JUDICIAL TRAINING AND RESEARCH INSTITUTE, U.P.
LUCKNOW

Quarterly Digest

CONSTITUTIONAL, CIVIL, CRIMINAL AND REVENUE LAWS

(Covering important judgments of Supreme Court and Allahabad High Court)

April to June, 2023

Volume : XXVIII **Issue No. 2**

SUBJECT INDEX
(SUPREME COURT)

SUBJECT INDEX
(HIGH COURT)

NOTE: This Journal is meant only for the reference and guidance. For authentic detailed information, readers are advised to consult referred Journal(s)

LIST OF THE CASES COVERED IN THIS ISSUE
(SUPREME COURT)

	(2023) 5 SCC 627	
23.	Inox Renewables Limited v. Jayesh Electricals Limited, (2023) 3 SCC 733	10
24.	Janhit Abhiyan v. Union of India (EWS Reservation), (2023) 5 SCC 1	32
25.	Jhabbar Singh (Deceased) Through Legal Heirs and others v. Jagtar Singh S/o Darshan Singh, 2023 (1) ARC 812- SC	11
26.	Joseph Shine v. Union of India, 2023 Cri.L.J.1400 : AIROnline 2023 SC 141	38
27.	Juhru and others v. Karim and another, (2023) 5 SCC 406	18
28.	Juhru vs. Karim, AIR 2023 SC 1160	21
29.	K.L. Swamy v. Commissioner of Income Tax and another, (2023) 4 SCC 274	40
30.	Ka Rauf Sherif v. Directorate of Enforcement and others, (2023) 6 SCC 92	79
31.	Kaushal Kishor v. State of Uttar Pradesh and others, (2023) 4 SCC 1	28
32.	Kekhriesatuo Tep and others v. National Investigation Agency, (2023) 6 SCC 58	84
33.	Kunti and another v. State of Uttar Pradesh and another, (2023) 6 SCC 109	43
34.	Land Acquisition Collector (South) v. Hari Chand and another, (2023) 6 SCC 99	68
35.	Land Acquisition Collector and another v. B.S. Dhillon and others, (2023) 4 SCC 377	68
36.	M/s. BLS Infrastructure Ltd. vs. M/s. Rajwant Singh, 2023 (123) ACC 620 (SC)	19
37.	Man Singh vs. Shamim Ahmad (Dead) thr. L.Rs., 2023(5) ADJ 227 (SC)	85
38.	Meenu Prakash Bhantu v. State of Uttar Pradesh and another, (2023) 5 SCC 386	17
39.	Mita India Pvt. Ltd. vs. Mahendra Jain, 2023 (123) ACC 614 (SC)	72
40.	Mohd. Muslim @ Hussain vs. State (NCT of Delhi), AIR 2023 SC 1639	51
41.	Munna Lal vs. State of U.P., 2023 (123) ACC 654 (SC)	44
42.	Nand Lal vs. State of Chhattisgarh, AIR 2023 SC 1599	49
43.	Neeraj Dutta v. State (Government of NCT of Delhi), (2023) 4 SCC 731	73
44.	Neeraj Dutta vs. State (Govt. of NCT of Delhi), 2023 (123) ACC 677 (SC)] Judgment of Constitutional Bench	75
45.	Nikhil Chandra Mondal vs. State of WB., AIR 2023 SC 1323	45
46.	Omprakash Sahni vs. Jai Shankar Chaudhary, AIR 2023 SC 2202	27
47.	Pawan Kumar Chourasia vs. State of Bihar, AIR 2023 SC	45

	1464	
48.	Pradeep Kumar v. State of Chhattisgarh, (2023) 5 SCC 350	41
49.	Prakash Nayi @ Sen vs. State of Goa, 2023 (123) ACC 952 (SC)	44
50.	Prakash Nayi alias Sen v. State of Goa, (2023) 5 SCC 673	42
51.	Premchand v. State of Maharashtra, (2023) 5 SCC 522	18
52.	Premchand v. State of Maharashtra, 2023 Cri.L.J. 1883 : AIROnline 2023 SC 172	60
53.	Premchand vs. State of Maharashtra, AIR 2023 SC 1487	47
54.	Radhey Shyam and others v. State of Rajasthan, (2023) 6 SCC 151	43
55.	Rajendra Kumar Shrivas v. State of Madhya Pradesh and others, (2023) 5 SCC 364	83
56.	Rakesh Raman vs. Smt. Kavita, AIR 2023 SC 2144	40
57.	Ram Gopal S/O Mansharam v. State of Madhya Pradesh, (2023) 5 SCC 534	41
58.	Ram Shridhar Chimurkar v. Union of India and another, (2023) 4 SCC 312	83
59.	Ramesh Chandra Sharma vs. State of U.P., AIR 2023 SC 1117	70
60.	Ramisetty Venkatanna and another v. Nasyam Jamal Saheb and others, 2023(2) ARC 42 – SC	12
61.	Rana Ayyub v. Directorate of Enforcement, (2023) 4 SCC 357	79
62.	Ravasaheb alias Ravasahebgouda and others v. State of Karnataka, (2023) 5 SCC 391	42
63.	Ravi Dhingra v. State of Haryana, (2023) 6 SCC 76	43
64.	Ravi Dhingra v. State of Haryana, 2023 Cri.L.J. 1913 : AIROnline 2023 SC 149	67
65.	Roppen Transportation Services Private Limited v. Union of India and others, (2023) 4 SCC 349	28
66.	S.K. Varshney v. Principal, Our Lady of Fatima Higher Secondary School and others, (2023) 4 SCC 539	29
67.	Sabir Ali Khan v. Syed Mohd. Ahmad Ali Khan and others, 2023(1) ARC 777- SC	86
68.	Shaifuddin (Dead)Thr. LRs. v. Kanhaiya Lal (Dead) Thr. LRs. and others, 2023 (2) ARC 16	70
69.	Shivshankara vs H.P.Vedavyasa Char: 2023 (41) LCD 1046 (SC)	17
70.	Shri Rakesh Raman v. Smt. Kavita, 2023 (2) ARC 19	39
71.	Shyam Kumar Gupta and others v. Shubham Jain, (2023) 4 SCC 713	10
72.	Soundarajan v. State Rep. By the Inspector of Police Vigilance Anticorruption Dindigul, Cri.L.J. 2123 : AIROnline 2023 SC 300	78
73.	Sri Mahavir Agency and another v. State of West Bengal and	78

	another, (2023) 6 SCC 103	
74.	St. Mary's Education Society and another v. Rajendra Prasad Bhargava and others, (2023) 4 SCC 498	29
75.	Stalin alias Satalin Sammuvel v. State Represented by The Inspector of Police, 2023 Cri.L.J. 1553: AIROnline 2023 SC 83	57
76.	State Bank of India and others v. Rajesh Agarwal and others, (2023) 6 SCC 1	33
77.	State of Chhatisgarh vs. Aman Kumar Singh, AIR 2023 SC 1441	76
78.	State of Himachal Pradesh and others v. Raj Kumar and others, (2023) 3 SCC 773	82
79.	State of Maharashtra and another v. Dr. Maroti S/o Kashinath Pimpalkar, (2023) 4 SCC 298	82
80.	State through CBI v. T. Gangi Reddy @ Yerra Gangi Reddy 2023 (123) ACC 706 (SC)	20
81.	State through Central Bureau of Investigation v. T. Gangi Reddy alias Yerra Gangi Reddy, (2023) 4 SCC 253	19
82.	Talat Sanvi vs. State of Jharkhand, 2023 (123) ACC 989 (SC)	20
83.	Tata Sons Private Limited (Formerly Tata Sons Limited) v. Siva Industries and Holdings Limited and others, (2023) 5 SCC 421	10
84.	Thiru K. Palaniswamy vs. M. Shanmugam, AIR 2023 SC 1253	17
85.	Vahitha vs. State of Tamil Nadu, AIR 2023 SC 1165	37
86.	Yedala Subba Rao and another v. Union of India, (2023) 6 SCC 65	84

LIST OF THE CASES COVERED IN THIS ISSUE
(HIGH COURT)

25.	Khwaja Moinuddin Chishti Language University Thru. Registrar vs. Dr. Arif Abbas, 2023 (159) RD 297	92
26.	Km. Chandana Mukherji (D) Through LRs. vs. Addl. District Judge/Special Judge, P.C. Act, 2023 (159) RD 580	94
27.	Kusuma Devi and others v. Shrawan Kumar Mishra and others, 2023 ACJ 739	126
28.	Lalji and others v. State of U.P., Cri.L.J. 2009:AIROnline 2023 All. 398	124
29.	Mohd. Anwar vs. State of U.P., 2023 (123) ACC 467 (All-L.B.)	95
30.	Mohd. Siddique and Ors. vs. Mohd. Nafees, 2023(4) ADJ 305	137
31.	Muhammed v. United India Insurance Co. Ltd. and others, 2023 ACJ 894	126
32.	Murari Lal vs. State of U.P., 2023 (123) ACC 130 (All)	120
33.	Narmadi Bai v. Triupati Arolu and others, 2023 ACJ 1207	129
34.	National Insurance Co. Ltd. v. Brijrani and another, 2023 ACJ 1307	131
35.	Naveen Kumar Sharma and another Vs. State of U.P and another, 2023(4) ADJ 693	134
36.	Nizamuddin vs. State of U.P., 2023 (123) ACC 595 (All)	96
37.	Pappu vs. State of U.P., 2023 (123) ACC 868 (All)	97
38.	Pawan Singhania v. State of U.P. 2023 (123) ACC 735(All)	97
39.	Praveen Kumar Mishra v. Dr. Gaurav Mishra and another, 2023 (2) ARC 385.	88
40.	Raja Beti and others v. Ashok Kumar and others, 2023 ACJ 1340	132
41.	Rajveer Singh vs. State of U.P., 2023(5) ADJ 231(DB)	119
42.	Rakesh Kumar (Defendant No. 2/1) and another v. Chhotey Lal and others, 2023 (2) ARC 458	89
43.	Ramesh Duggal alias Pappu v. Pt. Ram Shanker Mishra Trust Chief Office, 2023 (2) ARC 134.	87
44.	Ritu Sethi v. State of NCT. Of Delhi and others, 2023 Cri.L.J.2046 : AIROnline 2023 Del.9	125
45.	Ruchi Mittal vs. State of U.P. and and Ors. (09.01.2023 - ALLHC), 2023(5) ADJ 419	98
46.	Sanjana and others v. Arun Sharma and others, ACJ 2023 1216	130
47.	Sanjay Kumar Modi and another v. Udairaj and another, 2023(2) ARC 330	88
48.	Sanjay Mishra @ Ashu v. Magan Pandey and Another, 2023 (1) ARC 868.	87
49.	Saraf v. State of Chhattisgarh, 2023 Cri.L.J.(NOC) 227 (Chh.) : AIROnline 2023 CHH 138	104
50.	Satya Pal vs. State of U.P., 2023(4) ADJ 345(LB)	100

51.	Savrunisha and Ors. vs. Bhola Nath : 2023 (41) LCD 1000 (All)	94
52.	Sephy v. CBI and other, 2023 Cri.L.J.1210 : AIROnline 2023 Del 28	117
53.	Shefali Kaul vs. State of U.P., 2023 (123) ACC 95 (All)	95
54.	Shyamu and others v. Rashid Ahmad and others, 2023 ACJ 1366	132
55.	Smt. Hasina Khatoon vs. State of U.P., 2023 (123) ACC 795 (All)	117
56.	Smt. Pinki Gautam @ Geeta Devi vs. State of U.P., 2023 (123) ACC 81 (All)	95
57.	Sonal Gupta and another v. United India Insurance Co. Ltd. and another, 2023 ACJ 1013	128
58.	Star Paper Mills Ltd. vs. Smt. Anisa Begum (Dead), 2023 (159) RD 282	92
59.	State of U.P. vs. Deeraj, 2023 (123) ACC 413 (All)	95
60.	Sudhamayee Pattnaik vs. Bibhu Prasad Sahoo, 2023(159) RD 124	91
61.	Suneeta Pandey v. State of U.P., 2023 Cri.L.J. 1822: AIROnline 2023 All. 295	112
62.	Suneeta Pandey vs. State of U.P., 2023 (123) ACC 485 (All)	95
63.	Suresh Sahu and another v. State of Bihar (Now Jharkhand), 2023 Cri.L.J 1624.: AIR Online 2023 JHA 103	109
64.	Union Bank of India vs. Additional District Magistrate, Meerut and Ors. 2023(6) ADJ 264 (DB)	135
65.	Vijay Credit and Supply Co. Op. Society Ltd. v. State of Gujarat, 2023 Cri.L.J. (NOC) 242 (Guj) : AIROnline 2022 GUJ 2703	104
66.	Vijay Kumar and others v. Nanag Ram and others, ACJ 2023 1212	129
67.	Vipin Singh v. State and Another, 2023 Cri.L.J. 1420 : AIROnline 2023 Del 29	103
68.	Virendra and others v. State of U.P., 2023 Cri.L.J. (NOC) 156 (All.): AIR Online 2022 All 704	100
69.	Waseem Khan vs. State of U.P., 2023 (123) ACC 904 (All-LB)	136

PART I – SUPREME COURT

ARBITRATION AND CONCILIATION ACT

It has been held by the Hon'ble Supreme Court that the two clauses in the arbitration agreement must be read together as the courts in Rajasthan were vested with jurisdiction only because the seat of arbitration was to be at Jaipur. However, once the seat of arbitration is replaced by mutual agreement to be at Ahmedabad, the courts at Rajasthan are no longer vested with jurisdiction as exclusive jurisdiction is now vested in the courts at Ahmedabad, given the change in the seat of arbitration. **(Inox Renewables Limited v. Jayesh Electricals Limited, (2023) 3 SCC 733)**

Arbitration and Conciliation Act, 1996 - S. 29-A (as amended w.e.f. 30-8-2019) -Time-limit stipulated for making an arbitral award was held, inapplicable to international commercial arbitral proceedings. Furthermore, the amended S. 29-A (w.e.f. 30-8-2019) being retrospective in nature, it follows that the removal of the mandatory time-limit shall also apply to pending international commercial arbitrations.

It has been held that since S. 29-A(1), as amended, is remedial in nature, it should be applicable to all pending arbitral proceedings as on the effective date i.e. 30-8-2019, which would also mean the removal of the mandatory time-limit re pending international commercial arbitrations. However, the removal of the mandatory time-limit for making an arbitral award in the case of an international commercial arbitration, held, does not confer any rights or liabilities on any party. **(Tata Sons Private Limited (Formerly Tata Sons Limited) v. Siva Industries and Holdings Limited and others, (2023) 5 SCC 421)**

CODE OF CIVIL PROCEDURE

Civil Procedure Code, 1908-Or. 9 R. 13 r/w S. 17 of the Provincial Small Cause Courts Act, 1887-Ex parte eviction decree - Rejection of application on the ground that amount towards further use and occupation of suit shop not deposited.

Suit for recovery of arrears of rent and for ejectment Tenants - immediately after passing of decree depositing amounts quantified in decree -Only compensation for further use, and municipal taxes were not deposited but which tenant was ready to deposit - Ex parte eviction decree was held liable to be set aside. Appellants deserve an opportunity to contest suit on merits. **(Shyam Kumar Gupta and others v. Shubham Jain, (2023) 4 SCC 713)**

Civil Procedure Code, 1908 - Or. 7 Rr. 10 & 11 and Or. 7 R. 13- Applications both under Or. 7 R. 10 for return of plaint, and, for rejection of plaint under Or. 7 R. 11 - Proper mode of disposal - Effect of allowing application under Or. 7 R. 11- Principles clarified.

Civil Procedure Code, 1908-S. 16(d) & proviso thereto, S. 20(c), Or. 7 R. 10 and Or. 2 R. 2(3) Whether suit was for determination of right to or interest in immovable property covered by S. 16(d) - Determination of Scope and applicability of S. 16 proviso - True nature of reliefs sought. Multiple suits pending in respect of the same subject-matter-Attempt by plaintiffs to seek temporary relief in one court, and permanent reliefs in another. Propriety of - Leave granted under Or. 2 R. 2(3) to file suit in respect of some of the reliefs later - Effect if, any on right of defendants to seek return of plaint under Or. 7 R. 10.

Civil Procedure Code, 1908 Ss. 16 to 20, Or. 7 Rr. 10 & 11 and Or. 39- Multiple suits in respect of same subject-matter-Forum shopping - Attempt to seek temporary reliefs in one court and permanent reliefs in another was deprecated. It was held that court should not be a party to practice of allowing a litigant to use one court for purpose of temporary reliefs and another court for permanent reliefs. **(Future Sector Land Developers LLP and another v. Bagmane Developers Private Limited and others, (2023) 5 SCC 368)**

O. VI, R. 2(1) – Pleadings – Cardinal rule-Explained.

Specific Relief Act, 1963, S.5 – Suits seeking decree for possession of suit lands – Claiming right of pre-emption – Suit dismissed holding plaintiff lost the joint status as the co-sharer on the date of passing the judgment and decree – Appeal against dismissed – High Court allowed the appeal against – Legality of – Plaintiff neither pleaded as to how he was the co-sharer nor had impleaded 'x' the owner of the land with whom he claimed to be co-sharer-Right of pre-emption a very weak right and could be defeated by all legitimate methods – Trial Court as well as lower Appellate Court rightly held that the plaintiff did not possess the status of co-sharer on the date of decree and that his right of pre-emption had not survived till the date of passing of the decree in the suits – Impugned order set aside.

The basic and cardinal rule of pleadings contained in Order VI, Rule 2(1) of the Code, according to which every pleading (i.e., plaint or written statement) has to contain a statement in concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be. The pleading need not contain the evidence by which such material facts are to be proved, nonetheless the facts necessary to formulate a complete cause of action i.e., the material facts must be stated. Omission of a singled material fact would lead to an incomplete cause of action. **Jhabbar Singh (Deceased) Through Legal Heirs and others v. Jagtar Singh S/o Darshan Singh, 2023 (1) ARC 812- SC.**

CPC, 1908, O. VII, R. 11(a) & (d) – Rejection of plaint – Application for – On ground suit barred by limitation instituted after 61 years of the execution of partition deed – Application rejected – The plaint ought to have been rejected in exercise of powers under O.VII, R. 9 (a) & (d) of CPC being vexatious, illusory cause of action and barred by limitation – By clever drafting and not asking any relief with respect to the partition deed, the plaintiffs have tried to circumvent the provision of limitation Act and have tried to maintain the suit which is something but abuse of process of Court and law – The application allowed, the plaint rejected. **Ramisetty Venkatanna and another v. Nasyam Jamal Saheb and others, 2023(2) ARC 42 – SC**

CPC, 1908, O. IX, R. 13 read with S. 151 – Provincial Small Cause Courts Act, 1887, S. 17 – Ex parte eviction decree – Application to set aside ex parte decree along with application under S. 17 PSCC Act- Applications rejected, the surety provided by appellants also rejected – Revision against rejected – Writ petition against dismissed holding no application for dispensing with surety was filed, further requirement of S. 17 mandatory and filing of application without furnishing surety and making no prayer for dispensing would be read against the appellants – Legality of – The appellants had not complied with the mandatory requirement of S. 17 mandatory and filing of application without furnishing surety and making no prayer for dispensing would be read against the appellants – Legality of – The appellants had not complied with the mandatory requirement of S. 17 – The Court is expected to pass an order promptly on the application which may be filed under S. 17 which may of the same date as the application under O. IX, R. 13, CPC – The security furnished by the appellants in the form of the rented shop belonging to a third party cannot be accepted as security in law.

Provincial Small Cause Courts Act, 1887, S. 17 – Application to set aside ex parte decree – Duty of Applicant:- (a) He must deposit in the Court, the amount due under the decree; (b) In the alternative, he should give security for the performance of the Decree. **Arti Dixit and another v. Sushil Kumar Mishra and others, 2023 (2) ARC 174-SC**

Order39, Rr. 1, 2—Temporary injunction—Prima facie case—General Council meeting of a political party—Findings by Single Judge of the High Court that prima facie case was in favour of the plaintiff was based on flawed consideration—Order granting interim relief rightly set aside by Division Bench

In Wander Ltd. (supra), a decision strongly relied upon by the learned counsel for the appellants, this Court explained the principle that ordinarily, the

Appellate Court would not be interfering with the exercise of discretion by the Court of first instance and substitute its own discretion except in the cases where discretion was shown to have been exercised arbitrarily, capriciously or perversely or against the settled principles of law. This Court observed and held as under: -

"9. Usually, the prayer for grant of an interlocutory injunction is at a stage when the existence of the legal right asserted by the plaintiff and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence. The court, at this stage, acts on certain well settled principles of administration of this form of interlocutory remedy which is both temporary and discretionary. The object of the interlocutory injunction, it is stated

"...is to protect the plaintiff against injury by violation of his rights for which he could not adequately be compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The need for such protection must be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The court must weigh one need against another and determine where the 'balance of convenience' lies."

The interlocutory remedy is intended to preserve in status quo, the rights of parties which may appear on a prima facie case. The court also, in restraining a defendant from exercising what he considers his legal right but what the plaintiff would like to be prevented, puts into the scales, as a relevant consideration whether the defendant has yet to commence his enterprise or whether he has already been doing so in which latter case considerations somewhat different from those that apply to a case where the defendant is yet to commence his enterprise, are attracted.

***** ***** *****

14. ….. In such appeals, the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. After referring to these principles

Gajendragadkar, J. in Printers (Mysore) Private Ltd. v. Pothan Joseph (1960) 3 SCR 713: (SCR 721)

"... These principles are well established, but as has been observed by Viscount Simon in Charles Osenton & Co. v. Jhanaton: 1942 AC 130 '...the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case'." The appellate judgment does not seem to defer to this principle."

The case of State of Karnataka (supra) essentially related to a suit involving inter-State water disputes and in the referred passage, it was indicated that even when balance of convenience or inconvenience is another requirement but no fixed rules or notions ought to be had in the matter of grant of injunction; and the relief would depend on facts and circumstances of each case with justice of the situation being the guiding factor, in the following terms: -

"168. ….Generally speaking, however, be it noted that the issue of grant of injunction is to be looked at from the point of view as to whether on refusal of the injunction, the plaintiff would suffer irreparable loss of injury keeping in view the strength of the parties' case. Balance of convenience or inconvenience is also another requirement but no fixed rules or notions ought to be had in the matter of grant of injunction and the relief being always flexible depending upon the facts and circumstances of each case. The justice of the situation ought to be the guiding factor ….."

In Surya Nath Singh (supra), this Court held that though the grant of injunction was a matter of discretion, the same must be on settled principles of law to advance the cause of justice; and it is subject to correction by the Appellate Court. This Court said: -

"2. …..Though the grant of injunction is discretionary, the same must be exercised on settled principles of law to advance the cause of justice. It is subject to correction by the appellate court…."

In the case of Dunlop India Ltd. (supra), though expositing in relation to the matters of public revenue, this Court explained the requirements of due consideration of the questions relating to balance of convenience and irreparable injury in the following terms: -

"5. We repeat and deprecate the practice of granting interim order which practically give the principal relief sought in the petition for no better reason than that a prima facie case has been made out, without being concerned about the balance of convenience, the public interest and a host of other relevant considerations. …..…..There are, of course, cases which demand that interim orders should be made in the interests of justice. Where gross violations of the law and injustices are perpetrated or are about to be perpetrated, it is the bounden duty of the

court to intervene and give appropriate interim relief. In cases where denial of interim relief may lead to public mischief, grave irreparable private injury or shake a citizen's faith in the impartiality of public administration, a court may well be justified in granting interim relief against public authority. But since the law presumes that public authorities function properly and bona fide with due regard to the public interest, a court must be circumspect in granting interim orders of far-reaching dimensions or orders causing administrative, burdensome inconvenience or orders preventing collection of public revenue for no better reason than that the parties have come to the court alleging prejudice, inconvenience or harm and that a prima facie case has been shown. There can be and there are no hard and fast rules. But prudence, discretion and circumspection are called for. There are several other vital considerations apart from the existence of a prima facie case. There is the question of balance of convenience. There is the question of irreparable injury. There is the question of the public interest. There are many such factors worthy of consideration…."

In the case of Dalpat Kumar, this Court explained the principles for exercise of judicial discretion in granting or refusing the relief of injunction in the following terms: -

"4. Order 39 Rule 1(c) provides that temporary injunction may be granted where, in any suit, it is proved by the affidavit or otherwise, that the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit, the court may by order grant a temporary injunction to restrain such act or make such other order for the purpose of staying and preventing … or dispossession of the plaintiff or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit as the court thinks fit until the disposal of the suit or until further orders….. Injunction is a judicial process by which a party is required to do or to refrain from doing any particular act. It is in the nature of preventive relief to a litigant to prevent future possible injury. In other words, the court, on exercise of the power of granting ad interim injunction, is to preserve the subject matter of the suit in the status quo for the time being. It is settled law that the grant of injunction is a discretionary relief. The exercise thereof is subject to the court satisfying that (1) there is a serious disputed question to be tried in the suit and that an act, on the facts before the court, there is probability of his being entitled to the relief asked for by the plaintiff/defendant; (2) the court's interference is necessary to protect the party from the species of injury. In other words, irreparable injury or damage would ensue before the legal right would be established at trial; and (3) that the comparative hardship or mischief or inconvenience which is likely to occur from withholding the injunction will be greater than that would be likely to arise from granting it.

5. Therefore, the burden is on the plaintiff by evidence aliunde by affidavit or otherwise that there is "a prima facie case" in his favour which needs adjudication at the trial. The existence of the prima facie right and infraction of the enjoyment of his property or the right is a condition for the grant of temporary injunction. Prima facie case is not to be confused with prima facie title which has to be established, on evidence at the trial. Only prima facie case is a substantial question raised, bona fide, which needs investigation and a decision on merits. Satisfaction that there is a prima facie case by itself is not sufficient to grant injunction. The Court further has to satisfy that non-interference by the Court would result in "irreparable injury" to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one, namely one that cannot be adequately compensated by way of damages. The third condition also is that "the balance of convenience" must be in favour of granting injunction. The Court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties, if the injunction is refused and compare it with that which is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the Court considers that pending the suit, the subject matter should be maintained in status quo, an injunction would be issued. Thus the Court has to exercise its sound judicial discretion in granting or refusing the relief of ad interim injunction pending the suit."

In the case of American Express Bank Ltd. (supra), on the discretion of the Court in grant of declaration and injunction, this Court observed and held in the referred paragraph as under: -

"22. Undoubtedly declaration of the rights or status is one of discretion of the court under Section 34 of the Specific Relief Act, 1963. Equally the grant or refusal of the relief of declaration and injunction under the provision of that Act is discretionary. The plaintiff cannot claim the relief as of right. It has to be granted according to sound principles of law and ex debito justitiae. The court cannot convert itself into an instrument of injustice or vehicle of oppression. While exercising its discretionary power, the court must keep in its mind the well-settled principles of justice and fair play and the discretion would be exercised keeping in view the ends of justice since justice is the hallmark and it cannot be administered in vacuum. Grant of declaration and injunction relating to commercial transactions tend to aid dishonesty and perfidy.

Conversely, refusal to grant relief generally encourages candour in business behaviour, facilitates free flow of capital, prompt compliance with covenants,

sustained growth of commerce and above all inculcates respect for the efficacy of judicial adjudication. Before granting or refusing to grant relief of declaration or injunction or both the court must weigh pros and cons in each case, consider the facts and circumstances in their proper perspective and exercise discretion with circumspection to further the ends of justice. From the backdrop fact-situation we have no hesitation to hold that the relief of declaration granted is unjust and illegal. It tended to impede free flow of capital, thwarted the growth of mercantile business and deflected the course of justice." **[Thiru K. Palaniswamy vs. M. Shanmugam, AIR 2023 SC 1253]**

Civil Procedure Code, 1906 : Order 6 Rule 17 : Amendment in written statement cannot be granted on mere request – Allowing amendment at belated stage will prompt *de novo* trial and hence it is to be allowed in rare circumstances at appellate stage.

Order 22 – Where surviving defendants are jointly defending the suit there shall be no abatement due to non-substitution of all legal heirs of the deceased defendant. When in the event of death of the defendant, his estate was substantially represented in the suit jointly by other defendants; the suit can't be abated on account of non-substitution of all the other legal representatives of the deceased. **Shivshankara vs H.P. Vedavyasa Char: 2023 (41) LCD 1046 (SC)**

CODE OF CRIMINAL PROCEDURE

Criminal Procedure Code, 1973- Ss. 319 and 482 - Summoning of additional accused under S. 319 CrPC - Case of embezzlement of money from bank account of complainant. Application filed under S. 319 CrPC by prosecution for summoning present appellant (Miscellaneous Clerk in State Bank of India) and others as additional accused, was eventually allowed by trial court. **(Meenu Prakash Bhantu v. State of Uttar Pradesh and another, (2023) 5 SCC 386)**

S. 319-Summoning of additional accused-Ingredients, scope and powers bestowed on court under S. 319- Word "evidence" in S. 319-How to be understood and thus materials which have come before court in course of enquiry, how can be used - Power of summoning under S. 319-When to be exercised - How to prevent frequent misuse of power under S. 319. Guidelines that trial court must follow while commencing trial against additional accused.

Ss. 319 and 482-Summoning of additional accused - Case of dowry death - Deceased woman hung herself to death in her matrimonial home-Whether there was sufficient evidence against appellants to summon them as additional accused. Father-

in-law, sister-in-law and brother-in-law of deceased victim, respectively under S. 319 CrPC as additional accused to face trial. **(Juhru and others v. Karim and another, (2023) 5 SCC 406)**

Criminal Procedure Code, 1973-Ss. 313(1)(b) and 313(5) [as inserted in 2009]-Examination of accused - Preparation of relevant questions- Duty of court after insertion of S. 313(5) which enables court to take assistance of Public Prosecutor and defence counsel.

Criminal Procedure Code, 1973- S. 313 - Examination of accused - Absence of satisfactory explanation as to facts within special knowledge of accused-Held, such infirmity can be treated as a factor against him. Further, held, though such factor by itself is not conclusive of guilt, it becomes relevant while considering the totality of the circumstances (Evidence Act, 1872, S. 106).

Ss. 302 or 304 Pt. II and 307 r/w S. 300 Exception 4-Murder or culpable homicide - Non-consideration of written statement of accused under S. 313(5) CrPC, in its entirety-Manner in which S. 313(5) CrPC statement of accused is to be considered.

S. 300 Exception 4 whether applicable in present case - Effect along with applicability of S. 300 Exception 4 Conviction recorded by holding - that the appellant aged 58 yrs committed one murder with a knife and also attempted to commit the murder of three injured at Katol, when he visited Katol from Nagpur, his place of residence, for collecting rent.

S. 302 or 304 Pt. II of IPC - Injury on accused: Absence of investigation by police and the appellant also not pursuing any available remedy to right the wrong. Considering that about a decade having passed since the incident took place, direction to investigate the issue at this distance of time, declined. **(Premchand v. State of Maharashtra, (2023) 5 SCC 522)**

S. 167(2)-Remand to police custody after elapse of the first 15 days from the date of arrest - Whether/When permissible.

Conduct of accused in evading police custody during the said period of the first 15 days or part thereof duly granted in accordance with law - Or, erroneous refusal of court at first instance/court below to grant police custody within the first 15 days of arrest when duly applied in accordance with law. Relevance of grant of remand to police custody after elapse of the said period of 15 days. Attempt of accused to evade remand to police custody altogether Need for vigilance of court there against. **(Central Bureau of Investigation v. Vikas Mishra alias Vikash Mishra, (2023) 6 SCC 49)**

Criminal Procedure Code, 1973- Ss. 197 and 482 - Quashment of complaint on ground of absence of sanction under S. 197 Whether warranted-Nexus test - Application of - Acts allegedly done by accused whether committed while acting or purporting to act in the discharge of official duty.

It has been held that in present case, prima facie, the respondent, a police official without any authority along with other police personnel, entered the house of the appellant early in the morning and committed the offences alleged against them. Resultantly, the acts allegedly done by the respondent, held, not committed by her while acting or purporting to act in the discharge of her official duty-Hence, quashment of complaint against respondent, held, not warranted. **(Dr. S.M. Mansoori (dead) through legal representatives v. Surekha Parmar and others, (2023) 6 SCC 156)**

The issue under consideration in this case was in the context of Sections 167(2), 437(5) and 439(2) r/w Chapter XXXIII in relation to default bail.

It has been held that there is no absolute bar that once a person is released on default bail, his bail cannot be cancelled on merits and his bail can be cancelled on other general grounds like tampering with the evidence/witnesses, not cooperating with the investigating agency and/or not cooperating with trial court concerned, etc.

S. 167(2) proviso - Default bail - The object of proviso and nature of order granting default bail under S. 167(2) fixes the outer limit within which the investigation must be completed and if the same is not completed within the period prescribed therein, the accused is entitled to be released on bail if he is prepared to and does furnish bail. Thus, object of S. 167(2) proviso was held is to impress upon the need for expeditious investigation within the prescribed time-limit and to prevent laxity in that behalf and, therefore, order granting default bail, held, cannot be said to be an order on merits. **(State through Central Bureau of Investigation v. T. Gangi Reddy alias Yerra Gangi Reddy, (2023) 4 SCC 253)**

Sec. 256 CrPC—Case under Negotiable Instruments Act, 1881—Dismissal of complaint for non-appearance of complainant

Where complainant's evidence already recorded and his evidence closed with direction to list matter for recording defence evidence, presence of complainant, in such situation, not necessary. Not appropriate for court to pass an order of acquittal merely for non-appearance of complainant. Relied on the case of S. Anand v. Vasumathi Chandrasekar 2008 (61) ACC 349. Both courts below failed to consider this aspect of matter. Therefore, impugned order set aside. Appeals allowed. **[M/s. BLS Infrastructure Ltd. vs. M/s. Rajwant Singh, 2023 (123) ACC 620 (SC)]**

Secs. 167(2) and 439(2)— Appeal against dismissal of application for cancellation of bail

In the instant case, on the very next day of lapse of 90 days, default bail was allowed. Subsequently, investigation in the crime was entrusted to the C.B.I. First chargesheet was filed by C.B.I. and named A1 to A4. C.B.I. filed petition before High Court under section 439(2) Cr.P.C. for cancellation of bail granted to the respondent-accused No.1. High Court rejected the said petition.

Held: It cannot be said that order of release on bail under provision to section 167(2) Cr.P.C., is an order on merits. An accused is released on bail under provision to section 167(2) Cr.P.C. on the failure of the prosecuting agency. Therefore, the deeming fiction under section 167(2) Cr.P.C. cannot be interpreted to the length of converting the order of bail not on merits as if passed on merits. Held, when special reasons/grounds are being made out from the charge-sheet and the charge-sheet reveals the commission of a non-bailable crime, the bail in favour of a person, who has been released on default bail under section 167(2) Cr.P.C. can be cancelled considering section 437(5) and section 439(2) Cr.P.C. The judgment and order passed by High Court dismissing the application for cancellation of the bail filed by the C.B.I. under section 439(2) Cr.P.C. deserves to be quashed and set aside. Appeal is allowed. **[State through CBI v. T. Gangi Reddy @ Yerra Gangi Reddy 2023 (123) ACC 706 (SC)]**

Secs. 357 and 438 CrPC—The High Court has given direction to pay interim victim compensation in the proceedings for anticipatory bail—Appeal against

The question of interim victim compensation cannot form part of the bail jurisprudence. Victim compensation is simultaneous with the final view taken in respect of the alleged offence, i.e., whether it was so committed or not and, thus, there is no question of any imposition pre-finality of the matter pre-trial to prevent unnecessary harassment, compensation has been provided where meaningless criminal proceedings had been started. Such a compensation can hardly be determined at the stage of grant of bail. Held, condition imposed in the impugned order is quashed in this behalf while maintaining the other aspects of the grant of anticipatory bail. Appeal is allowed. **[Talat Sanvi vs. State of Jharkhand, 2023 (123) ACC 989 (SC)]**

Secs. 482 and 204 CrPC—Dismissal of criminal miscellaneous cases against summoning orders—Appeals against

Trial court after meticulously examining the allegations made in the complaint and the evidence of the complainant and one witness, had taken cognizance, with regard to offences under sections 120-B, 406 and 423 read with 34 of IPC only. It did not take cognizance of the other offences alleged under sections

409, 418, 420, 465, 467 and 468 of IPC which shows proper application of mind by the trial court before issuing the summons to the appellant and others. In the instant cases, all the three Courts below have discussed in detail about the prima facie involvement of the appellant in the alleged offences. Held, no illegality or infirmity in the orders passed by the trial court issuing summons against the appellant for the alleged offences. Appeals were dismissed. **[Cardinal Mar George Alencherry v. State of Kerala 2023 (123) ACC 1003 (SC)]**

Sec. 319—Summoning of additional accused—Challenge against—

The guidelines that the Trial Court must follow, while commencing the trial against Appellant have been extensively iterated by the Constitution Bench in Sukhpal Singh Khaira, (AIR 2023 SC 1), in the following terms:

"41 (III). What are the guidelines that the competent court must follow while exercising power under Section 319 CrPC?

41.1 If the competent court finds evidence or if application under Section 319 of CrPC is filed regarding involvement of any other person in committing the offence based on evidence recorded at any stage in the trial before passing of the order on acquittal or sentence, it shall pause the trial at that stage. 41.2 The Court shall thereupon first decide the need or otherwise to summon the additional accused and pass orders thereon.

41.3 If the decision of the court is to exercise the power under Section 319 of CrPC and summon the accused, such summoning order shall be passed before proceeding further with the trial in the main case. 41.4 If the summoning order of additional accused is passed, depending on the stage at which it is passed, the Court shall also apply its mind to the fact as to whether such summoned accused is to be tried along with the other accused or separately.

41.5 If the decision is for joint trial, the fresh trial shall be commenced only after securing the presence of the summoned accused.

41.6 If the decision is that the summoned accused can be tried separately, on such order being made, there will be no impediment for the Court to continue and conclude the trial against the accused who were being proceeded with." **[Juhru vs. Karim, AIR 2023 SC 1160]**

Secs. 389—Suspension of sentence and grant of bail—Factors to be considered by Court—Discussed

Section 389 of the CrPC reads thus:

"389. Suspension of sentence pending the appeal; release of appellant on bail.—(1) Pending any appeal by a convicted person, the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or

order appealed against be suspended and, also, if he is in confinement, that he be released on bail, or on his own bond.

Provided that the Appellate Court shall, before releasing on bail or on his own bond a convicted person who is convicted of an offence punishable with death or imprisonment for life or imprisonment for a term of not less than ten years, shall give opportunity to the Public Prosecutor for showing cause in writing against such release:

Provided further that in cases where a convicted person is released on bail it shall be open to the Public Prosecutor to file an application for the cancellation of the bail.

(2) The power conferred by this section on an Appellate Court may be exercised also by the High Court in the case of an appeal by a convicted person to a Court subordinate thereto.

(3) Where the convicted person satisfies the Court by which he is convicted that he intends to present an appeal, the Court shall,—

(i) where such person, being on bail, is sentenced to imprisonment for a term not exceeding three years, or

(ii) where the offence of which such person has been convicted is a bailable one, and he is on bail, order that the convicted person be released on bail, unless there are special reasons for refusing bail, for such period as will afford sufficient time to present the appeal and obtain the orders of the Appellate Court under sub-section (1), and the sentence of imprisonment shall, so long as he is so released on bail, be deemed to be suspended.

(4) the appellant is ultimately sentenced to imprisonment for a term or to imprisonment for life, the time during which he is so released shall be excluded in computing the term for which he is so sentenced."

Suspension conveys postponement or temporarily preventing a state of affairs from continuing. According to the Black's Law Dictionary (Seventh Edition), the word 'suspend' means, inter alia, to interrupt; postpone; defer. Black's Law Dictionary (Seventh Edition) describes the word 'suspension' to mean, inter alia, an act of temporarily delaying, interrupting or terminating something. Attributing the same meaning to the word 'suspend' as pointed out above, the New Oxford Dictionary of English (1998 Edition) describes suspend as temporarily preventing from continuing or being enforced or given effect or defer or delay an action, event or judgment.

Thus, when we speak of suspension of sentence after conviction, the idea is to defer or postpone the execution of the sentence. The purpose of postponement of sentence cannot be achieved by detaining the convict in jail; hence, as a natural consequence of postponement of execution, the convict may be enlarged on bail till further orders.

The principle underlying the theory of criminal jurisprudence in our country is that an accused is presumed to be innocent till he is held guilty by a court of the competent jurisdiction. Once the accused is held guilty, the presumption of innocence gets erased. In the same manner, if the accused is acquitted, then the presumption of innocence gets further fortified.

From perusal of Section 389 of the CrPC, it is evident that save and except the matter falling under the category of sub-section 3 neither any specific principle of law is laid down nor any criteria has been fixed for consideration of the prayer of the convict and further, having a judgment of conviction erasing the presumption leaning in favour of the accused regarding innocence till contrary recorded by the court of the competent jurisdiction, and in the aforesaid background, there happens to be a fine distinction between the prayer for bail at the pre-conviction as well as the post-conviction stage, viz Sections 437, 438, 439 and 389(1) of the CrPC.

In Rajesh Ranjan Yadav alias Pappu Yadav v. CBI, reported in (2007) 1 SCC 70, it has been held under paras 8, 9 and 10 respectively, which are as follows:

8. Learned counsel for the appellant then relied on the decision of this Court in Kashmira Singh v. State of Punjab [(1977) 4 SCC 291:1977 SCC (Cri) 559] . In para 2 of the said decision it was observed as under : (SCC pp. 292-93)

"It would indeed be a travesty of justice to keep a person in jail for a period of five or six years for an offence which is ultimately found not to have been committed by him. Can the Court ever compensate him for his incarceration which is found to be unjustified? Would it be just at all for the Court to tell a person: 'We have admitted your appeal because we think you have a prima facie case, but unfortunately we have no time to hear your appeal for quite a few years and, therefore, until we hear your appeal, you must remain in jail, even though you may be innocent?' What confidence would such administration of justice inspire in the mind of the public? It may quite conceivably happen, and it has in fact happened in a few cases in this Court, that a person may serve out his full term of imprisonment before his appeal is taken up for hearing. Would a Judge not be overwhelmed with a feeling of contrition while acquitting such a person after hearing the appeal? Would it not be an affront to his sense of justice? Of what avail would the acquittal be to such a person who has already served out his term of imprisonment or at any rate a major part of it? It is, therefore, absolutely essential that the practice which this Court has been following in the past must be reconsidered and so long as this Court is not in a position to hear the appeal of an accused within a reasonable period of time, the Court should ordinarily, unless there are cogent grounds for acting otherwise, release the accused on bail in cases where special leave has been granted to the accused to appeal against his conviction and sentence."

Learned counsel for the appellant then relied on the decision of this Court in Bhagirathsinh v. State of Gujarat [(1984) 1 SCC 284 : 1984 SCC (Cri) 63]

, Shaheen Welfare Assn. v. Union of India [(1996) 2 SCC 616 : 1996 SCC (Cri) 366] , Joginder Kumar v. State of U.P. [(1994) 4 SCC 260 : 1994 SCC (Cri) 1172] , etc.

10. In our opinion none of the aforesaid decisions can be said to have laid down any absolute and unconditional rule about when bail should be granted by the Court and when it should not. It all depends on the facts and circumstances of each case and it cannot be said there is any absolute rule that because a long period of imprisonment has expired bail must necessarily be granted."

This Court, in the case of Ash Mohammad v. Shiv Raj Singh alias Lalla Babu and Another, reported in (2012) 9 SCC 446, has observed in para 30, as follows:

"30. We may usefully state that when the citizens are scared to lead a peaceful life and this kind of offences usher in an impediment in establishment of orderly society, the duty of the court becomes more pronounced and the burden is heavy. There should have been proper analysis of the criminal antecedents. Needless to say, imposition of conditions is subsequent to the order admitting an accused to bail. The question should be posed whether the accused deserves to be enlarged on bail or not and only thereafter issue of imposing conditions would arise. We do not deny for a moment that period of custody is a relevant factor but simultaneously the totality of circumstances and the criminal antecedents are also to be weighed. They are to be weighed in the scale of collective cry and desire. The societal concern has to be kept in view in juxtaposition of individual liberty. Regard being had to the said parameter we are inclined to think that the social concern in the case at hand deserves to be given priority over lifting the restriction on liberty of the accused."

In Bhagwan Rama Shinde Gosai and Others v. State of Gujarat, reported in (1999) 4 SCC 421, wherein the appellants were convicted by the Trial Court against which, the appeal was pending before the High Court, the High Court successively rejected the prayer for grant of bail till the pendency of appeal after suspending the sentence. Thus, it has been held as follows:

"3. When a convicted person is sentenced to a fixed period of sentence and when he files an appeal under any statutory right, suspension of sentence can be considered by the appellate court liberally unless there are exceptional circumstances. Of course, if there is any statutory restriction against suspension of sentence it is a different matter. Similarly, when the sentence is life imprisonment the consideration for suspension of sentence could be of a different approach. But if for any reason the sentence of a limited duration cannot be suspended every endeavour should be made to dispose of the appeal on merits more so when a motion for expeditious hearing of the appeal is made in such cases. Otherwise the very valuable right of appeal would be an exercise in futility by efflux of time. When the appellate court finds that due to practical reasons such appeals cannot be disposed of expeditiously the appellate court must bestow upon special concern in the matter of

suspending the sentence so as to make the appeal right, meaningful and effective. Of course, appellate courts can impose similar conditions when bail is granted."

In Sidhartha Vashisht alias Manu Sharma v. State (NCT of Delhi), reported in (2008) 5 SCC 230 (popularly known as the Jessica Lal murder case), this Court had the occasion to consider the rival submissions as well as various judicial pronouncements referred to by both the sides over the prayer for bail.

Thus, it has been held as follows:

"19. We are conscious and mindful that the main matter (appeal) is admitted and is pending for final hearing. Observations on merits, one way or the other, therefore, are likely to prejudice one or the other party to the appeal. We are hence not entering into the correctness or otherwise of the evidence on record. It, however, cannot be overlooked that as on today, the applicant has been found guilty and convicted by a competent criminal court. Initial presumption of innocence in favour of the accused, therefore, is no more available to the applicant.

xxx xxx xxx

30. ….In the above cases, it has been observed that once a person has been convicted, normally, an appellate court will proceed on the basis that such person is guilty. It is no doubt true that even thereafter, it is open to the appellate court to suspend the sentence in a given case by recording reasons. But it is well settled, as observed in Vijay Kumar [(2002) 9 SCC 364 : 2003 SCC (Cri) 1195 : JT 2002 Supp (1) SC 60] that in considering the prayer for bail in a case involving a serious offence like murder punishable under Section 302 IPC, the Court should consider all the relevant factors like the nature of accusation made against the accused, the manner in which the crime is alleged to have been committed, the gravity of the offence, the desirability of releasing the accused on bail after he has been convicted for committing serious offence of murder, etc. It has also been observed in some of the cases that normal practice in such cases is not to suspend the sentence and it is only in exceptional cases that the benefit of suspension of sentence can be granted.

In Hasmat [(2004) 6 SCC 175 : 2004 SCC (Cri) 1757 : JT (2004) 6 SC 6] , this Court stated : (SCC p. 176, para 6)

"6. Section 389 of the Code deals with suspension of execution of sentence pending the appeal and release of the applicant on bail. There is a distinction between bail and suspension of sentence. One of the essential ingredients of Section 389 is the requirement for the appellate court to record reasons in writing for ordering suspension of execution of the sentence or order appealed. If he is in confinement, the said court can direct that he be released on bail or on his own bond. The requirement of recording reasons in writing clearly indicates that there has to be careful consideration of the relevant aspects and the order directing suspension of sentence and grant of bail should not be passed as a matter of routine."

32. The mere fact that during the period of trial, the accused was on bail and there was no misuse of liberty, does not per se warrant suspension of execution of sentence and grant of bail. What is really necessary is to consider whether reasons exist to suspend execution of the sentence and grant of bail."

In the case of Atul Tripathi v. State of Uttar Pradesh and Others, reported in (2014) 9 SCC 177, whereunder apart from identifying the differences of consideration of prayer for grant of bail relating to pre-conviction stage as well as post-conviction stage, it has been held in para 14 which is as follows:

"14. Service of a copy of the appeal and application for bail on the Public Prosecutor by the appellant will not satisfy the requirement of the first provision to Section 389(1) CrPC. The appellate court may even without hearing the Public Prosecutor, decline to grant bail. However, in case the appellate court is inclined to consider the release of the convict on bail, the Public Prosecutor shall be granted an opportunity to show cause in writing as to why the appellant be not released on bail. Such a stringent provision is introduced only to ensure that the court is apprised of all the relevant factors so that the court may consider whether it is an appropriate case for release having regard to the manner in which the crime is committed, gravity of the offence, age, criminal antecedents of the convict, impact on public confidence in the justice-delivery system, etc. ….."

In Kishori Lal v. Rupa and Others, reported in (2004) 7 SCC 638, this Court has indicated the factors that require to be considered by the courts while granting benefit under Section 389 of the CrPC in cases involving serious offences like murder etc. Thus, it is useful to refer to the observations made therein, which are as follows:

"4. Section 389 of the Code deals with suspension of execution of sentence pending the appeal and release of the appellant on bail. There is a distinction between bail and suspension of sentence. One of the essential ingredients of Section 389 is the requirement for the appellate court to record reasons in writing for ordering suspension of execution of the sentence or order appealed against. If he is in confinement, the said court can direct that he be released on bail or on his own bond. The requirement of recording reasons in writing clearly indicates that there has to be careful consideration of the relevant aspects and the order directing suspension of sentence and grant of bail should not be passed as a matter of routine.

5. The appellate court is duty-bound to objectively assess the matter and to record reasons for the conclusion that the case warrants suspension of execution of sentence and grant of bail. In the instant case, the only factor which seems to have weighed with the High Court for directing suspension of sentence and grant of bail is the absence of allegation of misuse of liberty during the earlier period when the accused-respondents were on bail.

6. The mere fact that during the trial, they were granted bail and there was no allegation of misuse of liberty, is really not of much significance. The effect of bail granted during trial loses significance when on completion of trial, the accused persons have been found guilty. The mere fact that during the period when the accused persons were on bail during trial there was no misuse of liberties, does not per se warrant suspension of execution of sentence and grant of bail. What really was necessary to be considered by the High Court is whether reasons existed to suspend the execution of sentence and thereafter grant bail. The High Court does not seem to have kept the correct principle in view."

In Vijay Kumar v. Narendra and Others reported in (2002) 9 SCC 364 and Ramji Prasad v. Rattan Kumar Jaiswal and Another reported in (2002) 9 SCC 366, it was held by this Court that in cases involving conviction under Section 302 of the IPC, it is only in exceptional cases that the benefit of suspension of sentence can be granted. In Vijay Kumar (supra), it was held that in considering the prayer for bail in a case involving a serious offence like murder punishable under Section 302 of the IPC, the court should consider the relevant factors like the nature of accusation made against the accused, the manner in which the crime is alleged to have been committed, the gravity of the offence, and the desirability of releasing the accused on bail after they have been convicted for committing the serious offence of murder.

The aforesaid view is reiterated by this Court in the case of Vasant Tukaram Pawar v. State of Maharashtra reported in (2005) 5 SCC 281 and Gomti v. Thakurdas and Others reported in (2007) 11 SCC 160.

Bearing in mind the aforesaid principles of law, the endeavour on the part of the Court, therefore, should be to see as to whether the case presented by the prosecution and accepted by the Trial Court can be said to be a case in which, ultimately the convict stands for fair chances of acquittal. If the answer to the above said question is to be in the affirmative, as a necessary corollary, we shall have to say that, if ultimately the convict appears to be entitled to have an acquittal at the hands of this Court, he should not be kept behind the bars for a pretty long time till the conclusion of the appeal, which usually take very long for decision and disposal. However, while undertaking the exercise to ascertain whether the convict has fair chances of acquittal, what is to be looked into is something palpable. To put it in other words, something which is very apparent or gross on the face of the record, on the basis of which, the Court can arrive at a prima facie satisfaction that the conviction may not be sustainable. The Appellate Court should not reappreciate the evidence at the stage of Section 389 of the CrPC and try to pick up few lacunas or loopholes here or there in the case of the prosecution. Such would not be a correct approach. **[Omprakash Sahni vs. Jai Shankar Chaudhary, AIR 2023 SC 2202]**

CONSTITUTION OF INDIA

It has been held that the interpretation of constitutional provisions relating to fundamental rights should be based on well - established principles and not by reading additional restrictions into Article 19(2) as the restrictions are already exhaustive. Hon'ble Supreme Court also explained the meaning and objects of right to freedom and speech and traced its genesis. The rationale of correlative duties and objectives behind restrictions under Article 19(2) were elucidated. The issued relating right to circulate, right to dissent, right to advertise (commercial speech), compelled speech, hate speech were also elucidated by the Hon'ble Court. **(Kaushal Kishor v. State of Uttar Pradesh and others, (2023) 4 SCC 1)**

Art. 32 - Alternative remedy/Exhaustion of remedies - Challenge to State Notification, as in the present case Notification dated 19-1-2023 issued by State of Maharashtra Non- maintainability of -No challenge was made before High Court to the Notification dated 19-1-2023, however, two petitions were instituted before Supreme Court under Art. 32 for the purpose of challenging the notification of the State Government Declining to entertain the challenge to Notification dated 19-1-2023 of the Home Department of the State Government in proceedings under Art. 32, held, the petitioners would be at liberty to pursue the alternate remedy under Art. 226 before High Court. **(Roppen Transportation Services Private Limited v. Union of India and others, (2023) 4 SCC 349)**

Constitution of India - Arts. 226, 30 and 19(1)(g)- of writ petition against private person or body Requisites for - Public duty/function/element test. Nuanced applicability of- Nexus test - Laid down Action impugned before writ court.

Held, if action impugned before writ court has no nexus with public element, even though the private body in question may be discharging public function, held, writ jurisdiction cannot be invoked in such a case. Writ petition against private unaided minority educational institution challenging termination order by employee is not maintainable since no public law element was involved in such action. Power of judicial review under Art. 226 can be exercised even if body against which action is sought is not "State" or instrumentality of "State" provided there is public element in action complained of. For ascertaining public duty/function/element, it must be established that body or person was seeking to achieve relief for collective benefit of public and had authority to do so.

Right originating from private law cannot be enforced taking aid of writ jurisdiction irrespective of fact that such institution is discharging public duties and/or public functions. Scope of mandamus is limited to enforcement of public duty. Terms of contract should not be construed to be inseparable part of obligation

to impart education, particularly in respect of disciplinary proceedings that may be initiated against employee.

Constitution of India Arts. 226, 30 and 19(1)(g)- Maintainability of writ petition against private person or body. Requisites for Fact that body in question is subject to regulatory power of the State, or, even that action impugned before writ court is subject to regulatory control of the State was held not sufficient by themselves to make proceedings amenable to writ jurisdiction. It is only if the action impugned before the writ court itself involves or has nexus with public duty/function/element, will writ jurisdiction be attracted.

It has been held, CBSE is not a statutory body, nor regulations framed by it have any statutory force- Mere fact that Board grants recognition to institutions on certain terms and conditions itself does not confer any enforceable right on any person against Management Committee Where any employee of private unaided institution challenges action of Management Committee for violation of terms of contract or rules of affiliation Bye-Laws, appropriate remedy would be to approach CBSE or seek alternative legal remedy.

Further held, fact that school is affiliated to CBSE inconsequential in regard to maintainability of writ petition against it, since such affiliation was only for purpose of recognition, syllabus, courses of study and provisions of the 2009 Act and the Rules framed thereunder. Besides, CBSE is only a registered society and school affiliated to it is not creation of statute and hence not a statutory body. **(St. Mary's Education Society and another v. Rajendra Prasad Bhargava and others, (2023) 4 SCC 498)**

Constitution of India Art. 226-Maintainability of writ petition - Petition against private unaided educational institution. It has been held that a writ under Art. 226 against a private educational institute would be justified only if a public law element is involved. If it is only a private law remedy, no writ petition would lie. In the present cases, there is no question of public law element involved inasmuch as the grievances of the appellants are of personal nature. **(S.K. Varshney v. Principal, Our Lady of Fatima Higher Secondary School and others, (2023) 4 SCC 539)**

Equation of "morality" with constitutional morality, and the meaning of constitutional morality as enunciated in Sabarimala Temple-5 J., (2019) 11 SCC 1, summarized.

Articles 25 and 26 of the Constitution of India - Essential religious practices. It is only those essential religious practices which conform to constitutional values that warrant constitutional protection. Safeguarding of such essential religious practices alone is the duty of Courts. Essential religious practices or beliefs that detract from fundamental values cannot claim legitimacy. **(Central Board of**

Dawoodi Bohra Community and another v. State of Maharashtra and another, (2023) 4 SCC 541)

Constitution of India -Arts. 124(2), 217(1), 222(1), 216, 141, 136 and 226 Collegium System of appointment of Judges -Transparency in - Publication of final decision of Collegium on the Supreme Court's website as per Resolution dt. 3-10-2017. It has been held that only final decisions have to be uploaded on Supreme Court's website. **(Anjali Bhardwaj v. CPIO, Supreme Court of India (RTI Cell), (2023) 4 SCC 784)**

Constitution of India - Arts. 15(6) and 16(6)- Economic Disabilities or Economic Backwardness Criterion - Economic disabilities or economic backwardness was held (per majority), a valid criterion for reservation or compensatory discrimination. Equality clause in the Constitution is not merely about formal equality but embodies the concept of real and substantive equality.

Any civilised jurisdiction differentiates between haves and have-nots, in several walks of life and more particularly, for the purpose of differential treatment by way of affirmative action. Poverty, the disadvantageous condition due to want of financial resources, is a phenomenon which is complex in origin as well as in its manifestation. Deprivations arising from economic disadvantages are required to be addressed by the State, to achieve the goals of an egalitarian society and social, economic and political justice.

Constitution of India-Arts. 15(6) & 16(6) and Arts. 46, 38, 39, Pts. III, IV and Preamble-Distributive justice-The submission that Art. 46 cannot be invoked for reservation in favour of any economically weaker section that is not carrying other attributes which could place it on a par with, or akin to, SCS/STs, held (per majority), is based on a too narrow and unacceptably restricted reading of the text of Art. 46 while totally missing on its texture and suffers from following shortcomings.

Constitution of India Arts. 15(6) and 16(6) Reservation for economically weaker sections under Exclusion of classes covered by - Arts. 15(4), 15(5) and 16(4), even if they comprise poor persons, held (per majority), does not destroy the basic structure of the Constitution-Exclusion herein does not violate the equality code or damage the basic structure of the Constitution. Said exclusion balances the requirements of non- discrimination and compensatory discrimination. The 103rd Constitution -- Amendment cannot be said to breach the basic structure of the Constitution in excluding the SEBCS/OBCs/SCS/STs from the scope of EWS reservation. Said exclusion is a form of compensatory discrimination and not direct discrimination. Transforming the reservation policy towards an egalitarian, casteless and classless society

Constitution of India Arts. 15(4) and 16(4)-Whether categories in Arts. 15(4) and 16(4) are different despite legal distinction drawn by the Court between the "backward classes" referred to in Art. 16(4) and "socially and educationally backward classes" referred to in Art. 15(4) of the Constitution, in the practice which has developed over a period of time, such distinction has been virtually obliterated

Constitution of India Arts, 16(1) and 16(4) Art. 16(4), whether exhaustive of the concept of reservation, Art. 16(4) itself is not exhaustive of the concept of reservation Art. 16(1) itself, of course, in very exceptional situations and not for all and sundry reasons, permits reservation.

Constitution of India. Arts. 14 to 16 - Right to equality - Right to equal concern and right against discrimination. Not right to identical treatment. Hence, a classification may be tested on the ground of whether it is based on any prejudice, contempt or insult to any class or person. Meaning and interpretation Words "other than" in Arts. 15(6) and 16(6), held (per curiam), cannot be read as "in addition to" so as to include SCS/STS/OBCs within EWS The suggested construction is plainly against the direct meaning of the exclusionary expression "other than" as employed in, and for the purpose of, Arts. 15(6) and 16(6) - Even otherwise, the official Hindi translation of the amendment clarifies the said position

Critical role of fraternity in ensuring unity of the nation. Its central position in the constitutional scheme and its intricate connection with justice, liberty, equality and dignity of the individual discussed in detail. 50% ceiling re reservation laid down by the Supreme Court in decisions preceding the insertion of Arts. 15(6) and 16(6)- Applicability of the said ceiling-Basic structure of the Constitution, and the said ceiling - Whether violated by Arts. 15(6) and 16(6)

Constitution of India. Arts. 15(6) and 16(6) Reservation for economically weaker sections (EWS) being person specific while existing reservations being class-specific. Whether can be a ground to invalidate constitutional amendment inserting Arts. 15(6) and 16(6). Held (per majority), arguments that while the existing reservations are class- specific, the impugned reservation is person-specific, not tenable as the limited permissible challenge to the impugned Amendment is on the question of the destruction of basic structure.

Constitution of India - Art. 15(6) and Arts. 19(1)(g) & (6) and 14 Reservation for economically weaker sections (EWS) Enabling State to make reservation in admissions to private unaided educational institutions - Whether violates basic structure Held (per majority), the 103rd Constitution Amendment cannot be said to breach the basic structure of the Constitution by permitting the State to make special provisions in relation to admission to private unaided institutions.

Constitution of India Art. 368 and Pt. III Amending power -Amendment of fundamental rights-New enabling provisions providing reservation for economically weaker sections (EWS) excluding backward classes or castes already getting

reservation. Scope, grounds, approach of judicial review to determine said validity. Constitution of India Art. 368 and Pt. III Basic features or structure of the Constitution-Extent to which fundamental rights constitute basic structure.

Constitution of India Art. 368 - Basic features or structure of the Constitution Whether a basic feature of the Constitution has been destroyed or materially altered. In respect of application of the Doctrine of Basic Structure, no cut-and-dried formula or ready-made answer can be provided, however, the material factors and tests for appropriate determination elucidated Constitutional amendment to give effect to international conventions Manner of construction. Constitutional amendment to give to international conventions, have to be broadly construed. They may be read as part of the domestic law as long as there is no inconsistency in Laws (including constitutional amendment) enacted to give effect to international convention must be broadly construed and cannot be struck down for askance.

Constitution of India - Art. 368- Amending power - Living tree doctrine or the doctrine of progressive interpretation and the Doctrine of Basic Structure - Meaning and method of identifying basic structure of the Constitution explained. Amending power constitutional provision is amendable or not- Three different standards (i) Minimal Effect Standard is the most stringent standard of the judicial review of amendments -(ii) Disproportionate Violation Standard is the intermediate standard of review-(iii) Fundamental Abandonment Standard is the lowest level of scrutiny.

Constitution of India-Art. 368- Basic features or structure of the Constitution-Basic structure of Constitution in India- The balance of the two rival philosophies-One favouring the complete sanctity of fundamental rights while the other supporting the complete flexibility of the Constitution, discussed. Exercise of constituent power under Nature, Scope and limitations or safeguards - Power of judicial - review vis-à-vis constituent power of Parliament under Art. 368 to amend the Constitution. **(Janhit Abhiyan v. Union of India (EWS Reservation), (2023) 5 SCC 1)**

Arts. 32, 226, 19(1)(a) and 50- Where statutory - provision in question pertains to legislative policy, without involving violation of Pt. III or absence of legislative competence, the Court cannot interfere.

Writ petition challenging constitutional validity of S. 33(7) of Representation of the People Act, 1951 and seeking direction to Central Government and Election Commission of India to take steps to restrict contesting election for same office from more than one constituency simultaneously, instead of more than two constituencies as provided under amended S. 33(7). It has been held that matter pertains to legislative policy alleged - violation of Art. 19(1)(a) by the statutory provision is not

made out. Hence relief sought cannot be granted. **(Ashwini Kumar Upadhyay v. Union of India and another, (2023) 5 SCC 668)**

Articles 32, 14, 19 and 21 of the Constitution of India - Maintainability-Principle of ex debito justitiae vis-à-vis the principle of finality of issues in collateral proceedings - Prima facie error of Court in earlier collateral proceedings [that is in Jayantilal N. Mistry, (2016) 3 SCC 525] in not balancing and considering the fundamental right to privacy while delivering judgment on right to information, thereby enabling RBI to seek confidential and sensitive information pertaining to petitioner banks and their customers. Without expressing any final opinion on Jayantilal N. Mistry case, but based on prima facie findings and applying the principle of ex debito justitiae against the plea of finality of issues, preliminary objection as to maintainability was rejected. **(HDFC Bank Limited and others v. Union of India and others, (2023) 5 SCC 627)**

Administrative Law - Natural Justice - Generally-Nature, Scope and Applicability Reporting of criminal offence/Registration of FIR Inapplicability of principles of natural justice or rule of audi alteram partem Reiterated. (S. 154 Cr.P.C.)

Constitution of India - Art. 14 - Non-arbitrariness, reasonableness and fairness in administrative action and exercise of discretionary power Duty of administrative authorities to act fairly and without being discriminatory. Validity of administrative action - Natural justice principles, and particularly the rule of audi alteram partem, as being inherent and integral part of guarantee contained in Art. 14. **(State Bank of India and others v. Rajesh Agarwal and others, (2023) 6 SCC 1)**

Art. 136—Penal Code, 1860, Sec. 302—Appeal by Special leave—Concurrent findings of conviction—Scope of interference

This Court explained the reasons including that a witness cannot be expected to possess a photographic memory; a witness is likely to be overtaken by events particularly of unanticipated occurrence; the powers of observation differ from person to person; by and large people cannot accurately recall the conversations or the sequence of events; and a witness howsoever truthful is liable to be overawed by the Court atmosphere and piercing cross- examination etc. The following passage from this decision could be usefully extracted thus: -

"5……Their evidence has been considered to be worthy of acceptance. It is a pure finding of fact recorded by the Sessions Court and affirmed by the High Court. Such a concurrent finding of fact cannot be reopened in an appeal by special leave unless it is established : (1) that the finding is based on no evidence or (2) that the finding is perverse, it being such as no reasonable person could have arrived at even

if the evidence was taken at its face value or (3) the finding is based and built on inadmissible evidence, which evidence, if excluded from vision, would negate the prosecution case or substantially discredit or impair it or (4) some vital piece of evidence which would tilt the balance in favour of the convict has been overlooked, disregarded, or wrongly discarded. The present is not a case of such a nature. The finding of guilt recorded by the Sessions Court as affirmed by the High Court has been challenged mainly on the basis of minor discrepancies in the evidence. We do not consider it appropriate or permissible to enter upon a reappraisal or reappreciation of the evidence in the context of the minor discrepancies painstakingly highlighted by learned Counsel for the appellant. Overmuch importance cannot be attached to minor discrepancies. The reasons are obvious:

"(1) By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen.

(2) Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprised. The mental faculties therefore cannot be expected to be attuned to absorb the details.

(3) The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind, whereas it might go unnoticed on the part of another.

(4) By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape-recorder.

(5) In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guess-work on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time-sense of individuals which varies from person to person.

(6) Ordinarily a witness cannot be expected to recall accurately the sequence of events which takes place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on.

(7) A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross-examination made by counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. The sub-conscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the

occurrence witnessed by him — Perhaps it is a sort of a psychological defence mechanism activated on the spur of the moment."

12.4. In the case of Gangadhar Behera (supra), this Court again highlighted that the normal discrepancies in evidence are of natural occurrence in the Court, while observing as under: -

"15. Normal discrepancies in evidence are those which are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence and those are always there however honest and truthful a witness may be. Material discrepancies are those which are not normal, and not expected of a normal person. Courts have to label the category to which a discrepancy may be categorized. While normal discrepancies do not corrode the credibility of a party's case, material discrepancies do so. These aspects were highlighted recently in Krishna Mochi v. State of Bihar [(2002) 6 SCC 81] ….."

12.5. As regards the approach towards the appreciation of the evidence of closely related witnesses, in the case of Gangabhavani (supra), this Court has explained the principles as follows: -

"15…..It is a settled legal proposition that the evidence of closely related witnesses is required to be carefully scrutinised and appreciated before any conclusion is made to rest upon it, regarding the convict/accused in a given case. Thus, the evidence cannot be disbelieved merely on the ground that the witnesses are related to each other or to the deceased. In the case the evidence has a ring of truth to it, is cogent, credible and trustworthy, it can, and certainly should, be relied upon. (Vide Bhagaloo Lodh v. State of U.P.) [(2011) 13 SCC 206]"

12.6. In the case of Ramnaresh (supra), this Court has, though recognised the right of the accused to maintain silence during investigation as also before the Court in the examination under Section 313 CrPC but, at the same time, has also highlighted the consequences of maintaining silence and not availing opportunity to explain the circumstances appearing against him, including that of the permissibility to draw adverse inference in accordance with law. This Court observed and held as under: -

"49. In terms of Section 313 CrPC, the accused has the freedom to maintain silence during the investigation as well as before the court. The accused may choose to maintain silence or complete denial even when his statement under Section 313 CrPC is being recorded, of course, the court would be entitled to draw an inference, including adverse inference, as may be permissible to it in accordance with law.

* * * * *

52. It is a settled principle of law that the obligation to put material evidence to the accused under Section 313 CrPC is upon the court. One of the main objects of recording of a statement under this provision of CrPC is to give an opportunity to the

accused to explain the circumstances appearing against him as well as to put forward his defence, if the accused so desires. But once he does not avail this opportunity, then consequences in law must follow. Where the accused takes benefit of this opportunity, then his statement made under Section 313 CrPC, insofar as it supports the case of the prosecution, can be used against him for rendering conviction. Even under the latter, he faces the consequences in law."

12.7. The principles enunciated by this Court in regard to the obligation of explanation in terms of Section 106 of the Evidence Act and the consequences of want of explanation have been explained by this Court in the case of Satpal (supra) as follows: -

"6. We have considered the respective submissions and the evidence on record. There is no eyewitness to the occurrence but only circumstances coupled with the fact of the deceased having been last seen with the appellant. Criminal jurisprudence and the plethora of judicial precedents leave little room for reconsideration of the basic principles for invocation of the last seen theory as a facet of circumstantial evidence. Succinctly stated, it may be a weak kind of evidence by itself to found conviction upon the same singularly. But when it is coupled with other circumstances such as the time when the deceased was last seen with the accused, and the recovery of the corpse being in very close proximity of time, the accused owes an explanation under Section 106 of the Evidence Act with regard to the circumstances under which death may have taken place. If the accused offers no explanation, or furnishes a wrong explanation, absconds, motive is established, and there is corroborative evidence available inter alia in the form of recovery or otherwise forming a chain of circumstances leading to the only inference for guilt of the accused, incompatible with any possible hypothesis of innocence, conviction can be based on the same. If there be any doubt or break in the link of chain of circumstances, the benefit of doubt must go to the accused. Each case will therefore have to be examined on its own facts for invocation of the doctrine."

12.8. In Satye Singh and Anr. v. State of Uttarakhand: (2022) 5 SCC 438, where the prosecution failed to prove the basic facts as against the accused, this Court emphasised that Section 106 of the Evidence Act does not relieve the prosecution of its primary duty to prove the guilt of the accused as follows: -

"19. …the Court is of the opinion that the prosecution had miserably failed to prove the entire chain of circumstances which would unerringly conclude that alleged act was committed by the accused only and none else. Reliance placed by learned advocate Mr. Mishra for the State on Section 106 of the Evidence Act is also misplaced, inasmuch as Section 106 is not intended to relieve the prosecution from discharging its duty to prove the guilt of the accused…."

12.9. Apart from the above, we may also usefully take note of the decision of this Court in the case of Sabitri Samantaray v. State of Odisha: 2022 SCC OnLine

SC 673. In that case based on circumstantial evidence, with reference to Section 106 of the Evidence Act, a 3-Judge Bench of this Court has noted that if the accused had a different intention, the facts are specially within his knowledge which he must prove; and if, in a case based on circumstantial evidence, the accused evades response to an incriminating question or offers a response which is not true, such a response, in itself, would become an additional link in the chain of events. This Court said, inter alia, as under: -

"19. Thus, although Section 106 is in no way aimed at relieving the prosecution from its burden to establish the guilt of an accused, it applies to cases where chain of events has been successfully established by the prosecution, from which a reasonable inference is made out against the accused. Moreover, in a case based on circumstantial evidence, whenever an incriminating question is posed to the accused and he or she either evades response, or offers a response which is not true, then such a response in itself becomes an additional link in the chain of events." **[Vahitha vs. State of Tamil Nadu, AIR 2023 SC 1165]**

Constitution of India Article 134, 33,15,14,21 Indian Penal Code Section 497

Five Judges Bench of Hon'ble Supreme Court held in a matter related to applicant, Central Government seeking clarification of the judgment reported in AIR 2018 SC 4898, which struck down 497 of Penal Code declaring offence of adultery as unconstitutional. The Central Government requested for the clarification of this judgment and its impact on proceeding under Army Act 1950, Navy Act 1957 & Air Force Act 1950, considering the requirement of discipline for proper discharge of duty by member of Armed Forces. It was held that the court pronouncing judgment was concerned only with the validity of 497 IPC and the court has no occasion to consider the effect of the provision of the Acts in question, thus the Hon'ble Court held-

"Learned counsel for the petitioner in the main case would, in fact, agree with the applicant that the questions which have been raised in the application seeking clarification were not those which arose for consideration in the judgment sought to be clarified. This Court was concerned with the validity of Section 497 IPC. It pronounced on the same. It had nothing to do with the provisions under the Acts.

He would submit that no occasion has arisen for this Court to clarify the order accordingly. In fact, this Court posed the following question. In a given case, the authority is presented with the following set of facts. An officer is proceeded against under Section 45 of the 1950 Act; the charge against him is adultery; it is alleged, in other words, that he has committed adultery within the meaning of Section 497 IPC which has been struck down. Mr. Kaleeswaram Raj, learned counsel for the original petitioner, very fairly submits that, the fact that Section 497

IPC has been struck down may not stand in the way of the authorities proceeding against the officer with the aid of the provisions contained in Section 45 of the 1950 Act. Of course, he adds that the decision must finally depend upon the play of facts.

This Court in the case in question was concerned only with the validity of Section 497 IPC and Section 198 (2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.' for brevity). This Court spoke through separate but concurrent judgments. Apart from the lead judgment of Hon'ble Mr. Justice Dipak Misra, former Chief Justice of this Court, and with whom, Hon'ble Mr. Justice A. M. Khanwilkar concurred, the other learned Judges wrote separate opinions. However, they agreed that Section 497 IPC and Section 198 Cr.P.C. were unconstitutional. The premise on which the provision was struck down was that it offended Articles 14, 15 and 21 of the Constitution. In this case, this Court had no occasion, whatsoever, to consider the effect of the provisions of the Acts in question. In fact, we may notice that it is not as if this Court approved of adultery. This Court has found that adultery may be a moral wrong (per Hon'ble Ms. Justice Indu Malhotra). This Court has also held that it will continue to be a ground for securing dissolution of marriage. It has also been described as a civil wrong.

In view of the fact that the scheme of the Acts in the context, in particular, of Article 33 of the Constitution did not fall for the consideration of this Court, we must necessarily observe and clarify that the judgment of this Court in Joseph Shine v. Union of India (2019) 3 SCC 39 was not at all concerned with the effect and operation of the relevant provisions in the Acts which have been placed before us by the applicant. In other words, this Court was neither called upon nor has it ventured to pronounce on the effect of Sections 45 and 63 of the 1950 Act as also the corresponding provisions in other Acts or any other provisions of the Acts." **Joseph Shine v. Union of India, 2023 Cri.L.J.1400 : AIROnline 2023 SC 141**

ELECTRICITY ACT

Electricity Act, 2003 S. 125- Substantial question of law - Requirement for entertaining appeal before Supreme Court-Existence of substantial question of law-Test for determination of-Procedure required to be followed, post such determination, namely, formulation of the question and issuance of notice to the respondent(s) Second appeal - vis-à-vis issues that can be raised/pointed out. Scope and ambit of revision or re-determination of the tariff already determined by Commission on the pretext of prudence check and truing up.

Vigilance/Enforcement Department detects theft/unauthorised use of electricity and after giving due opportunity, the bills are generated for electricity stolen/unauthorised use These are called enforcement sales/ assessed sales and the statutory charge for such theft/unauthorised use is twice the normal rate. **(BSES**

Rajdhani Power Limited v. Delhi Electricity Regulatory Commission, (2023) 4 SCC 788)

HINDU MARRIAGE ACT, 1955

S. 13(1) (ka) & (ib) – Divorce petition – On ground of desertion, cruelty – Suit decreed in favour of husband on ground of cruelty as well as desertion – Appeal against allowed – Legality of – The marriage couple stayed together for four years and have been living separately for last 25 years – No child out of wedlock, the matrimonial bond is completely broken and beyond repair – The relationship must end as its continuation is causing cruelty on both sides- The long separation and absence of cohabitation and the complete breakdown of all meaningful bonds and the existing bitterness between the two, has to be read as cruelty under S. 13 (1)(ia) of Act, 1955. **Shri Rakesh Raman v. Smt. Kavita, 2023 (2) ARC 19 – SC.**

Sec. 13(1)(ia), (ib)—Divorce—Cruelty and desertion—

Cruelty has not been defined under the Act. All the same, the context where it has been used, which is as a ground for dissolution of a marriage would show that it has to be seen as a 'human conduct' and 'behaviour" in a matrimonial relationship. While dealing in the case of Samar Ghosh (supra) this Court opined that cruelty can be physical as well as mental: "46…If it is physical, it is a question of fact and degree. If it is mental, the enquiry must begin as to the nature of the cruel treatment and then as to the impact of such treatment on the mind of the spouse. Whether it caused reasonable apprehension that it would be harmful or injurious to live with the other, ultimately, is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse.

Cruelty can be even unintentional:

…The absence of intention should not make any difference in the case, if by ordinary sense in human affairs, the act complained of could otherwise be regarded as cruelty. Intention is not a necessary element in cruelty. The relief to the party cannot be denied on the ground that there has been no deliberate or wilful ill--treatment."

This Court though did ultimately give certain illustrations of mental cruelty. Some of these are as follows:

(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.

(xii) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.

(xiii) Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.

(xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair.

The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty.

We have a married couple before us who have barely stayed together as a couple for four years and who have now been living separately for the last 25 years. There is no child out of the wedlock. The matrimonial bond is completely broken and is beyond repair. We have no doubt that this relationship must end as its continuation is causing cruelty on both the sides. The long separation and absence of cohabitation and the complete breakdown of all meaningful bonds and the existing bitterness between the two, has to be read as cruelty under Section 13(1) (ia) of the 1955 Act. We therefore hold that in a given case, such as the one at hand, where the marital relationship has broken down irretrievably, where there is a long separation and absence of cohabitation (as in the present case for the last 25 years), with multiple Court cases between the parties; then continuation of such a 'marriage' would only mean giving sanction to cruelty which each is inflicting on the other. We are also conscious of the fact that a dissolution of this marriage would affect only the two parties as there is no child out of the wedlock. **[Rakesh Raman vs. Smt. Kavita, AIR 2023 SC 2144]**

INCOME TAX ACT

Income Tax - Block Assessment Interest on account of delay in filing return by a person/assessee "other than searched person", pursuant to notice issued to file return Leviability of- Notice under S. 158-BD i.e. in absence of any notice under S. 158-BC.

Income Tax Act, 1961 Ss. 158-BFA and 140-A- Scheme under, for levy of interest -Distinguished between- Interest under S. 158-BFA is leviable on standalone basis for late or non-filing of return, which ceases on the day return is filed. However, the liability of payment of interest does not stop merely on filing of the return but is attracted in terms of S. 140-A till payment of tax in terms of the section. **(K.L. Swamy v. Commissioner of Income Tax and another, (2023) 4 SCC 274)**

INDIAN EVIDENCE ACT

It was held in the context of S. 106 of Evidence Act that facts proved to be within special knowledge of accused must be explained by him or he must throw some light upon such facts.

The deceased was murdered by petitioner accused using axe and the case was based on circumstantial evidence. The fact that deceased was last seen together with petitioner as established by prosecution and then the burden under S. 106 of the Evidence Act was on petitioner to offer some explanation as to when and under what circumstances he parted company of deceased. But the burden was not discharged and the time-gap between period when deceased was last seen with petitioner and recovery of corpse of deceased was found quite proximate. Having regard to oral evidence of witnesses, enmity between deceased and petitioner also surfaced. Corroborative evidence with regard to recovery of weapon (axe) alleged to have been used in commission of crime from petitioner, further substantiated the case of prosecution. In such facts and circumstances of case, upholding by High Court of conviction of petitioner accused under S. 302 IPC was confirmed. **(Ram Gopal S/O Mansharam v. State of Madhya Pradesh, (2023) 5 SCC 534)**

INDIAN PENAL CODE

Penal Code, 1860-Ss. 302, 201 and 34- Circumstantial evidence- Prior animosity as motive, extra-judicial confession and recovery of articles belonging to deceased from accused held, not established. Investigation also not reliable. Resultantly, considering said infirmities, requisite chain of circumstances, not completed against appellant-accused also and, thus, his conviction and sentence set aside.

Penal Code, 1860-Ss. 302, 201 and 34-Extra-judicial confession - Reliability of witness to whom such confession is made -Confession claimed to be made before a co-villager who himself remained suspect before the police.

Constitution of India - Art. 136- Interference with concurrent findings of fact was held, permissible only in exceptional cases or where gross errors are committed, overlooking crying circumstances and well- established principles of criminal jurisprudence leading to miscarriage of justice. **(Pradeep Kumar v. State of Chhattisgarh, (2023) 5 SCC 350)**

Penal Code, 1860-S. 302 r/w Ss. 149, 143, 147 and 504- Sole related eyewitness-Relationship with deceased, absence of recovery from some of the accused and number of witnesses turning hostile. In present case conviction of all the eight accused persons was based on evidence of the sole related eyewitness was held

justified, particularly when there is no vagueness in his testimony with respect to the role ascribed to each one of the accused.

Penal Code, 1860 S. 302 r/w Ss. 149, 143, 147 and 504 Hostile witnesses-Effect of absence of support. It has been held that the mere fact that spot witnesses or the witness to the events prior or leading to the incident did not support the prosecution would not mean that the testimonies of all these witnesses would automatically stand discarded, with the natural corollary being acquittal of the accused-Evidentiary value of hostile witnesses, reiterated. (Evidence Act, 1872, S. 154).

Constitution of India - Art. 136- Interfere with concurrent findings of fact was held, permissible only in very special circumstances or in the case of a gross error committed by the courts below. **(Ravasaheb alias Ravasahebgouda and others v. State of Karnataka, (2023) 5 SCC 391)**

This case relates to Section 84 of IPC dealing with unsoundness of mind. Impairment of cognitive faculties of mind rendering accused incapable of knowing nature of the act committed. It was held that legal insanity, not medical insanity, needs to be proved and the test of prudent man to be applied. Conduct of accused shortly before, at the time of and immediately after commission of crime was held relevant.

Penal Code, 1860 - S. 84 Unsoundness of mind Burden of - proof required under S. 105 of the Evidence Act when exception under S. 84 claimed Burden on accused to rebut presumption of sanity at the time of doing the offensive act. The burden is to be discharged by accused by proving unsoundness of mind on basis of preponderance of probabilities by producing reasonable material before court in form of oral, documentary and circumstantial evidence.

It is the collective responsibility of person concerned, court and prosecution to decipher proof qua insanity by treating proceeding non-adversarial keeping friendly relations with accused and regarding him as one having disability and as a victim in need of help. The whole idea should be to facilitate a person of unsound mind to stand trial. The provisions under Sections 328, 329, 330, 334 though procedural in nature, become substantive while dealing with accused person of unsound mind. **(Prakash Nayi alias Sen v. State of Goa, (2023) 5 SCC 673)**

S. 364-A or S. 363 r/w Ss. 148 and 149 of IPC - Offence of kidnapping for ransom with threat to cause death or hurt or reasonable apprehension thereof under S. 364-A - Particularly the ingredient of threat resulting in reasonable apprehension that victim may be put to death or hurt. Words or conduct which may amount to such threat - Intent behind use of such words or conduct. Using such threatening words or conduct merely to prevent victim from crying out - Whether enough.

Contradictory statements of victim, resulting in absence of requisite ingredients attracting S. 364-A. Hence, appellants acquitted under S. 364-A. However, considering entire factual and legal position it was held that conviction would be proper under S. 363 and the appellants were sentenced to seven yrs' RI.

S. 216- Alteration or addition of charge. When permissible: Matters to be considered by court- Relevancy of stage of the proceedings. **(Ravi Dhingra v. State of Haryana, (2023) 6 SCC 76)**

Penal Code, 1860 - Ss. 406, 420, 467, 468, 417 and 418 - Quashing of FIR Dispute being essentially a civil dispute in nature - Appellants allegedly entered into an agreement to sell in respect of the property in dispute, but despite receiving certain amount in advance from the complainant the respondent, remained absent from the office of the Deputy Registrar on the date fixed for execution of sale deed. Subsequently, FIR in question lodged when the appellants planned to sell the property in dispute to some other person.

It was held that a breach of contract does not give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction. Further, merely the allegation of failure to keep up promise, held, will not be enough to initiate criminal proceedings. Further held, the criminal court should exercise a great deal of caution in issuing the process, particularly when matters appear essentially of civil nature and, thus, any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged. **(Kunti and another v. State of Uttar Pradesh and another, (2023) 6 SCC 109)**

Section 302 & 149 of the Penal Code, 1860: Child eyewitness - Determination of credibility of Age factor and duty of court. It was held that evidence of child witness cannot be rejected merely because of her age being 12 yrs, but being a child witness, her evidence needs a very careful evaluation with greater circumspection considering the fact that a child witness can always be easily tutored.

Penal Code, 1860-S. 302 r/w S. 149-Related eyewitness-Failure to identify even a single accused by name in court was held to be a material fact to doubt reliability of witness, when the witness concerned claimed that she was in a position to identify the accused by their names as well as their respective father's name. **(Radhey Shyam and others v. State of Rajasthan, (2023) 6 SCC 151)**

Sec. 302 IPC—Conviction and sentence under—Appeal against—

As far as non-obtaining of ballistic report is concerned, it is no doubt true that its essentiality would depend upon the circumstances of each case. Here, since no weapon of offence was seized, no ballistic report was called for and obtained.

There is a fair degree of uncertainty in the prosecution story. The Courts below appear to have somewhat been influenced by the oral testimony of PW-2 and PW-3, without taking into consideration the effect of the other attending circumstances, thereby warranting interference. Held, the charge that the appellants had murdered Narayan, cannot be said to have been proved beyond reasonable doubt. Hence, they were and are entitled to the benefit of doubt. Appeal is allowed. **[Munna Lal vs. State of U.P., 2023 (123) ACC 654 (SC)]**

Sec. 84—The existence of an unsound mind is a sine qua non to the applicability of section 84 IPC

A mere unsound mind per se would not suffice, and it should be to the extent of not knowing the nature of the act. Such a person is incapable of knowing the nature of the said act, a mere medical insanity cannot be said to mean unsoundness of mind. There may be a case where a person suffering from medical insanity would have committed an act, however, the test is one of legal insanity to attract the mandate of section 84 of the IPC. There must be an inability of a person in knowing the nature of the act or to understand it to be either wrong or contrary to the law. The burden of proof does lie on the accused to prove to the satisfaction of the court that one is insane while doing the act prohibited by law. Such a burden gets discharged based on a prima facie case and reasonable materials produced on his behalf. The extent of probability on his behalf, the extent of probability is one of preponderance. Appeal is allowed. **[Prakash Nayi @ Sen vs. State of Goa, 2023 (123) ACC 952 (SC)]**

Sec. 302—Evidence Act, 1872, Secs. 3, 24, 27, 28—Murder—Circumstantial evidence—Extra-judicial confession

It is a settled principle of law that extra-judicial confession is a weak piece of evidence. It has been held that where an extra-judicial confession is surrounded by suspicious circumstances, its credibility becomes doubtful and it loses its importance. It has further been held that it is well-settled that it is a rule of caution where the court would generally look for an independent reliable corroboration before placing any reliance upon such extra-judicial confession. It has been held that there is no doubt that conviction can be based on extra-judicial confession, but in the very nature of things, it is a weak piece of evidence. Reliance in this respect could be placed on the judgment of this Court in the case of Sahadevan and Another v. State of Tamil Nadu2. This Court, in the said case, after referring to various earlier judgments on the point, observed thus:

"16. Upon a proper analysis of the abovereferred judgments of this Court, it will be appropriate to state the principles which would make an extra-judicial confession an admissible piece of evidence capable of forming the basis of

conviction of an accused. These precepts would guide the judicial mind while dealing with the veracity of cases where the prosecution heavily relies upon an extra-judicial confession alleged to have been made by the accused:

(i) The extra-judicial confession is a weak evidence by itself. It has to be examined by the court with greater care and caution.

(ii) It should be made voluntarily and should be truthful.

(iii) It should inspire confidence.

(iv) An extra-judicial confession attains greater credibility and evidentiary value if it is supported 2 (2012) 6 SCC 403 by a chain of cogent circumstances and is further corroborated by other prosecution evidence.

(v) For an extra-judicial confession to be the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities.

(vi) Such statement essentially has to be proved like any other fact and in accordance with law." **[Nikhil Chandra Mondal vs. State of WB., AIR 2023 SC 1323]**

Sec. 302—Evidence Act, 1872, Sec. 24—Murder—Extra-judicial confession—Reliability—Conviction based on extra-judicial confession

Extra-judicial confession is a weak piece of evidence. However, a conviction can be sustained on the basis of extrajudicial confession provided that the confession is proved to be voluntary and truthful. It should be free of any inducement. The evidentiary value of such confession also depends on the person to whom it is made. Going by the natural course of human conduct, normally, a person would confide about a crime committed by him only with such a person in whom he has implicit faith. Normally, a person would not make a confession to someone who is totally a stranger to him. Moreover, the Court has to be satisfied with the reliability of the confession keeping in view the circumstances in which it is made. As a matter of rule, corroboration is not required. However, if an extrajudicial confession is corroborated by other evidence on record, it acquires more credibility. **[Pawan Kumar Chourasia vs. State of Bihar, AIR 2023 SC 1464]**

Secs. 302, 304 Part II, 307—Evidence Act, 1872, Sec. 3—Murder—Grave and sudden provocation—Proof

A bench of three Hon'ble Judges of this Court in State of U.P. vs Lakhmi, (1998) 4 SCC 336 has extensively dealt with the aspect of value or utility of a statement under section 313, Cr. P.C. The object of section 313, Cr. P.C. was explained by this Court in Sanatan Naskar vs. State of West Bengal, (2010) 8 SCC 249. The rationale behind the requirement to comply with section 313, Cr. P.C. was adverted to by this Court in Reena Hazarika vs. State of Assam, (2019) 13 SCC 289. Close on the heels thereof, in Parminder Kaur vs. State of Punjab, (2020) 8 SCC

811, this Court restated the importance of section 313, Cr. P.C. upon noticing the view taken in Reena Hazarika (supra) and M. Abbas vs. State of Kerala, (2001) 10 SCC 103.

What follows from these authorities may briefly be summarized thus:

a. section 313, Cr. P.C. [clause (b) of sub-section 1] is a valuable safeguard in the trial process for the accused to establish his innocence;

b. section 313, which is intended to ensure a direct dialogue between the court and the accused, casts a mandatory duty on the court to question the accused generally on the case for the purpose of enabling him to personally explain any circumstances appearing in the evidence against him;

c. when questioned, the accused may not admit his involvement at all and choose to flatly deny or outrightly repudiate whatever is put to him by the court;

d. the accused may even admit or own incriminating circumstances adduced against him to adopt legally recognized defences;

e. an accused can make a statement without fear of being cross-examined by the prosecution or the latter having any right to cross-examine him;

f. the explanations that an accused may furnish cannot be considered in isolation but has to be considered in conjunction with the evidence adduced by the prosecution and, therefore, no conviction can be premised solely on the basis of the section 313 statement(s);

g. statements of the accused in course of examination under section 313, since not on oath, do not constitute evidence under section 3 of the Evidence Act, yet, the answers given are relevant for finding the truth and examining the veracity of the prosecution case;

h. statement(s) of the accused cannot be dissected to rely on the inculpatory part and ignore the exculpatory part and has/have to be read in the whole, inter alia, to test the authenticity of the exculpatory nature of admission; and

i. if the accused takes a defence and proffers any alternate version of events or interpretation, the court has to carefully analyze and consider his statements;

j. any failure to consider the accused's explanation of incriminating circumstances, in a given case, may vitiate the trial and/or endanger the conviction.

earing the above well-settled principles in mind, every criminal court proceeding under clause (b) of sub-section (1) of section 313 has to shoulder the onerous responsibility of scanning the evidence after the prosecution closes its case, to trace the incriminating circumstances in the evidence against the accused and to prepare relevant questions to extend opportunity to the accused to explain any such circumstance in the evidence that could be used against him. Prior to the amendment of section 313 in 2009, the courts alone had to perform this task. Instances of interference with convictions by courts of appeal on the ground of failure of the trial court to frame relevant questions and to put the same to the accused were not rare.

For toning up the criminal justice system and ensuring a fair and speedy trial, with emphasis on cutting down delays, the Parliament amended section 313 in 2009 and inserted sub-section (5), thereby enabling the court to take the assistance of the Public Prosecutor and Defence Counsel in preparing such questions [the first part of sub-section (5)]. Ideally, with such assistance (which has to be real and not sham to make the effort effective and meaningful), one would tend to believe that the courts probably are now better equipped to diligently prepare the relevant questions, lest there be any infirmity. However, judicial experience has shown that more often than not, the time and effort behind such an exercise put in by the trial court does not achieve the desired result. This is because either the accused elects to come forward with evasive denials or answers questions with stereotypes like 'false', 'I don't know', 'incorrect', etc. Many a time, this does more harm than good to the cause of the accused. For instance, if facts within the special knowledge of the accused are not satisfactorily explained, that could be a factor against the accused. Though such factor by itself is not conclusive of guilt, it becomes relevant while considering the totality of the circumstances. A proper explanation of one's conduct or a version different from the prosecution version, without being obliged to face cross-examination, could provide the necessary hint or clue for the court to have a different perspective and solve the problem before it. The exercise under section 313 instead of being ritualistic ought to be realistic in the sense that it should be the means for securing the ends of justice; instead of an aimless effort, the means towards the end should be purposeful. Indeed, it is optional for the accused to explain the circumstances put to him under section 313, but the safeguard provided by it and the valuable right that it envisions, if availed of or exercised, could prove decisive and have an effect on the final outcome, which would in effect promote utility of the exercise rather than its futility.

Once a written statement is filed by the accused under sub- section (5) of section 313, Cr. P.C. and the court marks it as an exhibit, such statement must be treated as part of the accused's statement under sub-section (1) read with sub-section (4) thereof. In view of the latter sub-section, the written statement has to be considered in the light of the evidence led by the prosecution to appreciate the truthfulness or otherwise of such case and the contents of such statement weighed with the probabilities of the case either in favour of the accused or against him. **[Premchand vs. State of Maharashtra, AIR 2023 SC 1487]**

Sec. 302—Evidence Act, 1872, Sec. 3—Murder—Non-explanation of injuries of accused—Benefit of doubt

We will first consider the issue with regard to non- explanation of injuries sustained by accused No. 11 Naresh Kumar. In the case of Lakshmi Singh and Others v. State of Bihar, (1976) 4 SCC 394, which case also arose out of a

conviction under Section 302 read with Section 149 of the IPC, this Court had an occasion to consider the issue of non-explanation of injuries sustained by the accused. This Court, after referring to the earlier judgments on the issue, observed thus:

"12. …….It seems to us that in a murder case, the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which the court can draw the following inferences:

"(1) that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version;

(2) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable;

(3) that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case."

The omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one.

As held by this Court in State of Gujarat v. Bai Fatima [(1975) 2 SCC 7 : 1975 SCC (Cri) 384] there may be cases where the non-explanation of the injuries by the prosecution may not affect the prosecution case. This principle would obviously apply to cases where the injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, so independent and disinterested, so probable, consistent and creditworthy, that it far outweighs the effect of the omission on the part of the prosecution to explain the injuries. The present, however, is certainly not such a case, and the High Court was, therefore, in error in brushing aside this serious infirmity in the prosecution case on unconvincing premises."

A similar view with regard to non-explanation of injuries has been taken by this Court in the cases of State of Rajasthan v. Madho and Another, 1991 Supp (2) SCC 396, State of M.P. v. Mishrilal (Dead) and Others, (2003) 9 SCC 426 and Nagarathinam and Others v. State (Represented by Inspector of Police), (2006) 9 SCC 57.

In the case of Ramesh Baburao Devaskar and Others v. State of Maharashtra, (2007) 13 SCC 501:

"19. In a case of this nature, enmity between two groups is accepted. In a situation of this nature, whether the first information report was ante- timed or not also requires serious consideration.

First information report, in a case of this nature, provides for a valuable piece of evidence although it may not be a substantial evidence. The reason for insisting on lodging of first information report without undue delay is to obtain the earlier information in regard to the circumstances in which the crime had been committed, the name of the accused, the parts played by them, the weapons which had been used as also the names of eyewitnesses. Where the parties are at loggerheads and there had been instances which resulted in death of one or the other, lodging of a first information report is always considered to be vital."

In the case of Vadivelu Thevar v. The State of Madras7, the Court has observed thus:

"11. ……Hence, in our opinion, it is a sound and well-established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact. Generally speaking, oral testimony in this context may be classified into three categories, namely:

(1) Wholly reliable.

(2) Wholly unreliable.

(3) Neither wholly reliable nor wholly unreliable.

12. In the first category of proof, the court should have no difficulty in coming to its conclusion either way — it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial……"

It could thus be seen that in the category of "wholly reliable" witness, there is no difficulty for the prosecution to press for conviction on the basis of the testimony of such a witness. In case of "wholly unreliable" witness, again, there is no difficulty, inasmuch as no conviction could be made on the basis of oral testimony provided by a "wholly unreliable" witness. The real difficulty comes in case of the third category of evidence which is partly reliable and partly unreliable. In such cases, the court is required to be circumspect and separate the chaff from the grain, and seek further corroboration from reliable testimony, direct or circumstantial. **[Nand Lal vs. State of Chhattisgarh, AIR 2023 SC 1599]**

Secs. 148, 323, 302—Evidence Act, 1872, Sec. 3—Unlawful assembly and murder—Appreciation of evidence—

While granting bail in the cases under the NDPS Act, the conditions which courts have to be cognizant of are that there are reasonable grounds for believing that the accused is "not guilty of such offence" and that he is not likely to commit any offence while on bail. The term "not guilty" means only a prima facie determination.

The classification of offences under Special Acts (NDPS Act, etc.), which apply over and above ordinary bail conditions required to be assessed by courts, require that the court records its satisfaction that the accused might not be guilty of the offence and that upon release, they are not likely to commit any offence. These two conditions have the effect of overshadowing **o**ther conditions. A plain and literal interpretation of the conditions under Section 37 (i.e., that Court should be satisfied that the accused is not guilty and would not commit any offence) would effectively exclude grant of bail altogether, resulting in punitive detention and unsanctioned preventive detention as well. Therefore, the only manner in which such special conditions as enacted under Section 37 can be considered within constitutional parameters is where the court is reasonably satisfied on a prima facie look at the material on record (whenever the bail application is made) that the accused is not guilty. Any other interpretation, would result in complete denial of the bail to a person accused of offences such as those enacted under Section 37 of the NDPS Act.

The conditions which courts have to be cognizant of are that there are reasonable grounds for believing that the accused is "not guilty of such offence" and that he is not likely to commit any offence while on bail. What is meant by "not guilty" when all the evidence is not before the court? It can only be a 18 As per the counter-affidavit dated 21.02.2023 filed by the respondent-state before this court. prima facie determination. That places the court's discretion within a very narrow margin. Given the mandate of the general law on bails (Sections 436, 437 and 439, CrPC) which classify offences based on their gravity, and instruct that certain serious crimes have to be dealt with differently while considering bail applications, the additional condition that the court should be satisfied that the accused (who is in law presumed to be innocent) is not guilty, has to be interpreted reasonably. Further the classification of offences under Special Acts (NDPS Act, etc.), which apply over and above the ordinary bail conditions required to be assessed by courts, require that the court records its satisfaction that the accused might not be guilty of the offence and that upon release, they are not likely to commit any offence. These two conditions have the effect of overshadowing other conditions. In cases where bail is sought, the court assesses the material on record such as the nature of the offence, likelihood of the accused co-operating with the investigation, not fleeing from justice: even in serious offences like murder, kidnapping, rape, etc. On the other hand, the court in these cases under such special Acts, have to address itself principally on two facts: likely guilt of the accused and the likelihood of them not committing any offence upon release. This court has generally upheld such conditions on the ground that liberty of such citizens have to - in cases when accused of offences enacted under special laws – be balanced against the public interest.

A plain and literal interpretation of the conditions under Section 37 (i.e., that Court should be satisfied that the accused is not guilty and would not commit any offence) would effectively exclude grant of bail altogether, resulting in punitive detention and unsanctioned preventive detention as well. Therefore, the only manner in which such special conditions as enacted under Section 37 can be considered within constitutional parameters is where the court is reasonably satisfied on a prima facie look at the material on record (whenever the bail application is made) that the accused is not guilty. Any other interpretation, would result in complete denial of the bail to a person accused of offences such as those enacted under Section 37 of the NDPS Act.

The standard to be considered therefore, is one, where the court would look at the material in a broad manner, and reasonably see whether the accused's guilt may be proved. The judgments of this court have, therefore, emphasized that the satisfaction which courts are expected to record, i.e., that the accused may not be guilty, is only prima facie, based on a reasonable reading, which does not call for meticulous examination of the materials collected during investigation (as held in Union of India v. Rattan Malik, 19 (2009) 2 SCC 624). Grant of bail on ground of undue delay in trial, cannot be said to be fettered by Section 37 of the Act, given the imperative of Section 436A which is applicable to offences under the NDPS Act too (ref. Satender Kumar Antil supra). Having regard to these factors the court is of the opinion that in the facts of this case, the appellant deserves to be enlarged on bail. **[Mohd. Muslim @ Hussain vs. State (NCT of Delhi), AIR 2023 SC 1639]**

Secs. 304-B, 498-A, 201—Evidence Act, Sec. 113-B—Cruelty and dowry death—Presumption regarding—

The interpretation of Sections 304B and 498A IPC came up for consideration in Baijnath's case (supra). The opinion was summed up in paras 25 to 27 thereof, which are extracted below:-

"25. Whereas in the offence of dowry death defined by Section 304-B of the Code, the ingredients thereof are:

(i) death of the woman concerned is by any burns or bodily injury or by any cause other than in normal circumstances, and

(ii) is within seven years of her marriage, and

(iii) that soon before her death, she was subjected to cruelty or harassment by her husband or any relative of the husband for, or in connection with, any demand for dowry. The offence under Section 498-A of the Code is attracted qua the husband or his relative if she is subjected to cruelty. The Explanation to this Section exposits "cruelty" as:

(i) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical), or

(ii) harassment of the woman, where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

26. Patently thus, cruelty or harassment of the lady by her husband or his relative for or in connection with any demand for any property or valuable security as a demand for dowry or in connection therewith is the common constituent of both the offences.

27. The expression "dowry" is ordained to have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961. The expression "cruelty", as explained, contains in its expanse, apart from the conduct of the tormentor, the consequences precipitated thereby qua the lady subjected thereto. Be that as it may, cruelty or harassment by the husband or any relative of his for or in connection with any demand of dowry, to reiterate, is the gravamen of the two offences.

As the aforesaid case was also pertaining to dowry death, presumption under Section 113B of the Indian was also discussed in detail in paras 29 to 31 of the aforesaid judgment. The same are extracted below:-

"29. Noticeably this presumption as well is founded on the proof of cruelty or harassment of the woman dead for or in connection with any demand for dowry by the person charged with the offence. The presumption as to dowry death thus would get activated only upon the proof of the fact that the deceased lady had been subjected to cruelty or harassment for or in connection with any demand for dowry by the accused and that too in the reasonable contiguity of death. Such a proof is thus the legislatively mandated prerequisite to invoke the otherwise statutorily ordained presumption of commission of the offence of dowry death by the person charged therewith.

30. A conjoint reading of these three provisions, thus predicate the burden of the prosecution to unassailably substantiate the ingredients of the two offences by direct and convincing evidence so as to avail the presumption engrafted in Section 113-B of the Act against the accused. Proof of cruelty or harassment by the husband or his relative or the person charged is thus the sine qua non to inspirit the statutory presumption, to draw the person charged within the coils thereof. If the prosecution fails to demonstrate by cogent, coherent and persuasive evidence to prove such fact, the person accused of either of the above referred offences cannot be held guilty by taking refuge only of the presumption to cover up the shortfall in proof.

31. The legislative primature of relieving the prosecution of the rigour of the proof of the often practically inaccessible recesses of life within the guarded

confines of a matrimonial home and of replenishing the consequential void, by according a presumption against the person charged, cannot be overeased to gloss over and condone its failure to prove credibly, the basic facts enumerated in the sections involved, lest justice is the casualty".

A conjoint reading of Section 304B IPC and Section 113B of the Indian Evidence Act with reference to the presumption raised was discussed in para 32 of the aforesaid judgment, which is extracted below:-

"32. This Court while often dwelling on the scope and purport of Section 304-B of the Code and Section 113-B of the Act have propounded that the presumption is contingent on the fact that the prosecution first spell out the ingredients of the offence of Section 304-B as in Shindo v. State of Punjab [Shindo v. State of Punjab, (2011) 11 SCC 517 : (2011) 3 SCC (Cri) 394] and echoed in Rajeev Kumar v. State of Haryana [Rajeev Kumar v. State of Haryana, (2013) 16 SCC 640 : (2014) 6 SCC (Cri) 346] . In the latter pronouncement, this Court propounded that one of the essential ingredients of dowry death under Section 304-B of the Code is that the accused must have subjected the woman to cruelty in connection with demand for dowry soon before her death and that this ingredient has to be proved by the prosecution beyond reasonable doubt and only then the Court will presume that the accused has committed the offence of dowry death under Section 113-B of the Act. It referred to with approval, the earlier decision of this Court in K. Prema S. Rao v. Yadla Srinivasa Rao [K. Prema S. Rao v. Yadla Srinivasa Rao, (2003) 1 SCC 217 : 2003 SCC (Cri) 271] to the effect that to attract the provision of Section 304-B of the Code, one of the main ingredients of the offence which is required to be established is that "soon before her death" she was subjected to cruelty and harassment "in connection with the demand for dowry". **[Charan Singh @ Charanjit Singh vs. State of Uttarakhand, AIR 2023 SC 2095]**

Secs. 302, 326—Murder and grievous hurt—Accused persons acquitted by trial Court were convicted by High Court in appeal—

This Court in Darshan Singh & others vs. State of Punjab, (2009) 16 SCC 290 ruled that accused have to be convicted on the basis of their individual acts and where an accused inflicted simple injuries with lathis etc., he is ordinarily not to be convicted for the offence of murder. **[Fedrick Cutinha vs. State of Karnataka, AIR 2023 SC 2102]**

Section 149, 302, 307 IPC, Section 3 Indian Evidence Act

The matter was related to unlawful assembly murder and attempt to murder. During trial there was proof regarding the assailants, relatives and neighbor attacking family of victim at night in their home killing four person and injuring one. Two daughter injured in incident witnessing incident as per the statement of eye witness

there was pre existing enmity between accused person and there brother and father. Injured witness fully supported prosecution case as narrated by her under section 161 Cr.P.C. It was held by the court that she was fully reliable witness and stated thing in natural course. It was also held that non examination of statement u/s 164 Cr.P.C. had no relevance, if I.O. did not think necessary in his wisdom. It was held that conviction was proper. The Hon'ble Court discussed in detail and held-

"The submissions advanced are being dealt with in the same sequence. PW-1 is an injured witness. Her injuries have not been challenged. There is no reason why PW-1 would make false implication and allow the real assailants to go scot-free. A perusal of her testimony shows that she has fully supported the prosecution story as narrated by her in her statement under section 161 CrPC. Even during cross-examination nothing has been elicited from her which in any way may weaken or demolish her testimony. She was a fully reliable witness and has stated the things in natural course.

The two daughters of the deceased Vijay Pal Singh having seen the assailants murdering their family members and also causing injury to one of them i.e. Smt Pinky (PW-1) being close relative rightly and wisely did not speak out anything in their presence and allowed them to remain in dark that she had actually seen them committing the crime. At the first instance, when the Investigating Officer went to the hospital to record her statement, they immediately came out with the true sequence of events as they had happened. The appellants cannot gain anything out of the above submission.

The pressing of the dog squad into service was also fully justified as till that time when the dog squad was pressed into service in the morning the names of the assailants had not been disclosed. The dog squad had been pressed into service as per the FIR since the names of the assailants were not known. It is the case of the prosecution itself that the time when the FIR was lodged and at the time when Smt Pinky (PW-1) was admitted to the hospital, the names of the assailants had not been disclosed deliberately and for justifiable reasons. The daughters of the deceased Vijay Pal Singh needed to protect their lives otherwise they would also had been done to death.

Non-examination of Ms Rashmi and Horam, father of Vijay Pal Singh also has no material bearing. It is the discretion of the prosecution to lead as much evidence as is necessary for proving the charge. It is not the quantity of the witnesses but the quality of witnesses which matters. Smt Pinky (PW-1) was the injured witness having received grievous and life-threatening injuries. We are not impressed by this argument also.

Non-examination of the statement under section 164 CrPC also has no relevance or bearing to the findings and conclusions arrived at by the courts below. It was for the Investigating Officer to have got the statement under section 164 CrPC

recorded. If he did not think it necessary in his wisdom, it cannot have any bearing on the testimony of PW-1 and the other material evidence led during trial.

Learned Amicus for the appellant Mukesh has tried to point out several discrepancies and inconsistencies in the evidence. We need not go into details as the same are minor and do not have any impact on the findings recorded by the courts below.

For all the reasons recorded above, we do not find any infirmity in the order of the High Court affirming the conviction of the appellants. Accordingly, Criminal Appeal Nos.598-600 of 2013 and Criminal Appeal No. 337 of 2014 are liable to be dismissed and are accordingly dismissed. Insofar as the appeals filed by the State are concerned for enhancement of sentence, we find that the High Court has given sound and cogent reasons for commuting death sentence into life sentence. Accordingly, the Criminal Appeal Nos.745-748 of 2015 also stand dismissed. The appellants are in custody and they will serve out their sentence." **Ajai alias Ajju etc. v. State of Uttar Pradesh 2023 Cri.L.J. 1457: AIROnline 2023 SC 117**

Section 149, 302, 109, 201 IPC, Section 3, 9 Indian Evidence Act

The matter was related to unlawful assembly and murder, the evidence produced before trial court was that the accused persons allegedly entered forcibly into cabin of deceased and stabbed him with knives, the eye witnesses ran away from there, test identification parade was conduced in open ground, recover of incriminating material was not free of doubt. It was held by Hon'ble court that the prosecution failed to prove case beyond reasonable doubt and it was held that accused person were entitled to benefit of doubt.

Hon'ble Court discussed the appreciation of evidence and procedure of test identification parade, held that-

"It can thus clearly be seen that the policeman of Korattur Police Station had taken photos and videos for showing them to the witnesses to identify the accused persons in the lock-up which, was also objected by accused No. 2 Stalin and accused No. 3 Vinayagamurthy. Malarvizhi (PW-4) further admitted that when she asked accused No.4 Harikrishnan @ Hari whether there were any objections about TIP, he stated that the IO and the Sub-Inspector of Police had kept them under custody in Korattur Police Station for eight days for identification of the witnesses. She further admitted that the TIP was conducted in an open ground. In our considered view, reliance could not have been placed on such a TIP which is full of lacunas.

Recently, this Court, in the case of Gireesan Nair and Others v. State of Kerala1, observed thus:

> "31. In cases where the witnesses have had ample opportunity to see the accused before the identification parade is held, it may adversely affect (2023) 1 SCC 180 the trial. It is the duty of the prosecution to establish

before the court that right from the day of arrest, the accused was kept "baparda" to rule out the possibility of their face being seen while in police custody. If the witnesses had the opportunity to see the accused before the TIP, be it in any form i.e. physically, through photographs or via media (newspapers, television, etc.), the evidence of the TIP is not admissible as a valid piece of evidence (Lal Singh v. State of U.P. [Lal Singh v. State of U.P., (2003) 12 SCC 554 : 2004 SCC (Cri) Supp 489] and Suryamoorthi v. Govindaswamy [Suryamoorthi v . Govindaswamy, (1989) 3 SCC 24 : 1989 SCC (Cri) 472]).

If identification in the TIP has taken place after the accused is shown to the witnesses, then not only is the evidence of TIP inadmissible, even an identification in a court during trial is meaningless (Sk. Umar Ahmed Shaikh v. State of Maharashtra [Sk. Umar Ahmed Shaikh v. State of Maharashtra, (1998) 5 SCC 103 : 1998 SCC (Cri) 1276]). Even a TIP conducted in the presence of a police officer is inadmissible in light of Section 162 of the Code of Criminal Procedure, 1973 (Chunthuram v. State of Chhattisgarh [Chunthuram v. State of Chhattisgarh, (2020) 10 SCC 733 : (2021) 1 SCC (Cri) 9] and Ramkishan Mithanlal Sharma v. State of Bombay [Ramkishan Mithanlal Sharma v. State of Bombay, (1955) 1 SCR 903 : AIR 1955 SC 104]).

It is significant to maintain a healthy ratio between suspects and non-suspects during a TIP. If rules to that effect are provided in Prison Manuals or if an appropriate authority has issued guidelines regarding the ratio to be maintained, then such rules/guidelines shall be followed. The officer conducting the TIP is under a compelling obligation to mandatorily maintain the prescribed ratio. While conducting a TIP, it is a sine qua non that the non- suspects should be of the same age-group and should also have similar physical features (size, weight, colour, beard, scars, marks, bodily injuries, etc.) to that of the suspects. The officer concerned overseeing the TIP should also record such physical features before commencing the TIP proceeding. This gives credibility to the TIP and ensures that the TIP is not just an empty formality (Rajesh Govind Jagesha v. State of Maharashtra [Rajesh Govind Jagesha v. State of Maharashtra, (1999) 8 SCC 428 :1999 SCC (Cri) 1452] and Ravi v. State [Ravi v. State, (2007) 15 SCC 372 : (2010) 3 SCC (Cri) 730])."

A perusal of the evidence of Malarvizhi (PW-4), Syed Jamal (PW-23) and M. Rangarajan (PW-25) would reveal that none of the aforesaid requisites were followed in the TIP in question. As such, the conviction on the basis of such a TIP would not be sustainable.

That leaves us with the alleged recovery of incriminating material at the instance of the accused persons.

We find that the said recoveries are also not free from doubt. However, in any case, only on the basis of the alleged recovery, the conviction could not be sustained.

From the material placed on record, it also appears that the investigating agency, in the present case, appears to have gone out of the way to create evidence against the accused persons. It will be relevant to refer to the following observations of the High Court made in the impugned judgment:

> "Further at the time when the statement of Thanikaivel was recorded by the Judicial Magistrate under Sec.164 of Cr.P.C., he has categorically stated that he was tortured by the police to give such a statement, and thus, it would be quite clear that the prosecution had withdrawn those witnesses in order to avoid the situation that if they were examined, it would go against the prosecution." [emphasis supplied]

We are of the considered view that the prosecution has failed to prove the case beyond reasonable doubt and the accused are entitled to benefit of doubt.

In the result, the appeals are allowed." **Stalin alias Satalin Sammuvel v. State Represented by The Inspector of Police, 2023 Cri.L.J. 1553: AIROnline 2023 SC 83**

Section 302, 304 part II, 307 IPC, Section 3 Evidence Act

The matter was related to murder by grave and sudden provocation. Hon'ble Supreme Court discussed in detail about the motive in such matters and the circumstances in which the incident occurred. Hon'ble Court also discussed the procedure u/s 313 Cr.P.C. regarding statement of accused and held that-

"Bearing the above well-settled principles in mind, every criminal court proceeding under clause (b) of sub-section (1) of section 313 has to shoulder the onerous responsibility of scanning the evidence after the prosecution closes its case, to trace the incriminating circumstances in the evidence against the accused and to prepare relevant questions to extend opportunity to the accused to explain any such circumstance in the evidence that could be used against him. Prior to the amendment of section 313 in 2009, the courts alone had to perform this task. Instances of interference with convictions by courts of appeal on the ground of failure of the trial court to frame relevant questions and to put the same to the accused were not rare. For toning up the criminal justice system and ensuring a fair and speedy trial, with emphasis on cutting down delays, the Parliament amended section 313 in 2009 and inserted sub-section (5), thereby enabling the court to take the assistance of the Public Prosecutor and Defence Counsel in preparing such questions [the first part of sub-section (5)]. Ideally, with such assistance (which has to be real and not sham to make the effort effective and meaningful), one would tend to believe that the courts probably are now better equipped to diligently prepare the relevant questions, lest

there be any infirmity. However, judicial experience has shown that more often than not, the time and effort behind such an exercise put in by the trial court does not achieve the desired result. This is because either the accused elects to come forward with evasive denials or answers questions with stereotypes like 'false', 'I don't know', 'incorrect', etc. Many a time, this does more harm than good to the cause of the accused. For instance, if facts within the special knowledge of the accused are not satisfactorily explained, that could be a factor against the accused. Though such factor by itself is not conclusive of guilt, it becomes relevant while considering the totality of the circumstances. A proper explanation of one's conduct or a version different from the prosecution version, without being obliged to face cross-examination, could provide the necessary hint or clue for the court to have a different perspective and solve the problem before it. The exercise under section 313 instead of being ritualistic ought to be realistic in the sense that it should be the means for securing the ends of justice; instead of an aimless effort, the means towards the end should be purposeful. Indeed, it is optional for the accused to explain the circumstances put to him under section 313, but the safeguard provided by it and the valuable right that it envisions, if availed of or exercised, could prove decisive and have an effect on the final outcome, which would in effect promote utility of the exercise rather than its futility.

Once a written statement is filed by the accused under sub- section (5) of section 313, Cr. P.C. and the court marks it as an exhibit, such statement must be treated as part of the accused's statement under sub-section (1) read with sub-section (4) thereof. In view of the latter sub-section, the written statement has to be considered in the light of the evidence led by the prosecution to appreciate the truthfulness or otherwise of such case and the contents of such statement weighed with the probabilities of the case either in favour of the accused or against him.

In the normal run of events, the victim as well as P.W.2 and the appellant were not supposed to interact with each other on 26 th September, 2013. P.W.2 opened the shop of the victim because the victim had not returned from the field. If P.W.2 had not opened the shop, the appellant would probably not have met him. It was by chance that the appellant and P.W.2 met each other. The victim and the appellant had no quarrel with each other; whatever was there, it was between the appellant and P.W.2. The inter se quarrel between the two had long subsided. There is a missing link in the prosecution case as to the motive of the appellant to inflict the blow on P.W.2 first. It is in the evidence of P.W.2 that he was reading a newspaper sitting in front of the shop of the victim and that the appellant was sitting in the saloon of Baburao Sawarkar (not examined), which was opposite to the shop of the victim. The appellant, as per P.W.2, was unarmed initially. P.W.2's further version was that the appellant went to his house, fetched a knife and then stabbed P.W.2 on his left shoulder, neck and left-hand finger resulting in serious bleeding

injuries. The reason why the appellant suddenly on seeing the septuagenarian P.W.2 would go to his house and return with a knife is not there in the evidence. We shall, for the present, assume that there were heated exchanges and that the appellant gave a blow to P.W.2 first, and thereafter to the others one by one. Then again, the victim who, according to P.W.2, was supposed to be in the field but appeared in the scene from some other place all on a sudden, was the third in the series to be stabbed by the appellant and, thus, was not his target. Though there is no specific admission by the appellant that he had stabbed the victim or the other injured witnesses, reading of the contents of Ext.96 does evince an act of retaliation spurred by sudden provocation resulting in a quarrel as well as a scuffle which ultimately, most unfortunately, cost the victim his life and left some others injured. The appellant too sustained injuries in the scuffle and there is evidence on record that one of the injuries was grievous, yet, the criminal law was surprisingly not set in motion to bring to book those responsible for inflicting such injury. It was in a sudden quarrel, which could have been provoked by the victim and P.W.2, that blows followed from each side. Most importantly, the circumstances in which the incident occurred does clearly negate any suggestion of premeditation in mind. That apart, it cannot be overlooked that while the victim was middle-aged, the appellant was in his late fifties. At the time of the alleged incident, apart from P.W.s 2 and 3, Shankarrao Fartode, Umrao Charde, Ramesh Korde (all three not examined) were present at the spot, as per the version of P.W.2. It is indeed improbable that in the presence of such persons, the appellant wielding a weapon like a knife would come to the spot with an intention to commit the offence of murder overpowering all of them without any sufficient reason or provocation. In our opinion, the trial court lacked in objectivity by not examining the facts and circumstances as to whether the situation was such as is likely to reasonably cause an apprehension in the mind of the appellant that there was imminent danger to his body, of either death or grievous hurt being caused to him, if he did not act in private defence. To impute intention to cause death or the intention to cause that particular injury, which proved fatal, in these circumstances seems to be unreasonable.

Exception 4 to section 300, IPC ordains that culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner. The explanation thereto clarifies that it is immaterial in such cases which party offers the provocation or commits the first assault. Four requirements must be satisfied to invoke this exception, viz. (i) it was a sudden fight; (ii) there was no premeditation; (iii) the act was done in a heat of passion; and (iv) the assailant had not taken any undue advantage or acted in a cruel or unusual manner.

Taking an overall view of the matter, we are inclined to the opinion that the appellant was entitled to the benefit of Exception 4 to section 300, IPC.

The upshot of the above discussion is that this is not a case where the appellant could be convicted for murder of the victim. His conviction for murder and sentence of life imprisonment are liable to be set aside. It is ordered accordingly.

However, we think it proper to convict the appellant under section 304, Part II, IPC. Since the appellant has suffered imprisonment for more than nine years and he is presently in his late sixties, we consider incarceration for such period as adequate punishment. The appellant shall be released from custody forthwith, unless required in connection with any other case.

Since the appellant has already served the sentence imposed for commission of offence under section 307, IPC, based on a conviction which is highly suspect, we allow it to rest.

The appeal stands allowed to the extent indicated above. No costs.

Before parting, we observe that this is a case where the police should have investigated the injuries suffered by the appellant too. The appellant also did not pursue any available remedy to right the wrong. However, in view of little less than a decade having passed since the incident took place, any direction to investigate at this distance of time may not yield any fruitful result. We, therefore, refrain from issuing such direction." **Premchand v. State of Maharashtra, 2023 Cri.L.J. 1883 : AIROnline 2023 SC 172**

Section 364A, 363 IPC Section 134 Indian Evidence Act, Section 216 Cr.P.C.

The matter was related to kidnapping for ransom. The conviction was challenged. The trial court and High Court place reliance on the testimony of the victim to prove the element of 'threat to cause death or hurt'. Hon'ble Supreme Court held that there were crucial changes in statement given by the victim to the police and before the court in respect of exact timing of threat, specificity of delivery of threat to kill and omission of intend behind threat, It was held that the ingredient of threat not proved beyond doubt. Hence, conviction u/s 364A IPC was held unsustainable. It was held by the Hon'ble Court that-

"Facts in brief, as per FIR No.64 dated 15.02.2000 at Police Station, City Thanesar lodged at the instance of complainant, Dr. H.K. Sobti (PW-20) are that the appellants accused kidnapped Harsh (PW-21), aged 14 years, son of Dr H.K. Sobti and Smt Indra Sobti (PW-5) when he was going to school, at about 8:15 a.m. on the aforesaid date. The Station House Officer had filed the FIR with a remark that a case under Section 364/34 of the IPC seems to be made out from the facts. As per the statement of PW-21, he was intimidated by co-accused Ravi Dhingra to ride as a pillion rider on his scooter and upon his refusal, he was forcibly put inside a car. Upon screaming for safety, he was threatened to be killed with a knife and pistol if

he cried. They also told him that his affluent father could even pay the ransom of Rs.50 lakhs.

It emerged in the investigation that PW-21 was kept in House No.772, Sector-13, Kurukshetra. Smt. Kanta Goyal (PW-2) who was a resident of house No. 1653/13 which was near the said school and another student of 9 th Standard, namely, Manish (PW4) told them that at 8:15 a.m., two boys with muffled faces had put Harsh in a Maruti car without a number plate and having tinted window glass. Later, on the same day, calls demanding ransom were received, acting on which, PW-20 reached the concerned location with the ransom demanded. While he was waiting for the appellants accused to receive the ransom and release his child, PW-21 Harsh Sobti was released between 04:00 a.m. and 04:30 a.m. on 16.2.2000 and dropped near the house of PW-11 Suraj Bhan Rathee. He made a phone call to his mother, who took him to his house at around 5:30 a.m.

That demands and enquiries for ransom were made through letters and telephonic messages to PW-20 on 09.03.2000, 12.03.2000, 13.03.2000 and 14.03.2000. Another message regarding ransom was received via telephone on 15.03.2000 at 2:30 p.m. He informed the appellants that while he could not arrange Rs.15 lakhs, he had arranged Rs.12 lakhs. Acting on the instructions received in these messages, PW-20, after intimating the police, boarded the train at 8:15 p.m. with a bag of money. When the train stopped at Ambala, he got down. He went back to Kurukshetra wherefrom he was asked to leave his house with the bag of money and come to Karnal. PW-20 went in his car with two sub-inspectors in civil dress. Upon the delivery of the cash in a bag near a bridge, it was discovered that calls were made from a mobile phone registered in the name of an engineering student, Ravi Duhan (PW-19). He revealed that his friends, appellants herein, had borrowed his phone. On 17.03.2000, upon receiving secret information about the whereabouts of four accused persons, namely, Ravi Dhingra, Baljit Pahwa, Parvej Khan and Raman Goswami, were apprehended by the police except accused Laxmi Narain who was apprehended on 03.04.2000. The Chief Judicial Magistrate, Kurukshetra, committed the case to the Court of Sessions for trial on 06.06.2000.

Additional Sessions Judge, Fast Track Court, Kurukshetra, ('Trial Court', for the sake of convenience) tried the appellants accused for the commission of offences under Sections 364, 364A, 342, 506 read with Section 148 of the IPC. The prosecution presented 27 witnesses and 72 documentary Exhibits, including statements of the appellants under Section 164 of the Code of Criminal Procedure, 1973 (hereinafter 'Cr.PC', for short) and 5 case properties. From the appellants' side, 13 documentary exhibits were presented. The Trial Court recorded the appellants'accused's statements under Section 313 of the Cr.PC.

Appellants maintained that they were falsely implicated and had been kept in illegal confinement after being apprehended. They also argued that they were

produced before the Court after their pictures had been widely publicised through local media and confronted with prosecution witnesses. Further, it was submitted that they were tortured before being presented before the court on 18.03.2000. They also stated that they were forced to sign statements prepared by Investigating Officer on 20.03.2000.

The Trial Court considered the aforementioned statements and the other evidence on record and held that appellants formed an unlawful assembly and in pursuance of a common object, kidnapped PW-21 to compel his father to pay a ransom amount of Rs.15 Lakhs. The Trial Court also concluded that the appellants sought to take advantage of PW-21's confinement and the threat to cause death to him for compelling PW-20 to pay the ransom.

The Trial Court found no reason to disbelieve the statement of the PW-21.

Thus, appellants were held guilty for the commission of offences punishable under Sections 148 and 364A read with Section 149 of the IPC. Appellants prayed for leniency in the sentence on the ground that they had old parents and there was no one else to look after them. The Trial Court concluded the trial and rendered its verdict on 29.05.2003. The Trial Court sentenced the accused-appellants to undergo rigorous imprisonment for three years under Section 148 of the IPC, rigorous imprisonment for life and to pay a fine of Rs.2000/- each under Section 364A read with Section 149 of the IPC. The Trial Court further clarified that the period of under-trial detention would be set off and both sentences shall run concurrently.

Appellants appealed against the order of conviction and sentence before the Punjab and Haryana High Court. The High Court considered the question as to whether there existed reliable evidence to identify and connect the appellants with the offence of kidnapping for ransom under Section 364A of the IPC. The High Court termed PW-21's statement to be crucial, and placing reliance on the same, held that all ingredients of Section 364A of the IPC had been satisfied.

The High Court rejected the plea that there was material discrepancy in the prosecution's case and held that there was no reason to cast any doubt on the veracity of the versions of prosecution witnesses. Regarding PW-21, the High Court remarked that he was "a child witness, but he faced long and searching cross-examination" and there is no contradiction in his version. It rejected the contention as to the contradictions in PW20's stance by declaring that "Discrepancy in investigation cannot by itself a ground to reject the testimony of a reliable witness." Further, the High Court concluded that by virtue of the testimony of PW-20 and PW-21 itself, the "connection of the accused with the crime stands established beyond reasonable doubt."

In view of the facts on record and the rival submissions of the parties, we deem it appropriate to limit the point for consideration in this appeal to whether the facts, in this case, attract the offence under Section 364A of the IPC and if the

answer is in the negative, would it be just and proper to modify the conviction to a sentence under Section 363 of the IPC.

To put the matter in perspective, the provisions of Section 361 read with Sections 363, 364 and 364A ought to be compared. The said provisions read as under:

Section 361: Kidnapping from lawful guardianship. Whoever takes or entices any minor under sixteen years of age if a male, or under eighteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.

Explanation.-The words "lawful guardian" in this section include any person lawfully entrusted with the care or custody of such minor or other person.

Exception.-This section does not extend to the act of any person who in good faith believes himself to be the father of an illegitimate child, or who in good faith believes himself to be entitled to the lawful custody of such child, unless such act is committed for an immoral or unlawful purpose.

x x x

Section 363: Punishment for kidnapping. Whoever kidnaps any person from India or from lawful guardianship, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Section 364. Kidnapping or abducting in order to murder. Whoever kidnaps or abducts any person in order that such person may be murdered or may be so disposed of as to be put in danger of being murdered, shall be punished with imprisonment for life or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Section 364A. Kidnapping for ransom, etc. - Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction, and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, or causes hurt or death to such person in order to compel the Government or any foreign State or international intergovernmental organization or any other person to do or abstain from doing any act or to pay a ransom, shall be punishable with death, or imprisonment for life, and shall also be liable to fine."

We note that Section 363 of the IPC punishes the act of kidnapping and Section 364 thereof punishes the offence of kidnapping or abduction of a person in order to murder him. Section 364A further adds to the gravity of the offence by involving an instance of coercive violence or substantial threat thereof, to make a demand for ransom. Accordingly, the maximum punishment for the three crimes is

seven years imprisonment; ten years' imprisonment and imprisonment for life or death, respectively.

The nuanced, graded approach of the Parliament while criminalising the condemnable act of kidnapping must be carefully interpreted. Before interpreting the varying ingredients of crime and rigours of punishment, and appraising the judgments impugned, we deem it appropriate to reiterate the observations of this Court in Lohit Kaushal vs. State of Haryana, (2009) 17 SCC 106, wherein this Court observed as under:

> "15. ... It is true that kidnapping as understood under Section 364-A IPC is a truly reprehensible crime and when a helpless child is kidnapped for ransom and that too by close relatives, the incident becomes all the more unacceptable. The very gravity of the crime and the abhorrence which it creates in the mind of the court are, however, factors which also tend to militate against the fair trial of an accused in such cases. A court must, therefore, guard against the possibility of being influenced in its judgments by sentiment rather than by objectivity and judicial considerations while evaluating the evidence."

This Court, notably in Anil vs. Administration of Daman & Diu, (2006) 13 SCC 36 ("Anil"), Vishwanath Gupta vs. State of Uttaranchal (2007) 11 SCC 633 ("Vishwanath Gupta") and Vikram Singh vs. Union of India, (2015) 9 SCC 502 ("Vikram Singh") has clarified the essential ingredients to order a conviction for the commission of an offence under Section 364A of the IPC in the following manner:

a) In Anil, the pertinent observations were made as regards those cases where the accused is convicted for the offence in respect of which no charge is framed. In the said case, the question was whether appellant therein could have been convicted under Section 364A of the IPC when the charge framed was under Section 364 read with Section 34 of the IPC. The relevant passages which can be culled out from the said judgment of the Supreme Court are as under:

"The propositions of law which can be culled out from the aforementioned judgments are:

(i) The appellant should not suffer any prejudice by reason of misjoinder of charges.

(ii) A conviction for lesser offence is permissible.

(iii) It should not result in failure of justice.

(iv) If there is a substantial compliance, misjoinder of charges may not be fatal and such misjoinder must be arising out of mere misjoinder to frame charges.

The ingredients for commission of offence under Section 364 and 364-A are different. Whereas the intention to kidnap in order that he may be murdered or may be so disposed of as to be put in danger as murder satisfies the requirements of

Section 364 of the Penal Code, for obtaining a conviction for commission of an offence under Section 364-A thereof it is necessary to prove that not only such kidnapping or abetment has taken place but thereafter the accused threatened to cause death or hurt to such person or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt or causes hurt or death to such person in order to compel the Government or any foreign State or international inter-governmental organisation or any other person to do or abstain from doing any act or to pay a ransom.

It was, thus, obligatory on the part of the learned Sessions Judge, Daman to frame a charge which would answer the description of the offence envisaged under Section 364-A of the Penal Code. It may be true that the kidnapping was done with a view to get ransom but the same should have been put to the appellant while framing a charge. The prejudice to the appellant is apparent as the ingredients of a higher offence had not been put to him while framing any charge."

b) In Vishwanath Gupta, it was observed as under:

"8. According to Section 364-A, whoever kidnaps or abducts any person and keeps him in detention and threatens to cause death or hurt to such person and by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, and claims a ransom and if death is caused then in that case the accused can be punished with death or imprisonment for life and also liable to pay fine.

9. The important ingredient of Section 364-A is the abduction or kidnapping, as the case may be. Thereafter, a threat to the kidnapped/abducted that if the demand for ransom is not met then the victim is likely to be put to death and in the event death is caused, the offence of Section 364-A is complete. There are three stages in this section, one is the kidnapping or abduction, second is threat of death coupled with the demand of money and lastly when the demand is not met, then causing death. If the three ingredients are available, that will constitute the offence under Section 364-A of the Penal Code. Any of the three ingredients can take place at one place or at different places."

c) In Vikram Singh, it was observed as under:

"25. … Section 364-A IPC has three distinct components viz. (i) the person concerned kidnaps or abducts or keeps the victim in detention after kidnapping or abduction; (ii) threatens to cause death or hurt or causes apprehension of death or hurt or actually hurts or causes death; and (iii) the kidnapping, abduction or detention and the threats of death or hurt, apprehension for such death or hurt or actual death or hurt is caused to coerce the person concerned or someone else to do something or to forbear from doing something or to pay ransom. These ingredients are, in our opinion, distinctly different from the offence of extortion under Section 383 IPC. The deficiency in the existing legal framework was noticed by the Law Commission and a separate provision in the form of Section 364-A IPC proposed for

incorporation to cover the ransom situations embodying the ingredients mentioned above."

It is necessary to prove not only that such kidnapping or abetment has taken place but that thereafter, the accused threatened to cause death or hurt to such person or by his conduct gave rise to a reasonable apprehension that such person may be put to death or hurt or cause hurt or death to such person in order to compel the Government or any foreign State or international, inter-governmental organization or any other person to do or abstain from doing any act or to pay a ransom.

Now, we shall consider the applicability of the above ratio to the present case and deal with appellants' argument about contradictions in the statements of the PW-21. We agree with the High Court that the statements are crucial. We also note that the Courts below, as is usual in kidnapping cases, have placed singular reliance on the testimony of PW-21 to prove the element of 'threat to cause death or hurt', or to determine whether the appellants' conduct gives rise to a reasonable apprehension that such person may be put to death or hurt. We have perused the statement of PW-21 made to the police on 18.02.2000, i.e., two days after he had returned home from the captivity of appellantsherein. The statements record that he was threatened at night by the appellants with a 'revolver,' which was claimed to be possessed by them. The exact statement was, "One handkerchief and one black cloth were tied on the eyes and said to me they have revolver and they will kill him if [he] raises any voice." However, the statement before the Trial Court dated 15.04.2002, nearly two years after the initial statement, includes a substantial detail that was omitted in the previous statement. After mentioning that the PW-21 was forcibly put inside the car and gagged, the statement reads, "The occupants threatened me with a knife and pistol and threatened me to kill." Thus, three crucial changes may be noticed: first, a change in the exact timing of the threat; second, the specificity of the delivery of the threat to kill; and third, omission of the intent behind the threat i.e. to prevent PW-21 from crying out. These details are crucial to proving the second ingredient of the charge under Section 364A and essential to bring home the guilt under this section namely, threat resulting in giving rise to a reasonable apprehension that such person may be put to death or hurt. It is clear that this ingredient has not been proved beyond reasonable doubt. The Courts below did not thoroughly address this doubt before convicting the appellants. For proving the ingredient of threat, the intimidation of the child victim, for the purpose of making him silent, cannot be enough. If the sentence carrying a maximum sentence of death and a minimum sentence of life sentence has such a low evidentiary threshold, the difference between punishments for kidnapping under 363, 364 and 364A shall become meaningless.

In the facts of the present case, we therefore agree with the submission of the learned counsel for the appellants, Sri Gaurav Agrawal, that the conviction of the appellants is unsustainable under Section 364A of the IPC.

This Court has wide power to alter the charge under Section 216 of the Cr.PC whilst not causing prejudice to the accused, as reiterated in Jasvinder Saini vs. State (Govt. of NCT of Delhi) (2013) 7 SCC 256, para 11; Central Bureau of Investigation vs. Karimullah Osan Khan (2014) 11 SCC 538, paragraph Nos. 17 and 18. The following observations of this Court in Dr. Nallapareddy Sridhar Reddy vs. State of Andhra Pradesh (2020) 12 SCC 467, paragraph No. 21 are also instructive:

"21. From the above line of precedents, it is clear that Section 216 provides the court an exclusive and wide-ranging power to change or alter any charge. The use of the words "at any time before judgment is pronounced" in sub-section (1) empowers the court to exercise its powers of altering or adding charges even after the completion of evidence, arguments and reserving of the judgment. The alteration or addition of a charge may be done if in the opinion of the court there was an omission in the framing of charge or if upon prima facie examination of the material brought on record, it leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the alleged offence. The test to be adopted by the court while deciding upon an addition or alteration of a charge is that the material brought on record needs to have a direct link or nexus with the ingredients of the alleged offence. Addition of a charge merely commences the trial for the additional charges, whereupon, based on the evidence, it is to be determined whether the accused may be convicted for the additional charges. The court must exercise its powers under Section 216 judiciously and ensure that no prejudice is caused to the accused and that he is allowed to have a fair trial. The only constraint on the court's power is the prejudice likely to be caused to the accused by the addition or alteration of charges. Subsection (4) accordingly prescribes the approach to be adopted by the courts where prejudice may be caused."

Therefore, we allow the appeals in part and set aside the conviction under Section 364A of the IPC.

The judgments of the learned Trial Court and the High Court are modified to the above extent. The appellants are now convicted for the offence under Section 363 of the IPC; i.e., kidnapping and sentenced to imprisonment for seven years and a fine of Rs.2000/-. If the appellants have completed imprisonment of more than seven years with remission and have paid the fine of Rs.2000/-, we direct the appellants to be released forthwith; if not on bail. If not, the appellants shall surrender within a period of four weeks and serve the remainder of the sentence." **Ravi Dhingra v. State of Haryana, 2023 Cri.L.J. 1913 : AIROnline 2023 SC 149**

LAND ACQUISITION, REHABILITATION AND RESETTLEMENT ACT

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 S. 24(2): Deemed lapse of acquisition proceedings - Grounds of non-payment of compensation and not taking over of possession.

Where notice under S. 12(2) of the 1894 Act is issued to landowner and owner fails to come to collect compensation, held, subsequently it is not open for such owner to allege that compensation was not paid. Furthermore, held, where possession of major part of acquired land is taken and only minor part could not be taken due to built-up area, such situation cannot be treated as failure to take possession. **(Government of NCT of Delhi and another v. Dayanand and another, (2023) 5 SCC 381)**

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 - S. 24(2) - Deemed lapse of - acquisition proceedings Non-payment of compensation, reiterated, is not a sole ground for lapse of the proceedings, where possession of land taken as in present case

Held, it was specific case of appellant that award was passed and possession was taken on 21-4-2006. Possession of land taken and compensation not paid would not result in deemed lapse of acquisition. Hence acquisition proceedings initiated under the Land Acquisition Act, 1894 would not lapse. **(Land Acquisition Collector and another v. B.S. Dhillon and others, (2023) 4 SCC 377)**

Land Acquisition and Requisition - Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 -S. 24(2) -Deemed lapse of acquisition proceedings.

Practice and Procedure - Delay/Laches/Limitation - Condonation of delay. There was enormous delay in preferring appeal before the Supreme Court. However, coordinate Benches had condoned delay arising out of very High Court declaring lapse of acquisition proceedings under S. 24(2) of the 2013 Act. Further, precedent relied on by High Court while passing its judgment was later overruled by Supreme Court. Hence, delay in preferring appeal condoned. **(Government of NCT of Delhi v. Sushil Kumar Gupta and others, (2023) 5 SCC 650)**

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 - S. 24(2) - Deemed lapse of acquisition proceedings - Non-payment of compensation, reiterated, is not a sole ground, where possession of land taken, as in present case. **(Land Acquisition Collector (South) v. Hari Chand and another, (2023) 6 SCC 99)**

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 S. 24(2) Deemed lapse of acquisition proceedings - When not occasioned-Principles reiterated Held, if either there has been payment of compensation to landowner, or, possession of acquired land has been taken, then there shall be no deemed lapse of the acquisition proceedings.

Land Acquisition Act, 1894-Ss. 31 and 34-Deposit of compensation amount before Reference Court- When permissible and warranted under the 1894 Act-Principles for payment of interest in case of delayed payment or deposit of compensation under the 1894 Act. Corresponding legal scheme provided under the 2013 Act, compared Scheme for payment of interest under the 2013 Act in a case where possession has been taken in proceedings under the 1894 Act, but compensation has not been paid or deposited Clarified.

Land Acquisition Act, 1894-S. 16-Taking of possession by State - Manner in which may be done - Drawing up of memorandum or panchnama of taking possession, held, amounts to taking physical possession of land.

After acquisition of large chunk of land, State is not required to put some person or police force to retain possession and start cultivating on land till it is utilized. Government is also not required to start residing or physically occupying the same once process of the acquisition is complete.

Any person retaining possession thereafter or making re-entry in land has to be treated as trespasser. Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, S. 24. **(Delhi Development Authority v. Anita Singh and others, (2023) 6 SCC 113)**

Sec. 55—U.P. Land Acquisition (Determination of Compensation and Declaration of Award of Agreement) Rules, 1997, Rr. 2, 3 4(2)—Constitution of India, Art. 14—Land acquisition—Classification of landowners—Validity

In the instant case the classification of landowners as 'Pushtaini' and 'Gairpushtaini' landowners for payment of compensation for land acquisition at different rates was upheld by a Full Bench of the High Court. Dealing with a challenge to the said judgment, the Supreme Court was called upon to decide whether it was contrary to the judgment of the Supreme Court in the case of Nagpur Improvement Trust.

Held, the classification made between Pushtaini landowners and Gairpushtaini land-owners is contrary to the law laid down in the Nagpur Improvement Trust case. The classification made by the GNOIDA author- ity for the purposes of awarding differential compensation is bad in law, and it is precisely this

kind of classification that has been barred under the decision in the case of Nagpur Improvement Trust reported in AIR 1973 SC 689. When the purpose of the acquisition of the land is for the benefit of the public at large, then the nature of the owner of the said land is inconsequential to the purpose. If such a classification on the basis of the na- ture of owner is allowed, then on the same grounds, there might be a possibility of fu- ture classifications where powerholding mem- bers of the society may get away with a larger compensation, and the marginalized may get lesser compensation. This is pre- cisely what the Supreme Court in the case of Nagpur Improvement Trust predicted, and to pre-empt such arbitrary classification, clarified the position in law. The Land Ac- quisition Act does not distinguish between classes of owners, and uniformly provides compensation to all classes of landowners. The classification made between Pushtaini landowners and Gair-pushtaini landowners is contrary to the law laid down in the Nagpur Improvement Trust case. **[Ramesh Chandra Sharma vs. State of U.P., AIR 2023 SC 1117]**

LIMITATION ACT, 1963

Art. 136 – Execution proceedings – Institution of – The date on which compromise decree entered into or the date when final decree passed – Limitation thereto – Consideration of – The Limitation period would commence only with the decree becoming enforceable and thus is capable of being executed – The period of twelve years computable from date when the final decree passed by the Civil Court. **Shaifuddin (Dead)Thr. LRs. v. Kanhaiya Lal (Dead) Thr. LRs. and others, 2023 (2) ARC 16 – SC**

MOTOR VEHICLES ACT

Motor Vehicles Act, 1988 Ch. XII (Ss. 165 to 176), Ch. X (Ss. 140 to 144) and Ch. XI (Ss. 145 to 164-D) [as they stand after 2019 Amendment] Convenient procedure for adjudication of claim cases without delay Amended Act analysed - Considering overall aspects of Amending Act of 2019, elaborate directions issued under Art. 142 of the Constitution to ensure expeditious disposal of accident compensation cases.

Motor Vehicles Act, 1988- - S. 146 (as it stands after the 2019 Amendment) Motor vehicle insurance Mandatory in nature. Exemption from insurance given for certain category of vehicles owned by the Central Government, State Government, local authority or any State transport undertaking, if the vehicle is used for the purpose not connected with any commercial enterprise. However, such exemption is subject to order passed by appropriate Government on establishing and maintaining fund by such authority.

Liability of insurer Requirements of insurance policies and limits of liability to pay compensation under S. 147 as it stands after the amendment, specified. Role and Responsibilities of police officials elaborately explained. Role of facilitator is cast upon Police Officer. He has to act in time bound manner and perform his duties as per 2019 Amendment Act. **(Gohar Mohammed v. Uttar Pradesh State Road Transport Corporation and others, (2023) 4 SCC 381)**

NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT

Secs. 20, 25, 35—Illegal possession of contraband—Presumption against owner of vehicle—

While dealing with the question of possession in terms of Section 54 of the Act and the presumption raised under Section 35, this Court in Noor Aga v. State of Punjab (2008) 16 SCC 417 while upholding the constitutional validity of Section 35 observed that as this section imposed a heavy reverse burden on an accused, the condition for the applicability of this and other related sections would have to be spelt out on facts and it was only after the prosecution had discharged the initial burden to prove the foundational facts that Section 35 would come into play.

Applying the facts of the present case to the case cited above, it is apparent that the initial burden to prove that the appellant had the knowledge that the vehicle he owned was being used for transporting narcotics still lays on the prosecution, as would be clear from the word "knowingly", and it was only after the evidence proved beyond reasonable doubt that he had the knowledge would the presumption under Section 35 arise. Section 35 also presupposes that the culpable mental state of an accused has to be proved as a fact beyond reasonable doubt and not merely when its existence is established by a preponderance of probabilities. We are of the opinion that in the absence of any evidence with regard to the mental state of the appellant no presumption under Section 35 can be drawn. The only evidences which the prosecution seeks to rely on is the Appellant's conduct in giving his residential address in Rajasthan although he was a resident of Fatehabad in Haryana and that the Appellant had taken the truck on superdari. Registration of the offending truck cannot by any stretch of imagination fasten him with the knowledge of its misuse by the driver and others**." [Harbhajan Singh vs. State of Haryana, AIR 2023 SC 2179]**

NEGOTIABLE INSTRUMENTS ACT

Sec. 138 read with Sec. 141/142 N.I. Act—The complaint by the appellant-company has been filed in the name of the company through its authorized representative, Ripanjit Singh Kohli- Power of Attorney Holder

The complaint is by the appellant-company in its own name. It has not been filed in the name of the power of attorney holder. The complainant, i.e., the appellant-company is entitled to file the complaint in its own name through its power of attorney holder. One of the directors of the appellant-company, i.e., Kavinder Singh Anand is holding power of attorney of the appellant-company and is the true and lawful attorney of the same. Kasvinder Singh Anand, on the strength of the power of attorney, authorized Ripanjit Singh Kohli to lodge the complaint.

Relied on the case of AC Narayanan v. State of Maharashtra, 2013 (131) AIC 160. Held, as the power of attorney holder is said to be having due knowledge about the transactions, he has the capacity to depose. Trial Court or the revisional court committed no error of law in rejecting the applications of the respondent. High Court erred in interfering with the orders of trial court. Appeal is allowed. **[Mita India Pvt. Ltd. vs. Mahendra Jain, 2023 (123) ACC 614 (SC)]**

PREVENTION OF CORRUPTION ACT

Public Accountability, Vigilance and Prevention of Corruption - Prevention of Corruption Act, 1988-Ss. 7 and 13(1)(d) r/w Ss. 13(2) and 20 -Illegal gratification-Drawing inferential deduction of culpability/guilt of a public servant.

It has been held for recording conviction under Ss. 7, 13(1)(d)(i) and (ii), the prosecution has to first prove the demand and acceptance of illegal gratification either: (1) by direct evidence which can be in the nature of oral evidence or documentary evidence, or, (2) by circumstantial evidence in the absence of direct oral and documentary evidence.

It has been held that in order to bring home the offence under S. 7 of the Prevention of Corruption Act, 1988 there must be an offer which emanates from the bribe-giver which is accepted by the public servant which would make it an offence. Similarly, a prior demand by the public servant when accepted by the bribe-giver and in turn there is a payment made which is received by the public servant, would be an offence of obtainment under Ss. 13(1)(d)(i) and (ii).

It was further held that presumption of fact with regard to demand and acceptance or obtainment of an illegal gratification may be made by the court by way of an inference only when the foundational facts are proved on record. Thus, on the basis of the material on record, the court can raise a presumption of fact while considering whether the fact of demand has been proved by the prosecution or not. Said presumption of fact, held, is subject to rebuttal by the accused and in the absence of rebuttal, presumption stands.

It was also held that if the complainant turns "hostile", or has died or is unavailable to let in his evidence during trial, demand of illegal gratification can be proved by letting in the evidence of any other witness who can again let in evidence,

either orally or by documentary evidence, or, the prosecution can prove the case by circumstantial evidence and, thus, the trial does not abate in such cases, nor does it result in an order of acquittal of the accused public servant.

Public Accountability, Vigilance and Prevention of Corruption Prevention of Corruption Act, 1988-S. 20 r/w Ss. 7, 11, 13(1)(a), (b) and 13(1)(d)-Statutory presumption under S. 20 is available for the offence punishable under Ss. 7 or 11, or, cls. (a) and (b) of sub-section (1) of S. 13. However, the same is not available for cl. (d) of sub-section (1) of S. 13.

Public Accountability, Vigilance and Prevention of Corruption Prevention of Corruption Act, 1988 S. 20 Presumption as to public servant accepting gratification other than legal remuneration Direct evidence to prove requisite conditions for drawing such presumption was held, not necessary. The same can be raised based on circumstantial evidence adduced by the prosecution. Presumption under S. 20 is a mandatory legal presumption, which is rebuttable.

Evidence Act, 1872-Ss. 8, 14 and 15-Facts showing existence of any state of mind. It has been held that the facts showing the existence of any state of mind, such as intention, knowledge, good faith, negligence, or ill will need not be proved by direct testimony. They may be proved inferentially from conduct, surrounding circumstances, etc.

Evidence Act, 1872-Ss. 59, 61, 64, 65 and 67 to 73- Documentary evidence - Mode of proof-Documentary evidence was held to be proved by the production of the documents themselves or, in their absence, by secondary evidence under S. 65 Further, held, mere production and marking of a document as an exhibit by the court cannot be held to be due proof of its contents and, thus, its execution has to be proved by admissible evidence.

Evidence Act, 1872- -Ss. 62, 63 and 65 Primary and secondary evidence-Distinction between. It has been held that primary evidence is an oral account of the original evidence of a person who saw what happened and gives an account of it recorded by the court, or the original document itself, or the original thing when produced in court and, the secondary evidence is a report or an oral account of the original evidence or a copy of a document or a model of the original thing. **(Neeraj Dutta v. State (Government of NCT of Delhi), (2023) 4 SCC 731)**

Secs. 7 and 13(1)(d)(i) and (ii)—Reference due to the divergence in the treatment of the evidentiary requirement for proving the offence under sections 7 and 13(1)(d) read with section 13(2)—

The following question was framed by the Constitutional Bench- whether in the absence of evidence of complainant/direct or primary evidence of demand of illegal gratification, is it not permissible to draw inferential deduction of culpability/guilt of a public servant under Section 7 and Section 13(1)(d) read

with Section 13(2) of Prevention of Corruption Act, 1988 based on other evidence adduced by the prosecution?

The following law was summarized-

(a) Proof of demand and acceptance of illegal gratification by a public servant as a fact in issue by the prosecution is a sine qua non in order to establish the guilt of the accused public servant under Sections 7 and 13 (1)(d) (i) and(ii) of the Act.

(b) In order to bring home the guilt of the accused, the prosecution has to first prove the demand of illegal gratification and the subsequent acceptance as a matter of fact. This fact in issue can be proved either by direct evidence which can be in the nature of oral evidence or documentary evidence.

(c) Further, the fact in issue, namely, the proof of demand and acceptance of illegal gratification can also be proved by circumstantial evidence in the absence of direct oral and documentary evidence.

(d) In order to prove the fact in issue, namely, the demand and acceptance of illegal gratification by the public servant, the following aspects have to be borne in mind:

(i) if there is an offer to pay by the bribe giver without there being any demand from the public servant and the latter simply accepts the offer and receives the illegal gratification, it is a case of acceptance as per Section 7 of the Act. In such a case, there need not be a prior demand by the public servant.

(ii) On the other hand, if the public servant makes a demand and the bribe giver accepts the demand and tenders the demanded gratification which in turn is received by the public servant, it is a case of obtainment. In the case of obtainment, the prior demand for illegal gratification emanates from the public servant. This is an offence under Section 13 (1)(d)(i) and (ii) of the Act.

(iii) In both cases of (i) and (ii) above, the offer by the bribe giver and the demand by the public servant respectively have to be proved by the prosecution as a fact in issue. In other words, mere acceptance or receipt of an illegal gratification without anything more would not make it an offence under Section 7 or Section 13 (1)(d), (i) and (ii) respectively of the Act. Therefore, under Section 7 of the Act, in order to bring home the offence, there must be an offer which emanates from the bribe giver which is accepted by the public servant which would make it an offence. Similarly, a prior demand by the public servant when accepted by the bribe giver and inturn there is a payment made which is received by the public servant, would be an offence of obtainment under Section 13 (1)(d) and (i) and (ii) of the Act.

(e) The presumption of fact with regard to the demand and acceptance or obtainment of an illegal gratification may be made by a court of law by way of an inference only when the foundational facts have been proved by relevant oral and documentary evidence and not in the absence thereof. On the basis of the material on record, the Court has the discretion to raise a presumption of fact while considering whether the fact of demand has been proved by the prosecution or not. Of course, a presumption

of fact is subject to rebuttal by the accused and in the absence of rebuttal presumption stands.

(f) In the event the complainant turns 'hostile', or has died or is unavailable to let in his evidence during trial, demand of illegal gratification can be proved by letting in the evidence of any other witness who can again let in evidence, either orally or by documentary evidence or the prosecution can prove the case by circumstantial evidence. The trial does not abate nor does it result in an order of acquittal of the accused public servant.

(g) In so far as Section 7 of the Act is concerned, on the proof of the facts in issue, Section 20 mandates the court to raise a presumption that the illegal gratification was for the purpose of a motive or reward as mentioned in the said Section. The said presumption has to be raised by the court as a legal presumption or a presumption in law. Of course, the said presumption is also subject to rebuttal. Section 20 does not apply to Section 13 (1) (d) (i) and (ii) of the Act.

(h) We clarify that the presumption in law under Section 20 of the Act is distinct from presumption of fact referred to above in point (e) as the former is a mandatory presumption while the latter is discretionary in nature.

Held, in the absence of evidence of the complainant (direct/primary, oral/documentary evidence), it is permissible to draw an inferential deduction of culpability/guilt of a public servant under section 7 and section 13(d) read with section 1312) of the Act based on other evidence, adduced by the prosecution-Reference is answered. **[Neeraj Dutta vs. State (Govt. of NCT of Delhi), 2023 (123) ACC 677 (SC)] Judgment of Constitutional Bench**

Sec. 13(1)(b), (2)—Quashing of FIR—Allegations of corruption—

In Tapan Kumar Singh (supra). There, this Court ruled that:

"20. *** The information given disclosing the commission of a cognizable offence only sets in motion the investigative machinery, with a view to collect all necessary evidence, and thereafter to take action in accordance with law. The true test is whether the information furnished provides a reason to suspect the commission of an offence, which the police officer 9 (1996) 1 SCC 542 concerned is empowered under Section 156 of the Code to investigate. If it does, he has no option but to record the information and proceed to investigate the case either himself or depute any other competent officer to conduct the investigation. The question as to whether the report is true, whether it discloses full details regarding the manner of occurrence, whether the accused is named, and whether there is sufficient evidence to support the allegations are all matters which are alien to the consideration of the question whether the report discloses the commission of a cognizable offence. Even if the information does not give full details regarding these matters, the investigating

officer is not absolved of his duty to investigate the case and discover the true facts, if he can."

Thus, it being the settled principle of law that when an investigation is yet to start, there should be no scrutiny to what extent the allegations in a first information report are probable, reliable or genuine and also that a first information report can be registered merely on suspicion, the High Court ought to have realized that the FIR which, according to it, was based on "probabilities" ought not to have been interdicted. Viewed through the prism of gravity of allegations, a first information report based on "probability" of a crime having been committed would obviously be of a higher degree as compared to a first information report lodged on a "mere suspicion" that a crime has been committed. The High Court failed to bear in mind these principles and precisely did what it was not supposed to do at this stage. We are, thus, unhesitatingly of the view that the High Court was not justified in its interference on the ground it did. **[State of Chhatisgarh vs. Aman Kumar Singh, AIR 2023 SC 1441]**

Prevention of Corruption Act, Section 3 Evidence Act

The matter was related to the illegal gratification and proof of demand, Hon'ble Supreme Court held that a charge cannot be framed very casually. The trial courts ought to be very meticulous when it comes to the framing of charges. In a given case any such error or omission may lead to acquittal and or a long delay in trial due to order of remand which can be passed under sub section 2 of section 464 Cr.P.C. apart from trial court it is the duty of the public prosecutor to be vigilant while the framing of charges. Hon'ble Court held-

"As stated earlier, complainant PW2 has not supported the prosecution. He has not said anything in his examination-in-chief about the demand made by the appellant. The public prosecutor cross examined PW2. The witness stated that there was no demand of a bribe made by the appellant. According to him, he filed a complaint as the return of the sale deed was delayed. Though PW2 accepted that he had filed the complaint, in the cross examination, he was not confronted with the material portions of the complaint in which he had narrated how the alleged demand was made. The public prosecutor ought to have confronted the witness with his alleged prior statements in the complaint and proved that part of the complaint through the concerned police officer who had reduced the complaint into writing. However, that was not done.

Now, we turn to the evidence of the shadow witness (PW3). In the examination-in-chief, he stated that the appellant asked the PW2 whether he had brought the amount. PW3 did not say that the appellant made a specific demand of gratification in his presence to PW2. To attract Section 7 of the PC Act, the demand for gratification has to be proved by the prosecution beyond a reasonable doubt. The

word used in Section 7, as it existed before 26 th July 2018, is 'gratification'. There has to be a demand for gratification. It is not a simple demand for money, but it has to be a demand for gratification. If the factum of demand of gratification and acceptance thereof is proved, then the presumption under Section 20 can be invoked, and the Court can presume that the demand must be as a motive or reward for doing any official act. This presumption can be rebutted by the accused.

There is no circumstantial evidence of demand for gratification in this case. In the circumstances, the offences punishable under Section 7 and Section 13(2) read with Section 13(1)(d) have not been established. Unless both demand and acceptance are established, offence of obtaining pecuniary advantage by corrupt means covered by clauses (i) and (ii) of Section 13(1)(d) cannot be proved.

EFFECT OF THE FAILURE TO FRAME A PROPER CHARGE

We must deal with another argument made by the learned senior counsel appearing for the appellant. That is about the failure to frame a proper charge for the offence punishable under Section 7. The relevant portion of the charge reads thus:

> "You, working as the Sub Registrar at Kannivadi, Dindigul District from 27.10.2003 to 27.10.2003 and as such you are a public servant you registered the sale deed of 16.05 cents of land purchased by Sundaramoorthy on 12.07.2004 and demanded a sum of Rs.500/ from Sundaramoorthy as gratification other than legal remuneration for returning the registered document and also received Rs.500/ as bribe, hence you disclosed the offences punishable u/s. 7 of Prevention of Corruption Act 1988 and triable by this Court."

Thus, the Special Court omitted to frame a specific charge on demand allegedly made by the appellant on 6 th and 13th August 2004 and acceptance thereof on 13th August 2004.

Under Section 464 of CrPC, omission to frame a charge or any error in charge is never fatal unless, in the opinion of the Court, a failure of justice has in fact been occasioned thereby. In this case, from the perusal of the cross-examination of PW3 and other prosecution witnesses made by the Advocate for the appellant, it is apparent that the appellant had clearly understood the prosecution case about the first alleged demand made on 6th August 2004 and the subsequent alleged demand and acceptance on 13 th August 2004. There is no doubt that this is a case of omission to frame a proper charge, and whatever charge has been framed is, per se defective. However, by reason of the said omission or defect, the accused was not prejudiced insofar as his right to defend is concerned. Therefore, in this case, the omission to frame charge and/or error in framing charge is not fatal.

We find that, in this case, the charge has been framed very casually. The Trial Courts ought to be very meticulous when it comes to the framing of charges. In a given case, any such error or omission may lead to acquittal and/or a long delay in

trial due to an order of remand which can be passed under subsection (2) of Section 464 of CrPC. Apart from the duty of the Trial Court, even the public prosecutor has a duty to be vigilant, and if a proper charge is not framed, it is his duty to apply to the Court to frame an appropriate charge.

The appeal is allowed. The impugned judgments are quashed and set aside, and the appellant is acquitted of the offences alleged against him. The bail bonds of the appellant stand cancelled." **Soundarajan v. State Rep. By the Inspector of Police Vigilance Anticorruption Dindigul, Cri.L.J. 2123 : AIROnline 2023 SC 300**

PREVENTION OF FOOD ADULTERATION ACT

Prevention of Food Adulteration Act, 1954-S. 14 & proviso thereto, S. 16(1)(a)(i) r/w Ss. 7 and 19(2)(a)(ii)-Vendor of food article, particularly in the case of a packaged item When cannot be held liable for adulteration of the same - Law clarified.

Adulteration in pan masala, namely, "Pan Parag" — Liability of appellant vendor, who sold the pan masala to customers, after purchasing the same from its manufacturer - Whether made out. **(Sri Mahavir Agency and another v. State of West Bengal and another, (2023) 6 SCC 103)**

PREVENTION OF MONEY LAUNDERING ACT

Prevention of Money-Laundering Act, 2002-Ss. 43(1) & (2), 44(1)(a) and 44(1)(c) r/w S. 4-Taking cognizance of scheduled offence by court other than the Special Court which took cognizance of the offence of money-laundering. Procedure to correct this infirmity was held, even if the scheduled offence is taken cognizance of by - any other court, that court shall commit the same, on an application by the authority concerned to the Special Court which has taken cognizance of the offence of money-laundering.

Terrorism and Organised Crime - Prevention of Money-Laundering Act, 2002 Ss. 43(1) & (2), 44(1)(a) and 44(1)(c) r/w S. 44(1) Expln. (i) - Trial of scheduled offence and offence of money-laundering by the same court. It was held that S. 44(1) Expln. (i) clarifies that the trial of both sets of offences by the same court shall not be construed as joint trial.

Terrorism and Organised Crime Prevention of Money-Laundering Act, 2002-Ss. 2(1)(p) and 3 Expln.-"Money-laundering" in S. 2(1)(p) to have the same meaning as assigned to it in S. 3-S. 3, held, comprises of two essential limbs, namely, (i) involvement in any process or activity; and (ii) connection of such process or activity to the proceeds of crime.

Criminal Procedure Code, 1973- Ss. 177 to 184 - Jurisdiction of criminal court and civil court. It was held that the jurisdiction of a civil court is limited by territorial as well as pecuniary limits - However, the jurisdiction of a criminal court is determined by: (i) the offence; and/or (ii) the offender. **(Rana Ayyub v. Directorate of Enforcement, (2023) 4 SCC 357)**

Prevention of Money-Laundering Act, 2002 Ss. 44, 43, 45, 3 and 4-Special Court which has jurisdiction : Transfer of case under PMLA-Lack of jurisdiction of Special Court concerned alleged - Case sought to be transferred from the Court of the Special Judge, PMLA, Lucknow to the Court of the Special Judge, PMLA at Ernakulam, Kerala - Transfer sought by challenging jurisdiction of Special Court, Lucknow by claiming that all criminal activities alleged by the prosecution took place in Kerala.

It has been held that irrespective of where the FIR relating to the Scheduled Offence was filed and irrespective of which court took cognizance of the Scheduled Offence, the question of territorial jurisdiction of a Special Court to take cognizance of a compliant under PMLA should be decided with reference to the place/places where any one of the activities/processes which constitute the offence under S. 3 took place.

S. 406 r/w S. 167(2): Transfer of case - Relevancy of court remanding petitioner-accused to custody under S. 167(2). Case sought to be transferred from the Court of the Special Judge, PMLA, Lucknow to the Court of the Special Judge, PMLA at Ernakulam, Kerala. It was held that the fact that the petitioner was remanded to custody by Special Judge at Ernakulam under S. 167(2) CrPC and therefore, the filing of the complaint at Lucknow is impermissible, is not legally well-founded. **(Ka Rauf Sherif v. Directorate of Enforcement and others, (2023) 6 SCC 92)**

Prevention of Money Laundering Act 2002, Section 439 of Cr.P.C.

The matter was related to prevention of money laundering Act, offence of cheating and misappropriation of public funds in furtherance of criminal conspiracy. The investigation is still going on against the accused by Enforcement Directorate. Hon'ble Supreme Court held that the allegation against accused were very serious and required to be investigated thoroughly. Hence the order granting bail was liable to be set aside. Hon'ble Court held that-

" At the outset, it is required to be noted that respective respondent No. 1 – accused are facing the investigation by the Enforcement Directorate for the scheduled offences and for the offences of money laundering under Section 3 of the PML Act punishable under Section 4 of the said Act. An enquiry/investigation is still going on by the Enforcement Directorate for the scheduled offences in connection

with FIR No. 12/2019. Once, the enquiry/investigation against respective respondent No. 1 is going on for the offences under the PML Act, 2002, the rigour of Section 45 of the PML Act, 2002 is required to be considered. Section 45 of the PML Act, 2002 reads as under: -

> '45. Offences to be cognizable and non-bailable.— (1) [Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no person accused of an offence [under this Act] shall be released on bail or on his own bond unless—]
>
> (i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and
>
> (ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:
>
> Provided that a person, who, is under the age of sixteen years, or is a woman or is sick or infirm [or is accused either on his own or alongwith other co-accused of money- laundering a sum of less than one crore rupees], may be released on bail, if the Special Court so directs:
>
> Provided further that the Special Court shall not take cognizance of any offence punishable under Section 4 except upon a complaint in writing made by—
>
> (i) the Director; or
>
> (ii) any officer of the Central Government or a State Government authorised in writing in this behalf by the Central Government by a general or special order made in this behalf by that Government.
>
> [(1-A) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), or any other provision of this Act, no police officer shall investigate into an offence under this Act unless specifically authorised, by the Central Government by a general or special order, and, subject to such conditions as may be prescribed.]
>
> (2) The limitation on granting of bail specified in [* * *] sub-section
>
> (1) is in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail."

By the impugned judgment(s) and order(s) and while granting bail, the High Court has not considered the rigour of Section 45 of the PML Act, 2002.

Even otherwise, the High Court has not at all considered the nature of allegations and seriousness of the offences alleged of money laundering and the offences under the PML Act, 2002. Looking to the nature of allegations, it can be said that the same can be said to be very serious allegations of money laundering which are required to be investigated thoroughly.

Now so far as the submissions on behalf of the respective respondent No. 1 that respective respondent No. 1 were not named in the FIR with respect to the scheduled offence(s) and/or that all the other accused are discharged/acquitted in so far as the predicated offences are concerned, merely because other accused are acquitted/discharged, it cannot be a ground not to continue the investigation in respect of respective respondent No. 1. An enquiry/investigation is going on against respective respondent No. 1 with respect to the scheduled offences. Therefore, the enquiry/investigation for the scheduled offences itself is sufficient at this stage.

From the impugned judgment(s) and order(s) passed by the High Court, it appears that what is weighed with the High Court is that chargesheet has been filed against respective respondent No. 1 – accused and therefore, the investigation is completed. However, the High Court has failed to notice and appreciate that the investigation with respect to the scheduled offences under the PML Act, 2002 by the Enforcement Directorate is still going on. Merely because, for the predicated offences the chargesheet might have been filed it cannot be a ground to release the accused on bail in connection with the scheduled offences under the PML Act, 2002. Investigation for the predicated offences and the investigation by the Enforcement Directorate for the scheduled offences under the PML Act are different and distinct. Therefore, the High Court has taken into consideration the irrelevant consideration. The investigation by the Enforcement Directorate for the scheduled offences under the PML Act, 2002 is till going on.

As observed hereinabove, the High Court has neither considered the rigour of Section 45 of the PML Act, 2002 nor has considered the seriousness of the offences alleged against accused for the scheduled offences under the PML Act, 2002 and the High Court has not at all considered the fact that the investigation by the Enforcement Directorate for the scheduled offences under the PML Act, 2002 is still going on and therefore, the impugned orders passed by the High Court enlarging respective respondent No. 1 on bail are unsustainable and the matters are required to be remitted back to the High Court for afresh decision on the bail applications after taking into consideration the observations made hereinabove.

In view of the above and for the reasons stated above, both these appeals succeed. The impugned judgment(s) and order(s) passed by the High Court in Criminal Petition Nos. 1146/2021 and 1147/2021 enlarging respective respondent No. 1 – accused in respective appeals on bail are hereby quashed and set aside. That respective respondent No. 1 now to surrender before the competent court having jurisdiction or before the concerned jail authority within a period of one week from today. The matters are remitted back to the High Court to consider the bail applications afresh in light of the observations made hereinabove and after respective respondent No. 1 surrenders within a period of one week as ordered

above." **Directorate of Enforcement v. Aditya Tripathi, 2023 Cri.L.J. 2293: AIROnline 2023 SC 402**

PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT

Protection of Children from Sexual Offences Act, 2012- Ss. 19 and 21 - Object - Strict compliance intended Person on coming to know about commission of offence under - Pocso Act, held, is obliged to promptly report the same to the specified authorities. Failure to do so must be regarded as a serious offence even though punishment prescribed under S. 21 is not severe Supreme Court under parens patriae jurisdiction has duty to give directions for compliance with provisions of the POCSO Act.

Criminal Procedure Code, 1973 S. 482 - Quashing of FIR and - charge-sheet- Power should be exercised by High Court sparingly ex debito justitiae Quashment on basis of statements of victims and other witnesses recorded under S. 161 CrPC unjustified and would result in miscarriage of justice. Power can be exercised if FIR and final report filed under S. 173(2) CrPC along with materials collected disclose ingredient to constitute alleged offence(s) and a prima facie case against accused. **(State of Maharashtra and another v. Dr. Maroti S/o Kashinath Pimpalkar, (2023) 4 SCC 298)**

SERVICE LAW

It has been held that the right to be considered for promotion occurs on the date of consideration of eligible candidate and applicable rules would be the rules existing at that time. The government is entitled to take conscious policy decision not to fill vacancy arising prior to amendment of rules.

In the context of Article 309, 310 and 311, it was held that the relationship between employee and the State originates in contract but by virtue of constitutional constraints coupled with legislative and executive rules governing service, such relationship attains 'status' as against contract. It was further held that the State has a right to stop recruitment process any time before the appointment takes place as there is no vested right in candidate to get process completed. However, the state must justify its action on the touchstone of Article 14 of the constitution. **(State of Himachal Pradesh and others v. Raj Kumar and others, (2023) 3 SCC 773)**

Family pension - R. 54(14)(b) of the Central Civil Services (Pension) Rules, 1972 "Family in relation to a government servant" - Adopted son/daughter - Child adopted by widow of government servant. Benefit of family pension restricted only to child legally adopted by government servant during his/her lifetime. Adoptee must

have familial relationship with government servant during his lifetime Child adopted by widow of government servant, subsequent to death of government servant was held not covered by definition of "family" under R. 54(14)(b) of the 1972 Rules and not entitled to receive family pension -Principle of noscitur a sociis to be applied. **(Ram Shridhar Chimurkar v. Union of India and another, (2023) 4 SCC 312)**

Higher Judicial Service - Recruitment Process- Appointments made in excess of quota beyond 10% through limited competitive examination in breach of directions issued by Supreme Court in All India Judges' Assn., (2010) 15 SCC 170 w.e.f. 1-1-2011- Directed to be adjusted against future recruitments.

Higher Judicial Service-Necessary Party Challenge to appointments made in excess of 10% quota under limited departmental examination for recruitment to Higher Judicial Service in the year 2017/18. No relief granted in absence of selected/appointed candidates being made party to proceedings.

Recruitment Process% Locus standi of petitioners to challenge same - Not gone into and matter considered in light of All India Judges' Assn., (2010) 15 SCC 170. **(Rajendra Kumar Shrivas v. State of Madhya Pradesh and others, (2023) 5 SCC 364)**

SPECIFIC RELIEF ACT

The Hon'ble Supreme Court held that the contract automatically stood terminated as per the stipulated contractual terms. The sale agreements should have been held to be terminated instead of being declared impossible to perform. Further, the forfeiture was justified and within the confines of reasonable compensation as per Section 74 of the Contract Act in light of the Act that during the entirety of proceedings – firstly nature of forfeiture was never contested by the respondent and secondly the respondent never prayed for the refund of earnest money. Consequently, the judgements rendered by the courts below were set aside and suit was dismissed. **(Desh Raj and others v. Rohtash Singh, (2023) 3 SCC 714)**

Specific Relief Act, 1963-S. 16-Suit for specific performance.

Contract and Specific Relief Specific Relief Act, 1963 S. 16 Agreement to sell Suit for specific performance: Readiness and willingness - Accounts and their non-production. Unless plaintiff was called upon to produce passbook either by defendant or, court orders him to do so, no adverse inference can be drawn from the same. **(Basavaraj v. Padmavathi and another, (2023) 4 SCC 239)**

UNLAWFUL ACTIVITIES (PREVENTION) ACT

Unlawful Activities (Prevention) Act, 1967 Ss. 39 & 40 and S. 43-D(5) & proviso thereto - Offences of supporting and/or raising funds for terrorist organization under Ss. 39 & 40 - Essential ingredients Cancellation of bail in respect of such offence(s)- Whether justified-Matters to be considered.

"Reasonable grounds for believing that the accusation against such person is prima facie true" for denial of bail as provided under S. 43-D(5) proviso-Standard of "prima facie" satisfaction prescribed under S. 43-D(5) of the UAPA for grant/denial of bail vis-à-vis standard of "not guilty" prescribed in TADA, MCOCA and NDPS Act for grant/denial of bail.**(Kekhriesatuo Tep and others v. National Investigation Agency, (2023) 6 SCC 58)**

Unlawful Activities (Prevention) Act, 1967 - S. 43-D(5) & proviso thereto r/w Ss. 18, 19, 20 and 39- Bail- "Reasonable grounds for believing that the accusation against such person is prima facie true" for denial of bail as provided under S. 43-D(5) proviso. Whether made out in the present case against appellant-Accused 46 and 47 Determination of - In an incident resulting in double murder, appellant- Accused 46 and 47, along with other co-accused prosecuted under S. 120-B r/ w S. 302 IPC, Ss. 18, 19, 20 and 39 of UAPA and Ss. 4 and 5 of the Explosives Substances Act, 1908. **(Yedala Subba Rao and another v. Union of India, (2023) 6 SCC 65)**

UTTAR PRADESH TRADE TAX ACT

U.P. Trade Tax Act, 1948 - S. 4-A Production of product When can be considered as "diversification." Manufacturer when entitled to exemption on grounds of "expansion" or "modernization." On facts held, as goods manufactured by appellant assessee did not fall within ambit of expression "diversification", denial of eligibility certificate under diversification scheme justified.

It was held that Taxing/Fiscal statutes should be construed literally. Exemption provisions are to be read as they are and to be construed literally and should be given a literal meaning. Person claiming exemption must satisfy all the conditions laid down in exemption notification. **(AMD Industries Limited (earlier known as Ashoka Metal Décor Private Limited) v. Commissioner of Trade Tax, Lucknow and another, (2023) 4 SCC 231)**

UTTAR PRADESH URBAN BUILDINGS (REGULATION OF LETTING, RENT AND EVICTION) ACT

Facts

Premises in question was given on rent to Appellant on monthly rent, later rent was increased. Subsequently, landlord refused to accept rent which was then paid by tenant through money order which was returned. Under these circumstances when rent was being refused by landlord, tenant started depositing rent in Court of Civil Judge. Notice was given by landlord for demanded rent from tenant. Said notice did not result in deposit of rent before landlord and consequently landlord filed suit in Court of Judge, Small Causes, for arrears of rent and eviction, on grounds of arrears of rent. Small Cause Court gave finding that tenant was in arrears of rent and consequently decree of eviction and recovery of rent was passed against tenant. Tenant then filed revision before District Judge which was dismissed and so was his writ petition, later by High Court.

The High Court though, had set aside the findings of the Trial Court and the Sessions Court, on the enhanced rent. The High Court held that there was no evidence before the trial Court of any oral agreement set up by the landlord, which provided for a periodical increase of rent. The High Court further held that once the notice of demand was sent to the tenant by the landlord, demanding a rent at the enhanced rate, then the tenant had no option but to deposit the rent before the landlord, as against depositing it in the Court. He could though deposit the admitted rent and not the enhanced rent, but the deposit had to be made to the landlord. Therefore, present appeal was filed on the question as to whether impugned decree of eviction on ground of arrears of rent warrants any interference.

Held

The tenant can only deposit rent in the Court, as long as the landlord has refused to accept the rent. Once the landlord expresses his willingness to accept the rent, which in the present case he did by serving the notice, the tenant had no option but to deposit the rent to the landlord. This had not been done by the Appellant.

If the landlord has been refusing to accept the rent at the correct rate and has been claiming rent at higher rate, the tenant as a consequence of landlord's earlier refusal in the past, deposited the rent in the Court under Section 30 and if thereafter landlord serves formal notice to of demand against the higher rate and expresses his willingness to accept the rent, the tenant after receipt of notice is under an obligation to tender the rent at least at the rate admitted to him to the landlord and has got no right to straight away deposit the same under Section 30(1) of the Act. The appeal was accordingly dismissed. **Man Singh vs. Shamim Ahmad (Dead) thr. L.Rs., 2023(5) ADJ 227 (SC)**

WAQF ACT, 1955

S. 52 (2) – Suit challenging sale-deed executed by mutawalli, second suit seeking declaration the plaint schedule property was a waqf property further relief sought for expunging the name of his two brothers – The Collector directed respondents to deliver possession of the property to the Board within thirty days – Appeal against, ADJ allowed the appeal-Writ petition against contending it was Waqf Tribunal which had the jurisdiction not the ADJ – Order of ADJ set aside thereafter First Appeal before Waqf Tribunal which allowed the First Appeal setting aside order of the Collector-Revision against dismissed holding respondent No. 1 in both the cases acquired title by adverse possession – Legality of – Waqf property can be the subject matter of acquisition of title by adverse possession.

Applying Art. 65 and as the adverse possession would kick in from the date of transfer, on the expiry of twelve years i.e., in 1986 applying S. 27 of the Limitation Act whatever title remained within the meaning of S. 65 would stand extinguished – Art. 96 not applicable – Even in regard to a proceeding under the Act be it S. 52 if as on the date the action is taken, the title in the property stood vested with the person in possession by virtue of S. 27 of the Limitation Act then it may not be permissible to ignore the right which had been acquired – No error in the order impugned, appeals dismissed. **Sabir Ali Khan v. Syed Mohd. Ahmad Ali Khan and others, 2023(1) ARC 777- SC**

PART II – HIGH COURT

CODE OF CIVIL PROCEDURE

O. IX, R. 13- Provincial Small Cause Courts Act, 1887, S. 17 – Restoration application for setting aside ex parte judgment and decree – Rejection of – On ground while filing application under O. IX, R. 13, CPC, non-compliance of S. 17 of Act, 1887 **–** Neither application of petitioner under O. IX, R. 13, CPC was accompanied along with deposit required under S. 17 of Act, 1887 – nor having any application to dispense with the deposit of S. 17 of Act, 1887 - Even in restoration application, there is no such prayer to grant permission to comply with the S. 17 of Act, 1887 – Petitioner not entitled for any relief to comply the provision of S. 17 of Act, 1887 – Petitioner not entitled for any relief to comply the provision of S. 17 of 1887, after filing of application under O. IX, R. 13, CPC read with S. 151, CPC – Rejection proper. **Sanjay Mishra @ Ashu v. Magan Pandey and Another, 2023 (1) ARC 868.**

O. VI, R. 17- Amendment of written statement – At Revisional stage – To withdraw admission in W.S. – Rejection of – Right accrued based on admission of facts cannot be taken back by way of allowing application withdrawing the admission earlier given – Present case is best example of negligence and not of due diligence – Rejection proper. **Ramesh Duggal alias Pappu v. Pt. Ram Shanker Mishra Trust Chief Office, 2023 (2) ARC 134.**

S. 100 – Suit for mandatory injunction – To remove the possession of defendant from suit property as well as for damages owing to use and occupation by defendants –Suit dismissed holding violation of terms of license not been roved by plaintiff – Appeal against allowed suit decreed – Legality of – Defendants/Appellants not adduced any evidence to prove his tenancy or ownership, as claimed by him at later stage over the property in question – The sale deed in favour of plaintiff still exists and cannot be denied – The suit maintainable.

Indian Evidence Act, 1872, S. 120 – Deposition by husband – On behalf of his wife – Permissibility of – By virtue of S. 120 of Evidence Act, husband is even in absence of any power of attorney, quite competent to depose on behalf of his wife. **Gagendra Singh @ Gajendra Singh Bhagel v. Girraj Dharan Family Turest Meera Khandelwal, 2023 (2) ARC 147**

CPC, 1908 – O. XVII, R. 1 – Direction to proceed suit ex parte – Recall application against – Rejection of – Engagement of pleader of party in another court

would not be ground for adjournment – In present case 22 adjournments have been sought - Adjournment has to be granted on bona fide reasons and unavoidable circumstances for limited occasion not for many occasion as the present case is. **Heera Lal Chhabra v. Nawal Kishore Agrawal, 2023 (2) ARC 269.**

CPC, 1908- O. XV, R. 5 – Application for striking off defence – Application allowed, defence struck off- Due to ill advice the due rent could not be deposited before SCC Court where suit was pending – Plea of – Held-Any amount so deposited under S. 30 of Act of 1972 cannot be adjusted against the monthly deposit of rent as required under O. XV, R. 5, CPC and it has to be deposited in such Court, where the suit is pending – In correct or illegal advice cannot be a ground to reject the application under O. XV, R. 5, CPC – Striking off defence proper. **Jagdish Prasad Gupta and another v. Smt. Sudha Mehra and others, 2023(2) ARC 286**

CPC, 1908, O. XLI, R. 23 and 23-A – Remand of case – Scope of – Explained.

O. XLI, R. 23 and 23-A – Remand of case by LAC – To trial Court for decision afresh – Justification of – The reasoning of LAC does not reflect conscious application of judicial principles as required to be applied before a remand order is passed – Parties have led their entire evidence and there is no reference made by LAC that any particular issue or on any particular aspect of the matter, the parties have not been able to lead evidence which was imperative which leads the LAC to remand the matter- No reason to why remand is necessary nor any justifiable cause mentioned in the impugned order can support the order of remand – Impugned order quashed, LAC directed to decide the appeals afresh on merits. **Sanjay Kumar Modi and another v. Udairaj and another, 2023(2) ARC 330, Lucknow Bench, HC.**

CPC, 1908 O. XXI, R. 10 – Execution proceeding – For execution of order allowing release application – Two execution application filed by one by plaintiff No. 2 and another by plaintiff No. 3 – During pendency of execution proceeding, possession of the shop in dispute handed over to plaintiff No. 2, further Executing Court proceeded to pass order directing plaintiff No. 2 to hand over the possession of the shop to plaintiff No. 3 for whom bona fide need was set up – Order of Executing Court challenged on ground once the possession is given to any landlord, Execution Court has no authority to proceed with the execution proceeding in absence of collusion between tenant or landlord – Held – Once the bona fide need is set up in favour of co-plaintiff, Executing Curt has full right to proceed with and pass order for possession of property in question in favour of co-landlord for whom bona fide need was set up – No error in order impugned. **Praveen Kumar Mishra v. Dr. Gaurav Mishra and another, 2023 (2) ARC 385.**

CPC, 1908, O. VII, R.11 – Rejection of plaint – Application for – Questioning the maintainability of small cause suit for recovery of rent and ejectment after coming into force of U.P. Regulation of Urban Premises Tenancy Act, 2021 – Application rejected – The Small Causes Courts are Special Courts constituted under PSCC Act, 1887, which is a central Act and State Amendments brought into it for its application vide Presidential assent in modified form, would continue to be in force in their application to the state until such amendments are repealed with prescribed assent – Rejection proper.

U.P. Regulation of Urban Premises Tenancy Act, 2021, S. 42 – Pending SCC Suits and SCC Revision–Maintainability of – On date of enforcement of the new Tenancy Act, 2021–SCC Suits and SCC Revisions, shall not abate notwithstanding the provisions as contained under S. 42 of the New Tenancy Act, 2021 as no such intendment can be drawn inasmuch as S. 6 of General Clauses Act would apply, still further SCC Suits would stand saved as where conceived of under Old Rent Control Act, proceeding whereof have been saved under S. 2 of S. 46 of the New Tenancy Act, 2021.

U.P. Regulation of Urban Premises Tenancy Act, 2021, S. 42 – SCC Suits – Maintainability of – SCC suits would still maintainable in cases of tenancies not converged by under S. 4 and relating to rights accrued, if any under T.P. Act, 1882 where adamancy is unwritten, and a tenancy is on month to month basis – Overriding effect of S. 42 will give way to Central Act, and these could be no doubt about that if the Central Act has occupied the field to certain extent. **Amit Gupta v. Gulab Chandra Kanodia, 2023 (2) ARC 390.**

CPC, 1908, S. 151 and O. XXI, R. 10 – Limitation Act, 1963, Art. 136 – Execution Application – For execution of decree passed in suit for specific performance of an agreement to sell – Objection to execution proceeding stating to be barred by time as decree is of date 2.6.1975 and execution application moved on 21.7.2011 also heirs of J.D. not properly impleaded – Objection rejected – Revision against also rejected holding it to be not maintainable – Legality of – Limitation has to be reckoned from the dated of the decree of the Appellate Court, even if the date of order of this Court dismissing the Second Appeal in limine is ignored – The appellate decree was passed on 31..3.2011 by ADJ and execution application made on 21.7.20211, which was well within the limitation of 12 years under Art. 136- The execution is competent and must proceed. **Rakesh Kumar (Defendant No. 2/1) and another v. Chhotey Lal and others, 2023 (2) ARC 458.**

The Hon'ble Court observed that it transpires that suit had been filed for cancellation of sale deed and for permanent injunction. During course of suit

proceedings, an application under Order 26 Rule 9 read with Section 151 CPC had been filed for issuance of commission which was rejected by means of order dated 25th September, 2017 primarily on the ground that question regarding possession of parties over the property in dispute cannot be ascertained by issuance of commission. It was further held that issuance of commission cannot be a substitute for adducing evidence. It is noticeable that the aforesaid order dated 25th September, 2017 attained finality and no revision there against was filed by the petitioner-plaintiff but subsequently another application for issuance of commission under Order 26 Rule 9 read with Section 151 CPC dated 14th November 2017 was again filed by the plaintiff. It is relevant to indicate that in both the applications the applicant is Smt. Sarla who has been brought on record as a substitute party in place of original plaintiff Km. Chandana Mukherji, who passed away during pendency of suit proceedings.

It has been held that a reading of both applications brings to the fore the fact that essential pleadings for issuance of commission in both the application remain the same which pertained to apprehension on behalf of plaintiff that actual ground situation may be changed by the defendant in case forcible possession of the same is taken from the plaintiff. The second application has been rejected by means of impugned order dated 10th January, 2018 primarily on the ground that earlier as well application at the behest of plaintiff has been rejected by the court by detailed order dated 25th September, 2017 on the same pleading raised by plaintiff and therefore there was no merit found in the second application for issuance of commission. The revisional court has also taken essentially the same grounds for rejecting revision preferred by plaintiff.

A perusal of the provision makes it evident that commission to make local investigations can be permitted by the court where it deems local investigation to be requisite or proper for the purpose of elucidating any matter in dispute or ascertaining market value of any property, or amount of any mesne profit or damages or annual net profits. The purpose of issuance of commission as such is evident from the conditions indicated there-under itself which is only for the purposes of elucidating primarily any matter in dispute. The provisions of Order XXVI Rule 9 of the Code do not make it applicable for the purposes of collection of evidence on behalf of the plaintiff.

Hon'ble Court held that application for issuance of commission to conduct an investigation and examination regarding possession of parties to a dispute would not be maintainable in terms of Order XXVI Rule 9 of the Code particularly when there is no explanation furnished by the plaintiff that he could not have access to any documents required for proving his possession over suit property. Even otherwise, it is impossible for a commission to decide possession of a particular party to dispute over the suit property only on the basis of a cursory examination. Applications under

Order XXVI Rule 9 cannot be allowed merely for purposes of facilitating the case of one or the other party and it is not the business of the courts to discharge burden of evidence of either party. **Chandana Mukherji vs. Addl. District Judge Special Judge and Ors., 2023(4) ADJ 196 (LB)**

Order 1, Rule 10—Impleadment of party—Suit for declaration, permanent injunction and recovery of possession—Defendants filed application with prayer to implead subsequent purchasers as parties defendants in suit—Allowed by Trial Court and upheld by High Court—Legality

As per settled position of law, plaintiffs are dominus litis unless Court suo motu directs to join any other person not party to suit for effective decree and/or for proper adjudication as per Order 1, Rule, CPC. Nobody can be permitted to be impleaded as defendants against wish of plaintiffs not impleading another person as defendant against wish of plaintiffs shall be at risk of plaintiffs. Therefore, subsequent purchasers could not have been impleaded as party defendants in application submitted by original defendants that too against wish of plaintiffs.

That the appellants – original plaintiffs instituted Civil Suit No. 298/2011 against the original defendants for declaration, permanent injunction and recovery of possession. In the said suit, original defendants appeared and filed their joint written statement along with counter-claim for declaration of their right, title and interest over the suit property and for permanent injunction. After the evidence from the side of the plaintiffs was closed, original defendant Nos. 1 to 4 filed an application under Order 1 Rule 10 CPC and prayed for impleadment of subsequent purchasers as party defendants alleging inter alia that during the pendency of the suit, the plaintiffs have illegally and unlawfully alienated some parcels of the disputed land in favour of one Manasi Sahoo wife of Sanjaya Kumar Sahoo, Bharat Chandra Sahoo, Dhaneswar Sahoo and Kedarnath Sahoo. Therefore, it was prayed to implead the subsequent purchasers as party defendants for proper adjudication of the suit and to avoid multiplicity of proceedings.

The suit is for declaration, permanent injunction and recovery of possession. As per the settled position of law, the plaintiffs are the domius litis. Unless the court suo motu directs to join any other person not party to the suit for effective decree and/or for proper adjudication as per Order 1 Rule 10 CPC, nobody can be permitted to be impleaded as defendants against the wish of the plaintiffs. Not impleading any other person as defendants against the wish of the plaintiffs shall be at the risk of the plaintiffs. Therefore, subsequent purchasers could not have been impleaded as party defendants in the application submitted by the original defendants, that too against the wish of the plaintiffs. **[Sudhamayee Pattnaik vs. Bibhu Prasad Sahoo, 2023(159) RD 124]**

Oral gift—CPC, Order XIII, Rule 8—

Memorandum of oral gift described as "Yaddasht hiba" is not taxed to any stmap duty—As per provision of section 3 (14-A) of the U.P. State Amendment introduced vide U.P. Act No. 38 of 2001 defined an instrument of gift which the central statute does not—Definition of an instrument of gift in sub-section (14-A) of section 2 is an inclusive definition and expressly defined an instrument of gift whether by way of declaration or other use for making or accepting an oral gift. After the enforcement of the Statement Amendment a memorandum of oral gift recording an antecedent transaction of hiba howsoever described and in whatever kind of words couched is taxable to stamp duty as an instrument of gift.

Section 129 of the Transfer of Property Act makes allowance for oral gifts under the Mohammedan Law and death bed gifts of movable property alone for other citizens. Section 129 reads:

> 129. Saving of donations mortis causa and Muhammadan law.-- Nothing is this Chapter related to gifts of moveable property made in contemplation of death, or shall be deemed to affect any rule of Muhammadan law.

This being the substantive law relating to disposition by gift and given the terms of the State Amendment vide sub-Section (14-A) of Section 2 of the Act of 1899, there is not the slightest doubt that after enforcement of the State Amendment, a memorandum of oral gift recording an antecedent transaction of hiba, howsoever described and in whatever kind of words couched, is taxable to stamp duty as an instrument of gift. The order impugned holding to the contrary passed by the learned Additional District Judge cannot be countenanced. **[Star Paper Mills Ltd. vs. Smt. Anisa Begum (Dead), 2023 (159) RD 282]**

Section 115 and Order XXVI, Rule 9—Interlocutory order—Revision filed against—Objection regarding maintainability of revision

Revision under Section 115 CPC has been filed against order dated 15.11.2022 in regular suit No. 2216 of 2022 whereby application for issuance of commission under Order XXVI, Rule 9 of the Code filed by the plaintiff-opposite party No.1 has been allowed.

In the present case, although application under Order XXVI, Rule 9 of the Code has been allowed but the proposition of law under Section 115 that even in such a case if jurisdiction has been exercised illegally and with material irregularity, revision would be maintainable finds support from judgment of Co-ordinate Bench rendered in the case of Lalti Devi vs. Bindu Bihari Verma and others, Writ-C No. 41940 of 2013 and in the light thereof, the present revision is held to be maintainable. **[Khwaja Moinuddin Chishti Language University Thru. Registrar vs. Dr. Arif Abbas, 2023 (159) RD 297]**

Order 1, Rule 10 and Order VI, Rule 17—Applications under allowed permitting original plaintiffs to amend their respective plaints so as to declare void ab initio all the mortgages/charges on the entire premises in question and also implead mortgagee banks/financial institutions for that purpose—Appeals against—As per the settled proposition of law, if, by permitting plaintiffs to amend the plaint including a prayer clause nature of the suit is likely to be changed—In that case, Court would not be justified in allowing the amendment—It would also result in misjoinder of causes of action—Plaintiffs cannot be permitted to join any party as a defendant who may not be necessary and/or proper parties at all on the ground that plaintiff is the dominus litis

Suit was filed for declaration that plaintiff has unfettered right in occupy the property, the defendant contested the suit and stated that suit is not maintainable during pendency of suit, plaintiff moved an application for amendment and impleadment for declaration regarding mortgage deed and impleadment of financial institution which was allowed. Plaintiff cannot be permitted to add any party, plaintiff is dominus litis only where the party sought to be added is a necessary or proper, not otherwise.

In view of the above and for the reasons stated above, High Court has committed serious error in allowing the application under Order 6 Rule 17 and under Order 1 Rule 10 of the Code of Civil Procedure by permitting original plaintiffs to amend the plaint including prayer clause by which, the plaintiffs have now prayed to declare the charges / mortgages on the entire premises as voidab initio and permitting the original plaintiffs to join / implead the respective banks / financial institutions as party defendant. The alleged rights of the plaintiffs as perpetual license holders are yet to be adjudicated upon. The licenses of the original plaintiffs have been revoked. Therefore, in a suit challenging revocation of the respective licenses, the plaintiffs cannot be permitted to challenge the respective mortgages/charges created on the entire premises as void abinitio. **[Asian Hotels (North) Ltd. vs. Alok Kumar Lodha, 2023(159) RD 316]**

Order XXVI, Rule 9— Question regarding possession of parties over property in dispute—Cannot be ascertained by issuance of commission—Provisions of Order XXVI, Rule 9, CPC do not make it applicable for purpose of collection of evidence on behalf of plaintiff

The limited question of law requiring adjudication in the present petition is whether the court below was justified in rejecting the application filed by petitioner-plaintiff for issuance of commission in a suit for cancellation of sale-deed and permanent injunction.

The application for issuance of commission to conduct an investigation and examination regarding possession of parties to a dispute would not be maintainable in terms of Order XXVI, Rule 9 of the Code as observed herein above particularly when there is no explanation furnished by the plaintiff that he could not have access to any documents required for proving his possession over suit property. Even otherwise, it is impossible for a commission to decide possession of a particular party to dispute over the suit property only the basis of cursory examination. **[Km. Chandana Mukherji (D) Through LRs. vs. Addl. District Judge/Special Judge, P.C. Act, 2023 (159) RD 580]**

Civil Procedure Code, 1908 : Summary Suit - Order 37 : Leave to defend can be rejected only when it is moved at a proper time as stipulated under Order 37 CPC. The crux of the issue was that the learned Trial Judge refused the application for leave to defend, made by the defendant at a time when the stage for that kind of an application had not yet arrived. This is so because the plaintiff had not taken out any summons for judgment. Therefore, in this case the defendant's application for leave to defend was premature. Application moved at any prior stage may be rejected as pre-mature but can't be dismissed on merits. Order 37 CPC is a salutary procedure that could curtail much avoidable criminal litigation and bring quick justice. However, for some reason in the State of Uttar Pradesh, this procedure has historically been under-utilized. This case is a classical example of lack of acquaintance on both sides. **Savrunisha and Ors. vs. Bhola Nath : 2023 (41) LCD 1000 (All)**

Code of Civil Procedure, 1908 : Order XVII - Adjournment is to be granted only for genuine reasons or for unavoidable circumstances. Adjournment has to be granted on bona-fide reasons and unavoidable circumstances for limited occasion not for many occasions. The engagement of counsel in another court is not a ground for adjournment. The Apex Court has highly depreciated the tendency of grant of adjournment and also taken a firm view that change of lawyer, continuance of illness of lawyer or similar grounds will not justify more than three adjournments to a party during the hearing of the suit. **Heera Lal Chhabra V. Nawal K. Agrawal : 2023 (41) LCD 1339 (All)**

CODE OF CRIMINAL PROCEDURE

Secs. 482, 239 and 227 CrPC — Secs. 419, 420, 467 and 468 IPC, 1860—Charge—Rejection of discharge application

Courts below not expected to go through documents placed before it in support of their case not forming a part of Police report. As there are two versions of

same question. Disputed question can be finally settled on basis of evidence recorded during trial. No illegality committed by Courts below by rejecting discharge application of accused-application. **[Smt. Pinki Gautam @ Geeta Devi vs. State of U.P., 2023 (123) ACC 81 (All)]**

Sec. 439(2) CrPC—Secs. 406, 420, 467, 468 and 120-B IPC, 1860—Cancellation of bail—Application for—Consideration of—Allegation of Resiling from condition of bail order

Terms of settlement/MoU form basis of order granting bail, which were resiled by accused persons. Therefore, fit case for exercising power under section 439(2), Cr.P.C. Bail was cancelled and application was allowed. **[Shefali Kaul vs. State of U.P., 2023 (123) ACC 95 (All)]**

Sec. 378 CrPC—Sec. 376 IPC, 1860—Rape—Acquittal—Legality—Two reasonable views/conclusions possible on basis of evidence on record

Appellate Court should not disturb finding of acquittal recorded by Trial Court. Medical evidence does not support prosecution case. Chain of circumstantial evidence found to be incomplete. Therefore, judgment passed by Trial Court of acquittal of accused-respondent does not require interference. Order of acquittal upheld. Appeal was dismissed. **[State of U.P. vs. Deeraj, 2023 (123) ACC 413 (All)]**

Sec. 482 CrPC—Imposition of erroneous bail conditions for sureties- Applicant enlarged on bail in all four cases lodged against him—Trial Court fixed separate sureties for each case—Petition to permit applicant to produce a single surety for four cases—Sustainability

Court cannot expect every accused or surety to be a propertied person. Fixation of excessive conditions tantamount to refusal to grant bail. Directions issues, Application allowed. **[Mohd. Anwar vs. State of U.P., 2023 (123) ACC 467 (All-L.B.)]**

Secs. 319 and 482 CrPC— Secs. 376-D and 212 IPC, 1860—Summoning of additional accused in case of gang rape.

A woman can also be held guilty of gang rape if she has facilitated act of rape with a group of persons. No interference warranted in order impugned. Application dismissed. **[Suneeta Pandey vs. State of U.P., 2023 (123) ACC 485 (All)]**

Secs. 438 and 82 CrPC—Secs, 419, 420, 467, 468 and 471 IPC, 1860—Anticipatory bail—Application for—Scope of granting relief under section 438

vis-à-vis a person who has been declared as proclaimed offender under section 82, Cr.P.C.

A proclaimed offender in terms of section 82, Cr.P.C. not entitled to relief of anticipatory bail. Since applicant declared as a proclaimed offender. Therefore, not entitled to anticipatory bail. Application for anticipatory bail rejected. **[Dr. Archana Gupta vs. State of U.P., 2023 (123) ACC 536 (All)]**

Secs. 451, 457 and 482 CrPC—Secs. 60, 63 and 72 U.P. Excise Act, 1910—Application for release of vehicle—Dismissal—Legality—Pendency of proceeding for confiscation of vehicle under section 72(2) of U.P. Excise Act

When release application and revision against rejection order of CJM were pending, impugned vehicle was under process of confiscation. Therefore, District Magistrate would only be entitled to deal with such vehicle. Concerned Judicial Magistrate not competent to release vehicle or to entertain release application. Since impugned vehicle was under confiscation proceeding before District Magistrate. It was open to applicant to appear and contest there. Petition dismissed. **[Ajay Kumar vs. State of U.P., 2023 (123) ACC 561 (All)]**

Secs. 311 and 482 CrPC—Secs. 304, 323 and 504 IPC, 1860—Summoning of witnesses—Application for—Allowing of—Legality—Non-mentioning of name of witnesses in F.I.R. or in charge-sheet—I.O. did not record their statement

Non-mentioning of name of any witness in F.I.R. would not justify rejection of evidence of eye-witness. Mentioning name of all witnesses in F.I.R. or in statement in 161 Cr.P.C. is not a requirement of law. Trial Court has ample power to summon any person as witness for just decision of case. Proposed witnesses received injuries with deceased on and at time of incident. Even then their statement was not recorded by I.O. and inspite of getting their medical report, same not annexed with charge-sheet. Serious allegations also levelled on I.O. In such circumstances, bounden duty of Court to summon and examine those witnesses. Trial Court rightly allowed application and ordered to examine applicants for just decision of case. Application dismissed. **[Harish Chandra vs. State of U.P., 2023 (123) ACC 570 (All)]**

Secs. 446 and 397/401 CrPC—Forfeiture of surety amount—Application to exempt from depositing surety amount—Rejection—Legality

Even after forfeiture of surety bonds, order of remission may be passed adopting lenient view if accused produced by sureties in Court concerned. Impugned order passed by trial court modified to extent that instead of depositing Rs. 50,000/-, they shall pay Rs. 20,000/-. Revision disposed of. **[Nizamuddin vs. State of U.P., 2023 (123) ACC 595 (All)]**

Sec. 145 CrPC—Order by City Magistrate u/s 145 and 146(1) CrPC—Revisional Court dropped the proceeding on the ground of pendency of civil suit subsequently

Held that merely a pendency of a civil suit cannot be ground for dropping of the proceeding under section 145 CrPC. Reffered to the judgement of Supreme Court in Amresh Tiwari v. Lalta Prasad Dubey and another 2000(40) ACC 1016 (SC) and the full bench decision of Allahabad High Court in Ganga Bux Singh v. Sikhdin AIR 1959 All 141. The court set aside the order of revisional court and directed City Magistrate to decide afresh the application u/s 145 CrPC. **[Pawan Singhania v. State of U.P. 2023 (123) ACC 735(All)]**

Sec. 97 CrPC—Habeas corpus writ—During pendency of application under section 97, Cr.P.C., writ filed—maintainability of writ

Petitioners already invoked provisions of section 97, Cr.P.C. and have approached competent court. Thus, effective alternative statutory remedy already availed by them which is still pending. Therefore, Habeas corpus writ held not maintainable as per law settled by Full Bench decision in Rachana and another vs. State of U.P., 2021 (115) ACC 511. **[Ahzam Ahmad vs. State of U.P., 2023 (123) ACC 782 (All)]**

Secs. 451 and 397/401 CrPC—Secs. 307 and 504 IPC, 1860— Application for release of licensed rifle—Rejection—Legality

In absence of any proceeding regarding confiscation and cancellation of impugned rifle. Rifle would be treated to be case property about which a release order may be passed. Impugned rifle also an article of which value would be diminished. Decaying articles should be released in favour of owner or possession holder. Impugned order quashed. Revision allowed. **[Gyanendra vs. State of U.P., 2023 (123) ACC 853 (All)]**

Sec. 439 CrPC—IPC, 1860, Secs. 363, 366 and 376(3)—Protection from Children from Sexual Offences Act, 2012, Sec. 3/4—Bail—Application for—Consideration of—

Prosecutrix was minor at time of incident, therefore, her consent immaterial. Statement of victim recorded under section 161, Cr.P.C. discloses not only her forceful kidnapping but that accused forcefully married and made physical relationship with her. Statement of victim not recorded till date during trial. Thus, possibility of influence upon victim. Bail rejected. **[Pappu vs. State of U.P., 2023 (123) ACC 868 (All)]**

Facts

In the instant matter, application has been moved under Section 482 CrPC to set aside the order dated 25.07.2022 passed by ACJM-I, Gautam Budh Nagar in Criminal Misc. Application No. 462 of 2021 (old No. 343 of 2021, Smt. Ruchi Mittal Vs. Amit Mittal and others), under Section 156(3) CrPC treating the application under Section 156(3) CrPC to be a complaint case. It was also prayed that after setting aside the impugned order, a fresh order directing police to register case and start investigation and to submit investigation report. Alternatively, a prayer was also made to direct ACJM-I, Gautam Budh Nagar to hear and decide the aforementioned application under Section 156(3) CrPC within a stipulated period of time.

Held

A proceeding under Section 482 CrPC against the impugned order is not maintainable and the applicant should have preferred a revision before the revisional court. Accordingly, above application is dismissed as not maintainable. The applicant is at liberty to institute a revision in the concerned revisional court. **Ruchi Mittal vs. State of U.P. and and Ors. (09.01.2023 - ALLHC), 2023(5) ADJ 419**

Facts

In the instant matter, Habeas Corpus petition was filed for commanding and directing the respondents to produce the corpus before Hon'ble Court and set them at liberty forthwith alongwith other relief. The petitioners were lodged in Child Protection Home.

Held

The present petition is not maintainable as the petitioners have already invoked provisions of Section 97 Cr.P.C. and have approached the competent court i.e. the court of Chief Judicial Magistrate, Allahabad and the corpus are in Child Protection Home.

The petitioners have already invoked the alternative effective statutory remedy, and more so, when the stand taken by the police authorities that the petitioners are in Child Protection Home, therefore, on the ground of already invoked effective statutory remedy and also in view of Full Bench decision in the case of Rachna and another vs. State of UP and others, AIR 2021 ACR 109(FB), the present Habeas Corpus petition is not maintainable.

The petitioners have been lodged in Child Protection Home, therefore, prima facie, a genuine presumption can be raised that the machinery under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015 has been put into

motion. Therefore, present petition would not be maintainable. **Ahzam Ahmad and Ors. vs. State of U.P. and Ors. 2023(4) ADJ 484 (DB)**

Facts

The application under Section 482 Cr.P.C. was filed for quashing of summoning order dated 16.01.2023 as well as entire proceeding of Criminal Case No. 1447 of 2023, arising out of Case Crime No. 0310 of 2022, under Sections 376, 313 I.P.C., Police Station Sandila, District Hardoi, pending in the court of learned Civil Judge (Senior Division)/ F.T.C., Hardoi.

Held

The cognizance of an offence on complaint is taken for the purpose of issuing process to the accused. Since, it is a process of taking judicial notice of certain facts which constitute an offence, there has to be application of mind as to whether the material collected by the Investigating Officer results in sufficient grounds to proceed further and would constitute violation of law so as to call a person to appear before the criminal court to face trial. This discretion puts a responsibility on the Magistrate concerned to act judiciously keeping in view the facts of the particular case as well as the law on the subject and the orders of Magistrate does not suffers from non-application of judicial mind while taking cognizance of the offence.

For the purposes of investigation, offences are divided into two categories, "cognizable" and "non-cognizable". When information of a cognizable offence is received or such commission is suspected, the proper police officer has the authority to enter in the investigation of the same but where the information relates to a non-cognizable offence, he shall not investigate it without the order of the competent Magistrate. Investigation includes all the proceedings under the Cr.P.C. for the collection of evidence conducted by a police officer or by any person other than a Magistrate (who is authorised by a Magistrate in his behalf). Investigation consists of steps, namely (i) proceeding to spot, (ii) ascertainment of the facts and circumstances of the case, (iii) discovery and arrest of the suspected offender, (iv) collection of evidence relating to the commission of the offence and (v) formation of opinion as to whether on the material collected therein to place the accused before a Magistrate for trial and if so to take necessary steps for the same by filing a chargesheet under Section 173, Cr.P.C.

The conduct of the judicial officers concerned in passing orders on printed proforma by filling up the blanks without application of judicial mind is objectionable and deserves to be deprecated. The summoning of an accused in a criminal case is a serious matter and the order must reflect that Magistrate had applied his mind to the facts as well as law applicable thereto, whereas the impugned

summoning order was passed in mechanical manner without application of judicial mind.

The impugned cognizance/ summoning order passed is cryptic and does not stand the test of the law laid down by the Hon'ble Apex Court. Accordingly, the present Criminal Misc. Application U/s. 482 Cr.P.C succeeds and is allowed. **Satya Pal vs. State of U.P., 2023(4) ADJ 345(LB)**

Criminal Revision, Attachment of Property, Cr.P.C. Section 145, 146, 397, 401

It was held by the Hon'ble Court while evaluating the validity of order for attachment passed observing that ad interim injunction order was passed in favour of the party who initiated the proceeding u/s 145 Cr.P.C.

It was held that ad interim injunction was specifically passed in a civil suit the Magistrate did not record his satisfaction that dispute is lightly to cause the breach of peace or state of emergency as citied u/s 146(1) Cr.P.C. exist. Instead of recording a finding regarding none of the parties being in possession, Magistrate observed that the opposite parties have usurped the possession of the entire disputed plot in violation of civil court's order. Thus the order was held not sustainable. **Virendra and others v. State of U.P., 2023 Cri.L.J. (NOC) 156 (All.): AIR Online 2022 All 704**

Section 439 Cr.P.C., Section 363, 366, 376, 506 IPC, POCSO Act, grant of bail

The matter was related to bail of an accused who is in judicial custody u/Ss. 363/366/376/506 IPC and Section 6 of POCSO Act, the matter was related to abduction and rape of a minor. The accused took plea that the prosecutrix had produced Aadhaar Card and PAN Car stating to major when physical relations were established consensually. So there was no reason for accused to believe her to be minor.

Hon'ble Court also discussed about the determination of age and presumption under POCSO Act and held that-

"This Court, vide order dated 01.11.2022, directed the Unique Identification Authority of India ('UIDAI') to furnish details of the date of birth of the victim/prosecutrix, as per records relating to Aadhar Card maintained by the said department. In response to the aforesaid direction, the UIDAI placed on record, a report wherein it was mentioned that initially date of birth of the victim/prosecutrix, as per their record was 07.03.2004. Further on 13.10.2020, a request was made to change her date of birth from 07.03.2004 to 07.03.2001 on the basis of PAN Card. On the basis of said request, the date of birth was altered and changed to 07.03.2001. It has also been submitted that subsequently, there have been attempts to change the date of birth again on the basis of school leaving certificate/marksheet and birth certificate. It is pointed out that date of birth in the matriculation certificate is

07.03.2004. Even as per the birth certificate issued by NCT of Delhi, it is 07.03.2004.

It is pertinent to note that the Juvenile Justice (Care and Protection of Children) Rules, 2007 stand repealed by the Juvenile Justice (Care and Protection of Children) Model Rules, 2016. The procedure for determining age is now part of Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015, which reads as under:

> "94. Presumption and determination of age.--(1) Where, it is obvious to the Committee or the Board, based on the appearance of the person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry under Section 14 or Section 36, as the case may be, without waiting for further confirmation of the age.
>
> (2) In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining--
>
> (i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;
>
> (ii) the birth certificate given by a corporation or a municipal authority or a panchayat;
>
> (iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board: Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.
>
> (3) The age recorded by the Committee or the Board to be the age of person so brought before it shall, for the purpose of this Act, be deemed to be the true age of that person."

Be that as it may, the enquiry with respect to the date of birth of the victim/prosecutrix would be in the jurisdiction of the learned trial Court, who shall determine, by way of necessary and relevant evidence, the correct date of birth. For the purpose of the present application, this Court cannot agree with the submissions made by the counsel for the applicant that the age of the victim/prosecutrix should be taken as per her Aadhar Card and PAN Card. While disposing of this bail application, the date of birth is being taken as per the case of the prosecution, i.e., 07.03.2004. This is without prejudice to the right of the applicant to demonstrate otherwise before the learned Trial Court.

In view of the above, the age of the victim/prosecutrix at the time of the incident comes to about 17 years and therefore, Section 29 of the POCSO Act would require consideration. The learned counsel for the applicant relies upon a judgment of coordinate Bench of this Court in Dharmender Singh v. The State (Govt. of NCT, Delhi) (supra), wherein it has been held that if an application for bail is being considered before the charges have been framed, Section 29 of the POCSO Act will have no application and that the grant or refusal of bail would be considered according to the usual and ordinary settled principles. It is pointed out that in the present case, charges are yet to be framed.

Coming to the facts of the present case, it is an admitted position that in all the statements given by the victim/prosecutrix, she has not alleged that the present applicant had made any physical relations with her on the pretext of a promise to marry. It is pertinent to note that even after the change in her stance, in her second statement recorded under Section 164 of the CrPC, she admits the fact that she loved the applicant and ran away with him. She has further stated that the marriage was performed between the applicant and herself on 09.04.2021 by the applicant putting sindoor in her mang and making her wear a mangalsutra.

No doubt that the victim/prosecutrix, in her subsequent statement had stated that the applicant used to threaten her not to disclose anything to anyone and that her first statement under Section 164 of the CrPC was recorded when she was panicking and not feeling well, the fact remains that the victim/prosecutrix accompanied the applicant without any force or coercion. At the time of incident, i.e., on 02.07.2021, the victim/prosecutrix was aged around 17 years and the applicant was aged around 25 years. In view thereof, it can be stated that though there is no consent in law, there was no force or coercion applied on the victim/prosecutrix either. It is a categorical assertion on behalf of the applicant that the said Aadhar Card and PAN Card were provided by the victim/prosecutrix herself to the present applicant and therefore there was no reason for the present applicant to believe that the victim/prosecutrix was minor.

The fact that the applicant and the victim/prosecutrix intended to marry each other is also reflected from the FIR registered at the instance of the father of the victim/prosecutrix. In the FIR, it is recorded that the father of the victim/prosecutrix suspected that the present applicant had abducted his daughter and was apprehensive that he will marry her. As far as the allegations of beating are concerned, the first MLC of the victim/prosecutrix conducted on 02.07.2021, immediately after her recovery from Sonepat, Haryana, showed no external injuries.

It is further noted that the victim, though minor, was definitely of an age where she could understand the consequences of the act involved and has stated that she was in love with the applicant at the time when she left with him for Sonepat, Haryana.

In the status report filed by the State, it is stated that if the applicant is admitted to bail, there is an apprehension of the applicant threatening the victim/prosecutrix and her family members. Apart from the aforesaid assertion, nothing has been placed on record to substantiate the said apprehension. It would be pertinent to note that the applicant was released on bail on 02.07.2021, after being recovered alongwith the victim/prosecutrix and was re-arrested in the present FIR after a period of 3 months, on 16.10.2021. There is no allegation with respect to any threat given to the victim/prosecutrix or her family members during that period of time. Even till date, the status report does not mention any incident of any threat at the instance of the applicant to the victim/prosecutrix or her family members.

The investigation in the present case is complete and the chargesheet stands filed. The present applicant is in judicial custody since 16.1.2021 and is not required for any further investigation, therefore, no useful purpose would be served in keeping the applicant in judicial custody.

In view of the facts and circumstances of the present case, the application is allowed." **Vipin Singh v. State and Another, 2023 Cri.L.J. 1420 : AIROnline 2023 Del 29**

Section 256 Cr.P.C.

The matter was decided by Hon'ble Gujarat High Court which was related to acquittal of accused. Complainant was not appearing from long time even accused had not remain present and non bailable warrant against the accused could not be served for a very long time. The complainant had visited foreign country but it was represented by lawyer on record. It was held by the Hon'ble Court that trial court judge ought to have closed stage of cross examination since affidavit of the examination-in-chief was already on record and should have posted matter for side of accused rather than dismissing the matter. Hon'ble Court directed the matter to be restored back on file of Magistrate from stage of cross examination. **Hemendrakumar Narendrabhai Patel v. Endujbhai Methyusbhai Maapale, 2023 Cri.L.J. (NOC) 225 (Guj) : AIROnline 2022 GUJ 2503**

Section 62, 64, 72, 74, 256 of Cr.P.C.

The matter was related to stopping of proceedings without exhausting the procedure laid down in Cr.P.C. to bring the culprit before the court of law. Hon'ble High Court of Gujarat held that as the accused had remained absent police could have ensured that the summons was served on the adult male member residing with the accused and in case summon could not be effected, serving officer could have affixed duplicate summons on some conspicuous part of the house. It was seen that the trial court had not even inititated any process for issuance of warrant against the accused and had simply, without any reasons stopped the proceedings. It was also

held that by stopping of proceedings without exhausting the procedure laid down in Cr.P.C. to bring the culprit before the court of law, Court had caused great injustice to complainant the direction were issued to proceed in accordance with law." **Vijay Credit and Supply Co. Op. Society Ltd. v. State of Gujarat, 2023 Cri.L.J. (NOC) 242 (Guj) : AIROnline 2022 GUJ 2703**

Article 226 Constitution of India, Seciton 154, 156 200 of Cr.P.C.

The matter was related to non-registration of FIR. It was held by the Hon'ble Chhattisgarh High Court that writ petition cannot be entertained in such matters if the petitioner is aggrieved by non-registration of FIR on the complaints made by him against accused- Judicial Officer the petitioner had alternative remedy to approach jurisdictional criminal court u/s 156(3) of Cr.P.C. or to file complaint u/s 200 of Cr.P.C. **Ritu Saraf v. State of Chhattisgarh, 2023 Cri.L.J.(NOC) 227 (Chh.) : AIROnline 2023 CHH 138**

Section 120B, 302 IPC, Section 3,118,32,11 Evidence Act, Section 154 Cr.P.C.

The Criminal appeal was preferred before the Jharkhand High Court on behalf of appellants against impugned judgment of conviction for the offence u/s 120B, 302 & 302/149 IPC, in this matter Hon'ble court discussed about the appreciation of evidence regarding plea of alibi, admissibility of evidence in murder case regarding fard bayan, FIR, testimony of eye witness corroborated by testimony of other witness, medical report and reliability of dying declaration. It was held that the prosecution was successful in proving the case against the accused person for the offence u/s 302 read with section 34 of IPC beyond reasonable doubt, the court in detailed discussed and held that-

"From the perusal of this fardbeyan which is denied by the informant-Rameshwar Sahu, it is found that in this case, the name of the assailants who committed the murder of his son are not shown. It was lodged against the unknown persons and it is also mentioned that on 11th May, 1990 in the fair, the altercation had taken place between his son and some person of tribal caste on the issue of payment of sweets which was being sold by his son Gajendra Gupta and amid the way his son was assaulted with hockey, lathi and chain by the unknown persons. As such it is found that this fardbeyan is not suppressed on behalf of the prosecution, rather the contents of the same being denied by the informant himself and the informant also denied the execution of the fardbeyan. So on the basis of the same, no formal F.I.R. was lodged.

The informant--Rameshwar Sahu moved the written information on 13th May, 1990 in which he stated that on 11th May, 1990 his son Gajendra Prasad Gupta had gone to sold the sweets in the fair. In the evening at 7 o' clock, they came back from the fair and along with them Ashok Sahu, Khakhnadu Sahu and Jatan Sahu

were also present. Amid the way at 7:30 near Damphu, four to five persons armed with lathi and hockey obstructed to his son. One person put the stick in the wheel of his cycle and they caught hold of his son and took him near the pit and assaulted him. When he came to rescue his son, he was also criminally intimidated and his son was crying addressing Aditya and Suresh not to kill him. As he was too old age and had weak eye-sight could not rescue his son from the assailants. His lantern was also broken by Suresh and he was also pushed and he fell down on the ground. His son also told him that Suresh and Aditya along with five to six persons assaulted him. Thereafter, he took his son to RMCH, Ranchi, where he died on 12th May, 1990. After postmortem, the dead body was brought at his house and after cremation, he lodged the F.I.R. It is also mentioned in the written information that Aditya and Suresh Sahu had committed this murder because there was dispute on the issue of acquisition of land in CCL and getting service in lieu of the same by Suresh and Aditya wherein his son for not getting the service had filed the case. The contents of this written information (Ext.1) are also proved by this witness P.W.-3 Rameshwar Sahu. There is no material contradiction in the contents of this written information Ext.B and the statement given by P.W.-3 before the trial court. On the basis of this written information, the formal F.I.R. was also prepared which was registered at Case Crime No.43 of 1990. The same is also proved by the P.W.-3 Rameshwar Sahu which was marked Ext.5.

From the statement of P.W.-3 Rameshwar Sahu, it is evident that this witness has stated that on 11th May, 1990 at 07:30 the occurrence took place. He had lantern in his hand and the assailants had assaulted to his son and threw him in a pit in injured condition. The son was brought out with the help of Ashok Sahu, Khakhandu Sahu and Jatan Sahu. He carried his son from there by bicycle to the nearby village Lotambi and from there by thela to his house. Thereafter his daughters had put oil and water and his son told him to take him to hospital, where at Mandar Hospital, the doctor denied to give the treatment. Thereafter, his son was taken to RMCH, Ranchi and on next day i.e., 12th May, 1990 his son died. On 12th May, 1990, the postmortem was conducted and he brought the dead to his house and overnight the dead body remained at his house and on next day, the same was cremated. After cremation, he lodged the F.I.R. on 13th May, 1990. Therefore, the delay in lodging the F.I.R. is well explained from the statement of P.W.-3 Ramehswar Sahu and same is not fatal to the prosecution case.

In the case in hand, since the fardbeyan dated 12th May, 1990 has been totally denied by the informant, as such, the same cannot be the basis of the F.I.R. It is written information dated 13th May, 1990 which contents are proved by the informant--P.W.-3, the maker of the written information. On the basis of which, the Case Crime No.43 of 1990 was lodged with the police station Mandar and, thereafter, the investigation was conducted by the I.O. Therefore, the contention of

the learned senior counsel for the appellants that the second F.I.R. on the basis of written information dated 13th May, 1990 is bad in law is not sustainable, since, the fard beyan dated 12th May, 1990 has been totally denied by the P.W.-3 Rameshwar Sahu (the informant) and merely by admitting the signature thereon. Though the exhibit was marked on this fardbeyan, yet the contents of the same has not been proved by the P.W.-3 and he stated that indeed he was illiterate. His signature was taken by his brother Laxman and Bigan by saying that the dead body could be given after postmortem only, if he put the signature thereon. Under that impression, he had put his signature on that paper and he had not given any written information as mentioned in the same.

It is also pertinent to mention here that the fardbeyan which is denied by the P.W.-3 Rameshwar Sahu was lodged against the unknown persons in regard to murder of his son while the written information dated 13th May, 1990 was given by P.W.-3 against the named accused Suresh Sahu and Aditya Sahu in regard to committing the murder of his son. As such even if the written information dated 13th May, 1990 is treated to be second F.I.R., same is not barred being against the different persons, though in regard to the same occurrence. More so, this F.I.R. cannot be treated as second F.I.R., as the first one was never lodged on the basis of the which the informant had never given to any police officer.

In the case in hand, the inquest and postmortem of the deceased was conducted. On the basis of the fardbeyan, the sanha was recorded and thereafter, the formal F.I.R. was registered at Case Crime No.43 of 1990 on 13th May, 1990 which was marked Ext.1. Thereafter, the investigation was conducted, as such, prior to lodging of the F.I.R., preparing the inquest report of the deceased and conducting the postmortem under such circumstances is not found fatal to the prosecution case.

P.W.-3 Rameshwar Sahu had given his statement before the Magistrate and stated that on 11th May, 1990 his son was selling the sweets in the fair. One unknown person came and demanded sweet from him and he did not make the payment of the same on which some altercation took place and the matter was pacified then and there. On the very day in the evening when they were coming back to their house in between 7 to 7:30 of evening, five to six boys came and obstructed the bicycle of his son and began to assault his son. He had lantern in his hand and accused-Suresh Sahu had pushed him and had broken his lantern and his son was crying addressing Suresh not to kill him. Ashok, Khakandu and Jatan were called later on, who brought his son out from the pit in injured condition and they took him to Tetambi village. Ayodhya Babu brought one rickshaw and took to Tetambi by the same and from there by thela he brought his son to the house and this statement Ext.3 has been proved by P.W.-4 B.K. Singh which was recorded on 19th May, 1990 and the Ext.3/1 was recorded on 21st May, 1990. In this statement, he stated that while his first statement was being recorded by the Magistrate he omitted to disclose

the name of accused-Aditya, therefore, he stated that at the time of occurrence Suresh and Aditya both had assaulted to his son. His son was crying by addressing the name of both these assailants not to kill him. Suresh had also broken his lantern and pushed him, as such, the contents of the written information, Ext.1 and the statement of this witness given before the Magistrate under Section 164 Cr.P.C. in regard to the occurrence as Ext.3 and 3/1 are found in consonance and assailants are told to be Suresh Sahu and Aditya Sahu. This witness P.W.-3 Rameshwar Sahu in his statement also produced a letter which was sent by Suresh and this letter has been proved as Ext.2. He stated that the letter was in handwriting of Suresh, he recognize the same. From perusal of the said letter Ext.2, it is found that this letter is dated 8th October, 1990 and at that time, accused-Suresh was in jail in this very case crime and in the said letter, he exculpating himself stated that it was Aditya who had killed his son and he requested his uncle to get him on bail in this case. This letter was received by informant Rameshwar Sahu on which the stamp of the post office are also affixed, as such, the informant had identified the handwriting of Suresh and stated that this is in handwriting of Suresh and signature as well which was marked Ext.5, therefore, this letter also corroborated the prosecution story to this extent that both the brother, Suresh Sahu and Aditya Sahu were the assailants in this occurrence.

So far as the conduct of this witness P.W.-3 Rameshwar Sahu which is unnatural to the extent that he could not disclose the name of the assailants to Ashok, Khakhandu and Jatan Sahu or doctor before lodging the F.I.R. This conduct of P.W.-3 is not found unnatural, more so, P.W.-3 Tapeshwari Kumari says that when the injured brother Gajendra was brought at house she applied water and oil on his head and in conscious condition her brother told that it was Aditya and Suresh who had assaulted him. At that time all the persons were present, who came with the thela by which her brother was brought to the house. The said act on the part of the informant is not found unnatural, more so, it depends upon the social background of the witness, who is stricken with grief horror or fear. More so, this witness has stated that on account of the murder of his only son he was little depressed. He was also stricken with grief horror and on the sole ground, the whole testimony of this witness cannot be discarded and it is the duty of the court to separate the grain from the chaff.

In this case whether the appellants were falsely implicated in this case on account of animosity is to be decided in view of the testimony of the informant and other corroborating evidence to that effect. P.W.-3 Rameshwar Sahu and other witnesses who were examined before the trial court in regard to the fact that there is no contradiction in their testimony given before the court and their statements recorded by the I.O. under Section 161 Cr.P.C. as well as the statement of this witness P.W.-3 Ramehswar Sahu which was recorded under Section 164 Cr.P.C.

before the Magistrate and the same are also proved by P.W.-4 B.K. Singh, Judicial Magistrate.

Certainly, the presence of the I.O. is necessary in order to show the contradiction in the testimony of the witnesses, if the same is brought out during cross-examination of the witnesses or if there is recovery of any article, the examination of the I.O. was necessary. Keeping in view the facts and circumstances and also the evidence on record, the non-examination of the I.O. is not found fatal to the prosecution case.

From the testimony of P.W.-1 Tapeshwari Kumari and P.W.-2 Saroj Kumari, it is found that the deceased-Gajendra Prasad while in injured condition was brought at his house. They applied oil and water on his head. Her brother told, on being asked by them, that Suresh and Aditya assaulted him, therefore, this oral declaration made by the deceased while in injured condition on the very date of occurrence in the night, who subsequently was taken to the hospital and on next day died becomes admissible under Section 32 of the Evidence Act as a dying declaration. So far as the mental state of the injured while making declaration is concerned, both these witnesses P.W.-1 and P.W.-2 says that at that time their brother was in conscious condition. This statement is also corroborated with the testimony of the doctor. The injured died on the very next day in the hospital. The postmortem report of the deceased is proved by P.W.-5 Dr. Ajit Kumar Chaudhary. This witness has also proved that there were two ante mortem abrasions, three bruises and three lacerated wounds on the body of the deceased and cause of death was shock and hemorrhage as a result of ante mortem injuries caused by hard and blunt object may be the lathi and hockey. This witness was cross-examined and he stated that despite three lacerated wound being on the head and scalp, the injuries which the deceased had sustained he might be in conscious condition. Though, this doctor opined that he cannot say that how long he can be in conscious condition but he stated that the patient would in like nature of injury would be in conscious condition. As such, the dying declaration made by the deceased while in injured condition in regard to cause of death which was caused by the assailants Suresh and Aditya by inflicting injury is admissible as dying declaration under Section 32 of the Evidence Act which is proved from the statement of P.W.-1 and P.W.-2.

From the testimony of defence witness D.W.-1, D.W.-2, D.W.-3, though all the three have stated that on the very day of occurrence in the fair, the altercation took place with some Adivasi person but these witnesses did not see the occurrence of assaulting to the deceased son of the informant. All the three witnesses as per testimony of P.W.-3 Rameshwar Sahu stated that they were coming with the informant and his son Gajendra Prasad Gupta from the fair to their house, amid the way, the occurrence took place. At that time, Khakhndu Saw, Ashok Saw and Jatan Saw had fled away. They had not seen the occurrence and they came later on and

with the help of these persons, the P.W.-3 Rameshwar Sahu got the injured son out of the pit. From the testimony of these three witnesses, it cannot be accepted that the deceases son of the informant while in injured condition was unconscious. More so, P.W.-1 Tapeshwari Kumari, P.W.-2 Saroj Kumari who are real sisters of the deceased while putting water and oil to their injured brother, her brother was in conscious condition and he told that it was Suresh Sahu and Aditya Sahu, who had assaulted him. The doctor P.W.-5 also opined that in like nature of injury which the deceased had sustained, the patient would be in conscious condition. Therefore, on the testimony of these defence witness D.W.- 1, D.W.-2 and D.W.-3, it cannot be accepted that the deceased while in injured condition was unconscious and no advantage can be given of their testimony to the appellant- accused. So far as the testimony of D.W.-4 Jagarnath Prasad Pandit, D.W.-5 Prabhakar Jha and D.W.-6 Ram Lakhan Mandal are concerned they are the office bearers of CCL. They have proved the attendance register. They stated that Suresh Sahu and Aditya Sahu had put their signature in overtime which was 6:30 to 9:30 pm respectively in their office. Both these witnesses fairly admitted that the signature in the attendance register and OD register differ. There was also overwriting on the signature on the date of occurrence of Suresh Sahu. This witness also fairly admitted that even after putting the signature on the attendance register, the employees could leave the office. Therefore, merely on showing the signature in the attendance register which more so is also doubtful, it cannot accepted that both the accused persons at the time of occurrence were not present at the place of occurrence or they were present at the office. The accused persons had failed to prove this possibility that at the time of occurrence, they could not reach leaving their office to the place of occurrence. The plea of alibi is not found proved even on the touchstone of preponderance of probabilities.

Even if the trial court had not framed the charge against the accused persons with the help of Section 34 or 149 of the I.P.C., yet from the testimony of the P.W.-3 Rameshwar Sahu, the informant, who is also eye-witness and other witnesses i.e., P.W.-1 Tapeshwar Kumari and P.W.-2 Saroj Kumari, it is found that both the appellants Suresh Prasad Sahu and Aditya Prasad Sahu shared the common intention in commission of murder of the deceased Gajendra Prasad Gupta." **Suresh Sahu and another v. State of Bihar (Now Jharkhand), 2023 Cri.L.J 1624.: AIR Online 2023 JHA 103**

Section 319, 482 Cr.P.C., Section 11, 375, 376D IPC

In the instant case, a lady who was summoned as an additional accused for offences punishable u/s 376D & 212 of the IPC had challenged the said order. The challenge was based mainly on the ground that the accused being a lady, no offence u/s 376D IPC can be made out against her. It was held by Hon'ble Allahabad High

Court that woman can also be held guilty of gang rape if she has facilitated act of rape with a group of persons.

"Learned counsel for the applicant has further argued that the trial court has grossly erred in summoning the applicant for the offence punishable under Sectin 376-D IPC and Section 212 IPC. It is argued that a woman cannot commit rape and therefore, she cannot be prosecuted for gang rape because woman cannot be said to have an intention to commit rape. In support of his submission, he relied upon a decision of Hon'ble Supreme Court in Priya Patel Vs. State of M.P. and another, (2006) 3 SCC (Cri.) 96. He has further relied upon the judgment of the Apex Court in the case of State of Rajasthan Vs. Hemraj & Another reported in 2009 (12) SCC 402. It is also submitted that the applicant cannot be held guilty even in terms of the explanation to Section 376(2)(g) of IPC.

The extract of Section 375 & 376(2)(g) IPC prior to amendment is as under:-

375. Rape :-A man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions:-

First- Against her will.

Secondly- Without her consent.

Thirdly- With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.

Fourthly- With her consent, when the man 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.

Fifthly- With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly-With or without her consent, when she is under sixteen years of age.

Explanation- Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Exception-Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.]

376. Punishment for rape (1) Whoever, except in the cases provided for by sub-section (1), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless the women raped is his own wife and is not under twelve years of age, in which cases, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both: Provided that the court may, for adequate and

special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years.

(2) Whoever,-- xx xx xx xx xx

(g) commits gang rape, shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment of either description for a term of less than ten years,

Explanation I.-- Where a woman is raped by one or more in a group of persons acting in furtherance of their common intention, each of the persons shall be deemed to have committed gang rape within the meaning of this subsection.

However, going through the amended provisions of Section 375 IPC & 376 IPC, the question, whether a female can commit the offence of rape is itself clear by the non-ambiguous language of section 375 of IPC which specifically states that the act of rape can only be done by a 'man' and not by "any woman". Therefore, a woman cannot commit rape. But looking through again the amended provision of Section 376-D IPC, which is a distinct and separate offence of Gang Rape-according to which- "Where a woman is raped by 'one or more persons' constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have comitted the offence of rape and shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to life which shall mean imprisonment for the remainder of that persons's natural life, and with fine". Thus, from the language used in Section 376-D IPC, it is seen that in order to establish an offence under Section 376-D IPC, the prosecution has to adduce evidence to indicate that one or more persons had acted in concert and in such an event, if rape had been committed by even one, all the accused will be guilty irrespective of the fact that victim had been raped by one or more of them. In other words this provision embodies a principle of joint liability and the essence of that liability is the existence of common intention that common intention presupposes prior concert which may be determined from the conduct of offenders revealed during the course of action. In such cases, there must be criminal sharing, marking out a certain measure of jointness in the commission of offence. The term "person" used in the Section should not be contrued in a narrow sense. Section 11 I.P.C. defines 'person' as it includes any company or association or body of persons whether incorporated or not. The word "person" is also defined in the Shorter Oxford English Dictionary in two ways: firstly, it is defined as "an individual human being" or "a man, woman, or child"; and, secondly, as "the living body of a human being". As such, a women can not commit the offense of rape but if she facilitated the act of rape with a group of people then she may be prosecuted for Gang Rape in view of

the amended provisions. Unlike man, a woman can also be held guilty of sexual offences. A woman can also be held guilty of gang rape if she has facilitated the act of rape with a group of person.

Keeping in view of the aforesaid facts and law laid down by the Apex Court, I find no scope for interference in the impugned order passed by the trial court at this stage. The application has no force and is accordingly dismissed." **Suneeta Pandey v. State of U.P., 2023 Cri.L.J. 1822: AIROnline 2023 All. 295**

Section 200 Cr.P.C., Examination of complainant through video linkage

The matter was related to the examination of witnesses through video linkage. It was challenged on ground that the examination through video linkage was not as effective as physical mode. In this matter complainant was employed in Dubai and his presence cannot be secured without delay and without spending travelling and other expenses, the challenge raised was held, not tenable. It was held that-

"Since the purpose of enactment of Electronic Video Linkage Rules for Courts (Kerala), 2021 itself is to examine the witnesses whose presence could not be secured without undue delay or expenses and for other reasons stated in Rule 8(23), a person who has been employed in Dubai whose presence could not be secured without delay and also without spending travelling and other expenses when allowed to be examined through video linkage, in terms of the rules, in such a case the petitioner has no right to say that cross examination by video linkage is not effective and as good as physical mode and, therefore, such examination should not be permitted. In fact, the examination of the witness either through physical mode or through video linkage, the same makes no difference as far as the right of the accused to cross examine the witness is concerned. However, the intention of the petitioner securing physical presence of the witness for examination may be one with ulterior motive, which I am not inclined to discuss in detail. That apart, it is worthwhile to note that the framers of the Rules even visualised the argument of this nature while implementing the Rules and they vigilantly implemented Rule 8(24) and the said provision provides that subject to the orders of the Court, if any party or his authorised person is desirous of being physically present at the Remote Point at the time of recording of the evidence, it shall be open for such party to make arrangements at his own cost. If so, the dread persuasion of the petitioner could be addressed by resorting to Rule 8(24), subject to the orders of the Court.

It is pertinent to note that, if the submissions of the learned counsel for the petitioner is accepted, the same is akin to make the Electronic Video Linkage Rules for Courts (Kerala), 2021 redundant. The principles governing interpretation do not permit interpretation of a provision of law or an enactment to make the same as redundant.

Epitomizing the discussion, it is held that the learned Special Judge rightly allowed the petition with a view to secure examination of CW1, whose presence could not be secured without undue delay or expenses, through video linkage and with bona fide intention to dispose of a case of the year 2012, pending for the last 11 years, without further delay. Therefore, the order impugned does not suffer from any infirmity or requires any interference and the order impugned is liable to be confirmed.

Accordingly the petition fails and is dismissed. The interim order granted in this matter stands vacated and the Special Jude can go on with examination of CW1 through video linkage facility." **Gopal C. v. Central Bureau of Investigation, 2023 Cri.L.J. 2191: AIR Online 202 Ker 49**

CONSTITUTION OF INDIA

Facts

Petition under Article 226 of the Constitution of India has been filed raising challenge to the order dated 10th February, 2023 passed in Civil Revision No. 6 of 2023 as well as order dated 21st December, 2022 passed by the trial Court under Order XXI Rule 29 of the Code of Civil Procedure, 1908 as well as revisional order dated 06th March, 2023 affirming the same.

Initially Regular Suit No. 355 of 1988 was filed by the opposite party no.3 against late Suresh Chandra initially seeking relief of permanent injunction and subsequently by amendment, the relief of possession. The said Suit although was initially dismissed on 08th May, 1996 but Appeal No. 115 of 1996 was allowed by means of judgement and order dated 25th September, 2001. Said Appellate Order was thereafter challenged in Second Appeal No. 422 of 2001 and was dismissed on merits on 23th November, 2001 where after Execution Application No. 1 of 2002 was filed by the opposite party no.3. It is relevant to indicate that the present petitioner was not a party to any of the proceedings. During pendency of the execution proceedings, the present petitioner filed Regular Suit No. 474 of 2005 against the opposite party no.3 for permanent injunction which is still pending consideration. During pendency of the said Suit proceedings, an Application under Order XXI Rule 29 of the Code was filed by the petitioner on 19th October, 2005 in the execution proceedings. The said application was rejected vide order dated 18th August, 2009 but Civil Revision No. 79 of 2009 filed therein was allowed vide judgment and order dated 16th November, 2010 and the issue was remanded for consideration afresh. After remand, the said application for stay of execution proceedings was rejected vide order dated 21st December, 2022 which was challenged in Revision No. 6 of 2023 and which has been rejected by means of impugned order dated 10th February, 2023.

Held

In the present case, it is admitted between the parties that while Regular Suit proceedings are pending in the Court of Additional Civil Judge, Senior Division, Hardoi, the execution case is pending consideration before Civil Judge, Senior Division, Hardoi. Obviously both the Courts are different and cannot be construed to be same Court to come within the definition of 'such court' as envisaged in Order XXI Rule 29 of the Code. A perusal of Order XXI Rule 29 of the Code makes it evident that the same would be applicable in case a Suit is pending in any Court against the holder of a decree of such Court or of a decree which is being executed by such Court on the part of a person against whom the decree is passed or any person whose interest is affected by the decree or any order made in execution thereof.

It is evident that even where a decree is transferred for execution, stay of that decree cannot be sought under Order XXI Rule 29 of the Code since it would not come within the definition of 'such court' i.e. the Court in which the Suit is pending. Execution proceedings were filed prior to institution of Regular Suit against the decree holder.

The provisions of Order XXI Rule 29 of the Code empower the Executing Court to stay the execution of decree, at the same time, it is evident that such a power is not to be exercised in a cursory or mechanical manner but in exceptional circumstances only when a Suit against the decree holder is pending consideration at the time of filing of execution. Applying the aforesaid provisions to Suits filed subsequent to execution proceedings would lead to absurd results whereby no decree of any Court of competent jurisdiction can ever be satisfied. This cannot be the meaning and purpose of Order XXI Rule 29 of the Code particularly keeping in view the specific provisions of Rule 29 of the Code itself which indicates that a Suit should be pending against the holder of a decree or of a decree which has been executed. The obvious conclusion of the word 'pending' is that the Suit against the judgment decree holder should be pending as on the date of institution of execution. The provisions of Order XXI Rule 29 of the Code being inapplicable in the present facts and circumstances of the case, no exception can be taken to the orders impugned. **Deepak and Ors. vs. Distt. Judge, Hardoi and Ors., 2023(4) ADJ 381 (DB)**

Constitution of India Article 21, Section 53 Cr.P.C.

In present case, during investigation of murder case, female accused was subjected to virginity test against her free will while she was in police custody. It was held that conducting virginity test on female accused in police custody during investigation against her free will violates her fundamental right to life. The right to

dignity of a person as available under Article 21 of the Constitution of India is not suspended even when the person is accused.

The court held that-

“A consideration of the aforesaid precedents, undoubtedly, point out that the "right to dignity" of a person as available under Article 21 of Constitution of India is not suspended even when the person is accused of committing an offence or is arrested. The right to life and personal liberty under Article 21 can be suspended only as per procedure established by law, and such procedure must be just, fair and reasonable and not arbitrary, fanciful and oppressive [Ref: Maneka Gandhi v. Union of India (1978) 1 SCC 248]. Right to personal liberty of an accused gets suspended the moment one is arrested as the same might be necessary for the State security. However, the right to dignity is not suspended or waived even of an accused, undertrial or a convict.

e. Virginity Test: Victim vs. Accused

There cannot be two sets of views regarding the test of virginity being in violation of fundamental right of a victim of sexual assault and a woman under investigation. It is not the issue of a person being a victim or an accused but the vital issue is such a test being in violation of fundamental right if conducted on a female, whether a victim or an accused.

To hold that conducting virginity test on a woman who is victim of sexual assault and on a woman who may be an accused of an offence will be on different footing or that the earlier will be unconstitutional and the later constitutional, will be a perverse finding and against the intent of the Constitution of India and Article 21.

In light of the same, it can also be observed and reiterated that there is no procedure, under any law for the time being, which provides for "virginity test" of a female accused. Virginity testing is a form of inhuman treatment and the same violates the principle of human dignity. The test, being violative of right to dignity of an individual, cannot be resorted to by the State and the same shall be in teeth of the scheme of Indian Constitution and the right to life enshrined under Article 21.

This Court has to be guided by values and Constitutional principles essential to establish rule of law in a democratic society that lays stress on respect for inherent dignity of all citizens. The respect for human dignity cannot be questioned and it has been recognised as human right by the Hon'ble Apex Court as part of fundamental right under Article 21. In this regard, Apex Court's decisions make it clear that notion of dignity may not be so worded in the Fundamental Constitutional right under Article 21, but it has been held to be part of it and also has been held to be of immense value.

Most shockingly, in the present case the virginity test was used to determine the truth of the accusation of murder against the petitioner. Undoubtedly, the test in itself is extremely traumatic for a victim of sexual assault as well as upon any other

women in custody and is bound to have devastating effect on the psychological as well as physical health of the person.

Strangely, though the word "virginity" may not have a definite scientific and medical definition, it has become a mark of purity of a woman. The intrusive testing procedure, as been held in several judgments of the Hon'ble Apex Court, does not have a medical standing. Despite being inaccurate and their being definite studies that in some women hymen may not tear during vaginal intercourse, while in others they may tear even without vaginal sexual intercourse due to sports and other activities and some women may not even have one, such test has been conducted.

This Court, therefore, holds that this test is sexist and is in violation of human right to dignity even of a female accused if she is subjected to such a test while being in custody. The long term and short term negative effects of such a test have been reported in many reports.

Prayer (a): The virginity test conducted on a female detainee, accused under investigation, or in custody, whether judicial or police, is declared unconstitutional and in violation of Article 21 of the Constitution which includes right to dignity.

Considering the importance and sensitivity of the issue involved in the present case, this Court is also inclined to pass the following directions:

(i) It is declared that the virginity test conducted on a female detainee, accused under investigation, or in custody, whether judicial or police, is unconstitutional and in violation of Article 21 of the Constitution which includes right to dignity

(ii) The necessary information regarding unconstitutionality of virginity test as above be circulated to all investigating agencies/stakeholders through Secretary, Union Ministry of Home Affairs, Secretary, Union Ministry of Health and Family Welfare and Secretary, Department of Health and Family Welfare, Govt. of NCT of Delhi.

(iii) The Delhi Judicial Academy is directed to include in its curriculum and in the workshops conducted for investigating officers, prosecutors and other stakeholders, the information regarding this issue.

(iv) Similarly, the Delhi Police Academy for Training shall also include the necessary information regarding this issue in its training curriculum.

(v) The Commissioner of Police, Delhi is also directed to ensure that the investigating officers are informed and sensitized in this regard.

It was clarified during the course of arguments that this Court is examining the question as to whether the virginity test conducted on the petitioner was in violation of her fundamental right to live with dignity and not regarding its outcome and its bearing or admissibility before the Court before whom the trial of the criminal case is pending. It is also clarified that the issue before this Court was only regarding the infringement of fundamental right of the petitioner and the dismissal of

representation of the petitioner before National Human Rights Commission having its Headquarters at Delhi and regarding the plea for taking action against officers of Central Bureau of Investigation who were instrumental in getting the test conducted during the course of investigation having its Headquarters in Delhi, and the decision rendered by this Court will have no bearing on the criminal case pending before the concerned courts.

In view of the above terms, the petition stands disposed of." **Sephy v. CBI and other, 2023 Cri.L.J.1210 : AIROnline 2023 Del 28**

DOMESTIC VIOLENCE ACT

Secs. 31 and 12 Domestic Violence Act—Sec. 482 Cr.P.C., 1973—Execution proceeding—Claim of balance maintenance amount—Rejection on ground of one month imprisonment undergone by opposite party No.2—Legality

Sending of a defaulter to civil prison is a mode of enforcement but not a mode of satisfaction of liability. Serving out in jail of month would not absolve opposite party No. 2 from liability of maintaining his wife and children. Impugned order not sustainable. **[Smt. Hasina Khatoon vs. State of U.P., 2023 (123) ACC 795 (All)]**

INDIAN EVIDENCE ACT

Facts

Two appeals were filed against the judgement and order dated 28.10.2017 passed by learned Additional District & Sessions Judge (FTC), Court No.3, Bulandshahr in Sessions Trial No.271 of 2012 (State Vs. Rajveer Singh and another) by which both the appellants were awarded life imprisonment along with fine of Rs.20,000/- each, under Section-302 read with Section 34 IPC and in case of non-payment of fine they would further undergo two years incarceration. Appellants were also imposed six months imprisonment along with fine of Rs.10,000/- each under Section-201 IPC and in case of non-payment of fine, they would further undergo one year imprisonment.

As per the prosecution case, first informant Harbir Singh Arya Advocate (PW-1) had given a Tehrir dated 20.10.2011 to Station House Officer, Police Station-Narora, District- Bulandshahr stating therein that his son Lavkesh was married to Pooja, daughter of Rajveer resident of village-Kamalpur in the year 2009. Since, the date of marriage Smt. Pooja refused to live with his son Lavkesh and she has also lodged case under dowry prohibition act as well as for maintenance against him as well as his family. On 18.10.2011 at 9:30 pm, he received a phone call from Gajraj Singh, son of Banshi Singh, resident of Ganaura Nagli that his daughter-in-

law Smt. Pooja has been killed by her parents, brother and Rahisuddin by forcibly administering poison to her and just to falsely implicate him, they initially planned to bring the dead body of Pooja at his house. When they could not get chance, they disposed off the dead body of Pooja by burning it. After receiving the aforesaid information, first informant, Harbir Singh had given information of this incident to SP Sri R.S. Rathore on his mobile phone. It was further mentioned that he could not register the case because of the fear of accused persons. After receiving the aforesaid information, FIR was registered in case crime no.252 of 2011, under Sections-302, 201 IPC on 20.10.2011 at 10:50 am against Rajveer as well as mother and brother of Pooja and also against Rahisuddin.

Sole basis of lodging the FIR on part of the first informant (PW-1) is the information received by him from Gajraj Singh regarding the murder of deceased Pooja. Subsequently, during trial PW-1 had stated that the incident of causing death was also witnessed by Budhh Pal Singh, Ravi, Nanak and Sanjay apart from Gajraj Singh. During trial, Budhh Pal Singh (PW-2) and Nanak (PW-3) did not support the prosecution story and were declared hostile. The sole witness (Gajraj) mentioned in the FIR who was the main source of information regarding the murder of Pooja was not produced before the trial court to support the prosecution story. Apart from this, another witness Ravi, who as per the statement of PW-1 had seen the incident, was not produced before the court by the prosecution. Even the witness of motive for causing the murder of Pooja, Bishan Singh (PW-4) did not support the prosecution story, therefore, he was declared hostile.

The recovery memo for recovery of ashes and burnt bones of deceased Pooja on the basis of information given by the appellants which was marked as Ext No. Ka-6 was not signed by any of the appellants and the witnesses who signed this recovery memo namely, Ram Lal Singh and Kadhak Singh, were not produced before the court to prove the aforesaid recovery memo (Ext Ka-6). The above evidences shows the entire prosecution story is based on hearsay evidence of PW-1 as well as circumstantial evidence. Even the Forensic Science Laboratory report which was marked as Paper No.19A did not give any opinion about the origin of recovered ashes and burnt bones. PW-1 in his statement clearly admitted that the appellant- Rajveer as well as his daughter deceased Pooja had lodged criminal cases against PW-1 and, PW-1 had also subsequently lodged cases against appellant no.1-Rajveer, prior to lodging the present case and this fact was also admitted to PW-1 that appellant- Rahisuddin was also the witness of one of the cases lodged by the appellant- Rajveer.

Sessions Judge while passing the impugned judgement also observed that if deceased Pooja was died because of illness then there was no occasion on the part of the appellants to dump the ashes and burnt bones in his agriculture land by digging the pit and he has not given any information to police. Therefore, Sessions Judge on

the basis presumption under Section 106 of the Evidence Act convicted the appellants.

The appellants in support of the cause of death of deceased Pooja produced DW-1 and DW-2. DW-1 Sanjay Singh, though as per the statement of PW-1, was a witness of murder of deceased Pooja but he appeared before the court as defence witness and denied the prosecution story and on the other hand stated that Pooja has died due to her illness. DW-2 who was the doctor, proved the medical prescription of Pooja issued by his clinic regarding her illness and duly proved that Pooja was seriously ill and he referred her to Kailash hospital considering her critical condition and also proved that Pooja could have died because of dehydration. In their statement under Section 313 Cr.P.C., both the appellants namely, Rajveer and Rahisuddin, clearly stated that they have been falsely implicated just to pressurize them to enter into the settlement in the cases which were lodged by the appellant-Rajveer and her daughter Pooja.

Held/observation

Basis of conviction of the appellants was circumstantial evidence as well as presumption under Section 106 of the Evidence Act, though chain of circumstances is itself not complete because there was no eye witness of the incident and entire prosecution case is based on the statement of PW-1 who himself was not the witness of incident but his information was based on the information received from Nanak (PW-3) and Budhh Pal Singh (PW-2) and Gajraj, though neither PW-2 nor PW-3 supported the prosecution story and Gajraj was not produced before the Court in support of prosecution case. Therefore, the evidence of PW-1 is simply a hearsay evidence which has no relevancy as per the Evidence Act. PW-1 also could not prove the motive on the part of appellants to murder Pooja. On the other hand, the appellants had proved the motive on the part of PW-1 to falsely implicate them.

Conviction on the basis of circumstantial evidence is not proper unless the chain of circumstances is complete but, in the present case, there is no evidence which connects the appellants with the death of deceased Pooja. As PW-1 was not the eye witness and other alleged eye witness who were the source of information to PW-1 did not support the prosecution story and even there is no documentary evidence which could establish the alleged recovered ashes and burnt bones belong to Pooja. Even, the memo of recovery (Ext Ka.6) of ashes and part of the burnt bones is not reliable because same was not signed by the appellants even same was not proved by the SDM under whose direction and supervision the above memo recovery was prepared. Prosecution has also failed to establish the complete chain of circumstances. The judgement cannot be based on any conclusive evidence but, simply on the basis of presumption and circumstantial evidence which itself was not sufficient. **Rajveer Singh vs. State of U.P., 2023(5) ADJ 231(DB)**

INDIAN PENAL CODE

Secs. 498/304-B IPC—Dowry Prohibition Act, 1961, Sec. 4—Dowry death—Conviction and sentence—Legality—Multiple Dying declaration

No allegation against mother-in-law and father-in-law and even husband in the first dying declaration. However, in second dying declaration allegation levelled against husband, mother-in-law and father-in-law. No overt act to father-in-law and mother-in-law was alleged, only general allegations against them. Therefore, they are acquitted of offences charged. However, considering evidence of witnesses and also considering medical evidence including post mortem report, no doubt about guilt of husband-appellant. He remained in jail for 17 years. Considering contradictory dying declaration of deceased, punishment too harsh and reduced to 10 years imprisonment. Appeal partly allowed. [**Dharmendra vs. State of U.P., 2023 (123) ACC 121 (All)]**

Secs. 302/34, 201 and 376-D IPC—Protection of Children from Sexual Offences Act, 2012, Sec. 6—Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Sec. 3(2)(v)—Cr.P.C., 1973, Secs. 366 and 374(4)—Murder—Concealment of evidence—Rape—Death sentence—Legality—Prosecution case based upon circumstantial evidence

Held, extra-judicial confession by its very nature rather a weak type of evidence and requires great deal of care and caution. When extra-judicial confession is surrounded by suspicious circumstances, its credibility becomes doubtful and loses its importance. Chain of evidence not complete governing basic principles of cases based on circumstantial evidence. Recovery of articles not proved as requirement of law and likewise post-mortem report. No legally admissible evidence against appellants. Prosecution failed to prove its case against appellant beyond all reasonable doubt. Appeal allowed. Reference to confirm death penalty, rejected. Appellant acquitted. **[Murari Lal vs. State of U.P., 2023 (123) ACC 130 (All)]**

Secs. 363 and 366 IPC, 1860—Quashing of FIR—Plea of Live-in-relationship

Petitioners are major, therefore, they have right to live together outside wedlock. No authority or person should intervene or intercept their enjoyment of live-in-relationship. Hence, considering facts and circumstances of case and nature of offence. Impugned FIR quashed. Petition allowed. **[Akash Rajbhar vs. State of U.P., 2023 (123) ACC 532 (All)]**

Delay in lodging FIR Section 302, 34 IPC Section 3, 45 Evidence Act

The matter was related to murder in which Hon'ble Court discussed about the issues of delay in lodging FIR, testimony of eye witness, common intention, reliability of interested witnesses, appreciation of medical evidence, effect of non-examination of Investigating Officer and determination of sentence. Hon'ble Court also discussed about the exception of Section 300 IPC related to sudden fight and while discussing murder and culpable homicide not amount to murder. Hon'ble Court held the appellant accused guilty under Section 304 part II of IPC in the place of Section 302 IPC and considering the age of appellant reduced the sentence of the appellant, to three years rigorous imprisonment in the place of life imprisonment.

Hon'ble Court held that-

"Injuries on the person of deceased Lalman were caused by lathi as stated by P.Ws. 1, 2 & 3. Ext. Ka-2 is the post-mortem report wherein multiple lacerated and abrasion wounds were found on the body of the deceased Lalman and P.W.4 Dr. S.C. Srivastava has proved the injuries and told that all the injuries were likely to be caused with lathi. He opined that cause of death was coma due to head injury.

In this way injuries found on the body of deceased Lalman are proved to have been caused with lathi at about 4 p.m on 26.10.1991 and it corroborates the manner of causing injuries resulting into death as stated by P.Ws. 1, 2 & 3. Thus, the eye witnesses account regarding cause of death finds corroboration from the medical evidence on record.

There is no delay in lodging the F.I.R. Occurrence took place at 4 p.m. on 26.10.1991 and F.I.R. was lodged at 8. 30 p.m. on the same day, after four hour and thirty minutes. It cannot be said to be inordinate delay.

Learned counsel has also drawn attention of this Court towards the absence of motive to commit murder. He urged that the prosecution has failed to prove any motive on the part of the appellants to commit the crime.

It is true that there is no mention of motive in F.I.R. about the commission of crime. Even PW-1, PW-2 and P.W. 3 have also not disclosed anything that became the root cause of committing murder by the appellants except conversation started on the part of the appellants and Lalman in relation to construction of the wall belonging to cow shed but it is settled law that merely because the prosecution fails to prove motive for commission of the crime, it must not necessarily result in acquittal of the accused. It is well settled that where ocular evidence is found to be trustworthy and reliable and finds corroboration from the medical evidence, a finding of guilt can safely be recorded even if the motive for the commission of crime has not been proved.

In our opinion, in the facts and circumstances of the case, the absence of an evidence on the point of motive cannot have any such impact so as to discard the other reliable evidence available on record which certainly establishes the guilt of the accused. In the case of Thaman Kumar vs. State of Union Territory of

Chandigarh 2003 (47) ACC 7 the Hon'ble Apex Court has reiterated the same view after taking into consideration the aforementioned cases.

It is common knowledge that village (mohalla) life is faction ridden and involvement of one or the other in the incidents is not unusual. One has also to be cautious about the fact that wholly independent witnesses are seldom available or are otherwise not inclined to comeforth, lest they may invite trouble for themselves for future. Therefore, relationship of eye-witnesses inter se, cannot be a ground to discard their testimony. There is no reason to suppose the false implication of the appellants at the instance of the eye-witnesses. It would also be illogical to think that witnesses would screen the real culprits and substitute the appellants for them.

This Court has also made such observations in Para No.14 of Rameshwar and others vs. State 2003 (46) ACC 581.

No doubt P.W. 1, the witness of fact examined in instant case, is real son of the deceased but the relationship itself is not a ground to reject the testimony of this witness, rather he would be last person to leave the real culprit and falsely implicate any other person. P.W. 2 is a resident of the same village of the deceased as well as appellants and he is not related to the family of the deceased. Likewise, P.W. 3 is a mason who is resident of another village and was working at the instance of the deceased. He had no interest in either of the party, therefore, he can not be termed as an interested witness. All of the witnesses are natural witnesses. P.Ws. 1 & 3 were present at the time of the incident at the site where they were constructing the wall and P.W. 2 also arrived at the place where the incident took place. They all have identified the accused persons. P.Ws. 1 & 2 being residents of the same village were known to each another. P.W.3 was also resident of the adjacent village located on 1 km. distance. So there is no question of confusion in identification. P.W.1 being relative, it can not be said that he would falsely implicate the appellants in the case, while leaving the real culprits free. There is no suggestion of enmity between the appellants and witnesses and therefore, no reason to implicate them falsely. In this way, these witnesses are wholly reliable & credible. Their testimony cannot be discarded only on the ground that they are relatives of the deceased. The arguments placed by learned counsel for the appellants, in this regard, cannot be accepted.

In the facts of the present case, it transpires that the involvement of the accused in the incident has been clearly established with the evidence of the eye witnesses P.Ws. 1 to 3. Such evidences are in conformity with the case as made out in F.I.R. and also with the post mortem report.

It is also relevant to note that the prosecution witnesses i.e. P.W.1 & P.W.2. have not been confronted with their previous statement as recorded by the Investigating Officer under section 161 Cr.P.C. except P.W.3 Chibilli on some minor issues which are not material to the case. Even regarding the place of occurrence

there is no dispute. In this way, it cannot be said that any prejudice had been caused to the defence on account of non-examination of Investigating Officer.

The Court while determining the question that whether it is culpable homicide or murder has to keep in focus key words used in Section 299 and 300 of IPC. It is the degree of probability of death which determines that whether a case would fall within the ambit of 'murder' or 'culpable homicide not amounting to murder'. But when there is question as to whether a particular offence would come within the scope of Part-1 or Part-II of the 'culpable homicide not amounting to murder', the Court would look into two important elements mentioned in the Section 304 IPC. First element is the intention and other one is the knowledge. When there is a case which involves intention to cause death with the knowledge that the act is likely to cause death then the accused would be convicted under the first part of Section 304 IPC. But if the element of intention for causing death is missing and the act is done with the knowledge that it is likely to cause death of the person, then in such a case the accused would be punished under part II of Section 304 IPC

Applying the law as laid down by the Supreme Court in the aforesaid decision, it is required to be considered whether the case would fall under Section 302 IPC or any other lesser offence. P.W.1 and P.W. 2 who are the eye witnesses to the incident right from the beginning deposed that when the deceased was heightening the wall of gausala on the land in dispute between the parties, appellants came there with lathies and asked the deceased to stop the work claiming the land being their own lease land which the deceased objected, on this there was hot talk. The appellants assaulted the deceased with lathi who tried to escape then again the appellants surrounded him and beaten him, as a result the decased fell on the ground and died. P.W. 3 Chibilli, the mason gave vivid details in this regard in his cross-examination and stated that appellant Lalji made assault on the deceased and when the deceased tried to escape, Lalji chased and assaulted him with lathi four times. There were injuries on the person of the deceased, lacerated wounds on the head and abrasions on the hand. In the opinion of doctor, injury no. 1, 2 and 3 were on vital parts and as a result of injury no. 2, the patient would have gone into Coma and died.

In this case, as noticed above, the appellant Lalji was equipped with lathi, a blunt weapon. There was no previous enmity between the parties. There was dispute relating to goshala land which was being claimed by both of them. The deceased was heightening the walls which was prevented by the accused appellant and there was oral altercation on this issue. In the course of oral altercation, the appellant assaulted the deceased with lathi on his head. The deceased tried to esacpe, the appellant again assaulted him but lathi blows were made on hands, not on head or chest. The circumstances show that there was no premeditation in the mind of appellant to cause death of the deceased or to cause such bodily injury which was likely to cause his death. On account of oral altercation, in the spur of moment, he assaulted the

deceased with lathi on his head and again other lathi blows on his hands. Striking lathi on the head can be attributed to have knowledge that the injury was likely to cause death but it was not with the intention to cause such bodly injury which was likely to cause death. The intention of the appellant seemed to be only to prevent the deceased from making further construction on the wall of cow shed (goshala) land. Thus, there appears absence of intention on the part of the appellant but it was only with the knowledge to cause injury likely to cause death which would fall within the ambit of Section 304 Part-II IPC.

Thus, we hold that the appellant Lalji guilty under Section 304 Part-II IPC in the place of Section 302 IPC. The appellant is aged about 75 years, the occurrence took place in the year 1991 and he is in jail since 04.03.2021, therefore, to meet the ends of justice, we would like to the reduce sentence of the appellant, to three years rigorous imprisonment in the place of life imprisonment."**Lalji and others v. State of U.P., Cri.L.J. 2009:AIROnline 2023 All. 398**

Section 406, 498A IPC, Section 227 Cr.P.C. validity of discharge

The matter was related to the discharge and its validity of accused u/s 406, 498A IPC. It was held by the Hon'ble Delhi High Court that the basic ingredients required for offences u/s 498A as well as 406 IPC were not made out. Hence the discharge of accused was proper. Hon'ble Court held that-

As far as the discharge of the respondent no. 3, under section 406 of the IPC is concerned, the finding in the order dated 10.01.2013 passed by the learned Metropolitan Magistrate is as under:

> "Coming now to the allegations u/s 406 IPC against this accused. Now whereas it was it is settled position of law that a husband is presumed to be having dominion over stridhan of his wife, however, it is not an irrebuttable presumption and facts of each have to be kept in mind before raising this presumption. The complainant in this case is a qualified working lady who was working with the Australian High Commission when she got married. She was a resident of Delhi at the time of her marriage and even her matrimonial house was in Delhi, therefore, the complainant was required to specifically mention that whether at any point of time she handed over her jewellery to her husband which she has not mentioned. Further, all the household articles which were allegedly given were kept in the matrimonial house and in the absence of averment to the contrary it is a natural presumption that they have been used by all including the complainant as they were lying in the house and were articles of daily utility. In such circumstances no entrustment to the husband can be presumed. Further, prior to approaching the police there is no demand made by the complainant from her husband seeking return of those articles, thus, neither entrustment, nor

refusal to return are made out from the investigation are made out. Thus, the accused Vivek Sethi is discharged of the offence u/s 406 IPC."

The aforesaid findings were upheld by the Revisional Court vide judgment dated 10.05.2013.

The learned counsel for the petitioner submits that the learned Metropolitan Magistrate has gone beyond the scope of the jurisdiction at the stage of charge and ought to have taken the statement of the petitioner at its face value without appreciating and weighing evidence, as has been done. The said contention of the learned counsel for the petitioner is unfounded, as the bare perusal of the findings reproduced hereinabove shows that the learned Metropolitan Magistrate has taken the statement on face value itself and has come to the finding that bare reading of the same does not make out a case for framing of charges under Section 498A/406 of the IPC against the respondent no. 2 and the mother-in-law and under Section 406 of the IPC against respondent no. 3.

The learned counsel for the petitioner has taken this Court through the record of the case, and this Court, after examining the same, does not find any grounds to interfere with the findings of the courts below. As observed above, the learned Metropolitan Magistrate has correctly appreciated the case of the prosecution as put forth in the chargesheet. Furthermore, the judgment of the Revisional Court endorsing the findings of the learned Metropolitan Magistrate is also well within the scope of the revisional jurisdiction that was exercised. The learned Additional Sessions Judge in the impugned order dated 10.05.2013, recorded as under:

> "9. I have perused the impugned order, Learned Trial Court has comprehended the allegations against each of the accused and in detail dealt with the allegations. To conclude, on sifting and weighing the material on record, this Court finds that there is no sufficient material on record to proceed further against accused persons, who have been discharged by the Learned Trial Court and a prima facie case u/s 406 IPC has not emerged against accused husband Vivek Sethi (R-3), therefore, this Court is of the opinion that the conclusion derived by the Learned Trial Court cannot be faulted as unreasonable or erroneous. This Court finds no infirmity or illegality in the impugned order, when material on record is perused as a whole. This revision petition being devoid of any merit is, therefore, dismissed. TCR be sent back alongwith copy of this order. Revision file be consigned to Record Room."

This court does not find any infirmity or illegality in the aforesaid orders and accordingly, the present petition is dismissed and disposed of alongwith the pending application(s), if any." **Ritu Sethi v. State of NCT. Of Delhi and others, 2023 Cri.L.J.2046 : AIROnline 2023 Del.9**

MOTOR VEHICLES ACT

25% of disability – No evidence about income

Since the Tribunal as well as High Court has taken note that the appellant had suffered disability of 25 per cent as per Exh. 4 but reckoned less, we reckon at 25 per cent and the amount equivalent to the same is to be awarded to the appellant. Accordingly, the same would be in a sum of Rs. 3,26,700.)

In addition, since we have reckoned the salary at Rs. 9,000 per month, the difference of amount towards loss of earnings during treatment will have to be added. If the same is taken note and the amount awarded on the other heads by the MACT and enhanced by the High Court is taken into account, it will add up to Rs. 8,19,000. The total, therefore, would be in a sum of Rs. 11,45,700. On deducting the sum of Rs. 9,95,900 awarded by the High Court, the appellant will be entitled to the enhanced compensation of Rs. 1,49,800 with interest at 8 per cent per annum. ***Muhammed v. United India Insurance Co. Ltd. and others, 2023 ACJ 894***

Contributory negligence

Negligence means failure to exercise required degree of care and caution expected of a prudent driver. Negligence is the omission to do something which a reasonable man, guided upon the considerations, which ordinarily regulate conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do. Negligence is not always a question of direct evidence. It is an inference to be drawn from proved facts. Negligence is not an absolute term, but is a relative one. It is rather a comparative term. What may be negligence in one case may not be so in another. Where there is no duty to exercise care, negligence in the popular sense has no legal consequence. Where there is a duty to exercise care, reasonable care must be taken to avoid acts or omissions which would be reasonably foreseen likely to cause physical injury to person. The degree of care required, of course, depends upon facts in each case. On these broad principles, the negligence of drivers is required to be assessed.

It would be seen that burden of proof for contributory negligence on the part of deceased has to be discharged by the opponents. It is the duty of driver of the offending vehicle to explain the accident. It is well settled law that at an intersection where two roads cross each other, it is the duty of a fast moving vehicle to slow down and if driver did not slow down at the intersection, but continued to proceed at a high speed without caring to notice that another vehicle was crossing, then the conduct of driver necessarily leads to conclusion that vehicle was being driven by him rashly as well as negligently. ***Kusuma Devi and others v. Shrawan Kumar Mishra and others, 2023 ACJ 739***

Total Disablement

Ideally, the compensation should be provided to the employees against the hazards of employment to which an employee is exposed. This also includes any occupational disease or industrial accident that the employee may encounter arising out of or during the course of employment which leads to disability or death. Specifically, a worker is entitled to compensation in case of:

(i) Death

(ii) Permanent total disablement

(iii) Permanent partial disablement

(iv) Temporary disablement-both total and partial

(v) An occupational disease. J

Disablement is a wide term and under the 1923 Act, it is divided into two categories i.e., partial disablement and total disablement. Accord- ing to section 2 (1) (g) of the Act 'partial disablement' means, where the disablement is of a temporary nature, such disablement reduces the earning capacity of an employee in any employment in which he was engaged at the time of accident resulting in the disablement, and, where the disablement is of a permanent nature, such disablement as reduces his earning capacity in every employment which he was capable of undertaking at that time. Thus, section 2 (1) (g) classifies partial disablement into two kinds, namely, (a) temporary partial disablement and, (b) permanent partial disablement.

The distinction between the two types of partial disablement depends on the fact whether the disablement results in reduction of earning capacity in the particular employment in which the employee was engaged at the time of accident or in all employment which he was capable of doing. In the former case the partial disablement is called temporary and in the latter case permanent. Every injury specified in Part II of Schedule I of the Employee's Compensation Act shall be deemed to result in permanent partial disablement.

Whereas, 'total disablement' is defined under section 2 (1) (b) to mean such disablement whether of a temporary or permanent nature as incapacitates a workman for all work which he was capable of performing at the time of accident resulting in such disablement and every injury specified in Part 1 of Schedule I or combination of injuries specified in Part II of Schedule I where aggregate percentage, as specified in Part II against those injuries amounts to 100 per cent or more. Total disablement is of two types:

(i) Temporary total disablement-In temporary total disablement the earning capacity of a workman is lost for a temporary period, for all work which he was capable of performing at the time of accident. (ii) Permanent total disablement-Total permanent disability (TPD) is a condition in which an individual is no longer able to work due

to injuries. Total permanent disability, also called permanent total disability, applies to cases in which the individual may never be able to work again.

Having considered the aforesaid facts of the present case and the dictum of the judicial pronouncements referred to above and the position of the appellant after the accident incapacitated her from carrying out her vocation as a labourer, we are of the opinion that the impugned order passed by the High Court is not liable to be sustained. The functional dis- ability of the appellant is liable to be assessed as 100 per cent and, accord- ingly, the compensation is to be determined. The functional disability of the appellant being 100 per cent, her age being 40 years and income being Rs. 8,000, 60 per cent whereof works out to be Rs. 4,800 and applying the multiplier of 184.17, as per Schedule IV of the 1923 Act, the compensation works out to be Rs. 8,84,016. Adding an amount of Rs. 42,200 towards medical expenses for which the bills were presented, the total compensa- tion works out to be Rs. 9,26,216 rounded of to Rs. 9,30,000. The appellant shall also be entitled for payment of interest at 9 per cent per annum, from the date of making the application till the date of actual payment. ***Chandramma v. Manager, Regional Office, NCC Ltd. and another, 2023 ACJ 806***

Evidence -Identity of – Driver

In Bimla Devi v. Himachal Road Trans. Corpn., 2009 ACJ 1725 SC), the Hon'ble Supreme Court held as follows:

"It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. For the said purpose, the High Court should have taken into consideration the respective stories set forth by both the parties".

In a claim under Motor Vehicles Act, the evidence should not be scrutinized in a manner as is done in a civil suit or a criminal case. In a civil case the rule is preponderance of probability and in a criminal case, the rule is proof beyond reasonable doubt. ***Sonal Gupta and another v. United India Insurance Co. Ltd. and another, 2023 ACJ 1013***

Fatal accident – Determination of Quantum

The only issue for consideration in the instant appeal is with regard to the appropriate quantum of compensation.

In the present case, court noted that the deceased was pursuing his Bachelor of Engineering course which by itself would indicate that he was a bright student and had secured a seat for engineering. Therefore, on completion of the course he would have been assured of employment. Therefore, even on a conservative estimate, it

would be appropriate to reckon the income at Rs. 8,000 per month. To the said amount, 40 per cent is added as the 'future prospects' which would be in a sum of Rs. 3,200 per month. Out of the total amount of Rs. 11,200 per month, 50 per cent is deducted towards the personal expenses since he was a bachelor. The appropriate multiplier to be applied is '18'. ***Narmadi Bai v. Triupati Arolu and others, 2023 ACJ 1207***

Determination of Quantum – Fatal accident

In the circumstances of accident, taking note that appellant had suffered injuries and being a student having suffered visual impairment would affect his future studies as well. Therefore, in a case where there is no material on record to indicate the subsequent stage, only taking note of the disability he has suffered and is likely to affect him in future, we deem it appropriate to award a further global compensation of Rs. 1,50,000 which shall be paid to him as the enhanced compensation.

Insofar as the claimant-Vijay Kumar, the appellant, was concerned, he examined himself as PW 1 and referred to the fact that he was running a shop and in respect of the income earned therefrom he had produced the income tax returns. It is noted that the returns for the year 1995-1996 onwards has shown steady increase in his earnings. However, keeping in view the fact that a constant income cannot be assumed in the present case, the fact that there would be loss of earnings due to the disability suffered by the appellant at 25 per cent which has been assessed and also keeping in view the fact that due to the loss of his wife, he had to attend to his children and could not have been regular at the shop, some compensation in that regard also is to be kept in view. Therefore, making an overall assessment of the matter, we feel it appropriate that an additional global amount of Rs. 2,25,000 can be considered as adequate. In that light, in addition to the compensation which has already been awarded by the Tribunal and enhanced by the High Court, the appellant would be entitled to the enhanced global compensation of Rs. 2,25,000. ***Vijay Kumar and others v. Nanag Ram and others, 2023 ACJ 1212***

Quantum – eye injury – Injured a heavy vehicle driver suffered 30% permanent visual impairment in left eye

The disability is to be reckoned at 100 per cent and the compensation is to be re-calculated. Since the High Court has taken income at Rs. 10,000, 40 per cent of the same will have to be added towards 'future prospects'. As such the total income could be reckoned at Rs. 14,000. If taken on the annual basis and the appropriate multiplier of '15' is applied, the amount under the head 'loss of income due to disability' would be in a sum of Rs. 25,20,000. On the other heads, the High Court has awarded a sum of Rs. 5,51,603 which is retained. Hence, the total compensation

would be in a sum of Rs. 30,71,603 with interest at 9 per cent per annum which shall be payable by the insurance company and the balance payable after deducting the amount already paid shall be deposited within a period of six weeks from the date of receipt of a copy of this judgment before the MACT, whereupon the compensation amount shall be disbursed to the claimant.– ***Gurdev Singh v. Reliance General Ins. Co. Ltd, 2023 ACJ 1255***

Fatal Accident - Quantum

The claim was that the deceased was working as a carpenter and he had sufficient income which he was providing for the family. Though the claimant No. 1-wife in her evidence stated that the deceased was working in the Forest Department to undertake wood work and was earning a sum of Rs. 20,000, no material was placed in that regard. It is in that view that Tribunal, taking note of the avocation, has taken a notional income at Rs. 3,000 per month. The High Court has reckoned the income at Rs. 4,500 per month.

In a matter of the present nature, where the accident had occurred in the year 2008 and the deceased was shown to be a skilled labourer, the income in any event cannot be less than Rs. 200 per day even on a conservative estimate. In that view, it would be appropriate to reckon the income at Rs. 6,000 per month. Since even as per the claim made, nothing is shown that he was in regular employment and was undertaking work as and when available, it would be reasonable to take the future prospects at 40 per cent of the monthly income reckoned. 1/4th of the amount is deducted for personal expenses keeping in view the number of depend- ants. Loss of dependency per month would be in a sum of Rs. 6,300. If the same is taken on the annual basis and the multiplier of '14' is applied, the the total amount of loss of dependency would be in a sum of Rs. 10,58,400. ward The conventional amount of Rs. 70,000 is added to the above amount. Hence, the total amount would be at a sum of Rs. 11,28,400 with interest at 7.5 per cent p.a. ***Sanjana and others v. Arun Sharma and others, 2023 ACJ 1216***

S. 147(1) read with S. 163-A – liability of Insurance Company

S. 163-A as was inserted on 14.11.1994 was read as, 163-A- *Special provisions as to payment of compensation on structured formula basis.-(*1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

(2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in

respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule."

From perusal of the aforesaid section, it is clear that it starts with a non obstante clause providing that the owner of the motor vehicle or the authorised insurer shall be liable to pay in case of death or permanent disability due to accident arising out of the use of motor vehicle, compensation, as indicated in Second Schedule, to the legal heirs or the victim, as the case may be. Sub-clause (2) of section 163-A further provides that the claimant shall not be required to plead or establish that the death or permanent disability in respect of which claim has been made was due to any wrongful act or negligence or default of the owner of the vehicle or vehicles concerned or of any other person.

Thus, it is clear that this provision has an overriding effect over other provisions of the Act under which the claim is made. ***National Insurance Co. Ltd. v. Brijrani and another, 2023 ACJ 1307***

Quantum – Principles of Assessment in Fatal Accident

In the present case, it is not disputed that the office of the insurance company-opposite party No. 3 is situated at District Shahjahanpur and the company has its business at Shahjahanpur. Thus, in the light of observations of the Supreme Court in Malati Sardar, 2016 ACJ 542 (SC), the Tribunal at Shahjahanpur had the jurisdiction to entertain the claim petition. The Tribunal has clearly erred in holding that the claim petition was not maintainable in Shahjahanpur. The findings of the Tribunal on issue No. 4 are contrary to law and are hereby set aside and it is held that the claim petition was maintainable before the Motor Accidents Claims Tribunal, District Shahjahanpur.

Claim petition was contested by the insurance company-opposite party No. 3 and the claimants had led their evidence before the Tribunal. The Tribunal has recorded its findings on the other issues framed by it. The records are before this court and, therefore, it would serve no purpose to remand back the matter to the Tribunal to only quantify the compensation payable to the claimants. In view of the aforesaid, this court has perused the lower court records to examine the findings of the Tribunal on other issues, i.e., issue Nos. 1, 2 and 3.

In the light of aforesaid principles, the compensation payable to the claimants is computed as below:

(a) Notional income of deceased: Rs. 3,000 per month, i.e., Rs. 36,000 per annum.

(b) Deductions towards personal expenses of the deceased (4 of her income): Rs. 9,000.

(c) Income of the deceased for determining compensation: Rs. 27,000 (Rs. 36,000 - Rs. 9,000). (d) Addition of 40 per cent future prospects to the income of deceased: Rs. 27,000+ 100 x 40 Rs. 10,800.

(e) Thus, the multiplicand: Rs. 27,000+ Rs. 10,800 Rs. 37,800.

(f) Applying multiplier of 16, the total amount of pecuniary damages:

Rs. 37,800 x 16 = Rs. 6,04,800.

(g) Loss of spousal consortium to appellant No. 1: Rs. 40,000.

(h) Loss of parental consortium to appellant Nos. 2 to 7: Rs. 40,000 x 6= Rs. 2,40,000 (Rs. 40,000 each to appellant Nos. 2 to 7)

(i) Funeral expenses: Rs. 15,000

(j) Loss of estate: Rs. 15,000

Thus, the total compensation payable to the appellants: Rs. 9,14,800 (f+g+h+i+j).

The aforesaid compensation shall bear interest at the rate of 7 per cent per annum from the date of filing the claim petition till the date of actual payment by the insurance company.

Thus, it is held that the claimants are entitled to a compensation of Rs. 9,14,800 with 7 per cent simple interest per annum from the date of filing the petition till the date of actual payment by the insurance company. ***Shyamu and others v. Rashid Ahmad and others, 2023 ACJ 1366***

Fatal Accident – Quantum – Determination of compensation

While determining the income, an addition of 50 per cent of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30 per cent, if the age of the deceased was between 40 and 50 years. In case the deceased was be- tween the age of 50 and 60 years, the addition should be 15 per cent. Actual salary should be read as actual salary less tax

Considering the facts and circumstances of the case and law settled by Hon'ble Apex Court, the compensation awarded by the Claims Tribunal is re-assessed as follows:

(1) Monthly income	Rs. 7,000
(2) Annual income	Rs. 7,000 x 12 = Rs. 84,000
(3) Future prospects (30 per cent)	Rs. 25,200
(4) Total annual income	Rs. 84,000+ Rs. 25,200 = Rs. 1,09,200
(5) Deduction towards personal expenses (1/4th)	Rs. 1,09,200 - Rs. 27,300 = Rs. 81,900
(6) Multiplier applicable (14)	Rs. 81,900 x 14 = Rs. 11,46,600
(7) Non-pecuniary damages	Rs. 70,000
Total	Rs. 11,46,600+ Rs. 70,000 = Rs. 12,16,600

Raja Beti and others v. Ashok Kumar and others, 2023 ACJ 1340

NEGOTIABLE INSTRUMENTS ACT

Facts

In the present matter, the prayer was made for setting aside the entire proceedings of Criminal Complaint Case No. 496 of 2022 under Section 138 N.I. Negotiable Instruments Act, as well as the impugned summoning order dated 13.10.2022 passed by the Court of Ld. Additional Civil Judge (Junior Division)/Judicial Magistrate, Court No. 9, Bulandshahar in Crl. Complaint Case No. 496 of 2022 (Smt. Shashi Sharma Vs. M/s. Naveen Auto and Another) under Section 138 of N.I. Act, P.S. Kotwali Nagar, District Bulandshahar (Annexure No. 6 to this petition) and impugned judgment and order dated 13.12.2022 passed by Court of Ld. Additional Sessions Judge/Fast Track Court, Court No. 2, Bulandshahar in Crl. Revision No. 361 of 2022.

Factual matrix of the case in brief are that respondent No. 2 filed a complaint which is registered as Case No. 496 of 2022 under Section 138 of N.I. Act, P.S. Kotwali Nagar, District Bulandshahar with averment that complainant and respondent No. 2 are working in a partnership firm in the name of M/s. Naveen Auto at Raje Babu road, Bulandshahar. Complainant and respondent No. 2, both are partners in the firm. In the profits of firm, share of complainant is 30%, share of wife of respondent No. 2 is 30%, share of respondent No. 2 is 20% and share of Uma Sharma is 20%. The respondent No. 2 has been directed to transact the business on behalf of the firm, however, for last three years no profit was given to the complainant and she was avoided by respondent No. 2 in respect of affairs of the firm. When she negotiated with respondent No. 2, he asked her to terminate her relations with the firm and this was agreed between the complainant and partners of the firm that Rs. 3,00,000,00/- will be given to the complainant in lieu of her 30% share and profits. This was also agreed between partners that until Rs. 3,00,000,00/- is paid to the complainant, she would keep on receiving the profits and on that count a cheque of Rs. 90,00,000/- was issued by the firm in favour of the complainant dated 15.6.2022 which was signed by respondent No. 2 as authorized signatory of the firm. This cheque was drawn on Canara Bank account of the firm. The complainant presented the cheque on same day at his Bank PNB, Yamunapuram Branch Bulandshahr on her bank account, however, the same was dishonoured and returned on 20.7.2022 with endorsement "account blocked", thus consequently the cheque got bounced. Accordingly, complainant present complaint for prosecution of the firm and respondent No. 2 for charge under Section 138 of N.I. Act. Learned Magistrate recorded statement of complainant under Section 200 Cr.P.C. and her witnesses under Section 202 Cr.P.C. and passed impugned summoning order

whereby the present petitioners were summoned to face trial for charge under Section 138 of N.I. Act.

Held:

Whether the account of which the said cheque was drawn, was having sufficient balance to pay the amount gathered by said cheque worth Rs. 90,000,00/- drawn in favour of respondent, whether petitioner was having some other account apart from the account which was blocked as said above on which cheque would be drawn in favour of the respondents in discharge of certain debt and liability as claimed by her, whether the petitioner indeed intended to get the cheque encashed, all these questions are to be decided during trial and the grounds taken in present petition can be raised by the petitioner at the stage of leading defence.

The petitioner has claimed that said cheque was issued in favour of the respondent No. 2 as security cheque, as huge amount was outstanding to the respondent No. 2 and for that reason after completing all formalities of disassociation from firm the cheque was to be encashed, is dispelled by the aforesaid proposition of law laid down by Hon'ble Apex Court in Om Laboratory Pvt. Ltd., wherein it was held that handing over of cheque by way of security per se, would not absolve the accused from discharge of liability arising from said cheque.

It was observed that the no good ground to interfere in impugned orders passed by court below which are under challenged in present petition. The impugned orders are in accordance with law and no illegality or irregularity is found therein. **Naveen Kumar Sharma and another Vs. State of U.P and another, 2023(4) ADJ 693**

SCHEDULED CASTES AND SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT

Secs. 3(1)(x) SC/ST Act—Appeal for quashing of summoning order alongwith entire criminal proceedings of complaint case—Sustainability—Summoned u/s 147, 323, 326 A, 504 IPC and 3(1)(X) SC/ST Act

Hurling abuses naming caste in public place or at place of public view would only constitute an offence under SC/ST Act. Unless it is established no criminal proceeding can go on incident took place inside house. Access not within view of public. Though on cry of family members of complainant, village persons reached and saw beating of his family members, same cannot be said to have happened at a place within public view or public place. Thus, issuance of summons against applicants under section 3(1)(x) of SC/ST passed by trial court without applying judicial mind. Therefore, summoning order set aside to extent of offence under

section 3(1)(x) of SC/ST Act. Appeal partly allowed. **[Indramani Yadav vs. State of U.P., 2023 (123) ACC 833 (All)]**

SECURITIZATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002

Facts

In the instant matter, review application has been filed seeking review of the judgment and order dated 19.04.2021. Facts in brief in the instant case are that the writ petition in question was filed by the petitioner challenging the decision taken by the Additional District Magistrate (Finance & Revenue), Meerut dated 30.10.2019 by which the application filed by the Bank under sub-section 1 of Section 14 of the SARFAESI Act, 2002 seeking physical possession of the property was rejected. After hearing counsel for the parties, the writ petition filed by the petitioner was dismissed by Hon'ble Court vide its judgment ated 19.04.2021 on the ground of availability of statutory alternative remedy to the petitioner as provided under Section 17 of SARFAESI Act, 2002 before the Debt Recovery Tribunal.

Held

The present review application filed by the petitioner being the second review application is not maintainable. The review application has been filed to misuse the process of law and process of Court; hence the same is liable to be dismissed with exemplary costs. Review proceedings cannot be equated with the original hearing and a review is by no means as appeal in disguise whereby an alleged erroneous decision is reheard and corrected. **Union Bank of India vs. Additional District Magistrate, Meerut and Ors. 2023(6) ADJ 264 (DB)**

UTTAR PRADESH GANGSTERS AND ANTI-SOCIAL ACTIVITIES (PREVENTION) ACT

Secs. 3(1) and 12—Cr.P.C., 1973, Secs. 227, 228 and 482—Quashing of entire criminal case on ground of acquittal in substantive offence and non-compliance of mandate of section 12 of Act, 1986—Sustainability

Applicant-accused, a member of gang and several FIR registered against him for his criminal activities. Charge-sheets came to be registered and submitted against him for offences defined under section 2(3) of Act, 1986. Therefore, acquittal of accused-applicant for witness turning hostile or otherwise not a material aspect. Therefore, plea of dropping proceedings of Gangsters Act on ground of acquittal in substantive offence declined. Since trial of substantive offence transferred by Supreme Court to New Delhi but trial of offence under Gangster Act not transferred.

Both cases not conducted in same Court. Therefore, section 12 of Act, 1986 has no applicability in present case. Further accused-appellant never took this plea during trial of substantive offence by Special Court at New Delhi. Application dismissed. **[Afjal Ansari vs. State of U.P., 2023 (123) ACC 871 (All)]**

Secs. 14, 15, 17 and 18—Attachment of property—Appeal—

Properties being made subject-matter of attachment must have been acquired by gangster and that too by commission of an offence triable under Act. Attachment of property by District Magistrate only on basis of report of Police, subjective satisfaction of District Magistrate vitiated. For reason that no material supplied to him to form opinion that property in question acquired by Gangster as a result of commission of any offence triable under Act. Appellant having enough source of income from his business from which he acquired properties. Properties acquired by him much prior to registration of criminal case and imposition of Gangster Act. Therefore, impugned attachment order passed in mechanical manner without application of mind set aside. Appeal allowed. Direction issued to release all properties of appellant attached in his favour. **[Waseem Khan vs. State of U.P., 2023 (123) ACC 904 (All-LB)]**

UTTAR PRADESH URBAN BUILDINGS (REGULATION OF LETTING, RENT AND EVICTION) ACT

Interpreting the law on the point qua entertainability/maintainability of the application for release the court observed that it must be held that when the Legislature has provided that no application under Section 21(1) (a) of the Act shall be entertained by the prescribed authority on grounds mentioned in clause (a) of Section 21(1) of the Act before expiry of three years from date of purchase of property by the landlord it must necessarily mean consideration by the prescribed authority of the grounds mentioned in clause (a) of Section 21(1) of the Act of merits.

On the facts of the present case, the appellant had waived that contention about the suit being premature having been filed before the expiry of six months from the date of the suit notice. The appellate court had proceeded to decide that since six months' notice did not precede to release application, therefore, there was non-compliance of statutory provision and hence the release application was barred.

Applying the legal principle on the point of maintainability of release application beyond the period of three years of purchase of the property by the landlord, is as much as the requirement of law to have six months' notice before presenting the release application.

It has been held that the moratorium of three years period having already expired because the property was purchased by the present landlord way back in the year 2001, and the fact that the tenant respondent was admittedly paying the rent to landlord-respondents, tenant by his own and statement made in the written statement, the release application was maintainable. So, judgment granting release application having been passed on 23rd December, 2014, it would not get rendered as null and void or bad for coram non judice as the prescribed authority concerned had the jurisdiction to entertain the release application and pass order thereupon. **Mohd. Siddique and Ors. vs. Mohd. Nafees, 2023(4) ADJ 305**

Facts

A tenants' writ petition assailing an order of release under Section 21(1)(a) of The Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 passed concurrently by the two Authorities below. Facts are that an application for the release of a shop, situate in Mohalla Lajpat Nagar, Bazar Manik Chowk, Konch, District Jalaun, was moved by Rameshwar Dayal son of Sri Munga Lal before the Prescribed Authority/Civil Judge (Jr. Div.), Konch, District Jalaun against the three tenant-petitioners, Awadesh Kumar, Jitendra Kumar and Mukesh Kumar, all sons of the late Balram Soni. The boundaries of the shop aforesaid are detailed at the foot of the release application, instituted before the Prescribed Authority. The application for release under Section 21(1)(a) of the Act was moved by Rameshwar Dayal against the three tenant-petitioners on the ground of his bona fide need.

In Mohalla Jai Prakash Nagar, the landlord owns two shops and a house, where one shop is lying vacant. In the same locality, the landlord has purchased a new shop in the name of his wife, Smt. Shakuntala, which is lying vacant. There is an averment that if at all 'the so called son' of the landlord requires a shop for purpose of business, he can utilize the vacant shop, newly purchased. The tenant has also asserted that the landlord has four other shops in Mohalla Patel Nagar, Town Konch, out of which two are in the occupation of his sons, Sanjay Soni and Mukesh Soni, who carry on the business of jewellers for the past many years therein. As such, the landlord's son, Mukesh Kumar cannot be said to be without livelihood. The tenants, on the other hand, have no other shop to earn their livelihood, except the demised shop. Amongst the tenants, Awadesh Kumar and Jitendra Kumar are married men, who have in their family their wives and four children. Mukesh Kumar, amongst the tenants, is unmarried. The tenants' mother is still alive. They are a family of ten souls, all of whom are dependent upon the demised shop for sustenance. It is in the last asserted by the tenants that comparative hardship lies in their favour as they would suffer greater hardship in the event of release than that which the landlord would face in the event of refusal of the application.

The Prescribed Authority in substance held that the tenants had taken the demised shop on rent from the landlord and was paying rent to Rameshwar Dayal. As such, Rameshwar Dayal was the landlord, vis-à-vis the tenants. The Prescribed Authority held that the tenants' case that the land, on which the demised shop was constructed, was taken on lease from the Nagar Palika Parishad, Konch, would not make the Nagar Palika Parishad the landlord vis-à-vis the tenants. Thus, the provisions of the Act would apply to the demised shop and it would not be exempt from the operation of the Act by virtue of Section 2(1). The question of relationship of landlord and tenant was answered accordingly, bearing in mind the distinction between the well defined concepts of owner and landlord of an immovable property. The tenants having inherited the tenancy from their father upon his death, the Prescribed Authority also held that the failure to join the tenants' mother, was hardly of consequence. This was so, because the tenants, which may include their mother, were joint tenants, and proceedings against one were competent against all. The issue of bona fide need and comparative hardship were answered in favour of the landlord and against the tenants. On the aforesaid findings, the Prescribed Authority allowed the release application and directed the tenants' eviction upon usual terms as to payment of two years' rent as compensation by the landlord vide judgment and order dated 01.04.2016. The aforesaid judgment was impugned in appeal before the District Judge, Jalaun at Orai. The appeal was registered before the learned District Judge as Rent Appeal No. 4 of 2016. It was heard and dismissed by the learned District Judge vide judgment and order dated 15.02.2018, affirming all the findings of the Prescribed Authority.

Held

There is a distinction between the availability of accommodation with the landlord, where an adult member of his family can establish his business and the fact that the member of his family, for whose requirement the landlord seeks release of an accommodation, is actually in gainful employment. The inference of bona fide need is to be drawn from the latter fact and not the former. If the landlord is able to show that an adult member of his family is not in gainful employment, or even in stable gainful employment, that is independent, it is not for the tenant to show and say that another accommodation, that is available with the landlord, can be utilized for the purpose. Here, there is no positive evidence against the landlord's categorical assertion to the effect that Mukesh Kumar is in actual gainful and stable employment of his own.

On the issue of bona fide need, the aforesaid stand of the tenant is very relevant. It is reflective of mala fides and obduracy. The tenants have no right to tell the landlord how and in what manner, he should go about satisfying his bona fide need. It is precisely in this context that the principle under reference has been laid

down. The tenant says that the landlord has a number of shops available with him, where his son can set up independent business. That is precisely what the tenant cannot tell the landlord. Once the landlord's son is proven to be not gainfully employed in independent business, it is the landlord's right to seek release of any of the shops that he owns for his son's need. The landlord cannot be driven to ask his son to set up business in a vacant shop of his, which is not the landlord's choice.

So far as the issue of comparative hardship is concerned, the two Authorities below have taken note of the fact that the tenants have not made efforts to find alternative accommodation during all this period of time, which tilts the balance of comparative hardship against them. The Appellate Authority has taken particular note of the fact that the tenant in his cross-examination has said that even if the landlord were to offer him another shop, he would not vacate the demised shop. This stand of the tenants, the Appellate Authority has regarded as malicious. **Awadesh Kumar and Ors. vs. Rameshawar Dayal and Ors. 2023(4) ADJ 289**

WAQF ACT

Facts

Revision under section 83(9) of the Waqf Act 1995 was been filed against order dated 17.11.2022 passed in Case No. 38 of 2020 whereby revisionist-plaintiff was directed to pay ad valorem Court fees on the relief sought in plaint.

In the instant matter, Learned counsel for revisionist submitted that the aforesaid case had been filed by revisionist seeking a relief of permanent injunction against the defendants and their agents from interfering in peaceful possession over suit property. Further relief for a decree of declaration for properties entered in Waqf deed dated 03.12.1924 as Waqf Properties were also sought. It is submitted that for the purposes of payment of Court fees, it was indicated in the plaint that Waqf Property not having marketable value, only for the purposes of payment of Court fee, suit was being valued tentatively at Rs. 1000/-and since prayer for permanent injunction had been sought, the maximum prescribed Court fee of Rs. 500/-was being paid and on the point of declaration, Rs. 200/-was being paid.

Held

it is evident that computation of Court fee payable in certain suits particularly with regard to declaratory decree with consequential relief is indicated in Section 7(iv)(a) whereunder provisions of sub-section(iv-A) is an exception. The proviso to aforesaid provisions indicates that in cases of suits falling under Clause (a) where relief sought is with reference to any immoveable property, such amount shall be the value of consequential relief and if such relief is incapable of valuation, then the value of immoveable property is to be computed in accordance with Sub-Section (v-

A) or (v-B) of the Section. The provisions regarding cancellation or adjudging void instruments and decrees has been indicated in Section 7(iv-A) of the Act, which has been exempted for consideration for purposes of Court fees pertaining to Section 7(iv)(a). Proviso to section 7(iv-B)(e) provides that in cases of suits following under clauses (a) and (b), the amount of Court fee leviable shall in no case exceed Rs. 500/-. Section 7 (iv-B) provides also that with regard to consequential relief of injunction, the amount of Court fee leviable in no case shall exceed Rs. 300/-.

The fact that in a suit filed to obtain declaratory decree or order where consequential relief other than relief specified in sub-section (iv-A) is prayed for with relief for permanent injunction, then the Court fees is to be assessed as per the valuation indicated in the plaint. In such cases that possession of property is not sought as a consequential relief, the declaratory suit filed with prayer for injunction, Court fee leviable shall not exceed Rs. 500/-.

In present matter, suit for declaratory decree has been filed with consequential relief of only permanent injunction and not for possession. In such circumstances, Court fees would be payable in terms of Section 7(iv-a) of the Act and not in terms of Section 7(iv-A) of the Act and therefore only a fixed Court fee of Rs. 500/-was payable by the revisionist. The Tribunal has clearly erred in holding ad valorem Court fee being payable by the revisionist. It is also a relevant factor that it cannot be assumed that a relief of possession is to be sought for by the plaintiff particularly when no such express relief has been sought in the plaint. The aforesaid judgments clearly indicate that Court fee is payable only as per relief sought in a plaint and not for what it ought to have prayed for. Accordingly, the impugned order dated 17.11.2022 passed by the Waqf Tribunal is against the propositions of law and is therefore set aside. Consequently, revision succeeds and is allowed. **Ansar Nawaz Khan vs. Adeel Ahmad and Ors. 2023(5) ADJ 14 (LB)**