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

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(SUPREME COURT)

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PART I – SUPREME COURT

ARBITRATION AND CONCILIATION ACT

Arbitration and Conciliation Act, 1996 - Sections 34 to 36 r/w Arbitration Act, 1940- Pendency of execution petitions in various districts in State of U.P., for execution of arbitral awards. Directions issued to High Court to prepare a road map and to take a call as to how problem of pendency of execution petitions/applications to execute awards passed under 1940 Act and 1996 Act and applications under S. 34 are decided/disposed of at earliest, so that ultimate object and purpose of Arbitration Act and Commercial Courts Act is achieved. **(Chopra Fabricators and Manufacturers Private Limited v. Bharat Pumps and Compressors Limited and another, (2023) 2 SCC 481)**

CENTRAL EXCISE ACT

Central Excise Act, 1944 - S. 4 Valuation of excisable goods - Sale of goods to both "related person" and "unrelated person." Determination of assessable value of sale of goods to "related person" when sold underpriced where sale price is readily available- Price at which goods sold to unrelated person is the benchmark. However, such method needs to be followed after due application of mind.

Central Excise Act, 1944-S. 11-A-Extended period of limitation- Invocation of Only where there is suppression of facts and failure provide accurate information - On facts held, as Revenue itself was unclear about correct method of valuation, invocation of extended period of limitation was not proper. **(Commissioner of Central Excise and Service Tax, Rohtak v. Merino Panel Product Limited, (2023) 2 SCC 597)**

CIVIL PROCEDURE CODE

Order 33 and Section 11 - Application to file suit as indigent person. Refusal on the ground of res judicata and lack of cause of action. Legality of rejection of application to sue as indigent person. Order that may be passed and remedy available to applicant. Explained. **(Solomon Selvaraj and others v. Indirani Bhagawan Singh and others, (2023) 1 SCC 349)**

Civil Procedure Code, 1908 S. 11 Res judicata - Applicability Findings on issue(s) which actually fell for consideration in the previous proceedings alone can operate as res judicata.

Issue in earlier suit was limited only as to whether respondent- plaintiff has a right to construct latrine in passage. Issue as to whether respondent-plaintiff was exclusively entitled to possession thereof did not fall for consideration in earlier round, whereas in present suit said issue directly fell for consideration. Principle of res judicata, held, not applicable. **(Anil Kumar Modi and others v. Tarsem Kumar Gupta, (2023) 2 SCC 201)**

Civil Procedure Code, 1908 - Or. 22 Rr. 3, 4 and 11, Or. 39 and Or. 43 R. 1(r) Death of party and bringing of LRS on record- Substitution of LRs at stage of hearing of appeal arising out of interlocutory order of trial court.

Held, if the legal representatives are brought on record within the prescribed time at one stage of the suit, including at interlocutory/interim stage, it will enure for the benefit of all the subsequent stages of the suit. Consequently, main suit would not stand abated. **(Maringmei Acham v. M. Maringmei Khuripou, (2022) 2 SCC 473)**

Order VII, Rule 11, C.P.C.

Even the averments and allegations in the plaint with respect to fraud are not supported by any further averments and allegations how the fraud has been committed/played. Mere stating in the plaint that a fraud has been played is not enough and the allegations of fraud must be specifically averred in the plaint, otherwise merely by using the word "fraud", the Plaintiffs would try to get the suits within the limitation, which otherwise may be barred by limitation. Therefore, even if the submission on behalf of the Respondents-original Plaintiffs that only the averments and allegations in the plaints are required to be considered at the time of deciding the application under Order VII Rule 11 of CPC is accepted, in that case also by such vague allegations with respect to the date of knowledge, the Plaintiffs cannot be permitted to challenge the documents after a period of 10 years. By such a clever drafting and using the word "fraud", the Plaintiffs have tried to bring the suits within the period of limitation invoking Section 17 of the limitation Act. The Plaintiffs cannot be permitted to bring the suits within the period of limitation by clever drafting, which otherwise is barred by limitation.

Both the Courts below have materially erred in not rejecting the plaints in exercise of powers Under Order VII Rule 11(d) of CPC. The respective suits have been filed after a period of 10 years from the date of execution of the registered sale deeds. It is to be noted that one suit was filed by the minor, which was filed in the year 2006, in which some of the Plaintiffs herein were also party to the said suit and in the said suit, there was a specific reference to the Sale Deed dated 19.09.2005 and the said suit came to be dismissed in the year 2014 and immediately thereafter the present suits have been filed.

Thus, from the averments in the plaint and the bundle of facts stated in the plaint, we are of the opinion that by clever drafting, the Plaintiffs have tried to bring the suits within the period of limitation, which otherwise are barred by limitation. Therefore, as the respective suits are barred by the law of limitation, the respective plaints are required to be rejected in exercise of powers under Order VII Rule 11 of CPC.

The impugned common judgment and order passed by the High Court rejecting the revision applications and the orders passed by the learned Trial Court rejecting the respective applications under Order VII Rule 11 CPC and refusing to reject the plaints in exercise of powers under Order VII Rule 11 of CPC are quashed and set aside.

The respective applications filed by the Appellant herein-original Defendant to reject the respective plaints on the ground that the same are barred by the law of limitation are hereby allowed. The respective plaints are rejected on the ground that the same are barred by limitation. Present appeals allowed. (**C.S. Ramaswamy Vs. V.K. Senthil and Ors. (2023 (158) RD 583 (Supreme Court))**

Sections 96 to 100 CPC, 1908:

Sections 96 to 100 of CPC deals with the procedure for filing appeals from original decrees. A perusal of the above provision makes it clear that the provisions are silent about the category of persons who can prefer an appeal. But it is well settled legal position that a person who is affected by a judgment but is not a party to the suit, can prefer an appeal with the leave of the Court. The sine qua non for filing an appeal by a third party is that he must have been affected by reason of the judgment and decree which is sought to be impugned. Any aggrieved party can prefer an appeal with the leave of the Court.

The High Court, relying upon the above judgments of Supreme Court in Ram Prakash Agarwal v. Gopi Krishan which recognizes the power to recall, seems to have lost sight of the restrictions imposed while exercising jurisdiction Under Section 151 of the CPC, which were elaborately discussed by Supreme Court in the above referred judgment about exercising of the power Under Section 151 of the CPC being only in circumstances where alternate remedies do not exist.

Therefore, recalling a final decree in such circumstances cannot be countenanced under Section 151 of the CPC. The High Court erred in exercising its jurisdiction Under Section 151 of the CPC, to hear and pass a detailed judgment recalling its earlier final decree dated 19.09.2013, rather than directing the Respondents to pursue the effective alternate remedies under law. While exercising the power under Section 151 CPC for setting aside the final judgment and decree, the Division Bench should have taken into consideration the restriction which was observed by this Court. Appeal allowed. (**My Palace Mutually Aided Co-operative Society vs. B. Mahesh and Ors. (2023 (158) RD 121 (S.C.)))**

O. 33, Rr. 5, 15A—Application to sue as indigent—Rejection—Prima facie found that plaint does not disclose any cause of action and suit was barred by res judicate—Rejection, proper

In the present case the appellants herein – the original plaintiffs while instituting the suit submitted an application to permit them to sue as indigent persons under Order 33 rule 1 of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'CPC'). The said application came to be dismissed by the learned Trial Court, confirmed by the High Court on the ground that the suit is vexatious, an abuse of process of law and the court and the suit is barred by res judicata.

Therefore, the short question which is posed for consideration before this Court is whether on the aforesaid ground the application under Order 33 Rule 1 CPC namely to sue as indigent persons could have been rejected by the learned Trial Court?

The question which is posed for consideration before this Court is even in a case where the application to sue as indigent persons is rejected what order can be passed and what will be the remedy available to the plaintiff/(s)?

An application to sue as indigent persons would be under Order 33 Rule 1 CPC. Order 33 Rule 1A CPC provides for inquiry into the means of an indigent person. Order 33 Rule 2 CPC provides contents of application. Order 33 Rule 4 CPC provides for examination of the applicant in case the application is in proper form and duly presented. Order 33 Rule 5 CPC provides the circumstances under which the application for permission to sue as an indigent person can be rejected.

Order 33 Rule 7 CPC provides for procedure at hearing. Order 33 Rule 8 CPC provides for procedure if application is allowed. It appears that if the application is granted, it shall be numbered and registered, and it shall be deemed the plaint in the suit, and the suit shall proceed in all other respects as the suit instituted in the ordinary manner, except that the plaintiff shall not be liable to pay any court fee or fees payable for service of process in respect of any petition, appointment of a pleader or other proceeding connected with the suit. Meaning thereby if the application is granted thereafter the suit shall be numbered and registered. Till then the plaint/suit shall be at pre-numbered and pre-registered stage. Order 33 Rule 9 CPC provides for withdrawal of permission to sue as an indigent person on the application of the defendant, or of the Government pleader on the grounds stated in Order 33 Rule 9 CPC. When such an application is preferred under Order 33 Rule 9A CPC, it is the duty cast upon the Court to assign a pleader to a person who is permitted to sue as an indigent person, if not ready by a pleader. That thereafter most relevant provision is Order 33 Rule 15 and Order 33 Rule 15A CPC.

Thus, from the scheme of Order 33 CPC, it emerges that the application under Order 33 Rule 1 CPC seeking permission to sue as indigent person can be rejected on the grounds mentioned in Order 33 Rule 5 CPC. It includes that the

allegations in the application would not show cause of action …… or that the allegations made by the applicant in the applications show that the suit would be barred by law for the time being in force (Order 33 Rule 5(d) & (f) CPC). Identical question came to be considered by this Court in the case of Kamu Alias Kamala Ammal, while considering Order 33 Rule 5, CPC, it is observed and held that the application for permission to sue as an indigent person has to be rejected and could not be allowed if the allegations in the plaint could not show any cause of action.

Applying the law laid down by this Court in the aforesaid decision and when having prima facie found that the plaint does not disclose any cause of action and the suit is barred by res judicata it cannot be said that the learned Trial Court committed any error in rejecting the application to sue as indigent persons.

However, at the same time taking into consideration Order 33 Rule 15 and 15A CPC and when the application to sue as indigent person is rejected and/or refused, the Court may, while rejecting an application, under Order 33 Rule 15A CPC grant time to the applicant to pay the requisite Court fee within such time as may be fixed by the Court or extended by it from time to time and upon such payment and on payment of cost referred to in Rule 15 within that time, the suit shall be deemed to have been instituted on the date on which the application for permission to sue as an indigent person was presented, even considering Order 33 Rule 15 CPC on refusing to allow to sue as an indigent person which may be a bar to any subsequent application of the like nature in respect of the same right to sue, the applicant shall be at liberty to institute a suit in the ordinary manner in respect of such right. **[Solomon Selvaraj vs. Indirani Bhagawan Singh, AIR 2023 SC 116]**

Secs. 19, 66—CPC, 1908, O. 21, R. 4(1)—modes of payment under decrees And Computation Of Interest

This court, in Gurpreet Singh (supra), observed in the context of Order XXI of (which deals with modes of payment under decrees and also stipulates when interest shall cease to "run" (i.e., not be payable)) as follows:

"Thus, in cases of execution of money decrees or award decrees, or rather, decrees other than mortgage decrees, interest ceases to run on the amount deposited, to the extent of the deposit. It is true that if the amount falls short, the decree holder may be entitled to apply the rule of appropriation by appropriating the amount first towards the interest, then towards the costs and then towards the principal amount due under the decree. But the fact remains that to the extent of the deposit, no further interest is payable thereon to the decree holder and there is no question of the decree holder claiming a re-appropriation when it is found that more amounts are due to him and the same is also deposited by the judgment debtor. In other words, the scheme does not

contemplate a reopening of the satisfaction to the extent it has occurred by the deposit. No further interest would run on the sum appropriated towards the principal.

As an illustration, we can take the following situation. Suppose, a decree is passed for a sum of Rs. 5,000/- by the trial court along with interest and costs and the judgment debtor deposits the same and gives notice to the decree holder either by approaching the executing court under Order XXI Rule 2 of the Code or by making the deposit in the execution taken out by the decree-holder under Order XXI Rule 1 of the Code. The decree holder is not satisfied with the decree of the trial court. He goes up in appeal and the appellate court enhances the decree amount to Rs. 10,000/- with interest and costs. The rule in terms of Order XXI Rule 1, as it now stands, in the background of Order XXIV would clearly be, that the further obligation of the judgment debtor is only to deposit the additional amount of Rs. 5,000/- decreed by the appellate court with interest thereon from the date the interest is held due and the costs of the appeal. The decree holder would not be entitled to say that he can get further interest even on the sum of Rs. 5,000/- decreed by the trial court and deposited by the judgment debtor even before the enhancement of the amount by the appellate court or that he can re-open the transaction and make a re-appropriation of interest first on Rs. 10,000/-, costs and then the principal and claim interest on the whole of the balance sum again. Certainly, at both stages, if there is short-fall in deposit, the decree holder may be entitled to apply the deposit first towards interest, then towards costs and the balance towards the principal. But that is different from saying that in spite of his deposit of the amounts decreed by the trial court, the judgment debtor would still be liable for interest on the whole of the principal amount in case the appellate court enhances the same and awards interest on the enhanced amount."

The rule was explained in another decision of this court, in V. Kala Bharathi & Ors. vs The Oriental Insurance Company Ltd., 2014(5) SCC 577 :

> "A bare perusal of the aforesaid provisions makes it amply clear that the scope of Order XXI Rule 1 of the Code of Civil Procedure is that the judgment debtor is required to pay the decretal amount in one of the modes specified in Sub-rule (1) thereof. Sub-rule (2) of Rule 1 provides that once payment is made Under Sub-rule (1), it is the duty of the judgment debtor to give notice to the decree-holder through the Court or directly to him by registered post acknowledgement due. Sub-rule (3) of Rule 1 merely indicates that in case money is paid by postal money order or through a bank under Clause (a) or Clause (b) of Sub-rule (1) thereof, certain particulars are required to be accurately incorporated while making such payment. Sub-rules (4) and (5) of Rule 1 states from which date, interest shall cease to run-in case amount is paid under Clause (a) or (c) of Sub-rule (1), interest shall cease to run from the date of service of notice as indicated Under Sub-rule (2); while in case of out of court payment to the decree-holder by way of any of the modes mentioned

under Clause (b) of Sub-rule (1), interest shall cease to run from the date of such payment." **[K.L. Suneja vs. Dr. (Mrs.) Manjeet Kaur Monga (D) Through Her Lr., AIR 2023 SC 705]**

O. 21, Rr. 84, 85, 90—Execution proceedings—Application to set aside sale—Rejection of

In the case of Manilal Mohanlal Shah, AIR 1954 SC 349, it is observed and held that the provision regarding the deposit of 25% of the amount by the purchaser other than the decreeholder is mandatory and the full amount of the purchase money must be paid within fifteen days from the date of the sale. It is further observed and held that if the payment is not made within the period of fifteen days, the Court has the discretion to forfeit the deposit, and there the discretion ends but the obligation of the Court to resell the property is imperative. In paragraph 8 of the decision, it is observed and held as under:

> "8. The provision regarding the deposit of 25 per cent by the purchaser other than the decreeholder is mandatory as the language of the Rule suggests. The full amount of the purchase money must be paid within fifteen days from the date of the sale but the decreeholder is entitled to the advantage of a setoff. The provision for payment is, however, mandatory…. (Rule 85). If the payment is not made within the period of fifteen days, the court has the discretion to forfeit the deposit, and there the discretion ends but the obligation of the court to resell the property is imperative. A further consequence of nonpayment is that the defaulting purchaser forfeits all claim to the property.… (Rule 86)."

The decision of this Court in the case of Manilal Mohanlal Shah (supra) fell for consideration before this Court in the subsequent decision in the case of Rosali V. (supra). In the said decision this Court interpreted the word "immediately" in Order 21 Rule 84. In the said decision, this Court considered paragraph 11 of the decision in the case of Manilal Mohanlal Shah (supra) in paragraph 20 as under:

> "20. What would be the meaning of the term "immediately" came up for consideration before this Court, as noticed hereinbefore, in Manilal Mohanlal Shah [AIR 1954 SC 349] wherein it was held : (AIR pp. 35152, para 11)
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> "11. Having examined the language of the relevant rules and the judicial decisions bearing upon the subject we are of opinion that the provisions of the rules requiring the deposit of 25 per cent of the purchase money immediately, on the person being declared as a purchaser and the payment of the balance within 15 days of the sale are mandatory and upon noncompliance with these provisions there is no sale at all. The rules do not contemplate that there can be any sale in favour of a purchaser without depositing 25 per cent of the purchase money in the first instance and the balance within 15 days. When there is no

sale within the contemplation of these rules, there can be no question of material irregularity in the conduct of the sale. Nonpayment of the price on the part of the defaulting purchaser renders the sale proceedings as a complete nullity. The very fact that the Court is bound to resell the property in the event of a default shows that the previous proceedings for sale are completely wiped out as if they do not exist in the eye of the law. We hold, therefore, that in the circumstances of the present case there was no sale and the purchasers acquired no rights at all." **[Gas Point Petroleum India Ltd. vs. Rajendra Marothi, AIR 2023 SC 936]**

CONSTITUTION OF INDIA

Constitution of India - Pts. III and IV-A - Government/Government-aided schools and educational institutions Government Order dt. 5-2-2022 requiring the wearing of uniform dress without any external addition and subtraction as prescribed by school authorities, leading to prohibition on wearing of hijab or headscarf by Muslim girl students in such schools/institutions - Disagreeing at the Bench, matter referred to larger Bench.

Constitution of India Articles 21, 21-A, 39(f), 41, 46 and 51-A - Mandate and object of promoting literacy and education - Literacy of Muslim girl child who even otherwise finds it difficult to reach the school gate as compared to a male child - Prohibition on wearing of hijab or headscarf by Muslim girls in government/government-aided schools and institutions. Effect on above said rights of Muslim girl child.

Constitution of India - Articles 25, 26, 19, 21 and 14 - Freedom of religion and freedom of conscience of students vis-à-vis campus discipline Decision of school authorities regarding uniform dress code amounting to a prohibition on wearing hijab or headscarf by Muslim girls in government/government-aided schools and institutions.

Constitution of India Articles 25, 26, 19, 14 and 21 Secularism- What is Prohibition on wearing of hijab or headscarf by Muslim girls in - government/government-aided schools and institutions - Whether violated the ethic of secularism.

Constitution of India - Articles 19, 14, 21, 25, 29 and 51-A(f) — Rights to conscience and religion, right to culture, right to identity, right to dignity, autonomy and choice and the principle of secularism. Whether violated by prohibition on wearing of hijab or headscarf, in prescribed school uniform of government/government-aided schools and institutions.

Constitution of India - Articles 25, 26 and 14 Wearing of hijab or headscarf by Muslim girls - Whether an essential religious practice - Prohibition of the same in

government/government-aided schools and institutions-Whether violated Articles 25, 26 and 14- Interplay of Articles 25(1) and 25(2) in this regard. **(Aishat Shifa (Hijab Case) v. State Of Karnataka and others, (2023) 2 SCC 1)**

Article 144 - Compliance with orders of Supreme Court by High Court - Necessity of Supreme Court's order to High Court to place before Supreme Court suggestions and road map formulated by High Court for early disposal of commercial disputes. Suggestions and road map formulated by High Court, held, should have been necessarily placed before Supreme Court well in advance so as to enable Supreme Court to pass further orders and directions. **(Chopra Fabricators and Manufacturers Private Limited v. Bharat Pumps and Compressors Limited and another, (2023) 2 SCC 325)**

Article 14 Right to equality - Reasonable - accommodation of disabled or differently-abled persons. Requirement of Two facets of right to equality. Formal equality and substantive equality. Formal equality means that every person, irrespective of attributes must be treated equally and must not be discriminated, while substantive equality is aimed at producing equality of outcomes through different modes of affirmative action. Reasonable accommodation, held, one of the means for achieving substantive equality, pursuant to which disabled persons must be reasonably accommodated based on their individual capacities. Disability as social construct precedes medical condition of individual. Sense of disability introduced because of absence of access to facilities.

Human and Civil Rights - Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995- Object and Scheme - Explained To promote human rights of disabled persons by providing accessible environment, social security, safety net and employment, and sustainable livelihood premised on equality and non-discrimination Reasonable accommodation component of guarantee of equality under Article 14 of the Constitution of India.

Human and Civil Rights Rights of Persons with Disabilities Act, 2016 - S. 20 Rights of persons with mental disabilities against workplace discrimination vis-à-vis safe working environment in combat force undertaking security operations. Right of Government to exempt establishment from provisions of S. 20. Held, is not absolute and may be amenable to judicial review.

Human and Civil Rights Persons with Disabilities (Equal - Opportunities, Protection of Rights and Full Participation) Act, 1995-Ss. 33, 45, 46 and 47-Right of non-discrimination under the 1995 Act-Nature and facets of Explained-Exemption from applicability of the Act. Whether can extend to exemption from general right of non-discrimination that runs through entire statute. **(Ravinder Kumar Dhariwal and another v. Union of India and others, (2023) 2 SCC 209)**

Expeditious/Time-bound disposal-Special Arrears Committee of Judges of Allahabad High Court. Constitution of committee to tackle with problem of arrears of commercial matters. Only Judges from Allahabad Bench are in Committee None of Judges from Lucknow Bench is part of Committee. Committee directed to be reconstituted so that they may have further suggestions from Lucknow Bench also as there are large number of pending commercial matters within jurisdiction of Lucknow Bench.

Courts, Tribunals and Judiciary-Judiciary- Adequacy of Judicial resources/ Infrastructure Additional commercial courts in four districts - of Gautam Budh Nagar, Meerut, Agra and Lucknow in State of U.P. where pendency of commercial cases is comparatively larger, directed to be constituted by Government of UP. Practice and Procedure - Commercial Courts Act, 2015. Duty of High Court in this regard. Directions issued. **(Chopra Fabricators and Manufacturers Private Limited v. Bharat Pumps and Compressors Limited and another, (2023) 2 SCC 327)**

Service Tax - Concession/Exemption/Incentive/Rebate/Subsidy Mega Exemption Notification No. 25 of 2012-Service Tax - Para 5-A of the Mega Exemption Notification providing for exemption to services by specified organizations in respect of a religious pilgrimage. Inapplicability of, to Haj Group Organizers (HGOs)/private tour operators (PTOS).

Constitution of India-Article 14-Mega Exemption Notification No. 25 of 2012-Service Tax i.e. classification made by treating the Haj Committee as a separate class Validity of Granting of exemption to cases where Haj pilgrims perform Haj ceremony through the Haj Committee but denial of the exemption where Haj pilgrims perform ceremony through HGOS i.e. rendering of same service to same class of service recipients by different classes of service providers Not discriminatory Test of nexus between - the classification made and the object sought to be achieved by granting exemptions. **(All India Haj Umrah Tour Organisers Association, Mumbai v. Union of India and others, (2023) 2 SCC 484)**

Constitution of India - Art. 14- Proportionality - Independent provisions of forfeiture, distinct from criminal prosecution, held, need to be utilised in a proportional manner, looking at the gravity of the offence

Constitution of India-Arts. 14, 19 and 21-Substantive due process - Applicability and Actionability of, in Indian law- - Final settled position under Indian law- Grounds on which constitutionality of legislation may be challenged - Principles summarized

When may primary and secondary legislation be declared unconstitutional on ground of Principles summarised - Words and Phrases - "Manifest arbitrariness."

Property Law - Prohibition of Benami Transactions Act, 1988-S. 4 [before and after the 2016 Amendment] - Effect of the 2016 Amendment and ruling in present case holding Ss. 3 and 5 of the unamended 1988 Act as unconstitutional – Clarified. **(Union of India and another v. Ganpati Dealcom Private Limited, (2023) 3 SCC 315)**

Debt, Financial and Monetary Laws Monetary Laws and Norms - Money supply/Monetization/Demonetization/Currency offences - Demonetization 2016-Demonetization of Rs 500 and Rs 1000 currency notes of existing and any older series in circulation - Decision-making process - Validity, rationality, reasonability and non-arbitrariness - Initiation of the proposal of demonetization by the Central Government and its decision to implement it in exercise of its executive powers under S. 26(2) of the RBI Act, held (per majority), valid, rational and reasonable and not arbitrary

The statutory requirements under S. 26(2) of the RBI Act held (per majority), were complied with - Two requirements under S. 26(2) are recommendation of demonetization by the Central Board of RBI and decision of the Central Government to implement the same. In present case both the requirements were complied with. There was conscious, meaningful, effective and purposeful consultation between the Central Government and the Central Board of RBI regarding the proposed demonetization - The matter was under active consideration between the Central Government and RBI for six months

Merely because the Central Government initiated the proposal of demonetisation and ultimately implemented it, held (per majority), cannot be a ground to hold that the procedure prescribed under S. 26(2) of the RBI Act was breached - There is no substance in the contention that the Meeting of Central Board of RBI dt. 8-11-2016 was not valid for want of quorum as required under Regns. 8 and 10 of the 1949 Regulations -Minutes of Meeting showed that eight Directors of RBI were present, when the quorum requirement was four

Debt, Financial and Monetary Laws — Reserve Bank of India Act, 1934 S. 26(2)- Power of demonetization under-Scope of - Authorities entitled to exercise power under S. 26(2)- Manner in which such power is to be exercised - Interpretation of word “any” whether should be given a narrow or wider interpretation - Principles elucidated in detail

Held (per majority), word “any” means “all” under S. 26(2) of the RBI Act-It cannot be accepted that the word “any” has to be given a restricted meaning taking into consideration the overall scheme, purpose and object of the RBI Act and also the context in which the power is to be exercised

Constitution of India-Articles 14 and 19- Proportionality-Four tests of proportionality, reiterated-Applying the tests to 2016 - Demonetization of specified bank notes (SBNs) viz. Rs 500 and Rs 1000 currency notes, held (per majority), the four tests of proportionality are satisfied That is because the Central Government took the decision on the basis of aid and recommendation of experts and it was felt necessary to meet certain legitimate concerns

Constitution of India - Articles 14 and 19- Proportionality-Third test, as to whether a measure (restriction on rights) taken for achieving proper purpose/object is the only necessary measure, or, there are other alternative measures that could have been taken Applicability to economic policy - where decision-making authority has to depend upon opinion of experts As decision herein was taken on the basis of opinion of experts, the third test i.e. whether the demonetization of specified bank notes (SBNs) was the only necessary measure, held (per majority), was satisfied. **(Vivek Narayan Sharma and others (Demonetization Case - 5J) v. Union of India and others, (2023) 3 SCC 1)**

Cr.P.C., 1974, Secs. 173, 207—copy of chargesheet not to be put on websites

Copy of the chargesheet along with the necessary documents cannot be said to be public documents within the definition of Public Documents as per Section 74 of the Evidence Act. As per Section 75 of the Evidence Act all other documents other than the documents mentioned in Section 74 of the Evidence Act are all private documents. Therefore, the chargesheet/documents along with the chargesheet cannot be said to be public documents under Section 74 of the Evidence Act, reliance placed upon Sections 74 & 76 of the Evidence Act is absolutely misplaced. Conjoint reading of S. 173 and S. 207 Cr.P.C. shows that Investigating Agency is required to furnish copies of report along with relevant documents to be relied on by prosecution to accused and to none else. Thus Prayer for directing all the States to put the copies of charge-sheets/challans filed under S. 173 of Cr.P.C. on their websites cannot be accepted **[Saurav Das vs. Union of India, AIR 2023 SC 615]**

Sections 300, 302, 34 IPC Sections 3, 25, 27 Evidence Act, Article 20(3) Constitution of India

An FIR was lodged on 12.10.2000 at 1:15 PM mid night, which was the intervening night between 11th October and 12th October, 2000 by the son-in-law of the deceased, S. Ramakrishnan. As per the FIR, his father-in-law, who was seventy-two years of age, and was living alone in house No.19/1 Haudin Road, Ulsoor, was murdered by some unknown persons. The deceased last spoke to his daughter (wife of the informant), at about 6:30 PM that evening. Informant then says that his wife

and him left their house in the evening that day (11.10.2000) to attend a dinner engagement. They returned home at about 11:15 PM. On their return they received a call from a cousin Dr. B. Anarth Narayan, of the Indian Institute of Sciences. Dr. Narayan informed him that he had received a telephone call at about 10.00 PM, from one Sundar who is a neighbour of his father- in-law. Sundar had informed that the gates of the house of his father-in-law were open and lights were also on, which seemed unusual at that hour in the night. On this information, the informant and his wife rushed to the house of his father-in-law. He was apprehending that his father-in-law may have collapsed, since he had a history of heart disease. When they reached the house at around 11.30 PM, they immediately had an impression as if something was burning in the kitchen. This drew them to the kitchen, where they found the dead body of S. Ramakrishnan. They also noticed that the cupboards of the living room were open and the purse of her father was missing where he normally kept approximately Rs.3000/-. They immediately informed the Police and the FIR was lodged and Criminal Case No.600 of 2000 was registered for the offence punishable under Section 302 at Police Station, Ulsoor, Bengaluru and investigation commenced.

Meanwhile, Inquest had started at about 07:00 AM in the morning of 12.10.2000, and it is completed at 09:30 AM that day. The inquest report states that a male person about 72 years old by the name of S. Ramakrishnan s/o Subbaraya Ayyer, found dead at No. 19/1, Haudin Road, Ulsoor, Bengaluru on the day of 12.10.2000.

Then it records: -

> "The dead body is lying in blood pool in kitchen at Door No. 19/1, Haudin Road, Ulsoor, facing the sky. Head facing West and legs towards East. Eyes are open. A 4" long bleeding injury is found in deceased's neck; it is found to be cut with a sharp weapon. Both the hands are stretched on the body. Cut injury caused in neck is found to be caused by some antisocial elements. Deceased is wearing 1) A cross-belt, 2) White full arm banyan, 3) White underwear, 4) White dhothi. All clothes are full of blood.

The dead body is found in kitchen at door No. 19/1, Haudin Road, Ulsoor, the main door of the house is facing North, 'kitchen door is to the West, on entering the kitchen, the dead body is lying on the floor facing the sky with head towards West and legs towards East. Not found in water. Not in well.

On 12-10-2000 at 9.30 AM, Sri. NS. Ramachandrappa, Police Inspector of Ulsoor Police Station, in order to know the actual cause for deceased's death, sent the dead body to Bowring Hospital Doctor through Sri. Giriyaiah PC-2539.

Sri. N.S. Ramachandra, P.I. has ordered PC 2539 to handover the dead body to deceased's blood relatives after postmortem, to perform obsequies.

On 11-10-2000. Some culprits have murdered the diseased Sri. S.Rakakrishnan, 72 years in the kitchen of his residence in between 6.30 PM and 11.30 PM and escaped from there by stealing around Rs.3000/- from the cupboard, by cutting his neck with some sharp weapon. However, we the Panchas opine that the dead body should be sent to postmortem to find out the actual cause of deceased's death."

A post-mortem was conducted on 12.10.2000 between 10:30-11:30 AM. The post-mortem report indicates that there were seven ante mortem injuries which are as follows:

"1. Horizontally placed Incised wound present over front of neck on the midline situated 8 cm below middle of Chin and 4 cm above level of suprasternal notch measuring 13 cm X 5 cm X cervical vertebrae deep, underneath muscles of front and sides of neck, Jugular veins on both sides, carotid arteries on both sides, trachea and esophagus cut completely and the body of 5th Cervical Vertebrae cut superficially, blood extravagated around, margins are clean cut.
2. Obliquely placed incised wound over left side frontal region situated 1 cm above inner end of left eye brow measuring 4 cm X 1 cm X bone deep.
3. Incised wound over right side of neck situated 6 cm below right ear lobule measuring 2.5 cm X 1 cm X muscle deep.
4. Incised wound present 1 cm below injury No.3 measuring 2 cm X 1 cm X muscle deep.
5. Superficial incised wound over left side of neck situated 4 cm below left ear lobule measuring 4cm X 0.5 cm X skin deep.
6. Superficial incised wound over front and upper part. of right side chest over right sterno clavicular joint measuring 4 cm X 0.5 cm X skin deep.
7. Superficial incised wound over front and upper part of left side chest, over left sterno clavicular joint 3 cm X 0.5 cm X skin deep."

Undoubtedly, it is a very heinous crime which has been committed in the night of 11th October, 2000, where a seventy-two-year-old man was done to death. In all probability he died because of the main injury that is injury No.1 which is a 13 cm x 5 cm deep incised wound on the front neck cutting jugular veins on both sides. The death would have been in a few minutes due to the excessive loss of blood. The post-mortem was conducted by Dr. Nissar Ahmad, who was the Assistant Professor in the Department of Forensic Medicines Bowring Hospital, Bangalore Medical College, Bangalore. He was later, examined in the trial as PW-5. According to him, all the wearing apparels of the deceased, like white lungi, white Katcha, white baniyan and white sacred thread were all stained with blood, which were all handed over to the police. He had noticed the ante mortem injuries, as already referred above. All the injuries were fresh injuries. On opening the dead body, he found all the internal

organs intact but pale. His opinion was that death was due to shock and hemorrhage due to the ante mortem injuries in the front neck. On being questioned by the Court he replied that a person who sustains such injuries in the front neck, can only survive for a few seconds and death is immediate and the injured cannot raise his voice. This expert witness is referring to in particular to injury No.1, referred above. In his post mortem report the cause of death is given as :-

> "Death was due to shock and hemorrhage as a result of injury over front of neck sustained."

Meanwhile the investigation had commenced in the present case. The present appellants were, however arrested by PW-15 who was the Police Inspector and Investigation Officer in another case of dacoity and murder which was registered at Police Station, Vijayanagar as Crime No.674 of 1999 under Sections 354/397, IPC. This Investigation Officer (PW-15) received information on 31.01.2001 about the location of an accused called 'Dodda Hanuma'. Dodda Hanuma was also an accused in this case and had faced trial and was convicted like the other appellants (he is, however, not before this Court amongst the present appellants). The information received was that Dodda Hanuma had escaped from the Chittor Jail after assaulting the staff of the jail. Following the lead, this Police Inspector (PW-15) along with some Constables reached Eachanoor village and caught the accused along with four other persons at about 9.00 PM. All the five persons were taken into custody and were brought to Vijayanagar Police Station and were formally arrested on 01.02.2001. A voluntary statement was then given by Dodda Hanuma (Accused No. 2), and finally all the five accused confessed that they had committed the dastardly murder of S. Ramakrishnan on that fateful night of 11.10.2000. They also volunteered to show the place where they had committed the crime on the night of 11.10.2000 (i.e. House No. 19/1, Haudin Road), and how they murdered the old aged person and then decamped with the cash and jewelry. They led the Police party to the said house that is House No. 19/1, Haudin Road, showed the exact place where they had committed murder and got away with the cash and jewelry. Meanwhile a videography statement of the accused was also recorded. The videography was done by one, Sadashiva (PW-16), on 08.02.2001.

It is a case of circumstantial evidence and in a case of circumstantial evidence, the entire chain of evidence must be complete and the conclusions which is arrived after examining the chain of evidence must point towards the culpability of the accused and to no other conclusion. This, however, is clearly missing from the case of the prosecution. The entire case of the prosecution is based on the so-called confessional statements or voluntary statements given by accused Nos. 1 to 5 (all the present appellants) while they were in police custody. Statement given by an accused to police under Section 161 of CrPC is not admissible as evidence. The so-called

evidence discovered under section 27 of Indian Evidence Act, 1872, i.e., the recovery of stolen items and the recovery of the weapon are also very doubtful.

In a case of circumstantial evidence, the Court has to scrutinize each and every circumstantial possibility, which is placed before it in the form of an evidence and the evidence must point towards only one conclusion, which is the guilt of the accused. In other words, a very heavy duty is cast upon the prosecution to prove its case, beyond reasonable doubt. As early as in 1952, this Court in its seminal judgment of Hanumant Govind Nargundkar & Anr. v. State of Madhya Pradesh1 had laid down the parameters under which the case of circumstantial evidence is to be evaluated. It states: -

> "… It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused…" Hanumant has been consistently followed by this Court. To name a few, Tufail (Alias) Simmi v. State of Uttar Pradesh2 , Ram Gopal v. State of Maharashtra3 and Sharad Birdhichand Sarda v. State of Maharashtra4.

In Musheer Khan @ Badshah Khan & Anr. v. State of Madhya Pradesh5 dated 28.01.2010, this Court while discussing the nature of circumstantial evidence and the burden of proof of prosecution stated as under: - 1 AIR 1952 SC 343 2 (1969) 3 SCC 198 3 (1972) 4 SCC 625 4 (1984) 4 SCC 116 5 (2010) 2 SCC 748

> "39. In a case of circumstantial evidence, one must look for complete chain of circumstances and not on snapped and scattered links which do not make a complete sequence. This Court finds that this case is entirely based on circumstantial evidence. While appreciating circumstantial evidence, the Court must adopt a cautious approach as circumstantial evidence is "inferential evidence" and proof in such a case is derivable by inference from circumstances.

Chief Justice Fletcher Moulton once observed that "proof does not mean rigid mathematical formula" since "that is impossible". However, proof must mean such evidence as would induce a reasonable man to come to a definite conclusion.

Circumstantial evidence, on the other hand, has been compared by Lord Coleridge "like a gossamer thread, light and as unsubstantial as the air itself and may vanish with the merest of touches". The learned Judge also observed that such evidence may be strong in parts but it may also leave great gaps and rents through which the accused may escape. Therefore, certain rules have been judicially evolved for appreciation of circumstantial evidence.

To my mind, the first rule is that the facts alleged as the basis of any legal inference from circumstantial evidence must be clearly proved beyond any reasonable doubt. If conviction rests solely on circumstantial evidence, it must create a network from which there is no escape for the accused. The facts evolving out of such circumstantial evidence must be such as not to admit of any inference except that of guilt of the accused. (See Raghav Prapanna Tripathi v. State of U.P. [AIR 1963 SC 74 : (1963) 1 Cri LJ 70])

The second principle is that all the links in the chain of evidence must be proved beyond reasonable doubt and they must exclude the evidence of guilt of any other person than the accused. (See State of U.P. v. Dr. Ravindra Prakash Mittal [(1992) 3 SCC 300 : 1992 SCC (Cri) 642 : 1992 Cri LJ 3693] , SCC p. 309, para 20.)

While appreciating circumstantial evidence, we must remember the principle laid down in Ashraf Ali v. King Emperor [21 CWN 1152 : 43 IC 241] (IC at para 14) that when in a criminal case there is conflict between presumption of innocence and any other presumption, the former must prevail.

The next principle is that in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and are incapable of explanation upon any other reasonable hypothesis except his guilt.

When a murder charge is to be proved solely on circumstantial evidence, as in this case, presumption of innocence of the accused must have a dominant role.

In Nibaran Chandra Roy v. King Emperor [11 CWN 1085] it was held that the fact that an accused person was found with a gun in his hand immediately after a gun was fired and a man was killed on the spot from which the gun was fired may be strong circumstantial evidence against the accused, but it is an error of law to hold that the burden of proving innocence lies upon the accused under such circumstances. It seems, therefore, to follow that whatever force a presumption arising under Section 106 of the Evidence Act may have in civil or in less serious criminal cases, in a trial for murder it is extremely weak in comparison with the dominant presumption of innocence.

The same principles have been followed by the Constitution Bench of this Court in Govinda Reddy v. State of Mysore [AIR 1960 SC 29 : 1960 Cri LJ 137] where the learned Judges quoted the principles laid down in Hanumant Govind Nargundkar v. State of M.P. [AIR 1952 SC 343 : 1953 Cri LJ 129] The ratio in

Govind [AIR 1952 SC 343 : 1953 Cri LJ 129] quoted in AIR para 5, p. 30 of the Report in Govinda Reddy [AIR 1960 SC 29 : 1960 Cri LJ 137] are:

> "5. … '10. … in cases where the evidence is of a circumstantial nature, the circumstances [which lead to the conclusion of guilt should be in the first instance] fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be [shown] that within all human probability the act must have been [committed] by the accused.' [As observed in Hanumant Govind Nargundkar v. State of M.P., AIR 1952 SC 343 at pp. 345-46, para 10.] " The same principle has also been followed by this Court in Mohan Lal Pangasa v. State of U.P. [(1974) 4 SCC 607: 1974 SCC (Cri) 643:AIR 1974 SC 1144]"

In the case at hand the entire case of the prosecution is built upon the confessional/voluntary statements made by the accused persons before the police and the recovery of the alleged weapon of murder recovered at the pointing out of the accused and the recovery of alleged stolen gold material from a jewelry shop, again, on pointing out of the accused. Let us deal with the first evidence. As per the police, all the accused were arrested from a school building on 31.01.2001 and formally arrested on 01.02.2001. They confessed to as many as 24 crimes committed by them. Their confessions of how they planned and executed the murders has been captured on a video, which was also exhibited before the court. The Court has taken this evidence of voluntary statements made by the accused and hence admitted it as evidence. This was done both by the Sessions Court as well as the High Court. The learned Sessions Judge records in his judgment dated 19.03.2003 records as under: -

> "… The prosecution has played the audio in the open Court Hall in the presence of the accused persons and jam-packed Court Hall and on a mere perusal and hearing the video, it will be evident that the accused persons themselves had explained the entire incident the manner in which they have committed the offence alleged by the prosecution against them. The video statement of accused no. 5 makes it clear as to how the deceased was made to open the iron grill and as to how they had planned to murder the aged innocent Ramakrishnan who was residing alone. The video statement of the accused personal reveals the intension of the accused person and also the manner in which they have made deceased Ramakrishnan to open the iron grill and also the manner in which the accused persons have committed the offence in murdering the aged man."

The Sessions Court then refers to a decision of Supreme Court, (Shri N. Sri Rama Reddy, Etc. v. Shri V.V. Giri, AIR 1971 SC 1162) and states that in view of this decision video tapes can also be used as corroborative evidence. This is what has been said: -

> "When such being the case, it goes without saying that the video recorded statement of the accused persons can also be made use as corroborative piece of evidence. If really, the accused persons after witnessing and hearing the video cassettes suspected the bonafide or genuineness of the video recorded statement of the accused persons, instead of taking contention that their statements obtained by making them to consume alcohol, they would have requested the Court for subjecting the video tape records for scientific scrutiny.
>
> In view of the rulings of the Hon'ble Supreme Court, even video tapes of the voluntary statement of the accused persons can be used as the corroborative piece of evidence. Thus, on perusal of the materials on record, it will be quite manifest that the circumstances relied upon by the prosecution will bring home the guilt of the accused beyond all reasonable doubt" Later the High Court while hearing the appeal of the accused gives a similar finding as follows : -
>
> "It is not the case of the accused that they have not given voluntary statements before PW 15 as per Ext P 8,9,10, 11 & 12. However, it is their contention that they were made to drink liquor and under the influence of liquor, the statements have been taken as per Exs. P-8,9,10,11 & 12 and the statements were not voluntary. The material on record does not probablise the said version taken by the accused. In the absence of proof of the said fact, voluntary statements at Exs. P- 8,9,10,11 & 12 given by accused Nos. 1 to 5 is proved to be voluntary as there is no material on record which would probablise the defence taken by the accused that they were made to drink liquor and their statements were recorded in the influence of drinking and it was not voluntary".

The High Court then affirms the finding of the Sessions Court and the admissibility of the voluntary statement of the accused and the videography placed before the Court and states as under: -

> "It is clear from the above said proved circumstances that the accused have committed murder of S Ramakrishnan aged 72 years by slitting his neck as he was living alone in the house. The only defence taken by the accused is that they have given voluntary statements under the influence of liquor which is not probabilised by the material on record and in view of statements of the accused pointing to the scene of offence wherein S Ramakrishnan was murdered and Ramakrishnan suffered homicidal death and recovery of M.O.1 which according to P.W.5 would cause injury found on the body of S

Ramakrishnan and also recovery of ornaments which they melted into ingot from the shop of P.W.17 and the fact that accused have shown the place where they committed the scene of offence in furtherance of the voluntary statements have been conclusively proved by the prosecution and such circumstances form a complete link which would point out only to the guilt of the accused and is wholly inconsistent with their innocence.

The trial Court has appreciated oral and documentary evidence on record in the right perspective and on re-appreciation of the entire material on record, we hold that finding of guilt arrived at against the accused Nos.1 to 5 – appellants herein for having committed the offence punishable under Sections 302 & r/w 34 of IPC is justified and sentence imposed thereon cannot also be said to be excessive so as to call for interference in this appeal." Both the Trial Court and the Appellate Court went completely wrong in placing reliance on the voluntary statements of the accused and their videography statements.

Under Article 20(3) (No person accused of any offence shall be compelled to be a witness against himself) of the Constitution of India, an accused cannot be compelled to be a witness against himself. Again, under Section 25 (Confession to police-officer not to be proved. — No confession made to a police-officer, shall be proved as against a person accused of any offence) of the Indian Evidence Act, 1872; a confessional statement given by an accused before a Police officer is inadmissible as evidence.

The reference of the Supreme Court judgment by the trial Court (Shri N. Sri Rama Reddy v. Shri V.V. Giri) is also misplaced. That case only refers to the admissibility of a tape- recorded conversation in an election petition which is tried before a Court under the Civil Procedure Code (Section 87 of the Representation of People Act, 1951). This Court, in the above cited judgment was not dealing with a criminal case and most certainly not on the admissibility of a statement given by an accused to the Police under Section 161 of Code of Criminal Procedure. Indeed, the above judgment also ends with a note of caution:

"30. We once again emphasize that this order relates only to the admissibility in evidence of the conversation recorded on tape and has not dealt with the weight to be attached to that evidence. It must also be pointed out that the question, whether the pamphlets, Exhibits P-18-B and P-37- A, have been circulated in the manner alleged by the petitioners and the further question whether they amount to exercise of undue influence are also matters which have not been considered in this order.

The above are all aspects which will be dealt with in the judgment, while disposing of the election petitions." Thus, the opinion of this Court regarding the admissibility of a tape-recorded conversation, was in an entirely different context. As far as the recovery of gold ingot is concerned, PW-1, i.e., the son-in-law and the

complainant has said in his evidence before the Court that he does not recognize the ingot and it does not belong to his father-in-law. Therefore, the gold which has been recovered has not been identified as the one which was stolen from the house of the deceased. The recovery of knife is also doubtful. Firstly, Venkatesh who had led the discovery had mentioned about the knife and its disposal on 01.02.2001 when he was arrested. The recovery, however was made on 15.05.2001 i.e., four and a half months later. Why such a belated recovery was made has not been explained. Secondly, the independent witness to this recovery PW-10 Murugan, had also turned hostile during cross- examination as he said that he does not recognize Venkatesh (accused) on whose pointing out the alleged recovery was made. So much for the recovery of the murder weapon.

At this juncture, we may also add that some of the accused who were before us were also facing another trial of similar nature in which they were convicted on 17.09.2010 and sentenced to death. Thereafter in Appeal their conviction was upheld, but the sentence was converted to life imprisonment by the High Court. They finally came before this Court in Appeal. The course of investigation and the appreciation of evidence by the Trial Court and the Appellate Court had taken a similar course as they have in the present case. While hearing their Criminal Appeal (Nos. 1476-1477 of 2018, 2022 SCC OnLine SC 765) this Court made certain observations, which are equally relevant for the present case as well. Regarding the investigation of the Police in the case, this is what was said by this Court:

> "…19. We must observe that we have repeatedly found a tendency on part of the Prosecuting Agency in getting the entire statement recorded rather than only that part of the statement which leads to the discovery of facts. In the process, a confession of an accused which is otherwise hit by the principles of Evidence Act finds its place on record. Such kind of statements may have a direct tendency to influence and prejudice the mind of the Court. This practice must immediately be stopped. In the present case, the Trial Court not only extracted the entire statements but also relied upon them.
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> The other disturbing feature that we have noticed is that voluntary statements of the appellants were recorded on a DVD which was played in Court and formed the basis of the judgment of the Trial Court as is noticeable from paragraph Nos.34 and 35 of its judgment. Such a statement is again in the nature of a confession to a Police Officer and is completely hit by the principles of Evidence Act. If at all the accused were desirous of making confessions, the Investigating Machinery could have facilitated recording of confession by producing them before a, Magistrate for appropriate action in terms of Section 164 of the Code. Any departure from that course is not acceptable and cannot be recognized and taken on record as evidence. The Trial Court erred in exhibiting those DVD statement Exh.P-25 to 28. As a

matter of fact, it went further in relying upon them while concluding the matter on the issue of conviction.

What has further aggravated the situation is the fact that said statements on DVD recorded by the Investigating Agency were played and published in a program named "Putta Mutta" by Udaya TV. Allowing said DVD to go into the hands of a private TV channel so that it could be played and published in a program is nothing but dereliction of duty and direct interference in the administration of Justice. All matters relating to the crime and whether a particular thing happens to be a conclusive piece of evidence must be dealt with by a Court of Law and not through a TV channel. If at all there was a voluntary statement, the matter would be dealt with by the Court of Law. The public platform is not a place for such debate or proof of what otherwise is the exclusive domain and function of Courts of law. Any such debate or discussion touching upon matters which are in the domain of Courts would amount to direct interference in administration of Criminal Justice.

The last disturbing feature is the fact that Chart Exh.P-29 was taken to be proof of the activities of the gang to which the appellants allegedly belonged. Apart from exhibiting the chart, no details or documents either in the form of charge sheet or orders, depositions were produced on record. If the Prosecution wanted the Court to take note of the fact that there were other matters in which accused were involved, the concerned Charge sheets should have been produced on record along with sufficient details including the judgments or orders of conviction. A mere chart cannot be taken as proof of the involvement of the accused in other crimes either at the stage of conviction or sentence. But that factor seriously weighed with the Trial Court as is obvious from paragraphs 15 to 18 of the order of sentence. In fact, such involvement was taken to be one of the reasons why the death sentence was awarded by the Trial Court. Such a practice can never be approved.

We must clarify that the approach at certain stages including the stage of considering the bail application may be qualitatively different. At the stage of consideration of bail, the primary concern is to weigh in balance the liberty of an accused and the possible prejudice that may get visited upon the societal interest in case he is released. It would therefore be apt and proper to consider his involvement in other crimes. But at the stage of final assessment whether conviction be recorded or not, the matter must be considered purely on its merits unless the very membership of a gang or a group or an outfit itself can amount to an offence or as an aggravated form of an offence. Again, at the stage of sentencing, his involvement in other crimes may be a relevant factor provided the concerned material in the form of concluded judgments in the other matters are brought on record in a manner known to law. The established involvement in other matters would then certainly be relevant while dealing with the question whether the concerned accused is required to be dealt with sternly or leniently.

We have gone through Chart Exh. P-29. According to said chart, in so far as the present appellants are concerned, they were said to be involved in one more crime which has given rise to Special Leave Petition (Crl) Diary No.24079 of 2020 and was listed along with the instant appeal before us. That matter is still pending consideration before us. Therefore, what weighed with the Trial Court was the alleged involvement of the other members of the alleged gang in so many similar activities, in support of which there was no concrete material, other than the confessions of the appellants."

We must add that this Court in its order dated 19.04.2022 has allowed the above appeal and has set aside the order of the Sessions Judge as well as of the High Court which had placed its reliance almost completely on the statement made by the accused before the Police under Section 161 of CrPC. This is exactly what has been done in the present case as well and consequently this too must meet the same fate. Indeed, it was also the case of the prosecution that the appellants belong to a gang which commits crime of this nature and that the modus operandi is by and large the same in all cases. It was alleged that the appellants are involved in as many as 20-25 such cases. But what was given before the Court was a chart giving description of offences, numbers and Sections under which such offences had been allegedly committed. No documents in the nature of charge sheet or any other proof was submitted. Therefore, this factor cannot be taken into account. This was also not taken into account by this Court in the above order dated 19.04.2022, while allowing the Criminal Appeal No. 1476-1477 of 2018 as referred above.

Ordinarily, this Court does not interfere with concurrent findings of facts as they are in the present case. But, then in the present case it has become necessary to interfere with the findings for the reasons that both the High Court as well as the Sessions Court have ignored the well-established principles of criminal jurisprudences and have relied upon facts and evidences which are clearly inadmissible in a court of law. The crime indeed was ghastly, to say the least. Yet, linking the crime to the present appellants is an exercise which was to be undertaken in the court of law under established principles of law. This has not been done. This Court in Sharad Birdhichand Sarda has cautioned thus: -

> "179. We can fully understand that though the case superficially viewed bears an ugly look so as to prima facie shock the conscience of any court yet suspicion, however great it may be, cannot take the place of legal proof. A moral conviction however strong or genuine cannot amount to a legal conviction supportable in law.
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> 180. It must be recalled that the well-established rule of criminal justice is that "fouler the crime higher the proof". In the instant case, the life and liberty of a subject was at stake. As the accused was given a capital sentence, a very careful, cautious and meticulous approach was necessary to be made."

In view of the above, these appeals are allowed, the order of the Sessions Judge dated 19.03.2003 and the High Court dated 31.08.2010 are hereby set aside, the appellants shall be released from jail, unless they are wanted in some other crime.

The matter was related to the offence of murder and the evidence was circumstantial. It was held by the Apex Court that culpability of accused persons was not conclusive after examining the chain of witness. It was held that conviction was improper. (**Munikrishna alias Krishna Etc. v. State by Ulsoor Ps., 2023 Cri.L.J. 673 : AIR Online 2023 SC 874)**

CONSUMER PROTECTION

Consumer Protection - Services - Housing and Real Estate - Promised amenities and facilities - Size of project - Irrelevance of, for ascertaining deficiency in provision of promised facilities and amenities. **(Debashis Sinha and others v. R.N.R. Enterprise Represented by its Proprietor/Chairman, Kolkata and others, (2023) 3 SCC 195)**

Consumer Protection-Services-Carriers/Transporters-Mistake/ Negligence in making forwarder cargo receipt (FCR), as in the present case by recording wrong loading port, leading to non-honouring of letter of credit. Consideration of, as deficiency of service. Compensation for such deficiency Quantum of, and Heads for which may be granted - Mental harassment and agony arising out of such deficiency in service.

Maritime and Admiralty Law - Bills of lading Bill of lading is an instrument signed by the master of shipping in his capacity of the carrier acknowledging the receipt of the merchant goods. There are usually three parts - One, is to be retained by the consigner of the goods; another, is sent to the consignee; and the other one, is preserved by the master of the ship - Words and Phrases “Bill of lading.” **(Bawa Paulins Private Limited v. UPS Freight Services (India) Private Limited and another, (2023) 2 SCC 330)**

CRIMINAL PROCEDURE CODE

Sec. 397/401—Indian Penal Code, 1860, Secs. 143, 147, 148, 504, 323, 302, 307, 114 and 149—

According to FIR at around 18:30 hours on 25.12.2016 accused came to village of the appellant armed with knives and rods and abused and assaulted some villagers. Few of the accused allegedly assaulted and stabbed the appellant, his elder

brother and another villager with knives. Two injured succumbed to their injuries. Appellant examined as PW-7. Public prosecutor wanted to mark the complaint together with the signature of appellant as an exhibit. Objection raised by the defence that in view of statement of PW-2 during his examination, statement of appellant is referable to section 161, Cr.P.C. and cannot be marked as exhibit. Appellant instituted a criminal revision. High Court upheld the order of Trial Court and dismissed the revision as not maintainable. View of High Court that revision is to be restricted to final orders of acquittal or conviction for lessee offence imposing inadequate compensation, is unsustainable. In present case appellant filed revision as his interest as informant and injured victim were adversely affected-Having held that order of the Trial Court is not interlocutory in nature and that bar under section 397(2) Cr. P.C. is inapplicable, the criminal revision filed by the informant against the said order of the Trial Court was maintainable-Order of the Trial Court and impugned judgment of the High Court set aside. Appeal allowed. **[Honnaiah T.H. vs. State of Karnataka, 2023 (122) ACC 693 (Supreme Court)]**

Criminal Procedure Code, 1973-S. 482 - Quashment of proceedings.

Complaint disclosing civil transaction may also have a criminal texture but High Court must examine whether the dispute which is in substance of a civil nature is given a cloak of a criminal offence. In such a situation, if civil remedy is available and is in fact adopted, High Court, held, may quash criminal proceedings. **(R. Nagender Yadav v. State of Telangana and another, (2023) 2 SCC 195)**

Criminal Procedure Code, 1973-Ss. 211, 212, 213 and Ill. (e) thereto, 215, 313 and 464 Omission to frame proper charge and to put relevant circumstances to accused during their examination under S. 313 (in a murder case).

Held, object of the provisions regarding framing of charge is that accused should be in a position to effectively defend himself. Accused can properly defend himself provided he is clearly informed about the nature of the allegations against him before the actual trial starts. Further, held, there is the specific requirement of S. 213 CrPC that if the particulars mentioned in Ss. 211 and 212 CrPC do not give the accused sufficient notice of the matter with which he is charged, the charge shall also contain such particulars of the manner in which the alleged offence was committed as will be sufficient for that purpose - However, in a murder case, this must be read subject to Ill. (e) to S. 213 CrPC, which states that the charge contains an allegation that A is accused of the murder of B at a given time and place, the charge need not state the manner in which A murdered B. **(Kalicharan and others v. State of Uttar Pradesh, (2023) 2 SCC 583)**

Hon'ble Court observed that Statement of PW-3 under Section 161, Code of Criminal Procedure was recorded nearly 24 days after the incident. The Investigating Officer did not enter the witness box; the Appellants did not have the occasion to cross-examine him and thereby elicit the reason for such delay. Consequently, the delay in recording the statement of PW-3 in course of investigation is not referred to and, therefore, remains unjustified. The possibility of PW-3, being fixed up as an eye-witness later during the process of investigation, cannot be totally ruled out.

It was observed that PW-4 is said to have reached the place of occurrence at 1.30 p.m. on 5th September, 1985 and recovered a bullet in the blood oozing out from the injury at the hip of the dead body, no effort worthy of consideration appears to have been made to seize the weapons by which the murderous attack was launched. It is true that mere failure/neglect to effect seizure of the weapon(s) cannot be the sole reason for discarding the prosecution case but the same assumes importance on the face of the oral testimony of the so-called eye-witnesses, i.e., PW-2 and PW-3, not being found by this Court to be wholly reliable.

The missing links could have been provided by the Investigating Officer who, again, did not enter the witness box. Whether or not non-examination of a witness has caused prejudice to the defence is essentially a question of fact and an inference is required to be drawn having regard to the facts and circumstances obtaining in each case.

The reason why the Investigating Officer could not depose as a witness, as told by PW-4, is that he had been sent for training. It was not shown that the Investigating Officer under no circumstances could have left the course for recording of his deposition in the trial court. It is worthy of being noted that neither the trial court nor the High Court considered the issue of non-examination of the Investigating Officer. In the facts of the present case, particularly conspicuous gaps in the prosecution case and the evidence of PW-2 and PW-3 not being wholly reliable.

Accordingly, Hon'ble Court held that the present case as one where examination of the Investigating Officer was vital since he could have adduced the expected evidence. His non-examination creates a material lacuna in the effort of the prosecution to nail the Appellants, thereby creating reasonable doubt in the prosecution case.

No weapon of offence was seized; no ballistic report was called for and obtained. The failure/neglect to seize the weapons of offence, on facts and in the circumstances of the present case, has the effect of denting the prosecution story so much so that the same, together with non-examination of material witnesses constitutes a vital circumstance amongst others for granting the Appellants the benefit of doubt. Bullet though seized under a seizure memo does not appear to have been exhibited at the trial which renders the version of PW-4 unacceptable.

Although, mere defects in the investigative process by itself cannot constitute ground for acquittal, it is the legal obligation of the Court to examine carefully in each case, the prosecution evidence de hors the lapses committed by the Investigating Officer to find out whether the evidence brought on record is at all reliable and whether such lapses affect the object of finding out the truth. Being conscious of the above position in law and to avoid erosion of the faith and confidence of the people in the administration of criminal justice, Hon'ble Court as examined the evidence led by the prosecution threadbare and refrained from giving primacy to the negligence of the Investigating Officer as well as to the omission or lapses resulting from the perfunctory investigation undertaken by him.

The disturbing features in the process of investigation, since noticed, have not weighed in the Court's mind to give the benefit of doubt to the Appellants but on proper evaluation of the various facts and circumstances, it has transpired that there were reasons for which PW-2 might have falsely implicated the Appellants and also that PW-3 was not a wholly reliable witness. There is a fair degree of uncertainty in the prosecution story and 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. The charge that the Appellants had murdered Narayan, cannot be said to have been proved beyond reasonable doubt. The impugned judgment and order passed by the High Court, upholding the conviction and sentence, stands set aside. The appeals was accordingly allowed. **(Munna Lal vs The State of Uttar Pradesh, 2023(3) ADJ 704)**

Criminal Procedure Code, 1973 S. 173(8) r/w S. 156 - Further investigation or direction by the Magistrate-Permissibility. It was held that the powers of the Magistrate to ensure proper investigation in terms of S. 156, include the power to order further investigation in terms of S. 173(8) after receiving the report of investigation. Whether further investigation should or should not be ordered, held, within the discretion of the Magistrate and such discretion should be exercised on the facts of each case in accordance with law.

Criminal Procedure Code, 1973 Ss. 482, 156, 173(8), 190(1)(c) and 2(h) Further investigation or direction by High Court while exercising inherent powers under S. 482 CrPC in petition challenging order taking cognizance by the Magistrate against the petitioner. R-3 - Propriety of, without hearing appellant, whose actions/omissions were directed to be investigated by the impugned order.

Exclusion of audi alteram partem rule, by and large, at the stage of investigation, by scheme of CrPC - Principles clarified. **(Devendra Nath Singh v. State of Bihar and others, (2023) 1 SCC 48)**

Criminal Procedure Code, 1973-S. 438 - Anticipatory bail - Refusal by High Court but interference by Supreme Court - When warranted. **(Sunita Devi and another v. State of Haryana, (2023) 1 SCC 178)**

Section 319 r/w Sections 232, 235, 236, 353 and 354 r/w Section 360: Summoning of additional accused. Stage(s) of the proceedings at which may be invoked. Meaning of "conclusion of trial."

Section 319 - Summoning of additional accused-Trial court whether empowered under Section 319 to summon additional accused when the trial with respect to other co-accused ended and the judgment of conviction rendered on the same date, before pronouncement of the summoning order under Section 319.

Section 319 - Summoning of additional accused Guidelines that need to be followed by courts while exercising powers under Section 319, laid down. **(Sukhpal Singh Khaira v. State of Punjab, (2023) 1 SCC 289)**

Criminal Procedure Code, 1973 S. 427- Sentence on offender already sentenced for another offence - Whether to run consecutively or concurrently with the previous sentence(s) being served - Principles summarized.

Criminal Procedure Code, 1973 S. 427(1) - Present case whether one where court should have exercised its discretion to direct that sentences imposed on appellant shall run concurrently. Trial Judge whether had given clear direction of concurrent running of sentences. Determination of offences being mainly under Electricity Act for theft of electricity. Failure of High Court to intervene under Article 226 of the Constitution - Whether justified. **(Iqram v. State of Uttar Pradesh and others, (2023) 3 SCC 184)**

Sec. 319—Power to summon additional accused—Exercise of—Guidelines to be followed by competent Court—Explained

"I. Whether the trial court has the power under Section 319 of CrPC for summoning additional accused when the trial with respect to other co-accused has ended and the judgment of conviction rendered on the same date before pronouncing the summoning order?

The power of Section 319 of CrPC is to be invoked and exercised before the pronouncement of the order of sentence where there is a judgment of conviction of the accused. In the case of acquittal, the power should be exercised before the order of acquittal is pronounced. Hence, the summoning order has to precede the conclusion of trial by imposition of sentence in the case of conviction. If the order is passed on the same day, it will have to be examined on the facts and circumstances

of each case and if such summoning order is passed either after the order of acquittal or imposing sentence in the case of conviction, the same will not be sustainable.

II. Whether the trial court has the power under Section 319 of the CrPC for summoning additional accused when the trial in respect of certain other absconding accused (whose presence is subsequently secured) is ongoing/pending, having been bifurcated from the main trial?

The trial court has the power to summon additional accused when the trial is proceeded in respect of the absconding accused after securing his presence, subject to the evidence recorded in the split up (bifurcated) trial pointing to the involvement of the accused sought to be summoned.

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

(i) 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.

(ii) The Court shall thereupon first decide the need or otherwise to summon the additional accused and pass orders thereon.

(iii) 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.

(iv) 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.

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

(vi) 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.

(vii) If the proceeding paused as in (i) above is in a case where the accused who were tried are to be acquitted and the decision is that the summoned accused can be tried afresh separately, there will be no impediment to pass the judgment of acquittal in the main case.

(viii) If the power is not invoked or exercised in the main trial till its conclusion and if there is a split-up (bifurcated) case, the power under Section 319 of CrPC can be invoked or exercised only if there is evidence to that effect, pointing to the involvement of the additional accused to be summoned in the split up (bifurcated) trial.

(ix) If, after arguments are heard and the case is reserved for judgment the occasion arises for the Court to invoke and exercise the power under Section 319 of CrPC, the appropriate course for the court is to set it down for re-hearing.

(x) On setting it down for re-hearing, the above laid down procedure to decide about summoning; holding of joint trial or otherwise shall be decided and proceeded with accordingly.

(xi) Even in such a case, at that stage, if the decision is to summon additional accused and hold a joint trial the trial shall be conducted afresh and de novo proceedings be held.

(xii) If, in that circumstance, the decision is to hold a separate trial in case of the summoned accused as indicated earlier;

(a) The main case may be decided by pronouncing the conviction and sentence and then proceed afresh against summoned accused.

(b) In the case of acquittal the order shall be passed to that effect in the main case and then proceed afresh against summoned accused. **[Sukhpal Singh Khaira vs. State of Punjab, AIR 2023 SC 1]**

Sec. 482—IPC, Secs. 406, 415, 471, 120-B—Quashing of summoning order—Dispute pertaining to settlement of accounts

In order to apply Section 420 of the IPC, namely cheating and dishonestly inducing delivery of property, the ingredients of Section 415 of the IPC have to be satisfied. To constitute an offence of cheating under Section 415 of the IPC, a person should be induced, either fraudulently or dishonestly, to deliver any property to any person, or consent that any person shall retain any property. The second class of acts set forth in the section is the intentional inducement of doing or omitting to do anything which the person deceived would not do or omit to do, if she were not so deceived. Thus, the sine qua non of Section 415 of the IPC is "fraudulence", "dishonesty", or "intentional inducement", and the absence of these elements would debase the offence of cheating.11 Explaining the contours, this Court in Mohd. Ibrahim and Another v. State of Bihar and Others12, observed that for the offence of cheating, there should not only be cheating, but as a consequence of such cheating, the accused should also have dishonestly adduced the person deceived to deliver any property to a person; or to make, alter, or destroy, wholly or in part, a valuable security, or anything signed or sealed and which is capable of being converted into a valuable security.

Where the ingredients of Section 415 of the IPC are not satisfied, the offence under Section 420 of the IPC is not made out.

Section 471 of the IPC is applicable when a person fraudulently or dishonestly uses as genuine any document or electronic record, which he knows or

has reasons to believe to be a forged document or electronic record. This Court in Mohd. Ibrahim and Another vs. State of Bihar, (2009) 8 SCC 751, has elucidated that the condition precedent of an offence under Section 471 of the IPC is forgery by making a false document or false electronic record or part thereof. Further, to constitute the offence under Section 471 of the IPC, it has to be proven that the document was "forged" in terms of Section 47014, and "false" in terms of Section 464 of the IPC. **[Deepak Gaba vs. State of U.P., AIR 2023 SC 228]**

Secs. 439(2), 167(2)—Default bail—Cancellation of

In the instant case, a case under Section 302 read with Section 120-B of the IPC was registered against the respondent. The respondent was released on default bail since charge- sheet was not filed within 90 days. Subsequently, pursuant to an order passed by the High Court, investigation in the said case was entrusted to the CBI.CBI filed charge-sheet and thereafter filed an application before the High Court under Section 439(2) Cr.P.C. for cancellation of the bail granted to the respondent. Said application was rejected on the ground that once the accused was released on default bail under Section 167(2) Cr.PC., the bail cannot be cancelled on merits.

Held, in a case where an accused is released on default bail under Section 167(2) Cr.P.C., if on filing of the charge-sheet, a strong case is made out that the accused has committed a non-bailable offence, then considering the grounds set out in Sections 437(5) and Section 439(2), his bail can be cancelled on merits and the Courts are not precluded from considering the application for cancellation of the bail on merits. However, mere filing of the charge-sheet is not enough, but on the basis of the charge-sheet, a strong case is to be made out that the accused has committed non-bailable offence and he de- serves to be in custody. If the view that once an accused is released on default bail under Section 167(2) Cr.P.C., his bail cannot be cancelled on merits is accepted, it will be giving a premium to the lethargy and/or negligence, may be in a given case of deliberate attempt on the part of the investigating agency not to file the charge-sheet within the prescribed time period. Release of the accused on default bail is not on merits at all, and is on the eventuality occurring in proviso to sub-section (2) of Section 167. However, subsequently on curing the defects and filing the charge-sheet, though a strong case is made out that an accused has committed a very serious non-bailable crime, if the Court cannot cancel the bail, that would frustrate the ends of justice. The Courts have the power to cancel the bail and to examine the merits of the case where the accused is re- leased on default bail and not on merits earlier. Such an interpretation would be in furtherance of the administration of justice. **[State Through Central Bureau of Investigation vs. T. Gangi Reddy @ Yerra Gangi Reddy, AIR 2023 SC 457]**

Section 482, 204, 251 of Cr.P.C.

The proposition of law as set out above makes it abundantly clear that the Court should be slow to grant the relief of quashing a complaint at a pre-trial stage, when the factual controversy is in the realm of possibility particularly because of the legal presumption, as in this matter. What is also of note is that the factual defence without having to adduce any evidence need to be of an unimpeachable quality, so as to altogether disprove the allegations made in the complaint.

The consequences of scuttling the criminal process at a pre-trial stage can be grave and irreparable. Quashing proceedings at preliminary stages will result in finality without the parties having had an opportunity to adduce evidence and the consequence then is that the proper forum i.e., the trial Court is ousted from weighing the material evidence. If this is allowed, the accused may be given an un-merited advantage in the criminal process. Also because of the legal presumption, when the cheque and the signature are not disputed by the appellant, the balance of convenience at this stage is in favour of the complainant/prosecution, as the accused will have due opportunity to adduce defence evidence during the trial, to rebut the presumption.

Situated thus, to non-suit the complainant, at the stage of the summoning order, when the factual controversy is yet to be canvassed and considered by the trial court will not in our opinion be judicious. Based upon a prima facie impression, an element of criminality cannot entirely be ruled out here subject to the determination by the trial Court. Therefore, when the proceedings are at a nascent stage, scuttling of the criminal process is not merited.

In our assessment, the impugned judgment is rendered by applying the correct legal principles and the High Court rightly declined relief to the accused, in the quashing proceeding. Having said this, to rebut the legal presumption against him, the appellant must also get a fair opportunity to adduce his evidence in an open trial by an impartial judge who can dispassionately weigh the material to reach the truth of the matter. At this point, one might benefit by recalling the words of Harry Brown, the American author and investment advisor who so aptly said - “A fair trial is one in which the rules of evidence are honored, the accused has competent counsel, and the judge enforce the proper court room procedure – a trial in which every assumption can be challenged.” We expect no less and no more for the appellant.

We might add before parting that the observation made in this judgment is only for the limited purpose of this order and those should not stand in the way of the trial Court to decide the case on merit. The appeals are accordingly dismissed leaving the parties to bear their own cost.

IT was held that factual defences should not be considered within parameters of limited enquiry permissible in petition u/s 482 Cr.P.C.. The matter was regarding quashing of summoning order under the offence of dishonor of cheque. It was held that quashing of summoning order at pre-trial, when factual controversy is yet to be canvassed and considered by trial court is non-judicious. (**Rathish Babu Unnikrishnan v. State (Govt of NCT of Delhi), 2023 Cri.L.J. 311)**

GOODS AND SERVICES TAX ACT

GST-Central Goods and Services Tax Act, 2017 - Section 174(2)(c) - Scope of Held, first part protects any right, privilege, obligation, etc. under the amended Act or repealed Acts. Proviso thereto provides that any tax exemption granted as an incentive against investment shall not continue as a privilege if the said notification is rescinded on or after the appointed day.

GST Central Goods and Services Tax Act, 2017- Sections 174(2)(c) and 11- Claim of refund of 100% CGST relying on earlier exemption notification issued prior to enforcement of the GST Act on ground of promissory estoppel. Mandamus, held, cannot be issued to direct Government to act in a particular way or to exercise its discretionary statutory power in a particular way. However, on facts, liberty granted to appellant assessees to approach GST Council and respective State Governments for consideration of their claims of refund based on the exemption notifications which stood superseded by GST law. **(Hero Motocorp Limited v. Union of India and others, (2023) 1 SCC 386)**

INDIAN EVIDENCE ACT

S. 112 and 114 – Application seeking a direction of second child to DNA testing – With a view to ascertain the child's paternity – In petition for divorce proceeding. Allowing of the application improper, hence set aside-

S. 112 – DNA test of a minor –Direction to conduct – Principles thereunder-Enumerated-

The lis in these cases is between the parties to a marriage. The lis is not between one of the parties to the marriage and the child whose paternity is questioned. To enable one of the parties to the marriage to have the benefit of fair trial, the Court cannot sacrifice the rights and best interests of a third party to the lis, namely, the child-

The High Court was wrong in allowing the application of the respondent for subjecting the child to DNA test. However, this shall not preclude the respondent – husband from leading any other evidence to establish the allegations made by him

against the appellant in the petition for divorce. **Aparna Ajinkya Firodia v. Ajinkya Arun Firodia, 2023 (1) ARC 305 – SC**

Section 45-DNA evidence - Evidentiary value – It has been held that the DNA evidence is in the nature of opinion evidence as envisaged under S. 45 and like any other opinion evidence, its probative value varies from case to case.

Penal Code, 1860 - Ss. 302, 365, 367, 376(2)(g) and 201 r/w S. 34 Circumstantial evidence: Absence of identification of accused, doubt regarding arrest and recovery of incriminatory materials, absence of clarity as to timing of death, infirmities in regard to timing and manner of collection of samples/forensic evidence i.e. the report regarding the DNA profiling, and absence of fair trial. Hence, conviction reversed.

Criminal Procedure Code, 1973-S. 357-A-Compensation - Claim by family members of deceased girl, who was killed after gang rape. It was held that it, cannot be denied even in case of acquittal of accused.

Section 3 of the Evidence Act, 1872 - Circumstantial evidence Conditions need to be fulfilled by the prosecution or the five golden principles, which constitute the panchsheel of the proof of a case based on circumstantial evidence, reiterated. **(Rahul v. State of Delhi, Ministry of Home Affairs and another, (2023) 1 SCC 83)**

Section 9 - Test identification parade (TIP) - Witnesses having ample opportunity to see the accused before holding TIP Effect of not only witnesses themselves deposed having seen the suspects before the TIP, but the accused also from the very beginning, claimed that suspects were all photographed, videographed and were shown to the witnesses. Resultantly, the TIP, held, a mere formality, having no legal value and, therefore, in absence of any other incriminatory material, conviction, held, not sustainable and set aside.

Section 9 - Holding test identification parade (TIP) in presence of a police officer or IO. TIP conducted in the presence of a police officer, held, inadmissible in light of S. 162 CrPC.

Evidence Act, 1872 Section 9: Test identification parade (TIP) necessity and its object. When the eyewitnesses neither disclose names nor identities of the accused participating in the crime, conduct of a TIP becomes necessary. Object of conducting a TIP and its evidentiary value, reiterated.

Section 9: Test identification parade (TIP) - Burden to prove TIP being conducted in a fair manner and that all necessary measures and precautions were taken before conducting the TIP, held, on the prosecution and not on the defence.

Sections 386 and 374 - Appeal challenging conviction but dismissal without considering appellant’s contention was held, a serious infirmity, resulting in, no legal

judgment in the eye of the law. **(Gireesan Nair and others v. State Of Kerala, (2023) 1 SCC 180)**

Sections 32(1) and 157 - Executive Magistrate - recording statement of injured prosecution witness assaulted by accused persons, in the form of dying declaration However, aforesaid witness - surviving such assault. Manner in which so-called dying declaration can be treated.

Penal Code, 1860-Ss. 302/149-Deceased was assaulted to death by giving lathi blows, in his house around midnight, by 9 accused persons, including accused-appellants (Accused 2, 3 and 9), when he tried to save his parents, who were being assaulted by aforesaid accused persons-PWs 1 and 8 (father and mother of deceased, respectively) were also injured in such assault. Conviction and sentence of only accused-appellants herein (Accused 2, 3 and 9) out of the 9 accused was maintained by High Court. **(Ramcharan (dead) and another v. State of Madhya Pradesh, (2023) 2 SCC 163)**

INDIAN PENAL CODE

Penal Code, 1860- Ss. 84, 86, 302 and 201-Defence of insanity - When available Matters to be established or mental incapacity - Principles clarified.

Whether such defence available to accused addicted to alcohol and who was got discharged by his family members from de-addiction rehabilitation centre against medical advice, and without letting him complete rehabilitation course to its expected duration.

Penal Code, 1860-Ss. 84, 86, 302 and 201 - Plea of insanity or mental incapacity- Failure on part of the trial court to adopt the procedure. envisaged by S. 329 CrPC-Held, not material, when during the trial, the accused not found to be of unsound mind and consequently incapable of making his defence Criminal Procedure Code, 1973, Ss. 328, 329, 330, 331 and 332.

Penal Code, 1860-Ss. 84, 86, 302 and 201 Plea of insanity Post conviction behaviour of appellant-Held, not material, when the material on record did not indicate that the appellant was a person of unsound mind at the time of commission of crime or was a person of unsound mind when tried in this case-Criminal Procedure Code, 1973, S. 329.

Penal Code, 1860. - Ss. 302 and 201-Circumstantial evidence Absence of explanation, false explanation or false defence When can be taken as an additional link to complete the chain of circumstances Principles clarified- Evidence Act, 1872.

Evidence Act, 1872 S. 8 Motive Relevancy in case of - circumstantial evidence-Held, in case of circumstantial evidence, if motive is proved, that would supply another link in the chain of circumstantial evidence but, absence of motive by

itself cannot be a ground to reject the prosecution case, though such an absence of motive is a factor that weighs in favour of the accused Whether the prosecution case is strong enough to ground conviction despite absence of motive, held, has to be determined in the facts and circumstances of each case. **(Prem Singh v. State (NCT of Delhi), (2023) 3 SCC 372)**

Penal Code, 1860-Ss. 415 and 420 Cheating Ingredients that - need to be proved for attracting S. 420-Explained

Penal Code, 1860 - S. 471 r/w Ss. 470 and 464-Invocation of Necessary ingredients- Held, S. 471 is forgery by making a false document or false electronic record or part thereof - Further, to constitute the offence under S. 471, it has to be proven that the document was "forged" in terms of S. 470, and "false" in terms of S. 464

Penal Code, 1860 S. 120-B and Ss. 405 and 406 r/w Ss. 420, 471 - r/w Ss. 470 & 464- Conspiracy re the above offences - Requirements for establishing the same - Quashing of summoning order or non-bailable warrant. Absence of requisite ingredients of the abovesaid offences - Proper form of summoning order in case of accused being a company. Principles clarified.

Criminal Procedure Code, 1973- S. 204 - Issuance of process - Recording detailed reasoning, though, held, not necessary, but there should be adequate evidence on record to set the criminal proceedings into motion- When summoning order should be passed, reiterated

Criminal Procedure Code, 1973-S. 204 r/w S. 202 - Summoning of accused residing outside jurisdiction of court - Effect of insertion made to S. 202 by Act 25 of 2005- As per this insertion, held, it is obligatory upon the Magistrate to inquire into the case himself or direct investigation be made by a police officer or such other officer for finding out whether or not there is sufficient ground for proceeding against the accused. **(Deepak Gaba and others v. State of Uttar Pradesh and another, (2023) 3 SCC 423)**

Penal Code, 1860-S. 302-Murder trial - Circumstantial evidence Links in the chain of circumstances not established conviction reversed. Conviction of appellant accused under S. 302 for murder of deceased. Out of all accused, including appellant, only appellant’s conviction under S. 302 was upheld by High Court. Held, in facts and circumstances of instant case, conviction of appellant is not sustainable. Hence, he stands acquitted. **(Ram Pratap v. State of Haryana, (2023) 2 SCC 345)**

Section 302 of the Penal Code, 1860 - Death sentence Principles - imposition of Surveyed in detail, commencing with Bachan Singh, (1980) 2 SCC 684.

Discretion of court in imposition of death sentence True reason for availability of Proper manner in which such discretion is to be exercised. Individualized principled sentencing based on both the crime and criminal, with consideration of whether reform or rehabilitation is achievable, and consequently whether the option of life imprisonment is unquestionably foreclosed. It has been held that the only factor of "commonality" that must be discernible from decisions relating to capital offences.

In fact, further held, the approach of rigid categorization of crimes, or aggravating and mitigating circumstances, to determine the imposition of death sentence as adopted to some extent in Macchi Singh, (1983) 3 SCC 470, is per incuriam Bachan Singh, (1980) 2 SCC 684, to this extent-As, Bachan Singh specifically rejected the contention that standards and guidelines should be laid down, and held that aggravating and mitigating circumstances could not be rigidly enumerated so as to exclude "all free play of discretion."

Penal Code, 1860 S. 302 Death penalty Mitigating circumstances whether present, or, absence of scope of reform or rehabilitation of accused. Duties of court as well as of the prosecution/State, particularly in the absence of an individual's capacity to effectively bring forth mitigating factors.

Penal Code, 1860 S. 302- Imposition of death sentence Recording of special reasons therefor, held, mandatory. Special reasons must be such as to compel the court to hold that it is impossible to reform and rehabilitate the offender after examining the matter with due regard to the age, character and antecedents of the offender and the circumstances in which the offence was committed. Criminal Procedure Code, 1973, Ss. 354(3), 235(2), 360 and 361.

Criminal Procedure Code, 1973 S. 235(2) Sentencing hearing - contemplated under Held, is not confined merely to oral hearing but intended to afford a real opportunity to the prosecution as well as the accused, to place on record facts and material relating to various factors on the question of sentence and if interested by either side, to have evidence adduced to show mitigating circumstances to impose a lesser sentence or aggravating grounds to impose death penalty.

Criminal Procedure Code, 1973 Ss. 173, 207, 208, 91 and 243- Documents and information not relied on by investigation officer/prosecution -Disclosure of, to accused-Held and directed, the prosecution, in the interests of fairness, should as a matter of rule, in all criminal trials, furnish the list of statements, documents, material objects and exhibits which are not relied upon by the investigating officer to the accused. Presiding officers of courts in criminal trials, held, shall ensure compliance therewith. Constitution of India – Article 21 - Evidence Act, 1872, Section 165.

Penal Code, 1860-Ss. 302, 397 and 449 r/w S. 34- Expert evidence regarding accused's fingerprints. Failure to procure the fingerprints of the appellants in

compliance with the Identification of Prisoners Act, held, would not per se vitiate the evidence, in a given case.

Penal Code, 1860- Ss. 302, 397 and 449 r/w S. 34- - Looting and murder - Circumstantial evidence Recovery and identification of looted articles, presence of fingerprints of accused on the spot, knowledge regarding commission of crime, user of pistol and accused themselves inadvertently sustaining firearm injuries during the incident along with absence of explanation - Conviction of all three accused confirmed. **(Manoj and others v. State of Madhya Pradesh, (2023) 2 SCC 353)**

Sec. 498A—Evidence Act, Sec. 32—Cruelty by husband and his relatives—Multiple dying declarations—Evidentiary value—Incident of setting of deceased on fire—

In Jagbir Singh vs. State of NCT Delhi, (2019) 8 SCC 779, Supreme Court reviewed several previous decisions involving multiple dying declarations and re-stated the law in these terms:

(2019) 8 SCC 779

"30. A survey of the decisions would show that the principles can be culled out as follows:

a. Conviction of a person can be made solely on the basis of a dying declaration which inspires confidence of the court;

b. If there is nothing suspicious about the declaration, no corroboration may be necessary;

c. No doubt, the court must be satisfied that there is no tutoring or prompting;

d. The court must also analyse and come to the conclusion that imagination of the deceased was not at play in making the declaration. In this regard, the court must look to the entirety of the language of the dying declaration;

e. Considering material before it, both in the form of oral and documentary evidence, the court must be satisfied that the version is compatible with the reality and the truth as can be gleaned from the facts established;

f. However, there may be cases where there are more than one dying declaration. If there are more than one dying declaration, the dying declarations may entirely agree with one another. There may be dying declarations where inconsistencies between the declarations emerge. The extent of the inconsistencies would then have to be considered by the court. The inconsistencies may turn out to be reconcilable.

g. In such cases, where the inconsistencies go to some matter of detail or description but is incriminatory in nature as far as the Accused is concerned, the court would look to the material on record to conclude as to which dying declaration is to be relied on unless it be shown that they are unreliable;

h. The third category of cases is that where there are more than one dying declaration and inconsistencies between the declarations are absolute and the dying declarations are irreconcilable being repugnant to one another. In a dying declaration, the Accused may not be blamed at all and the cause of death may be placed at the doorstep of an unfortunate accident. This may be followed up by another dying declaration which is diametrically opposed to the first dying declaration. In fact, in that scenario, it may not be a question of an inconsistent dying declaration but a dying declaration which is completely opposed to the dying declaration which is given earlier. There may be more than two."

i. In the third scenario, what is the duty of the court? Should the court, without looking into anything else, conclude that in view of complete inconsistency, the second or the third dying declaration which is relied on by the prosecution is demolished by the earlier dying declaration or dying declarations or is it the duty of the court to carefully attend to not only the dying declarations but examine the rest of the materials in the form of evidence placed before the court and still conclude that the incriminatory dying declaration is capable of being relied upon?" **[Rajaram vs. State of M.P., AIR 2023 SC 94]**

Secs. 302, 201—Evidence Act, 1872, Sec. 3—Murder—Circumstantial evidence

The relevancy of motive in a case based on circumstantial evidence, the weight of authorities is on principles that if motive is proved, that would supply another link in the chain of circumstantial evidence but, absence of motive cannot be a ground to reject the prosecution case, though such an absence of motive is a factor that weighs in favour of the accused. In Anwar Ali and Anr. v. State of Himachal Pradesh: (2020) 10 SCC 166, this Court has referred to and relied upon the principles enunciated in previous decisions and has laid down as under: -

"24. Now so far as the submission on behalf of the accused that in the present case the prosecution has failed to establish and prove the motive and therefore the accused deserves acquittal is concerned, it is true that the absence of proving the motive cannot be a ground to reject the prosecution case. It is also true and as held by this Court in Suresh Chandra Bahri v. State of Bihar, 1995 SCC (Cri) 60 that if motive is proved that would supply a link in the chain of circumstantial evidence but the absence thereof cannot be a ground to reject the prosecution case. However, at the same time, as observed by this Court in Babu, (2010) 9 SCC 189, absence of motive in a case depending on circumstantial evidence is a factor that weighs in favour of the accused. In paras 25 and 26, it is observed and held as under:-

"25. In State of U.P. v. Kishanpal, (2008) 16 SCC 73, this Court examined the importance of motive in cases of circumstantial evidence and observed:

‘38. … the motive is a thing which is primarily known to the accused themselves and it is not possible for the prosecution to explain what actually promoted or excited them to commit the particular crime.

39. The motive may be considered as a circumstance which is relevant for assessing the evidence but if the evidence is clear and unambiguous and the circumstances prove the guilt of the accused, the same is not weakened even if the motive is not a very strong one……...’

26. This Court has also held that the absence of motive in a case depending on circumstantial evidence is a factor that weighs in favour of the accused. (Vide Pannayar v. State of T.N., (2009) 9 SCC 152). **[Prem Singh vs. State of NCT of Delhi, AIR 2023 SC 193]**

Sec. 302—Evidence Act, Secs. 3, 134—Murder—Proof

‘Settled principles of law’ regarding witnesses and evidentiary value of their statement are:

(a). Section 134 of Indian Evidence Act, 1872, enshrines the well-recognized maxim that evidence has to be weighed and not counted. In other words, it is the quality of evidence that matters and not the quantity. As a sequitur, even in a case of murder, it is not necessary to insist upon a plurality of witnesses and the oral evidence of a single witness, if found to be reliable and trustworthy, could lead to a conviction.

(b). Generally speaking, oral testimony may be classified into three categories, viz.:

(i) Wholly reliable;

(ii) Wholly unreliable;

(iii) Neither wholly reliable nor wholly unreliable.

The first two category of cases may not pose serious difficulty for the court in arriving at its conclusion(s). However, in the third category of cases, the court has to be circumspect and look for corroboration of any material particulars by reliable testimony, direct or circumstantial, as a requirement of the rule of prudence.

(c). A defective investigation is not always fatal to the prosecution where ocular testimony is found credible and cogent. While in such a case the court has to be circumspect in evaluating the evidence, a faulty investigation cannot in all cases be a determinative factor to throw out a credible prosecution version.

(d). Non-examination of the Investigating Officer must result in prejudice to the accused; if no prejudice is caused, mere non-examination would not render the prosecution case fatal.

(e). Discrepancies do creep in, when a witness deposes in a natural manner after lapse of some time, and if such discrepancies are comparatively of a minor nature and do not go to the root of the prosecution story, then the same may not be given undue importance. **[Munna Lal vs. State of U.P., AIR 2023 SC 634]**

Section 3, 25, 27, 8, 65B, 45 of Indian Evidence Act & Section 365, 367, 376(2)(g), 302, 201, 34 IPC

In the instant case the accused person kidnapped the victim, committed gang rape on her, murdered her and thrown her dead body in the field. In the investigation conducted by the Police there was alleged discovery of incriminating articles namely the broken piece of bumper, wallet containing the document connecting accused etc.

In this matter Hon'ble Apex Court discussing the evidence under section 3, Section 25, 27, 8, 65B, Section 45 regarding the offences u/s 365, 367, 376(2)(g), 302, 201,34 IPC held that-

"The next important circumstance relied upon by the prosecution was the arrest of the accused Rahul with red coloured Indica car on 13.02.2012. Again, turning to the case of prosecution, it appears that after the alleged incident of kidnapping, an information was received by the Police Station Chhawla, New Delhi through call at 21:18 hours on 09.02.2012 to the effect that a girl was kidnapped in a red-coloured Tata Indica Car near Hanuman Chowk, Qutub Vihar, Chhawla. The said information was recorded as DD No.27A at the said police station. On receiving the said information S.I. Prakash Chand (PW-45) who was posted at P.S. Chhawla, along with constable Rakesh had gone to the spot at Hanuman Chowk, where they met the complainant- Saraswati. She gave her statement with regard to the alleged incident and on the basis of her statement, the FIR was got registered under Section 363 IPC by SI Prakash Chand. Thereafter on 13.02.2012 when the investigation was entrusted to the SHO, P.S. Chhawla, Inspector Sandeep Gupta (PW-48), the ASI Rajinder Singh from P.S. Sector-23, Dwarka (PW-12) produced the accused-Rahul and one red coloured Indica Car bearing Registration No. DL 3C AF 4348 stating that the accused Rahul was found roaming in the said car near Metro station, Sector 9, Dwarka, New Delhi.

As regards the arrest of the accused-Rahul, PW-12 ASI Rajinder Singh had stated before the Court that the accused-Rahul was seen driving the red Indica Car, and he looked perplexed; when he asked for the documents of the said vehicle, the accused-Rahul could not produce them and therefore he (PW-12) apprehended Rahul and handed over his custody to the SHO at P.S. Chhawla. The PW-12 ASI Rajinder had tried to explain that there was a message from the Control Room that a girl was abducted in a red coloured Indica Car and the police had to apprehend the said vehicle and to report to the concerned SHO, and therefore he apprehended Rahul. Thus, the accused Rahul was apprehended because he was driving one red Indica Car. Pertinently, none of the witnesses examined by the prosecution had identified the Indica Car which was allegedly being driven by Rahul on 13.02.2012. P.W-29, the complainant Saraswati had admitted in her cross- examination that she could not

say with certainty that it was the same car in which the victim was kidnapped. None of the witnesses had seen even the registration number of the car in which the victim was kidnapped.

Now, as per the further case of the prosecution, the accused-Rahul gave a disclosure statement (Ex. PW-39/B) before Inspector Sandeep Gupta on the basis of which the other accused Vinod and Ravi were brought to the police station by the beat constables, and they were also arrested at 14:45 and 15:00 hours respectively. They also gave their disclosure statements (Ex. P.W-39/A and Ex. PW-39/C) before P-1 Sandeep Gupta. The said beat constables were not examined by the prosecution before the Trial Court. The non-examination of the said beat constables has created a cloud of doubt in the story of the arrests of the accused, as in the further statements, recorded under Section 313 of Cr.P.C., the accused-Rahul had stated that Ravi was lifted from his house, and when he (i.e., Rahul) reached to the police station in the evening to enquire about Ravi, he was arrested and the car was seized. The accused-Vinod and Ravi have also stated that they were picked up from their home. Thus, the circumstances under which the accused were arrested and the car was seized have also raised serious doubts in the story put-forth by the prosecution.

At this juncture, it may be noted that the trial court had allowed the entire disclosure statements of the three accused to be admitted in evidence by exhibiting the same as Ex. PW-39/B, PW-41/B and PW-41/C. The said statements were recorded by the PW-48, Sandeep Gupta, when they were in police custody. The said statements being in nature of the confessions before the police were hit by Section 25 of the Evidence Act. The law in this regard is very clear that the confession before the police officer by the accused when he is in police custody, cannot be called an extra-judicial confession. If a confession is made by the accused before the police, and a portion of such confession leads to the recovery of any incriminating material, such portion alone would be admissible under Section 27 of the Evidence Act, and not the entire confessional statements. In the instant case, therefore the trial court had committed gross error in exhibiting the entire disclosure statements of the accused recorded by the PW-48 P1 Sandeep Kumar Gupta, for being read in evidence. Though, the information furnished to the Investigating Officer leading to the discovery of the place of the offence would be admissible to the extent indicated in Section 27 read with Section 8 of the Evidence Act, but not the entire disclosure statement in the nature of confession recorded by the police officer.

This takes us to the next circumstance with regard to the alleged discovery of incriminating articles on 13.02.2021 namely, the broken piece of bumper, wallet containing the documents connecting the accused-Rahul etc. In this regard, the evidence of the Delhi Police and the Haryana Police Officers would be relevant. Though PW-32 Head Constable Omkar Singh of P.S. Chhawla and PW-36 ASI Atar Singh, in charge of Crime Team South-West District, New Delhi, stated about the

recovery of the said incriminating articles, PW-37, PW-38, PW-39 and PW-41 who were also there at the spot did not make any mention about the said articles. Again PW-31 photographer called at the instance of P.S. Rodai also did not state about the said articles. The other non-official witnesses i.e. PW-3, PW-7, PW-8 and PW-14 also did not state anything about such discoveries or recoveries. The prosecution had also not proved by cogent evidence that the broken piece of bumper lying near the dead body of the victim was of he red coloured indica car seized from the accused-Rahul. Further, the seizure memo of the wallet (Exhibit 34/A) mentioned only that one red coloured wallet containing Rs.365 and a list of things was seized. There was no mention about any document in the seizure memo which could connect the accused Rahul. If the ATM cards, driving licence, photocopies of school leaving certificates and PAN card connecting the accused Rahul, were found from the said wallet, no Investigating Officer would commit such a blunder of not mentioning them in the seizure memo. The accused- Rahul in his further statement under Section 313 had stated that the said articles were taken away from him at the police station.

The recovery of a strand of hair found from the body of the deceased by ASI Balwan Singh as per the Seizure Memo (Exhibit 34/A) is also highly doubtful, inasmuch as the same was allegedly found from the body of the deceased which was lying in the open field for about three days and three nights. The PW-8 father of the deceased and PW-3 and PW-7 neighbours of the deceased who had identified the dead body of the victim had not stated anything about the articles lying near the dead body. The learned advocates for the appellants had also drawn the attention of the Court with regard to number of inconsistencies and contradictions appearing in the evidence of the Haryana Police, Delhi Police and also in the testimonies of the formal witnesses, which render the entire evidence with regard to the discovery and recovery as also seizure of the incriminating articles, very unreliable. The seizure of the articles like burnt ash, underwear of the deceased etc. on 14.02.2012 at the instance of the accused were also not duly proved by the prosecution. The said articles were sent to the CFSL for examination however, no conclusive opinion was given by the CFSL to establish their link with the accused.

The next circumstance relied upon by the prosecution was the alleged recovery of the phone of the deceased at the instance of the accused Rahul from the bushes on the road divider opposite to Rajinder Dhaba near Kamal Cinema. Though PW-8 Kunwar Singh Negi, father of the deceased had stated that mobile phone no.9540594640 was in his name and was used by his daughter, he was not shown the phone instrument for the purpose of identity. The call details record of the said phone being electronic record, was also not proved in terms of Section 65B of the Evidence Act. Hence, this part of the evidence also does not take the case of the prosecution any further.

In the instant case, the alleged incident of kidnapping had taken place on 09.02.2012 and the dead body of the victim was found on 13.02.2012. Hence, the time of death was also very much significant, however in view of the state in which the dead body was found, the Post-Mortem Report Ex.26/A is also not clear about the timing as to when the death had occurred. The Post-Mortem report stated the time of death to be 72 to 96 hours i.e. between 10.02.2012 to 11.02.2012, as the post-mortem had taken on 14.02.2012. However, as per the case of the prosecution, death would have taken place on the intervening night of 09.02.2012 to 10.02.2012. The body of the deceased also did not show any signs of putrefaction. It is highly unlikely that the dead body would have remained in the field for three days without being noticed by anybody.

The learned Senior Advocates appearing for the appellants have also rightly drawn the attention of the Court to the timings and the manner in which the samples were collected during the course of post-mortem of the deceased, to submit that the PW-48 P1 Sandeep Kumar was present at the hospital when the post-mortem was conducted on 14.02.2012, and therefore there was no reason to collect the samples from the body of the deceased on 16.02.2012. The collection and sealing of the samples during the MLC of the accused which had taken place on 14.02.2012 at the RTMR Hospital, Jaffarpur also does not inspire confidence. The story of blood stains and semens found on the seat covers of the Indica Car seized on 13.02.2012 and sent to the CFSL for examination also appears to be highly improbable and unreliable. There is no clear evidence as to who was in custody of the said car after its seizure till it was sent to CFSL for examination and as to whether the car was sealed during the said period.

The learned Amicus Curiae has also assailed the forensic evidence i.e., the report regarding the DNA Profiling dated 18.04.2012 (Exhibit P-23/1) giving incriminating findings. She vehemently submitted that apart from the fact that the collection of the samples sent for examination itself was very doubtful, the said forensic evidence was neither scientifically nor legally proved and could not have been used as a circumstance against the Appellants-accused. The Court finds substance in the said submissions made by the Amicus Curiae. The DNA evidence is in the nature of opinion evidence as envisaged under Section 45 and like any other opinion evidence, its probative value varies from case to case. In this regard a very pertinent observations made by this Court in case of Manoj and Ors. v. State of Madhya Pradesh3 deserve to be made. This Court has in detail dealt with the issue of DNA profiling methodology and statistical analysis, as also the collection and preservation of DNA evidence. The relevant paragraphs read as under:-

> "138. During the hearing, an article published by the Central Forensic Science Laboratory, Kolkata was relied upon. The relevant extracts of the article are reproduced below:

"Deoxyribonucleic acid (DNA) is genetic material present in the nuclei of cells of living organisms. An average human body is composed of about 100 trillion of cells. DNA is present in the nucleus of cell as double helix, supercoiled to form chromosomes along with Intercalated proteins.

Twenty-three pairs of chromosomes present In each nucleated cells and an individual Inherits 23 chromosomes from mother and 23 from father transmitted through the ova and sperm respectively. At the time of each cell division, (2022) SCC Online SC 677 chromosomes replicate and one set goes to each daughter cell. All Information about Internal organisation, physical characteristics, and physiological functions of the body is encoded in DNA molecules in a language (sequence) of alphabets of four nucleotides or bases: Adenine (A), Guanine (G), Thymine (T) and Cytosine (C) along with sugar-phosphate backbone. A human haploid cell contains 3 billion bases approx. All cells of the body have exactly same DNA but it varies from individual to Individual in the sequence of nucleotides. Mitochondrial DNA (mtDNA) found in large number of copies in the mitochondria is circular, double stranded, 16,569 base pair in length and shows maternal inheritance. It is particularly useful in the study of people related through the maternal line. Also being in large number of copies than nuclear DNA, it can be used in the analysis of degraded samples. Similarly, the Y chromosome shows paternal inheritance and is employed to trace the male lineage and resolve DNA from males in sexual assault mixtures.

Only 0.1 % of DNA (about 3 million bases) differs from one person to another. Forensic DNA Scientists analyse only few variable regions to generate a DNA profile of an individual to compare with biological clue materials or control samples. …… DNA Profiling Methodology DNA profile is generated from the body fluids, stains, and other biological specimen recovered from evidence and the results are compared with the results obtained from reference samples. Thus, a link among victim(s) and/or suspect(s) with one another or with crime scene can be established. DNA Profiling Is a complex process of analyses of some highly variable regions of DNA. The variable areas of DNA are termed Genetic Markers. The current genetic markers of choice for forensic purposes are Short Tandem Repeats (STRs). Analysis of a set of 15 STRs employing Automated DNA Sequencer gives a DNA Profile unique to an Individual (except monozygotic twin). Similarly, STRs present on Y chromosome (Y-STR) can also be used in sexual assault cases or determining paternal lineage. In cases of sexual assaults, Y-STRs are helpful in detection of male profile even in the presence of high level of female portion or in case of azoo11permic or vasectomized" male. Cases In which DNA had undergone environmental stress and biochemical degradation, min lSTRs can be used for over routine STR because of shorter amplicon size.

DNA Profiling is a complicated process and each sequential step involved in generating a profile can vary depending on the facilities available In the laboratory. The analysis principles, however, remain similar, which include:

1. isolation, purification & quantitation of DNA
2. amplification of selected genetic markers
3. visualising the fragments and genotyping
4. statistical analysis & interpretation.

In mtDNA analysis, variations in Hyper variable Region I & II (HVR I & II) are detected by sequencing and comparing results with control samples:….

Statistical Analysis Atypical DNA case involves comparison of evidence samples, such as semen from a rape, and known or reference samples, such as a blood sample from a suspect. Generally, there are three possible outcomes of profile comparison:

1) Match: If the DNA profiles obtained from the two samples are indistinguishable, they are said to have matched.
2) Exclusion: If the comparison of profiles shows differences, it can only be explained by the two samples originating from different sources.
3) Inconclusive: The data does not support a conclusion Of the three possible outcomes, only the "match" between samples needs to be supported by statistical calculation. Statistics attempt to provide meaning to the match. The match statistics are usually provided as an estimate of the Random Match Probability (RMP) or in other words, the frequency of the particular DNA profile in a population. In case of paternity/maternity testing, exclusion at more than two loci is considered exclusion. An allowance of 1 or 2 loci possible mutations should be taken Into consideration while reporting a match. Paternity of Maternity Indices and Likelihood Ratios are calculated further to support the match.

Collection and Preservation of Evidence If DNA evidence is not properly documented, collected, packaged, and preserved, It will not meet the legal and scientific requirements for admissibility in. a court of law. Because extremely small samples of DNA can be used as evidence, greater attention to contamination issues is necessary while locating, collecting, and preserving DNA evidence can be contaminated when DNA from another source gets mixed with DNA relevant to the case. This can happen when someone sneezes or coughs over the evidence or touches his/her mouth, nose, or other part of the face and then touches area that may contain the DNA to be tested. The exhibits having biological specimen, which can establish link among victim(s), suspect(s), scene of crime for solving the case should be Identified, preserved, packed and sent for DNA Profiling."

In an earlier judgment, R v. Dohoney & Adams the UK Court of Appeal laid down the following guidelines concerning the procedure for introducing DNA evidence in trials: (1) the scientist should adduce the evidence of the DNA

comparisons together with his calculations of the random occurrence ratio; (2) whenever such evidence is to be adduced, the Crown (prosecution) should serve upon the defence details as to how the calculations have been carried out, which are sufficient for the defence to scrutinize the basis of the calculations; (3) the Forensic Science Service should make available to a defence expert, if requested, the databases upon which the calculations have been based.

The Law Commission of India in its report, observed as follows:

> "DNA evidence involves comparison between genetic material thought to come from the person whose identity is in issue and a sample of genetic material from a known person. If the samples do not 'match', then this will prove a lack of identity between the known person and the person from whom the unknown sample originated. If the samples match, that does not mean the identity is conclusively proved. Rather, an expert will be able to derive from a database of DNA samples, an approximate number reflecting how often a similar DNA "profile" or "fingerprint" is found. It may be, for example, that the relevant profile is found in 1 person in every 100,000: This is described as the 'random occurrence ratio' (Phipson 1999)."

Thus, DNA may be more useful for purposes of investigation but not for raising any presumption of identity in a court of law."

In Dharam Deo Yadav v. State of UP this court discussed the reliability of DNA evidence in a criminal trial, and held as follows:

> "The DNA stands for deoxyribonucleic acid, which is the biological blueprint of every life. DNA is made-up of a double standard structure consisting of a deoxyribose sugar and phosphate backbone, cross-linked with two types of nucleic acids referred to as adenine and guanine, purines and thymine and cytosine pyrimidines…..DNA usually can be obtained from any biological material such as blood, semen, saliva, hair, skin, bones, etc. The question as to whether DNA tests are virtually infallible may be a moot question, but the fact remains that such test has come to stay and is being used extensively in the investigation of crimes and the Court often accepts the views of the experts, especially when cases rest on circumstantial evidence. More than half a century, samples of human DNA began to be used in the criminal justice system. Of course, debate lingers over the safeguards that should be required in testing samples and in presenting the evidence in Court. DNA profile, however, is consistently held to be valid and reliable, but of course, it depends on the quality control and quality assurance procedures in the laboratory."

The US Supreme Court, in District Attorney's Office for the Third Judicial District v. Osborne, dealt with a post- conviction claim to access evidence, at the behest of the convict, who wished to prove his innocence, through new DNA

techniques. It was observed, in the context of the facts, that "Modern DNA testing can provide powerful new evidence unlike anything known before. Since its first use in criminal investigations in the mid-1980s, there have been several major advances in DNA technology, culminating in STR technology. It is now often possible to determine whether a biological tissue matches a suspect with near certainty. While of course many criminal trials proceed without any forensic and scientific testing at all, there is no technology comparable to DNA testing for matching tissues when such evidence is at issue. DNA testing has exonerated wrongly convicted people, and has confirmed the convictions of many others."

Several decisions of this court - Pantangi Balarama Venkata Ganesh v. State of Andhra Pradesh, Santosh Kumar Singh v. State Through CBI, Inspector of Police, Tamil Nadu v. John David, Krishan Kumar Malik v. State of Haryana, Surendra Koli v. State of Uttar Pradesh, and Sandeep v. State of Uttar Pradesh, Rajkumar v. State of Madhya Pradesh and Mukesh v. State for NCT of Delhi have dealt with the increasing importance of DNA evidence. This court has also emphasized the need for assuring quality control, about the samples, as well as the technique for testing-in Anil v. State of Maharashtra "7. Deoxyribonucleic acid, or DNA, is a molecule that encodes the genetic information in all living organisms. DNA genotype can be obtained from any biological material such as bone, blood, semen, saliva, hair, skin, etc. Now, for several years, DNA profile has also shown a tremendous impact on forensic investigation. Generally, when DNA profile of a sample found at the scene of crime matches with DNA profile of the suspect, it can generally be concluded that both samples have the same biological origin. DNA profile is valid and reliable, but variance in a particular result depends on the quality control and quality procedure in the laboratory."

It is true that PW-23 Dr. B.K. Mohapatra, Senior Scientific Officer (Biology) of CFSL, New Delhi had stepped into the witness box and his report regarding DNA profiling was exhibited as Ex. PW-23/A, however mere exhibiting a document, would not prove its contents. The record shows that all the samples relating to the accused and relating to the deceased were seized by the Investigating Officer on 14.02.2012 and 16.02.2012; and they were sent to CFSL for examination on 27.02.2012. During this period, they remained in the Malkhana of the Police Station. Under the circumstances, the possibility of tampering with the samples collected also could not be ruled out. Neither the Trial Court nor the High Court has examined the underlying basis of the findings in the DNA reports nor have they examined the fact whether the techniques were reliably applied by the expert. In absence of such evidence on record, all the reports with regard to the DNA profiling become highly vulnerable, more particularly when the collection and sealing of the samples sent for examination were also not free from suspicion.

Thus, having regard to the totality of circumstances and the evidence on record, it is difficult to hold that the prosecution had proved the guilt of the accused by adducing cogent and clinching evidence. As per the settled legal position, in order to sustain conviction, the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability, the crime was committed by the accused only and none else. The circumstantial evidence must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence. As demonstrated earlier, the evidence with regard to the arrest of the Appellants-accused, their identification, discoveries and recoveries of the incriminating articles, identity of the Indica Car, the seizures and sealing of the articles and collection of samples, the medical and scientific evidence, the report of DNA profiling, the evidence with regard to the CDRs etc. were not proved by the prosecution by leading, cogent, clinching and clear evidence much less unerringly pointing the guilt of the accused. The prosecution has to bring home the charges levelled against them beyond reasonable doubt, which the prosecution has failed to do in the instant case, resultantly, the Court is left with no alternative but to acquit the accused, though involved in a very heinous crime. It may be true that if the accused involved in the heinous crime go unpunished or are acquitted, a kind of agony and frustration may be caused to the society in general and to the family of the victim in particular, however the law does not permit the Courts to punish the accused on the basis of moral conviction or on suspicion alone. No conviction should be based merely on the apprehension of indictment or condemnation over the decision rendered. Every case has to be decided by the Courts strictly on merits and in accordance with law without being influenced by any kind of outside moral pressures or otherwise.

In short it was held that the offence related to kidnapped gang rape and murder comprised of circumstantial evidence. The evidences regarding arrest of accused, their identification, discoveries and recoveries of incriminating articles, identity of car, seizures and sealing of articles and collection of sample, medical and scientific evidence, report of DNA profiling, evidence regarding CDRs etc. were not proved by prosecution by leading, cogent, clinching and clear evidence. Hence, accused were acquitted from the charges levelled against them by giving them benefit of doubt. Conviction was set aside. (**Rahul v. State of Delhi, Ministry of Home Affairs with Ravi Kumar v. State of NCT of Delhi, 2023 Cri.L.J.1: AIR Online 2022 SC 841)**

Circumstantial Evidence and Sections 384, 34 Indian Penal Code

The matter was related to voluntarily causing hurt in committing robbery. The case was related to circumstantial evidence produced by prosecution. Allegation was accused persons went to residential house of deceased, assaulted by iron road and knife resulting into her death and stole gold and silver ornament worn by her.

The accused persons were arrested after fifteen months of incident and ornament were recovered more than 7 days after recording voluntary statements of accused persons. While appreciating evidences it was found that the shop owner was unable to produce register or documents showing that accused persons came to his shop on particular date and sold concerned ornaments. Even after the recovery of the ornaments, no test identification parade was conducted. The chemical examination of weapons recovered simply found human blood stains but fail to analyze blood group and other details which could be associated with deceased.

It was also held that mere chart giving details about cases pending against gang of which accused persons were alleged to be members cannot be taken into account at the stage of conviction. The link in chain of circumstances was incomplete, accused person were entitled to benefit of doubt. The judgment of High Court was reversed. **(Venkatesh alias Chandra and another Etc. v. State of Karnataka, 2023 Cri.L.J. 183 : AIR Online 2022 SC 595)**

INSOLVENCY AND BANKRUPTCY CODE, 2016

Insolvency and Bankruptcy Code, 2016 - Ss. 8 and 9 - Application for initiation of CIRP by operational creditor for non-payment/short payment on accounts of goods supplied Rejection of, when there is a pre-existing dispute regarding goods supplied.

Contract and Specific Relief-Sale of Goods Act, 1930-Ss. 13(1) & (2) and 59 r/w S. 12(3) Stipulation in contract- When can be considered as warranty -Condition and warranty - Distinguished between.

Contract and Specific Relief-Sale of Goods Act, 1930- Ss. 13(1) and (2), 41, 42 and 59 Availing of remedy for breach of warranty Permissibility of, even when there is breach of condition - Buyer's reliance on breach of warranty for refusal to pay the price/canvas for reduction of price (remedy available under S. 59)- Permissibility of, when goods already consumed though not being as per specifications.

Sale of Goods Act, 1930-Ss. 55(2) and 59-Buyer's refusal to pay the price of goods- Permissibility of, even when there is a certain day fixed for the payment of the price irrespective of the passing of the property. **(Rajratan Babulal Agarwal v. Solartex India Private Limited and others, (2023) 1 SCC 115)**

Insolvency and Bankruptcy Code, 2016 Ss. 238-A, 7 and 9 r/w Article 137 of the Limitation Act Limitation period for initiation of CIRP - Commencement of, from the time of default, as opposed to from date of enforcement of the relevant provisions - Principles reiterated.

Insolvency and Bankruptcy Code, 2016-Ss. 238-A, 7 and 9 r/w Ss. 14, 18 & Art. 137 of the Limitation Act - Provisions of the Limitation Act - Applicability of Benefit of Ss. 14 and 18 of the Limitation Act-Entitlement to- Extent of - Principles clarified. **(Tech Sharp Engineers Private Limited v. Sanghvi Movers Limited, (2023) 2 SCC 531)**

Insolvency and Bankruptcy Code, 2016- S. 14 — Benefit of tax settlement scheme (2019 Scheme in present case re settlement of service tax) - Grantability of, when payment for availing benefit of such tax settlement scheme, could not be made by corporate debtor in time on account of moratorium imposed i.e. when it was impossible for the appellant to deposit the settlement amount in view of the bar and/or the restrictions under the IBC.

Constitution of India – Article 226 - Direction to accept/appropriate settlement payment under tax settlement scheme (the 2019 Scheme in present case)/government scheme, even post the stipulated period - Grantability of, when there exist valid reasons and/or causes for person's inability to make the payment. **(Shekhar Resorts Limited (Unit Hotel Orient Taj) v. Union of India and others, (2023) 3 SCC 220)**

Insolvency and Bankruptcy Code, 2016-Ss. 9 and 238-A-Period during which the operational creditor's right to proceed against or sue the corporate debtor remains suspended by virtue of S. 22(1) SICA, 1985-Condonability of, under S. 5 of the Limitation Act, 1963 Statutory bar under S. 22(1) SICA - Principles clarified.

Date of coming into force of IBC viz. 1-12-2016, held, does not form the trigger point of limitation for a S. 9 application Rather, the period of limitation for S. 9 application is three years from the date when the right to apply accrues as provided by Art. 137 of the Limitation Act -Further, the right to apply under the IBC would accrue on the date when default occurs and it is extendable only by application of S. 5 of the Limitation Act Limitation Act, 1963, Article 137 and Section 5.

Insolvency and Bankruptcy Laws-Insolvency and Bankruptcy Code, 2016 Sections 8 and 9 Application for initiation of CIRP by operational creditor. Rejection of, when there is a pre-existing dispute regarding goods supplied-Pre-existing dispute whether exists - Determination of Principles clarified - Continuation with pending arbitration proceedings in respect of such pre-existing dispute(s) – Directed. **(Sabarmati Gas Limited v. Shah Alloys Limited, (2023) 3 SCC 229)**

Insolvency and Bankruptcy Code, 2016 - Ss. 238-A and 9- Non- consideration of developed law on the applicability of S. 18 of the Limitation Act to IBC proceedings - Non-consideration of relevant material on the said issue, in the present case the letter claimed as acknowledgment of liability. Limitation period for initiating proceedings under IBC - Extension of, when there is acknowledgment of liability. **(SVG Fashions Private Limited (earlier known as SVG Fashions Limited) v. Ritu Murli Manohar Goyal and another, (2023) 2 SCC 205)**

LAND ACQUISITION, REHABILITATION AND RESETTLEMENT ACT

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 -S. 24(2)-Lapse of acquisition proceedings is not occasioned where possession of land could not be taken due to pendency of litigation initiated by the landowners challenging the acquisition proceedings. **(Government of NCT of Delhi and another v. Sudesh Verma and another, (2023) 1 SCC 31)**

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 -S. 24(2) Lapse of acquisition proceedings is not occasioned where possession of land could not be taken due to pendency of litigation initiated by the landowners challenging the acquisition proceedings. **(Government of NCT of Delhi v. Subhash Jain and others, (2023) 1 SCC 35)**

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 S. 24(2) - Lapse of acquisition proceedings. Non-payment of compensation is not a ground occasioning the same where possession of land taken. Further reiterated, subsequent purchaser does not have locus standi to claim lapse of proceedings under the 2013 Act. **(Government of NCT of Delhi and another v. Karampal and another, (2023) 1 SCC 39)**

Right to Fair Compensation and - Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 S. 24(2) Lapse of acquisition proceedings. Allegation of non- payment of compensation and dispute regarding possession of land. Records indicating possession of land taken by authorities by following procedure laid down under the Land Acquisition Act, 1894. Hence held, as possession was taken land vests with State and alleged possession of original landowners of the said land thereafter is illegal. Acquisition proceedings under the

1894 - Act, held, did not lapse. **(Government of NCT of Delhi and another v. Ram Prakash Sehrawat and others, (2023) 2 SCC 348)**

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 -S. 24(2)-Lapse of acquisition proceedings-Reiterated, is not occasioned if possession has been taken, but compensation has not been paid, as in present case. Land Acquisition Act, 1894, Ss. 11 and 16. **(Government of NCT of Delhi v. Krishna Saini and others, (2023) 1 SCC 170)**

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 S. 24(2) Lapse of acquisition proceedings - Non-payment of compensation is not ground, where possession of land taken. Writ petition by subsequent purchaser claiming lapse of proceedings, reiterated, not maintainable. **(Government of NCT of Delhi and another v. Mohd. Zubair and another, (2023) 1 SCC 174)**

Sec. 24(2)—Land Acquisition—Lapse of—Possession of land was handed over to Authority

In paragraph 366 of Indore Development Authority, the Constitution Bench authority of supreme court has observed and held as under:-

366. In view of the aforesaid discussion, we answer the questions as under:

366.1. Under the provisions of Section 24(1) (a) in case the award is not made as on 1-1-2014, the date of commencement of the 2013 Act, there is no lapse of proceedings. Compensation has to be determined under the provisions of the 2013 Act.

366.2. In case the award has been passed within the window period of five years excluding the period covered by an interim order of the court, then proceedings shall continue as provided under Section 24(1)(b) of the 2013 Act under the 1894 Act as if it has not been repealed.

366.3. The word "or" used in Section 24(2) between possession and compensation has to be read as "nor" or as "and". The deemed lapse of land acquisition proceedings under Section 24(2) of the 2013 Act takes place where due to inaction of authorities for five years or more prior to commencement of the said Act, the possession of land has not been taken nor compensation has been paid. In other words, in case possession has been taken, compensation has not been paid then there is no lapse. Similarly, if compensation has been paid, possession has not been taken then there is no lapse.

366.4. The expression “paid” in the main part of Section 24(2) of the 2013 Act does not
include a deposit of compensation in court. The consequence of non-deposit is provided in the proviso to Section 24(2) in case it has not been deposited with respect to majority of landholdings
then all beneficiaries (landowners) as on the date of notification for land acquisition under Section 4 of the 1894 Act shall be entitled to compensation in accordance with the provisions of the 2013 Act.

In case the obligation under Section 31 of the Land Acquisition Act, 1894 has not been fulfilled, interest under Section 34 of the said Act can be granted. Non-deposit of compensation (in court) does not result in the lapse of land acquisition proceedings. In case of non-deposit with respect to the majority of holdings for five years or more, compensation under the 2013 Act has to be paid to the “landowners” as on the date of notification for land acquisition under Section 4 of the 1894 Act.

366.5. In case a person has been tendered the compensation as provided under Section 31(1) of the 1894 Act, it is not open to him to claim that acquisition has lapsed under Section 24(2) due to non-payment or non-deposit of compensation in court. The obligation to pay is complete by tendering the amount under Section 31(1). The landowners who had refused to accept compensation or who sought reference for higher compensation, cannot claim that the acquisition proceedings had lapsed under Section 24(2) of the 2013 Act.

366.6. The proviso to Section 24(2) of the 2013 Act is to be treated as part of Section 24(2), not part of Section 24(1)(b).

366.7. The mode of taking possession under the 1894 Act and as contemplated under Section 24(2) is by drawing of inquest report/memorandum. Once award has been passed on taking possession under Section 16 of the 1894 Act, the land vests in State there is no divesting provided under Section 24(2) of the 2013 Act, as once possession has been taken there is no lapse under Section 24(2).

366.8. The provisions of Section 24(2) providing for a deemed lapse of proceedings are applicable in case authorities have failed due to their inaction to take possession and pay compensation for five years or more before the 2013 Act came into force, in a proceeding for land acquisition pending with the authority concerned as on 1-1-2014. The period of subsistence of interim orders passed by court has to be excluded in the computation of five years.

366.9. Section 24(2) of the 2013 Act does not give rise to new cause of action to question the legality of concluded proceedings of land acquisition. Section 24 applies to a proceeding pending on the date of enforcement of the 2013 Act i.e. 1-1-2014. It does not revive stale and time-barred claims and does not reopen concluded proceedings nor allow landowners to question the legality of mode of taking possession to reopen proceedings or mode of deposit of compensation in the treasury

instead of court to invalidate acquisition." **[Lucknow Development Authority vs. Mehdi Hasan (Deceased) Thr. LRs., AIR 2023 SC 174]**

Sec. 23—Market value—Determination—

Supreme Court in State of Gujarat vs. Kakhot SinghJi VajesinghJi Vaghela (1968) 3 SCR 692. This Court had enunciated the principle that the price agreed between a willing seller and a willing purchaser would be the price which is generally prevailing in the market in respect of the lands having similar advantages which can be the basis to determine the market value of acquired lands if such sale instances are brought on record.

Further, the Reference Court had also kept in view the decision of this Court in Atma Singh (Dead) through Lrs. and Ors. vs. State of Haryana and Anr. (2008) 2 SCC 568 wherein it is held that the sale instances of small pieces of land cannot be ignored while determining the compensation for a large extent of land acquired.

The position of law is well settled that when large extent of lands are acquired and if the sale exemplar, also for the large extent is available on record it would be safer to rely on the same if they are comparable transactions. However, as already noted above, this Court in Atma Singh (supra) has also held that the sale instances of smaller extents cannot be ignored. Further, this Court has reiterated in many cases that the sale exemplars for smaller extent can be relied upon subject to appropriate deduction being provided towards development charges.

when large extent of agricultural land is sold under a document and if the land is to be used for agricultural purpose, the price agreed thereto would be based on the nature of the land and the purpose for which it is put to use. In cases, where the large extent of agricultural land belonging to a single owner is acquired, it would no doubt be safe to rely on such sale exemplars of large extents, more particularly, in circumstances where the land which is classified as agricultural land is also used for agricultural purposes. In such circumstances, to arrive at the market value depending on the nature of the cultivation, the capitalisation method by applying the multiplier to the crop pattern and price derived can be adopted and the market value be determined or determine the market value based on such sale deeds which are comparable exemplars.

However, the difficulty arises when a person holds a smaller extent of land which is classified as agricultural land but would have lost its character due to non-cultivation and urbanization when such land is more eminent and fit to be used for non-agricultural purposes. It is in that circumstance, such land though classified as agricultural will have to be treated as a land having nonagricultural potential more particularly for urban use. In that light, in appropriate cases depending on the location and the extent of land held by each of the land losers who is a part of the same acquisition, is required to be kept in view, while applying the yardstick to reckon the

appropriate exemplar and arrive at the ultimate conclusion. Therefore, there can be no strait jacket formula that when the sale deeds for the sale of large extent are available and large extent of lands are acquired that alone should be reckoned as the exemplar. What is material is its comparability, which would depend on case to case basis and that is for the Court to analyze based on the evidence available on record. **[Ravinder Kumar Goel vs. State of Haryana, AIR 2023 SC 1002]**

LIMITATION ACT

Art. 22 and 113 – Issue of Limitation – Decision thereof – The issue of limitation is a mixed question of law and fact – The issue of limitation cannot be decided by ignoring the factual scenario. **Topline Shoes Limtied and another v. Punjab National Bank, 2023 (1) ARC 83 (SC).**

Sec. 5—CPC, 1908, Secs. 100, 149—Court Fees Act, 1870, Sec. 4—Condonation of delay—Sufficient cause—

Supreme Court, while emphasizing the scope of Section 5 of the Limitation Act, in the case of Mahant Bikram Dass Chela versus Financial Commissioner, Revenue, Punjab, Chandigarh And Others, (1977) 4 SCC 69 has held:

> "21. Section 5 of the Limitation Act is a hard task-master and judicial interpretation has encased it within a narrow compass. A large measure of case-law has grown around Section 5, its highlights being that one ought not easily to take away a right which has accrued to a party by lapse of time and that therefore a litigant who is not vigilant about his rights must explain every day's delay. These and similar considerations which influence the decision of Section 5 applications are out of place in cases where the appeal itself is preferred within the period of limitation but there is an irregularity in (1977) 4 SCC 69 presenting it. Thus, in the instant case, there was no occasion to invoke the provisions of Section 5, Limitation Act, or of Rule 4, Chapter I of the High Court Rules. If the Division Bench were aware that Rule 3 of Chapter 2-C is directory, it would have treated the appeal as having been filed within the period of limitation, rendering it inapposite to consider whether the delay caused in filing the appeal could be condoned."

Again apex Court in the case of Basawaraj and Another versus Special Land Acquisition Officer, (2013) 14 SCC 81, while rejecting an application for condonation of delay for lack of sufficient cause has concluded in Paragraph 15 as follows:

> "15. The law on the issue can be summarized to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the "sufficient cause" which means an adequate

and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the (2013) 14 SCC 81 condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature." **[Ajay Dabra vs. Pyare Ram, AIR 2023 SC 698]**

MAHARASHTRA LAND REVENUE (EXTRACTION AND - REMOVAL OF MINOR MINERALS) RULES, 1968

Maharashtra Land Revenue (Extraction and - Removal of Minor Minerals) Rules, 1968-R. 4-A Scope and Object of, stated-Resolution dt. 12-7-2011 in pursuance to Jagpal Singh, (2011) 11 SCC 396 for removal of encroachments or unauthorised construction on barren land/grassy land and on common village land, on facts, held, valid as R. 4-A is not applicable.

Further, refusal to renew permission to "Vadar" community as per Resolution dt. 12-7-2007 in respect of barren lands/grassy lands, any village land owned by local bodies or the Government, would not attract R. 4-A. Said community can get permission in respect of private lands or un-assessed government wasteland. **(Maharashtra Rajya Vadar Samaj Sangh v. Union of India and others, (2023) 1 SCC 43)**

MOTOR VEHICLES ACT

Motor Vehicles Act, 1988 Ss. 166, 168 and 173- Permanent disability- Estimation of functional disability and loss of earning capacity, as against merely determining the extent of physical disability. Necessity of determination of compensation Heads under which damages can be assessed. Distinction between pecuniary losses and non-pecuniary losses- Principles to be adopted by Tribunals/Courts. Extensively surveyed and summarized.

Constitution of India - Art. 21 - Right to dignity- Severe limitations inflicted due to injuries in motor vehicle accidents, held, undermine dignity of the individual, which is now recognized as an intrinsic component of the right to life under Art. 21. Thus, depriving the person of the essence of the right to a wholesome life which she or he

had lived hitherto. **(Sidram v. Divisional Manager, United India Insurance Company Limited and another, (2023) 3 SCC 439)**

Sec. 168—Compensation—Loss of income due to disability—Determination

The Appellant has suffered an amputation of the lower right limb, a fracture in the medial wall of the bilateral orbit, crush injury right leg, fracture tibia right leg, exposed vessels and other injuries. As per the disability certificate, the Appellant has suffered 70% disability, however the High Court has held that the Appellant has only suffered 35% loss in future earnings due to the disability.

To assess the quantum of compensation to be awarded, this Court has to assess whether the permanent disability caused has any adverse effect on the earning capacity of the Appellant, as held by this Court in the case of Sandeep Khanuja Vs. Atul Dande and Anr. (2017) 3 SCC 351. The relevant paragraph of the judgment is quoted hereunder:-

"The crucial factor which has to be taken into consideration thus is to assess whether the permanent disability has any adverse effect on the earning capacity of the injured. We feel that the conclusion of the MACT on the application of aforesaid test is erroneous. A very myopic view is taken by the MACT in taking the view that 70% permanent disability suffered by the appellant would not impact the earning capacity of the appellant. The MACT thought that since the appellant is a chartered accountant he is supposed to do sitting work and therefore his working capacity is not impaired. A person who is engaged and cannot freely move to attend to his duties may not be able to match the earning in comparison with the one who is healthy and bodily able. Movements of the appellant have been restricted to a large extent and that too at a young age."

This Court has also laid out in the case of Raj Kumar Vs Ajay Kumar and Anr., (2011) 1 SCC 343 that where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation for loss of future earnings would depend upon the impact and effect of the Permanent Disability on his earning capacity. This Court observed as under :-

"Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings, would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, that is, percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent disability. Some Tribunals wrongly assume that in all cases, a particular extent (percentage) of permanent disability would result in a corresponding loss of earning

capacity, and consequently, if the evidence produced show 45% as the permanent disability, will hold that there is 45% loss of future earning capacity. In most of the cases, equating the extent (percentage) of loss of earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high a compensation. What requires to be assessed by the Tribunal is the effect of the permanently disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation."

The Appellant herein has suffered permanent disability of 70% and has an amputated right lower limb amongst other injuries. The High Court has wrongly taken the view that the Appellant has only suffered 35% functional disability. The Appellant is not a salaried person but is self-employed who manages his business. For the Appellant to be able to augment his income, he is most definitely required to move around. The Appellant can also not drive on his own, which hinders his mobility further. This proves that the functional disability of the Appellant will severely impact his earning capacity, and the 35% functional disability calculated by the High Court is incorrect in the facts and circumstances of the case and in our view the loss of future earning capacity must be calculated at 60%.

It is also to be noted that even if the income of the Appellant had increased after the accident, it would not be enough grounds to disable the Appellant from claiming compensation for future prospect as the rise in income may be attributed to multiple other factors. **[Mohd. Sabeer @ Shabir Hussain vs. Regional Manager, U.P. State Road Transport Corporation, AIR 2023 SC 186]**

PREVENTION OF CORRUPTION ACT, 1988

Public Accountability, Vigilance and Prevention of Corruption - Prevention of Corruption Act, 1988 - Section 19-Sanction for prosecution: Opinion of CVC on whether sanction should be granted. It has been held, though opinion of CVC is only advisory, it is nevertheless a valuable input in the decision-making process of the appointing authority. However, the final decision of the appointing authority must be of its own, by application of independent mind.

It has been held that five legislations on the subject of corruption being CrPC, the DSPE Act, the PC Act, the CVC Act, and the Lokpal Act operate as

integrated scheme and as per this statutory scheme, the appointing authority could call for, seek and consider the advice of CVC. Thus, by doing so, it can neither be termed as acting under dictation nor a factor which could be referred to as an irrelevant consideration.

Public Accountability, Vigilance and Prevention of Corruption - Prevention of Corruption Act, 1988 - Section 19(1) and provisos thereto - Sanction for prosecution - Periods specified in provisos to Section 19(1) within which issue of grant of sanction must be determined. Whether mandatory Consequences of non-compliance therewith-Explained. **(Vijay Rajmohan v. Central Bureau of Investigation (Anti-Corruption Branch), (2023) 1 SCC 329)**

Secs. 7, 13(1)(d), 13(2), 20 Prevention of Corruption Act—Illegal gratification—Demand and acceptance—Nature and quality of proof necessary to sustain conviction

General rules regarding appreciation of evidence are summarized as under:

(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 in turn there is Criminal Appeal No.1669 of 2009 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 Criminal Appeal No.1669 of 2009 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.**[Neeraj Dutta vs. State (Govt. of NCT of Delhi), AIR 2023 SC 330]**

Section 19(1) Prevention of Corruption Act, Prosecution of Public Servant, Grant of sanction

The matter was related to the prosecution of public servant under Prevention of Corruption Act and Central Vigilance Act. The issue was related to grant of sanction, it was held by the Supreme Court-

It is evident from the above referred formulation that the position of law and the legal regime obtained by virtue of the five legislations on the subject of corruption, operates as integrated scheme. The five legislations being the Cr.P.C, DSPE Act, PC Act, CVC Act, and Lokpal Act, must be read together to enable the authorities to sub-serve the common purpose and objectives underlying these legislations. The Central Vigilance Commission, constituted under the CVC Act is specifically entrusted with the duty and function of providing expert advice on the subject. It may be necessary for the appointing authority to call for and seek the opinion of the CVC before it takes any decision on the request for sanction for prosecution. The statutory scheme under which the appointing authority could call for, seek and consider the advice of the CVC can neither be termed as acting under dictation nor a factor which could be referred to as an irrelevant consideration. The opinion of the CVC is only advisory. It is nevertheless a valuable input in the decision-making process of the appointing authority. The final decision of the appointing authority must be of its own by application of independent mind. The issue is, therefore, answered by holding that there is no illegality in the action of the appointing authority, the DoPT, if it calls for, refers, and considers the opinion of the Central Vigilance Commission before it takes its final decision on the request for sanction for prosecuting a public servant.

Returning to the case facts, we have examined the correspondence and the long-drawn communications between the CBI, the DoPT, and the CVC. We found that the inquiry made by the appointing authority, the DoPT, was only for soliciting further information, and particularly the opinion given by CVC is also advisory. The sanction order of the DoPT dated 24.07.2017 is an independent decision of the department that was taken based on the material before it. Under these circumstances, we are not inclined to accept the first submission made on behalf of the Appellant that the order of sanction suffers from illegality due to non-application of mind or acting under dictation. Re: Issue No. 2: Whether the criminal proceedings could be quashed for the delay in the issuance of the sanction order?

It is in between these competing interests that the Court must maintain the delicate balance. While arriving at this balance, the Court must keep in mind the duty cast on the competent authority to grant sanction within the stipulated period of time. There must be a consequence of dereliction of duty to giving sanction within the time specified. The way forward is to make the appointing authority accountable for the delay in the grant of sanction.

Accountability in itself is an essential principle of administrative law. Judicial review of administrative action will be effective and meaningful by ensuring accountability of the officer or authority in charge.

Sanctioning authority and the corrupt officials were or are partners in the same misdeeds…….

By causing delay in considering the request for sanction, the sanctioning authority stultifies judicial scrutiny and determination of the allegations against corrupt official and thus the legitimacy of the judicial institutions is eroded. It, thus, deprives a citizen of his legitimate and fundamental right to get justice by setting the criminal law in motion and thereby frustrates his right to access judicial remedy which is a constitutionally protected right…….

The principle of accountability is considered as a cornerstone of the human rights framework. It is a crucial feature that must govern the relationship between "duty bearers" in authority and "right holders" affected by their actions. Accountability of institutions is also one of the development goals adopted by the United Nations in 201530 and is also recognized as one of the six principles of the Citizens Charter Movement31.

Accountability, as a principle of administrative law, when applied to the issue that we are dealing with, translates in this manner. Responsibility for grant of sanction for prosecution of a public servant under Section 19 of the PC Act is always vested in the appointing authority. Identification of appointing authority is always clear and straightforward. The 2018 amendment specifically obligates the appointing authority to convey the decision within three months and to provide for the reasons to be recorded in writing for the extended period of one month. This amendment, in fact, evidences legislative incorporation of answerability, the second constituent of accountability. For enforceability, Parliament has expressly empowered the Central Vigilance Commission under Section 8(1)(f) of the CVC Act to review the progress of the applications pending with the competent authorities, and this function must take within its sweep the power to deal with the consequences of failure of the competent authority to comply with its statutory duty. This power and responsibility of CVC is clear from the provisions of the statute and decipherable from functions entrusted to it.

In conclusion, we hold that upon expiry of the three months and the additional one-month period, the aggrieved party, be it the complainant, accused or victim, would be entitled to approach the concerned writ court. They are entitled to seek appropriate remedies, including directions for action on the request for sanction and for the corrective measure on accountability that the sanctioning authority bears. This is especially crucial if the non- grant of sanction is withheld without reason, resulting in the stifling of a genuine case of corruption. Simultaneously, the CVC

shall enquire into the matter in the exercise of its powers under Section 8(1)(e) and (f) and take such corrective action as it is empowered under the CVC Act.

The second issue is answered by holding that the period of three months, extended by one more month for legal consultation, is mandatory. The consequence of non-compliance with this mandatory requirement shall not be quashing of the criminal proceeding for that very reason. The competent authority shall be Accountable for the delay and be subject to judicial review and administrative action by the CVC under Section 8(1)(f) of the CVC Act.

Returning to the facts of the present case, we have noticed that the CBI made the application for sanction for prosecution on 08.09.2015, and the same was granted on 24.07.2017, i.e., after one year and ten months. As the Appellant did not question the legality of the delay either before the Trial or the High Court but chose to confine the challenge only to the appointing authority acting under the dictation of the CVC, there was no occasion for CBI to respond to the submission of delay. The submission was raised for the first time before this Court. Though the learned ASG submitted that this plea should not be permitted to be raised, without standing on a technicality, we would have proceeded to examine the matter if the necessary material were on record of the case. As there is no material placed on record to examine the accountability of the appointing authority for not deciding the request for sanction within time, we leave it to the Appellant to seek appropriate remedy based on principles that we have laid down hereinabove.

It was held that sanction order of DoPT is an independent decision of department that was taken on the material placed before it. The legality of delay was not challenge before the Trial Court or High Court. Hence, the order of sanction does not suffer from illegality due to non-application of mind or acting under dictation or for not deciding request for sanction within time. (**Vijay Rajmohan v. State Represented by The Inspector of Police, CBI, ACB Chennai, Tamil Nadu, 2023 Cri.L.J. 863 : AIR Online 2022 SC 487)**

PREVENTION OF MONEY LAUNDERING ACT

Sec. 44(1)(a)(c)—Criminal P.C., 1974, S. 177—Offence of money laundering—Territorial jurisdiction—Combined reading of S. 44 of the PMLA and Ss. 177 to 184 of the Cr.P.C. shows that in view of specific mandate of S. 44(1)(a), (c), it is the Special Court constituted under the PMLA that would have jurisdiction to try even the scheduled offence—

As pointed out by this Court in **Kaushik Chatterjee vs. State of Haryana & Ors., 2020 (10) SCC 92,** the question of territorial jurisdiction in criminal cases revolves around, (i) place of commission of the offence; or (ii) place where the

consequence of an act, both of 2020 (10) SCC 92 which constitute an offence, ensues; or (iii) place where the accused was found; or (iv) place where the victim was found; or (v) place where the property in respect of which the offence was committed, was found; or (vi) place where the property forming the subject-matter of an offence was required to be returned or accounted for, etc., according as the case may be.

As articulated in Kaushik Chatterjee (supra), the jurisdiction of a civil court is limited by territorial as well as pecuniary limits, but the jurisdiction of a criminal court is determined by (i) the offence; and/or (ii) the offender.

The discussion on the question of territorial jurisdiction in terms of the provisions of the Cr.P.C can be cut short by extracting the principles culled out in paragraphs 19 to 21 of the decision in Kaushik Chatterjee. They read as follows:

> "19. Chapter XIII of the Code of Criminal Procedure, 1973 contains provisions relating to jurisdiction of criminal courts in inquiries and trials. The Code maintains a distinction between (i) inquiry; (ii) investigation; and (iii) trial. The words "inquiry" and "investigation" are defined respectively, in clauses (g) and (h) of Section 2 of the Code.
>
> 20. The principles laid down in Sections 177 to 184 of the Code (contained in Chapter XIII) regarding the jurisdiction of criminal courts in inquiries and trials can be summarised in simple terms as follows:
>
> 20.1. Every offence should ordinarily be inquired into and tried by a court within whose local jurisdiction it was committed. This rule is found in Section 177. The expression "local jurisdiction" found in Section 177 is defined in Section 2(j) to mean "in relation to a court or Magistrate, means the local area within which the court or Magistrate may exercise all or any of its or his powers under the Code".
>
> 20.2. In case of uncertainty about the place in which, among the several local areas, an offence was committed, the Court having jurisdiction over any of such local areas may inquire into or try such an offence.
>
> 20.3. Where an offence is committed partly in one area and partly in another, it may be inquired into or tried by a court having jurisdiction over any of such local areas. 20.4. In the case of a continuing offence which is committed in more local areas than one, it may be inquired into or tried by a court having jurisdiction over any of such local areas.
>
> 20.5. Where an offence consists of several acts done in different local areas it may be inquired into or tried by a court having jurisdiction over any of such local areas. (Numbers 2 to 5 are traceable to Section 178)
>
> 20.6. Where something is an offence by reason of the act done, as well as the consequence that ensued, then the offence may be inquired into or tried by a court within whose local jurisdiction either the act was done or the consequence ensued. (Section 179)

20.7. In cases where an act is an offence, by reason of its relation to any other act which is also an offence, then the first mentioned offence may be inquired into or tried by a court within whose local jurisdiction either of the acts was done. (Section 180)

20.8. In certain cases such as dacoity, dacoity with murder, escaping from custody, etc., the offence may be inquired into and tried by a court within whose local jurisdiction either the offence was committed or the accused person was found.

20.9. In the case of an offence of kidnapping or abduction, it may be inquired into or tried by a court within whose local jurisdiction the person was kidnapped or conveyed or concealed or detained.

20.10. The offences of theft, extortion or robbery may be inquired into or tried by a court within whose local jurisdiction, the offence was committed or the stolen property was possessed, received or retained.

20.11. An offence of criminal misappropriation or criminal breach of trust may be inquired into or tried by a court within whose local jurisdiction the offence was committed or any part of the property was received or retained or was required to be returned or accounted for by the accused person.

20.12. An offence which includes the possession of stolen property, may be inquired into or tried by a court within whose local jurisdiction the offence was committed or the stolen property was possessed by any person, having knowledge that it is stolen property. (Nos. 8 to 12 are found in Section 181)

20.13. An offence which includes cheating, if committed by means of letters or telecommunication messages, may be inquired into or tried by any court within whose local jurisdiction such letters or messages were sent or received. 20.14. An offence of cheating and dishonestly inducing delivery of the property may be inquired into or tried by a court within whose local jurisdiction the property was delivered by the person deceived or was received by the accused person.

20.15. Some offences relating to marriage such as Section 494 IPC (marrying again during the lifetime of husband or wife) and Section 495 IPC (committing the offence under Section 494 with concealment of former marriage) may be inquired into or tried by a court within whose local jurisdiction the offence was committed or the offender last resided with the spouse by the first marriage. (Nos. 13 to 15 are found in Section 182)

20.16. An offence committed in the course of a journey or voyage may be inquired into or tried by a court through or into whose local jurisdiction that person or thing passed in the course of that journey or voyage. (Section 183).

20.17. Cases falling under Section 219 (three offences of the same kind committed within a space of twelve months whether in respect of the same person or not), cases falling under Section 220 (commission of more offences

than one, in one series of acts committed together as to form the same transaction) and cases falling under Section 221, (where it is doubtful what offences have been committed), may be inquired into or tried by any court competent to inquire into or try any of the offences. (Section 184).

Apart from Sections 177 to 184, which lay down in elaborate detail, the rules relating to jurisdiction, Chapter XIII of the Code also contains a few other sections. Section 185 empowers the State Government to order any case or class of cases committed for trial in any district, to be tried in any Sessions Division. Section 186 empowers the High Court, in case where two or more courts have taken cognizance of the same offence and a question as to which of them should inquire into or try the offence has arisen, to decide the district where the inquiry or trial shall take place. Section 187 speaks of the powers of the Magistrate, in case where a person within his local jurisdiction, has committed an offence outside his jurisdiction, but the same cannot be inquired into or tried within such jurisdiction. Sections 188 and 189 deal with offences committed outside India."

Clause (a) of sub-section (1) of Section 44 leaves no semblance of any doubt that the offence of money-laundering is triable only by the Special Court constituted for the area in which the offence of money-laundering has been committed. To find out the area in which the offence of money-laundering has been committed, we may have to go back to the definition in Section 3 of the PMLA.

As we have pointed out earlier, the involvement of a person in any one or more of certain processes or activities connected with the proceeds of crime, constitutes the offence of money- laundering. These processes or activities include, (i) concealment; (ii) possession; (iii) acquisition; (iv) use; (v) projecting as untainted property; or (vi) claiming as untainted property.

In other words, a person may (i) acquire proceeds of crime in one place, (ii) keep the same in his possession in another place, (iii) conceal the same in a third place, and (iv) use the same in a fourth place. The area in which each one of these places is located, will be the area in which the offence of money- laundering has been committed. To put it differently, the area in which the place of acquisition of the proceeds of crime is located or the place of keeping it in possession is located or the place in which it is concealed is located or the place in which it is used is located, will be the area in which the offence has been committed.

In addition, the definition of the words "proceeds of crime" focuses on "deriving or obtaining a property" as a result of criminal activity relating to a scheduled offence. Therefore, the area in which the property is derived or obtained or even held or concealed, will be the area in which the offence of money- laundering is committed.

Therefore, the question of territorial jurisdiction in this case requires an enquiry into a question of fact as to the place where the alleged proceeds of crime were (i) concealed; or (ii) possessed; or (iii) acquired; or (iv) used. This question of fact will

actually depend upon the evidence that unfolds before the Trial Court. It will be useful in this regard to extract Paragraph 38 of the decision in Kaushik Chatterjee which reads as follows: -

"38. But be that as it may, the upshot of the above discussion is:

38.1. That the issue of jurisdiction of a court to try an "offence" or "offender" as well as the issue of territorial jurisdiction, depend upon facts established through evidence.

38.2. That if the issue is one of territorial jurisdiction, the same has to be decided with respect to the various rules enunciated in Sections 177 to 184 of the Code.

38.3. That these questions may have to be raised before the court trying the offence and such court is bound to consider the same." **[Rana Ayyub vs. Directorate of Enforcement through its Assistant Director, AIR 2023 SC 875]**

PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012

POCSO, quashing of FIR u/s 482

The matter was related to sexual assault against minor tribal girls in girl's hostel. Accused was medical practitioner appointed for the treatment of girls. The matter was regarding quashing of FIR and inherent power of the court. The offence was related to the Sections 7, 19,21 POCSO Act. It was held by Hon'ble Supreme Court that-

"Prompt and proper reporting of the commission of offence under the POCSO Act is of utmost importance and we have no hesitation to state that its failure on coming to know about the commission of any offence thereunder would defeat the very purpose and object of the Act. We say so taking into account the various provisions thereunder. Medical examination of the victim as also the accused would give many important clues in a case that falls under the POCSO Act. Section 27 (1) of the POCSO Act provides that medical examination of a child in respect of whom any offence has been committed under the said Act, shall, notwithstanding that a First Information Report or complaint has not been registered for the offence under the Act, be conducted in accordance with Section 164 A of the Cr.P.C., which provides the procedures for medical examination of the victim of rape.

In this contextual situation, it is also relevant to refer to Section 53 A of Cr.P.C. that mandates for examination of a person accused of rape by a medical practitioner. It is also a fact that clothes of the parties would also offer very reliable evidence in cases of rape. We refer to the aforesaid provisions only to stress upon the fact that a prompt reporting of the commission of an offence under POCSO Act would enable immediate examination of the victim concerned and at the same time, if it was committed by an unknown person, it would also enable the investigating

agency to commence investigation without wasting time and ultimately to secure the arrest and medical examination of the culprit. There can be no two views that in relation to sexual offences medical evidence has much corroborative value.

If FIR and the materials collected disclose a cognizable offence and the final report filed under Section 173(2), Cr.P.C. on completion of investigation based on it would reveal that the ingredients to constitute an offence under the POCSO Act and a prima facie case against the persons named therein as accused, the truthfulness, sufficiency or admissibility of the evidence are not matters falling within the purview of exercise of power under Section 482 Cr.P.C. and undoubtedly they are matters to be done by the Trial Court at the time of trial. This position is evident from the decisions referred supra.

Thus, a bare perusal of the above extracted recitals from paragraph No.10 of the impugned judgment would reveal that the High Court had gone through the statements of victims/witnesses cited by the prosecution, to arrive at the conclusion as to the existence or otherwise of evidence against the respondent. In view of the provisions referred above and also plethora of decisions including the decisions in M.L. Bhatt's case and in Rajeev Kourav's case , statements recorded under Section 161 Cr.P.C. are inadmissible in evidence and, therefore, could not have been made the basis for arriving at such conclusions. As noted above, the FIR carries suspicion of commission of sexual assault and the charge-sheet reveals prima facie against the respondent in relation to non-reporting of such an offence under the POCSO Act. The very case of the Appellant is that some among the seventeen victims have given statements under Section 161, Cr.P.C. and some others under Section164 Cr.P.C., specifically stating that the respondent was informed of the sexual assault on them.

When that be the position, we have no doubt that the High Court should not have embarked upon an enquiry, especially by looking into the statements of the victims recorded as also their teacher to form an opinion regarding the availability of evidence to connect the Respondent with the crime. True that the FIR and the charge sheet still remain in fact in respect of the other accused. But then, non-reporting of sexual assault against a minor child despite knowledge is a serious crime and more often than not, it is an attempt to shield the offenders of the crime of sexual assault. Be that as it may in view of the decision in Shankar Kisan Rao Khade's case holding non-reporting of such a crime as serious and in view of the position obtained from a conjoint reading of Sections 19(1) and 21 of POCSO Act, such persons are also liable to be proceeded with, in accordance with law. In this context, it is also relevant to refer to an observation made by this Court in the said case that this Court under parens patriae jurisdiction has a duty to give directions for compliance of the provisions under the POCSO Act."

It was held truthfulness, sufficiency or admissibility of evidence are not matters falling within the purview of exercise of power u/s 482 Cr.P.C., if

investigation based of FIR discloses components essential to constitute offence under POCSO Act and prima facie case has been made out against persons identified therein as accused FIR not liable to quashed. (**State of Maharashtra v. Dr. Maroti S/o Kashinath Pimpalkar, 2023 Cri.L.J. 818 :AIR Online 2022 SC 824)**

RECOVERY OF DEBTS AND BANKRUPTCY ACT, 1993

Recovery of Debts and Bankruptcy Act, 1993-Ss. 18, 19, 17, 2(g) and 31 – Maintainability of Civil suit by borrower against Bank/Financial Institution in relation to proceedings for recovery of debt already initiated by Bank/Financial Institution.

The jurisdiction of a civil court to try a suit filed by a borrower against a bank or financial institution was held not ousted by virtue of the scheme of the RDB Act in relation to proceedings for recovery of debt by a bank or financial institution However, the proceedings under the RDB Act will not be impeded in any manner by filing of a separate suit before the civil court by the borrower.

Transfer to DRT of independent civil suit filed by a borrower against Bank/Financial Institution, which has applied for recovery of its loan against the plaintiff under the RDB Act i.e. for being tried along with the application under the RDB Act by DRT - Impermissibility of - Jurisdiction under S. 151 CPC for transfer suit Non-exercisability of, in such a case. **(Bank of Rajasthan Limited v. VCK Shares and Stock Broking Services Limited, (2023) 1 SCC 1)**

REGISTRATION ACT

Secs. 32, 33, 60—Sale deed—Validity—Issue regarding proof of execution of sale deed by alleged holder of power of attorney where the power of attorney was not produced in Court—Divergent views expressed

In the instant case the original owner, had shifted to East Pakistan, and being unable to repay the loan which he had taken from plain- tiff no. 2. executed a Power of Attorney be- fore the 1st Class Magistrate, Komilla, East Pakistan appointing plaintiff No.2 as his attorney. On the strength of the aforesaid power of attorney plaintiff No.2 sold the property to himself, as a result he became the absolute owner and as the absolute owner, executed registered sale deed in favour of his wife. The plaintiffs had instituted the suit for declaration of title, to which they were laying claim by virtue of the two sale deeds, one executed by plaintiff No.2 in his favour on the basis of the alleged POA and the second sale deed executed by plaintiff No.2 in favour of plaintiff No.1. Both, the Trial Court as well as the first appellate Court held that the plaintiffs had failed to prove their title as the POA on the basis of which

plaintiff No.2 claimed the right/title was not forthcoming and/or not produced before the Court. There- fore both, the Trial Court as well as the first appellate Court held that the requirement of S. 33(1)(c) of the Registration Act had not been satisfied. However, by drawing the statutory presumption under S.60 of the Registration Act, the High Court had believed both sale deeds and held that the plaintiffs had proved their title. The High Court had set aside the concurrent findings recorded by the Subordinate courts.

The suit was rightly dismissed by the trial court on the ground of non-compliance of S 33(11)(C)of the Registration Act. The requirement of S.33(1)(c) of the Registration Act had not been satisfied at all. S. 32 of the Registration Act is to be read along with S.33(1)(c) of the Registration Act. Only in a case where the execution of the PoA is as per Section 32 read with Section 33(1)(c) of the Act, there shall be statutory presumption under S.60 and/ or under the provisions of the Registration Act. The PoA was not produced on record. The executant of the PoA in favour of plain- tiff No.2 had not stepped into the witness box. There was non-compliance of S.33(1)(c) of the Registration Act. Trial Court was justified and right in dismissing the suit and re- fusing to pass a decree for a declaration of title in favour of the plaintiffs. The same was rightly confirmed by the first appellate Court. The High Court committed a serious error in decreeing the suit in favour of plaintiffs. The impugned judgment and order of the High Court was unsustainable both, on law as well as on facts. **[Manik Majumdar vs. Dipak Kumar Saha (Dead) Through LRs., AIR 2023 SC 506]**

RIGHTS OF PERSONS WITH DISABILITIES ACT

Human and Civil Rights-Rights of Persons with Disabilities Act, 2016 -Ss. 2(r), (s), (m), (y), 3, 17(i), 18, 31 to 37, Chs. III, VI and Sch. Entry 2(a) - Right to inclusive education - Universal and non-discriminatory access to education-Expression “reasonable accommodation” defined in S. 2(y) r/w duty under S. 17 of the RPWD Act, 2016 to make suitable modifications in the curriculum and examination system to meet the needs of PwD students.

It has been held that the right to inclusive education is realized through the provision of reasonable accommodation. Reasonable accommodation is at the heart of the principle of equality and non-discrimination espoused under the RPWD Act, 2016. The denial of reasonable accommodation to a PwD amounts to discrimination. It is the positive obligation of the State to create the necessary conditions to facilitate the equal participation of disabled persons in society.

Human and Civil Rights - Rights of Differently-Abled/Disabled Persons and Mental Health Education and Public Employment. NEET Examination-Right to inclusive education of a Person with Disability (PWD) and right to reasonable

accommodation. Certificate on basis of which relaxations like compensatory time and scribe, etc. can be claimed at the stage of exam. **(Avni Prakash v. National Testing Agency (NTA) and others, (2023) 2 SCC 286)**

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

Debt, Financial and Monetary Laws - Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002-S. 26-E r/w Ss. 13(2), 13(4) and 14 Recovery under the SARFAESI Act-Priority of, over that under MSMED Act-Non obstante clauses in both SARFAESI Act (i.e. S. 26-A) and MSMED Act (i.e. S. 24)- Non-repugnancy and effect of Clarified.

Debt, Financial and Monetary Laws Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002- Ss. 14, 13 and 17-Absence of jurisdiction of authorities concerned under S. 14 to adjudicate on dispute between secured creditor and debtor- Principles reiterated. **(Kotak Mahindra Bank Limited v. Girnar Corrugators Private Limited and others, (2023) 3 SCC 210)**

SPECIFIC RELIEF ACT, 1963

S. 20 and 16 – Relief of Specific Performance – Grant of – The provisions of S. 16 of the Act have to be mandatorily complied with by the party seeking the relief of specific performance – The relief of specific performance cannot be granted in favor of a party who has not performed his obligations under the contract-

Evidence – Allowing of – No evidence can be permitted to let in in the absence of averments in the plaintiff/pleadings-

In the absence of compliance with the elementary requirements of S. 16 of the Act, enhancement of compensation cannot be employed as a device to allow specific performance in cases where the plaintiff has not performed his obligations under the contract as in the instant case – The conduct of plaintiff not reflective of his readiness as well as willingness on his part to pursue the agreement of sale of in terms of S. 16 (c) of the Act –Dismissal of the suit proper. **C. Haridasan v. Anaappath Parakkattu Vasudeva Kurup and Others, 2023(1) ARC 1 (SC)**

Specific Relief Act, 1963-Ss. 10 and 14(1)(a) (as amended by 2018 Amendment Act) - Nature and effect of 2018 Amendment - Mandatory nature of Section 10 post the amendment, when the requisite ingredients are fulfilled - Effect of substitution of Section 14(1)(a) – Explained.

Section 10 is prospective in application, as the amended Section 10 is substantive in nature.

Further held, Section 10 has been converted into a mandatory provision by the amendment, prescribing power the courts have to exercise when the requisite ingredients are fulfilled.

Specific Relief Act, 1963 - Sections 9, 10, 16 and 20 - Where time is of the essence of the contract, and there was breach by the party seeking specific performance, and also suit preferred beyond the limitation period of three years, relief can be granted.

Limitation Act, 1963- Article 54 Suit for specific performance of contract- Issuance of legal notice-When insufficient to get past the bar of limitation. Held, it is only in a case where the time period for performance is not fixed that the purchaser can take recourse to the notices issued and the vendors' reply thereto. In the case at hand, held, fixed time period was clearly mandated by the agreements to sell.

Specific Relief Act, 1963 - Section 12 - Specific performance of part of contract- Where there is no inability on the part of parties to perform-Relief to purchaser in terms of Section 12- Denial of, when claim of purchaser barred by delay, laches and limitation. **(Katta Sujatha Reddy and another v. Siddamsetty Infra Projects Private Limited and others, (2023) 1 SCC 355)**

Restitutionary indemnity provision in PPA Applicability of- Compound interest, as opposed to simple interest, on carrying cost incurred- Grantability of, on restitutionary indemnity principle encapsulated in PPA, as in the present case when what was sought was restitution of interest incurred and paid to the banks at the same rate, due to expense/carrying cost incurred due to a change of law event, as envisaged in the relevant clause(s) of the PPA. **(Uttar Haryana Bijli Vitran Nigam Limited and another v. Adani Power (Mundra) Limited and another, (2023) 2 SCC 624)**

CPC, 1908, OXII, R.6- Suit for declaration of an agreement between parties binding and for specific performance – A notice of motion under O. XII, R. 6, CPC – Seeking decree on admission, which awarded accordingly. Held in exercise of its jurisdiction it was competent to construe the decree by looking into the pleadings.

In the facts of the case herein, this cannot result in additions (to the terms of the consent, embodied in the email dated 28.3.2019) which were not agreed upon by the parties, since the decree was drawn on by consent of both parties at admissions stage itself. Both the single judge and Division Bench of the High Court have interpreted the appellants' silence (manifest in their not filing any written statement) as acquiescence to the inclusion of the loan amount, which, is although worthy of adverse inference, cannot be the reason to justify expansion of the decree. **Sanwarlal Agrawal and others v. Ashok Kumar Kothari and others, 2023(1) ARC 342 – SC.**

Sec. 20—Contract Act, 1872, Sec. 55—Specific performance—Time as essence of contract—Sale agreement—

In Citadel Fine Pharmaceuticals v Ramaniyam Real Estates Private Ltd., (2011) 9 SCC 147 and Saradamani Kandappan v S. Rajalakshmi, (2011) 12 SCC 18 wherein it was held that, defense under Section 55 of Contract Act is valid against anyone who is seeking the relief of specific performance. The facts of the instant case make the observations in Saradamini Kandappan, even more pertinent, which are to the following effect

> "36. The principle that time is not of the essence of contracts relating to immovable properties took shape in an era when market values of immovable properties were stable and did not undergo any marked change even over a few years (followed mechanically, even when value ceased to be stable). As a consequence, time for performance, stipulated in the agreement was assumed to be not material, or at all events considered as merely indicating the reasonable period within which contract should be performed. The assumption was that grant of specific performance would not prejudice the vendor defendant financially as there would not be much difference in the market value of the property even if the contract was performed after a few months. This principle made sense during the first half of the twentieth century, when there was comparatively very little inflation, in India. The third quarter of the twentieth century saw a very slow but steady increase in prices. But a drastic change occurred from the beginning of the last quarter of the twentieth century. There has been a galloping inflation and prices of immovable properties have increased steeply, by leaps and bounds. Market values of properties are no longer stable or steady. We can take judicial notice of the comparative purchase power of a rupee in the year 1975 and now, as also the steep increase in the value of the immovable properties between then and now. It is no exaggeration to say that properties in cities, worth a lakh or so in or about 1975 to 1980, may cost a crore or more now.
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> 43. Till the issue is considered in an appropriate case, we can only reiterate what has been suggested in K.S. Vidyanadam [(1997) 3 SCC 1] :
>
> (i) The courts, while exercising discretion in suits for specific performance, should bear in mind that when the parties prescribe a time/period, for taking certain steps or for completion of the transaction, that must have some significance and therefore time/period prescribed cannot be ignored.

(ii) The courts will apply greater scrutiny and strictness when considering whether the purchaser was "ready and willing" to perform his part of the contract.

(iii) Every suit for specific performance need not be decreed merely because it is filed within the period of limitation by ignoring the time limits stipulated in the agreement. The courts will also "frown" upon suits which are not filed immediately after the breach/refusal. The fact that limitation is three years does not mean that a purchaser can wait for 1 or 2 years to file a suit and obtain specific performance. The three year period is intended to assist the purchasers in special cases, as for example, where the major part of the consideration has been paid to the vendor and possession has been delivered in part performance, where equity shifts in favour of the purchaser."

Hence, in a scenario where the contractual terms clearly provide the factum of the pre estimate amount being in the nature of 'earnest money', the onus to prove that the same was 'penal' in nature squarely lies on the party seeking refund of the same. Failure to discharge such burden would treat any preestimated amount stipulated in the contract as a 'genuine preestimate of loss'. **[Desh Raj vs. Rohtash Singh, AIR 2023 SC 163]**

Sec. 34—Suit for declaration—Decree of possession

A person in possession of land in the assumed character as the owner, and exercising peaceably the ordinary rights of ownership, has a legal right against the entire world except the rightful owner. A decree of possession cannot be passed in favour of the plaintiff on the ground that defendants have not been able to fully establish their right, title and interest in the property. The defendants, being in possession, would be entitled to protect and save their possession, unless the person who seeks to dispossess them has at better legal right in the form of ownership or entitlement to possession. The burden of proof to establish a title lies upon the plaintiff as this burden lies on the party who asserts the existence of a particular state of things on the basis of which she claims relief. The onus of proof, no doubt shifts and the shifting is a continuous process in the evaluation of evidence, but this happens when in a suit for title and possession, the plaintiff has been able to create a high degree of probability to shift the onus on the defendant. In the absence of such evidence, the burden of proof lies on the plaintiff and can be discharged only when he is able to prove title. The weakness of the defence cannot be a justification to decree the suit. **[Smriti Debbarma (Dead) Through Legal Representative vs. Prabha Ranjan Debbarma, AIR 2023 SC 379]**

PART II – HIGH COURT

CIVIL PROCEDURE CODE

First Appellate Court gave specific findings while setting aside the ex-parte judgment and decree that the Defendant Nos. 2 & 3 have made out a sufficient cause for setting aside the ex-parte judgment and decree. But while passing the impugned judgment and order the High Court has not at all dealt with and considered the findings recorded by the First Appellate Court, recorded while setting aside ex-parte judgment and decree.

The High Court has set aside the order passed by the First Appellate Court solely on the ground that as the Defendant Nos. 2 & 3 did not file the written statement and contested the suit, the reopening of the suit would become futile. On restoration of the suit the parties to the suit shall be put to the same position as they were at the time when the ex-parte judgment and decree was passed and the Defendants may not be permitted to file the written statement as no written statement was filed. However, at the same time they can be permitted to participate in the suit proceedings and cross-examine the witnesses. In that view of the matter the impugned judgment and order passed by the High Court is unsustainable.

On setting aside the ex-parte judgment and decree, though the Defendants who had not filed the written statement, can be permitted to participate in the suit and cross-examine the witnesses. As observed hereinabove the High Court has not at all observed anything on the correctness of the order passed by the First Appellate Court setting aside the ex-parte judgment and decree on merits.

In view of the above and for the reason stated above the impugned judgment and order passed by the High Court is hereby set aside. The order passed by the First Appellate Court setting aside the ex-parte judgment and decree and restoring the suit is hereby restored. (**Nanda Dulal Pradhan and Ors. vs. Dibakar Pradhan and Ors (2023 (158) RD 452))**

O. VII, R.11-Limitation At, 1963, Article 59 – Rejection of plaint – Application for – In suit for cancellation of sale-deed on ground of limitation stating the suit instituted three y ears after execution of sale-deed.

The defendants/appellants have preferred the present appeal against the order dated 21.9.2022 passed by the lower appellate Court setting aside the order of the Trial court dated 11.3.2019 by which the Trial Court has rejected the plaint of Original Suit No. 59 of 2012 instituted by the plaintiff/respondent No. 1 for cancellation of sale deed with respect to the suit property on the ground that the suit is barred by limitation. In the present case, the question of limitation is not a pure question of law but a mixed question of fact and law – Upheld the order of lower

appellate court. **Smt. Shazia Khan and another v. Munazir Ali and others, 2023 (1) ARC 216.**

S.115 – Civil Revision – Against an order passed by Motor Accident Claims Tribunal constituted under the Act – Maintainability of – Civil Revision held maintainable -

The issue was settled by the Full Bench of the Court in the year 1997 and the controversy ought to have come to a quietus (supra). A Full Bench of the Karnataka High Court in Union of India represented by its Secretary, Railway Board, New Delhi and others v. Mysore Paper Mills Limited, Bhadravathi, Karnataka State and others, 2003 SCC Online Kar 552: AIR 2004 Kar 1, was confronted with the question whether a Tribunal constituted under the Act was a Court subordinate to the High Court within the meaning of Section 115 of the Code. Their Lordship of the Full Bench of the Karnataka High Court in Mysore Paper Mills (supra) held that the Motor Accident Claims Tribunal established under the Act is not a Court subordinate to the High Court for the purpose of Section 115 of the Code. Noticing the said decision, a Division bench of this Court in Oriental Insurance Company Limited through Divisional Manager, Meerut v. Smt. Manju and others, 2007 SCC Online All 192: (2007) 4 Al LJ 541 (DB), of course, for added reasons, but without noticing the Full Bench decision of our Court in Kamla Yadav (Supra) noted with approval, the view of the Full Bench of the Karnataka High Court that the Tribunal was not a Court subordinate to the High Court for the purpose of Section 115 of the Code. The decision of the Division Bench in Smt. Manju (supra) was not as such about the maintainability of a civil revision, but about the maintainability of a First Appeal from Order from an order of the Tribunal that was not an award and appealable under Section 173 of the Act. Nevertheless, the point was discussed and the decision of the Full Bench of the Karnataka High Court referred to with approval – Civil Revision held maintainable. **Radhey Shyam Singh v. Nagina Devi and others, 2023 (1) ARC 233.**

O. XLVII, R.1. – Review – Power thereof – In review jurisdiction, mere disagreement with the view of the judgment cannot be the ground for invoking the same.

When the review will be maintainable:

i. Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;
ii. Mistake or error apparent on the face of the record;
iii. Any other sufficient reason.

When the review will not be maintainable:

(i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.

(ii) Minor mistakes of inconsequential import;

(iii) Review proceedings cannot be equated with the original hearing of the case. **Vinod Kumar v. State of U.P. and others, 2023(1) ARC 288**.

O.XXVI, R. 9 - Issuance of commission – Application for – On apprehension that status quo would be changed by the defendants – Application rejected.

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.

A perusal of the aforesaid 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 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. **Km. Chandana Mukherji Died Thru. Smt. Sarla v. Addl. District Judge Special Judge P.C. Act Lucknow and another, 2023(1) ARC 423- HC – Lucknow Bench.**

CPC, 1908, S. 100 – Suit for declaration – Trial Court dismissed suit holding suit barred by S. 331 of UPZA and LR Act, Civil Court has no jurisdiction to try it – Appeal against also dismissed – Legality of – The appropriate order to make is to direct a return of the plaint and not dismissal of the suit.

The question in substance is that in a case where the Civil Court finds that the suit is not cognizable by it, but the Revenue Court, what would be the appropriate order to make: a direction to return the plaint or dismissal of the suit -

It is held that in a case where the Civil Court finds that the suit is not cognizable by it but the Revenue Court, the appropriate order to make is to direct a return of the plaint and not dismissal of the suit. **Ishlam v. State of U.P. and others, 2023 (1) ARC 444.**

Civil P.C. (5 of 1908), O.41 R.1, O.22 R.4, O.6 R.17 – Application for correction of error dismissed as not maintainable since not filed under O. 22 R. 4 read with O. 6 R. 17 – Admittedly legal heirs of parts had already been brought on record and duly substituted – O. 22 R.4 read with O. 6 R. 17, not applicable-

So far as Order 22, Rule 4 of the CPC is concerned, suffice to say that the same pertains to the procedure in case of death of one of several defendants or of sole defendant. Order 6, Rule 17 of the CPC pertains to amendment of the pleadings. **Sanjay Kumar v. Addl. Session Judge/Fast Track Court-1 and others, 2023 AIR ACC 199 (All).**

Civil P.C. (5 of 1908), Ss. 17, 16, 20 – Hindu Succession Act (30 of 1956), S. 8 – Suit for declaration – Jurisdiction of court – Plaintiff sued for declaring himself to be Class II successor of entire estate of his deceased brother – Suit filed at Bulandshahr – Properties situated within the jursidction of different courts including Bulandshahr – Suit properly instituted as per S. 17 CPC – Jurisdiction of Bulandshahr Court would not be barred merely because only property that was contested was outside it is jurisdiction – Order of trial court dismissing suit on the ground that as per S. 20 CPC the suit should have been instituted where the defendant resides, liable to be set aside. **Jagat Narain Sharma and others v. Garima Gautam and others, 2023 AIR CC 450 (All).**

C.P.C., 1908 - Order 26 Rule 9 - Application by petitioner for issue of commission – Rejection thereof - Applications under Order 26 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 - Rejection of application held proper - Petition dismissed.

It was observed that 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. **(Km. Chandana Mukherji Died v. Addl. District Judge Special Judge P.C. Act Lko and another, 2023 (41) LCD 733)**

Code of Civil Procedure, 1908 – Consent Decree – Order 23 Rule 3-A – Appeal Against – Not Maintainable – Remedy against consent decree – Can be raise before the Court which passed the decree- UPZA & L.R. Act – Section 341 – Nature & Scope - Explained

Therefore, the only remedy available to a party to a consent decree to avoid such consent decree is to approach the court which recorded the compromise and made a decree in terms of it, and establish that there was no compromise. In that event, the court which recorded the compromise will itself consider and decide the question as to whether there was a valid compromise or not. This is so because a consent decree is nothing but contract between parties superimposed with the seal of

approval of the court. The validity of a consent decree depends wholly on the validity of the agreement or compromise on which it is made. **(Smt. Tarawati and others v. State of U.P. and others, 2023 (41) LCD 107)**

CONSTITUTION OF INDIA

Art. 227 – Civil P.C. (5 of 1908), O.7, R. 2, O. 39, Rr. 1, 2 – Court Fees Act (7 of 1870), Ss. 7 (iv-A) Sch. 2, 6(3), 6-A(ii) – Recall of order – Application for – Plea that determination of the temporary injunction application ought to be postponed until the issues of undervaluation and proper court fee payable are decided-

There is no bar on the power of the Court below to consider the interim prayer without first deciding the issue pertaining to valuation and sufficiency of Court fee. Although it is advisable for the Court to exercise its wisdom and ascertain whether the objection raised in Respect of valuation of the suit or in respect of payment of Court fee has, prima facie, substance or not. **Urmila Devi Varshney v. Garima Varshney and others, 2023 AIR CC 185 (All).**

CRIMINAL PROCEDURE CODE

Sec. 372—IPC, Sec. 302/34—Appeal against acquittal—Right of victim—Ambit and scope of proviso to section 372, Cr.P.C. added by way of amendment inserted by Act 5 of 2019 w.e.f. 31.12.2009—Not retrospective in nature—

Incident allegedly took place on 1.5.2003 and impugned judgment and order of acquittal passed on 2.12.2004—In year 2004 when impugned judgment under challenge was passed. Victim/appellant had no right to challenge impugned order by way of filing appeal. Since, impugned judgment passed much prior to amendment in section 372, Cr.P.C. Therefore, appeal filed by victim clearly not maintainable. Dismissed. **[Triyugi Nath Tiwari vs. State of U.P., 2023 (122) ACC 121]**

Sec. 482—IPC, 1860, Secs. 419, 420 and 406—Quashing of criminal proceedings—Application for—Sustainability—

At stage of quashing only material of prosecution has to be seen. Court cannot delve into correctness of allegation or defence of accused. Only prima facie prosecution has to be looked into. Looking at prima facie allegations against applicant and criminal antecedents of applicant, this Court does not deem it proper to quash the proceedings. Therefore, application dismissed. **[Bal Kumar Patel @ Raj Kumar vs. State of U.P., 2023 (122) ACC 136]**

Secs. 451, 452 and 457—U.P. Prevention of Cow Slaughter Act, 1955, Secs. 3, 5-A and 8—Release of vehicle—Application for—Rejection of—Legality—

Allegation of transportation of leather skin outside of State. No contravention of transportation of cow skin leather from outside of State. District Magistrate/Commissioner of Police has no jurisdiction to confiscate such vehicle in event of seizure of vehicle by law enforcement officer. Special Magistrate has jurisdiction to decide release of vehicle in question. Impugned order set aside. Revision allowed. **[Manjeet Tanwar @ Manjeet Tanker vs. State of U.P., 2023 (122) ACC 808]**

Sections 451 and 457 CrPC—Narcotic Drugs and Psychotropic Substances Act, 1985, Sections 8, 20, 27-A, 29, 36-C and 51—Release of vehicle—Application for—Rejection—Legality

Provisions of Cr.P.C. so far as they are not contradiction with NDPS Act shall be application to NDPS Act. As in NDPS Act no procedure for interim custody of vehicle prescribed. Sections 451 and 457 Cr.P.C. specially deal with custody and disposal of property pending trial and procedure to be followed by Police upon seizure of property. Therefore, judgment of Sunderbhai Ambalal Desai vs. State of Gujarat, (2002) 10 SCC 283 shall be applicable. Thus, Magistrate/Special Judge, NDPS Act shall have power to consider application for interim custody of vehicle under provision of sections 451 and 457 Cr.P.C. Impugned order set aside Revision allowed. **[Rajdhari Yadav vs. State of U.P., 2023 (122) ACC 819]**

Criminal Procedure Code Sections 311, 293 and 397/401—Prevention of Corruption Act, 1988, Sections 7, 13(2) and 13(1)(d)—Summoning of witness—Allowing of application of respondent for summoning witness to give evidence in respect of electronic evidence—Prepared by person not living in India—Legality

If an expert who prepared report unable to attend personally, any other responsible officer working with him may be deputed to attend court. In such circumstance, impugned order passed by trial court does not require interference. Revision dismissed. **[Shyam Sunder Prasad vs. Central Bureau of Investigation, Lucknow, 2023 (122) ACC 851]**

Sections 227, 228 and 300—Dismissal of discharge application by Trial Court confirmed by High Court in revision—Appeal against

The appellant was tried earlier under sections 148, 149, 448, 364 and 506 IPC and acquitted by Sessions Court. Thereafter on 6.6.2011, after a period of one year from the date of acquittal, a second FIR came to be lodged alleging inter alia that the appellant and other co-accused had caused the death of Ajay Acharya, i.e., father of the first informant, the same person that they were alleged to have kidnapped and were acquitted of. Second FIR was registered on the basis of the discovery of the skeleton and identification of the clothes and teeth of the skeleton, by the son of the deceased, 11 years after the alleged incident. Held, the judgment and other passed by High Court is quashed and set aside. The matter is remitted to Trial Court to consider the application under section 300(1), Cr.P.C. filed by the appellant. Appeal is allowed. **[Chandi Puliya vs. State of W.B., 2023 (122) ACC 902]**

Secs. 91 and 391—Draft Rules of Criminal Practice, 2021, Rule 4—The right of the accused to be supplied with documents or material seized or collected during the investigation—High Court had by order fixed the hearing of a death reference—Appeal against—

The 'Draft Rules of Criminal Practice, 2020', were a product of a thorough consultative exercise under-taken to remedy asymmetries caused by the lack of uniformity in Rules across States, which could hamper appreciation of evidence, and in turn delay proceedings, especially at the appellate stage. Recognition of the need to streamline trials or mitigate delays, however, cannot come at the cost of the accused's right to fair trial. The framework that emerges (by reading sections 173, 207, 208 and Draft Rule 4) is that based on the list of statements, documents, etc. received at the commencement of the trial, the accused can seek appropriate orders under section 91 of the Cr.P.C., wherein the Magistrate on application of judicial mind, may decide on whether it ought to be called for. Additionally, by virtue of section 391 of the Cr.P.C., the appellate court, if it deems necessary, may take further evidence (or direct it be taken by a Magistrate or Court of Sessions) upon recording reasons. This safeguards the right of the accused in a situation where concern has been raised regarding evidence or material in possession of the prosecution that had not been furnished, but was material to the trial and disposal of the case. Appeal is dismissed. **[P. Ponnusamy vs. State of Tamil Nadu, 2023 (122) ACC 923]**

Secs. 397/125 and 401—Maintenance petition filed by the appellants under section 125 Cr.P.C.

Family Court dismissed it qua the appellant wife and her daughter but allowed maintenance allowance @ 76,000/- p.m. for the son till he attained the age of 18 years. Daughter having attained age of majority no interim maintenance was granted. Family Court disregarded the basic cannon of law that it was sacrosanct duty of the husband to provide financial support to the wife and to the minor children. Husband required to earn money doing even labour work to support his wife and the children. Section 125, Cr.P.C. measure for social justice. Specially enacted to protect women and children. Family Court not only over-looked but disregarded the aforesaid settled legal position but has proceeded in perverse manner. Appellant failed to appear before the Family Court. Enough evidence to believe that father of the appellant. Wife paid money to the husband from time to time. Respondent being able bodied obliged to earn by legitimate means to maintain his wife and the minor child. Court deemed proper to grant maintenance of 10,000/- p.m. to the appellant wife from date of filing of the petition before the Family Court, entire amount of arrears directed to be deposited by the respondent in the Family Court. Appeal allowed. **[Anju Garg vs. Deepak Kumar Garg, 2023 (122) ACC 328]**

Section 389—Suspension of sentence—Disqualification of appellant as per Representation of the People Act, 1951 in case of not suspending sentence—Plea of—Sustainability

Powers of suspension of conviction should be exercised in rare cases only. Conviction of appellant for rioting armed with deadly weapons, endangering life or personal safety of others, assault or criminal force to deter public servant from discharging his duty etc. Merely pleading that by conviction appellant will remain disqualified under the Representation of the People Act is no ground to suspend conviction. Application rejected. **[Vikram Singh Saini @ Vikram Saini vs. State of U.P., 2023 (122) ACC 524]**

Sec. 439—IPC, 1860, Secs. 147, 148, 149, 324, 427, 441, 323, 506, 447, 307, 302 and 34—Order granting bail to accused/respondent No. 2 by High Court—Sustainability—

Motive of crime, a land dispute between respondent No. 2 and complainant side. As per allegation in FIR, accused persons ran over tractor on standing crop and took over possession. When informant and others gathered at spot accused persons named in FIR attacked them and in said incident brother of information died and other persons seriously got injured. Since offence alleged to have been committed by accused was very serious offence. High Court ought to have given cogent reasons

while releasing respondent No. 2 on bail. Nature of allegation and soreness and gravity offences not at all considered by High Court and no reason assigned while releasing respondent No. 2/accused on bail. Impugned order of High Court unsustainable. Set aside. Appeal allowed. **[Yashpal Singh vs. State of U.P., 2023 (122) ACC 665]**

Secs. 364/34, 302/34 and 201/34—Conviction and sentences under—Appeal against—

Son of the informant, namely, Kishan aged about 2-1/2 years went missing on 24.04.2010. Next day, on 25.04.2010 a missing report was lodged by informant. On 18.05.2010, the dead body of the missing son was found in the well situated in the housing campus of accused- Prakashveer. This is a case of circumstantial evidence as nobody has seen the murder of the deceased-child. Deposition with regard to the facts, leading to the death of the child, are narrated by PW-1 (father of deceased child) in his evidence, but it was only hearsay. The prosecution has miserably failed to prove the motive behind the crime as well as the fact of 'Last seen' evidence. Chain of circumstantial evidence is not complete so as to point out that it was the appellants only who have committed the offence. Held, the appellants are given the benefit of doubt and the appeal is liable to be allowed. Appeal is allowed. **[Sandhya Singh vs. State of U.P., 2023 (122) ACC 766]**

The evidence is circumstantial and in order to prove the crime based on circumstantial evidence all the circumstances must indicate that the author of the crime is the accused and the accused alone and there is no possibility of being committed the crime by anybody else. The chain of the circumstances should be complete and no shadow of reasonable doubt must be there.

In the present matter, there is no eye witness of the crime as nobody has come to say that he saw the accused committing the crime. The FIR of the crime was lodged in pursuance of an order passed on an application moved under Section 156(3) of Cr.P.C. by the brother of deceased Khairunnisa. It is also undisputed that the death of all the four deceased persons resulted due to poison Thayodon (Organochloro) insecticide poison as found in the viscera preserved of Salis and (Fairoom) Khairunnisa. The viscera reports of Salis as Exhibit Ka-36 and Exhibit Ka-37.

The prosecution has failed to prove the circumstances leading towards the conclusion that the appellant/convict killed all the four deceased persons by administering poison in meat. There is no reliable evidence to establish that Mohd. Aslam brought meat and spices and handed over to the deceased lady to cook. There is no reliable evidence that Mohd. Aslam had poison in his possession and there is

no trustworthy and cogent evidence to prove that Mohd. Aslam mixed some poison in the meat while the meat was being cooked. The evidence on record is not of such a quality that we can unhesitatingly hold that the death of deceased persons were result of administration of poison by the convict/appellant. In other words, the prosecution has failed to prove that Mohd. Aslam brought meat alongwith spices and handed over to Khairunnisa to cook and mixed the poison in the meat at the time of cooking.

It is painful for this Court to note that four persons of the family were done to death by poisoning but the real culprit of the crime could not be brought to book. So far as the appellant-accused Mohd. Aslam is concerned the prosecution has failed to conclusively establish by cogent evidence that it was the accused/appellant who committed the murder of four deceased.

Hence the impugned judgment and order deserves to be set-aside and is set-aside. The appeal is allowed. (**Mohd. Aslam v. State of U.P, 2023 (2) ADJ 82**)

Section 340, 195, 125 Cr.P.C. perjury and quantum of maintenance

The matter arose out of original maintenance case a petition of Section 125 Cr.P.C. filed by Sushma Devi against the petitioner for grant of maintenance. The criminal revision was filled before Hon'ble Jharkhand High Court against the judgment passed by the Learned Principle Judge, Family Court Ranchi. It was held that This Court finds that except the information received through Right to Information Act, no register, no document and no birth certificate issued in favour of any third party has been produced and exhibited before the learned court below. This Court further finds that no ground was taken by the appellant before the learned court below in connection with alleged incorrect statement that the Respondent No.2 has no source of income.

This Court is of the considered view that mere statement of the appellant that the alleged document is a forged document is not sufficient for the purpose of Section 340 of Cr.P.C. This court also finds that Sushma Devi had enough material including her discharge slip from the hospital after birth of her son to prove the date of birth and parentage of the petitioner. This Court finds that the appellant has failed to make out any case against Sushma Devi for initiating a proceeding against her under Section 340 of Cr.P.C. This court also finds that the learned court below has passed a well-reasoned order refusing to initiate a proceeding under section 340 of Cr.P.C. Accordingly, this Court finds no merit in the present criminal appeal which is hereby dismissed.

The learned court below recorded that the maintenance proceeding under Section 125 Cr. PC is summary trial and the strict proof of marriage should not be a pre-condition for grant of maintenance under Section 125 of Cr. PC. The learned

court below has scrutinized the evidences on record and recorded that in the present case there is strong case of Sushma Devi that her marriage was registered with the petitioner and she has corroborated with documentary evidence by Ext.2 and 2/A, 3 and Ext.6 series which have been proved by PW-3 himself as official witness. Further from the evidence of PW-1 it has come clearly that Sushma Devi and the petitioner lived together as husband wife and from this wedlock they have been blessed with a son, applicant no.2. Sushma Devi herself (P.W.-2) has stated that after marriage she started living with the petitioner as husband and wife at matrimonial home and she was subjected to cruelty and thrown out from the matrimonial home after the assault by the petitioner for demand of dowry for which she filed criminal case, which shows clearly that Shusma Devi lived with the petitioner after marriage and cohabited and from this wedlock applicant no.2, a son was born. It has also been recorded by the learned court below that at the time of marriage Shusma Devi was widow, so there was no impediment for Sushma devi to marry with the petitioner.

This Court finds that Sushma Devi has adduced sufficient evidence before the learned court below, which has been discussed in the impugned order regarding her marriage in Kali Mandir at Kolkata and its subsequent registration at Kolkata and has also led oral evidence that the petitioner and Sushma Devi had cohabited and further evidence that a son was born out of wedlock and in support of which, discharge slip of the hospital was also exhibited by Sushma Devi before the learned court below showing the name of the petitioner as the father of her minor son. Further, there is enough material before the learned court below regarding birth of a son out of wedlock. The conduct of the petitioner who, at one point of time, as recorded in the proceedings before the learned court below and also in the impugned order, readily agreed for DNA Test to ascertain the paternity of the child, but subsequently did not turn up to undergo the test without citing any reason at all and even before this Court, the petitioner in person has not cited any reason for not having undergone the DNA Test, though admittedly he had agreed for said test before the learned court below. Rather, the petitioner in person has argued before this Court that the petitioner had no access to Sushma Devi for the period during which she could have conceived and given birth to a child. This aspect of the matter has been elaborately dealt with in the impugned order. The learned court blow has considered the aforesaid aspect whereby the petitioner initially agreed for paternity test through DNA test and after order was passed, he did not turn up and refused to undergo the test and the learned court below has drawn adverse inference against the petitioner on account of such conduct. The learned court below has also recorded that the petitioner has not led any evidence to deny having access to Sushma Devi. The learned court below has also considered the other evidences including the discharge slip of Shusma Devi from the hospital after giving birth to her son which also reflected that the petitioner was named as the father of the child.

This court has gone through the aforesaid findings of the learned court below which are based on appreciation of materials on record and also the conduct of the petitioner in denying to undergo the DNA test after the order for the same was passed with the consent of the petitioner. This court is also of the considered view that in a summary proceeding under section 125 Cr.P.C. where a purported father denies paternity, but refuses to undergo DNA test, such father is disentitled to deny paternity. The petitioner has heavily relied upon the judgment passed by the Hon'ble Madhya Pradesh High Court reported in 2011 SCC Online M.P. 192 (Lallu Lal Patel v. Anar Kali @ Tannu Bai Yadav and another) to submit that the conclusiveness of presumption under Section 112 of the Evidence Act cannot be rebutted by DNA Test and the proof of non-access between the parties during the relevant period is the only way to rebut such presumption and DNA Test is not to be directed as a matter of routine and it is to be directed in deserving the cases. This court finds that the said case was filed under Section 482 Cr. P.C. to challenge the order for DNA Test of the husband in a proceeding under Section 125 of Cr. P.C. On the one hand, in the present case, Sushma Devi has led sufficient evidence to prove that the petitioner had access to Sushma Devi and on the other hand, the petitioner has not been able to prove that he had no access to Sushma Devi. In the present case, the learned court below never compelled the petitioner to undergo DNA Test, rather the petitioner readily accepted to undergo DNA Test, but subsequently backed out from such test citing no reasons whatsoever.

Accordingly, the aforesaid judgment relied upon by the petitioner also does not help the petitioner. In this context , it would be useful to refer to the judgment passed by the Hon'ble Supreme Court in the case of Ashok Kumar v. Raj Gupta and Others reported in (2022) 1 SCC 20 wherein it has been held that at Para-18 that in case of refusal to undergo DNA Testing , an adverse inference can be drawn .

While considering the status of the applicant- Sushma Devi vis-à-vis the petitioner, this Court finds that the judgment relied upon by the petitioner reported in 1974 SCC Online Cal. 138 as mentioned in para-21 above is a case arising out of a criminal complaint, where charges were framed under Sections 495/109 of the Indian Penal Code against the petitioner of the said case. The Hon'ble Calcutta High Court held that in order to make out a case under Section 495 of the Penal Code, the complainant was required to prove satisfactorily that the alleged marriage took place between the parties according to Hindu Rites prior to the registration and that the certificate by itself does not prove marriage and in the facts of the said case, it was held that there was no evidence to prove the marriage to have taken place prior to registration under the certificate. The said judgment has no applicability in the facts and circumstances of this case as the nature of proof of marriage in case of allegation of bigamy under the Penal Code is much more strict as compared to the nature of proof in a proceeding under Section 125 Cr.P.C.

So far as the judgment reported in 1988 SCC Online Cal 24 is concerned, the same was arising out of a regular suit which was filed for decree for dissolution of marriage on the ground of cruelty. In the said case, the marriage itself was declared to be void after appreciating the evidences on record. The scope of enquiry in the present case is not as to whether the marriage has been conclusively proved, but as to whether the marriage has been proved prima-facie for the purposes of Section 125 Cr. P.C., which is a summary proceeding. The reliance by the petitioner on the aforesaid judgment is misplaced. It is also important to note that in the present case, it has come on record that the petitioner had filed a suit for declaration of alleged marriage between the petitioner and Sushma Devi as null and void before the civil court at Ranchi and in the said case Sushma Devi has appeared upon notice , but the petitioner had withdrawn the said suit . The order of withdrawal has not been brought on record. However, the party-in-person has tried to justify the withdrawal of the suit by submitting that the suit was withdrawn on account of want of territorial jurisdiction as the alleged marriage was performed at Kolkata. During the course of argument, he has also stated that no fresh suit at Kolkata has been filed so far. This Court is of the considered view that the claim of the petitioner that there was no marriage between the petitioner and Sushma Devi in the eyes of law is required to be declared by a competent court. In a proceeding under Section 125 Cr.P.C. only prima-facie proof of marriage was required to be seen which has been seen by the learned court below who upon appreciating of materials has recorded a finding that Sushma Devi was legally wedded wife of the petitioner.

So far as the claim of the petitioner that he was already married much prior to the alleged date of marriage with Sushma Devi, this court finds that the petitioner did not lead any cogent evidence with regard to his marriage with another lady except a statement to that effect. He had also stated that he could prove his previous marriage by documentary evidence but no such evidence was produced. This court is of the considered view that on the face of the materials on record the petitioner has not been able to prove that the petitioner was already a married person prior to the alleged marriage with the petitioner.

The petitioner in person has also relied upon attendance register to state that on the day Sushma Devi has claimed to have married the petitioner in temple at Kolkata and also on the day she claims that her marriage was registered at Kolkata, she was in Ranchi. On the date of marriage in the temple at Kolkata, Sushma Devi in her evidence has explained that marriage at Kolkata was solemnized in late evening and she could reach Kolkata from Ranchi. So far as her attendance in Ranchi on the date of registration of marriage is concerned, she has denied the same and admittedly in the attendance register whitener was used. The required documents regarding registration of marriage were proved by the official witness who had arrived from Kolkata.

This court finds that there was enough evidence before the learned court below to come to a prima-facie finding regarding proof of marriage between the petitioner and Sushma Devi and that the son of Sushma Devi was born out of wed lock between the petitioner and Sushma Devi. This court has gone carefully through the impugned order and finds that the same is based on appreciation of evidences brought on record. The learned court below has considered all the materials on record and also the arguments of the parties and has passed a well-reasoned order on the point of relationship amongst the petitioner and the two claimants. The arguments of the petitioner have been rejected by the learned court below by citing reasons. This court does not find any illegality or perversity in the impugned order so far as it relates to prima-facie recording of finding of marriage and birth of child out of wed lock between the petitioner and Sushma Devi. Thus, Sushma Devi has been able to prove by cogent evidence for the purposes of proceedings under section 125 Cr.P.C. that she was legally wedded wife of the petitioner and her son was the son of the petitioner.

Ingredients no (b) and (c)

(b) Whether Sushma Devi was unable to maintain herself and her son.

(c) Whether the petitioner, was having sufficient means.

The aforesaid facts and circumstances indicate that there is cloud over the sources of income / assets / liabilities of the petitioner and sources of income / assets / liabilities of Sushma Devi. In such circumstances, the truth regarding their sources of income / assets / liabilities is required to be ascertained to determine the quantum of maintenance. The method by which the court could arrive to the truth of income / assets / liabilities of the parties , has already been laid down by the Hon'ble Supreme Court in the aforesaid judgment of Rajnesh v. Neha which was passed prior to passing of impugned order. The direction as contained in Rajnesh v. Neha having not been undertaken/complied by the learned court below, the impugned order cannot be sustained in the eyes of law to the extent it relates to determination of quantum of maintenance.

It has been held by the Hon'ble Supreme Court that if the wife is working and earning sufficiently, the expenses may be shared proportionately between the parties. Thus, by no stretch of imagination, the responsibility of the petitioner to maintain his son jointly with Sushma Devi can be negated. However, the quantum of contribution from the side of the petitioner would certainly depend upon the final adjudication by the learned court below on the quantum of maintenance for the son and its proportion to be paid by the petitioner. In the fight between the petitioner and Sushma Devi, the education and progress in life of applicant No. 2- should not suffer. In such circumstances, this court is of the considered view that the fresh decision on quantum of maintenance to Sushma Devi and her son should be decided at the earliest.

In such circumstances, the impugned order to the extent it fixes the quantum of maintenance for Sushma Devi and her son is set aside and the matter is remitted back to the learned court below only for the purposes of undertaking the necessary exercise in terms of the judgment passed by the Hon'ble Supreme Court in the case of Rajnesh v. Neha for the purposes of determining the quantum of maintenance. The parties are directed to appear before the learned court below on 13.01.2023 along with the affidavit in terms of the judgment passed by the Hon'ble Supreme Court in the case of Rajnesh v. Neha. The learned court below is directed to proceed in accordance with law in terms of the judgment passed by the Hon'ble Supreme Court in the case of Rajnesh v. Neha. Considering the fact that much time has elapsed, the learned court below shall make all endeavour to pass a final decision on the point of quantum of maintenance within a period of three months from the date of appearance of the parties.

It was held that husband failed to make out any case against wife for initiating proceeding against her u/s 340 of Cr.P.C. Appreciating the evidence u/s 125 Cr.P.C., it was held that records proved that respondent was legally wedded wife of petitioner and a son was born from their wedlock. It was also held that there was cloud over the sources of income, assets and liability of husband as well as wife. The truth regarding the sources of income was required to be ascertained to determine the quantum of maintenance. Thus the order determining quantum of maintenance set aside and matter was remanded. (**Binod Kumar Singh v. Sushma Devi, Cri.L.J. 555 : AIR Online 2022 JHA 417)**

DRUGS AND COSMETICS ACT, 1940

Secs. 16, 34 and 27(d)—Drugs and Cosmetics Rules, 1945—Schedules C and C(1), Rule 76—Constitution of India—Article 226—Cr.P.C., Secs. 397/401 and 204—Order for issuance of process—Legality—

Averments in the complaint that accused Nos. 5 to 8 are Directors of CPPL Company doing the business of manufacturing buying, selling, importing and exporting of cosmetics and accused No. 4 is holding drug manufacturing licence. No specific averments, qua the present appellants who are neither the managing nor whole time directors of the accused-company. Accused-9 was approved by the licensing authority as the person under whose active direction and personal supervision the manufacture was to be conducted. Accused No. 10 was approved a head of the testing unit to be incharge for testing the quality and purety of the substance. Complaint in question totally lacking the requirement of section 34 of the Act of 1940. Order of issuance of process not an empty formality. Impugned order does not show application of mind. No reasons are given in the order to reach

conclusion that there is prima facie case against the accused. Impugned order for issuance of process passed by the CJM and that passed by the Sessions Judge quashed against the appellant. Complaint qua present appellant dismissed. Appeal allowed. **[Lalankumar Singh vs. State of Maharashtra, 2023 (122) ACC 257]**

HINDU MARRIAGE ACT

Sec. 13-B—Divorce by mutual consent—Refusal to grant—Wife never appeared in the petition u/S. 13-B which showed either no consent or implied withdrawal of consent by the wife—Second motion under S. 13-B(2) by both the parties, was never moved—Since admittedly husband alone moved the application, Court could not have passed a decree of divorce—Refusal of pass decree of divorce, proper

In the case of Hitesh Bhatnagar vs. Deepa Bhatnagar, (2011) 5 SCC 234, (Paras 14 and 15) the Hon'ble Supreme Court considered the provisions of Section 13- B(2) of the Act, 1955 and held, as under:-

14) The language employed in Section 13B(2) of the Act is clear. The Court is bound to pass a decree of divorce declaring the marriage of the parties before it to be dissolved with effect from the date of the decree, if the following conditions are met:

a. A second motion of both the parties is made not before 6 months from the date of filing of the petition as required under sub- section (1) and not later than 18 months;

b. After hearing the parties and making such inquiry as it thinks fit, the Court is satisfied that the averments in the petition are true; and

c. The petition is not withdrawn by either party at any time before passing the decree; In other words, if the second motion is not made within the period of 18 months, then the Court is not bound to pass a decree of divorce by mutual consent. Besides, from the language of the Section, as well as the settled law, it is clear that one of the parties may withdraw their consent at any time before the passing of the decree. The most important requirement for a grant of a divorce by mutual consent is free consent of both the parties. In other words, unless there is a complete agreement between husband and wife for the dissolution of the marriage and unless the Court is completely satisfied, it cannot grant a decree for divorce by mutual con- sent. Otherwise, in our view, the expression 'divorce by mutual consent' would be otiose. **[Kanhaiya Kanaujiya vs. Tara Devi, AIR 2023 All. 10]**

The matter relates to circumstantial evidence. It was observed that the doctrine of established "last seen together' shifts the burden of proof on accused requiring him to explain how the incident had occurred. Failure on the part of the accused to furnish any explanation in this regard would give rise to a very strong presumption against him.

In an established last seen case, the prosecution exempted to prove exact happening of incident, as accused himself would have special knowledge of incident and thus would have burden of proof as per Section 106 Evidence Act, although the initial burden of proof is on prosecution to adduce sufficient evidence pointing towards the guilt of the accused. The careful scrutiny of the evidence leads us to the definite conclusion that the last seen theory has gone and, at this juncture, we also find that the learned trial court relying upon the last seen theory has committed a grave error.

The alleged extra-judicial confession said to be made to P.W.4 by appellant Ganga Dhar is not trustworthy and requires solid corroboration which, no doubt, is missing in this case and hence, we ignore and reject the alleged extra-judicial confession, as relied upon by the prosecution.

In the light of the statement of P.W.1, the husband of the deceased and P.W.8, the first Investigating Officer, there is no evidence on record to show that the deceased and appellant Mahendra had been indulged in some affair. It is also notable that the recovery shown does not fall within the ambit of Section 27 of Evidence Act, as it was not made in consequence of any information received from both the appellants while in police custody. Since the recovery of currency notes from the possession of and on pointing out of the appellants has not been proved in the manner provided by law, the strong link of motive which could possibly be helpful for the prosecution to prove its case, is also not available to it. In fact, there was no motive of the appellants to do away with the deceased.

Expostulating the evidence regarding the CDR, the provisions of Section 65-B (4) of the Evidence Act, which requires certain certificates to be produced by the party relying upon the electronic evidence is available on record which was necessary in the facts and circumstances of the case and the availability of which, could not be relaxed as the aforesaid evidence of CDR, if proved properly in the manner prescribed by the Evidence Act, could throw some light upon the relations between the deceased and appellant Mahendra and thus, to enable the Court to draw any inference regarding the motive of the case.

The prosecution has miserably failed to prove its case beyond reasonable doubt. Learned trial court though has analysed several factors relating to the case, but has not scrutinized the evidence on record in proper and legal manner and

thereby, has accorded a perverse finding of conviction. The chain of the circumstances is never complete, which was essential to record a conviction of an accused in a case based on circumstantial evidence. All the material circumstances, like last seen, motive, recovery of murder weapon, extra judicial confession have not been proved for want of cogent and reliable evidence. The evidence rendered by the prosecution is shaky and not trustworthy. The medical evidence stands against the prosecution version.

All these shortcomings denude the prosecution case and in the aforesaid legal and factual scenario. Accordingly, impugned judgment and order set-aside (**Rishi Talwar v. State of U.P, 2023(3) ADJ 628 (DB))**

Sections 118, 3, 8, 27, 106 Indian Evidence Act and Sections 302 IPC

In this matter Hon'ble Allahabad High Court discussing elaborately about circumstantial evidence testimony of interested witness, motive of offence, lapses in investigation. Held that

Pawan Kumar (PW-3) is the brother of deceased Suresh @ Sanju. According to this witness, on 12.03.2005, at about 8.30 PM, he along with one Mahipal (not examined) were loitering and when he arrived near the field of Vijay Pal, he witnessed the appellants Parveen, Dinesh, Bhura and Satyaveer beating his brother Suresh @ Sanju (deceased). He also stated that the appellants threatened him and when he was returning home, on the way, he met his father (PW-1) and his brother Mukesh Kumar (PW-2). He informed them that Suresh @ Sanju (deceased) was lying in the field of Vijay Pal. This witness further stated that when they arrived at the field of Vijay Pal, they saw the dead body of Suresh @ Sanju (deceased) lying there. This witness nowhere states that Suresh @ Sanju (deceased) went along with appellants on 12.03.2005, at about 7.30 PM, as stated by Narayan Singh (PW-1) the informant and Mukesh Kumar (PW-2). The testimonies of PW-1 Narayan Singh and PW-2 Mukesh Kumar is to the effect that the deceased Suresh @ Sanju was taken away by the appellants on 12.03.2005 at 7.30 PM from home and when, after about one hour, all the appellants returned back but the deceased Suresh @ Sanju did not return, they started searching for him. As per the statement of PW-1 Narayan Singh and PW-2 Mukesh Kumar, during search, PW-3 Pawan Kumar accompanied them. This fact is also mentioned in the FIR. If, PW-3 Pawan Kumar was also searching for the deceased Suresh @ Sanju along with his family members, the possibility of him having witnessed the accused assaulting the deceased is not probable as then he would have informed his family members and they all would have rushed to the spot. Thus, the testimony of PW-3 does not inspire confidence to the extent he claims that he witnessed the deceased being assaulted by the accused-appellants.

If we exclude the testimony of Pawan (PW-3), the statements of PW-1 Narayan Singh (informant) and PW-2 Mukesh Kumar remains and, as per their evidence, they are witnesses of the circumstance that the deceased was taken from home and soon thereafter, the deceased was found dead.

In the present case, Narayan Singh PW-1 is the informant and father of Suresh @ Sanju (deceased). This witness stated that on 12.03.2005 Suresh @ Sanju (deceased) was taken by the appellants from his house at about 7.30 PM in front of him and when, at about 8.30 PM, appellants returned back and his son Suresh @ Sanju (deceased) did not return, then, when he, despite inquiry, did not receive proper reply from the appellants, he started search for his son along with Mukesh Kumar (PW-2), Pawan (PW-3) and other family members and at about 9.00 PM, the dead body of Suresh @ Sanju was found in a field which was about ¼ Kilometer away from his house.

Thus, from the statements of Narayan Singh (PW-1) and Mukesh Kumar (PW-2), it is proved that appellants took away the deceased Suresh @ Sanju from his house on 12.03.2005 at about 7.30 PM and within an hour, they returned back without Suresh @ Sanju (deceased) and failed to offer any explanation in this regard to the informant Narayan Singh (PW-1) and at about 9.00 PM i.e. within 1 and ½ hour dead body of Suresh @ Sanju was recovered from a field which was only ¼ Kilometer away from his house i.e. the place where appellants were last seen together with the deceased.

The prosecution therefore succeeded in proving the circumstance of last seen against the appellants beyond reasonable doubt and as the proximity of the time between the deceased being last seen together with the appellants and the death of the deceased is so close that it completely rules out involvement of any other person to have committed the crime than the appellants. Therefore, last seen circumstance/evidence in the present case is a clinching circumstance against the appellants which was duly proved by the prosecution.

In the case at hand, prosecution has established the motive. From the very beginning since lodging of the FIR, it is the case of the prosecution that Vimlesh, the sister of appellants, used to visit the house of Suresh @ Sanju (deceased) and, therefore, the appellants eliminated him as they suspected that deceased Suresh @ Sanju was having an affair with Vimlesh.

Prosecution in the present case also relied upon recovery of a love letter, written by Vimlesh, from the pocket of deceased Suresh @ Sanju to prove that Vimlesh was having love affair with deceased Suresh @ Sanju. However, as Vimlesh was not examined before the trial court and there is no evidence to prove that the letter was written by her, the evidence of recovery of letter from the pocket of deceased, in our view, cannot be used against the appellants.

However, PW-1 Narayan Singh, the informant (father of deceased) and PW-2 Mukesh Kumar (elder brother of deceased) through their testimony established that Vimlesh, sister of appellant Bhura and cousin sister of appellants Parveen and Dinesh, used to visit their house to meet Suresh @ Sanju (deceased) and due to this reason the appellants committed murder of Suresh @ Sanju as they were having suspicion that there was a relationship between them.

There is one more clinching circumstance that surfaced during investigation that is when the body of Suresh @ Sanju (deceased) was found, on his arm, the name of Vimlesh was embossed by a tattoo. This fact was proved by Narayan Singh PW-1 as well as Mukesh Kumar PW-2 in their testimonies and also by PW-6 Manohar Singh Yadav, the Investigating Officer. This also suggests that deceased and Vimlesh were in some sort of a relationship with each other, sufficient to arouse suspicion.

Thus, in our view, prosecution has been successful in proving the motive for the crime against the appellants.

Abscondence

One more incriminating circumstance in the present case is that appellant, Dinesh was absconding for a long period and charge-sheet was filed against him by PW-6 Manohar Singh Yadav as absconder and during investigation process under Section 82/83 Cr.P.C. was also issued against him. This fact is an additional circumstance, which also completes the chain of circumstances, at least, in respect of appellant Dinesh. As per the judgment of Supreme Court in case of Satpal if last seen evidence is coupled with other circumstances, such as abscondence of accused persons, then, in absence of proper explanation, on the basis of last seen evidence, conviction can be recorded.

Laches on the part of Investigating Officer

Learned counsel for the appellants vehemently argued that from the perusal of the statements of all the prosecution witnesses, namely, Narayan Singh (PW-1), Mukesh Kumar (PW-2) and Pawan (PW-3), it is apparent that police after registration of the FIR arrived at the spot in the night of 12.03.2005 and in the night they took away the body of deceased to police post (Chowki) from the place of incident. These witnesses also stated that they accompanied the dead body up to the police post, but, PW-6, the Investigating Officer, namely, Manohar Singh Yadav, states that police did not take away the body in the night of 12.03.2005 and the body was lying at the place of incident in the field of Vijay Pal till the morning and, thereafter, in the morning, the inquest report was prepared, therefore, this shows that prosecution has not come with clean hand hence no reliance can be placed on such prosecution evidence.

The law is well settled that no benefit can be given to the accused merely on the ground of laches of Investigating Officer or any illegality committed by him, if

evidence of prosecution witnesses is reliable and does not suffer from any infirmity. Supreme Court in the case of C. Muniappan and others v. State of Tamil Nadu (2010) 9 SCC 567 held that defect in investigation by itself cannot be a ground of acquittal.

In the present case, as prosecution case is based on circumstantial evidence, therefore, if, any illegality or laches in respect of taking away the dead body has been committed by the Investigating Officer, it hardly affects the prosecution case and does not cause any prejudice to the appellants.

Recovery of rope and wooden stick

The prosecution case also relies upon the circumstance of recovery by claiming that on 01.04.2005, when appellant Bhura was taken by the police on remand, on his pointing out a rope and wooden stick was recovered, which was alleged to have been used in commission of the crime. But as this recovery was made from open field of Arhar crop, accessible and visible to all, and both the recovered articles are common and found in every household, in absence of forensic evidence linking the articles to the crime, in our view, recovery of rope and wooden stick is of no significance and cannot be utilised as an incriminating circumstance against appellant Bhura.

In the present case, we find that all the prosecution witnesses of fact, namely, Narayan Singh PW-1, Mukesh Kumar PW-2 and Pawan PW-3, were extensively cross examined by the defence and a suggestion was also put to Narayan Singh PW-1, during his cross-examination, that deceased Suresh @ Sanju did not go with the appellants, which was denied by him, therefore, in our view, the appellants were fully aware of the incriminating circumstance with regard to the last seen theory and they could have offered their explanation. Hence, if question in respect of last seen theory was not put to appellants during their examination under Section 313 Cr.P.C., this, by itself, did not cause any prejudice to them and, therefore, this evidence cannot be excluded from consideration.

Recently, a three Judges Bench of Apex Court in case of Manoj Suryavanshi v. State of Chhatisgarh (2020) 4 SCC 451, in paragraph no. 19, held that if while recording the statement of accused under Section 313 Cr.P.C. the deposition of the witness, who provides the evidence of last seen, is specifically referred to the accused, then not asking a specific question in respect of last seen evidence appearing in the said deposition would not prove fatal to the prosecution case.

In the present case, while recording the statement under Section 313 Cr.P.C. of the appellants, trial court referred the evidence of PW-1 Narayan Singh and PW-2 Mukesh Kumar as well as the FIR to all the appellants, therefore, in view of the judgment in Manoj Suryavanshi case , no benefit can be extended to the accused/appellants merely because no specific question in respect of last seen circumstance emanating therefrom was put to the appellants.

One more circumstance exist in the present case against the appellants, that is the appellants failed to offer any explanation as to how and when they departed company of the deceased. As prosecution has proved that appellants and deceased were last seen together alive within couple of hours from recovery of dead body of the deceased, as per section 106 Evidence Act, the appellants were under an obligation to provide explanation in this regard, as this fact was exclusively in their knowledge. The Supreme Court in the case of Kashi Ram elaborately discussed this aspect and observed in para 23 as follows:-

"23. xxxxx

The principle is well settled. The provisions of Section 106 of the Evidence Act itself are unambiguous and categoric in laying down that when any fact is especially within the knowledge of a person, the burden of proving that fact is upon him. Thus, if a person is last seen with the deceased, he must offer an explanation as to how and when he parted company. He must furnish an explanation which appears to the Court to be probable and satisfactory. If he does so he must be held to have discharged his burden. If he fails to offer an explanation on the basis of facts within his special knowledge, he fails to discharge the burden cast upon him by Section 106 of the Evidence Act. In a case resting on circumstantial evidence if the accused fails to offer a reasonable explanation in discharge of the burden placed on him, that itself provides an additional link in the chain of circumstances proved against him. Section 106 does not shift the burden of proof in a criminal trial, which is always upon the prosecution. It lays down the rule that when the accused does not throw any light upon facts which are specially within his knowledge and which could not support any theory or hypothesis compatible with his innocence, the Court can consider his failure to adduce any explanation, as an additional link which completes the chain. xxxxxx"

Thus, failure on the part of the appellants to offer an explanation as to how and when they parted company of the deceased provides an additional link to the chain of circumstances pointing towards the guilt of the appellants.

The situation emerges thus, that there is clear evidence of the accused-appellants having taken the deceased from home and within 1 and ½ hour thereafter, just few hundred meters away, the body of the deceased, with multiple injuries is found, and that there is no explanation on the part of appellants either in respect of the circumstances that led to infliction of those injuries resulting in the death of deceased Suresh @ Sanju or as to how and when they (the appellants) parted the company of the deceased.

In view of the discussion made above, in our considered view, prosecution has been successful in proving the following circumstances against appellants beyond reasonable doubt:-

(i) Appellants took the deceased from home and within an hour and a half, the deceased was found dead at a short distance, from where he was taken by the appellants, with injuries on his body suggesting a case of homicide.
(ii) Appellants failed to provide any explanation as to how and when they parted company of the deceased and as to the manner in which the deceased suffered injuries.
(iii) Motive for commission of crime; and
(iv) Abscondence of appellant Dinesh.

In our considered view, all the above circumstances proved by the prosecution form a chain of circumstances against the appellants on the basis of which, it can safely be concluded that appellants were the persons, who committed the murder of deceased Suresh @ Sanju and except their guilt no other hypothesis can be inferred.

Consequently, both the appeals are dismissed. The judgment and order of conviction and sentence passed by the trial court is affirmed. The appellants are in jail and they will serve out the sentence awarded by the trial court."

Hon'ble Court held that in this matter the circumstantial evidence was properly proved by prosecution on the basis of which the court held that it can safely be concluded that except guilt of accused no other hypothesis can be inferred thus the conviction was held proper. (**Dinesh v. State of U.P., 2023 Cri.L.J. 67 : AIR Online 2022 All. 386)**

Section 147, 302 IPC, Sections 118, 32, 27, 154, 3 Evidence Act

The victim told for the first time to PW-2 Shravan Kumar Dixit about the manner of incident and when PW-1, the son of the victim, joined him while PW-2 was carrying the victim to hospital, she also informed his son about the incident. PW-1 and PW-2 had reproduced in court what the victim told them. However, the statement of victim herself was recorded on the date of incident itself on 25.04.2010 and it was firsthand information given to Investigating Officer. We are aware of the fact that any information passes through many person then some changes occur in the subsequent statement.

PW-7, Shambhu Nath Tiwari deposed in Court that he recorded the statement of the victim in hospital and due to paucity of time, the statement of doctor was not recorded and the statement of victim could not be recorded in the presence of Magistrate. He also stated in his statement that victim was badly injured when he recorded her statement, hospital employees and neighbours of the victim were not present. They were outside of the room. This fact is also to be taken into account that Investigating Officer did not record the statement of victim in the form of dying declaration. He simply recorded the statement under Section 161 Cr.P.C., therefore

the formalities to be at the time of dying declaration were not made. Later on when the victim died, the statement was read as dying declaration by the court. While relying on the dying declaration, the court has to look into whether the statement was given by the victim voluntarily as PW-7 stated that hospital employees and neighbours were not present in the room, it cannot be said that the statement given by the victim was under any duress, tutoring or prompting.

Now while considering the evidence on record, as it is said earlier, that the statements of PW-1 and PW-2 is secondary statement while the statement of the victim is first hand statement given on the same day of incident and she named all the appellants in her statement, therefore, if the name of Pappu and Munnu is omitted in the evidence PW-1 and PW-2 cannot be given much importance.

So far as the manner of putting her on fire is concerned, PW-1 and PW-2 are not eye witnesses of the fact and they were not present when the appellants set the victim ablazed. Therefore, if there is omission in the manner of incident in the statements of PW-1 and PW-2 that is immaterial because the statement of victim is intact regarding the manner of incident. It is also pertinent to mention here that the victim herself given only one statement under Section 161 Cr.P.C. and no other than this statement is recorded by any other person. Therefore we are not agree with the argument of learned counsel that there are multiple dying declarations. The statement of the victim is recorded once for all during the investigation. Therefore, there is no question of contradiction in the statements of victim.

From the site plan, it transpires that Investigating Officer recovered the towel and dhibari from the threshold of the appellant Ram Gopal. In the six number of index, he had mentioned that he recovered the Towel and Dhibari from the place shown on the gate of Ram Gopal. However, in his statement, the Investigating Officer stated that he recovered the towel from "Tiraha' of lane near place of occurrence and he did not sent this towel for FSL report but there is no explanation as how he shown to have recovered this towel from the threshold of the appellant.

The victim stated in her statement recorded under Section 161 Cr.P.C. treated as dying declaration that as soon as she entered into the house of the appellant Ram Gopal, all the accused covered her with Panni and tied her hands. The statement is corroborated with the statement of PW-2, Shravan Kumar who stated in examination-in-chief that when the victim came out of the house of appellant Ram Gopal, her hands were tied with chit and he released her hands.

The towel was produced in the court. The statement of PW-2 corroborates the recovery of towel as is also evident from the recovery memo Exhibit Ka-13.

We agree with the arguments of learned counsel for the appellant that doctor admitted in his cross examination that the piece of polythene may struck to the wounds of deceased if polythene sheet is used while ablazing but it is not clarified from the doctor whether there was any polythene remains on the body or not.

Therefore, it is quite possible that when she was treated in the hospital, her wounds must have been washed by the doctor.

From the evidence on record, it is found that dying declaration by the statement of victim recorded by the Investigating Officer under Section 161 Cr.P.C. and relied by the Court under Section 32 of the Indian Evidence Act are reliable evidence and the evidence is corroborated by the medical evidence as well as the evidence of PW-1 and PW-2.

Learned counsel for the appellants argued that PW-3 Neeraj has turned hostile during trial. From the perusal of the statement of PW-3 it transpires that PW-3 is declared hostile by ADGC.

Accordingly, the above captioned criminal appeals are hereby dismissed. The impugned judgment and order dated 24.10.2018 passed by Additional Sessions Judge/Special Judge Anti-Corruption, Court No. 6, Lucknow in Sessions Trial No. 1042 of 2010 (State v. Ram Gopal @ Guddu), arising out of Case Crime No. 168 of 2010, under Sections 147, 302 IPC, Police Station Hasanganj, District Lucknow, is confirmed.

It was held that the dying declaration by statement of victim recorded by IO u/s 161 Cr.P.C. were not recorded in presence of Magistrate due to paucity of time, were relied by the Court u/s 32 of Evidence Act, were corroborated by medical evidence, evidence of eye witness and recovery evidence was held reliable.

It was also held that the statement of hostile witness can be relied upon to the extent that he supports prosecution case. It was also held that it is the prerogative of prosecution to prove their case by single witness or multiple witness and it was reliability and credibility of witnesses and not number. (**Ram Gopal alias Guddu v. State of U.P., 2023 Cri.L.J. 634 : AIR Online 2022 All. 619)**

INDIAN PENAL CODE

Sec. 302/34—Evidence Act, 1872, Sec. 106—Murder—Conviction and sentence—Legality—Conviction of appellant on basis of circumstantial evidence and with aid of section 106 of Evidence Act, 1872—Sustainability

Prosecution established its case as a case of dowry death. As per prosecution story, marriage of daughter of informant solemnized with appellant. She was tortured for demand of additional dowry and done to death by appellant alongwith his parents, but no witness of fact supported prosecution story. Thus, motive fails, living of appellant and deceased in same house not sufficient for invoking section 106 of Evidence Act, 1872. First of all prosecution will have to prove fact that at time of commission of offence, appellant was inside house. Prosecution cannot escape from its burden. No benefit can be given to prosecution if it fails to prove that

fact. Since, prosecution failed to discharge its burden to prove that at time of alleged occurrence, appellant was inside of house. Section 106 of Evidence Act has no application in present case. Sine motive i.e. fact regarding demand of additional dowry not proved. Appellant was inside of house at time of occurrence, not proved. Time of death not established in medical evidence. Thus, chain of circumstance, not complete. Prosecution thus failed to prove its case beyond reasonable doubt against appellant. Therefore, appellant held entitled for benefit of doubt. Conviction and sentence set aside. Appeal allowed. **[Rakesh vs. State of U.P., 2023 (122) ACC 1]**

Sec. 302—Cr.P.C., 1973, Sec. 216—Murder—Conviction and sentence—Legality—Appreciation of evidence—

Initially, case registered under section 306, IPC as a suicide case. After investigation charge-sheet also filed under section 306, IPC. Chares framed by Trial Court under sections 306 and 498-A, IPC. Statement of accused under section 313, Cr.P.C. also recorded, but after completion of entire prosecution evidence, charges suddenly altered and charges framed under sections 304-B and 302, IPC. Accused-Appellant not given opportunity to defend himself against charge for which he was convicted. Thus, accused highly prejudiced for not getting fair and proper opportunity to defend himself against altered charge. Further, case of prosecution not proved even for offence under section 302, IPC. No eyewitness of case. Prosecution bound to prove guilt of accused under section 302, IPC beyond reasonable doubt. Chain of circumstances not complete. Conviction and sentence set aside. Appeal allowed. **[Ramayan vs. State of U.P., 2023 (122) ACC 20]**

Sec. 201—Conviction and sentence under—Legality—

Mere fact that deceased, allegedly died an unnatural death. Court not be sufficient to bring home charge punishable under section 201 IPC. Unless prosecution succeeded to establish that accused person knew to establish that accused person knew or having reason to believe that an offence has been committed, causes any evidence of commission of that offence to disappear, with intention of screening offender from legal punishment. He cannot be convicted. Accused allegedly acquitted of charge under section 306, IPC by Trial Court. Said verdict of acquittal not challenged by prosecution or by complainant. Therefore, Trial Court not justified in convicting appellant under section 201, IPC. Conviction and sentence set aside. Appeal allowed. **[Revti vs. State of U.P., 2023 (122) ACC 49]**

Section 411—Conviction—Sustainability—

Case of the prosecution that truck was loaded with house hold articles operating under informant's Excel Transport Agency. It commenced journey from Indore for Satna but did not reach its destination. Initially FIR was lodged for offence under section 406, IPC but investigation revealed that it's driver was murdered and goods loaded therein were looted-Stolen articles were dishonestly received by the present appellant knowing it to be stolen property-Goods in question were sold by the accused persons who were convicted for offence under section 411, I.P.C-Articles looted from the truck seized from accused-appellant and co-accused-Trial Court convicted the appellant and the High Court sustained it-Section 411, IPC can be broken in 4 segments that whoever 1. dishonestly 2. receives or retains any stolen property 3. knowingly or 4. having reasons to believe the same to be stolen property, will be punished for offence under this section. For successful prosecution it is not enough to prove that the accused was either negligent or he had cause to believe that property was stolen or he failed to make enough enquiries to comprehend the nature of the goods procured-Contradiction in the testimonies of PW-5, PW-22 and PW-24 quite glaring-Seizure evidence totally unbelievable-Prosecution failed to prove it's case beyond reason- able doubt-Essential elements of the offence not established against the appellant. Appellant acquittal of the charge. Appeal allowed. **[Shiv Kumar vs. State of M.P., 2023 (122) ACC 280]**

IPC Code, 1860, Secs. 302, 342, 374 and 448—

Conviction and sentences under -In appeal before High Court, judgment of Sessions Court was set aside and respondent was acquitted- Appeal against acquittal. The dying declaration makes it abundantly clear that respondent raped deceased, poured kerosene on her, and set her on fire. Cause of death was septicemia, which occurred as a result of the burn injuries. Hence, victim's death was a direct result of the injuries inflicted upon her by respondents (being the family members of deceased and other persons known to her) were declared hostile during the proceedings in Sessions Court. It is common for witnesses to turn hostile after death of victim (or even prior to it) for a variety of reasons. It was not prosecution's case that hostile witnesses were eye-witnesses to the crime. Rather, these witnesses' testimonies were relevant mainly to show that deceased consistently stated that respondent raped and murdered her to different persons. Held, the prosecution proved its case beyond reasonable doubt before Sessions Court. High Court ought not to have overturned Sessions Court's judgment. High Court's decision is set aside and Sessions Court's judgment convicting the respondent of offences punishable under sections 302, 341, 376 and 448 of the IPC, as well as its order dated 11 October, 2006 sentencing

respondent to rigorous imprisonment for life for the offence punishable under section 302 of IPC and rigorous imprisonment for 10 years for the offence punishable under section 376 of IPC is restored. Appeal is allowed. **[State of Jharkhand vs. Shailendra Kumar Rai @ Pandav Rai, 2023 (122) ACC 298]**

Indian Penal Code Sections 304-B and 498-A—Dowry death and cruelty—Conviction and sentence—Legality

Death of deceased occurred in her matrimonial home due to burning within seven years of her marriage. Post-mortem report also corroborated cause of death of deceased. Deceased survived for nine days after incident took place. She attributed role of burning to her husband. In such circumstances hostility of witness of fact cannot demolish value of dying declaration of deceased. Thus, prosecution has proved its case against appellants. Conviction upheld. Sentence of life imprisonment for offence under section 304-B, IPC reduced to a period of 10 years. Sentence awarded to other appellants for two years under section 498-A IPC reduced to period already undergone by them. **[Pawan vs. State of U.P., 2023 (122) ACC 388]**

Sections 363, 366 and 376—Protection of Children from Sexual Offences Act, 2012, Sec. 3/4—Acquittal —Legality—

Prosecutrix not supported prosecution case. She categorically deposed that she was in love with respondent No.2. She eloped with respondent No.2 out of her own volition. They performed marriage. She was never enticed by respondent No.2 and rape not committed against her will. Medical evidence not opining with regard to fact of rape. No illegality committed by court below in acquitting respondent No.2 of all charges levelled against him. Appeal dismissed. **[Dinesh vs. State of U.P., 2023 (122) ACC 458]**

Section 376—Protection of Children from Sexual Offences Act, 2012, Sec. 6—Conviction and sentence under—Appeal against

This is a case where the victim has developed a new story for the first time when her statement was recorded under section 164, Cr. P.C., i.e. after a month or more after the commission of rape upon her by the accused-appellant-No definite opinion regarding sexual assault has been given by the doctor-The torch in the light of which the accused-appellant was recognised by the victim has not been recovered and produced before the Court below-Victim (PW-1) has stated in her cross-examination that at the time of incident there was water and slurry in the paddy field where the offence was alleged to have been committed-The victim has stated that the

place where she went to ease her- self was dry, there was no slurry and water-It is improbable to conceive that when it was dark at about 4.30 a.m. in the morning, there was any need for the accused-appellant to maintain secrecy and drag her to the paddy field where there was water and slurry to commit the offence of rape upon the victim-This assertion also adds doubt to the prosecution story-It is also alleged by the prosecution that the accused-appellant caught hold of the informant on the road but this place is not shown in the site plan by the Investigating Officer i.e. PW-10, which also creates doubt in prosecution version. High Court held that the prosecution has failed to prove the guilt of the accused-appellant beyond reasonable doubt. Appeal was allowed. **[Ajeet Singh, Constable vs. State of U.P., 2023 (122) ACC 574]**

Sec. 304-B—Conviction—Sustainability

Case of the prosecution that deceased was married to appellant who used to demand dowry from her parents. Deceased fed up with the torture consumed poisonous substance on 21.4.1998. She was taken to CHC where she was referred to LNJP Hospital and thereafter to a private nursing home. Finally she was referred PGIMS, Chandigarh where she died on 9.5.1998. Charges came to be framed for offence punishable under section 304-B, IPC. Other two accused acquitted on benefit of doubt. Appellant convicted under section 304-B, IPC and sentenced to undergo sentence of R.I. 10 years. In her first dying declaration deceased stated that she consumed medicine by mistake and exonerated the accused persons. In her second dying declaration she stated that parents of appellant caught hold of her and appellant administered her the medicine. Prosecution did not examine DW-1 who had recorded the first dying declaration of the deceased. Second dying declaration recorded by PW-6 in which she stated that appellant forcibly administered the medicine to her Evidence of PW-6 that except deceased none were present when declaration was recorded. No certificate of fitness obtained by PW-6 from any medical officer. PW-6 herself admitted that father mother and sister of deceased were present in the hospital. Possibility of second dying declaration being given after tutoring by her relatives not ruled out. Prosecution did not examine DW-1 and K.K. Rao DSP PW-2-On basis of same very evidence Trial Court acquitted father and mother of the appellant. First dying declaration has to be considered more reliable as against second one. Benefit of doubt ought to have been given to the appellant as well when evidence was identical against all the three accused. Impugned judgment set aside. Appeal allowed. **[Makhan Singh vs. State of Haryana, 2023 (122) ACC 688]**

Close scrutiny of the evidence makes it clear that there is no eye witnesss account to the incident and the entire prosecution case is based on circumstantial evidence.

Main piece of evidence is the statement of P.W.3 Puneet Kumar Gautam, who saw the accused persons entering the house of the deceased and thereafter coming out from the same, however, merely on the basis of this evidence, it will not be safe for this Court to reach to the positive conclusion that it is the accused persons, who have committed the murder of the deceased. There is absolutely no evidence as to in what manner the murder of the deceased was committed by the accused persons. From accused Sanjoo @ Sanjay, one country made pistol has been seized, but there is no ballistic expert report connecting the said seizer in the commission of offence.

Furthermore, from accused Banwari and Praveen Dubey, knives have been seized, but undisputedly, no knife injury has been found on the body of the deceased. So far as the recovery of the amount is concerned, the said recovery has not been proved by any independent witness and the basic ingredients of Section 411 I.P.C. have also not been proved by the prosecution as required under the law.

Taking cumulative effect of the evidence, the evidence adduced by the prosecution does not appear to be sufficient on which basis the conviction of the appellants can be upheld. Keeping in mind the above proposition of law, facts and circumstances of the present case, the appellants are entitled for the benefit of doubt. Therefore, they are acquitted of all the charges and the judgment and order of the court below is liable to be set aside. (**Sanjoo @ Sanjay and others Vs. State of U.P. 2023(3) ADJ 279(DB))**

The recoveries by the Investigating Officer, specifically the time and place of the recoveries was not proved. The motive stated is too remote and it is though stated but not proved even from the circumstances of the case.

There are suggestions of the informant side carrying grudges against the accused persons because of lodging of the FIR against the deceased and his wife in the matrimonial case of appellant Vimlesh Kumari. A suggestion was given to PW-1 that the deceased had lodged a first information report against appellant Mata Prasad and accused Harish Chandra under Section 307 IPC on false grounds, which he had denied.

Enmity is a double edged weapon. It could be made use by either party to wield that weapon of motive against each other. There was sufficient motive on the part of the informant side to falsely implicate the accused party. Moreover, from the inconsistencies noted above, the possibility of the accused persons having been falsely implicated cannot be ruled out.

The deceased had criminal antecedents. He was engaged in the business of sale of illicit liquor and 'Satta' (gambling). The time of the incident was around 'Holi' festival. The defence witnesses had categorically stated that the deceased used to play 'Satta' with the people in the locality. There are chances that someone else had killed the deceased because of the enmity relating to the activities of the deceased. And on the information received by the informant, who was at home, after deliberations, the first information report was lodged. The defence theory that the accused party had been falsely implicated because of enmity cannot be completely ruled out because of the deep dent in the prosecution story on all material aspects of the case, in the above noted facts and circumstances of the case.

It is a cardinal principle of criminal jurisprudence that the guilt of the accused must be proved beyond all reasonable doubt. However, the burden on the prosecution is only to establish its case beyond all reasonable doubt not all doubts. Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than truth. To constitute reasonable doubt, it must be free from an over emotional response. Doubts must be actual and substantial doubts as to the guilt of the accused person arising from the evidence, or from the lack of it, as opposed to mere vague apprehensions.

Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favorable to the accused should be adopted.

From the analysis of the evidence on record cumulatively, for the reasons noted above, a serious doubt arises in the mind of the Court about the truthfulness of the prosecution story. The benefit of doubt obviously has to go to the accused persons. The conviction of the accused persons on the shaky version of two prosecution witnesses (PW-1 and PW-2) is liable to set aside by giving them benefit of doubt.

The judgment and order dated 27.2.2007 set aside and the appeal is allowed. (**Mata Prasad Verma and Others Vs State of U.P, 2023(1) ADJ 586)**

Section 302, 120B, 149 IPC, Section 118 Evidence Act, Testimony of Interested Eye Witness

The matter related to murder by unlawful assembly and the issues raised were testimony of interested eye witnesses and its reliability appreciation of medico legal evidence, the issue related to absence of motive, failure to recover the weapon of offence, non-reliability of FIR, proof of criminal conspiracy and appreciation of the principle of “Rarest of Rare Cases”, warranting capital punishment. It was held by the Hon’ble Allahabad High Court,

Undisputedly, both P.W.1-Rama Kant Verma and P.W.2-Uma Kant Verma, who are eye-witnesses, are family members of the deceased. It is settled law that merely because the witnesses are interested and related witnesses, it cannot be a ground to disbelieve their testimony. However, the testimony of such witnesses has to be scrutinized with due care and caution and upon scrutiny of the evidence of such witnesses, if the Court is satisfied that the evidence is creditworthy, then, there is no bar on the Court in relying on such witness. (See Dalbir Kaur v. State of Punjab : (1976) 4 SCC 158, Piara Singh and others v. State of Punjab : (1977) 4 SCC 452, Anil Phukan v. State of Assam : (1993) 3 SCC 282, Sudhkar alias Sudharshan v. State Represented by the Inspector of Police, Sri Rangam Police Station Trichy, Tamil Nadu : (2018) 5 SCC 435, Sheo Shankar Dubey v. State of Bihar : (2019) 6 SCC 501.

Both P.W.1-Rama Kant Verma and P.W.2-Uma Kant Verma have stated that on the date of occurrence i.e. in the intervening night of 10.11.1994, at 02:30 a.m., Rama Kant Verma (P.W.1) was sleeping along with cousin Girish Chandra Verma (deceased) inside tube-well room after shutting its door; his uncle Ram Naresh Verma (deceased) and his grand-father Sukai (deceased) were sleeping under Chhappar on separate cots west of the tube-well; uncle Ram Dev (deceased) was sleeping under the chhappar south of the tube-well; and Uma Kant Verma (P.W.2) was sleeping west of the Sariya on the Rasta (way), which is adjacent to the chhappar where Ram Naresh (deceased), Sukai (deceased) were sleeping. Both these witnesses i.e. P.W.1 and P.W.2 have further stated that appellants Krishna Murari alias Murli and Kashi Ram were armed with Gandasa and appellants Raghava Ram and Ram Milan were armed with Banka. They all and 2-3 other persons who had covered their faces by means of cloth and armed with Banka and Gandasa were causing hurt to their uncle Ram Naresh (deceased) and their grand-father Sukai (deceased). They also stated that on seeing causing hurt, both Girish (deceased) and Rama Kant (P.W.1) raised alarm and ran to help Ram Naresh (deceased) and Sukai (deceased) and thereafter, all the appellants were causing hurt to Girish (deceased) by means of Gandasa and Banka and thereafter, they ran inside the sugar-cane field. They also stated that they saw the incident in the light of electricity bulb, hanging in the branches of two Neem trees. They also stated that appellants and other assailants ran away, after assaulting Ram Naresh, Sukai, Ram Dev and Girish,.

We have gone through the evidence of Rama Kant Verma (P.W.1) and Uma Kant Verma (P.W.2) and find them to be wholly truthful witnesses. Since they have furnished the same manner of assault and while dealing with their evidence, we have found that their version in relation to the assault on the deceased is in consonance with medical evidence. Further, we find that they have explained their presence at the place of the incident. They have stated that they were sleeping there on the date and time of the incident.

It is pertinent to mention that although P.W.1-Rama Kant Verma and P.W.2-Uma Kant Verma were extensively cross-examined, nothing could be extracted there from which could impair their credibility.

Earlier we have reproduced the ante-mortem injuries suffered by the deceased Ram Dev, Ram Naresh, Sukai and Girish and seen that Ram Dev sustained two abraded contusion on the right side forehead, twelve incised wounds on his face, neck, shoulder, fore-arms and one stab wound on lungs. His right clavicle, 4 ribs (3 to 7) on right side chest were found fractured; lung was also found cut; semi digested food was present in the stomach; faecal matter was present in the intestines.

The deceased Ram Naresh sustained thirteen incised wounds on head, face, neck, arms, wrist and hand. His left cervical was found fractured; Right side ribs (3 to 6th) were found fractured; semi-digested food was present in the stomach; faecal matter was also found in intestines.

The deceased Sukai sustained four incised wounds on neck and fore-head. His right clavicle and right side 2nd to 7th ribs were found fractured; membrances of lungs were torned; right lung 7 cm x 4 cm were cut; semi digested food and faecal matter was found in stomach and intestines.

The deceased Girish sustained fifteen incised wounds on the head, hand, palm, knee, index finger. His occipital bone back side was fractured upto 3 inches; brain matter was coming out; semi digested food and faecal matter were found present.

Dr. O.P. Khatri (P.W.9) opined that all the deceased died due to shock and hemorrhage as a result of ante-mortem injuries. According to him, the ante mortem injuries suffered by the deceased were sufficient in the ordinary course of nature to cause death. It has also been stated before the trial Court by P.W.9 that the deceased could have died on 11.11.1994 at 02:30 a.m.; incised wound was found on the lungs of the deceased Ram Dev; because of injury no.9, color bone of the deceased Ram Dev was found fractured; injury no.9 of the deceased Ram Dev could be attributable by Banka; injuries no. 1 and 2 of Ram Dev could be attributable by banka or part of pool of Gandasa; and all the ante-mortem injuries sustained by other deceased persons could be attributable by Banka or Gandasa. P.W.9-Dr.O.P. Khatri was extensively cross-examined but nothing could be extracted there from which could impair credibility of the evidence of the eye-witnesses P.W.1-Rama Kant Verma and P.W.2-Uma Kant Verma. Both these witnesses have consistently stated that the deceased died on the spot as a consequence of the said injuries. Thus, we are of the considered view that there is no material discrepancy in the medical and ocular evidence. There is no reason to interfere with the judgments of the trial Court on this ground.

In any event, it has been consistently held by the Apex Court that the evidentiary value of medical evidence is only corroborative and not conclusive and,

hence, in case of a conflict between oral evidence and medical evidence, the former is to be preferred unless the medical evidence completely rules out the oral evidence. [See Solanki Chimanbhai Ukabhai v. State of Gujarat, (1983) 2 SCC 174; Mani Ram v. State of Rajasthan, 1993 Supp (3) SCC 18; State of Haryana v. Bhagirath, (1999) 5 SCC 96; Dhirajbhai Gorakhbhai Nayak v. State of Gujarat, (2003) 5 SCC 223; Thaman Kumar v. State of U.T. of Chandigarh, (2003) 6 SCC 380; Krishnan v. State, (2003) 7 SCC 56; Khambam Raja Reddy & Anr. v. Public Prosecutor, High Court of A.P., (2006) 11 SCC 239; State of U.P. v. Dinesh, (2009) 11 SCC 566; State of U.P. v. Hari Chand, (2009) 13 SCC 542; Abdul Sayeed v. State of M.P., (2010) 10 SCC 259 and Bhajan Singh @ Harbhajan Singh & Ors. v. State, 2011) 7 SCC 421].

In the present case, we do not find any major contradiction either in the evidence of the witnesses or any conflict in medical or ocular evidence that could tilt the balance in favour of the convicts/appellants. The minor improvements, embellishments etc. apart from being far yield of human faculties are insignificant and ought to be ignored since the evidence of witnesses otherwise overwhelmingly corroborates each other in material particulars.

However, the Trial Court found that there was sufficient motive with the accused persons/appellants to commit the murder of the deceased since 1990, litigation of land is going on between the family of the deceased and Krishna Murari. The long nursed feeling of hatred and the simmering enmity between the family of the deceased and the accused persons most likely manifested itself in the outburst of anger resulting in the murder of the deceased. We are not required to express any opinion on this point in the light of the evidence adduced by the direct witnesses to the incident.

It is a settled legal proposition that even if the absence of motive, as alleged, is accepted that is of no consequence and pales into insignificance when direct evidence establishes the crime. Therefore, if there is direct trustworthy evidence of witnesses as to the commission of an offence, motive loses its significance. Therefore, if the genesis of the motive of the occurrence is not proved, the ocular testimony of the witnesses as to the occurrence could not be discarded only on the ground of absence of motive, if otherwise the evidence is worthy of reliance. [See Hari Shankar v. State of U.P., (1996) 9 SCC 40; Bikau Pandey & Ors. v. State of Bihar, (2003) 12 SCC 616; State of U.P. v. Kishanpal & Ors., (2008) 16 SCC 73; Abu Thakir & Ors. v. State of Tamil Nadu, (2010) 5 SCC 91 and Bipin Kumar Mondal v. State of West Bengal; (2010) 12 SCC 91].

The next line of contention of the learned Counsel for the appellants is that no independent witnesses were examined to prove the prosecution case even though as per the prosecution case itself, number of villagers came on the spot on hearing the hue and cry. We are not impressed by this submission in the light of the

observations made by the Apex Court in Darya Singh v. State of Punjab : AIR 1968 SC 328, wherein the Apex Court has observed as under :-

> "12. It is well-known that in villages where murders are committed as a result of factions existing in the village or in consequence of family feuds, independent villagers arc generally reluctant to give evidence because they are afraid that giving evidence might invite the wrath of the assailants and might expose them to very serious risks. It is quite true that it is the duty of a citizen to assist the prosecution by giving evidence and helping the administration of criminal law to bring the offender to book, but it would be wholly unrealistic to suggest that if the prosecution is not able to bring independent witnesses to the Court because they are afraid to give evidence, that itself should be treated as an infirmity in the prosecution case so as to justify the defence contention that the evidence actually adduced should be disbelieved on that ground alone without examining its merits."

Similarly, in Raghubir Singh v. State of U.P., (1972) 3 SCC 79, the Apex Court has held that the prosecution is not bound to produce all the witnesses said to have seen the occurrence. Material witnesses considered necessary by the prosecution for unfolding the prosecution story alone need be produced without unnecessary and redundant multiplication of witnesses. In this connection, general reluctance of an average villager to appear as a witness and get himself involved in cases of rival village factions when tempers on both sides are running high, has to be borne in mind.

The learned Counsel for the convicts/appellants has then tried to create a dent in the prosecution story by pointing out inconsistencies between ocular evidence and the medical evidence. However, we are not persuaded with this submission since the trial Court has categorically ruled that the medical evidence was consistent with the ocular evidence and we can safely say that to that extent, it corroborated the direct evidence proffered by the eye-witnesses.

At the cost of repetition, it would be relevant to mention that there is no material discrepancy in the medical and ocular evidence. There is no reason to interfere with the judgments of the trial Court on this ground.

On due consideration of the evidence on record, we are of the view that merely taking of non-vegetarian food with the appellants does not constitute conspiracy as the prosecution has failed to adduce any evidence which shows that on the conspiracy/instigation of Ram Kripal and Ram Tilak, appellants/convicts had committed the offence of murder of the deceased persons. Thus, the trial Court has rightly acquitted Ram Kripal and Ram Tilak and there is no illegality or infirmity in the impugned judgment with regard to acquitting Ram Kripal and Ram Tilak, hence Criminal Revision No. 14 of 2000 is liable to be dismissed.

From a perusal of the above, it is clear that the special reasons assigned by the trial Court for awarding extreme penalty of death are that the murder was pre-meditated and pre-planned one, therefore, imposition of lesser sentence than that of death sentence, would not be adequate and appropriate. In these circumstances, the trial Court held that the balance-sheet of the aggravating and mitigating circumstances was heavily weighed against the appellants making it the rarest of rare cases and consequently awarded the death sentence.

But, having gone through the facts and circumstances of this case, we find that no evidence on record to establish that the convicts/ appellants committed pre-planned and pre-meditated murder of the deceased. At least, no such evidence has been led by the prosecution to establish this fact. It comes out that convicts/appellants were causing injuries to the deceased and when they were doing so, even the witnesses also reached there, but that itself is not sufficient to hold that it is a pre-meditated or pre-planned murder.

It is true that the manner in which crime has been committed by the appellants by Gandasa and Banka blows, is brutal, cruel and gruesome, but there is absolutely no evidence to suggest as to what could be the reason for the appellants to commit the said offence. This could be because of frustration, mental stress or emotional disorder which would be the mitigating circumstances to be taken note of.

It is relevant to mention here that both the eye-witnesses P.W.1 and P.W.2 have stated that at the time of the incident, appellants Krishna Murari alias Murli and Kashi Ram were armed with Gandasa, whereas appellants Raghav Ram and Ram Milan were armed with Banka and apart from them, 2-3 other persons who had covered their faces by means of cloth were also having Banka and Gandasa. As per the prosecution story, all the persons above were causing hurt to the deceased with Banka and Gandasa, on account of which, four deceased persons died on the spot. As per the opinion of P.W.9 Dr. O.P. Khatri, ante-mortem injuries sustained the deceased could be attributable by Banka and Gandasa. But both Rama Kant Verma PW-1 and Uma Kant Verma PW-2 have not been able to specify who amongst appellants and 2-3 unknown persons who covered their faces with the cloth, were responsible for the fatal injuries suffered by the four deceased. P.W.1 and P.W.2 have failed to narrate the specific role of assault of weapon by the appellants upon the deceased persons. Moreso, the appellants did not have criminal history.

After considering the above facts and circumstances of the case,, we are of the view that the instant case does not fall in the category of 'rarest of rare cases', warranting capital punishment. Hence, the death sentence awarded to the convicts/appellants under Section 302 read with Section 149 of IPC is liable to be converted into life imprisonment.

In this matter the appeal was partly allowed. The conviction was maintained but the death sentence was converted into Imprisonment for Life. (**State of U.P. v. Krishna Murari alias Murli, 2023 Cri.L.J. 897: AIROnline 2022 All. 1086)**

Section 302 IPC, Common Intention, Determination of Rarest of Rare case

It is well known fact that when such a heinous occurrence takes place where two appellants caused death of three persons at 05.00 p.m., people were shutting their shops and hiding themselves behind their doors and crowd was terrorized, then there is least chance that the independent witness will dare to depose about the incident in the court. The evidence of witnesses cannot be discarded only because they are in any way related to the deceased if they are reliable and inspire confidence of truthfulness. Moreover, the witness no. 2, Aamina is an injured witness in the case, who tried to save her sons from assault of the accused and in turn, she sustained injuries. Thus, there is no reason to discard the evidence of prosecution witnesses just because they are related witnesses to the extent that they have inspired confidence.

It is stated that the Investigating Officer of the case was not produced as a witness in the court. From perusal of the file of the trial court, it transpires that initial investigation of the case was conducted by the Investigating Officer, Sri Jasbir Singh and later on by the Investigating Officer, Ramesh Chandra Singh, who prepared the site plan and submitted charge sheet in court, but, the Investigating Officers, Jasbir Singh and Ramesh Chandra Singh were not produced in the court rather P.W.-10, Sub. Inspector, Rana Pratap Singh proved these documents by way of secondary evidence. However, it is stated by P.W.-10 that the Investigating Officer is alive.

Considering these facts, it is clear that the Investigating Officer did not depose in court to support prosecution case. However, learned counsel for the convict-appellants could not explain as to what damage was caused to the credibility and reliability in prosecution case, if Investigating Officer has not deposed in the court. The case is based on ocular evidence. The injured witness appeared in witness box and proved the case, therefore, merely absence of the Investigating Officer does not affect adversely of the complete prosecution case.

Learned counsel for the convict-appellants argued that the recovery of alleged weapons of assault from convict-appellants is highly doubtful. It transpires from the record that the accused were arrested and admitted to jail and the Investigating Officer had taken the accused in police custody by the order of the concerned court and subject to the conditions imposed by the court concerned; the recovery was made by the Investigating Officer on the pointing out of the accused from the space between the roof of latrine and the roof of his house. Appellant Laeek confessed during recovery that this is the weapon with which he assaulted the sons

of Sarfuddin and Alauddin. P.W.-3 recovered one meat chopper on the pointing out of convict-appellant, Mohd. Umar from under roof of his house who confessed that with the recovered weapon, he assaulted the sons of Sarfuddin and Alauddin. Both the meat choppers were stained with dry blood. Recovery memo is proved by P.W.-3 and no explanation is given by the accused about the recovery of the meat choppers from their respective houses. Therefore, there is no doubt in the recovery of weapons from convict-appellants.

Learned counsel for the convict-appellants argued that the learned trial court did not address the controversies and contradictions in the statements of the witnesses. However, the incident ignited when the injured Aamina forbade Appellant Laeek from urinating in home where she was preparing for Waju. She also sustained injuries when she tried to save deceased.

He further argued that there are vital discrepancies in the statements of P.W.-1 and P.W.-2 recorded before the trial court, but, trial court did not address the said controversies. From the perusal of statements of P.W.-1 and P.W.-2, it transpires that P.W.-1 and P.W.-2 who are the witnesses of facts; unequivocally stated in so many words that convict-appellant, Laeek Ahmad assaulted deceased, Jauhar Ali, Gauhar Ali, Javed Ahmad and Moinuddin and injured Aamina by meat choppers. There is no discrepancy on the point of genesis of dispute, on the "place of occurrence', or on the weapons used to commit the crime. P.W.-2, Aamina was herself injured in the case, who proved the incident in details. Therefore, there are no contradictions, discrepancies or controversy in the statements of witnesses. We do not consider it appropriate or permissible to embark upon the reappraisal or re-appreciate of the evidence in the contest of the minor controversies or discrepancies in view of the law laid down by the Apex Court reported in (1983) 3 SCC,217, Bharwada Bhoginbhai Hirjibhai v. State of Gujarat.

It is also submitted by the learned counsel for the convict-appellants that no overt act has been assigned to convict-appellant, Mohd. Umar and necessary ingredients for invoking section 34 I.P.C. are missing. However, from perusal of the record, it is proved that convict-appellant, Mohd. Umar picked the meat chopper from the shop of meat seller, Lallu and supplied the said meat chopper to convict-appellant, Laeek Ahmad. It is not necessary for constituting common intention that there must be meeting of minds or preponderance for commission of the crime days before. It is sufficient, if at the spur of moment, the meeting of minds arrived at besides, Mohd. Umar actively participated in the commission of crime. Therefore, it cannot be said that the ingredients for invoking section 34 I.P.C. are missing.

Learned trial court discussed the evidence at length. From perusal of the record of the trial court, it transpires that initially the incident occurred between Aamina and convict-appellant Laeek and when convict-appellant Laeek attacked on

Aamina with meat chopper, his son reached at the spot to save Aamina, then convict-appellant, Laeek assaulted all the four persons with meat chopper.

All the witnesses proved the incident against convict-appellants, Mohd. Umar and Laeek beyond reasonable doubt and the injuries inflicted upon the deceased. The injuries are well corroborated by the statements of doctors who conducted autopsy of the dead bodies of the deceased. The injuries on the person of injured Aamina are also corroborated by medical evidence on record. The evidences of all the witnesses of facts inspire confidence of veracity and truthfulness. There is nothing on record which can create doubt on the evidence of witnesses.

Learned counsel for the convict-appellants submitted that learned trial court placed reliance on the statements of the convict-appellants recorded under section 313 Cr.P.C. and based the conviction of the convict-appellants on their own statements.

It is a settled principle of law that the statement of an accused under section 313 Cr.P.C. can be used as evidence against the accused, in so far as it supports the case of the prosecution. Equally true is that the statement under section 313 Cr.P.C. simplicitor normally cannot be made the basis for conviction of the accused. But where the statement of the accused under section 313 Cr.P.C. is in line with the case of the prosecution, then certainly the heavy onus of proof on the prosecution is, to some extent, reduced as has been held in the case of (Brajendra Singh v. State of M.P. dated 28th February,2012).

In the light of this argument, we have perused the statement of the convict-appellant, Mohd. Umar recorded under section 313 Cr.P.C. Initially, convict-appellant, Mohd. Umar denied the allegations levelled against him and stated that he intervened on humanitarian ground to defend the quarrel, but, when he was asked to explain in his defence, he narrated the story in the line of prosecution case. It is also stated that convict-appellant, Laeek continued to stab the deceased and injured. Likewise, convict-appellant, Laeek Ahmad also denied all the prosecution evidences in his statement recorded under section 313 Cr.P.C. and when he was asked to explain in his defence, he narrated the story in the line of the prosecution case. It is further submitted that the dispute in question arose on trivial issue but, when the sons of complainant started beating him and one of the deceased had meat chopper in his hands, he snatched meat chopper and assaulted them in self defence and lost control over himself.

It is also pertinent to mention here that the statements of both the convict-appellants under section 313 Cr.P.C. are also reliable on the tune that both the convict-appellants were taken by the Investigating Officer in police custody remand from jail and meat choppers were recovered from the pointing of said convict-appellants from their houses between the roof of latrine and under roofs. Therefore, the reliance on the statements of the convict-appellants under section 313 Cr.P.C. by

trial court is in consonance with the provisions of law and the recovery of meat choppers on their pointing out is under section 27 of the Indian Evidence Act. Thus, there is no infirmity in the judgment passed by the trial court and the judgment of the trial court is based on factual and legal aspects of law.

The facts of this case lead that convict-appellants terrorized all the residents of the village and continued to stab till the three deceased died at the spot and one, Moinuddin expired when he was being carried to the hospital and injured, Aamina was badly injured on her chest and abdomen. The evidence of prosecution also proves that during this incident, the villagers of the village shut the doors of their houses and the shopkeepers also shut down their shops as they were put to terror by the brutal act of convict-appellants. Therefore, the judgment of the trial court is in conformity with the facts on record and is liable to be upheld.

The convict-appellants committed the crime which is abominable, vicious and ferocious in nature. If the crime is said to be of such a brutal depraved & heinous in nature so as to fall in the category of rarest of rare, accused convicts should be adequately punished for that, but, we have to consider the circumstances of convicts before awarding punishment.

There is no evidence to the effect that the convict-appellant, Laeek committed crime with pre-planning or preponderance. The occurrence happened suddenly when the hot exchanges arose due to urination in the lane of the complainant while Aamina was preparing for Wazu. The convict-appellant had no motive or intention to kill anybody at the time of occurrence. However, once he started stabbing, he continued to stab till the death of three persons caused at the spot and one person while he was being carried to the hospital and one person was badly injured. He himself admitted during his statement under section 313 Cr.P.C. that he lost control over himself.

We also find ourselves unable to agree with the view of the trial court that the convict-appellant-Laeek is menace to the society that he cannot be allowed to stay alive. On the other hand, we are of the view that the prosecution could not establish that convict-appellant-Laeek is beyond reform. We are also mindful that the convict-appellant-Laeek has no criminal antecedents prior to the commission of this crime, that too, was committed in the spur of moment. Therefore, the circumstances of the crime and criminal do not go to show that instant matter falls into the category of rarest of rare case or that the sentence of life imprisonment awarded to the convict-appellant-Laeek is unquestionably fore-closed.

Before proceeding further, it would be pertinent to mention here that life imprisonment is a rule and the death penalty is an exception only when the life imprisonment would be inadequate in proportion to the crime committed and the death penalty is imposed only when alternative life imprisonment is totally inadequate. The instant case does not fall in the category of rarest of rare cases,

where life imprisonment would suffice to the ends of justice. Therefore, in totality of facts and circumstances of this case, we find it a fit case to commute the death sentence of the convict-appellant, Laeek into life imprisonment.

While affirming the conviction of the convict-appellant-Laeek under Section 302 IPC, we set aside the death penalty of the appellant, Laeek awarded by the trial court and modify his sentence from death penalty to life imprisonment without remission rejected.

So far as conviction of convict-appellant, Mohd. Umar is concerned, he was convicted with convict-appellant, Laeek under sections 302/34,307/34,504 & 506 I.P.C., However, initially he had no prior meeting of mind with co-appellant, Laeek but he assisted with his overt act and played an active role in commission of crime. His role is not less than convict, Laeek. Therefore, the punishment awarded to convict-appellant, Mohd. Umar does not call for any interference by this court. Hence, the Criminal Appeal No. 704 of 2021 filed by convict-appellant, Mohd. Umar is dismissed accordingly.

The matter was related to capital punishment. It was held by the Hon'ble Allahabad High court that evidence of witnesses cannot be discarded only because they are in any way related to deceased, if they are reliable and inspire confidence. It was also held that mere non-examination of investigating officer could not affect prosecution case adversely. It was also held that the meat choppers were recovered from the house of accused and no explanation was given by them. Hence, the recovery of weapon was not doubtful. Regarding common intention it was also held that the common intention may occur at spur of moment. The meeting of minds was arrived further accused actively participated in commission of crime. Hence, Common intention was also proved. Conviction was held proper but the circumstances of crime and criminal do not show that case falls under category of rarest of rare case. Hence the death penalty was modified to sentence of imprisonment for life. (**State of U.P. v. Laeek, 2023 Cri.L.J. 1046 : AIR Online 2022 All. 497**)

Section 304B, 498A IPC Section 4 Dowry Prohibition Act, Double Jeopardy

The matter was related to the applicability of Double Jeopardy in the case of dowry death, cruelty and demand of dowry u/s 4 of Dowry Prohibition Act. It was held by Hon'ble Allahabad High Court that acquittal u/s 498A & 304 IPC and subsequent conviction u/s 4 of Dowry Prohibition Act does not attract the principle of double jeopardy as the ingredients of Section 4 of Dowry Prohibition Act are not identical to ingredients of offence u/s 498A or 304B IPC. In case of offence u/s 4 of Dowry Prohibition Act mere demand of dowry is punishable and element of cruelty is not necessary whereas demand of dowry u/s 304B IPC is qualified with the words

"soon before her death" and the demand of dowry u/s 4 of Dowry Prohibition Act is not qualified in any time period. Hence, it was held that principle of double jeopardy is not attracted. (**Satish and another v. State of U.P., 2023 Cri.L.J. (NOC) 100 (All) : AIR Online 2022 All. 747)**

Burden of Proof Section 106 Indian Evidence Act, Section 300, 302 IPC

In brief the facts of the case were as such that accused along with his family members allegedly tortured deceased for demand of additional dowry and causing cruelty to her administered poison to her. The accused and his deceased wife used to reside in same house. Hon'ble Allahabad High Court held that though accused and his deceased wife used to reside in same house, burden of proof could not be shifted on accused unless prosecution discharged burden by proving that at the time of alleged occurrence, accused was also in side of house. It was held that failure of prosecution to establish that the time of occurrence accused was inside of house. Section 106 of Evidence Act was not attracted.

It was also held that the trial court erred in placing reverse burden of proof on accused with aid of Section 106 of Evidence Act when prosecution had not discharged its initial burden. Hence, the conviction was set aside. **(Anil v. State of U.P., 2023 Cri.L.J.(NOC) 109 (All.) : AIR Online 2022 All. 605)**

JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT

Sec. 12(1)—IPC, 1860, Seccs. 147, 148, 323, 504, 506, 307 and 302—Bail to juvenile—Declining of—Legality--Incident did not occur on spur of moment

Clear allegation of beating up in a cruel manner, the complainant and her four months daughter lying on a cot in house thrown on ground and hit by applicant-juvenile on her head by iron rod. Applicant juvenile merely 16 years of age chose to have an upper hand in whole of incident in contrast with role alleged to be played by other members of her family. In social investigation report, people of locality expressed a negative opinion about her. She cannot be provided counselling by professional experts outside juvenile home. Thus, institutional custody seems better than family custody. No ground to interfere in impugned orders of rejection of bail. Revision dismissed. **['X' (Minor) vs. State of U.P., 2023 (122) ACC 194]**

Sec. 15—Offender under sections 307, 342, 452, 354, 326-K] 326-kh, 302, 376 and 511 IPC read with sections 7/8 of POCSO Act and section 3(2)(5) of SC/ST Act— Order of the JJ Board that the child in conflict with law shall be tried as

an adult in terms of provisions of section 15 of the Act. Appeal against—Dismissed—Legality of—

It was obligatory on the part of the Board to conduct preliminary assessment on four counts as mentioned under section 15 of the Act. An application moved by the juvenile before Board to get himself examined by a psychologist/psychiatrist. Not accepted. No member of the Board was professional in child psychology. Appellate Court did not assess the facts before coming to its own conclusion. Opinion of a child psychiatrist or child psychologist or other professional dealing in child psychology is mandatorily to be taken unless the Board comprises any such member. Order impugned have been passed not strictly in accordance with law. Requires reconsideration—Matter remanded before Board to decide it afresh in the light of observations. Revision disposed of. **[Minor 'X' vs. State of U.P. Through Principal Secretary, Home, Government of U.P. at Lucknow, 2023(122) ACC 206]**

Sec.7-A—Determination of age—Authenticity of matriculation certificate—

Date of birth reflected in matriculation certificate issued by C.B.S.E. Board cannot be accepted as authentic or credible. Admission form submitted to Annie Besant School at the time of admission of present juvenile. Bore signature of both parents and date of birth therein mentioned as 2.9.2001. When he was admitted in another institution in Class 6, no transfer certificate or any other document produced before that institution and a different date of birth 2.9.2002 from now on was mentioned. Thus, glaring gap of discrepancy between dates of birth recorded upto Class-V as compared to date which come to be recorded in Class-6, no illegality in order impugned in discarding matriculation certificate. Revision dismissed. **[Rajat Upadhyay vs. State of U.P., 2023 (122) ACC 417]**

Sections 101, 29, 30 and 37 IPC, 1860,— Sections 363, 366 and 376 Cr.P.C., 1973, — Section 397/401—Custody of victim—Rejection of application for custody of victim by Child Welfare Committee—Appeal dismissed on ground of maintainability by Appellate Court—Legality

When an order in regard to custody of victim passed by Child Welfare Committee, appeal against such order shall be maintainable by Children Court and not by District Magistrate. District Magistrate empowered to hear appeal against decision of Committee relating to foster care and sponsorship after care. Order in question does not fall in this category. Appellate Court thus wrong in holding that appeal did not lie before it. Impugned order set aside. Directions issued regarding the

name of the Special Judge POCSO Act or even an Additional Judge POCSO Act is "*Children's Court*" **[Girish Kumar vs. State of U.P., 2023 (122) ACC 804]**

MOTOR VEHICLES ACT

Commissioner relying on disability certificate took permanent disability at 60 per cent and awarded compensation.

Board in its report dated 09.11.2017 has opined that the appellant has not suffered any permanent disability. However, at the same time, it is required to be noted that the disability certificate issued by Dr. Umesh Kumar Singh, Civil Surgeon-cum-Medical Officer, Gardiner Road Hospital, Patna was of the year 2009 and the Medical Board constituted pursuant to the order passed by the High Court examined the injured employee after a period of approximately 9 years from the date of accident. At the relevant time, the employer did not make any application before the Commissioner, Employees' Compensation to constitute a Medical Board and the injured be examined by the Medical Board. The employer ought to have made such a request before the Commissioner, Employees' Compensation at the earliest opportunity. Be that as it may, considering the fact that the appellant did suffer the injuries due to fall and at the relevant time, it affected his 60% earning capacity, it may not be that nothing was to be awarded to the appellant - injured employee by way of compensation.

Supreme Court of the opinion that the appellant is entitled to Rs. 3,76,236/- by way of compensation with interest, which the appellant has already withdrawn, it shall meet the ends of justice. **[Suresh Paswan vs. KLA Construction Technologies Pvt. Ltd. and others, 2023 ACJ 10]**

Fatal accident.

It could thus be seen that the deceased S. Sathiyanarayan was 23 years of age at the time of the accident. He was a qualified engineering graduate and was pursuing an MBA degree at SRM University to further his professional capabilities. In view of the specific averments made in the affidavit as to the employment prospects of the classmates of the deceased S. Sathiyanarayan and also his young age at the time of the accident, we are of the considered view that the Tribunal and the High Court have erred in not giving due weightage to the same. Had the deceased S. Sathiyanarayan not met with the unfortunate accident, he would have surely drawn a salary equivalent to that of his classmates or at least an amount near the said amount. Furthermore, the deceased was the only issue of the appellants. Since no parent should have to suffer through the death of their children, much less their only child,

we are of the considered view that the monthly income as calculated by the High Court is inadequate.

Thus, we find that the compensation to be paid on account of the death of deceased S. Sathiyanarayan ought to be worked out by enhancing his monthly income to Rs. 30,000/. However, we find that, since he was the only child of the appellants 50% of the amount would have to be deducted as personal and living expenses. We further find that, insofar as the loss of consortium is concerned, an amount of Rs. 40,000/ will have to be awarded. The compensation on account of the death of the deceased S. Sathiyanarayan is, therefore, being reassessed as under:

Sl. No.	**Heads**	**Calculation**
1.	Income	Rs. 30,000/ per month
2.	40% to be added to Future Prospects	30,000/ + 12,000/ = Rs. 42,000/ per month
3.	1/2 deducted towards personal expenses	42,000/2 = Rs. 21,000/
4.	Yearly Income [(Sl. No.2- Sl. No. 3) x 12]	21,000 x 12 = Rs. 2,52,000/
5.	Compensation after Multiplier	2,52,000 x 18 = Rs. 45,36,000/
6.	Conventional Head (Funeral Expense and Loss of Estate)	Rs. 30,000/
7.	Loss of Consortium	Rs. 40,000/
8.	Transportation Expenses	Rs. 5,000/
9.	Total Compensation Awarded (5+6+7+8)	Rs. 46,11,000/
10.	Enhanced amount of Compensation from MACT (Rs. 7,48,052/)	46,11,000 – 7,48,052 = Rs. 38,62,948/
11.	Enhanced amount of Compensation from HC (Rs. 16,27,000/)	46,11,000 – 16,27,000 = Rs. 29,84,000/

[S. Vasanthi and another vs. Adhiparasakthi Engineering College and another, 2023 ACJ 100]

Quantum- Fatal accident –deceased was aged 20 years at the time of accident and he was working as a clerk.

The reason for his death is directly attributable to the accident. Both the courts have correctly assessed the income of the deceased. However, the age of the deceased should have been taken for application of the multiplier. Therefore, the correct multiplier is ‘18’. In view of the judgment in National Insurance Co. Ltd. vs. Pranay Sethi, 2017 ACJ 2700 (SC), the appellant is entitled to 40 per cent of the income towards loss of future prospects. 50 per cent of the income requires to be

deducted towards personal expenses of the deceased. Thus, the amount payable to the appellant towards loss of dependency is as under:

Loss of dependency	Rs. 3,613x12x18 which comes to Rs. 7,80,408
40 per cent of the annual income requires to be added towards future prospects which comes to	Rs. 3,12,163
50 per cent of the same to be deducted towards his personal expenses	Rs. 5,46,285
Total amount payable to the appellant	Rs. 5,46,285

Having regard to the long period of hospitalisation of the deceased and the medical evidence on record, it would be just and proper to award Rs. 1,00,000 medical expenses. The appellant is also entitled to a sum of Rs. 44,000 to each parent, i.e., Rs. 88,000 towards loss of consortium; a sum of Rs. 15,000 towards funeral expenses; and a sum of Rs. 15,000 towards loss of estate. Thus, a total compensation payable to the claimant/ appellant is Rs.7,64,285. **[Tara Devi and another vs. Oriental Insurance Co. Ltd. and others, 2023 ACJ 181]**

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 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 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. **[Ramo Devi and others vs. ICICI Lombard General Ins. Co. Ltd. and others, 2023 ACJ 294]**

Group insurance scheme- Scope of cover.

The policy was also stated to have expired by efflux of time on 23.06.2000. Learned counsel for the Appellant also sought to contend that the cause of death was due to a sun stroke/heat stroke and was not even covered within the scope of the policy as the 'Scope of Cover' of the MoU required it to be "external violent and any other visible means."

On the issue of time period within which the claim was to be made, the terms of the MoU were referred to, requiring the claim to be made and notified immediately to the Appellant, which had admittedly not been done. In fact, it was notified to the Appellant insurance company on 24.04.2011 i.e. after eleven years and after the Respondent No. 2 had filed the writ petition before the High Court of Patna.

Let us say that even if the wife had not claimed and the Appellant insurance company were of the view, that the case was covered by the policy, then it was the bounden duty of Respondent No. 1 to have lodged that claim. It cannot countenance the submission that while on one hand the claim made by the wife was initially rejected, subsequently, it is re- examined, almost as if making it a pre-condition to fasten the liability on the Appellant insurance company. The conditions of the MoU required the claim to be made immediately on the occurrence. The relevant clause is as under:

"INVOICE OF CLAIM

The claim will be intimated to the National Insurance Co. Ltd. immediately on its occurrence at its Regional office, Sone Bhawan, Birchand Patel Marg, Patna (Phone: 220979, 223103 Fax: 0612- 220973). On receipt of the intimation, the local office at the place of occurrence shall be liaisoning with the govt. Agencies in getting the desired papers completed in all respect."

The insurance contracts are in the nature of special class of contracts having distinctive features such as utmost good faith, insurable interest, indemnity subrogation, contribution and proximate cause which are common to all types of insurances. Each class of insurance also has individual features of its own. The law governing insurance contracts is thus to be studied in three parts, namely, (1) general characteristics of insurance contracts, as contracts; (2) special characteristics of insurance contracts, as contracts of insurance, and (3) individual characteristics of each class of insurance. [vide Justice K Kannan, Principles of Insurance Law Chapter 3 (Volume 1, 10th End. 2017, pg. 31)].

Now turning to some of the judicial pronouncements, wherein it has been opined that the words used in a contract of insurance must be given paramount importance and it is not open for the Court to add, delete or substitute any words [Suraj Mal Ram Niwas Oil Mills (P) Ltd. vs. United India Insurance Co. Ltd., 2011 ACJ 4018 (SC)]. Insurance contracts are in the nature where exceptions cannot be made on ground of equity and the Courts ought not to interfere with the terms of an insurance agreement [Export Credit Guarantee Corporation of India Limited vs. Garg Sons International, (2014)1 SCC 686].

An unexpected accident and unforeseen consequence or result from a normal or routine activity may constitute an accident but it would not qualify as "accidental means". Two illustrative examples given are: (a) a fatal heart attack while dancing would be called "accidental" but would fail to attract insurance cover as not due to "accidental means"; (b) heart attack suffered as a result of over-exertion on being chased by a ferocious dog the death might attract the insurance cover as it was caused by "accidental means". In the first example it was a normal activity while in the second it was an unintended activity and not a normal activity. The given type of injury may, thus, fall within or outside the policy according to the event which led to the death and it is this particular cause which is required to be examined. (Colinvaux's Law of Insurance 11th Edn. discusses the effect and the impact of the expressions "violent, external and visible"). The accident, thus, per se postulates a mishap or untoward happening, something which is unexpected or unforeseen. **[National Insurance Co. Ltd. vs. Chief Electoral Officer and others, 2023 ACJ 401]**

NEGOTIABLE INSTRUMENTS ACT

Sections 138 and 142(b)—Dishonour of cheque—Condonation of delay in filing complaint—Legality

Provision of section 142(b) of Act, 1881 cannot be effective with retrospective effect. Therefore, Trial Court wrongly passed order for condonation of delay in filing complaint by complainant. Moreover, objective filed by accused-respondent not considered by Trial Court. Trial Court also ignored provisions as contained under Section 142(b) of Act. Thus complaint filed by revisionist barred by time. Further cheque given by respondent to revisionist for collateral security not as discharge of any debt or other liability. Therefore, no illegality committed by Revisionist Court in setting aside conviction order. Revision dismissed. **[Shiv Narain Gupta vs. State of U.P, 2023 (122) ACC 434]**

Secs. 138 and 141—High Court quashed the entire proceedings including the summoning order-Appeals against-

Though respondent-accused was described as a Director of Ravi Organics Limited, but the company itself was not arrayed as a party in the complaint. The provisions of section 141 impose vicarious liability by deeming fiction which pre-supposes and requires the commission of the offence by the company or firm- Therefore, unless the company or firm has committed the offence as a principal accused, the persons mentioned in sub-sections (1) and (2) would not be liable to be convicted on the basis of the principles of vicarious liability. Held, no error has been committed by the High Court in allowing the writ petition filed by Respondent No. 2 and quashing the summoning order and the proceeding. Appeals are dismissed. **[Pawan Kumar Goel vs. State of U.P., 2023 (122) ACC 675]**

Section 142 Negotiable Instrument Act

Arguments advanced on behalf of the Appellant (complainant) that an additional accused can be impleaded subsequent to the filing of the complaint merits no consideration, once the limitation prescribed for taking cognizance of the offence under section 142 of NI Act has expired- More particularly, in view of the fact that neither any effort was made by the petitioner at any stage of the proceedings to arraign the company as an accused nor any such circumstances or reason has been pointed out to enable the Court to exercise the power conferred by proviso to section 142, to condone the delay for not making the complaint within the prescribed period of limitation. Appeals are dismissed. **[Pawan Kumar Goel vs. State of U.P., 2023 (122) ACC 675]**

RAILWAYS ACT, 1989

Section 12 (c)(2) and 124-A- Bona fide passenger.

Also, it is well settled that the mere absence of a railway ticket with the victim of a railway accident would not show that he was not a bona fide passenger. The claimant would discharge his initial burden or evidential burden by asserting on affidavit that he was a bona fide passenger, whereupon the burden would shift to the Railways and the issue is then to be decided, after both the sides lead evidence, according to the facts of each case and the circumstances. In this regard, reference may be made to the decision of the Supreme Court in Union of India vs. Rina Devi, 2018 ACJ 1441 (SC), where it was held:

"(17.4) We thus hold that mere presence of a body on the railway premises will not be conclusive to hold that injured or deceased was a bona fide passenger for which claim for compensation could be maintained. However, mere absence of ticket with such injured or deceased will not negative the claim that he was a bona fide passenger. Initial burden will be on the claimant which can be discharged by filing an affidavit of the relevant facts and burden will then shift on the Railways and the issue can be decided on the facts shown or the attending circumstances. This will have to be dealt with from case to case on the basis of facts found. The legal position in this regard will stand explained accordingly." **[Ajai Kumar vs. Union of India, 2023 ACJ 382]**

SPECIFIC RELIEF ACT

The Respondent Plaintiff has relied upon the notice dated 13.02.2003 and evidences of PW2 & PW3 to prove that he was always ready and willing to perform his part of the contract. Even though it may be true that the Respondent/Plaintiff had deposited the balance sale consideration in court on 06.04.2010, it cannot be ignored that such deposit was made by him seven years after 15.3.2003, being the date by which the sale had to be concluded. No evidence has been adduced on behalf of the Respondent/Plaintiff as to how the Respondent Plaintiff was in a position to pay or make arrangements for payment of the balance sale consideration within time. The Courts below also erred in not adjudicating upon this vital issue except to make a sweeping observation that, given that the Respondent Plaintiff was a businessman he had sources to arrange the balance funds. Careful study of balance sheet dated 31.03.2003 of the Respondent/Plaintiff would demonstrate that he did not have sufficient funds to discharge his part of contract.

It is settled law that for relief of specific performance, the Plaintiff has to prove that all along and till the final decision of the suit, he was ready and willing to perform his part of the contract. It is the bounden duty of the Plaintiff to prove his readiness and willingness by adducing evidence. This crucial facet has to be determined by considering all circumstances including availability of funds and mere statement or averment in plaint of readiness and willingness, would not suffice. The Respondent/Plaintiff has failed to discharge his duty to prove his readiness as well as willingness to perform his part of the contract, by adducing cogent evidence. Acceptable evidence has not been placed on record to prove his readiness and willingness. Further, it is clear from the Respondent Plaintiff's balance sheet that he did not have sufficient funds to discharge his part of contract in March 2003. Making subsequent deposit of balance consideration after lapse of seven years would not establish the Respondent Plaintiff's readiness to discharge his part of contract.

Deposit in court would not establish Plaintiff's readiness and willingness within meaning of Section 16(c) of Specific Relief Act.

Respondent/Plaintiff has failed to prove his readiness to perform his part of contract from the date of execution of the agreement till date of decree, which is a condition precedent for grant of relief of specific performance. Respondent/Plaintiff was not entitled to the relief of specific performance. The Respondent Plaintiff may have been willing to perform his part of contract, but it appears that he was not ready with funds. He was possibly trying to buy time to discharge his part of contract. The Trial Court and the High Court erred both in law and on facts in granting such relief. The appeal was accordingly allowed. The impugned judgment of the High Court and the judgment and decree of Trial court was accordingly set aside. (**U.N. Krishnamurthy Vs. A.M. Krishnamurthy, (2023 (158) RD 150))**

S.5 – Transfer of Property Act, 1882, S. 51 – Suit for possession of land by demolition of the structure put up thereon and for permanent prohibitory injunction-

Suit for recovery of possession filed within the period of limitation provided under Limitation Act, the doctrine of latches or acquiescence has no place to defeat the right of plaintiff to obtain the relief on his establishing his title-

S. 51 applies in terms to a transferee who makes improvements in good faith on a property believing himself to be its absolute owner-

In a case where the owner of the land filed suit for recovery of possession of his land from the encroacher and once he establishes his title, merely because some structures are erected by the opposite party ignoring the objection, that too without any bona fide belief, denying the relief of recovery of possession would tantamount to allowing a trespasser/encroacher to purchase another man’s property against that man’s will. The doctrine of laches or acquiescence has no place to defeat the right of the plaintiff to obtain the relief on his establishing his title.

Setting aside the judgment and decree of the First Appellate Court and also in restoring the judgment and decree of the Trial Court. **Baini Prasad (D) Thr. LRs. v. Durga Devi, 2023 (1) ARC 178.**

Specific Relief Act, 1963, Section 16(c) - Decree of Suit for specific performance - Readiness and willingness - Passbook of bank account not produced - Proof of available funds to pay balance sale consideration - Unless plaintiff was called upon to produce passbook no adverse inference can be drawn - Decree of suit for specific performance restored. **(Basavaraj v. Padmavathi, 2023 (41) LCD 496)**

TRANSFER OF PROPERTY ACT

By the amendment Act 3 of 2002, Section 106 has been amended w.e.f. 31.12.2002 by which now Section 106 contains four sub-sections and the period of notice is now 15 days where the lease is for any other purpose other than the agricultural and manufacturing, if the tenancy is month to month but where the tenancy is from year to year, the period of notice would be 6 months as it was prior to the amendment.

Notice shall not be deemed to be invalid merely because the period mentioned therein falls short of the period specified under that sub-section, where a suit or proceeding is filed after the expiry of the period mentioned in that sub-section. In this case the notice was given on 11.8.2002, the notice was sent through registered post within the city hence it would have been received by the defendant-tenant within three or four days. Though the receipt/acknowledgment is not on record to conclude that when and on which date the defendant-tenant had received notice but he admits that he had prepared reply of the notice on 4.9.2002 and had sent the same to the plaintiffs through his counsel on 5.9.2002. If days are calculated, it comes out that even from 4.9.2002, the suit was instituted after 30 days i.e. 29.10.2002. Thus, it cannot be said that 30 days period was not provided to the defendant-tenant to comply with the notice.

On the basis of the aforesaid discussions, it has been proved that the defendant-tenant is the defaulter, he has not paid the rent and taxes, there is no defect in notice, hence, the trial Court has wrongly dismissed the suit in respect of relief of eviction. Suit was not bad under Section 106 of the Transfer of the Property Act, therefore, the suit had to be decreed in toto for the reliefs claimed by the plaintiffs-landlords. (**Ramesh Kumar Singh vs. Virendra Singh and Ors. 2023(1) ADJ 790**)

U.P. CONSOLIDATION AND HOLDINGS ACT

The Grounds of challenge was that both the courts below have erred in law in holding that as it was a specific case of the plaintiff/respondent that late Sukhi Lal had not executed the document dated 27.08.1951 and sale deed dated 30.09.1957 nor he had put any impression on the said documents, and petitioner got those documents executed by producing an impostor, therefore, documents are forged and once consolidation operation had started in the area, where property in dispute is situated, the suit for cancellation of sale deed is cognizable by consolidation court and not by civil court.

It is evident from the pleadings in the plaint, extracted above, that the case of the plaintiff/respondent is that the documents in question were never executed by late Sukhi Lal nor any impression was put by him on these documents, therefore,

clearly the said documents are void documents as in the instant case there was fraudulent misrepresentation as to the character of the document and not to the contents thereof, therefore, in the opinion of the Court, both the courts below have erroneously held that documents in question are voidable document and are not void document. 19. The record of the case also reveals that though on the date of institution of suit, the area was not under the consolidation operation, but same was brought under consolidation operation by publication of notification under Section 4 of the Act, 1953 on 01.10.1983 and consolidation operation in the area was over on 03.10.2009, therefore, since during pendency of suit, consolidation operation had commenced in the area, the suit ought to have been abated by the court below as the relief prayed for in the instant suit could be granted only by consolidation court.

when consolidation operation has ended in the area after publication of notification under Section 5(2)(a) of the Act, 1953 on 30.09.2009, whether petitioner is entitled to any relief, and whether the suit is cognizable by civil court. In this regard, it would be relevant to peruse the paragraph 8 of the plaint, extracted above, wherein it is a admitted case of the plaintiff/respondent that names of the petitioner/defendant have been recorded in the revenue records.

As in view of the categorical averment made in paragraph 8 of the plaint, name of the petitioner/defendant have been recorded in the revenue record, therefore, the suit is not cognizable by civil court and is cognizable by revenue court. In such view of the fact, the impugned orders dated 21.08.1999 and 24.07.2003 are not sustainable in law and are hereby, set aside. The writ petition is allowed with no order as to costs. (**Zia Panchayat, Auraiya through its Adhyaksh and other Vs. Krishna Lal Dixit, (2023 (158) RD 354))**

U.P. GANGSTERS AND ANTI-SOCIAL ACTIVITIES (PREVENTION) ACT, 1986

Secs. 3(1) and 19(4)—Cr.P.C., 1973, Sec. 439—Bail application—Right of victim of predicate offence to oppose bail—

Where victim of a predicate offence comes forward to participate in proceeding by making submissions in opposition of a bail application. He must be given an opportunity of hearing. **[Ramesh Rai @ Matru Rai vs. State of U.P., 2023 (122 ACC 489]**

Section 439- U.P. Gangsters and Anti- Social Activities (Prevention) Act, 1986, Section 3(1) —Bail—Grant of-

Three persons shown as members of gang in gang-chart. Two accused persons already enlarged on bail. Numerous F.I.R.s. filed against applicant against version of FIR in case of Gangster Act. Thus, prima facie it appears that applicant has been implicated in present case merely because he has criminal history. Minimum punishment prescribed for two years. Applicant languishing in jail since 28.8.2022. Applicant already granted bail in all cases mentioned in gang chart. Bail allowed. **[Ramesh Rai @ Matru Rai vs. State of U.P., 2023 (122 ACC 489]**

U.P. LAND REVENUE ACT

U.P. Land Revenue Act (3 of 1901), Ss. 33, 39 – Uttar Pradesh Zamindari Abolition and Land Reforms Act (1 of 1951), Ss. 122B, 198(4) – Record of rights – Deletion of entry – Challenge against – Names of petitioners deleted from Record – of - rights, in summary proceedings, u/s 33/39 of U.P. Land Revenue Act – Neither proceedings for cancellation of allotment were initiated nor opportunity of hearing was afforded – Without cancelling allotment under the provisions of said Act, summary proceedings could not have been initiated to expunge the entry. **Surpatti and Another v. State of U.P. and others, 2023 AIR CC 374 (All).**

U.P. URBAN BUILDINGS (REGULATION OF LETTING, RENT AND EVICTION) ACT, 1972

S. 21(1) (a), First Proviso – Release Application – For residential need of landlady's family – Held – Since no objection about prematurity of the proceedings instituted under S. 21 was taken on account of landlady's failure to serve the six months' notice envisaged under the first proviso to S. 21 aforesaid, the bar must be held to have been waived – Two authorities below opined there is no evidence produced to show that in fact tenant made efforts to search alternative accommodation, hence the issue of comparative hardship answered against him – Allowing of release application proper, time to vacate the premises granted on conditions. **Prem Singh v. The Additional District and Sessions Judge/Spl. Judge-3, Gorakhpur and others, 2023 (1) ARC 111.**

U.P. ZAMINDARI ABOLITION AND LAND REFORMS ACT

U.P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 157-A- Land belonging to member of Scheduled Caste-Restriction on transfer – land in auction sale and sale deed executed by State-Restriction on transfer under S. 157-A does not apply-

The provisions of Section 157-A of the U.P.Z.A. and L.R. Act, bar of Section 157-A of the U.P.Z.A. and L.R. Act will not be applicable in the present matter where the sale deed has been executed after auction sale by state in favour of petitioner who belongs to upper caste irrespective of the fact that earlier owner of the land who was borrower, belongs to scheduled caste community.

In the present case since the bar of Section 157-A of the U.P.Z.A. and L.R. Act is not applicable, as such, the Board of Revenue in place of dismissing the revision on limitation, should have considered the revision on merit, as such, the impugned revisional order cannot be sustained in the eyes of law. **Saidan v. Board of Revenue, U.P. and others, 2023 AIR CC 364 (All).**

U.P. Zamindari Abolition and Land Reforms Act (1 of 1951), Ss. 282, 294 –

U.P. Zamindari Abolition and Land Reforms Rules (1952), Rr. 2851, 285E – Sale and attachment of immovable property – Objection against sale – 1/4th amount was deposited by purchaser/bidder on day of auction – Since 3/4th amount was deposited by bidder after period of 15 days from date of auction, mandatory provision of R. 285E was violated – Auction/Sale would be deemed to be null and void- Sale and attachment of immovable property – Objection against sale – Plea of bar of limitation – Provision of S. 5 of Limitation Act would be applicable to proceedings under R. 285I – Instead of remanding matter before subordinate courts for deciding objection/revision afresh, auction held to be null and void in view of clear violation of R. 285E. **Narayan Kumar Agarwal and another v. Board of Revenue and others, 2023 AIR CC 543 (All).**

U.P. Zamindari Abolition and Land Reforms Act (1 of 1951), S. 229B- Suit claiming co-bhumidhari rights – Decree passed in – Challenge regarding – Suit decreed without framing issues on the ground that defendants had admitted claim of plaintiffs – Since suit under S. 229B is suit of special nature, same cannot be decreed, without framing issues and without giving opportunity to parties to lead evidence on the issues – Case of admission by defendants in suit was denied by them when they came to know about the judgment of trial Court – Matter remanded to trial court. **Abhiram Abhiraj v. Board of Revenue and others, 2023 AIR CC 579 (All).**

U.P. Zamindari Abolition and Land Reforms Act (1 of 1951), Ss. 229B- Suit for declaration of title – Decree passed in – Challenge against –

Consolidation authorities have full jurisdiction to decide the question of parentage when they are called upon the decide the claim of the parties in the disputed land. **Kalloo v. Board of Revenue and others, 2023 AIR CC 746 (All).**

WAQF ACT, 1995

S.83(4) and 109 – The issue is about the vires of sub-rule (4) and Rule 3 of the Rules framed by State Government in exercise of power of power S. 109 of the Act – Consideration of – The matter ought to be heard and determined by a Division Bench.

The Regulations in question, which AICTE could not have made so as to bind universities/UGC within the confines of the powers conferred upon it, cannot be enforced against or bind a university in the matter of any necessity to seek prior approval to commence a new department or course and programme in technical education in any university or any of its departments and constituent institutions.

Since in this case, the issue is about the vires of sub-rule(4) and Rule 3 of the Rules framed by the State Government in exercise of power of power Section 109 of the Act, this Court is of opinion that the matter ought to be heard and determined by a Division Bench. **Nauman Ali v. Mazahar Hasan and others, 2023(1) ARC 245.**