– **Section 405 & 406** – Term "Entrustment" – Held – "Entrustment" of property u/S 405 IPC is pivotal to constitute an offence – The words used are "in any manner entrusted with property", thus it extends to entrustment of all kinds whether to clerks, servants, business partners or other persons, provided they are holding a position of trust – Criminal breach of trust would mean an act done dishonestly and in violation of any direction of law or any contract express or implied, using/disposing the property by a person entrusted with or has otherwise dominion thereover: *Neeraj Shrivastava Vs. State of M.P., I.L.R. 2024 M.P. 316*

– **Sections 405, 406 & 420** – Agreement of Loan – Held – Applicant borrowed money from complainant and loan agreement mentioning terms and conditions were executed between them – Even post dated cheques were issued by applicant – It cannot be said that applicant in any way committed any breach of trust or committed cheating with R-2: *Neeraj Shrivastava Vs. State of M.P., I.L.R. 2024 M.P. 316*

– **Sections 405, 406 & 420** – Ingredients and Considerations – Discussed and explained: *Neeraj Shrivastava Vs. State of M.P., I.L.R. 2024 M.P. 316*

– **Sections 405, 406, 419, 420, 467 & 468/34** – See – Criminal Procedure Code, 1973, Section 482: *Neeraj Shrivastava Vs. State of M.P., I.L.R. 2024 M.P. 316*

– **Sections 408, 409, 420, 467, 468, 471, 120-B & 34** – See – Criminal Procedure Code, 1973, Section 439(2): *Anand Kumar Mishra Vs. State of M.P., I.L.R. 2024 M.P. 310*

– **Sections 409, 420 & 120-B**, Prize Chits and Money Circulation Schemes (Banning) Act (43 of 1978), Sections 3, 4 & 5 and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Quashment – Considerations – Held – Applicant submitted that he resigned from company on 19.01.2011 – Respondent produced material to indicate that from the inception of company i.e. March 2010 till 19.01.2011, the date of so called resignation, Rs. 74 lacs were deposited by investors

with the company and during this period, applicant was working as director – No interference called for – Application dismissed: *Rajesh Jain Vs. State of M.P., I.L.R. 2024 M.P. *70*

– **Section 420** and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Quashment – Civil Dispute – Misuse of Criminal Law – Held – Complainant ought to have filed a suit for specific performance of contract – Instead of filing suit, a FIR was lodged – In order to avoid payment of stamp duty as well as Court fees, a trend has been developed to get a FIR registered to pressurize the party – This is nothing but misuse of police and wasting valuable time of Courts to settle down personal dispute or vendetta: *Dinesh Sharma Vs. State of M.P., I.L.R. 2024 M.P. *83*

– **Section 420** and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Quashment – Report of Investigation Officer – Held – It was alleged that applicant the SHO filed a report where he submitted that allegations are purely civil in nature and allegedly concealed the report of Deputy Director in respect of forgery and cheating committed by co-accused – Report submitted by I.O. is never binding on Court and Court is always competent to reject the report – Report is like an opinion by a police officer – It cannot be said that SHO was in connivance with co-accused and prepared the report in his favour – Proceedings against applicant quashed – Application allowed: *Dinesh Sharma Vs. State of M.P., I.L.R. 2024 M.P. *83*

– **Section 420** and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Quashment of FIR – False Declaration of Value of Property – Evasion of Stamp Duty – Held – If registration of sale deed is sought by falsely declaring the value of property, then it would *prima facie* falls within definition of Section 420 IPC – Stamp Act do not bar the applicability of provisions of IPC – Merely because penalty has been imposed by Collector of Stamps, would not absolve the applicant from criminal liability – Application dismissed: *Chandramohan Dubey Vs. State of M.P., I.L.R. 2024 M.P. 2398*

– **Section 420**, Ayurvigyan Parishad Adhiniyam, M.P. 1987 (11 of 1990), Section 24 and Criminal Procedure Code, 1973 (2 of 1974), Section 437(6) & 482 – Default Bail – Held – Magnitude, quantum and severity of offence can be a reason for denying bail u/S 437(1) or 439 of Cr.P.C. but not u/S 437(6) of Cr.P.C. – Accused is having a statutory right u/S 437(6) of Cr.P.C. – Time sought by counsel for applicant on a single date is not sufficient and cogent finding to reject bail application – Trial Court erred in rejecting his application – Bail granted – Application allowed: *Arun Sinha Vs. State of M.P., I.L.R. 2024 M.P. *173*

– **Sections 420, 406 & 34** – See – Criminal Procedure Code, 1973, Section 438: *Pramod Sethi Vs. State of M.P., I.L.R. 2024 M.P. 182*

– **Sections 420, 467, 468 & 471** – See –Notaries Act, 1952, Section 13: *Ramayan Prasad Kacher Vs. State of M.P., I.L.R. 2024 M.P. 544*

– **Sections 451, 324, 366 & 506-II** – Testimony of Victim – Testimony of victim and other witnesses cannot be wiped out on basis of trivial contradictions – Testimony of victim must be regarded as statement of injured witness which is backed by in-built guarantee of truth, rendering it high evidentiary value – Presence of some omissions and contradiction in statement of witnesses are natural – Statements of injured witnesses is well supported by medical evidence – Appeals dismissed: *Abdul Razaque Vs. State of M.P., I.L.R. 2024 M.P. *77*

– **Sections 464, 467 & 468** – See – Criminal Procedure Code, 1973, Section 482: *Neeraj Shrivastava Vs. State of M.P., I.L.R. 2024 M.P. 316*

– **Sections 467, 468 & 471** – See – Criminal Procedure Code, 1973, Section 156(3) & 202: *Arun Kumar Gupte Vs. Arvind Kumar, I.L.R. 2024 M.P. 2392*

– **Sections 467, 468 & 471** – See – Criminal Procedure Code, 1973, Section 320 & 482: *Ritesh Kumar Vs. State of M.P., I.L.R. 2024 M.P. *144*

SYNOPSIS: Section 498-A

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|--------------------------------------|-----------------------------|
| 1. Cause of Action/Limitation | 2. Compromise |
| 3. Counter Blast/Afterthought | 4. Cruelty |
| 5. Cruelty by Mother-in-Law | 6. Delay in FIR |
| 7. Dying Declaration | 8. Framing of Charge |
| 9. Preliminary Enquiry | 10. Quashment of FIR |
| 11. Relatives of Husband | 12. Stridhan |
| 13. Territorial Jurisdiction | |

1. Cause of Action/Limitation

– **Sections 498-A, 323, 294 & 506/34**, Dowry Prohibition Act (28 of 1961), Section 3 & 4 and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – FIR – Limitation – Continuous Cause of Action – Held – If a lady has been ousted from her matrimonial house, then certainly it will have an impact on her mind amounting to mental cruelty – It is a continuous offence and every day would give a fresh cause of action – FIR cannot be quashed on the ground that it was barred by limitation: *Mahendra Nagpure Vs. State of M.P., I.L.R. 2024 M.P. 2159*

2. Compromise

– **Section 498-A** and Criminal Procedure Code, 1973 (2 of 1974), Section 320 & 482 – Compromise – Applicant convicted and sentenced u/S 498-A IPC – In revision compromise application was filed – Held – As offence u/S 498-A IPC is not compoundable u/S 320 Cr.P.C., it is not possible to pass order of acquittal on basis of compromise – Such a compromise can be taken into account for reduction of sentence – Conviction maintained – To meet the ends of justice imprisonment awarded against applicant is reduced to period already undergone – Revision partly allowed: *Mahendra Vs. State of M.P., I.L.R. 2024 M.P. *59*

3. Counter Blast/Afterthought

– **Section 498-A** – Dowry Demand – Counter Blast – Held – All allegations are omnibus in nature – No specific dates and events mentioned by wife – She also filed application under Domestic Violence Act – All allegations, proceedings are subsequent to complaints made by petitioner and divorce case filed by petitioner – Prior to it she never made any allegation of harassment for dowry demand – Allegations are false and fabricated and is an afterthought – No offence made out u/S 498-A IPC: *Major Amit Pathak Vs. State of M.P., I.L.R. 2024 M.P. 2413*

– **Sections 498-A, 323, 294 & 506/34**, Dowry Prohibition Act (28 of 1961), Section 3 & 4 and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – FIR, a Counter blast of Divorce Petition – Held – Merely because FIR was lodged by wife after the petition of divorce instituted by husband, the same cannot be a ground to quash the proceedings – Unless and until surrounding circumstances indicate that allegations made against applicants are false and there was no mental/physical harassment/cruelty, this Court cannot quash the proceedings merely on ground that FIR was lodged by way of counter blast: *Mahendra Nagpure Vs. State of M.P., I.L.R. 2024 M.P. 2159*

4. Cruelty

– **Section 498-A** – Cruelty – Held – Compelling a married woman to live in her parental home amounts to cruelty: *Mool Kawar Mehta (Smt.) Vs. State of M.P., I.L.R. 2024 M.P. 1730*

5. Cruelty by Mother-in-Law

– **Section 498-A** – Cruelty – Conduct of Mother-in-Law – Held – Apex Court concluded that when an offence has been committed by a woman by meeting out cruelty to another woman i.e. daughter-in-law, it becomes a more serious offence

– Such woman deserves no leniency – Mother-in-law must protect daughter-in-law: *Mool Kavar Mehta (Smt.) Vs. State of M.P., I.L.R. 2024 M.P. 1730*

6. Delay in FIR

– **Section 498-A** and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Delay in FIR – Counter Blast – Held – If wife maintained silence in order to save her marital life and did not lodge the First Information Report, then her silence for the noble cause should not be considered against her by holding that FIR was lodged by way of counter blast to divorce petition – Once wife has realized that all chances of reconciliation have vanished on account of filing of divorce petition and if she decided to take action in accordance with law, she cannot be blamed for the same: *Neeraj Kumar Saraf Vs. State of M.P., I.L.R. 2024 M.P. 2630*

– **Sections 498-A, 323, 294 & 506/34**, Dowry Prohibition Act (28 of 1961), Section 3 & 4 and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Delay in FIR – Effect – Held – Apex Court concluded that delay in registration of FIR, by itself cannot be a ground for quashment of FIR – There may be variety of genuine causes for FIR lodgement to get delayed – The delay will assume importance only when complainant fails to give a plausible explanation which can be decided by trial Court after recording evidence: *Mahendra Nagpure Vs. State of M.P., I.L.R. 2024 M.P. 2159*

7. Dying Declaration

– **Section 498-A** – Cruelty – Dowry Demand – Held – In dying declaration, there is no mention of demand of dowry by appellant – There was no harassment either physically or mentally except on occasion when appellant mother-in-law scolded the deceased for allowing neighbour to come to their house to watch T.V. – This does not constitute cruelty for Section 498-A IPC – It cannot be said that deceased was not left with any other option except to commit suicide – A word uttered in a fit of anger or emotion without intending the consequence cannot be said to be an instigation – No offence u/S 498-A made out – Conviction set aside – Appeal allowed: *Sampat Bai Vs. State of M.P., I.L.R. 2024 M.P. *38*

8. Framing of Charge

– **Section 498-A**, Dowry Prohibition Act (28 of 1961), Section 3/4 and Criminal Procedure Code, 1973 (2 of 1974), Sections 227, 228 & 482 – Framing of Charge – Held – In the complaint, there are specific allegations against applicants about demand of dowry and causing physical and mental cruelty in connection to demand of dowry – No illegality in framing of charge against applicants –

Application dismissed: *Sukhendra Chaturvedi Vs. State of M.P., I.L.R. 2024 M.P. *19*

9. Preliminary Enquiry

– **Section 498-A & 506/34**, Dowry Prohibition Act (28 of 1961), Section 3 & 4 and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Quashment of FIR – Preliminary Inquiry – Held – Preliminary inquiry may be desirable but non-holding a preliminary inquiry will not vitiate the FIR – FIR cannot be quashed on the ground that preliminary inquiry was not conducted: *Avijit Sharma Vs. State of M.P., I.L.R. 2024 M.P. 2173*

10. Quashment of FIR

– **Section 498-A** and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Quashment of FIR – Mental Cruelty – Held – There are specific allegations against applicants regarding demand of dowry – Wife was forcefully ousted from her matrimonial house – Compelling a married woman to live in her parental house on account of non-fulfillment of dowry demands amounts to mental cruelty – FIR cannot be quashed – Application dismissed: *Neeraj Kumar Saraf Vs. State of M.P., I.L.R. 2024 M.P. 2630*

– **Sections 498-A, 323, 294 & 506/34**, Dowry Prohibition Act (28 of 1961), Section 3 & 4 and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Quashment of FIR – Specific Allegations – Held – A-2 is mother-in-law – In FIR, there is specific allegation that on account of demand of dowry, she used to beat the complainant and also used to pass taunts with regard to less dowry brought by complainant – Allegations are sufficient to prosecute her u/S 498-A, 294, 323 & 506 IPC – FIR against A-2 cannot be quashed: *Mahendra Nagpure Vs. State of M.P., I.L.R. 2024 M.P. 2159*

– **Sections 498-A, 323, 294 & 506/34**, Dowry Prohibition Act (28 of 1961), Section 3 & 4 and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Quashment of FIR – Specific Allegations – Held – Except general, vague and omnibus allegations made in FIR, there are no specific allegations against A-3 to A-7, who are relatives of husband – Prosecution of A-3 to A-7 cannot be allowed to continue – FIR & criminal proceedings against A-3 to A-7 quashed – Application disposed: *Mahendra Nagpure Vs. State of M.P., I.L.R. 2024 M.P. 2159*

– **Section 498-A & 506/34**, Dowry Prohibition Act (28 of 1961), Section 3 & 4 and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Quashment of FIR – Cruelty – Dowry Demand – Held – Cruelty does not mean harassment on account of non-fulfillment of dowry demand only but it also means a willful act of accused

which may drive a woman to commit suicide or may cause grave injury or danger to life, limb or health – Demand of dowry is not *sine qua non* for committing cruelty – There are specific allegations of dowry demand and harassment against applicant husband – *Prima Facie* case is made out – FIR cannot be quashed – Application dismissed: *Avijit Sharma Vs. State of M.P., I.L.R. 2024 M.P. 2173*

– **Section 498-A & 506/34**, Dowry Prohibition Act (28 of 1961), Section 3 & 4 and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Quashment of FIR – Held – Allegations are bald and general in nature – If mother-in-law was objecting to certain household work of daughter-in-law, such act of mother-in-law would not fall under the category of cruelty – If daughter-in-law gets mental harassment on such acts of mother-in-law then the daughter-in-law may be hypersensitive – No offence made out – FIR against mother-in-law quashed: *Alka Sharma Vs. State of M.P., I.L.R. 2024 M.P. 1922*

11. Relatives of Husband

– **Section 498-A** – Dowry Demand – Relatives of Husband – Held – There are general and vague allegations against father-in-law, mother-in-law and brother-in-law – Wife tried to implicate them just to exert pressure over her husband to succumb – Allegations have been leveled just to harass the family members of husband – Proceedings are manifestly frivolous, vexatious and initiated with ulterior motive to wreck vengeance – FIR quashed: *Major Amit Pathak Vs. State of M.P., I.L.R. 2024 M.P. 2413*

– **Sections 498-A, 323, 294 & 506/34**, Dowry Prohibition Act (28 of 1961), Section 3 & 4 and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Relatives of Husband – Held – In order to prosecute near and dear relatives of husband of complainant, vague, general and omnibus statements are not sufficient and unless and until a specific allegation is made against them, they may not be compelled to face ordeal of trial: *Mahendra Nagpure Vs. State of M.P., I.L.R. 2024 M.P. 2159*

– **Section 498-A & 506**, Dowry Prohibition Act (28 of 1961), Section 3/4 and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Quashment of FIR – Close Relatives of Husband – Held – Allegations of harassment and threatening are not against petitioners – Alleged incident took place at prayagraj, U.P. whereas petitioners not living with complainant and are resident of Satna, M.P. – No specific allegation against petitioners in FIR and in statements recorded u/S 161 Cr.P.C. – Applicants cannot be forced to undergo trial on basis of general and omnibus allegations – FIR and criminal proceedings quashed – Application allowed: *Varsha Singh (Smt.) Vs. State of M.P., I.L.R. 2024 M.P. 2189*

– **Sections 498-A, 506 & 34**, Dowry Prohibition Act (28 of 1961), Section 3/4 and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Quashment of FIR – Relatives of Husband – Held – There are specific allegations against applicants of demand of dowry and cruelty, which cannot be termed as general, omnibus or vague – From the contents of FIR, it cannot be said that no cognizable offence is made out – Defence of applicants are disputed questions of fact which cannot be decided unless and until their evidence is tested on the anvil of Cross-examination – Application dismissed: *Mool Kawar Mehta (Smt.) Vs. State of M.P.*, I.L.R. 2024 M.P. 1730

12. Stridhan

– **Section 498-A** and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Stridhan – Held – If wife had taken her *stridhan* with her, then no one can make complaint about that because only the wife is the owner of her *stridhan*: *Neeraj Kumar Saraf Vs. State of M.P.*, I.L.R. 2024 M.P. 2630

13. Territorial Jurisdiction

– **Section 498-A** – Territorial Jurisdiction – Held – Compelling a married woman to live in her parental home on account of cruelty is a continuous offence of cruelty – Since R-2 (wife) is residing in Bhopal, therefore Mahila Thana, Bhopal also has territorial jurisdiction to investigate the matter: *Mool Kawar Mehta (Smt.) Vs. State of M.P.*, I.L.R. 2024 M.P. 1730

– **Section 498-A & 506/34** and Dowry Prohibition Act (28 of 1961), Section 3 & 4 – Cruelty – Territorial Jurisdiction – Held – Compelling a married woman to live in her parental home on account of non-fulfillment of demand of dowry as well as on account of physical and mental harassment, amounts to cruelty – It can be said that cruelty is still continuing at the parental house of wife at Jabalpur – Mahila Thana Jabalpur has territorial Jurisdiction to investigate the matter: *Avijit Sharma Vs. State of M.P.*, I.L.R. 2024 M.P. 2173

- – **Section 506** – Ingredients – Held – Complainant deposed that accused while running from spot stated that “today you were rescued but after today, he will kill” – These words are expressed while accused is fleeing away from spot, thus cannot be attached to the offence of threatening – Appellant acquitted from charge for offence u/S 506 IPC – Appeal partly allowed: *Akram @ Akka Vs. State of M.P.*, I.L.R. 2024 M.P. *110

– **Section 506-II** – Criminal Intimidation – Held – Threatening is most important ingredient of criminal intimidation – Threatening or causing fear has not been revealed by prosecution witnesses, hence offence u/S 506-II IPC not made out

– Conviction u/S 506-II IPC set aside: *Ramsnehi Vs. State of M.P.*, I.L.R. 2024 M.P. *166

– **Section 506 P-II** – Criminal Intimidation – Ingredients – Held – An offence of criminal intimidation is made out only if it is established that accused had an intention to cause an alarm to complainant – Mere threats given by accused not with an intention to cause alarm to complainant, but with a view to deterring them from interfering in discharge of his duties would not constitute an offence of criminal intimidation: *Prafulla Kumar Jaiswal Vs. State of M.P.*, I.L.R. 2024 M.P. 555

– **Section 506 P-II** & Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Ingredients – Held – It was alleged that accused and others threatened that if they came back, they will be run over by a tractor – Necessary ingredients for offence u/s 506 P-II IPC not made out: *Prafulla Kumar Jaiswal Vs. State of M.P.*, I.L.R. 2024 M.P. 555

– **Section 506 P-II** and Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (33 of 1989), Section 3(1)(r) –Threatening – Held – Threatening is the most important ingredient of criminal intimidation – The sole eye witness deposed that accused told him that he has been rescued but if he came to his field he will be killed – This intimidation is conditional, so it does not come under the purview of offence punishable u/S 506(P-II) IPC and u/S 3(1)(r) of the 1989 Act: *Premchand Vs. State of M.P.*, I.L.R. 2024 M.P. *14

– **Section 509** and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Quashment of FIR – Insult – Held – Asking for attendance and/or ensuring discipline in the campus cannot be termed as an intention to insult R-2 – Petitioner may have exceeded her disposition but that was confined to realm of administration/service related situation – No criminal liability made out against applicant – FIR u/S 509 IPC against applicant is quashed: *Indu Bora (Smt.) Vs. State of M.P.*, I.L.R. 2024 M.P. *231

POLICE REGULATIONS, M.P.

– **See** – Civil Services (Classification, Control and Appeal) Rules, M.P., 1966, Rule 18: *Santosh Sharma Vs. State of M.P.*, I.L.R. 2024 M.P. 1534

– **Regulation 64(2)** – See – Civil Services (Conduct) Rules, M.P., 1965, Rule 23(c) & (d): *Shravan Kumar Balone Vs. State of M.P.*, I.L.R. 2024 M.P. 417

– **Regulation 64(2)** – Termination/ Compulsory Retirement – Impact of Negligence – Held – Petitioner was negligent and delayed the processing of 33

letters, however impact of such delay not spelled out in charge-sheet – Respondents have also not established any ill motive of petitioner – It was not made clear as to what was the adverse impact or resultant damage if petitioner did not process the letters with quite promptitude – Punishment is disproportionate and excessive in character – Impugned orders set aside – Matter remitted back to authority to take decision afresh on question of punishment – Petition allowed: *K.C. Kandwal Vs. State of M.P., I.L.R. 2024 M.P. 61*

– **Regulations 64(2), (4) & 226** – Unauthorized Absence – Circular – Period of 60 days – Held – As per circular, if any employee remains absent for 60 days or more, then departmental enquiry be conducted necessarily but it nowhere says that below absence of 60 days, no enquiry would be conducted at all: *Rajendra Prasad Pathak Vs. State of M.P., I.L.R. 2024 M.P. 1780*

– **Regulations 64(2), (4) & 226** – Unauthorized Absence – Disproportionate Punishment – For unauthorised absence of 58 days, punishment of "stoppage of one annual increment with cumulative effect" was inflicted to petitioner (constable) – Held – It is not established that petitioner remained absent without any intimation to department – Petitioner initially took leave for 5 days and thereafter on medical grounds remained absent further – Purpose of leave apparently was to appear in competitive examination – Petitioner deserves some punishment but not in the nature of Major Penalty – Punishment appear to be harsh and it should be punishment of last resort, not instantly – Impugned orders set aside – Matter remanded back for reconsideration and to inflict appropriate punishment in spirit of Regulation 226: *Rajendra Prasad Pathak Vs. State of M.P., I.L.R. 2024 M.P. 1780*

– **Regulation 64(4)** – See – Civil Services (Conduct) Rules, M.P., 1965, Rule 3(3): *Rakesh Gokhle Vs. State of M.P., I.L.R. 2024 M.P. *94*

– **Regulation 214 & 217** and Constitution – Article 14 & 16 – Promotion – Punishment of Ninda/Censure – Held – Nothing to show that "ninda" or "censure" are included as punishment in the Regulations – No valid reason to deprive petitioner from his right of consideration for promotion, as it is not only statutory right, it is fundamental right under Article 14 & 16 of Constitution – Respondents directed to consider and permit petitioner to participate in selection process and if he is selected, promote him from appropriate date as if he participated in examination held in 2010 – Petition allowed: *Ravindra Kumar Rajnegi Vs. State of M.P., I.L.R. 2024 M.P. *37*

– **Regulation 226** – Punishment – Considerations – Held – Regulation 226 advise officers to avoid infliction of harsh penalty in routine manner – It prescribes

infliction of punishment in moderate manner and understandably so because police constable stands at bottom of the pyramid in hierarchy of police employees – Suitable precaution has to be taken while inflicting punishment in graded manner: *Rajendra Prasad Pathak Vs. State of M.P., I.L.R. 2024 M.P. 1780*

– **Regulations 226 & 270** – Punishment Order – Amendment – Jurisdiction – Held – When S.P. passed the original order and inflicted punishment and the same got affirmed by appellate authority and attained finality, then S.P. has no jurisdiction to revise the order that too after 5 years – Impugned orders are set aside – Petition allowed: *Santosh Sharma Vs. State of M.P., I.L.R. 2024 M.P. 1534*

PRACTICE & PROCEDURE

– **Pleadings & Proof** – Held – Mere pleading cannot take place of proof: *Ravi Kiran Arigela Vs. D. Asha, I.L.R. 2024 M.P. 1697*

– **Quoting Wrong Provision** – Effect – Held – If a wrong provision is quoted but authority is otherwise equipped with power to pass an order, wrong quoting of provision will not denude him from exercising the power: *Manoj Kumar Khare Vs. State of M.P., I.L.R. 2024 M.P.*60*

PRATHMIK KRISHI SAAKH SAHKARI SANSTHA KE KARAMCHARI SEVA NIYAM

– **Rule 27** – Dismissal – Competent Authority – Held – Rule 27 provides that any action against Assistant Manager may be taken by the Manager only as he is the competent authority to take action against the employees of society – Dy. Registrar by usurping the power of Manager issued direction for dismissal of petitioner whereas he was not competent to punish petitioner – Order of dismissal issued by President in compliance of directions of Dy. Registrar was also without jurisdiction as President is not a competent authority – Impugned orders quashed – Petition allowed: *Vinay Upadhyay Vs. State of M.P., I.L.R. 2024 M.P. 1529*

– **Rule 27** – See – Constitution – Article 226: *Vinay Upadhyay Vs. State of M.P., I.L.R. 2024 M.P. 1529*

PRECEDENT

– **Interim Order** – Held – Interim order cannot be treated as a precedent: *Leeladhar Vishwakarma Vs. State of M.P., I.L.R. 2024 M.P. *10*

PREVENTION OF CORRUPTION ACT (49 OF 1988)

SYNOPSIS

- | | |
|--|--|
| <p>1. Accept/Receipt/ Obtain</p> <p>3. Proof of Demand</p> <p>5. Recovery of Money</p> <p>7. Miscellaneous</p> | <p>2. Applicability of Amendment</p> <p>4. Quashment of Proceedings/ Charge-Sheet</p> <p>6. Sanction/Validity</p> |
|--|--|

1. Accept/Receipt/Obtain

– **Section 7 & 13** – "Accept", "Receipt" & "Obtain" – Held – The expression "accept" has different connotations than the expression "receipt" – Section 7 does not provide for receipt of illegal gratification but it provides for acceptance of illegal gratification – In order to convert the receipt of illegal gratification into "acceptance", it must be proved that complainant has offered gratification other than legal remuneration to public servant while demanding a favour from him and public servant has received it – Mere receipt of gratification would not amount to "acceptance" unless it is preceded by an offer of complainant – The word "obtain" means to secure or gain something as a result of request to take and receive with a consenting mind: *J.S. Yadav Vs. State of M.P., I.L.R. 2024 M.P. 1864*

2. Applicability of Amendment

– **Sections 13, 13(1)(b) & 13(2)**, Constitution – Article 20(1) and Criminal Procedure Code, 1973 (2 of 1974), Section 216 & 482 – Amendment – Applicability – Held – Petitioner can be prosecuted, tried and punished on the anvil of law which was in force when the incident was committed – Incident occurred on 12 & 13 July 2018 and Section 13 of 1988 Act was amended on 26.07.2018 i.e. incident took place prior to amendment – Unamended Section 13 would apply in present case – Application for alteration of charge rightly dismissed – Application dismissed: *Arvind Pandey Vs. State of M.P., I.L.R. 2024 M.P. 363 (DB)*

– **Section 13(1)(d)** and Constitution – Article 20(1) – Substitution of Amended Section – Effect – Held – Offences which have taken place on or after 26.07.2018 would be dealt with by the amended section 13(1)(d) whereas offence which occurred prior to 26.07.2018 would be dealt with by unamended section 13(1)(d) of the 1988 Act: *U.S. (Upjeet Singh) Arora Vs. State of M.P., I.L.R. 2024 M.P. 570 (DB)*

3. Proof of Demand

– **Section 7 & 13** – Proof of Demand – Held – Applications are in nature of complaint given in writing to investigate into the allegations, they are not substantive piece of evidence of the facts stated therein, they may, at the most, be used to corroborate the testimony of complainant – Similarly Panchnama and seizure memo are memorandum of proceedings which require proper proof of fact stated therein by evidence at the trial – Trial Court erred in holding that documents mentioning demand of money are sufficient to infer demand of illegal gratification against the accused – Conviction set aside – Appeal allowed: *J.S. Yadav Vs. State of M.P.*, I.L.R. 2024 M.P. 1864

– **Sections 7, 13(1)(d) & 20** – Proof of Demand – Complainant Being Hostile – Held – Apex Court concluded that when complainant has disowned the allegation made in complaint and in absence of other evidence of proof of demand by accused, the evidence of complainant and complaint could not be relied upon as proof of demand – Mere possession and recovery of currency notes from accused without any proof of demand would not establish offence u/S 7 or 13(1)(d) of the Act – Presumption u/S 20 could be drawn only if there was proof of "acceptance of illegal gratification" for which proof of demand was a *sin qua non*: *J.S. Yadav Vs. State of M.P.*, I.L.R. 2024 M.P. 1864

4. Quashment of Proceedings/Charge-sheet

– **Sections 7, 13(2) & 19** and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Quashment of Proceedings – Scope of Interference – Held – Sanction was earlier refused and later granted as per advice of CVC – Adequacy of material placed before sanctioning authority cannot be gone into by this Court as it does not sit in an appeal – It is not a case where there is no sanction or sanction was granted by incompetent authority – Court is not required to consider the technicalities in amid of trial – Based on deposition of one witness, appreciation of his evidence is not permissible in present petition: *Shashikant Mishra Vs. Union of India*, I.L.R. 2024 M.P. 1428 (DB)

– **Sections 13(d), 13(2) & 20** and Criminal Procedure Code, 1973 (2 of 1974), Section 227 & 228 – Quashment of Charge-Sheet – Applicant submitted that she was sent by her superior authorities to collect money from complainant and she had no knowledge that the said money was bribe money – Held – Tainted money was recovered from possession of applicant which is sufficient material for framing of charge against him – Revision dismissed: *Pushpa Goyal (Smt.) Vs. State of M.P.*, I.L.R. 2024 M.P. *34 (DB)

– **Section 13(1)(d) & 13(2)** and Criminal Procedure Code, 1973 (2 of 1974), Section 227 & 228 – Quashment of Charge – Mens Rea – Held – Investigation agency *prima facie* found that applicant with malafide intention submitted false report regarding receipt of Lantern causing loss to government and giving advantage to private contractor – False report exposes the signatory of report to civil/criminal action – Once existence of element of *mens rea* is *prima facie* established, veracity/extent of the same is to be deciphered during trial and cannot be gone into at this stage – Application dismissed: *U.S. (Upjeet Singh) Arora Vs. State of M.P.*, *I.L.R. 2024 M.P. 570 (DB)*

– **Section 19(3)** and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Quashment of Proceedings – Held – Apex Court concluded that in view of the specific bar of Section 19(3) and that too without any material to demonstrate how failure of justice has occasioned to the accused as contemplated in Section 19(3), in the midst of trial, it would not be permissible to close the proceeding – Accused can raise the said issue at the time of final arguments in trial: *Shashikant Mishra Vs. Union of India*, *I.L.R. 2024 M.P. 1428 (DB)*

5. Recovery of Money

– **Section 7 & 13(1)(d)** – Recovery of Money – Held – Apex Court concluded that in absence of any evidence to prove the payment of bribe or to prove that accused has voluntarily accepted the money knowing it to be bribe, mere recovery would not be sufficient to prove charges u/S 7 & 13(1)(d) of the Act: *J.S. Yadav Vs. State of M.P.*, *I.L.R. 2024 M.P. 1864*

6. Sanction/Validity

– **Sections 7, 13(2) & 19** – Non-Grant of Sanction – Communication – Held – Until and unless the refusal to grant sanction is communicated to investigating agency, the inability to grant sanction may be treated as internal comments or opinion – No evidence on record that on earlier occasions the refusal of sanction was communicated to investigating agency and the investigating agency based on same material once again reagitated the matter before concerning department: *Shashikant Mishra Vs. Union of India*, *I.L.R. 2024 M.P. 1428 (DB)*

– **Sections 7, 13(2) & 19** – Non-Grant of Sanction – Validity – Held – Sanction was earlier refused based on separate inquiry conducted by sanctioning authority through field functionaries which is not permissible under law – Sanctioning authority had no power to call or consider the views or comments of field functionaries and/or their interaction with local persons – Sanctioning authority acted beyond its scope and denied the sanction – Such orders cannot be accepted as

valid orders and thus are *non-est* in the eyes of law: *Shashikant Mishra Vs. Union of India, I.L.R. 2024 M.P. 1428 (DB)*

– **Sections 7, 13(2) & 19** and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Non-Grant of Sanction on Earlier Occasion – Held – Earlier orders refusing grant of sanction were passed on extraneous material, the same were not based on same material – Competent authority of Bank has expressed his inability to accord sanction and matter was referred to Central Vigilance Commission for their advice – *Prima facie* those orders cannot be construed as final decision of refusal to grant sanction – Thus on basis of earlier orders, validity of the impugned sanction order cannot be questioned at this stage – Applicant will be at liberty to assail the impugned sanction order during trial – Application dismissed: *Shashikant Mishra Vs. Union of India, I.L.R. 2024 M.P. 1428 (DB)*

– **Section 17A** – Approval of Competent Authority – Held – If enquiry into the circumstances in which alleged administrative or official act was done by public servant or where malfeasance committed by him, which would involve an element of dishonesty or impropriety is required, the approval of competent authority is imperative u/S 17A of the Act: *Vikas Rajoria Vs. State of M.P., I.L.R. 2024 M.P. 1749 (DB)*

– **Sections 19** and Central Vigilance Commission Act (45 of 2003), Section 8(1)(f) & 8(1)(g) – Sanction – Advice of CVC – Scope – Held – Section 8(1)(f) authorizes the CVC to exercise its powers to review the progress of applications pending with competent authorities for sanction of prosecution under the PC Act – Section 8(1)(g) provides that it is one of the functions of CVC to tender advice to Central Government and its instrumentalities: *Shashikant Mishra Vs. Union of India, I.L.R. 2024 M.P. 1428 (DB)*

7. Miscellaneous

– **Section 13(1)(d) & 13(2)** – See – Criminal Procedure Code, 1973, Section 482: *Vikas Rajoria Vs. State of M.P., I.L.R. 2024 M.P. 1749 (DB)*

– **Section 13(1)(d)(ii) & (iii)** – See – Constitution – Article 226: *Sandeep Kulshrestha Vs. Manoj Pratap Singh Yadav, I.L.R. 2024 M.P. 1 (DB)*

PREVENTION OF CRUELTY TO ANIMALS ACT (59 OF 1960)

– **Section 11(D)** – See – Criminal Procedure Code, 1973, Sections 451, 457 & 482: *Mo. Imran Vs. State of M.P., I.L.R. 2024 M.P. 366*

PREVENTION OF MONEY LAUNDERING ACT, 2002
(15 OF 2003)

– **Sections 3, 4, 19, 45 & 70** and Criminal Procedure Code, 1973 (2 of 1974), Section 439 [Now Bharatiya Nagarik Suraksha Sanhita (46 of 2023), Section 483] – Bail – Contents of Arrest Order – Held – Compliance of Section 19 is mandatory – No reason has been mentioned in the arrest order – Reasons to believe has to be more than only a *prima facie* case – In absence of reference to material on which reasons to believe regarding guilt is based, arrest of applicant stands vitiated – Nothing on record to support apprehension that applicant is likely to commit any offence in future, if released on bail – Bail application allowed: *Pushpendra Singh Vs. Director of Enforcement, I.L.R. 2024 M.P. *241*

– **Section 8(8) First & Second Proviso** and Prevention of Money Laundering Rules, 2016, Rule 2(b), 3 & 3A – “Claimant” – Held – Special Court ordered release of property in lieu of fixed deposits – Since non-applicant-1 himself is an accused, he cannot be a claimant – Other applicants are his relatives, it cannot be presumed that they have acted in good faith and have suffered quantifiable loss as a result of money laundering despite taking all reasonable precautions – Impugned order is in violation of respective provisions of 2002 Act and 2016 Rules and is thus set aside – Revision allowed: *Directorate of Enforcement Vs. Vinod Bhandari (Dr.), I.L.R. 2024 M.P. *114*

– **Section 19 & 45** – Bail – Reasons of Belief of Guilt – Held – Authorized officer has to give reasons of belief of guilt and Court has to give reasons of belief of not guilty of offence to exercise power of grant of bail – Reason to believe is *sine qua non* for exercising power u/S 19 by authorized officer and u/S 45 by the Court: *Pushpendra Singh Vs. Director of Enforcement, I.L.R. 2024 M.P. *241*

– **Section 65 & 71** and Criminal Procedure Code, 1973 (2 of 1974), Section 397(2) – Interlocutory Order – Maintainability of Revision – Held – If order is finally deciding rights and liabilities of parties, even in interim stage, it will be treated as final order and revision against that order lies – Petitioner also challenged the order on the basis of violation of 2002 Act and also passing of order without jurisdiction – Impugned order was passed for custody of property, it will be considered as final order – Revision is maintainable: *Directorate of Enforcement Vs. Vinod Bhandari (Dr.), I.L.R. 2024 M.P. *114*

PREVENTION OF MONEY LAUNDERING RULES, 2016

– **Rule 2(b), 3 & 3A** – See – Prevention of Money Laundering Act, 2002, Section 8(8) First & Second Proviso: *Directorate of Enforcement Vs. Vinod Bhandari (Dr.)*, I.L.R. 2024 M.P. *114

PRIZE CHITS AND MONEY CIRCULATION SCHEMES (BANNING) ACT (43 OF 1978)

– **Sections 3, 4 & 5** – See – Penal Code, 1860, Sections 409, 420 & 120-B: *Rajesh Jain Vs. State of M.P.*, I.L.R. 2024 M.P. *70

PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT (32 OF 2012)

– **Section 5/6** – See – Criminal Procedure Code, 1973, Section 311: *Shahrukh Khan Vs. State of M.P.*, I.L.R. 2024 M.P. 171

– **Section 7/8** – See – Penal Code, 1860, Section 354: *Farid Khan Vs. State of M.P.*, I.L.R. 2024 M.P. *154

– **Section 7/8** – See – Penal Code, 1860, Section 354 & 506: *Nageshwar Vs. State of M.P.*, I.L.R. 2024 M.P. *63

– **Section 7/8 & 30(1)** – See – Penal Code, 1860, Section 354 & 506: *Nageshwar Vs. State of M.P.*, I.L.R. 2024 M.P. *63

– **Section 9(M)/10** – See – Penal Code, 1860, Section 363: *Prahalad Gujar Vs. State of M.P.*, I.L.R. 2024 M.P. *184

– **Section 9(M)/10 & 20** – See – Penal Code, 1860, Section 354 & 363: *Prahalad Gujar Vs. State of M.P.*, I.L.R. 2024 M.P. *184

PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT (43 OF 2005)

– **Section 2(f) & 17** – Domestic Relationship – Maintenance – Entitlement – Held – Respondent is sister-in-law of petitioner and since petitioners are coming in relationship with her and before 2006, they lived together in shared household, it cannot be said that there exist no domestic relationship – She has a right to reside in

shared household u/S 17 thus she would come within the definition of domestic relationship – It is also not necessary that at the time of filing application by aggrieved person, domestic relationship should subsist – Award of interim maintenance was proper – Revision dismissed: *Manohar Lal Jain Vs. Smt. Urmila*, I.L.R. 2024 M.P. 159

– **Section 2(f) & 17** – Incident Prior to 2005 – Held – Apex Court concluded that conduct of parties even prior to commencement of 2005 Act can be taken into consideration while passing order under provisions of 2005 Act – She cannot be debarred from getting protection under 2005 Act in later years: *Manohar Lal Jain Vs. Smt. Urmila*, I.L.R. 2024 M.P. 159

– **Section 3** – Domestic Violence – Held – As per Section 3, domestic violence includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse: *Manohar Lal Jain Vs. Smt. Urmila*, I.L.R. 2024 M.P. 159

– **Section 3** – Economic Abuse – Held – Respondent was compelled to live separately – Earlier she used to get maintenance of Rs. 10,000 and now it is stopped since 2012 – Petitioners had also deprived her for getting insurance money of her deceased husband – Fact of economic abuse is *prima facie* evinced in favour of respondent: *Manohar Lal Jain Vs. Smt. Urmila*, I.L.R. 2024 M.P. 159

– **Section 23** and Criminal Procedure Code, 1973 (2 of 1974), Section 125 – Findings of Proceedings – Binding Effect – Held – If an application u/s 125 CrPC is rejected by Family Court, wife is not precluded from claiming maintenance or other monetary remedy under 2005 Act – Reasons/findings assigned by Family Court in rejecting application u/s 125 CrPC regarding non-existence of sufficient cause for living separately from husband have no relevancy to the case pending under 2005 Act – Decision taken in application u/s 125 CrPC and u/s 12 of 2005 Act have no binding effect on each other: *Bhupendra Singh Rajawat Vs. Smt. Ranjeeta Rajawat*, I.L.R. 2024 M.P. 1037

– **Section 23** and Criminal Procedure Code, 1973 (2 of 1974), Section 125 – Maintenance in two Proceedings – Permissibility – Held – Maintenance application decided under one statute would not foreclose the claim for maintenance under a different statute – Even in a case, if maintenance is awarded under one statute that by itself would not preclude claimant from raising another application under a different statute claiming maintenance – Revision dismissed: *Bhupendra Singh Rajawat Vs. Smt. Ranjeeta Rajawat*, I.L.R. 2024 M.P. 1037

**PUBLIC DISTRIBUTION SYSTEM (CONTROL) ORDER,
M.P., 2015**

– **Clause 16(8)** – Punishment & Penalty – Jurisdiction – Held – If Collector is of the opinion that irregularity warrants prosecution then he may order the same – SDO did not sought any opinion from Collector and passed the order for prosecution – SDO acted without jurisdiction – Impugned order set aside – Petition disposed: *Jitendra Pateriya Vs. State of M.P., I.L.R. 2024 M.P. *254*

PUBLIC TRUSTS ACT, M.P. (30 OF 1951)

– **Section 3 & 34-A** – Delegation of Powers – Held – This Court has earlier concluded that Collector is a *persona designata* under the Act and he alone could act as Registrar of Public Trust and no one else – Unless and until a separate notification u/S 34-A of 1951 Act is issued, the powers of Registrar cannot be delegated to SDO by work distribution memo: *Shri Mahadev Ji Mandir Trust Vs. State of M.P., I.L.R. 2024 M.P. *99*

– **Section 22 & 26** – Powers of Registrar – Scope & Jurisdiction – Held – Registrar is only empowered to make inspection of property belonging to Public Trust and to inspect relevant records to ascertain whether functioning of trust is being conducted as per provisions of law or not – Registrar itself cannot make any observation or can pass any order for management of Public Trust or will try to administer the same – It can only be done by Civil Court – Registrar cannot issue any direction for appointing a Committee or to take the charge of property – Registrar while issuing directions exceeded its jurisdiction – Impugned order is without jurisdiction and is therefore set aside – Petition allowed: *Shri Mahadev Ji Mandir Trust Vs. State of M.P., I.L.R. 2024 M.P. *99*

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**RAILWAY ACCIDENTS AND UNTOWARD INCIDENTS
(COMPENSATION) RULES, 1990**

– **Rule 4** – See – Railways Act, 1989, Section 123(c)(2) & 124(A): *Rajveer Rajwanshi @ Shivam Bharti Vs. Union of India, I.L.R. 2024 M.P. *93*

RAILWAYS ACT (24 OF 1989)**SYNOPSIS**

- | | |
|---------------------------------------|---|
| 1. Absence of Ticket | 2. Bonafide Passenger/
Presumption |
| 3. Compensation & Interest | 4. Luggage/Parcel Route |
| 5. Negligence of Passenger | 6. Suicide |
| 7. Miscellaneous | |

1. Absence of Ticket

– **Sections 123(c)(2), 124 & 124-A** – Untoward Incident – Absence of Ticket – Held – Mere absence of ticket with injured/deceased will not negative the claim that he was a *bonafide* passenger: *Brijlal Ahirwar Vs. Union of India, I.L.R. 2024 M.P. *226*

– **Section 123(c)(2) & 124(A)** – Bonafide Passenger – Absence of Ticket – Held – Mere absence of ticket with injured or deceased will not negative the claim that he was a *bonafide* passenger – Merely because deceased was not possessing journey ticket it cannot be said that deceased did not die in an untoward incident: *Dinesh Kumar Dubey Vs. Union of India, I.L.R. 2024 M.P. 773*

2. Bonafide Passenger/Presumption

– **Sections 2(29), 123(c)(2) & 124(A)** – Untoward Incident – Bonafide Passenger – Presumption – Held – Since deceased boarded the train, the presumption would be that he has valid authority to travel – Merely because deceased was not possessing journey ticket, it cannot be said that deceased was not a *bonafide* passenger and he did not die in an untoward incident – Compensation rightly awarded – Appeal dismissed: *Union of India Vs. Devkaran, I.L.R. 2024 M.P. 498*

– **Section 123(c)(2) & 124(A)** – Bonafide Passenger – Held – Apex Court concluded that any person found dead or injured on railway premises is presumed to be a *bonafide* passenger unless the railway administration proves otherwise – Negligence of passenger not pleaded by Railway administration in written statement nor any evidence adduced in this respect: *Dinesh Kumar Dubey Vs. Union of India, I.L.R. 2024 M.P. 773*

– **Section 123(c)(2) & 124-A** – Untoward Incident – Bonafide Passenger – Held – It is admitted fact that deceased was travelling with valid ticket and Tribunal

has given a finding that deceased was a *bonafide* passenger – DRM report and police investigation also shows that deceased fallen from train while standing at the door of compartment due to heavy crowd, push and pull by passengers and jerk – This falls under "untoward incident" u/S 123(c) – Appellants entitled for compensation u/S 124-A of the Act: *Ramkishore Sahu Vs. Union of India, I.L.R. 2024 M.P. 1633*

– **Section 123(c)(2) & 124(A)** – Untoward Incident – Bonafide Passenger – Presumption – Held – Mere absence of ticket with injured/deceased will not negative the claim that he was a *bonafide* passenger – Since deceased had boarded the train, presumption would be that he had valid authority to travel – Initial burden will be on claimant which can be discharged by filing an affidavit of relevant facts and burden will then shift on Railways – Compensation rightly awarded – Appeal dismissed: *Union of India Vs. Shivraj Singh Thakur, I.L.R. 2024 M.P. 289*

– **Section 123(c)(2) & 124(A)** – Untoward Incident – Bonafide Passenger – Presumption – Held – Since deceased had boarded the train, the presumption would be that the person has a valid authority to travel – Deceased was a bonafide passenger and dies in the accident due to falling down from running train which is an untoward incident as defined u/S 123(c)(2) of the Act – Plea of negligence of passenger taken by Railways do not come under clause (a) to (e) of the proviso of Section 124(A) – Appellant entitled for compensation of Rs. 8 lacs – Appeal allowed: *Girija Bai (Smt.) Vs. Union of India, I.L.R. 2024 M.P. 991*

– **Section 123(c) & 124(A), Proviso, Clause (d)** – Untoward Incident – Bonafide Passenger – Held – Claimant lost his right hand not due to untoward incident – He fell from running train due to inhaling intoxicated substance – It was a case of conspiracy done by 2 accused persons for which claimant also lodged an FIR wherein offence was registered u/S 328, 326, 307, 201 & 34 IPC – Further, no valid ticket was produced by claimant – He was not a *bonafide* passenger – Case falls under category of clause (d) of proviso to Section 124(A) – Claim rightly rejected – Appeal dismissed: *Achal Ahirwar Vs. Union of India, I.L.R. 2024 M.P. *24*

3. Compensation & Interest

– **Section 123(c)(2) & 124(A)** and Railway Accidents and Untoward Incidents (Compensation) Rules, 1990, Rule 4 – Limit of Compensation – Rate of Interest – Appellant claiming interest from date of incident till date of realization – Held – Tribunal rightly awarded compensation of Rs. 8 lacs alongwith condition that if payments not made within 60 days from date of receipt of bank particulars, railway will pay interest from date of submission of bank particulars till date of payment – No interference warranted – Condition is appropriate – Appeal dismissed: *Rajveer Rajwanshi @ Shivam Bharti Vs. Union of India, I.L.R. 2024 M.P. *93*

– **Section 123(c)(2) & 124(A) proviso** – Untoward Incident – Held – Accidental falling of any passenger from a train carrying passengers would be an “untoward incident” – Railway administration is liable to pay compensation on account of untoward incident – Accident did not occur because of any reasons mentioned in clause (a) to (e) of the proviso of Section 124(A) – Compensation of Rs. 8 lacs granted – Appeal allowed: *Dinesh Kumar Dubey Vs. Union of India, I.L.R. 2024 M.P. 773*

4. Luggage/Parcel Route

– **Sections 123(c)(2), 124 & 124-A** – Untoward Incident – Luggage/Parcel Route – Held – If a passenger is crossing the railway track through parcel carrying luggage route and hit by an unknown train, would fall under the expression of "untoward incident" – Police officials and railway authorities are held accountable in such circumstances – Claimants entitled for compensation: *Manisha Solanki (Smt.) Vs. Union of India, I.L.R. 2024 M.P. 2321*

5. Negligence of Passenger

– **Sections 123(c)(2), 124 & 124-A** – Untoward Incident – Negligence of Deceased – Held – It is not even necessary to go into the issue as to whether it was the fault of the deceased or that he accidentally fell down from train which warrants payment of compensation whenever untoward incident occurs: *Brijlal Ahirwar Vs. Union of India, I.L.R. 2024 M.P. *226*

– **Sections 123(c)(2), 124 & 124-A** – Untoward Incident – Self Inflicted Injury/Negligence – Held – Deceased was carrying a valid ticket, thus he was a *bonafide* passenger – Co-passenger, an eye-witness stated that deceased unexpectedly fell down from running train, thus it would be covered as an "untoward incident" – DRM report is contrary to the version of the eye-witness – In absence of any criminal act and *mens rea* established, claimants entitled for compensation of Rs. 8 lacs – Appeal allowed: *Manisha Solanki (Smt.) Vs. Union of India, I.L.R. 2024 M.P. 2321*

– **Section 123(c)(2) & 124(A)** – Negligence of Passenger – Held – Even if it is assumed that deceased fell from the train and succumbed to death due to his negligence, it will not have any effect on the compensation payable u/S 124(A) of the Act: *Dinesh Kumar Dubey Vs. Union of India, I.L.R. 2024 M.P. 773*

– **Section 123(c)(2) & 124(A)** – Untoward Incident – Negligence of Passenger – Held – Compensation as applicable on the date of accident has to be given reasonably, even assuming that an act may be negligent or even rash –

Negligence of passenger does not have effect on liability of railways and claimants would be entitled for compensation: *Union of India Vs. Shivraj Singh Thakur, I.L.R. 2024 M.P. 289*

– **Section 123(c)(2) & 124-A** – Untoward Incident – Negligence of Passenger – Held – Negligence of passenger does not have any effect over the liability of railway u/S 124-A to pay compensation towards untoward incident: *Ramkishore Sahu Vs. Union of India, I.L.R. 2024 M.P. 1633*

– **Section 123(c)(2) & 124(A)** – Untoward Incident – Negligence of Passenger – Liability of Railway – Held – If a person falls down from a running train, such an incident would amount to an untoward incident – Liability of Railways in such type of cases is strict liability – If an untoward incident occurs then whether or not there has been any wrongful act, negligence or default on part of passenger, Railway cannot avoid making payment of compensation: *Union of India Vs. Devkaran, I.L.R. 2024 M.P. 498*

6. Suicide

– **Sections 123(c)(2), 124 & 124-A** – Untoward Incident – Suicide – Held – To substantiate the finding of suicide, neither proper material evidence collected by police nor by RPF before forwarding the investigation report – No statements recorded during *Naksha Panchayatnama* proceedings – Incident occurred on 28.12.2012, claim petition filed on 22.10.2013 and statement of father of deceased recorded on 11.06.2015, which shows that after filing of claim petition, investigation started – Defence of suicide taken by railway authorities is an afterthought – Compensation of Rs. 8 lacs awarded – Appeal allowed: *Brijlal Ahirwar Vs. Union of India, I.L.R. 2024 M.P. *226*

– **Sections 123(c)(2), 124 & 124-A** – Untoward Incident – Suicide – Presumption – Held – The presumption drawn by the Tribunal that deceased since was cut in two pieces cannot be said to have died due to falling from train is based on mere presumption and conjectures rather than on cogent evidence – No rebuttal evidence produced by railways – Claimants entitled for compensation: *Brijlal Ahirwar Vs. Union of India, I.L.R. 2024 M.P. *226*

– **Sections 123(c)(2), 124 & 124-A** – Untoward Incident – Suicide/Self Negligence – Held – Pilot of the train filed affidavit to the effect that on the said date and time when he was driving the train, suddenly a person came before the train – He honked the train siren but he did not move and therefore the person collided with the engine of the train – Police official also filed affidavit and supported the statement of the driver of train – Tribunal rightly dismissed the claim – Appeal dismissed: *Meena Meshram (Smt.) Vs. Union of India, I.L.R. 2024 M.P. 2333*

7. Miscellaneous

– **Section 124-A** – See – Railway Claims Tribunal Act, 1987, Section 13: *The General Manager, Western Railway Vs. M.P.E.B. Rampur, Jabalpur, I.L.R. 2024 M.P. *21*

– **Section 124-A** – See – Railway Passengers (Manner of Investigation of Untoward Incidents) Rules, 2020, Rule 6(2): *Brijlal Ahirwar Vs. Union of India, I.L.R. 2024 M.P. *226*

RAILWAY CLAIMS TRIBUNAL ACT (54 OF 1987)

– **Section 13** – New Ground in Appeal – Permissibility – Held – No new ground can be made before this Court which were never raised or objected to by the appellant before the Claim Tribunal: *Union of India Vs. Steel Authority of India Ltd., I.L.R. 2024 M.P. 1854*

– **Section 13** – Shortage in Booked Consignment – Held – There is ample documentary evidence that when officer of SAIL suspected shortage in booked consignment, he protested and on his application remark was made for getting the consignment re-weighed but he was made to approach Senior Officer and get permission because of which SAIL went for private approved surveyor for re-weighment which cannot be faulted with against SAIL – Tribunal rightly awarded the amount in respect of shortage of goods – Appeal dismissed: *Union of India Vs. Steel Authority of India Ltd., I.L.R. 2024 M.P. 1854*

– **Section 13** and Railways Act (24 of 1989), Section 124-A – Claim by Third Party – Compensation suit for damages caused to electricity lines underneath the railway track – Held – Loading of chemicals in tankers was not only the responsibility of consignor but also of defendants (Railways) as loading has been done in its oil tankers – It was imperative for defendants to ensure that loading was properly done – None of the Committee members have been examined – They have total lack of knowledge about the cause of fire – Compensation rightly awarded by trial Court – Appeal dismissed: *The General Manager, Western Railway Vs. M.P.E.B. Rampur, Jabalpur, I.L.R. 2024 M.P. *21*

– **Section 13** and Railways Act (24 of 1989), Section 124-A – Jurisdiction of Civil Court – Held – Civil Court has jurisdiction regarding any claim for damages caused to any third person, who is not a passenger or excluded u/S 124-A of 1989 Act – If any loss caused to any person or damage is caused to any property who is not a person or is not a property to which jurisdiction of Claims Tribunal extends by

virtue of Section 13 of 1987 Act, Tribunal will not have any jurisdiction for adjudicating a claim in respect thereof and it would only be the Civil Court which shall have such jurisdiction: *The General Manager, Western Railway Vs. M.P.E.B. Rampur, Jabalpur, I.L.R. 2024 M.P. *21*

RAILWAY PASSENGERS (MANNER OF INVESTIGATION OF UNTOWARD INCIDENTS) RULES, 2020

– **Rule 6(2)** – DRM Inquiry & Report – Delay – Held – DRM report was filed after period of 23 months of incident – This is contrary to Rule 6(2) of 2020 Rules – DRM report is of no avail and evidence of RW-1 is of no value and cannot be taken into consideration: *Manisha Solanki (Smt.) Vs. Union of India, I.L.R. 2024 M.P. 2321*

– **Rule 6(2)** and Railways Act (24 of 1989), Section 124-A – DRM Proceedings – Delay – Effect – Held – DRM proceedings were conducted belatedly i.e nearly 16 months from date of incident – Incident took place on 28.12.2012 and report was filed on 16.05.2014 – This is contrary to Rule 6(2) of 2020 Rules – DRM report is of no avail – No inquiry as mandated by the Rules was conducted immediately after the incident has occurred – Claimants entitled for compensation u/S 124-A of 1989 Act: *Brijlal Ahirwar Vs. Union of India, I.L.R. 2024 M.P. *226*

RECOVERY OF DEBTS DUE TO BANKS AND FINANCIAL INSTITUTIONS ACT (51 OF 1993)

– **Sections 17, 18 & 34** and Companies Act (1 of 1956), Section 446(2) – Release of “Subject Land” – Leave of Company Court – Held – Act of 1993 overrides the Companies Act therefore leave of the Company Court u/S 446(2) of Act of 1956 is not a *sine qua non* – Impugned order set aside – Official Liquidator directed to execute sale deed of the “Subject Lands” in favour of appellant – Appeal allowed: *Anil Kumar Khandelwal Vs. Lakhani Foot Care Pvt. Ltd., I.L.R. 2024 M.P. *3 (DB)*

REGISTRATION ACT (16 OF 1908)

– **Section 17 & 49** – See – Transfer of Property Act, 1882, Section 54: *Kamalsingh Vs. Sharif Khan, I.L.R. 2024 M.P. 2306*

– **Section 17 & 49** – See – Transfer of Property Act, 1882, Section 54: *Suleman Vs. Narendra Kumar, I.L.R. 2024 M.P. 112*

– **Section 17(1-A) & 49** – See – Specific Relief Act, 1963, Section 34: *Chandrika Prasad Tiwari Vs. Prashant Tripathi, I.L.R. 2024 M.P. 2293*

REGISTRATION (M.P. AMENDMENT) ACT, 2014 (12 OF 2015)

– **Section 17 & 49** – See – Indian Stamp (M.P. Amendment) Act, 2016, Sections 33, 35 & 40: *Mahendra Vs. Ramvilas Shukhla, I.L.R. 2024 M.P. 249*

REPRESENTATION OF THE PEOPLE ACT (43 OF 1951)

– **Sections 2(1)(f), 29-A & 33(1) Proviso** and Election Symbols (Reservation and Allotment) Order, 1968, Paragraph 2(1)(h) & 3 – Allotment of Government Accommodation – Held – No documents produced by petitioner to show that petitioner's party is a recognized political party within meaning of Section 2(1)(f) or as per proviso to Section 33(1) of 1951 Act or in terms of paragraph 3 of 1968 Order – No record to show that petitioner's party is either a recognized State party or a recognized National Party – Allotment of accommodation rightly declined – Petition dismissed: *Jai Lok Party Vs. State of M.P., I.L.R. 2024 M.P. 241*

– **Section 5** – See – Constitution – Article 243-D: *Jasraj Vs. The Specified Officer, I.L.R. 2024 M.P. *208*

– **Section 33(1)** – Substitute Candidate – Held – Condition (ii) of Form "B" says that when the nomination of approved candidate is rejected on scrutiny or on his withdrawal from the election, the substitute candidate of a party can only step into the shoe of approved candidate, if he is still a contesting candidate in the election – Petitioner is no more a contesting candidate due to his rejection of his form – Petitioner cannot step into the shoe of approved candidate who has withdrawn from the election – Petition dismissed: *Moti Singh Vs. Election Commission of India, I.L.R. 2024 M.P. 2239*

– **Section 36(5)** – Objection – Opportunity to Rebut – Held – Form of petitioner was rejected because it was not signed by 10 proposers – Petitioner did not raise any objection as per Section 36(5) of the Act which says that in case the objection raised by the Returning officer or by any person, the candidate concerned may be allowed time to rebut – Candidate concerned should seek time to rebut then only the Returning Officer would be obliged to take up the nomination form on the next date: *Moti Singh Vs. Election Commission of India, I.L.R. 2024 M.P. 2239*

– **Section 83** – See – Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993, Section 122: *Rabindra Kumar Upadhyay Vs. The Sub-Divisional Officer (Revenue), I.L.R. 2024 M.P. *118*

RESERVE BANK OF INDIA ACT (2 OF 1934)

– **Chapter III-B, Sections 45(1)(c), (e) & (f)** – See – Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002, Section 2(1)(m)(iv), 2(zd): *Virendra Rathore Vs. Tehsildar Distt. Mandsaur, I.L.R. 2024 M.P. 2244 (DB)*

RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT ACT (30 OF 2013)

– **See** – Land Acquisition Act (1 of 1894), Section 34 and Constitution – Article 300A – Construction made without Acquisition of Land – Held – State unauthorizedly utilized the private land of petitioner for construction of road in 1975-76 – State violated the constitutional guarantee given to the citizen – Petitioner liable to get compensation of his 1.04 acre of land – As dispossession was done in 1975-76, compensation and solatium etc be determined as per provisions of 1894 Act – Petitioner also liable to receive interest u/s 34 of 1894 Act – Petition allowed: *Jagdish Prasad Shukla Vs. State of M.P., I.L.R. 2024 M.P. 428*

– **See** – Wild Life (Protection) Act, 1972, Section 24(2)(b): *Manoj Kumar Prajapati Vs. State of M.P., I.L.R. 2024 M.P. 1481*

– **See** – Constitution – Article 226 & 300A – Delay and Latches – Held – Road was constructed by State utilizing petitioner's private land in the year 1975-76 – State cannot take shelter of delay when State has blatantly abused its position of eminent domain, in depriving a citizen of his right to property – Objection of delay rejected: *Jagdish Prasad Shukla Vs. State of M.P., I.L.R. 2024 M.P. 428*

– **Section 74** and Limitation Act (36 of 1963), Section 5 – Condonation of Delay – Sufficient Cause – Held – Reason for obtaining certified copy of order and relaxation for CORONA pandemic as assigned by appellant appears to be *bonafide* – Adoption of strict standard of Rule sometime fails to protect public interest – Delay of only 28 days caused by Government is due to its instrumentality and is *bonafide* – Delay condoned – Appeals allowed: *Land Acquisition Officer Vs. Purushottam, I.L.R. 2024 M.P. *193*

RIGHT TO INFORMATION ACT (22 OF 2005)

– **Sections 18, 19(8) & 20** – Appointment of Public Information Officers – Power of State Information Commission – Held – Commission directed the State to appoint PIO in office of Chief Minister and Chief Secretary – State submitted that both offices are formally under General Administration Department where one

should make application and they will forward the same to concerned offices, obtain information and supply to applicant – Such circuitous route suggested by State is an attempt to insulate the said offices from purview of RTI Act – This goes contrary to the intention of Act – Petition dismissed: *State of M.P. Vs. Ajay Dubey*, I.L.R. 2024 M.P. 885

– **Sections 18, 19(8) & 20** – Power of State Information Commission – Held – Argument of State that the Commission even after having found that there is violation of the Act, cannot pass any direction to remove the violation but can only award penalty, seems to be too drastic to accept – The interpretation that as a consequence of complaint entertained u/s 18, Commission cannot pass any remedial direction, runs counter to the purpose of the Act: *State of M.P. Vs. Ajay Dubey*, I.L.R. 2024 M.P. 885

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SCHEDULED CASTES AND SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT (33 OF 1989)

– **Section 3(1)(r)** – See – Penal Code, 1860, Section 506(P-II): *Premchand Vs. State of M.P.*, I.L.R. 2024 M.P. *14

– **Sections 3(1)(r), 3(1)(s) & 3(2)(va)** – See – Penal Code, 1860, Sections 294, 323, 506 r/w 34: *Dinesh Vs. State of M.P.*, I.L.R. 2024 M.P. *53

– **Sections 3(1)(r)(s), 3(2)(va) & 3(2)(ii)** – See – Criminal Procedure Code, 1973, Section 197 & 482: *Jagdish Mandloi Vs. State of M.P.*, I.L.R. 2024 M.P. *207

– **Section 3(1)(s)** – See – Penal Code, 1860, Section 294: *Premchand Vs. State of M.P.*, I.L.R. 2024 M.P. *14

– **Section 3(1)(xi)** – Caste Certificate – Held – Proof of caste is a necessary requirement – No caste certificate of victim produced and proved by prosecution by leading any evidence – In FIR and in statement u/s 161 CrPC, victim has not stated that she belongs to scheduled caste or scheduled tribe and accused belong to elite class – Prosecution failed to establish that victim was a woman of scheduled caste or scheduled tribe: *Anil Kumar Vs. State of M.P.*, I.L.R. 2024 M.P. 505

– **Section 3(1)(xi)** – Ingredients – Held – None of the witnesses stated about using of force by appellants with intent to outrage modesty of victim – Evidence of victim is nothing but exaggeration which she has not stated in FIR – She admitted that there was previous enmity between her and appellants – Ingredients of offence u/s 3(1)(xi) not proved – On basis of suspicion and emotion, appellants cannot be

convicted – Conviction set aside – Appeal allowed: *Anil Kumar Vs. State of M.P.*, I.L.R. 2024 M.P. 505

– **Section 3(1)(xi)** and Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995, Rule 7 – Investigation – Competent Officer – Held – Want of conduction of investigation by not below the rank of Dy. Superintendent of Police has caused serious prejudice to appellants which has rendered the conviction unsustainable – Whole trial is vitiated for non compliance of the mandatory provision of Rule 7 of 1995 Rules: *Anil Kumar Vs. State of M.P.*, I.L.R. 2024 M.P. 505

– **Section 14-A(2)** – Second Criminal Appeal – Maintainability – Held – After rejection or withdrawal of criminal appeal before this Court and approaching the Special Court for grant of bail with changed circumstances, the order passed by Special Court is a fresh order on merit and therefore same can be challenged u/S 14-A(2) by filing appeal before this Court – Mere mentioning of criminal appeal as second, third or fourth would not change the right of applicant to challenge the fresh order – Appeal maintainable: *Ketan Vs. State of M.P.*, I.L.R. 2024 M.P. 118

SCHEDULED CASTES AND SCHEDULED TRIBES (PREVENTION OF ATROCITIES) RULES, 1995

– **Rule 7** – See – Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Section 3(1)(xi): *Anil Kumar Vs. State of M.P.*, I.L.R. 2024 M.P. 505

SECURITIZATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT (54 of 2002)

SYNOPSIS

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|---|-------------------------------------|
| 1. Alternate Remedy | 2. Cause of Action/Court Fee |
| 3. Jurisdiction/Powers of Court | 4. Limitation |
| 5. Non Banking/Housing Finance Company | 6. Notice |
| 7. Scope & Jurisdiction | 8. Miscellaneous |

1. Alternate Remedy

– **Sections 13, 14 & 17** and Constitution – Article 226 – Maintainability – Held – Petitioner is questioning the very jurisdiction and applicability of the proceedings under the 2002 Act and raises a pure question of law – Writ petition to decide upon such pure questions of law, touching upon the jurisdiction, existence and exercise of powers by respondent Housing Finance Company, is maintainable – Alternate remedy is no bar and is rendered a mere technicality – Petition maintainable: *Virendra Rathore Vs. Tehsildar Distt. Mandsaur, I.L.R. 2024 M.P. 2244 (DB)*

– **Sections 14, 17 & 18** – Alternate Remedy – Held – Petitioners already availed alternative remedy by approaching DRT u/S 17 of 2002 Act – Since DRT without considering and deciding the issues raised by petitioners, have straight away directed petitioners to deposit 2 Crores, in such a situation, availability of alternative remedy cannot be ground for relegating the petitioner to the remedy of appeal: *Kabeer Reality Pvt. Ltd. Vs. LIC Housing Finance Ltd., I.L.R. 2024 M.P. 271 (DB)*

2. Cause of Action/Court Fee

– **Sections 13(2), 13(4) & 17** – Cause of Action – Court Fees – Held – Cause of action is nothing but a bundle of facts – Court fee is not payable on every single cause of action – Tribunal cannot ask the parties to pay court fee afresh on prayers added by way of amendment: *Kusum Jagdishchandra Singh (Smt.) Vs. LIC Housing Finance Ltd., I.L.R. 2024 M.P. *257 (DB)*

– **Sections 13(2), 13(4) & 17** – Rights of Borrower – Cause of Action – Held – When the auction notice is challenged, it is open to the borrower to challenge the series of steps from the date of issuance of notice u/S 13(2) upto the auction notice which has been done by the petitioner – Cause of action takes place as and when one or the other measures mentioned in Section 13(4)(a) to (d) to recover the secured debt is taken – DRT failed to deal with the question of cause of action – Matter remanded back to DRT for decision afresh – Impugned order set aside – Petition disposed: *Kusum Jagdishchandra Singh (Smt.) Vs. LIC Housing Finance Ltd., I.L.R. 2024 M.P. *257 (DB)*

3. Jurisdiction/Powers of Court

– **Section 14** – Correction in Order – Jurisdiction of Court – Wrong mentioning of Khasra Number – Held – Correction application filed by Bank was not for re-examination or re-consideration of earlier judgement but was only for correction in one survey number of secured asset, boundaries of which is available and the property is identifiable – It is an error/mistake arising from accidental slip/omission and may be rectified at any time – If mistake is not corrected then it

may affect the property that was not mortgaged but mentioned in the order – Impugned order set aside – R-1 directed to decide application accordingly – Petition allowed: *Punjab National Bank Vs. Additional District Magistrate, I.L.R. 2024 M.P. 2048 (DB)*

– **Section 14** – Jurisdiction of Court – Held – CJM in place of deciding the application within stipulated time, was kept pending for months together for arguments on registration of the case which is not warranted u/s 14 – CJM travelled beyond scope of section 14 – CJM directed to decide pending application within a period of 30 days – Petition allowed: *Equitas Small Finance Bank Ltd. Vs. State of M.P., I.L.R. 2024 M.P. 437 (DB)*

– **Section 14** – Power of Court – Held – Nature of power u/s 14 vested in DM/ADM/CJM is executory and ministerial and not adjudicatory: *Equitas Small Finance Bank Ltd. Vs. State of M.P., I.L.R. 2024 M.P. 437 (DB)*

– **Section 35** – Overriding Effect – Term “any other law for the time being in force” – Held – Apex Court concluded that the expression “any other law for the time being in force” to mean that any other law operating in the same field i.e. the field occupied by SARFAESI Act: *Umesh Kumar Gupta Vs. The Collector, I.L.R. 2024 M.P. 1149 (DB)*

4. Limitation

– **Section 17(1)** and Limitation Act (36 of 1963), Section 5 & 29(2) – Applicability – Held – Section 17 does not confer DRT with discretion to extend the period of limitation of 45 days but at the same time Act of 2002 does not expressly exclude application of provisions from Section 4 to 24 of Limitation Act – Section 5 of Limitation Act would apply with full force and are available for making prayer for condonation of delay – Impugned order set aside – Petition allowed: *Aniruddh Singh Vs. Authorized Officer, ICICI Bank Ltd., I.L.R. 2024 M.P. 754 (DB)*

5. Non Banking/Housing Finance Company

– **Section 2(1)(m)(iv)** – Non Banking Financial Company & Housing Finance Company – Held – HFCs/HFIs are an entirely different special class which are covered under the phrase "any other institution" adumbrated u/S 2(1)(m)(iv) of 2002 Act and can't be classed with other NBFCs: *Virendra Rathore Vs. Tehsildar Distt. Mandsaur, I.L.R. 2024 M.P. 2244 (DB)*

– **Section 2(1)(m)(iv), 2(zd)**, National Housing Bank Act (53 of 1987), Section 2(d) & 29-A and Reserve Bank of India Act (2 of 1934), Chapter III-B, Sections 45(1)(c), (e) & (f) – Applicability – Held – Respondent HFC is entitled

under law to resort to SARFAESI Act towards recovery of their loans and borrowings, irrespective of the loan borrowings in favour of the petitioner falling below the threshold of Rs. 20 lacs – Petition dismissed: *Virendra Rathore Vs. Tehsildar Distt. Mandsaur, I.L.R. 2024 M.P. 2244 (DB)*

– **Section 2(1)(m)(iv), 2(zd)**, National Housing Bank Act (53 of 1987), Section 2(d) & 29-A and Reserve Bank of India Act (2 of 1934), Chapter III-B, Sections 45(1)(c), (e) & (f) – Non Banking Financial Company & Housing Finance Company – Held – The notification issued by Central Government (Ministry of Finance) on applicability of 2002 Act on NBFC shall not be applicable in the context of HFCs/HFIs, but only in the context of NBFCs so defined under Chapter III-B of RBI Act specially Section 45(1)(f): *Virendra Rathore Vs. Tehsildar Distt. Mandsaur, I.L.R. 2024 M.P. 2244 (DB)*

– **Sections 11, 14, 35 & 37** and Arbitration and Conciliation Act (26 of 1996) – Applicability – Held – Respondent invoked the 1996 Act and obtained an award – Simultaneously respondent financial institution has invoked Section 14 of 2002 Act by approaching Collector – Provisions of 1996 Act are available to the financial institution to be invoked in addition to the remedy available under the 2002 Act – Invocation of Section 14 of 2002 Act is within the parameters of law – Petition dismissed: *Umesh Kumar Gupta Vs. The Collector, I.L.R. 2024 M.P. 1149 (DB)*

6. Notice

– **Section 14** – Notice – Held – District Magistrate while entertaining application u/S 14 did not issue notice to the lessee which is mandatory – Secured creditor (Bank) did not disclose the details of tenency which was within the express knowledge of bank while filing application u/S 14: *Kabeer Reality Pvt. Ltd. Vs. LIC Housing Finance Ltd., I.L.R. 2024 M.P. 271 (DB)*

– **Section 17** – Notice – Held – DRT can pass conditional orders but in instant case interim relief itself was not considered and without considering the grievance raised by petitioner directed them to deposit Rs. 2 crores – Impugned order set aside – DRT directed to decide prayer of interim relief – Petition disposed: *Kabeer Reality Pvt. Ltd. Vs. LIC Housing Finance Ltd., I.L.R. 2024 M.P. 271 (DB)*

7. Scope & Jurisdiction

– **Section 14** – Scope & Jurisdiction – Considerations – Held – DM/ADM/CJM is not required to hear the application for purpose of registration of case – They should determine whether secured assets fall within their jurisdiction and whether notice u/s 13(2) has been furnished or not and whether case of secured

creditor falls under any exceptions u/s 31 – It is not required to issue notice either to borrower or to 3rd party – It is to be ensured that affidavit is filed declaring that the terms and conditions prescribed u/s 14(1) are satisfied – They should ensure that application shall be decided as expeditiously as possible preferably within 45 days from date of filing of application – Petition allowed: *Equitas Small Finance Bank Ltd. Vs. State of M.P., I.L.R. 2024 M.P. 437 (DB)*

8. Miscellaneous

– **Section 34** – See – Civil Procedure Code, 1908, Order 7 Rule 11(d): *Aavas Financiers Ltd. Vs. Smt. Bhagwanti Mahawar, I.L.R. 2024 M.P. 535*

– **Section 17 & 34** – See – Civil Procedure Code, 1908, Order 7 Rule 11(d): *Aavas Financiers Ltd. Vs. Smt. Bhagwanti Mahawar, I.L.R. 2024 M.P. 535*

SERVICE LAW

SYNOPSIS

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1. Annual Increment

– **Delay – Held** – Since there is a delay in approaching the Court, we restrict the benefits of arrears to a period of 3 months immediately preceding the filing of the petition along with interest @ 7% p.a: *Bhaddu Lal Malviya Vs. State of M.P.*, I.L.R. 2024 M.P. 2066 (DB)

– **Superannuation – Annual Increment – Held** – Since petitioners superannuated from service on 30th June and 31st December respectively, they are entitled to get annual increment the succeeding day of their retirement i.e. on 01st July or 01st Jan – Respondents directed to grant annual increment with all consequential benefits – Petition allowed: *Bhaddu Lal Malviya Vs. State of M.P.*, I.L.R. 2024 M.P. 2066 (DB)

2. Appointment/Recruitment

– **Advertisement & Statutory Rules – Held** – Statutory rules assume precedence over advertisement in the event of variation between the two: *Sandeep Kulshrestha Vs. Manoj Pratap Singh Yadav*, I.L.R. 2024 M.P. 1 (DB)

– **Benefit of Age Relaxation – Held** – Order of Higher Education Department prescribes that benefit of age relaxation shall be available to three advertisements at the most – It does not mean that it would be applicable in three future examination but it reflects that it would be available for three further examination – Present examination is nowhere excluded in specific terms – Petitioners entitled to avail the benefit of age relaxation – Petitions allowed: *Rashmi Chaudhary (Dr.) Vs. State of M.P.*, I.L.R. 2024 M.P. *167

– **Cancellation of Appointment – Change of Government – Held** – In absence of any appointment order issued to petitioners, no right would lie to them to challenge any of the note–sheets of the Government – Until and unless there is an order of appointment, there cannot be any further proceedings thereto – Note–sheet cannot be an impugned order, it is only a communication between officers of government – Petition dismissed: *Omprakash Shukla Vs. State of M.P.*, I.L.R. 2024 M.P. 96 (DB)

– **Change of Rules – Held** – The circular reveals that appointments were to be made in terms of merit and not in terms of any majority resolution of Gram Panchayat – Circular also says that it will not be applicable to cases where appointments were already made – In the instant case, when the circular was issued, appointments were not made, thus it cannot be said that rules of game have been amended after the game has begun – Impugned resolution/order of appointment of

R-5 quashed – Petition allowed: *Kalika Prasad Vs. State of M.P., I.L.R. 2024 M.P. *233*

– **Conditions of Advertisement** – Held – After having participated in recruitment process, they cannot challenge any of the conditions of advertisement – After having declared disqualified, petitioners are estopped from challenging the conditions – Petitioners do not fulfill required qualifications as required in advertisement – Petition dismissed: *Sumokshi Tiwari Vs. State of M.P., I.L.R. 2024 M.P. *42*

– **Disqualification** – Held – As per office memorandum, any person who is related to government employee having direct or indirect relationship with the selection process or elected or nominated members of the Panchayat Raj Institutions/Local Bodies, than that will be a disqualification – Husband of R-6 was an elected Panch, thus R-6 was a close relative – Impugned order passed in favour of R-6 is set aside – Petition allowed: *Tulsa Bai Gond (Smt.) Vs. State of M.P., I.L.R. 2024 M.P. 1290*

– **Forged Experience Certificate** – Enquiry – Held – When the petitioner was not a confirmed employee, he was under probation and his appointment was under investigation and *prima facie* there was allegation that he obtained appointment by fraud and submitting fake and false document, no regular enquiry was required – It is not a case of termination on ground of misconduct but it is a case of cancellation of appointment as the same was obtained by committing fraud – Petition dismissed: *Atul Mishra Vs. Union of India, I.L.R. 2024 M.P. 1794*

– **Horizontal/Vertical Reservation** – Held – Candidates are not to be called for second round of selection on basis of number of seats reserved for each of the categories under horizontal reservation in same ratio which is applicable to vertical reservation – Post meant for horizontal reservation cannot be carried forward – Candidates are required to be called for, in a prescribed ratio only in terms of vertical categories and not in terms of horizontal reservation categories – Petitions dismissed: *Paroksh Kumar Sen Vs. State of M.P., I.L.R. 2024 M.P. 2214*

– **Horizontal/Vertical Reservation** – Held – When, as per scheme of examination, candidates in ratio of 5 times the number of posts are to be called for, in terms of each of vertical compartment and then, from amongst those, horizontal reservation posts are to be filled, merit could not have been diluted by either diluting the benchmark requirement or extending the list so as to accommodate 5 times the candidates from each of the horizontal category group: *Paroksh Kumar Sen Vs. State of M.P., I.L.R. 2024 M.P. 2214*

– **Legitimate Expectation** – Held – Once the process was initiated, it culminated in selection and recommendation, then without assigning any proper and cogent reason that recommendation cannot be overlooked by the State – After raising a legitimate expectation, without assigning any reason State cannot deny handing over of charge in favour of petitioner – Till the completion of process of direct recruitment, respondent is obliged to give charge to the petitioner – Petition allowed: *Ayesha Ali Vs. State of M.P., I.L.R. 2024 M.P. *190*

– **Qualification** – Held – Qualification cannot be changed in the mid of recruitment process: *Sandeep Kulshrestha Vs. Manoj Pratap Singh Yadav, I.L.R. 2024 M.P. 1 (DB)*

– **Qualification & Experience** – Difference – Discussed and explained: *Sandeep Kulshrestha Vs. Manoj Pratap Singh Yadav, I.L.R. 2024 M.P. 1 (DB)*

– **Recall of Appointment Order** – Opportunity of Hearing – Held – Petitioner was given opportunity by issuing a show cause notice to submit his explanation but he did not file any reply and did not even submit any explanation to the allegations made against him and only thereafter finding no option decision was taken by authority to recall the order of appointment: *Atul Mishra Vs. Union of India, I.L.R. 2024 M.P. 1794*

– **Recall of Appointment Order** – Recovery of Wages – Held – Since petitioner duly performed his duties on the concerned post for the said period, no recovery of wages already paid to petitioner shall be done – Part of the impugned order directing recovery of wages is set aside: *Atul Mishra Vs. Union of India, I.L.R. 2024 M.P. 1794*

– **Review/Recall of Appointment Order** – Competent Authority – Held – The authority which has given appointment, has every right to recall that order, if ultimately it is found that same was obtained by committing fraud because fraud vitiates all subsequent actions and such order is considered to be *void ab initio* and that mistake can be corrected by the authority at any time – Cancelling such order cannot be considered to be an order of review – Action of respondents cannot be said to be without any competence: *Atul Mishra Vs. Union of India, I.L.R. 2024 M.P. 1794*

– **Scheme/Project** – Held – Any appointment made under a Scheme/Project is co-terminus with the project – Merely because project continued for decades would not confer any right on such employee to continue even after closure of project: *Rajendra Singh Kachwaha Vs. State of M.P., I.L.R. 2024 M.P. *69*

– **Selection** – Opinion of Expert Committee – Scope of Interference – Held – There is no violation of UGC guidelines – No material to show that the members of Expert Committee were acting in a *malafide* or partial manner – Even members of Expert Committee were not impleaded in this petition – This Court cannot sit as an appellate authority over the judgment of the experts – Petition dismissed: *Yadvendra Prasad Dubey (Dr.) Vs. Principal Secretary, Higher Education Department, I.L.R. 2024 M.P. *189*

– **Suppression of Material Facts** – Held – A police enquiry and investigation was conducted against appellant which was suppressed by her while filling up the application form – Appellant had deliberately suppressed the material information – Suppression of material information had a clear bearing on the character, conduct and antecedents of the employee – Writ appeal dismissed: *Poonam Nanwani (Dr.) (Ms.) Vs. State of M.P., I.L.R. 2024 M.P. *197 (DB)*

3. Back Wages

– **Criteria** – Held – Employee in his affidavit of chief examination specifically stated that he is unemployed from date of termination and there is no source of income available to him – This fact was not cross-examined by the employer nor did the employer produced any evidence that after termination employee was working somewhere else and was getting some income, Labour Court was justified in awarding full back wages – Petition dismissed: *Birla Corporation Limited (M/s.) Vs. Algoo Rai, I.L.R. 2024 M.P. *225*

4. Caste Certificate

– **False Document & Forged Document** – Held – If caste certificate was issued by competent authority but it was obtained by misrepresentation or placing false facts, then said caste certificate will be in category of doubtful or false certificate requiring adjudication by High Level Caste Scrutiny Committee but where caste certificate was not issued by any authority at all and it was created by somebody or the beneficiary, then said document cannot be said to be false document but it will be a forged document – Thus, all non-genuine documents cannot be placed in category of forged documents: *Abhishek Agariya Vs. State of M.P., I.L.R. 2024 M.P. 402*

– **Forged Caste Certificate** – Jurisdiction of SDO – Held – SDO Sohagpur gave a finding that the caste certificate relied upon by petitioner was never issued from his office – SDO was well within his right and jurisdiction to give a report to Collector that caste certificate is a forged document – Petition dismissed: *Abhishek Agariya Vs. State of M.P., I.L.R. 2024 M.P. 402*

5. Cause of Action/Representation

– **Repeated Representation** – Cause of Action – Held – Successive representation do not give rise to a new cause of action – Even if any direction is given by Court to decide representation in an old/stale and dead case, said direction will not give rise to a fresh cause of action and even if such representation is decided, said decision will also not give rise to a new cause of action: *Rajendra Singh Kachwaha Vs. State of M.P., I.L.R. 2024 M.P. *69*

6. Charge-Sheet

– **Contents of Reply** – Held – In reply to charge-sheet petitioner has not raised any objection regarding ambiguity of the charges – This Court is not sitting as an appellate Court to examine these aspects – If there was any vagueness of charge, it was expected from petitioner to raise objection in his reply – No point of discrimination was raised in the reply – No interference warranted – Petition dismissed: *Ashish Mahajan Vs. State of M.P., I.L.R. 2024 M.P. *111*

– **Ground of Discrimination** – Held – The aspect of discrimination is an aspect relating to a fact which needs to be established by leading evidence in the departmental enquiry: *Ashish Mahajan Vs. State of M.P., I.L.R. 2024 M.P. *111*

7. Compassionate Appointment

– **Adoption Deed & Succession Certificate** – Held – There was no aspect of penury and family pension was available to the widow of deceased – Compassionate appointment is not an alternate mode of recruitment nor an estate of the deceased – Petitioner not entitled for compassionate appointment on basis of adoption deed (executed after death of employee) and succession certificate nor any right has been created in his favour – Petition dismissed: *Pawan Kumar Masurkar Vs. State of M.P., I.L.R. 2024 M.P. *196*

– **Delay** – Age of Majority – Held – Petitioner's father died in 2002 when petitioner was only 5 yrs. and 6 months old – Petitioner's mother has already expired before the death of his father – Petitioner filed application for compassionate appointment in 2015 after attaining majority – In his application petitioner contended that he is somehow looking after himself and his sister by doing labour work – Respondents directed to consider the claim of petitioner afresh on its own merits by treating that he became eligible for compassionate appointment only after attaining majority – Petition allowed: *Ganga Prasad Raidas Vs. Bank of India, I.L.R. 2024 M.P. 227*

– **Delay** – Effect – Held – Father of petitioner died in 1996 – Application for compassionate appointment was made in 2014, i.e. after 18 years of death – If dependant of deceased employee can survive for substantial long period, then they are not entitled for compassionate appointment because such appointment is not an alternative mode of regular appointment but it is a concession to the grieved family to tide over the crises on account of untimely death of bread winner: *Parmanand Sharma Vs. State of M.P., I.L.R. 2024 M.P. *66*

– **Delay** – Held – At least 14 years have passed after death of father of petitioner – Application was rejected on 2013 and contempt petition filed in 2022 – After getting direction from Court for early disposal of application, petitioner did not pursue the matter for 11 years which shows that she was not in need of appointment – No explanation of delay – Delay has wiped out the need of urgency – Petitioner is married and cannot be said to be dependent on her father – Petition dismissed: *Vina Kumari @ Laxmi Singh Vs. South Eastern Coal Field Ltd., I.L.R. 2024 M.P. *23*

– **Dependent** – Service Records – Held – In service records, deceased employee has mentioned the name of his mother, father and sister as dependent and has not mentioned that P-2 (brother of deceased) was dependent upon him rather it was declared that P-2 was already employed – P-2 not entitled for compassionate appointment as per the prevalent policy of bank – Petition dismissed: *Homdas Lobniya Vs. Madhya Pradesh Gramin Bank, I.L.R. 2024 M.P. *230*

– **Financial Condition of Family** – Held – Financial condition of family is certainly a relevant factor for consideration of appointment on compassionate ground – It is undisputed that after receiving terminal benefits of deceased employee, petitioner's family is getting more than the last drawn salary of deceased – No fault with the rejection order – Petition dismissed: *Sudhakar Ramchandra Madankar (Shri) Vs. General Manager, State Bank of India, I.L.R. 2024 M.P. 837*

– **Higher Post** – Held – Petitioner accepted his compassionate appointment as Constable therefore he is precluded from claiming appointment on higher post after having accepted the appointment once – Petition dismissed: *Vinay Kumar Athiya Vs. State of M.P., I.L.R. 2024 M.P. *128*

– **Illegitimate Child** – Entitlement – Held – As per the relevant policy, compassionate appointment could be claimed by a legitimate child – Petitioner was an illegitimate child of the deceased employee, thus not entitled for compassionate appointment – Petition dismissed: *Parmanand Sharma Vs. State of M.P., I.L.R. 2024 M.P. *66*

– **Principle & Considerations** – Held – Appointment on compassionate ground is not an alternative mode of direct recruitment – It is provided to meet out the unfortunate situation faced by dependents of bread earner – Delayed approach of dependents to Court, the survival of dependents for a considerable long time etc. are relevant considerations for deciding the claim of compassionate appointment: *Vina Kumari @ Laxmi Singh Vs. South Eastern Coal Field Ltd., I.L.R. 2024 M.P. *23*

– **Relevant Policy** – Held – Policy for compassionate appointment which was in force on the date of death of employee is relevant: *Parmanand Sharma Vs. State of M.P., I.L.R. 2024 M.P. *66*

– **Relevant Policy** – Held – Policy prevalent at the time of death of the deceased employee only is to be considered and not the subsequent policy – In matter of compassionate appointment policy/norms are not having retrospective applicability – Employee expired in 2017, thus policy of 2019 has no application – Petition dismissed: *Suyash Singh Vs. The Madhyanchal Gramin Bank, I.L.R. 2024 M.P. 907*

– **Void Marriage** – Held – Since mother of petitioner got married to the deceased only within one year from the date when first wife of deceased went missing – Marriage of mother of petitioner with deceased was a void marriage because on the date of marriage, deceased was having a living spouse: *Parmanand Sharma Vs. State of M.P., I.L.R. 2024 M.P. *66*

8. Compulsory Retirement

– **Compulsory Retirement & Removal from Service** – Held – DGP on mercy petition modified the punishment of removal from service to that of compulsory retirement – Not only consumption of alcohol was found to be proved but also petitioner caused nuisance by targeting rifle on the head constable and threatened him – Punishment imposed is not disproportionate – On humanitarian ground punishment was modified – No interference warranted – Petition dismissed: *Pandurang Vs. State of M.P., I.L.R. 2024 M.P. *117*

– **Terminal Benefits** – Held – Compulsory retirement is a species of removal – A man is removed from service though, he does not lose terminal benefits which one has already earned – It is a penalty distinct from removal though there is cessation of relationship: *Pandurang Vs. State of M.P., I.L.R. 2024 M.P. *117*

9. Conviction/Criminal Trial

– **Criminal Trial & Conviction** – Consideration – Held – When a person is facing trial, then there is an element of innocence attached to it – Merely because a

criminal trial is pending, a person cannot be treated as convicted – However after conviction of accused, if his conviction is not stayed and only his sentence is suspended then it cannot be presumed that accused/employee is an innocent person – If conviction is not stayed then the disqualification attached to conviction must follow: *Badelal Pathak Vs. State of M.P., I.L.R. 2024 M.P. *28*

– **Denial of Time Scale of Pay** – Held – Conviction will relate back to the date of registration of FIR in a cognizable offence – Registration of FIR is prior to the date on which petitioner became eligible for grant of Time Scale of Pay – While granting the Time Scale of Pay which is as good as granting promotion, the past conduct of petitioner shall be considered – Impugned order cannot be faulted with – Petition dismissed: *Laxman Prasad Rajak Vs. State of M.P., I.L.R. 2024 M.P. 1778*

10. Correction in Date of Birth

– **Ground** – Held – Once the date of birth is recorded in service book at the time of entry in service and that has been verified by petitioner himself, no change can be made at the verge of retirement especially when there is no manipulation in the date of birth recorded in service book – Petition dismissed: *Rajdev Mishra Vs. State of M.P., I.L.R. 2024 M.P. *263*

11. Departmental Enquiry/Proceedings

– **Acquittal in Criminal Case** – Effect – Held – There is a substantial difference between charges leveled against petitioner in criminal trial and departmental enquiry – Degree of proof in criminal case is much different from that of degree of proof in departmental enquiry – Petitioner executed a marriage agreement and gave false belief to prosecutrix that she is lawfully married to him – Charges against petitioner are with regard to his misconduct for his behaviour/misbehaviour with prosecutrix – No case made out for quashment of charge-sheet – Petition disposed: *Lakhan Ahirwar Vs. State of M.P., I.L.R. 2024 M.P. *87*

– **Challenge to Enquiry Report/Final Report** – Held – Once the employee has challenged the final penalty order as well as the appellate order, then the challenge to enquiry report is implicit in challenge to such orders – While challenging penalty order based on enquiry report, it can always be argued by delinquent employee that since enquiry report is vitiated on one count or the other, hence the final order is also vitiated – In absence of its acceptance by disciplinary authority, the enquiry report in itself would not operate to award penalty to an employee: *Shivhari Shrivastava Vs. State of M.P., I.L.R. 2024 M.P. 2277*

– **Dead Person** – Held – No departmental action can be initiated against a dead person for the simple reason that on the death of employee, the employer-

employee relationship would come to an end: *Veena Dhurvey (Smt.) Vs. State of M.P., I.L.R. 2024 M.P. *22*

– **Decision making Process** – Held – Petitioner was served with charge-sheet and his reply was obtained – He was permitted to cross-examine the witnesses – After receiving inquiry report, petitioner's reply was procured – Disciplinary authority passed a detailed order of punishment – Appeal was also considered and decided by a reasoned order – No flaws in the decision making process: *Shravan Kumar Balone Vs. State of M.P., I.L.R. 2024 M.P. 417*

– **Degree of Proof** – Held – Charges are required to be proved by applying principle of preponderance of probability and not that charges must be proved beyond reasonable doubt – If there is some evidence which connects the delinquent employee with the charges, same are sufficient to hold him guilty: *Shravan Kumar Balone Vs. State of M.P., I.L.R. 2024 M.P. 417*

– **Departmental Enquiry and Criminal Proceeding** – Held – After conduction and closure of full-fledged departmental enquiry and exoneration in the matter, no criminal proceedings can be launched against delinquent employee on the same set of facts and material: *Vikas Rajoria Vs. State of M.P., I.L.R. 2024 M.P. 1749 (DB)*

– **Judicial Review** – Scope – Discussed and explained: *Karan Singh Maravi Vs. State of M.P., I.L.R. 2024 M.P. 2451 (DB)*

– **Maintainability of Second Enquiry** – Preliminary/ Regular Enquiry – Held – If earlier enquiry was a regular enquiry where employee stood exonerated, a second enquiry would not be maintainable – This principle cannot be made applicable when previous enquiry was a preliminary enquiry and not a regular enquiry: *Ashish Mahajan Vs. State of M.P., I.L.R. 2024 M.P. *111*

– **Malafide against Inquiry Officer** – Held – Inquiry officer has not been impleaded as a party as respondent in his official capacity – Allegation of *malafide* cannot be considered: *Vishnu Kumar Mishra Vs. Union of India, I.L.R. 2024 M.P. *106*

– **Nature of Evidence/Proof** – Held – Though disciplinary enquiries have to abide by rules of natural justice, they are not governed by strict rules of evidence which apply to judicial proceedings – Standard of proof is not the strict standard which governs a criminal trial, of proof beyond reasonable doubt but a civil standard governed by preponderance of probabilities: *Karan Singh Maravi Vs. State of M.P., I.L.R. 2024 M.P. 2451 (DB)*

– **Non-production/Examination of Witnesses** – Principle of Natural Justice – Held – Prosecution did not produce any witness to prove the documents and its

contents used against the petitioner – In absence of statement of any witness, it is a case of no evidence and charges cannot be said to be found proved – Enquiry conducted against petitioner is in violation of principle of natural justice and also in violation of basic requirement of disciplinary proceeding – Impugned orders set aside – Petition allowed: *Nishant Yadav Vs. Bank of Baroda, I.L.R. 2024 M.P. 1319*

– **Plea of Bias** – Evidence – Held – There cannot be a direct evidence to show the biases of an authority but it has to be inferred from surrounding circumstances: *Ashok Singh Vs. Union of India, I.L.R. 2024 M.P. *6*

– **Preliminary/Regular Enquiry** – Held – Preliminary enquiry is not a mandatory requirement before holding a regular departmental enquiry – It is prerogative of disciplinary authority to conduct a preliminary enquiry or not – Outcome of preliminary enquiry does not bind the disciplinary authority for the purpose of initiating regular departmental enquiry: *Ashish Mahajan Vs. State of M.P., I.L.R. 2024 M.P. *111*

– **Presenting Officer as Witness** – Permissibility – Held – Dr. Utpal was appointed as Presenting Officer and was also listed as witness – Objection was raised by petitioner – Since Dr. Utpal continued to act as Presenting officer and possibility of biases against petitioner are not ruled out, departmental enquiry is vitiated and is thus quashed – Respondent permitted to proceed further with enquiry after appointing a new Presenting Officer – Petition allowed: *Ashok Singh Vs. Union of India, I.L.R. 2024 M.P. *6*

– **Recording of Reasons** – Held – Disciplinary authority is bound to record reasons in writing and record its findings, which may not be as detailed as findings of enquiry officer but they must contain reasons and final findings after considering representation of employee and some brief reasons that why disciplinary authority agrees with enquiry officer's report despite the representation of employee: *Shivhari Shrivastava Vs. State of M.P., I.L.R. 2024 M.P. 2277*

– **Role of Presenting Officer** – Held – Role of presenting officer is to place the material before Enquiry Officer – If presenting officer is not acting independently but is acting with preconceived notion/mind, then it is not expected that entire material may be placed before enquiry officer and possibility that enquiry may not take place in free and fair manner, cannot be ruled out: *Ashok Singh Vs. Union of India, I.L.R. 2024 M.P. *6*

12. Examination

– **Doctrine of Normalization & Doctrine of Moderation** – Held – Whether doctrine of normalization should have been applied or doctrine of moderation should

have been applied is beyond the scope of consideration because in case of Harshit Jain, coordinate bench of this Court has already held that doctrine of merger and normalization of marks should be applied – Further the said order is sub-judice before the Supreme Court – R-2 directed to merge and normalize two list i.e. result of first main examination and result of special main examination as directed by coordinate bench of this Court: *Vaishali Wadhvani Vs. State of M.P., I.L.R. 2024 M.P. *44*

– **Rights of Candidate** – Held – Even a selected candidate does not have any vested right for getting appointment provided that the State Government acts *bonafidely*: *Vaishali Wadhvani Vs. State of M.P., I.L.R. 2024 M.P. *44*

13. Gratuity/Retiral Dues

– **Concept** – Held – Amount of retiral dues including gratuity are not bounty, it is deferred payment to employee for the long services rendered by him to the department – This payment is made in the evening of their life with a view to provide them a security – They can use this amount for their own settlement, discharge of social obligations etc: *Sohagvati (Smt.) (Dead) Thr. LRs. Vs. Upkshetriya Prabandhak, I.L.R. 2024 M.P. *146*

– **Interest on Delayed Payment** – Held – Retiral dues of an employee are not bounty, it is earned by rendering long service – Pension and retiral dues must be paid on due date and with quite promptitude – If there is a delay in making payment and the same is attributable to employer, employee deserves the benefit of interest – While filing return, respondents have not averred that petitioner is responsible for the delay – Petitioner entitled to get 6% interest on delayed payment – Petition allowed: *A.S. Patel Vs. State of M.P., I.L.R. 2024 M.P. *1*

14. Kramonnati

– **Date of Initial Appointment** – Held – As per the schemes/circulars of State government for grant of Kramonnat Vetanman and Time Pay-Scale, services from the date of initial appointment in Feeder Cadre are liable to be counted and not from the date of promotional post – Petition dismissed: *Lokendra Kumar Vyas Vs. State of M.P., I.L.R. 2024 M.P. *58*

– **Delayed Claim** – Held – Petitioners approached High Court for the first time on 31.10.2022 by filing W.P. No. 24864/22 i.e after 23 long years of the date of cause of action – Petitioners have already retired much prior to filing of writ petition – They are seeking 1st Kramonnati but they accepted the 2nd & 3rd Kramonnati without any protest – Petition dismissed: *Rajendra Singh Kachwaha Vs. State of M.P., I.L.R. 2024 M.P. *69*

– **Determination** – Held – For the purpose of calculating the period of 1st*Kramonnati*, not only the previous service rendered by petitioners as a surplus employee is liable to be counted but the pay scale which they were getting as a surplus employee is also to be taken into account: *Rajendra Singh Kachwaha Vs. State of M.P., I.L.R. 2024 M.P. *69*

– **Entitlement** – Held – Petitioners have already got higher pay-scale on account of their absorption in School Education Department, therefore they were rightly denied the benefit of 1st*Kramonnati* – Further, benefits of 2nd& 3rd*Kramonnati* were accepted by them without any protest – No interference warranted – Petition dismissed: *Rajendra Singh Kachwaha Vs. State of M.P., I.L.R. 2024 M.P. *69*

15. Moral Turpitude

– **Appointment** – Acquittal on basis of Compromise – Moral Turpitude – Held – If department itself realized while issuing circular dated 24.07.2018 that offence u/S 323 & 325 IPC do not fall within four corners of "moral turpitude", merely because the previous circular took a different view to some extent, will not improve the case of employer – Nature of allegation and extent of petitioner's involvement, factual foundation of the incident etc. were not considered by Screening Committee – Impugned order set aside – Petition allowed: *Pramod Kumar Verma Vs. State of M.P., I.L.R. 2024 M.P. *67*

16. Promotion

– **Right of Consideration** – Punishments – Held – Only such punishments can deprive petitioner from right of consideration which are statutorily prescribed: *Ravindra Kumar Rajnegi Vs. State of M.P., I.L.R. 2024 M.P. *37*

– **Seniority-cum-Merit** – Held – A benchmark to determine eligibility/ minimum prescribed standard of merit may be prescribed by employer and thereafter all those who fulfill that benchmark criteria, are required to be given promotion on basis of principle of seniority-cum-merit – Since respondent Bank adhere to provisions of assessing the comparative merit by clubbing the marks of written examination, interview and APR appraisal and then preparing a combined merit list, is violative of criteria of seniority-cum-merit – Respondents directed to convene a review DPC and pass a fresh order of promotion – Petition disposed: *Rajendra Kumar Chourasia Vs. Narmada Mahwa Gramin Bank, I.L.R. 2024 M.P. *214*

– **Seniority-cum-Merit** – Held – When the criteria is seniority-cum-merit then it implies fulfillment of minimum prescribed standard of merit by candidates eligible for consideration and then making promotion out of them on basis of their

interse seniority irrespective of their comparative merit: *Rajendra Kumar Chourasia Vs. Narmada Malwa Gramin Bank, I.L.R. 2024 M.P. *214*

– **Time Scale of Pay/Kramonnati** – Held – The benefit of *Kramonnati* or time scale of pay is granted to the stagnating employees, if no promotion is granted to them within stipulated time – He continues to work on same post but gets a upgraded scale – In case where department offered promotion and employee has denied it, department cannot be blamed for stagnation – Because of refusal for promotion by petitioner, time scale of pay was rightly declined – Petition dismissed: *Jairam Thadhani Vs. State of M.P., I.L.R. 2024 M.P. *9*

17. Punishment/Penalty

– **Contents of Charge-Sheet** – Held – Apex Court concluded that an employee cannot be punished for an act which was not subject matter of the charge-sheet: *K.C. Kandwal Vs. State of M.P., I.L.R. 2024 M.P. 61*

– **Doctrine of Proportionality** – Held – Apex Court concluded that punishment imposed must be proportionate – Whether it is a departmental misconduct or an offence in a criminal case, the doctrine of proportionality is the anvil on which quantum of punishment needs to be tested: *K.C. Kandwal Vs. State of M.P., I.L.R. 2024 M.P. 61*

– **Minor Penalty** – Regular Departmental Enquiry – Held – If dispute is factual in nature and denied by the employee then even for imposing minor penalty, regular departmental enquiry is required to ascertain correctness of the allegation: *Virendra Singh Vs. State of M.P., I.L.R. 2024 M.P. *269*

– **Proportionality** – Held – Apex Court concluded that if out of more than one charge, the employee is found guilty of some but not all of them, the authority is entitled to impose suitable punishment particularly when charges were not independent of each other: *Pandurang Vs. State of M.P., I.L.R. 2024 M.P. *117*

18. Qualification/Relaxation

– **Asha Worker** – Minimum Qualification – Relaxation – Held – As per circular, preference is to be given to persons belonging to SC or ST community if their population is more than 50% in village – In instant case, population of ST category in village is more than 50% and petitioner (appointed candidate) belongs to SC category – Minimum qualification was education upto Class-X – The only ST candidate who applied was Class-VII pass whereas petitioner was Class-XII pass – Preference can be granted only in event when other things are equal – As no ST candidate having minimum qualification was in zone for consideration, respondents

wrongly terminated services of petitioner – Impugned orders set aside – Petition allowed: *Phoolwati Prajapati (Smt.) Vs. State of M.P., I.L.R. 2024 M.P. *260*

– **Equivalence of Degree** – Held – Equivalence of degree is a matter to be decided only by concerned authorities & experts and not by a Court of law: *Devansh Kaushik Vs. State of M.P., I.L.R. 2024 M.P. 621 (DB)*

19. Recovery/Excess Pay

– **Disciplinary Proceedings & Audit** – Held – Audit inspection can be considered to be a sort of enquiry but that cannot be a substitute of disciplinary proceeding in which delinquent is given full opportunity to participate and defend himself: *Virendra Singh Vs. State of M.P., I.L.R. 2024 M.P. *269*

– **Regular Departmental Enquiry** – Held – Since the recovery amount is not only huge but the allegations are also denied by petitioner (employee), therefore, factual aspect is required to be ascertained and that can only be done by conducting regular departmental enquiry – Impugned order based on audit report cannot be approved because during course of audit no opportunity was given to petitioner – Impugned orders set aside – Liberty granted to respondents for regular departmental enquiry to ascertain actual amount of recovery – Petition partly allowed: *Virendra Singh Vs. State of M.P., I.L.R. 2024 M.P. *269*

– **Undertaking** – Held – Petitioner rendered disqualified to get increment because he did not pass Hindi Typing Examination but by virtue of negligence/overlook of accountant, increment was paid to petitioner – He was getting a benefit for which he was not entitled otherwise also – Petitioner has given an undertaking regarding recovery of excess payment if any made to him – No interference warranted – After due deduction necessary PPO be issued and entitled pension and pensionary benefits be awarded to petitioner without delay – Petition dismissed: *Pranay Pallav Tripathi Vs. State of M.P., I.L.R. 2024 M.P. 2054*

– **Undertaking by Employee** – Permissibility – Held – The undertaking given by the employee at the time of grant of financial benefits on account of fixation of pay is a forced undertaking and is therefore not enforceable in light of Apex Court judgment in *Central Inland Water* case unless the undertaking is given voluntarily: *State of M.P. Vs. Jagdish Prasad Dubey, I.L.R. 2024 M.P. 575 (FB)*

20. Reduction of Wage

– **Delegation of Work** – Reduction of Wage – Held – There is a delegation of work from National Health Mission to Rogi Kalyan Samiti – There cannot be reduction of wages for doing the same nature of work for the same duration in the hands of a delegatee or a sub-delegatee – Petitioners who are engaged through

National Health Mission will be entitled to get the same wages as were contracted by them with National Health Mission – In case of delegation of work in favour of a delegatee, the contract wages cannot be reduced in an arbitrary and illegal manner – Petition allowed: *Darvari Singh Sareyam Vs. State of M.P., I.L.R. 2024 M.P. *153*

21. Regularization

– **Entitlement** – Held – Regularization can be considered only for those employees who were duly qualified and were appointed against vacant sanctioned posts – Petitioner admittedly not possessing requisite qualification of Higher Secondary as was the requirement since 1972 – Even if aspect of age is to be relaxed upto the age of 38, but in absence of requisite educational qualification, petitioner not entitled to seek benefit of regularization – Petition dismissed: *Kashiram Patel Vs. State of M.P., I.L.R. 2024 M.P. 1487*

22. Reinstatement

– **Back Wages** – Principle of “No Work No Pay” – Held – For applying doctrine of “no work no pay” it is to be seen that whether employee was restrained or was kept away by the employer from serving the department or whether employee was a fence sitter and was not interested in serving the department – Petitioner was unauthorizedly kept away from serving the department after the age of 60 years – Petitioner was not a fence sitter and was vigilantly fighting for his cause – He is entitled for back wages for the period from date of his retirement till the date of his reinstatement – Petition allowed: *Umesh Kumar Shrivastava Vs. Jawaharlal Nehru Krishi Vishwavidyalaya, I.L.R. 2024 M.P. 1252*

– **Resignation & Reinstatement** – Held – Once the resignation is accepted, there cannot be any withdrawal as the bilateral relationship of master and servant has ceased to exist – Impugned action of respondent in denying to accept the request of petitioner to permit him to be reinstated cannot be faulted with – Petition dismissed: *Madhav Prasad Pandey Vs. State of M.P., I.L.R. 2024 M.P. *89*

23. Reservation

– **Migrated Candidate** – Caste – Held – A person who migrates from one state to other, does not carry his caste status to the migrating State, even if the same caste is recognized as OBC in both States – There may be caste or sub caste of same name which are recognized in more than one State in India – Merely because the caste known by a particular name is recognized in more than one State cannot extend the benefit of reservation in both the States – Reservation in public services is always Statewise and does not have a Pan India sweep – Petition dismissed: *Seema Devi Vs. Union of India, I.L.R. 2024 M.P. 448 (DB)*

– **Migrated Candidate** – Determination – Held – It is not the similarity of name of a particular caste in two or more States, which is deciding factor but it is the social, economic and educational backwardness of that particular caste in a particular State which recognizes that caste to be a scheduled caste/OBC – The geographical, social, economical and educational backwardness are the factors which are never identical or even similar in two different States: *Seema Devi Vs. Union of India, I.L.R. 2024 M.P. 448 (DB)*

– **Presidential Orders** – Held – The Presidential Orders which notified the list of Scheduled Caste, Scheduled Tribe and OBC are published separately for each State – There is no singular list of S.C., S.T. & OBC for the entire country: *Seema Devi Vs. Union of India, I.L.R. 2024 M.P. 448 (DB)*

24. Seniority

– **Interse Seniority** – Age & Merit – Held – Petitioner and R-4 being appointed on the same date and petitioner being found to be more meritorious was placed above R-4 – Age cannot be given a preference over the merit – Decision of authorities giving preference to age over merit cannot be given a seal of approval – Interse seniority cannot be tempered on basis of GAD circular – Petitioner's interse seniority over R-4 is restored – Petition allowed: *Rajesh Vijayvargiya Vs. Chairman Cum Managing Director, I.L.R. 2024 M.P. 1988*

25. Suspension

– **Competent Authority** – Held – When a statutory authority is empowered to take a decision, the said authority must take that decision independently within the statutory framework – If he takes decision on the dictate of higher authority, the order becomes vulnerable: *Rashmi Rekha Mishra (Dr.) Vs. State of M.P., I.L.R. 2024 M.P. 828*

– **Purpose** – Held – The purpose of placing an officer under suspension is to keep her away from the mischief range – The purpose is to complete the proceedings unhindered – Suspension is an interim measure in aid of disciplinary proceedings so that the delinquent may not get custody or control of papers or take any advantage of her position: *Rashmi Rekha Mishra (Dr.) Vs. State of M.P., I.L.R. 2024 M.P. 828*

26. Termination

– **Aaganwadi Worker** – Enquiry – Held – As per scheme applicable to Aaganwadi workers, her services could not have been terminated without holding any enquiry: *Mamta Tirole Vs. Project Officer, I.L.R. 2024 M.P. *140*

– **Acquittal in Criminal Case** – Held – Petitioner not only given a false promise of marriage to prosecutrix but in order to convince her, he also executed an agreement of marriage which is not permissible under the law – Unfortunately, trial Court has not considered the definition of Section 375 (fourthly) IPC – Acquittal of petitioner for offence u/S 376(2)(n) was not in accordance with law: *Daulat Singh Markam Vs. State of M.P., I.L.R. 2024 M.P. 1267*

– **Aganwadi Workers** – Termination – Grounds – Aganwadi workers and assistants are appointed only to render services in Aganwadi Centres, they should not be forced to do other work – Arrangement of articles to make the "Shivjyoti Arpanam" program successful cannot be a part of the duties of Aganwadi Workers and Assistants – Petitioner being Aganwadi Worker rightly refused to do work of labour in the above said program which is not part of her duties – Impugned order quashed – Petition allowed with cost of Rs. 10,000: *Mamta Soni (Smt.) Vs. State of M.P., I.L.R. 2024 M.P. *11*

– **Aganwadi Workers** – Termination – Grounds – Held – Aganwadi Worker can only be removed from the post if the charges are proved to the effect that she is not running the centre properly or discharging duties and liabilities negligently: *Mamta Soni (Smt.) Vs. State of M.P., I.L.R. 2024 M.P. *11*

– **Conviction** – Disproportionate Punishment – Held – Apex Court concluded that even if an employee is convicted under some provision of penal law/IPC, it is not mandatory or obligatory for department to impose punishment of removal or dismissal from service – Authority needs to apply its mind whether the conduct which led to conviction is such grave which warrants punishment of dismissal or removal only: *Dinesh Kumar Bilthare Vs. State of M.P., I.L.R. 2024 M.P. *52*

– **Conviction** – GPF, GIS & Leave Encashment – Held – It is true that upon termination of services, the past service of petitioner would stand forfeited but GPF is nothing but a contribution made by delinquent officer – In absence of provision, leave encashment and GIS cannot be withheld – Respondents directed to pass a specific order – If aforesaid amount is personal property of petitioner and does not stand forfeited on account of his conviction, then it shall be paid to him: *Badelal Pathak Vs. State of M.P., I.L.R. 2024 M.P. *28*

– **Conviction** – Moral Turpitude – Held – Nature of injuries caused by petitioners to injured were not simple in nature – Injured sustained several fractures in legs for which injured remained in hospital for 12 days – The manner in which crime was committed it can be inferred that intention of petitioners was to kill the complainant/injured – Crime committed by petitioners falls within purview of moral

turpitude – Termination of petitioners was proper and not illegal – Petition dismissed: *Junaid Ahmed Vs. Western Coal Fields Ltd., I.L.R. 2024 M.P. 2019*

– **Direction by Higher Authority** – Held – After deciding to deduct 8 days honorarium as a punishment, it was not open to respondents to punish petitioner by proceeding further and terminating her from service, moreso, when such a decision of termination was taken at the dictate of Collector who is not the disciplinary authority of petitioner – Order passed under dictate of higher authority runs contrary to principle of natural justice and settled principles of Administrative Law – Impugned order set aside – Petition allowed: *Mamta Tirole Vs. Project Officer, I.L.R. 2024 M.P. *140*

– **Direction by Higher Authority** – Held – Impugned order was passed by competent authority on the behest of appellate authority and it was passed without due application of mind – Once the impugned order was passed on the instructions of superior authority, then the same was bad on that ground also: *Vivek Tiwari Vs. State of M.P., I.L.R. 2024 M.P. 841*

– **Disproportionate Punishment** – Held – Termination of service for one day's absence shocks the judicial conscience – Punishment is like killing a fly by using sledge hammer – Impugned orders are liable to be jettisoned: *Mamta Tirole Vs. Project Officer, I.L.R. 2024 M.P. *140*

– **Moral Turpitude** – Discussed & Explained: *Manoj Choure Vs. State of M.P., I.L.R. 2024 M.P. 1095*

– **Non-Supply of Documents** – Held – Termination was based on inquiry report which was further based on statement of witnesses – Thus all documents were relevant and necessary for petitioner to put forward his defence, which were not supplied to him – No opportunity of hearing was granted – Serious prejudice caused to petitioner – Impugned order passed in utter violation of principle of natural justice and is thus set aside – Matter remanded back with directions – Petition disposed: *Vivek Tiwari Vs. State of M.P., I.L.R. 2024 M.P. 841*

– **Principle of Natural Justice** – Held – Where allegations are serious and a stigmatic order is to be passed, then principle of natural justice are to be followed in their strict sense and opportunity of hearing should be given to petitioner alongwith the copy of enquiry report – Since that has not been done, termination order cannot be upheld – Respondents directed to issue a show cause notice containing imputations as well as proposed action against petitioner and thereafter decide the matter in accordance with law: *Sanjeev Kumar Ghosh Vs. State of M.P., I.L.R. 2024 M.P. *74*

– **Reasoned Order** – Held – Reasons are the backbone of order – Whenever any order is passed having civil and penal consequences the same must be passed after due application of mind – In the impugned order no other reason has been assigned except mentioning that the reply filed by petitioner was not found to be satisfactory: *Vivek Tiwari Vs. State of M.P., I.L.R. 2024 M.P. 841*

– **Suppression of Material Facts** – Held – Court while adjudicating the issue of suppression/disclosure has to consider the nature of the office, the timing and nature of criminal case, the nature of the query in application/verification form, the contents of the character verification reports, the socio-economic strata of the individual applying, other antecedents of candidate, the nature of consideration and the contents of the cancellation/termination order – These are crucial aspects which should enter the judicial verdict in adjudging suitability and in determining the nature of relief to be ordered: *Poonam Nanwani (Dr.) (Ms.) Vs. State of M.P., I.L.R. 2024 M.P. *197 (DB)*

– **Term “Consider”** – Discussed and explained: *Vivek Tiwari Vs. State of M.P., I.L.R. 2024 M.P. 841*

– **Termination of Probationer** – Enquiry – Held – Apex Court opined that termination of a probationer on the ground of misconduct without holding any enquiry is bad in law: *Shambhoo Prasad Tiwari Vs. M.P. State Agriculture Marketing Board, I.L.R. 2024 M.P. *40*

– **Unauthorized Absence** – Held – Appellant submitted that he was prevented by illness of his wife from reporting for duty – During the entire period of unauthorized absence of 455 days, there is no document regarding hospitalization of appellant’s wife or receiving treatment – There is no plausible explanation to satisfy the test laid down by the Apex Court for such cases – Appeal dismissed: *Karan Singh Maravi Vs. State of M.P., I.L.R. 2024 M.P. 2451 (DB)*

27. Transfer

– **Complaint** – Held – It is prerogative of the Commission to act upon the complaint on basis of the report, if any, is submitted by State government – No report has been submitted but presuming by State authority that instruction has been issued, impugned order was passed – Said presumption was without any foundation and in fact misconceived: *Rajesh Henry Vs. State of M.P., I.L.R. 2024 M.P. *120*

– **Model Code of Conduct**, Clause 19.4.1 (vii) & (viii) – Held – During the currency period of Model Code of Conduct any order in respect of an officer connected with election cannot be passed by State authority without prior approval of the Election Commission – Post approval is not material, it is the prior clearance

from Commission which is required – Impugned order is without any competence and jurisdiction and is thus set aside – Petition allowed: *Rajesh Henry Vs. State of M.P.*, I.L.R. 2024 M.P. *120

SEWA (NIYOJAN, NIBANDHAN TATHA KARYA STHITI)

NIYAM

– **Rules 23, 25 & 28** – See – Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rule 10(9) & 19: *Sanjay Vs. State of M.P.*, I.L.R. 2024 M.P. *97

SEXUAL HARASSMENT OF WOMAN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT

(14 OF 2013)

– **Section 9** – Appreciation of Evidence – Held – Before the five members committee as well in departmental appeal/representation, allegations against petitioner was not established – Merely because complainant preferred repeated complaints, petitioner cannot be held guilty – Report of inquiry officer is based on surmises and conjecture and not on any evidence – Impugned order set aside – Petition allowed: *Mukesh Khampariya Vs. State of M.P.*, I.L.R. 2024 M.P. 411

– **Sections 9, 13(2) & 18** – Appeal – Jurisdiction – Held – Report of internal/local committee is a "service matter", thus anybody aggrieved can approach the Tribunal/Court – There is no provision of preferring appeal to departmental authority under 2013 Act – Order of police headquarter to conduct another enquiry and the enquiry report are set aside: *Mukesh Khampariya Vs. State of M.P.*, I.L.R. 2024 M.P. 411

– **Section 9(1)** – Limitation – Delay – Held – As per Section 9(1), complaint can be made within 3 months of the incident – Committee may extend time limit for another 3 months for reasons to be recorded in writing but nothing on record to show that limitation period was extended – Incident occurred on 12.10.2016, complaint was preferred on 16.03.17 – Complaint itself was barred by time: *Mukesh Khampariya Vs. State of M.P.*, I.L.R. 2024 M.P. 411

SPECIAL POLICE ESTABLISHMENT ACT, M.P. (17 OF 1947)

– **Section 4** – See – Lokayukt Evam Up-Lokayukt Adhiniyam, M.P., 1981, Sections 7, 12 & 13(3): *Vikas Rajoria Vs. State of M.P.*, I.L.R. 2024 M.P. 1749 (DB)

SPECIFIC RELIEF ACT (47 OF 1963)

– **Section 10** and Civil Procedure Code (5 of 1908), Order 7 Rule 11 – Cause of Action – Held – As per terms & conditions of tender, successful bidder was required to execute contract/sale agreement – Plaintiff's averments and documents reveal that parties did not enter into any agreement/contract – There is nothing to show that the person with whom plaintiff's conversation took place, as per transcript/CD, was an authorized person of company to enter/execute agreement or to accept the bid – It is not a case of defective cause of action, instead plaintiff *ex-facie* does not disclose any cause of action – Trial Court rightly dismissed the suit exercising power under Order 7 Rule 11 CPC – Appeal dismissed: *Star Agronomics Ltd. Vs. Rio Tinto India Pvt. Ltd., I.L.R. 2024 M.P. *244*

– **Section 22(2) Proviso** – Applicability – Held – Section 22 is applicable for specific performance of contract for the transfer of immovable property – Present suit is not filed for specific performance of contract but is filed for declaration of title – First Appellate Court committed illegality by applying the proviso of Section 22(2) of the 1963 Act: *Nihal Singh Vs. Savitri Bai, I.L.R. 2024 M.P. 283*

– **Section 28** – Requirement – Held – D-2 to D-4 are purchasers of suit property even prior to filing of suit and decree has also been passed against them, therefore they were well within their rights to file application u/S 28 of the Act: *Narayan Prasad Agrawal Vs. Smt. Sheela Rani (Dead) Thr. LRs., I.L.R. 2024 M.P. 1219*

– **Section 31 & 34** – Readiness & Willingness – Held – Initial agreement of 4 months which was fixed on 27.07.1988 was extended upto March 1989, thereafter plaintiff/purchaser did not make any effort to get sale deed executed – Plaintiff for the first time issued a notice on 19.06.1991 after one year and four months – Plaintiff failed to prove continuous readiness and willingness to perform his obligations – Consequence of not performing obligations was provided in agreement itself – Plaintiff not entitled for a decree of execution of sale deed – Appeal dismissed: *Radheshyam Ramlal (Dead) Thr. LRs. Vs. Bheru Singh (Dead) Thr. LRs., I.L.R. 2024 M.P. *199*

– **Section 34** – Consequential Relief – Held – Section 34 prohibits a suit for mere declaration without consequential relief: *Pushpa Patel (Smt.) Vs. Smt. Neelima Tiwari, I.L.R. 2024 M.P. 1671*

– **Section 34** – Decree of Specific Performance – Time Period – Held – Even if time for payment of balance consideration is not prescribed in decree, purchaser is obliged to deposit balance amount within reasonable period which cannot be more

than 3 months which is maximum limit for filing appeal, unless he is permitted by Court for valid reasons on an application filed by him, otherwise he has to be ready to face adverse consequences – Executing Court rightly ordered the decree holder/purchaser to pay balance amount as per guideline of 2012-13 – Revision dismissed: *Narayan Prasad Agrawal Vs. Smt. Sheela Rani (Dead) Thr. LRs., I.L.R. 2024 M.P. 1219*

– **Section 34** – Readiness & Willingness – Held – Plaintiff has to be ready and willing to get executed sale deed from date of agreement of sale till passing of decree of specific performance and then upto execution of sale deed in his favour upon payment of balance sale consideration – Although there was a stay order passed in First appeal, but plaintiff was free to deposit balance consideration amount but it was not deposited: *Narayan Prasad Agrawal Vs. Smt. Sheela Rani (Dead) Thr. LRs., I.L.R. 2024 M.P. 1219*

– **Section 34** – See – Civil Procedure Code, 1908, Order 7 Rule 11: *Pushpa Patel (Smt.) Vs. Smt. Neelima Tiwari, I.L.R. 2024 M.P. 1671*

– **Section 34** and Limitation Act (36 of 1963), Schedule Part II, Clause 54 – Limitation – Held – For specific performance of a contract, the period of limitation is 3 yrs. from the date fixed for performance or if no such date is fixed, when the plaintiff has notice that performance is refused: *Suleman Vs. Narendra Kumar, I.L.R. 2024 M.P. 112*

– **Section 34** and Registration Act (16 of 1908), Section 17(1-A) & 49 – Unregistered Sale Agreement – Admissibility in Evidence – Held – Even an unregistered document can be received in evidence in a suit for specific performance of contract for any collateral transaction – It cannot be said that because of inserting Section 17(1-A) in 1908 Act, now only registered document can be taken into evidence – Trial Court rightly observed that acceptability of the document will be decided only after recording evidence – Petition dismissed: *Chandrika Prasad Tiwari Vs. Prashant Tripathi, I.L.R. 2024 M.P. 2293*

STAMP ACT, INDIAN (2 OF 1899)

– **Article 25(a), Proviso** – Amalgamation Deed – Held – If the immovable property transferred is located within State of M.P. then only stamp duty @ 5% of market value is liable to be paid and if not then stamp duty @ an amount equal to 0.5% of the aggregate of the market value of the shares issued or allotted in exchange or otherwise and the amount of consideration paid for such transfer whichever is higher will be paid by the transferee company – Impugned orders set aside – Matter remanded to Board of Revenue for decision afresh – Petition allowed:

*Mahle Engine Components India Pvt. Ltd. Vs. M.P. Board of Revenue, I.L.R. 2024 M.P. *179*

– **Section 36** – Admissibility of Document – Duty of Court – Application of mind – Held – Apex Court concluded that where a document has been inadvertently admitted without the Court applying its mind as to the question of its admissibility, the instrument could not be said to have been admitted in evidence with a view to attract Section 36 of 1899 Act: *Bherulal Vs. Bhanwarlal, I.L.R. 2024 M.P. 2609*

– **Section 36** – Admissibility of Document – Objection – Duty of Court – Held – Question of admissibility of document on the ground of the same being deficiently stamped and being unregistered was mandatorily required to be considered by trial Court even if objection in that regard had not been taken by plaintiff at that time and it was marked as exhibit – Section 36 would not come into play at all – Plaintiff would not be precluded from raising objection regarding admissibility – Impugned order set aside – Trial Court directed to decide the objection – Petition allowed: *Bherulal Vs. Bhanwarlal, I.L.R. 2024 M.P. 2609*

– **Section 36** – Admissibility of Document – Objection – Stage of Suit – Held – Apex Court concluded that the objection as to admissibility of a document on the ground that the same is inadmissible by itself can be raised even after the document has been marked as exhibit or even in appeal or revision: *Bherulal Vs. Bhanwarlal, I.L.R. 2024 M.P. 2609*

– **Sections 47(A)(4), (5), (6) & 56** – Appeal & Revision – Amendment – Effect – Held – Right to appeal was existing in Statute Book when the *lis* commenced – Right to appeal accrued to appellants in terms of provisions as existing in Statute book and would continue to apply to the case of appellants even after its abolition – Appellants would have a right to appeal u/S 47(A)(5) – Impugned orders set aside – Revision filed by appellants is directed to be treated as an appeal u/S 47(A)(5) subject to period of limitation provided u/S 47(A)(6) of the Act – Appeal disposed: *Ahshan Hussain Vs. State of M.P., I.L.R. 2024 M.P. 1975 (DB)*

STAMP ACT, INDIAN (M.P. AMENDMENT) 2016 (30 OF 2017)

– **Sections 33, 35 & 40** and Registration (M.P. Amendment) Act, 2014 (12 of 2015), Section 17 & 49 – Impounding of Document – Held – For purpose of admission of document in Court the newly inserted provision will be applicable for which the Court is competent to pass an appropriate order – In view of amendment in Section 35 & 40, there is no scope of adjudication by Collector and as on today only Court can pass an order u/S 35(1)(a) before admission of agreement to sale in

the evidence – Petition dismissed with cost: *Mahendra Vs. Ramvilas Shukhla, I.L.R. 2024 M.P. 249*

STATE MANDI BOARD SERVICES (REGULATIONS), 1998

– **Regulation 10, 13, 15, 34, 50(1) & 67** – Termination – Suppression of Material Fact – Held – Petitioner filled up verification form subsequent to his regularization – It cannot be said that petitioner got benefit of regularization by suppressing any material fact – Petitioner disclosed about criminal cases and filed relevant judgments alongwith verification form – He was exonerated in all criminal cases except one u/S 279 IPC – Court is unable to hold that for this offence, petitioner's services could have been terminated – Impugned order is stigmatic in nature – Termination order set aside, respondents directed to re-instate petitioner with all consequential benefits except back wages – Petition allowed: *Shambhoo Prasad Tiwari Vs. M.P. State Agriculture Marketing Board, I.L.R. 2024 M.P. *40*

– **Regulation 10, 13, 15, 34, 50(1) & 67** – Termination – Suppression of Material Fact – Show Cause Notice – Held – In show cause notice, it was nowhere alleged that petitioner had suppressed any material fact or misrepresented in any manner – Employee cannot be subjected to coercive action/punishment for an allegation which was not the subject matter of charge-sheet/show cause notice: *Shambhoo Prasad Tiwari Vs. M.P. State Agriculture Marketing Board, I.L.R. 2024 M.P. *40*

STRIDHAN

– **Property of Women** – Held – *Stridhan* is personal property of woman and even if her in-laws are in possession of same, their status is like a trustee and a person receiving dowry articles who is in dominion over the same is bound to return it – Even father/relative of woman has no right to receive the *stridhan* back on behalf of daughter/woman: *Seenu Tripathi (Smt.) Vs. Saurabh Tripathi, I.L.R. 2024 M.P. 746*

SUCCESSION ACT, INDIAN (39 OF 1925)

– **Section 63(c)** – See – Evidence Act, 1872, Section 68: *Vijay Singh Yadav Vs. Smt. Krishna Yadav, I.L.R. 2024 M.P. 1492*

– **Section 276 & 278** – See – Civil Procedure Code, 1908, Section 10: *Gayatriraje Puar (Smt.) Vs. Smt. Shailjaraje Puar, I.L.R. 2024 M.P. 277*

– **Section 372** – See – Civil Procedure Code, 1908, Order 8 Rule 6: *Nayan Raichandani Vs. Shriman Prabandhak Mahoday, I.L.R. 2024 M.P. 254*

SUITS VALUATION ACT (7 OF 1887)

– **Section 4 & 8** – See – Court Fees Act, 1870, Section 7(vi-a) & 7(v): *Ramchandra Banarsi Vs. Radhabai @ Devkabai, I.L.R. 2024 M.P. *121*

SWATANTRATA SANGRAM SAINIK SAMMAN NIDHI NIYAM, M.P., 1972

– **Rule 3(6)** – Payment of Samman Nidhi – Relevant Date – Held – The first order rejecting the Samman Nidhi was passed on 08.12.2000, therefore that would become the relevant date – Respondents directed to make payment from 08.12.2000 – Appeal dismissed: *State of M.P. Vs. Ghanshyam Sharma Through L.R., I.L.R. 2024 M.P. 189 (DB)*

T

THE INDIAN MEDICAL COUNCIL ACT (102 OF 1956)

– **Section 15** and Ayurvigyan Parishad Adhiniyam, M.P., 1987 (11 of 1990), Section 24 – Imposition of Conditions – Appellate Court imposed condition that “applicant shall not indulge in any medical practice/ profession in future” – Held – National Medical Commission is the only competent authority to revoke licence of a registered practitioner for misconduct – Appellate Court cannot stipulate such type of condition infringing the rights of the applicant to practice and profession guaranteed under Article 19(1)(g) of Constitution – Applicant entitled for medical practice – Revision partly allowed: *Nitishchandra Dhar Vs. State of M.P., I.L.R. 2024 M.P. *64*

TRADE MARKS ACT (47 OF 1999)

– **Sections 2(m), 15, 17(2) & 28(1)** – Deceptive Similarity – Class of Purchasers – Held – Apex Court concluded that the class of purchasers who are likely to buy the goods bearing their marks they require, their education, intelligence and degree of care they are likely to exercise in purchasing and/or using the goods would be a relevant factor for deciding the question of deceptive similarity: *Pernod Ricard India Pvt. Ltd. Vs. Karanveer Singh Chhabra, I.L.R. 2024 M.P. 964 (DB)*

– **Sections 2(m), 15, 17(2) & 28(1)** and Civil Procedure Code (5 of 1908), Order 39 Rule 1 & 2 – Temporary Injunction – Deceptive Similarity – Brand “Blenders Pride” & “London Pride” – Held – Plaintiff’s stand of claiming exclusively in respect of “Pride” part of its brand “Blenders Pride” alleging infringement on ground that defendant is using a mark including “Pride” as a part thereof, cannot be accepted – Merely by use of word “Pride” by defendant, there cannot be any misconception or misapprehension in the mind of consumer, a common man which may lead to any confusion in his mind – Prayer of temporary injunction rightly rejected – Appeal dismissed: *Pernod Ricard India Pvt. Ltd. Vs. Karanveer Singh Chhabra, I.L.R. 2024 M.P. 964 (DB)*

– **Section 15** – Complete Trade Mark – Applicability – Held – Protection of trade mark is available only for a complete trade mark and not any word therein unless the same is registered as a whole as well as in part as separate trade mark – Plaintiffs have not got the word “Pride” separately registered as a trade mark: *Pernod Ricard India Pvt. Ltd. Vs. Karanveer Singh Chhabra, I.L.R. 2024 M.P. 964 (DB)*

– **Section 17** – Individual Elements of Registered Mark – Held – No material to show that individual element of plaintiff’s registered marks, such as blue colour, golden dome, or arrangement of letters on the label, or shape of bottle have acquired secondary meaning over a period of time, or have become associated with their marks – Neither there is any visual nor phonetic nor structural similarity between any of the boxes or bottles of plaintiffs with that of the defendants – *Prima facie* it cannot be held that defendant’s mark infringes the mark of plaintiff: *Pernod Ricard India Pvt. Ltd. Vs. Karanveer Singh Chhabra, I.L.R. 2024 M.P. 964 (DB)*

TRANSFER OF PROPERTY ACT (4 OF 1882)

– **Section 3, Explanation 1** – Deemed Notice of Registered Document – Held – Explanation is applicable only to person who acquires such property under registered document and is not applicable to person who transfers such property under the instrument: *Shankheshwar Developers Vs. Kirhsna Kalota, I.L.R. 2024 M.P. *75*

– **Section 53-A** – Applicability – Necessary Conditions – Held – Section 53-A is ordinarily to be used as a defence and not as a weapon of attack – Right conferred by section 53-A is a right available to defendant to protect his possession – Necessary conditions which are required if a transferee wants to defend or protect his possession u/S 53-A enumerated: *Pushpa Patel (Smt.) Vs. Smt. Neelima Tiwari, I.L.R. 2024 M.P. 1671*

– **Section 53-A** – Protection – Requirements to be Fulfilled – Enumerated and explained: *Babulal Vs. Amra, I.L.R. 2024 M.P. *204*

– **Section 53-A** – Protection of Possession – Agreement to Sell – Held – Neither the plaintiff nor his father had filed suit for specific performance of contract on the basis of the agreement – No notice in furtherance to agreement was given to defendants – It was not shown in the evidence that plaintiff is willing to perform his part of contract – Possession cannot be protected – Appeal dismissed: *Kamalsingh Vs. Sharif Khan, I.L.R. 2024 M.P. 2306*

– **Section 53-A** – Protection of Possession – Held – Apex Court concluded that there are certain conditions which are required to be fulfilled if a transferee wants to defend or protect his possession u/S 53-A of the Act – Conditions enumerated: *Kamalsingh Vs. Sharif Khan, I.L.R. 2024 M.P. 2306*

– **Section 53-A** – Sale Agreement – Protection – Held – Appellant failed to prove that he had done some act in furtherance of some contract – Plaintiff has no right to protect his possession by way of agreement: *Babulal Vs. Amra, I.L.R. 2024 M.P. *204*

– **Section 53-A** – See – Civil Procedure Code, 1908, Order 7 Rule 11: *Pushpa Patel (Smt.) Vs. Smt. Neelima Tiwari, I.L.R. 2024 M.P. 1671*

– **Section 54** – See – Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993, Section 65(1): *Akhilesh Kumar Vs. State of M.P., I.L.R. 2024 M.P. 1519 (DB)*

– **Section 54** – Sale Agreement – Held – Apex Court concluded that transfer of immovable property by way of sale can only be by a deed of conveyance (sale deed) – In absence of deed of conveyance (duly stamped and registered), no right, title or interest in an immovable property can be transferred – Therefore by way of a sale agreement, plaintiff has not accrued any title in regard to suit property: *Babulal Vs. Amra, I.L.R. 2024 M.P. *204*

– **Section 54** – Title – Held – An agreement to sell does not create any right or title in favour of intending buyers – Apex Court concluded that transfer of immovable property by way of sale can only be by a deed of conveyance (sale deed) duly stamped and registered, In absence thereof, no right, title or interest in an immovable property can be transferred: *Prem Singh Vs. Mangilal, I.L.R. 2024 M.P. *186*

– **Section 54** and Registration Act (16 of 1908), Section 17 & 49 – Agreement to Sale – Transfer of Title – Held – No right, title or interest in immovable property can be transferred without registration of the sale deed – Agreement to sell does not confer any right, title or interest to the plaintiff/appellant: *Kamalsingh Vs. Sharif Khan, I.L.R. 2024 M.P. 2306*

– **Section 54** and Registration Act (16 of 1908), Section 17 & 49 – Sale of Immovable Property – Held – Apex Court concluded that transfer of immovable property by way of sale can only be by a deed of conveyance (sale deed) – In absence of a deed of conveyance (duly stamped and registered as required by law) no right, title or interest in a immovable property can be transferred – An agreement to sell does not create any right or title in favour of the intending buyer: *Suleman Vs. Narendra Kumar, I.L.R. 2024 M.P. 112*

TRANSPLANTATION OF HUMAN ORGANS AND TISSUES ACT **(42 OF 1994)**

– **Section 9** and Transplantation of Human Organs and Tissues Rules, 2014, Rule 18 & 22 – Kidney Transplantation – Consent/NOC of Spouse – Held – There is no provision in 2014 Rules to insist upon filing of NOC/Affidavit of husband of a woman donor – Any other close relative of donor, except the recipient, may confirm the independent consent of donor and that will suffice the compliance of Rule 22 – Hospital cannot insist upon NOC/Affidavit of husband of woman donor – Doctor certified that donor is medically fit to donate kidney – Hospital directed to process application and forward it to authorization committee at the earliest – Petition allowed: *Annu Bai Vs. State of M.P., I.L.R. 2024 M.P. 1786*

TRANSPLANTATION OF HUMAN ORGANS AND TISSUES **RULES, 2014**

– **Rule 18 & 22** – See – Transplantation of Human Organs and Tissues Act, 1994, Section 9: *Annu Bai Vs. State of M.P., I.L.R. 2024 M.P. 1786*

U

UCHCHA NYAYALAYA (KHAND NYAYPEETH KO APPEAL) **ADHINIYAM, M.P., 2005 (14 OF 2006)**

– **Section 2(1)** – See – Constitution – Article 226: *Anurag Nagar Griha Nirman Sahakari Sanstha Maryadit Vs. Indore Development Authority, I.L.R. 2024 M.P. *5 (DB)*

– **Section 2(1)** – Writ Appeal – Aggrieved Person – Locus – Held – A person may not be a party to the decree/order but he may with leave prefer an appeal from such decree/order if he is either bound by the order/decreed or is aggrieved by it or is prejudicially affected by it – Appellant's right are adversely affected after the land in question was declared as surplus land and same stood vested in favour of State

government – Appellant is a aggrieved person as he being the owner of one of the parcel of said land, he is permitted to prosecute the appeal though he was not a party in writ petition: *Ambrish Vs. State of M.P., I.L.R. 2024 M.P. 1955 (DB)*

UNLAWFUL ACTIVITIES (PREVENTION) ACT (37 OF 1967)

– **Section 43-D** – See – Criminal Procedure Code, 1973, Section 167(2)(b): *Abdul Jamil Vs. State of M.P., I.L.R. 2024 M.P. *108*

URBAN LAND (CEILING AND REGULATION) ACT (33 OF 1976)

– **Section 10(1)** – Physical Possession – Proof – Held – Preparation of receipt of possession by revenue authorities as well as mutation of the name of State Government in revenue record is sufficient material to show that physical possession was taken: *Kasturibai Vs. State of M.P., I.L.R. 2024 M.P. *209*

– **Section 10(1) & 20** – Limitation – Held – Land was declared as surplus land in 1984, possession was taken on 27.02.1984, thereafter objections and appeals were dismissed in 1985 and these proceedings attained finality and never been challenged – Petitioner is challenging the notice questioning the Kabza Panchnama dated 27.02.1984 after 26 years – Petition is hopelessly barred by time – Petition dismissed: *Kasturibai Vs. State of M.P., I.L.R. 2024 M.P. *209*

– **Section 10(3) & 10(5)** – Possession Panchnama – Held – When possession was being taken, petitioners were not present on spot, even after notice – State Authorities were left with no other option to take *ex-parte* possession – One of the permissible mode of taking possession is by preparing possession panchnama – It cannot be said that possession of surplus land was not taken by State: *Tika Bai Kosta (Smt.) Vs. Secretary, State of M.P., I.L.R. 2024 M.P. 2008*

– **Section 10(3) & 10(5)** and Urban Land (Ceiling and Regulation) Repeal Act (15 of 1999), Section 4 – Paper Possession – Abatement of Proceedings – Held – Apex Court concluded that paper possession will be a recognized mode of taking possession – Since possession was taken in 1992 and once the land has been vested in State Government and inspite of that if petitioners are still in possession, their status would be that of an encroacher only and they cannot claim adverse possession – They cannot be said to be in rightful possession – Proceedings cannot be said to be abated in the light of Section 4 of 1999 Act – Petition dismissed: *Tika Bai Kosta (Smt.) Vs. Secretary, State of M.P., I.L.R. 2024 M.P. 2008*

– **Section 10(5)** – Physical Possession – Objection – Held – State is not supposed to physically reside or occupy the land once the possession is taken after drawing Panchnama – If actual possession of land is taken by State then grievance about non-compliance of Section 10(5) has to be taken within reasonable time of the possession – If land owner failed to take such objection within reasonable time, then he has been deemed to have waived his right u/S 10(5) of the Act: *Kasturibai Vs. State of M.P., I.L.R. 2024 M.P. *209*

– **Section 10(5) & 10(6)** – Actual Possession – Panchnama – Validity – Held – For taking actual possession of surplus land it is mandatory u/S 10(5) of 1976 Act to serve a 30 days' notice not only to actual owner of land but also to the occupier – No notice served to occupiers who were in possession of land as well as the house constructed thereon – For want of compliance of mandatory provision, said panchnama is mere paper work and actual taking over possession not established – Proceedings are abated – Impugned order set aside – Respondents directed to update revenue entries by recording name of appellants – Appeal allowed: *Ambrish Vs. State of M.P., I.L.R. 2024 M.P. 1955 (DB)*

– **Section 10(5) & 10(6)** – Residential Construction – Actual Possession – Panchnama – Held – In matter of residential construction, possession can be taken only in two ways, first, by actually dispossessing the occupier or secondly by demolishing the existing structure – In present case, none of the above course was adopted by authorities – By way of alleged *panchnama*, only paper possession was taken over by authorities – Actual taking over of possession not established – No right shall accrue in favour of State – Ceiling proceedings abated: *Ambrish Vs. State of M.P., I.L.R. 2024 M.P. 1955 (DB)*

URBAN LAND (CEILING AND REGULATION) REPEAL ACT **(15 OF 1999)**

– **Section 4** – See – Urban Land (Ceiling and Regulation) Act, 1976, Section 10(3) & 10(5): *Tika Bai Kosta (Smt.) Vs. Secretary, State of M.P., I.L.R. 2024 M.P. 2008*

V

VETERINARY COUNCIL ACT (52 OF 1984)

– **Section 48(2) & 49(1)** – Removal of Name from Register – Application of Mind/Opportunity of Hearing – Held – Section 48(2) provides for application of mind by Registrar of the Council before removing name of defaulter – Section 49(1) provides that such removal will be done after giving reasonable opportunity of

hearing and after such further enquiry as it may think fit to make: *Ram Charan Singraul Vs. State of M.P., I.L.R. 2024 M.P. 1284*

– **Section 48(2) & 49(6)** – Deemed Removal of Name from Register – Specific Order & Publication – Held – In absence of there being any publication of the names of private respondents in Official Gazette, there will be no deemed removal from register of Council – It cannot be said that private respondents were ineligible on account of non-payment of renewal fee treating them to be deemingly removed from register of Council – Private respondents were rightly considered for appointment – Petition dismissed: *Ram Charan Singraul Vs. State of M.P., I.L.R. 2024 M.P. 1284*

– **Section 48(2) & 49(6)** – Removal from Register – Publication – Held – If a name is to be removed from register of State Veterinary Council due to non-payment of renewal fee as per Section 48(2) of 1984 Act then such name so removed is to be published in the Official Gazette – There is no deemed removal in such cases of non-payment of renewal fee: *Ram Charan Singraul Vs. State of M.P., I.L.R. 2024 M.P. 1284*

– **Section 48(3)** – Non-payment of Renewal Fee – Effect – Held – In terms of Section 48(3), on payment of renewal fee, the license to practice stands restored from a retrospective date, therefore it cannot be said that there was no registration of private respondents on the date of making application, rendering them ineligible for consideration of payment: *Ram Charan Singraul Vs. State of M.P., I.L.R. 2024 M.P. 1284*

VIDYUT SHULK ADHINIYAM, M.P. (17 OF 2012)

– **Section 2(1)(B)** and Electricity Act (36 of 2003), Section 2(15) & 2(77) – Exemption Notification – Entitlement – Held – Notification published on 04.03.2014 according to which for exemption from payment of electricity duty, connection should be taken within 5 years from the date of issuance of notification – Petitioners filed application on 27.06.2015 and electricity line was completed, verified and handed over to electricity company on 01.03.2019 i.e. within 5 years of publication of notification – Petitioners entitled for benefit of notification – Petition allowed: *Ultra Tech Cement Ltd. (M/s.) Vs. State of M.P., I.L.R. 2024 M.P. *267*

– **Section 5(i)** and Notification dated 04.03.2014 – New HT Connection – Exemption of Electricity Duty – Held – Intention of legislature is to give complete 5 years to take benefit of subsidy for new connections including supply – The word “take” cannot be given a meaning that the date from which supply was started – Benefit will be given to all those consumers who applied for new connection within 5 years of notification and even on the last date – Demand of electricity duty is quashed – Petition allowed: *Aquatic Pipes & Tubes Pvt. Ltd. (M/s) Vs. M.P. Madhya Kshetra Vidhyut Vitran Co., I.L.R. 2024 M.P. *46*

W

WILD LIFE (PROTECTION) ACT (53 OF 1972)

– **Section 24(2)(b)** and Contract Act (9 of 1872), Section 16(3) & 19A – Land Acquisition – Consent – Deposit of Compensation Amount – Held – Without there being any statutory provision of law, respondents unilaterally issued executive instructions and consent letters were obtained from land owners (petitioners) and amount has been deposited in their accounts – Consent were obtained under undue influence – It is a voidable contract – Consent letters and deposit of compensation amount is quashed – Petitioners directed to refund the amount and respondents directed to take action u/S 24(2)(b) of 1972 Act to ascertain the compensation amount – If petitioners fails to refund the amount, it will be taken as an acceptance to compensation – Petition disposed: *Manoj Kumar Prajapati Vs. State of M.P.*, I.L.R. 2024 M.P. 1481

– **Section 24(2)(b)** and Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act (30 of 2013) – Acquisition of Rights – Held – Collector can acquire such land or right over such land on payment of such compensation as provided in Land Acquisition Act which was subsequently repealed by new Act of 2013 or can acquire the land or rights by an agreement with the owner of such land or holder of rights: *Manoj Kumar Prajapati Vs. State of M.P.*, I.L.R. 2024 M.P. 1481

WORDS & PHRASES

– "**Aggrieved Person**" – Discussed and explained: *Ambrish Vs. State of M.P.*, I.L.R. 2024 M.P. 1955 (DB)

WORK CHARGED AND CONTINGENCY PAID EMPLOYEES PENSION RULES, M.P., 1979

– **Rules 2(a), 2(c), 3 & 6** – Permanent & Contingency Paid Employee – Entitlement of Pension – Held – Services rendered by contingency paid/work charged employee after the appointment and on completion of 15 years service, he shall be entitled for pension under 1979 Rules – Apex Court concluded that services rendered as work charged cannot be counted for pension but after rendering services as work charged employee for number of years and thereafter when their services

were regularized, they cannot be denied pension on ground that they have not completed the qualifying service for pension – Petition allowed: *Kailash Chandra Vs. State of M.P.*, I.L.R. 2024 M.P. *138

**WORKING JOURNALISTS AND OTHER NEWSPAPER
EMPLOYEES (CONDITIONS OF SERVICE) AND
MISCELLANEOUS PROVISIONS ACT (45 OF 1955)**

– **Section 17(2)** and Industrial Disputes Act (14 of 1947), Section 10 & 12 – Dispute of Wages – Jurisdiction of Labour Court – Held – Employee approached Dy. Labour Commissioner whereby he forwarded his recommendations to State Government for taking action u/S 17(2) of 1955 Act – On such notice, if State Government decided to act on its own motion then it cannot be said that the reference made by State Government was contrary to Section 17(2) of the Act – Further, simultaneous exercise of power u/S 10 & 12 of 1947 Act would not take out the reference out of purview of Section 17(2) – Labour Court has jurisdiction to decide the reference: *Dainik Bhaskar Vs. State of M.P.*, I.L.R. 2024 M.P. 2575

– **Section 17(1) & 17(2)** and Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Rules, 1955, Rule 36, Form C – Prior Notice – Held – Since Form C of 1955 Rules does not deal with Section 17(2) and it is merely a prescribe format for filing application u/S 17(1) of the Act, it was not necessary for employee to give any prior notice to employer: *Dainik Bhaskar Vs. State of M.P.*, I.L.R. 2024 M.P. 2575

– **Section 17(2)**, Majithia Wage Board, Clause 20(j) – Declaration – Interpretation – Held – Only that declaration can be a valid declaration under clause 20(j) if it is in favour of the employee and not detrimental to his interest – Petitioner's defence that employee has given a declaration expressing his satisfaction over the pay scale which is less than what has been recommended by the Wage Board, cannot be accepted – Employee was not stopped from claiming higher pay scale as per the recommendation of Majithia Wage Board: *Dainik Bhaskar Vs. State of M.P.*, I.L.R. 2024 M.P. 2575

– **Section 17(2)**, Majithia Wage Board, Clause 20(j) – Declaration by Employee – Framing of Issue – Held – Once it was the petitioner who raised a defence in its written statement, cross-examined the respondent and also led evidence, then it cannot be said that non-framing of issue with regard to declaration under clause 20(j) of Majithia Wage Board has prejudiced it and same had vitiated the proceedings: *Dainik Bhaskar Vs. State of M.P.*, I.L.R. 2024 M.P. 2575

– **Section 17(2)**, Majithia Wage Board, Clause 20(j) and Evidence Act (1 of 1872), Sections 101, 102 & 111 – Declaration – Burden of Proof – Held – The burden that the declaration was given voluntarily by respondent is upon the petitioner and he has miserably failed to prove that the employees were informed about recommendations of Majithia Wage Board and only after understanding the same, they have voluntarily signed the declaration form – Petitioner failed to discharge its burden to prove voluntary execution of declaration and that there was no misrepresentation – Petitions dismissed: *Dainik Bhaskar Vs. State of M.P.*, I.L.R. 2024 M.P. 2575

– **Section 17(2)**, Majithia Wage Board, Clause 20(j) and Evidence Act (1 of 1872), Section 114 – Nature of Duty – Burden of Proof – Held – If a person is in possession of best evidence and decides not to file the same, then Court can draw an adverse inference against such an erring litigant – Whether the petitioner was asked to produce documents or not, non-production of documents which were in his possession would invite adverse inference against him: *Dainik Bhaskar Vs. State of M.P.*, I.L.R. 2024 M.P. 2575

WORKING JOURNALISTS AND OTHER NEWSPAPER
EMPLOYEES (CONDITIONS OF SERVICE) AND
MISCELLANEOUS PROVISIONS RULES, 1955

– **Rule 36, Form C** – See – Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955, Section 17(1) & 17(2): *Dainik Bhaskar Vs. State of M.P.*, I.L.R. 2024 M.P. 2575

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