JUDICIAL TRAINING AND RESEARCH INSTITUTE, U.P.
LUCKNOW

Quarterly Digest

CONSTITUTIONAL, CIVIL, CRIMINAL AND REVENUE LAWS

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

July to September, 2023

Volume : XXVIII **Issue No. 3**

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PART I – SUPREME COURT

ARBITRATION AND CONCILIATION ACT

Arbitration and Conciliation Act, 1996 Ss. 8, 11 and 7 - Non-payment or deficient payment of stamp duty on substantive contract comprising/containing arbitration clause, or on standalone arbitration agreement, in cases where payment of stamp duty is mandatory, renders such arbitration agreement as non-existent pending payment of (the balance) stamp duty. Appointment of arbitrator by Court or reference to arbitration is impermissible in such cases, until the deficiency in stamp duty is made good in accordance with law.

Arbitration and Conciliation Act, 1996 - Ss. 11 and 8 - Original instrument or certified copy of deficiently stamped or unstamped substantive agreement containing arbitration clause, or of standalone arbitration agreement, which is compulsorily stampable. How must be dealt with by Court.

Arbitration and Conciliation Act, 1996 - Ss. 8, 11 and 7: Unlikely event that arbitration clause is stamped but the substantive contract in which it is contained is unstamped/insufficiently stamped - Held even in such a case, Court is not absolved of its duty under the Stamp Act, and hence cannot proceed further until the requisite stamp duty is paid both on the arbitration agreement and the substantive contract if both are exigible to stamp duty.

Arbitration and Conciliation Act, 1996- Ss. 16, 7, 8 and 11 - Issues relating to validity of contracts - When may be left to/adjudicated on by the arbitrator - Doctrine of kompetenz-kompetenz i.e. the Arbitral Tribunal is competent enough to rule on its own jurisdiction. **(N.N. Global Mercantile Private Limited v. Indo Unique Flame Limited and others, (2023) 7 SCC 1)**

Arbitration and Conciliation Act, 1996 Ss. 8 and 11- Application seeking reference to arbitration in pending civil suit - Non-acceptability of, when: (i) suit concerns/affects non-signatories to arbitration agreement; and (ii) suit is in respect of matter which falls partly outside the arbitration agreement i.e. substantive relief claimed in suit falls outside the arbitration clause. **(Gujarat Composite Limited v. A Infrastructure Limited and others, (2023) 7 SCC 193)**

Arbitration and Conciliation Act, 1996 S. 31(7)(a) - Award of interest: when there is no specific bar against it under the contract Award of interest pendente lite.

It has been held that arbitrator has the power to award interest unless specifically barred from awarding it and the bar must be clear and specific. Further, liability to pay interest pendente lite arises because the claimant is entitled to the same and has been kept out from those dues due to the pendency of the arbitration i.e. pendente lite. **(Indian Railway Construction Company Limited v. National Buildings Construction Corporation Limited, (2023) 7 SCC 390)**

CIVIL PROCEDURE CODE

Order 20, R.12—Transfer of Property Act, 1882, Secs. 53A, 54—Suit for possession and mesne profits—

At the cost of repetition, the suit is for eviction of the defendant-appellant from the suit premises and for recovery of mesne profits on the ground that after the defendant-appellant has parted with the possession of the property in favour of the plaintiff-respondent in part performance of the agreement, he has no right to disturb his possession. He is simply a licencee and the licence having been terminated, he has no right to remain in possession but to restore possession to the person having rightful possessory title over it.

It goes without saying that the power of attorney executed by the defendant-appellant is of no consequence as on the strength of said power of attorney, neither sale deed has been executed nor any action pursuant thereof has been taken by the power of attorney holder which may confer title upon the plaintiff-respondent. Non-execution of any document by the general power of attorney holder consequent to it renders the said general power of attorney useless. **[Ghanshyam vs. Yogendra Rathi, AIR 2023 SC 2754]**

Sec. 11—Principles of res judicata—Applicability—Only determinations which are fundamental would result in application of doctrine of res judicata

By now it's a globally settled principle of common law jurisprudence that only determinations which are fundamental would result in the application of the doctrine of res judicata.15 Only those findings, without which the Court cannot adjudicate a dispute and also form the vital cog in the reasoning of a definite conclusion on an issue on merits, constitute res judicata between the same set of parties in subsequent proceedings. However, in the process of arriving at a final conclusion, if the Court makes any incidental, supplemental or non essential observations which are not foundational to the final determination, the same would not tie down the hands of courts in future.

The principle in respect of fundamental determination has been explicitly discussed by this Court in Sajjadanashin Sayed Md. B.E. Edr. v.
Musa Dadabhai Ummer16 through the following paragraph:– "16. Spencer Bower and Turner on The Doctrine of Res judicata (2nd Edn., 1969, p. 181) refer to the English and Australian experience and quote Dixon, J. of the Australian High Court in Blair v. Curran [(1939) 62 CLR 464, 553 (Aus HC)] CLR at p. 553 to say:

"The difficulty in the actual application of these conceptions is to distinguish the matters fundamental or cardinal to the prior decision on judgment, or necessarily involved in it as its legal justification or foundation, from matters which, even though actually raised and decided as being in the circumstances of the case the determining considerations, yet are not in point of law the essential foundation of a groundwork of the judgment."

The authors say that in order to understand this essential distinction, one has always to inquire with unrelenting severity — is the determination upon which it is sought to find an estoppel so fundamental to the substantive decision that the latter cannot stand without the former. Nothing less than this will do. It is suggested by Dixon, J. that even where this inquiry is answered satisfactorily, there is still another test to pass: viz. whether the determination is the "immediate foundation" of the decision as opposed to merely "a proposition collateral or subsidiary only, i.e. not

more than part of the reasoning supporting the conclusion". It is well settled, say the above authors, "that a mere step in reasoning is insufficient. What is required is no less than the determination of law, or fact or both, fundamental to the substantive decision".

The effective test to distinguish between a fundamental or collateral determination is hinged on the inquiry of whether the concerned determination was so vital to the decision that without which the decision itself cannot stand independently. Any determination, despite being deliberate or formal, cannot give rise to application of the doctrine of res judicata if they are not fundamental in nature.

Doctrine of constructive res judicata, the said doctrine has been formulated over the time by courts as a part of public policy to prevent abuse of process of courts and to bring finality to the judicial pronouncements. This court in State of UP v. Nawab Hussain, (1977) 2 SCC 806, eloquently explained this principle:–

"3. The principle of estoppel per rem judicatam is a rule of evidence. As has been stated in Marginson v. Blackburn Borough Council [(1939) 2 KB 426 at p. 437], it may be said to be "the broader rule of evidence which prohibits the reassertion of a cause of action". This doctrine is based on two theories: (i) the finality and conclusiveness of judicial decisions for the final termination of disputes in the general interest of the community as a matter of public policy, and (ii) the interest of the individual that he should be protected from multiplication of litigation. It therefore serves not only a public but also a private purpose by obstructing the reopening of matters which have once been adjudicated upon. It is thus not permissible to obtain a second judgment for the same civil relief on the same cause of action, for otherwise the spirit of contentiousness may give rise to conflicting judgments of equal authority, lead to multiplicity of actions and bring the administration of justice into disrepute. It is the cause of action which gives rise to an action, and that is why it is necessary for the courts to recognise that a cause of action which results in a judgment must lose its identity and vitality and merge in the judgment when pronounced. It cannot therefore survive the judgment, or give rise to another cause of action on the same facts. This is what is known as the general principle of res judicata.

4. But it may be that the same set of facts may give rise to two or more causes of action. If in such a case a person is allowed to choose and sue upon one cause of action at one time and to reserve the other for subsequent litigation, that would aggravate the burden of litigation. Courts have therefore treated such a course of action as an abuse of its process. **[Yadaiah vs. State pf Telangana, AIR 2023 SC 3736]**

Order 6, R. 17, O.7, R.11—Court-fees Act, 1870, Sec. 7—Amendment of plaint—Suit for sale deed—Rejection of plaint for non-payment of deficit court fees

Court in S. RM. AR. S. SP. Sathappa Chettiar v. S. RM. AR. RM Ramanathan Chettiar, AIR 1958 SC 245, whereunder Court held that the question AIR 1958 SC 245 what could be the value for the purpose of jurisdiction of

a suit of this nature had to be decided by reading Section 7(iv) of the Court Fees Act along with Section 8 of the Suits Valuation Act. Paragraph 15 therein reads thus:-

"So far as suits falling under Section 7, sub-section (iv) of the Act are concerned, Section 8 of the Suits Valuation Act provides that the value as determinable for the computation of court fees and the value for the purposes of jurisdiction shall be the same. There can be little doubt that the effect of the provisions of Section 8 is to make the value for the purpose of jurisdiction dependent upon the value as determinable for computation of court fees and that is natural enough. The computation of court fees in suits falling under Section 7 (iv) of the Act depends upon the valuation that the plaintiff makes in respect of his claim. Once the plaintiff exercises his option and values his claim for the purpose of court fees, that determines the value for jurisdiction. The value for court fees and the value for jurisdiction must no doubt be the same in such cases; but it is the value for court fees stated by the plaintiff that is of primary importance. It is from this value that the value for jurisdiction must be determined. The result is that it is the amount at which the plaintiff has valued the relief sought for the purposes of court fees that determines the value for jurisdiction in the suit and not vice versa. **[B.P. Naagar vs. Raj Pal Sharma, AIR 2023 SC 3691]**

CPC, 1908, O. VII, R. 11 – Rejection of petition – Application for – On ground that it lacks material particulars and is in violation of mandatory requirement of law – Application rejected – There is substantial compliance of the requirements under S. 83 (1)(C) of the Representation of People Act, 1951 and this finding satisfies the test laid down by this Court in Siddeshwar, even the subsequent decision of this Court in Revanna supports the final conclusion arrived at by the High Court – Rejection proper.

The requirement to file an affidavit under the proviso to Section 83 (1)(c) is not mandatory. It is sufficient if there is substantial compliance. As the defect is curable, an opportunity may be granted to file the necessary affidavit. **Thangjam Arunkumar v. Yumkham Erabot Singh and others, 2023(2) ARC 658 (SC)**

CPC, 1908, O. XXI, R. 97 to 103 – Execution proceeding – For execution of decree passed in suit for recovery of possession – Objection against – Execution petition rejected on ground that encroacher(s) upon the land in question were not party to the suit and therefore, the decree could not be executed – Legality of- Executing Court could not have dismissed the execution petition by treating the decree to be in executable merely on basis that the decree – holder has lost possession to a third party/encroacher - impugned order set aside, Executing Court directed to execute the decree.

Rules 97 to 103 of Order XXI of the CPC provide the sole remedy both to the parties to a suit as well as to a stranger to the decree put to execution. **Smt. Ved Kumari (Dead Through Her Legal Representative) Dr. Vijay Agarwal v. Municipal Corporation of Delhi through its Commissioner, 2023(2) ARC 679 (SC)**

Civil Procedure Code, 1908 - Order XXVI Rule 10

The Commissioner has to submit a report in writing to the court. The report of the Commissioner and the evidence taken by him constitute evidence in the suit and form a part of the record. However, the court and, with its permission, any of the parties may examine the Commissioner personally in open court touching any of the matters referred to him or mentioned in the report or as regards the report including the manner in which the investigation has been made.

The court is also empowered to direct such further inquiry if it is dissatisfied with the proceedings of the Commissioner. The evidentiary value of any report of the Commissioner is a matter to be tested in the suit and is open to objections including cross-examination. A report of the Commissioner does not by and of itself amount to a substantive finding on matters in dispute and is subject to the process of the court during the course of the trial. **Committee of Management Vs. Rakhi Singh, 2023 (41) LCD 2054**

The application for setting aside ex parte decree has to be accompanied by deposit in the court of the amount due and payable by the applicant under the decree. The applicant may also move application for dispensing with deposit and seeking leave of the court for furnishing such security for the performance of the decree as the court may have directed. The application for setting aside the decree without the aforesaid is therefore incompetent. It could not be entertained and allowed by the Court. Undoubtedly, the deposit or security must be furnished within 30 days. The deposit or the security must be furnished at the time of presenting the application under Order IX Rule 13. But if a direction is required for furnishing security and the Court grants permission and time, then it may be possible to furnish the security only after the date of the application under Order IX Rule 13. **Arti Dixit & Anr. Vs. Sushil Kumar Mishra, 2023 (41) LCD 1551**

Civil Procedure Code, 1908 - Or. 21 Rr. 84, 85 and 90 - Auction- sale whether vitiated - Non-compliance with mandatory provisions of Or. 21 Rr. 84 & 85. It has been held that rejection of application to set aside auction sale was illegal as there was non-compliance of mandatory provisions of Or. 21 Rr. 84 and 85. **(Gas Point Petroleum India Limited v. Rajendra Marothi and others, (2023) 6 SCC 391)**

Debt, Financial and Monetary Laws - Debt/Debtor/Loan/Liability - Payment or refund or discharge of liability effected vide banker's cheque, or pay order, or demand draft, or any instrument where payment is effected through the bank - When complete, and when liability to pay interest on the amount in question ceases. Applicability of principles contained in Or. 21 Rr. 1(4) & (5) CPC.

Civil Procedure Code, 1908 - Or. 21 Rr. 1(4) & (5) Principles enshrined therein, as to when payment of a liability is complete, and when interest thereon ceases to run.

Payee challenging the basis of payment and the payment Ultimately, payee retaining possession of the pay order in question/ filing the same with complaint challenging the basis of the same - Duty of payee in such circumstances to take action/seek relief to ensure that instrument in question earned interest without conceding

its case or even accepting the amount-Courses of action open to payee in respect of the same.

Equity - In *aequali jure melior est conditio possidentis* - Where the equities are equal, the law should prevail - In present case, that the loss would lie where it falls In present case, payee who failed to act in a manner/seek relief to ensure that pay order duly tendered by the payer earned interest, for no fault of the payer, held, could not claim any right in equity that the payer be made liable to pay interest for the period that the pay order remained unencashed, for which the payee alone was responsible.

Civil Procedure Code, 1908 Or. 21 R. 1-Amounts deposited in - all courts and judicial forums Mandatory deposit of the same in a bank - or some financial institution, to ensure that no loss is caused in the future. Guidelines directed to be framed which should also cover situations where the litigant concerned merely files the instrument (pay order, demand draft, banker's cheque, etc.) without seeking any order, so as to avoid situations like the present case. These guidelines should be embodied in the form of appropriate rules, or regulations of each court, tribunal, commission, authority, agency, etc. exercising adjudicatory power. **(K.L. Suneja and another v. Dr. Manjeet Kaur Monga (dead) through her legal representative and another, (2023) 6 SCC 722)**

Civil Procedure Code, 1908 - S. 47 and Or. 21 - Alteration of terms of decree by executing court - Power of executing court to construe decree when it is ambiguous-Scope of Matters which may be examined in case of such ambiguity. **(Sanwarlal Agrawal and others v. Ashok Kumar Kothari and others, (2023) 7 SCC 307)**

COMPANIES ACT

Companies Act, 2013 - S. 140(5) - Enquiry/ Proceedings initiated under S. 140(5) - Non-terminability of, on resignation and/or discontinuance of auditor - Consequences in addition to those provided under first part of S. 140(5), namely, under second proviso.

It was held hat taking into consideration the object and purpose for which Section 140(5) of the 2013 Act is enacted, the same cannot be said to be arbitrary, excessive and violative of Article 14 of the Constitution and/or violative of fundamental rights guaranteed under Article 19(1)(g) of the Constitution, as alleged.

The proceedings before the High Court were at the stage of direction under Section 212(14) to allow the prosecution and the sanction to prosecute. Ample opportunity shall be available to the accused concerned against whom the prosecution was ordered for the offences punishable under Section 447 of the 2013 Act and other relevant provisions of the IPC. Therefore, the High Court has erred in setting aside the direction under Section 212(14) to prosecute at this stage and on the aforesaid grounds. **(Union of India and another v. Deloitte Haskins and Sells LLP and another, (2023) 8 SCC 56)**

It was observed that “the provisions contained in Sections 529-A and 530 of the Companies Act, 1956 essentially relate to overriding preferential payments as also preferential payments in relation to the classes of dues/debts specified therein. However, the question of payment of the same would arise after payment of costs and expenses of winding-up that are properly incurred by the appellant OL and are to be paid in priority.

The taxes payable to Respondent 1 Nigam during the period in question would directly amount to the costs and expenses of liquidation.

The Company Court and then the Division Bench of the High Court have rightly underscored the faults on the part of the appellant OL and have rightly held that the liability on account of the property tax and water tax claimed by Respondent 1 to the extent rejected by the appellant OL has been a post-liquidation liability, which the OL was obliged to discharge, in view of omission in the sale notice and then, in view of the operation of Rule 338 of the 1959 Rules. **(IISCO Ujjain Pipe And Foundry Company Limited through Official Liquidator v. Ujjain Nagar Palika Nigam and others, (2023) 8 SCC 138)**

CONSTITUTION OF INDIA

Constitution of India - Art. 324(2) and Arts. 142, 32, 14 and 19 - Independence and Impartiality of Election Commission - Cardinal importance of flourishing of true and substantial democracy, a part of the basic structure of the Constitution - Appointment of Chief Election Commissioner and other Election Commissioners - Legislative vacuum in the procedure of appointment as Parliament had failed to make any law in that regard as provided for in Article 324(2). Power of Court to issue directions under Article 142 in such cases.

Constitution of India - Arts. 324(2) and 14 and Pt. III - Rule of law - Selection and appointment of Chief Election Commissioner and other Election Commissioners exclusively by executive, whether affects or violates rule of law and the right to equality. The Election Commissioners including the Chief Election Commissioner who are conferred with nearly infinite powers and who are to abide by the fundamental rights, held (per curiam), must be chosen not by the executive exclusively and particularly without any objective yardstick.

Constitution of India - Art. 324 - Independent Secretariat/Charging of its expenditure on the Consolidated Fund of India - Directions in respect of, as prayed for declined to be issued by Court (per curiam) - Union of India and/or Parliament urged however to consider the same to further secure the independence of the Election Commission.

Constitution of India - Art. 324(5) and Art. 324(2) - Dissimilar protection of Chief Election Commissioner (CEC) and other Election Commissioners under Art. 324(5) provisos 1 and 2 - Parliament urged to make a law extending the same level of protection to other Election Commissioners as is afforded to CEC.

Election - Election Commission-Chief Election Commissioner and Other Election Commissioners (Conditions of Service) Act, 1991 S. 4- Term of six years separately assured to the Election Commissioners and the Chief Election Commissioner - Policy of law in S. 4(1) Purpose and Importance of Explained. Breach of the said policy in practice – Deprecated. **(Anoop Baranwal v. Union of India [Election Commission Appointments], (2023) 6 SCC 161)**

Requirements of Valid Marriage/Registration of Marriage - Transfer of case from High Courts to Supreme Court - Substantial question of general importance Issue raised in main proceedings pertaining to uniformity in minimum age of marriage for men and women in diverse legislations. Petition transferred from High Court to Supreme Court — Constitution of India, Arts. 139-A and 32. **(Ashwini Kumar Upadhyay and others v. Union of India and others, (2023) 6 SCC 511)**

Constitution of India Art. 14- Vague definitions and classification in creation of offence(s) and conferment of unguided power to investigate the same, that too by government order rather than legislation-Held, sufficient for invalidation of the same.

It has been held that in absence of any guidelines as to which cases can be said to be land grabbing cases, it gives unfettered and unguided and arbitrary powers to the police to treat any land case as a land grabbing case which will be investigated by the Anti-Land Grabbing Special Cell. Further held that even a dispute between two private persons which may be under the Specific Relief Act and/or Transfer of Property Act may be considered as a land grabbing case like in the Criminal Appeal in which a civil suit was pending for specific performance which was dismissed for non-prosecution and thereafter the defendant filed a complaint/FIR for the offences under IPC. **(Government of Tamil Nadu and others v. R. Thamaraiselvam and others, (2023) 7 SCC 251)**

Articles 14, 15 & 16 of the Constitution – Sub Classification of reservation

The 105th Amendment Act being prospective in operation, it is the 102nd Amendment Act which held the field at the time of enactment of the 2021 Act.

As the 2021 Act dealt with sub-classification and apportionment of certain percentage of reservation for the purpose of determining the extent of reservation of communities within the MBCS and DNCs, it is a permissible exercise of power by the State Government under Article 342-A of the Constitution in terms of the judgment of this Court in Jaishri Laxmanrao Patil 16. Prior to the 105th Amendment Act, what was prohibited for the State to carry out under Article 342-A is the identification of SEBCS, by inclusion or exclusion of communities in the Presidential List of SEBCs. It is clear that the exercise of identification of MBCs and DNCs had been completed by the State pursuant to the 1994 Act.

There is no bar to the sub-classification amongst backward classes, which has been expressly approved in *Indra Sawhney*. Even considering the judgment in *E.V. Chinnaiah,* which dealt with the sub-classification of Scheduled Castes identified in the Presidential List under Article 341 and held that any sub-division of Scheduled Castes by the State would amount to tinkering with the Presidential List, the State's competence in the present case to enact the 2021 Act is not taken away on this ground as, admittedly, the Presidential List of SEBCS is yet to be published, making the question of tinkering with such list redundant.

Placing of the 1994 Act under the Ninth Schedule cannot operate as a hurdle for the State to enact legislations on matters ancillary to the 1994 Act. Legislative competence of the State Legislature can only be circumscribed by express prohibition contained in the Constitution itself and Article 31-B does not stipulate any such express prohibition on the legislative powers of the State. Detailing the extent of reservation for communities already identified as MBCs and DNCs, which is the thrust of the 2021 Act, cannot be said to be in conflict with the 1994 Act, as determination of extent of reservation for various communities was not the subject-matter of the 1994 Act.

The 1994 Act, having received the assent of the President under Article 31-C, does not prohibit the State Legislature from enacting a legislation with the approval of the Governor on matters ancillary to the 1994 Act, as Article 31-C does not place any fetter on the legislative powers of the State. The State cannot be compelled to seek the assent of the President for a legislation granting internal reservation, when it is empowered to provide reservation and other special measures for backward classes, by

way of legislation as well as executive orders, under Articles 15(4) and 16(4) of the Constitution.

On the issue of caste-based classification, *Indra Sawhney* has, in precise and unambiguous terms, stated that caste can be the starting point for identifying backward classes, but it cannot be the sole basis. Accordingly, while caste can be the starting point for providing internal reservation, it is incumbent on the State Government to justify the reasonableness of the decision and demonstrate that caste is not the sole basis. As regards the letter of Justice Thanikachalam, Chairman of the Tamil Nadu Backward Classes Commission, which forms the basis of the 2021 Act, we find that the Government has committed an error in accepting the recommendations therein for the following reasons:

Recommendations have been based on the Report of the Chairman of the Janarthanam Commission, which had relied on antiquated data, and there is a clear lapse on the part of Justice Thanikachalam in having readily dismissed the reservations expressed by the majority members of the Janarthanam Commission, who had observed that in the absence of updated caste-wise data, recommendations on internal reservation could not be fruitfully made.

Apart from approving the Report of the Chairman of the Janarthanam Commission with respect to internal reservation for the Vanniakula Kshatriyas and making additional recommendations on the grouping of the remaining communities for specific percentages of reservation, the letter from Justice Thanikachalam does not refer to any analysis or assessment of the relative backwardness and representation of the communities within the MBCs and DNCs.

Population has been made the sole basis for recommending internal reservation for the Vanniakula Kshatriyas, which is directly in the teeth of the law laid down by this Court.

Finally, on the 2021 Act, there is no substantial basis for classifying the Vanniakula Kshatriyas into one group to be treated differentially from the remaining 115 communities within the MBCS and DNCS, and therefore, the 2021 Act is in violation of Articles 14, 15 and 16. We uphold the judgment of the High Court on this aspect. Given our conclusion on the 2021 Act being ultra vires Articles 14, 15 and 16 of the Constitution, we have refrained from delving into the issue of non-compliance by the State Government with the consultation requirement prescribed under clause (9) of Article 338-B at the time of enactment of the 2021 Act. **(Pattali Makkal Katchi v. A. Mayilerumperumal and others, (2023) 7 SCC 481)**

Appointment – Eligibility conditions – Judicial Review of Administrative Action – Nature & Scope of Article 136 of the Constitution.

On review of a catena of decisions rendered by the Supreme Court on issue pertaining to dismissal/termination of services of employee for suppression of material information or furnishing of false information in character and antecedent verification form at the time of recruitment, broad principles of applicable law are enumerated below:

(1) Each case should be scrutinised thoroughly by the public employer concerned, through its designated officials more so, in the case of recruitment for the Police Force, who are under a duty to maintain order, and tackle lawlessness, since their ability to inspire public confidence is bulwark to society's security.

(2) Even in a case where the employee has made declaration truthfully and correctly of a concluded criminal case, the employer still has the right to consider the

antecedents, and cannot be compelled to appoint the candidate. The acquittal in a criminal case would not automatically entitle a candidate for appointment to the post. It would be still open to the employer to consider the antecedents and examine whether the candidate concerned is suitable and fit for appointment to the post.

(3) The suppression of material information and making a false statement in the verification form relating to arrest, prosecution, conviction, etc. has a clear bearing on the character, conduct and antecedents of the employee. If it is found that the employee had suppressed or given false information in regard to the matters having a bearing on his fitness or suitability to the post, he can be terminated from service.

(4) The generalisations about the youth, career prospects and age of the candidates leading to condonation of the offenders' conduct, should not enter the judicial verdict and should be avoided.

(5) The Court should inquire: whether the authority concerned whose action is being challenged acted mala fide, or there was any element of bias in decision of authority, and whether the enquiry procedure adopted was fair and reasonable. **(Satish Chandra Yadav v. Union of India and others, (2023) 7 SCC 536)**

It has been observed that "while the law laid down in *Sandhya Educational Society, (2014) 7 SCC 701* and *Vinod Kapoor, (2012) 12 SCC 383* relied upon by the appellants, and other judgments in line with the said two judgments explicitly state that specific liberty is a requirement for filing a subsequent SLP after the withdrawal of the first SLP, however, a crack seems to appear in the foundation of the said judgments when the judgment of *Khoday Distilleries, (2019) 4 SCC 376* is read into in detail.

The Hon'ble Supreme Court, in *Khoday Distilleries case* and *Kunhayammed, (2000) 6 SCC 359*, while holding that a review is maintainable even after the dismissal of SLP, observed that the dismissal of SLP by way of a non-speaking order does not attract the doctrine of merger.

In simpler terms, this would essentially mean that even in cases where the SLP was dismissed as withdrawn, where no reason was assigned by the Court while dismissing the matter and where leave was not granted in the said SLP, the said dismissal would not be considered as laying down law within the ambit of Article 141 of the Constitution.

It has been held that if a dismissal of SLP by way of a non-speaking order is not considered law under Article 141 of the Constitution, the same also cannot be considered as res judicata, and therefore, in every such dismissal, even in cases where the dismissal is by way of a withdrawal, the remedy of filing a fresh SLP would still persist. Further, if on the said reasoning, a remedy to file a review in the High Court is allowed, then the same reasoning cannot arbitrarily exclude the filing of a subsequent SLP. Such an interpretation, if expanded beyond the specific scope of filing a review in the High Court is allowed, it would open the floodgates of litigation, and would essentially mean that every dismissal of SLP must be accompanied with reasons declaring the same. **(S. Narahari and others v. S. R. Kumar and others, (2023) 7 SCC 740)**

It was held that the constitutional mandate of Art. 226(2) is that the "cause of action", referred to must at least arise in part within the territories in relation to which

High Court exercises jurisdiction when writ powers conferred by Art. 226(1) are proposed to be exercised, notwithstanding that the seat of the Government or authority or the residence of the person is not within those territories. Further, for determination of the question as to whether the facts pleaded constitute a part of the cause of action, sufficient to attract Art. 226(2), would necessarily involve an exercise by High Court to ascertain that the facts, as pleaded, constitute a material, essential or integral part of the cause of action and in so determining, it is the substance of the matter that is relevant.

Held, the petitioning company has to bear the liability of paying tax @ 14% levied by the Government of Goa for selling lottery tickets in the State of Goa under Sch. IV of the impugned notification Further, it does not bear out from the petition memo how the impugned notification levying tax for carrying on business in the State of Goa subjects the petitioning company to a legal wrong within the territory of Sikkim for the writ petition to be entertained by High Court-Further, even assuming that a slender part of the cause of action did arise within the State of Sikkim, the concept of forum conveniens ought to have been considered by High Court - Thus, the applications filed by the appellant seeking its deletion from the array of respondents, not liable to be dismissed. **(State of Goa v. Summit Online Trade Solutions Private Limited and others, (2023) 7 SCC 791)**

Constitution of India - Art. 137 - Power of review

Held, a power to review cannot be exercised as an appellate power and has to be strictly confined to the scope and ambit of Or. 47 R. 1 CPC. Further, an error on the face of record must be such an error which, mere looking at the record should strike and it should not require any long-drawn process of reasoning on the points where there may conceivably be two opinions. **(Arun Dev Upadhyaya v. Integrated Sales Service Limited and another, (2023) 8 SCC 11)**

Art. 14- Reasonable time for exercising power - When a power exists to effectuate a purpose it must be exercised within a reasonable time- What would be reasonable time, would depend upon the facts and circumstances of the case, nature of the default/statute, prejudice caused, whether the third-party rights had been created, etc.

Energy, Power and Electricity Electricity consumption Contracted maximum demand of power - Delay beyond 6 months in reducing held, violative of Art. 14 of the Constitution when applications of others considered within a reasonable period of time. Differential amount paid by consumer during prolonged delay.

Constitution of India - Art. 14 - Applicability of, to contractual matters Requirement of Art. 14, reiterated, being the duty to act fairly, justly and reasonably, there is nothing which militates against the concept of requiring the State always to so act, even in contractual matters The fact that a dispute falls into the contractual realm does not relieve the State of its obligation to comply with the requirements of Art. 14. **(Madras Aluminium Company Limited v. Tamil Nadu Electricity Board and another, (2023) 8 SCC 240)**

Arts. 161 to 163 - Scheme - Governor in exercise of powers under Art. 161, held, is bound by advice of State Cabinet in matters relating to commutation and remission of sentences.

Non-exercise of power or inexplicable delay in exercise of power under Art. 161, not attributable to prisoner, held, is subject to judicial review, especially when State Cabinet recommended to Governor for release of prisoner Reference of State Cabinet's recommendation for release of prisoner to President of India by Governor, without himself taking decision thereon, further held, is inimical to constitutional scheme and amenable to judicial review.

Executive power of the States, held, would extend to offences under S. 302 IPC irrespective of whether subject-matter of S. 302 IPC is considered to be covered by an entry in List II or III of Sch. VII, in absence of specific provision under the Constitution or under law made by Parliament expressly conferring executive power on Union.

Even if issue raised does not fall within scope of appeal, Supreme Court can proceed to consider it, having regard to its importance. **(A.G. Perarivalan v. State, Through Superintendent of Police CBI/SIT/MMDA, Chennai, Tamil Nadu and another, (2023) 8 SCC 257)**

CRIMINAL PROCEDURE CODE

Section 438 Criminal Procedure Code—IPC, 1860, Sections 354, 354-B, 376 and 506—High Court allowing the anticipatory bail application filed by the respondent No.2/accused in connection with FIR registered under—Appellant/prosecutrix is a model by profession— Not Heard.

The Apex Court held that in the instant case, the nature and gravity of the alleged offence has been disregarded. So has the financial stature, position and standing of the accused vis-à-vis the appellant/prosecutrix been ignored. High Court has granted anticipatory bail in favour of the respondent No.2/accused in a brief order of three paragraphs, having been swayed by the "stark variations in the narration of the prosecutrix" implying thereby that what was originally recorded in the FIR, did not make out an offence of rape, as defined in sec. 375 IPC, which is an erroneous assumption. Despite the appellant/prosecutrix having filed an application for intervention in the petition for anticipatory bail moved by the respondent No.2/accused before High Court, she was not afforded a hearing. In a crime of this nature where ordinarily, there is no other witness except for the prosecutrix herself, it was all the more incumbent for High Court to have lent its ear to the appellant. The Court held that the order granting anticipatory bail to the respondent No.2/accused, cannot be sustained and are quashed and set aside. Appeals are allowed. **[Ms. X vs. State of Maharashtra, 2023 (124) ACC 673 (SC)]**

Sec. 438(2)—Conditions imposed—Grant of Anticipatory bail

The apex Court held that the Section 438 CrPC empowers courts to impose conditions while granting bail. Such conditions must not be onerous or unreasonable. All such conditions that facilitate appearance of the accused, unhindered investigation and safety of community could be imposed. The Court held that inclusion of condition for payment of money would not be warranted in private dispute. In exceptional cases, where public money is involved, it would be open to the Court to consider whether misappropriated money should be allowed to be

deposited before application for anticipatory bail is taken up for final hearing. The remanded back to High Court with directions. **[Ramesh Kumar vs. State of NCT of Delhi, 2023 (124) ACC 920 (SC)]**

Section 167(2) Criminal Procedure Code—Submission of charge sheet—For some accused—For rest accused investigation in progress— Three issues framed.

The Apex Court framed the following three issues:-

1. Can a charge-sheet or a prosecution complaint be filed in piecemeal without first completing the investigation of the case?
2. Whether the filing of such a charge-sheet without completing the investigation will extinguish the right of an accused for grant of default bail?
3. Whether the remand of an accused can be continued by the trial court during the pendency of investigation beyond the stipulated time as prescribed by the CrPC ?

The Court answered these questions as under-

1. Without completing the investigation of a case, a charge-sheet or prosecution complaint cannot be filed by an investigating agency only to deprive an arrested accused of his right to default bail under Section 167(2) of the CrPC.
2. Such a charge-sheet, if filed by an investigating authority without first completing the investigation, would not extinguish the right to default bail under Section 167(2) CrPC.
3. The trial court, in such cases, cannot continue to remand an arrested person beyond the maximum stipulated time without offering the arrested person default bail. **[Ritu Chhabaria vs. Union of India, 2023 (124) ACC 647 (SC)]**

Sec. 204—Penal Code, 1860, Sec. 420—Summoning order—Prima facie case—Offence of Cheating

As per Section 463, "whoever makes any false documents, with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed", he is said to have committed the offence of forgery. Making a false document is defined under Section 464 IPC. Therefore, for the offence of forgery, there must be making of a false document with intent to cause damage or injury to the public or to any person. Therefore, making the false documents is sine qua non. Identical question came to be considered by this Court in the case of Mohammed Ibrahim & Ors. (supra). While interpreting Sections 464 and 471 IPC and other relevant provisions of IPC, in paragraphs 13 and 14, it is observed and held as under:-

"13. The condition precedent for an offence under Sections 467 and 471 is forgery. The condition precedent for forgery is making a false document (or false electronic record or part thereof). This case does not relate to any false electronic record. Therefore, the question is whether the first accused, in executing and registering the two sale deeds purporting to sell a property (even if it is assumed that

it did not belong to him), can be said to have made and executed false documents, in collusion with the other accused.

14. An analysis of Section 464 of the Penal Code shows that it divides false documents into three categories:

1. The first is where a person dishonestly or fraudulently makes or executes a document with the intention of causing it to be believed that such document was made or executed by some other person, or by the authority of some other person, by whom or by whose authority he knows it was not made or executed.

2. The second is where a person dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part, without lawful authority, after it has been made or executed by either himself or any other person.

3. The third is where a person dishonestly or fraudulently causes any person to sign, execute or alter a document knowing that such person could not by reason of (a) unsoundness of mind; or (b) intoxication; or (c) deception practised upon him, know the contents of the document or the nature of the alteration.

In short, a person is said to have made a "false document", if (i) he made or executed a document claiming to be someone else or authorised by someone else; or (ii) he altered or tampered a document; or (iii) he obtained a document by practising deception, or from a person not in control of his senses." **[Sukhbir Singh Badal vs. Balwant Singh Khera, AIR 2023 SC 3053]**

Sec. 313—Penal Code, 1860, Secs. 302, 307, 120B—Examination of accused—Omission to put incriminating circumstance to accused—Offence of murder and criminal conspiracy

In the case of Tara Singh v. State, 1951 SCC OnLine SC 49, the Court considered the provision of Section 342 of the Code of Criminal Procedure, 1898 (for short, 'CrPC of 1898'). Section 313 of CrPC and Section 342 of CrPC of 1898 are in pari materia. In paragraph 18, this Court held thus :

"18. It is important therefore that an accused should be properly examined under Section 342 and, as their Lordships of the Privy Council indicated in Dwarkanath Varma v. Emperor [Dwarkanath Varma v. Emperor, AIR 1933 PC 124 at p. 130 : 1933 SCC OnLine PC 11] , if a point in the evidence is considered mportant against the accused and the conviction is intended to be based upon it, then it is right and proper that the accused should be questioned about the matter and be given an opportunity of explaining it if he so desires. This is an important and salutary provision and I cannot permit it to be slurred over. I regret to find that in many cases scant attention is paid to it, particularly in the Sessions Courts. But whether the matter arises in the Sessions Court or in that of the Committing Magistrate, it is important that the provisions of Section 342 should be fairly and faithfully observed."

Again in paragraph 23, this Court held thus:

"23. Section 342 requires the accused to be examined for the purpose of enabling him "to explain any circumstances appearing in the evidence against him". Now it is evident that when the Sessions Court is required to make the examination under this section, the evidence referred to is the evidence in the Sessions Court and

the circumstances which appear against the accused in that court. It is not therefore enough to read over the questions and answers put in the Committing Magistrate's Court and ask the accused whether he has anything to say about them. In the present case, there was not even that. The appellant was not asked to explain the circumstances appearing in the evidence against him but was asked whether the statements made before the Committing Magistrate and his answers given there were correctly recorded. That does not comply with the requirements of the section."

The second important decision on this aspect is the decision of a Bench of three Hon'ble Judges of this Court. This is a decision in the case of Shivaji Sahabrao Bobade & Anr. v. State of Maharashtra, (1973)2 SCC 793. In paragraph 16 of the decision, this Court examined the issue of noncompliance with the requirements of Section 342 of CrPC of 1898. Paragraph 16 reads thus:

"16. The discovery of incriminating materials pursuant to confessions made by the accused constitutes the third category of evidence. Obviously, the confessions are inadmissible but the discoveries are, provided they are pertinent to the guilt of the accused."

We may notice here a serious omission committed by the trial Judge and not noticed by either court. The pants allegedly worn at the time of the attack by the second accused has stains of blood relatable to the group of the deceased. This circumstance binds him to the crime a little clear but it is unfortunate that no specific question about this circumstance has been put to him by the Court. It is trite law, nevertheless fundamental, that the prisoner's attention should be drawn to every inculpatory material so as to enable him to explain it. This is the basic fairness of a criminal trial and failures in this area may gravely imperil the validity of the trial itself, if consequential miscarriage of justice has flowed. However, where such an omission has occurred it does not ipso facto vitiate the proceedings and prejudice occasioned by such defect must be established by the accused. In the event of evidentiary material not being put to the accused, the court must ordinarily eschew such material from consideration. It is also open to the appellate court to call upon the counsel for the accused to show what explanation the accused has as regards the circumstances established against him but not put to him and if the accused is unable to offer the appellate court any plausible or reasonable explanation of such circumstances, the Court may assume that no acceptable answer exists and that even if the accused had been questioned at the proper time in the trial court he would not have been able to furnish any good ground to get out of the circumstances on which the trial court had relied for its conviction. In such a case, the Court proceeds on the footing that though a grave irregularity has occurred as regards compliance with Section 342, CrPC, the omission has not been shown to have caused prejudice to the accused. In the present case, however, the High Court, though not the trial court has relied upon the presence of blood on the pants of the blood group of the deceased. We have not been shown what explanation the accused could have offered to this chemical finding particularly when we remember that his answer to the question regarding the human blood on the blade of the knife was "I do not know".

Then we come to the decision of this Court in the case of S. Harnam Singh v. State (Delhi Admn.), (1976) 2 SCC 819. In paragraph 22, this Court held thus :

"22. Section 342 of the Code of Criminal Procedure, 1898, casts a duty on the court to put, at any enquiry or trial, questions to the accused for the purpose of enabling him to explain any circumstances appearing in the evidence against him. It follows as a necessary corollary therefrom that each material circumstance appearing in evidence against the accused is required to be put to him specifically, distinctly and separately. Failure to do so amounts to a serious irregularity vitiating the trial if it is shown to have prejudiced the accused. If the irregularity does not, in fact, occasion a failure of justice, it is curable under Section 537, of the Code."

The law consistently laid down by this Court can be summarized as under:

(i) It is the duty of the Trial Court to put each material circumstance appearing in the evidence against the accused specifically, distinctively and separately. The material circumstance means the circumstance or the material on the basis of which the prosecution is seeking his conviction;

(ii) The object of examination of the accused under Section 313 is to enable the accused to explain any circumstance appearing against him in the evidence;

(iii) The Court must ordinarily eschew material circumstances not put to the accused from consideration while dealing with the case of the particular accused;

(iv) The failure to put material circumstances to the accused amounts to a serious irregularity. It will vitiate the trial if it is shown to have prejudiced the accused;

(v) If any irregularity in putting the material circumstance to the accused does not result in failure of justice, it becomes a curable defect. However, while deciding whether the defect can be cured, one of the considerations will be the passage of time from the date of the incident;

(vi) In case such irregularity is curable, even the appellate court can question the accused on the material circumstance which is not put to him; and

(vii) In a given case, the case can be remanded to the Trial Court from the stage of recording the supplementary statement of the concerned accused under Section 313 of CrPC.

(vii) In a given case, the case can be remanded to the Trial Court from the stage of recording the supplementary statement of the concerned accused under Section 313 of CrPC.

(viii) While deciding the question whether prejudice has been caused to the accused because of the omission, the delay in raising the contention is only one of the several factors to be considered. **[Raj Kumar @ Suman vs. State (NCT of Delhi), AIR 2023 SC 3113]**

Sec. 439—Bail—Cancellation of—Offences U/s. 302 read with Sec. 34 of IPC and Sec. read with Secs. 25 and 27 of Arms Act, 1959—

This Court has, on several occasions discussed the factors to be considered by a Court while deciding a bail application. The primary considerations which must be placed at balance while deciding the grant of bail are: (i) The seriousness of the offence; (ii) The likelihood of the accused fleeing from justice; (iii) The impact of release of the accused on the prosecution witnesses; (iv) Likelihood of the accused tampering with evidence. While such a list is not exhaustive, it may be stated that if a Court takes into account such factors in deciding a bail application, it could be

concluded that the decision has resulted from a judicious exercise of its discretion, vide Gudikanti Narasimhulu vs. Public Prosecutor, High Court of Andhra Pradesh, (1978) 1 SCC 240; Prahlad Singh Bhati vs. NCT, Delhi, (2001) 4 SCC 280; Anil Kumar Yadav vs. State (NCT of Delhi), (2018) 12 SCC 129.

This Court has also ruled that an order granting bail in a mechanical manner, without recording reasons, would suffer from the vice of non-application of mind, rendering it illegal, vide Ram Govind Upadhyay vs. Sudarshan Singh, (2002) 3 SCC 598; Prasanta Kumar Sarkar vs. Ashis Chaterjee, (2010) 14 SCC 496; Ramesh Bhavan Rathod vs. Vishanbhai Hirabhai Makwana (Koli), (2021) 6 SCC 230; Brijmani Devi vs. Pappu Kumar, [(2022) 4 SCC 497.

Reference may also be made to recent decisions of this Court in Manoj Kumar Khokhar vs. State of Rajasthan, 2022 SCC OnLine SC 30 and Jaibunisha vs. Meharban, (2022) 5 SCC 465, wherein, on engaging in an elaborate discussion of the case law cited supra and after duly acknowledging that liberty of individual is an invaluable right, it has been held that an order granting bail to an accused, if passed in a casual and cryptic manner, de hors reasoning which would validate the grant of bail, is liable to be set aside by this Court while exercising power under Article 136 of the Constitution of India.

The Latin maxim "cessante ratione legis cessat ipsa lex" meaning "reason is the soul of the law, and when the reason of any particular law ceases, so does the law itself," is also apposite.

While we are conscious of the fact that liberty of an individual is an invaluable right, at the same time while considering an application for bail, courts cannot lose sight of the serious nature of the accusations against an accused and the facts that have a bearing on the case, particularly, when the accusations may not be false, frivolous or vexatious in nature but are supported by adequate material brought on record so as to enable a Court to arrive at a prima facie conclusion. While considering an application for grant of bail, a prima-facie conclusion must be supported by reasons and must be arrived at after having regard to the vital facts of the case brought on record. Due consideration must be given to facts suggestive of the nature of crime, the criminal antecedents of the accused, if any, and the nature of punishment that would follow a conviction vis à vis the offence/s alleged against an accused. **[Rohit Bishnoi vs. State of Rajasthan, AIR 2023 SC 3547]**

Secs. 91, 104, 102—Custody of passport—Taken by police in exercise of powers U/s. 91—Imposition of conditions for release of—Validity

A relevant decision of this Court on the issue involved is in the case of Suresh Nanda1. In the said decision, it was held that the power under Section 104 of Cr.P.C. cannot be invoked to impound a passport. The reason is that the provisions of the PP Act which deal with the specific subject of impounding passports shall prevail over Section 104 of Cr.P.C. Moreover, it was held that under Section 102 (1) of Cr.P.C., the Police have the power to seize the passport but there is no power to impound the same. It was held that even if the power of seizure of a passport is exercised under Section 102, the Police cannot withhold the said document and the same must be forwarded to the Passport Authority. It is, thereafter, for the

Passport Authority to decide whether the passport needs to be impounded. **[Chennupati Kranthi Kumar vs. State of A.P., AIR 2023 SC 3633]**

Sec. 319—Summoning of additional accused—Powers of Court—

The merits of the evidence has to be appreciated only during the trial, by cross examination of the witnesses and scrutiny of the Court. This is not to be done at the stage of Section 319.

Thus, one of the charges being Section 149, which is of being a member of an unlawful assembly, for attracting the offence under Section 149 IPC, one simply has to be a part of an unlawful assembly. Any specific individual role or act is not material. [See : 2021 SCC OnLine SC 632-Manjeet Singh v. State of Haryana & Ors., Para 38].

A plain reading of Section 149 IPC (read with Section 141 IPC), makes it clear that no overt act needs to be assigned to a member of an unlawful assembly. "Even if no overt act is imputed to a particular person when the charge is under Section 149 IPC, the presence of the accused as part of an unlawful assembly is sufficient for conviction". [See : Yunis alias Kariya v. State of Madhya Pradesh, AIR 2003 SC 539]

Thus, we hold that though only a prima facie case is to be established from the evidence led before the court, not necessarily tested on the anvil of cross-examination, it requires much stronger evidence than mere probability of his complicity. The test that has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes unrebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 CrPC. In Section 319 CrPC the purpose of providing if "it appears from the evidence that any person not being the accused has committed any offence" it is clear from the words "for which such person could be tried together with the accused". The words used are not "for which such person could be convicted". There is, therefore, no scope for the court acting under Section 319 CrPC to form any opinion as to the guilt of the accused." **[Sandeep Kumar vs. State of Haryana, AIR 2023 SC 3648]**

Secs. 227, 465—Prevention of Corruption Act, 1988, Secs. 13, 19—Discharge—Dismissal of application by special Judge—Reversal of order by High Court—Validity

Having regard to the afore-stated provisions contained in Section 19 of the said Act, there remains no shadow of doubt that the statute forbids taking of cognizance by the Court against a public servant except with the previous sanction of the Government/authority competent to grant such sanction in terms of clauses (a), (b) and (c) to Section 19(1). It is also well settled proposition of law that the question with regard to the validity of such sanction should be raised at the earliest stage of the proceedings, however could be raised at the subsequent stage of the trial also. In our opinion, the stages of proceedings at which an accused could raise the

issue with regard to the validity of the sanction would be the stage when the Court takes cognizance of the offence, the stage when the charge is to be framed by the Court or at the stage when the trial is complete i.e., at the stage of final arguments in the trial. Such issue of course, could be raised before the Court in appeal, revision or confirmation, however the powers of such court would be subject to sub-section (3) and sub-section (4) of Section 19 of the said Act. It is also significant to note that the competence of the court trying the accused also would be dependent upon the existence of the validity of sanction, and therefore it is always desirable to raise the issue of validity of sanction at the earliest point of time. It cannot be gainsaid that in case the sanction is found to be invalid, the trial court can discharge the accused and relegate the parties to a stage where the competent authority may grant a fresh sanction for the prosecution in accordance with the law.

The combined reading of sub-section (3) and (4) of Section 19 makes it clear that notwithstanding anything contained in the Code, no finding, sentence or order passed by the Special Judge shall be reversed or altered by a Court in appeal, confirmation or revision on the ground of, the absence of, or any error, omission or irregularity in the sanction required under sub-section (1), unless in the opinion of the Court, a failure of justice has in fact been occasioned thereby. sub-section (4) further postulates that in determining under sub- section (3) whether the absence of, or any error, omission or irregularity in the sanction has occasioned, or resulted in failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings. The explanation to sub-section (4) further provides that for the purpose of Section 19, error includes "competency of the authority to grant sanction". Thus, it is clear from the language employed in sub-section (3) of Section 19 that the said sub-section has application to the proceedings before the Court in appeal, confirmation or revision, and not to the proceedings before the Special Judge. The said sub-section (3) clearly forbids the court in appeal, confirmation or revision, the interference with the order passed by the Special Judge on the ground that the sanction was bad, save and except in cases where the appellate or revisional court finds that the failure of justice had occurred by such invalidity.

This Court in case of Nanjappa Vs. State of Karnataka1 has very aptly dealt with the intricacies of Section 19(1) as also Section 19(3) and 19(4) of the said Act as to at what stage the question of validity of sanction accorded under Section 19(1) of the said Act could be raised, and what are the powers of the court in appeal, confirmation or revision under sub-section (3) of Section 19 of the said Act.

"22. The legal position regarding the importance of sanction under Section 19 of the Prevention of Corruption Act is thus much too clear to admit equivocation. The statute forbids 1 (2015) 14 SCC 186 taking of cognizance by the court against a public servant except with the previous sanction of an authority competent to grant such sanction in terms of clauses (a), (b) and (c) to Section 19(1). The question regarding validity of such sanction can be raised at any stage of the proceedings. The competence of the court trying the accused so much depends upon the existence of a valid sanction. In case the sanction is found to be invalid the court can discharge the accused relegating the parties to a stage where the competent authority may grant a fresh sanction for the prosecution in accordance with law. If the trial court proceeds,

despite the invalidity attached to the sanction order, the same shall be deemed to be non est in the eyes of law and shall not forbid a second trial for the same offences, upon grant of a valid sanction for such prosecution.

23. Having said that there are two aspects which we must immediately advert to. The first relates to the effect of sub- section (3) to Section 19, which starts with a non obstante clause. Also relevant to the same aspect would be Section 465 CrPC which we have extracted earlier.

23.1. It was argued on behalf of the State with considerable tenacity worthy of a better cause, that in terms of Section 19(3), any error, omission or irregularity in the order sanctioning prosecution of an accused was of no consequence so long as there was no failure of justice resulting from such error, omission or irregularity. It was contended that in terms of Explanation to Section 4, "error includes competence of the authority to grant sanction". The argument is on the face of it attractive but does not, in our opinion, stand closer scrutiny.

23.2. A careful reading of sub-section (3) to Section 19 would show that the same interdicts reversal or alteration of any finding, sentence or order passed by a Special Judge, on the ground that the sanction order suffers from an error, omission or irregularity, unless of course the court before whom such finding, sentence or order is challenged in appeal or revision is of the opinion that a failure of justice has occurred by reason of such error, omission or irregularity. Sub-section (3), in other words, simply forbids interference with an order passed by the Special Judge in appeal, confirmation or revisional proceedings on the ground that the sanction is bad save and except, in cases where the appellate or revisional court finds that failure of justice has occurred by such invalidity. What is noteworthy is that sub- section (3) has no application to proceedings before the Special Judge, who is free to pass an order discharging the accused, if he is of the opinion that a valid order sanctioning prosecution of the accused had not been produced as required under Section 19(1).

23.3. Sub-section (3), in our opinion, postulates a prohibition against a higher court reversing an order passed by the Special Judge on the ground of any defect, omission or irregularity in the order of sanction. It does not forbid a Special Judge from passing an order at whatever stage of the proceedings holding that the prosecution is not maintainable for want of a valid order sanctioning the same.

23.4. The language employed in sub-section (3) is, in our opinion, clear and unambiguous. This is, in our opinion, sufficiently evident even from the language employed in sub- section (4) according to which the appellate or the revisional court shall, while examining whether the error, omission or irregularity in the sanction had occasioned in any failure of justice, have regard to the fact whether the objection could and should have been raised at an early stage. Suffice it to say, that a conjoint reading of sub-sections 19(3) and (4) leaves no manner of doubt that the said provisions envisage a challenge to the validity of the order of sanction or the validity of the proceedings including finding, sentence or order passed by the Special Judge in appeal or revision before a higher court and not before the Special Judge trying the accused.

23.5. The rationale underlying the provision obviously is that if the trial has proceeded to conclusion and resulted in a finding or sentence, the same should not be lightly interfered with by the appellate or the revisional court simply because

there was some omission, error or irregularity in the order sanctioning the prosecution under Section 19(1). Failure of justice is, what the appellate or revisional court would in such cases look for. And while examining whether any such failure had indeed taken place, the Court concerned would also keep in mind whether the objection touching the error, omission or irregularity in the sanction could or should have been raised at an earlier stage of the proceedings meaning thereby whether the same could and should have been raised at the trial stage instead of being urged in appeal or revision."

In State of M.P. vs. Bhooraji and Others, (2001) 7 SCC 679, this Court had an occasion to deal with the various aspects contained in Section 465 of CrPC more particularly to deal with the expression "A failure of justice has in fact been occasioned" as contained therein. Since, the provisions contained in Section 19(3) of the Prevention of Corruption Act and in Section 465(1) of CrPC are pari materia, the observations made in the said decision would be relevant.

"14. We have to examine Section 465(1) of the Code in the above context. It is extracted below:

"465. (1) Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a court of competent jurisdiction shall be reversed or altered by a court of appeal, confirmation or revision on account of any error, omission or irregularity in the complaint, summons, warrant, proclamation, order, judgment or other proceedings before or during trial or in any enquiry or other proceedings under this Code, or any error, or irregularity in any sanction for the prosecution, unless in the opinion of that court, a failure of justice has in fact been occasioned thereby."

15. A reading of the section makes it clear that the error, omission or irregularity in the proceedings held before or during the trial or in any enquiry were reckoned by the legislature as possible occurrences in criminal courts. Yet the legislature disfavoured axing down the proceedings or to direct repetition of the whole proceedings afresh. Hence, the legislature imposed a prohibition that unless such error, omission or irregularity has occasioned "a failure of justice" the superior court shall not quash the proceedings merely on the ground of such error, omission or irregularity.

16. What is meant by "a failure of justice" occasioned on account of such error, omission or irregularity? This Court has observed in Shamnsaheb M. Multtani v. State of Karnataka [(2001) 2 SCC 577: 2001 SCC (Cri) 358] thus: (SCC p. 585, para 23)

"23. We often hear about 'failure of justice' and quite often the submission in a criminal court is accentuated with the said expression. Perhaps it is too pliable or facile an expression which could be fitted in any situation of a case. The expression 'failure of justice' would appear, sometimes, as an etymological chameleon (the simile is borrowed from Lord Diplock in Town Investments Ltd. v. Deptt. of the Environment [(1977) 1 All ER 813 : 1978 AC 359 :
(1977) 2 WLR 450 (HL)]). The criminal court, particularly the superior court should make a close examination to ascertain whether there was really a failure of justice or whether it is only a camouflage." **[State of Karnataka Lokayukta Police vs. S. Subbegowda, AIR 2023 SC 3770]**

Secs. 239, 197—Discharge—Non-compliance of provisions of S.197—

Sanction contemplated under Section 197 of the CrPC concerns a public servant who "is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty" whereas, the offences contemplated in the PC Act, 1988 are those which cannot be treated as acts either directly or even purportedly done in the discharge of his official duties.

The offences under the IPC and offences under the PC Act, 1988 are different and distinct. What is important to consider is whether the offences for one reason or the other punishable under the IPC are also required to be approved in relation to the offences punishable under the PC Act, 1988.

It is important to draw a distinction between an order of sanction required for prosecuting a person for commission of an offence under the IPC and an order of sanction required for commission of an offence under the PC Act, 1988.

In Kalicharan Mahapatra v. State of Orissa, reported in (1998) 6 SCC 411, this Court noted:

"The sanction contemplated in Section 197 of the Code concerns a public servant who 'is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty', whereas the offences contemplated in the PC Act are those which cannot be treated as acts either directly or even purportedly done in the discharge of his official duties. Parliament must have desired to maintain the distinction and hence the wording in the corresponding provision in the former PC Act was materially imported in the new PC Act, 1988 without any change in spite of the change made in Section 197 of the Code."

In Lalu Prasad alias Lalu Prasad Yadav v. State of Bihar reported in (2007) 1 SCC 4, this Court observed as under:

"10. It may be noted that Section 197 of the CrPC and Section 19 of the PC Act, 1988 operate in conceptually different fields. In cases covered under the Act, in respect of public servants the sanction is of automatic nature and thus factual aspects are of little or no consequence. Conversely, in a case relatable to Section 197 of the CrPC, the substratum and basic features of the case have to be considered to find out whether the alleged act has any nexus with the discharge of duties. Position is not so in case of Section 19 of the Act."

Thus, although in the present case, the appellant has been discharged from the offences punishable under the PC Act, 1988 yet for the IPC offences, he can be proceeded further in accordance with law.

From the aforesaid, it can be said that there can be no thumb rule that in a prosecution before the court of Special Judge, the previous sanction under Section 19 of the PC Act, 1988 would invariably be the only prerequisite. If the offences on the charge of which, the public servant is expected to be put on trial include the offences other than those punishable under the PC Act, 1988 that is to say under the general law (i.e. IPC), the court is bound to examine, at the time of cognizance and also, if necessary, at subsequent stages (as the case progresses) as to whether there is a necessity of sanction under Section 197 of the CrPC. There is a material difference between the statutory requirements of Section 19 of the PC Act, 1988 on one hand,

and Section 197 of the CrPC, on the other. In the prosecution for the offences exclusively under the PC Act, 1988, sanction is mandatory qua the public servant. In cases under the general penal law against the public servant, the necessity (or otherwise) of sanction under Section 197 of the CrPC depends on the factual aspects. The test in the latter case is of the "nexus" between the act of commission or omission and the official duty of the public servant. To commit an offence punishable under law can never be a part of the official duty of a public servant. It is too simplistic an approach to adopt and to reject the necessity of sanction under Section 197 of the CrPC on such reasoning. The "safe and sure test", is to ascertain if the omission or neglect to commit the act complained of would have made the public servant answerable for the charge of dereliction of his official duty. He may have acted "in excess of his duty", but if there is a "reasonable connection" between the impugned act and the performance of the official duty, the protective umbrella of Section 197 of the CrPC cannot be denied, so long as the discharge of official duty is not used as a cloak for illicit acts**. [A. Sreenivasa Reddy vs. Rakesh Sharma, AIR 2023 SC 3811]**

Section 158, 173(8), 482 of Cr.P.C. – Power of further investigation

In present case the Secretary Home passed an order of transferring investigation to CBCID on the ground that the show called eye witness of murder were not the eye witnesses. The request of the mother of accused had been accepted by the Secretary Home and the investigation was transferred.

Hon'ble Supreme Court, in this matter held that where a superior officer of a police has been appointed under Section 158 of Cr.P.C., the report shall be submitted through that officer, and he may, pending the order of the Magistrate, direct the officer incharge of the police station to make further investigation. Therefore, Section 173 Cr.P.C. read with Section 158 does not permit the Secretary Home to order for further investigation/re-investigation by another agency, other than the officer incharge of concern police station/or his superior officer. Hence, the criminal appeal was allowed arising out of SLP (Criminal) No. 4394/2021 filed by the mother of deceased. **Bohatie Devi (Dead) Through L.R. v. State of Uttar Pradesh, 2023 Cri.L.J. 2401: AIROnline 2023 SC 362**

Criminal Procedure Code, 1973- S. 167(2)(b) proviso [as added vide S. 20(2) of the GUJCTOC Act] - Default bail - Offences under GUJCTOC Act-Extending period to complete investigation up to 180 days on basis of report of the Public Prosecutor. Requirement of such report, duty of Public Prosecutor and Court. Mandatory notice and mandatory presence of accused in Court during consideration of said report and the extension application. Opportunity to accused to oppose the extension application on permitted grounds. Mandatory requirements of proviso as inserted by GUJCTOC Act.

Non-production of accused on the day on which the Special Court considered the request for the grant of extension of time - (2) Failure of the Special Court under the GUJCTOC Act to procure the presence of the accused at the time of the consideration of the reports submitted by the Public Prosecutor for a grant of extension of time to complete the investigation - (3) Failure to give notice to the accused of the reports submitted by the Public Prosecutor.

Criminal Procedure Code, 1973- S. 167(2)(b) proviso [as added vide S. 20(2) of the GUJCTOC Act] -Default bail: it was held that notice to accused before granting extension of time for completion of investigation not to be construed as a "written notice." Thus, only the production of the accused at the time of consideration of the report of the Public Prosecutor for grant of extension, and, informing him that the question of extension of the period for completing the investigation was being considered, would be sufficient notice to the accused. **(Jigar alias Jimmy Pravinchandra Adatiya v. State of Gujarat, (2023) 6 SCC 484)**

Criminal Procedure Code, 1973 - Ss. 319 and 164 - Summoning of additional accused under S. 319 CrPC. It has been held that the power under S. 319 CrPC is to be exercised sparingly and only in cases where strong and cogent evidence occurs against person from evidence led before court and not in casual and cavalier manner. Material was not sufficient for summoning of additional accused in exercise of power under S. 319 CrPC to establish complicity of appellant in crime. Material produced on record was not even sufficient for conviction of accused against whom charge-sheet was filed. Hence, application filed by complainant for summoning appellant as additional accused was dismissed. **(Vikas Rathi v. State of Uttar Pradesh and another, (2023) 6 SCC 702)**

Ss. 360 and 107-Benefit of probation under S. 360 – Appellant - accused was convicted under S. 80 of the Karnataka Police Act, 1963 for indulging in offence of gambling at public place, and sentenced to undergo 1 month imprisonment with fine of Rs 200, which was upheld by High Court. **(Soori alias T.V. Suresh v. State of Karnataka, (2023) 7 SCC 257)**

S. 319- Summoning of additional accused-Complainant and his wife assaulted and abused by accused persons -On evidence adduced by complainant and his wife in course of recording of their depositions, trial court exercising power under S. 319 CrPC, summoned appellant for trial along with D (appellant's brother already facing trial), which was upheld by High Court. It was held that for purpose of passing order under S. 319 CrPC, it is sufficient to form satisfaction of nature indicated in para 106 of decision in *Hardeep Singh, (2014) 3 SCC 92* - In facts and circumstances of instant case, trial court formed requisite satisfaction prior to summoning appellant to face trial with D (appellant's brother). Hence the order of trial court (Special Court under the SCST Act, 1989) and impugned order of High Court upholding it, cannot be faulted. **(Jitendra Nath Mishra v. State of Uttar Pradesh and another, (2023) 7 SCC 344)**

Criminal Procedure Code, 1973 - S. 438(2) Anticipatory bail Condition(s) that may be imposed for grant of - Imposition of condition of deposit/payment of amount(s) allegedly cheated by accused (Ss. 420/406/34 IPC) - Legality of Dispute whether predominantly civil in nature-Necessity of determination of - Cases in which money allegedly misappropriated should be directed to be deposited before the application for anticipatory bail/bail is taken up for final consideration, or as a condition for grant of anticipatory bail/bail.

Criminal Procedure Code, 1973 - S. 438(2) - Anticipatory bail Conditions that may be imposed Cases in which money allegedly misappropriated should be directed to be deposited before the application for anticipatory bail/bail is taken up for final

consideration. Exceptional cases involving misappropriation of public money, when public interest demands imposition of such condition. Prevention of Corruption Act, 1988, Ss. 7 to 13.

Criminal Procedure Code, 1973 S. 438 - Anticipatory bail Application seeking Appeal arising from - Intervention by the complainants Whether permissible Held, the complainants have no - right of audience before the appellate court having regard to the nature of offence alleged to have been committed by the appellant in the present case (of cheating) unless, of course, a situation for compounding of the offence under S. 420 IPC, with the permission of the court, arises. **(Ramesh Kumar v. State of NCT of Delhi, (2023) 7 SCC 461)**

Criminal Procedure Code, 1973-S. 439 Bail Grant by High Court to accused-respondents herein charge-sheeted after investigation for offences under Ss. 302, 307, 201 and 120-B IPC, by non-speaking order, and without taking into consideration any of material forming part of charge-sheet and without even considering seriousness of offences alleged and material collected during investigation. Only observations made by High Court were that looking to possibility that trial may take long time to conclude, it was just and proper to enlarge respondents on bail. It has been held that a position is unsustainable. Matter remitted to High Court to decide bail applications afresh in accordance with law.

Held, when accused were charge-sheeted after investigation, High Court ought to have taken note of and/or considered material collected during investigation even to find out whether there is any material collected during investigation involving accused for serious offence under S. 302 IPC and therefore, whether it is a fit case to enlarge accused on bail or not. **(Rahul Gupta v. State of Rajasthan and another, (2023) 7 SCC 781)**

Criminal Procedure Code, 1973-S. 102

It was held that "where the appellant Company and the accused were two separate entities, and the appellant Company was in no way connected to the investigation concerned, the operation of the freeze order against the appellant Company, was not legally tenable Further, the purpose of the freeze order, and the bank guarantee in extension of the freeze order, can only be in operation to aid in the investigation against the alleged crime and since the investigation against the appellant Company, was redundant, hence, the freeze of the appellant Company's assets and the bank guarantee imposed in furtherance of the freeze order also becomes redundant. In the present case, held, the condition imposed upon the appellant to furnish a bank guarantee by the courts below, was not liable to be sustained and therefore set aside." **(Jermyn Capital LLC Dubai v. Central Bureau of Investigation and others, (2023) 7 SCC 810)**

S. 438 CrPC - Anticipatory bail - Factors and parameters that need to be kept in mind by court. Held, while the right to liberty and presumption of innocence are vital, the court must also consider the gravity of the offence, the impact on society, and the need for a fair and free investigation.

The relief of anticipatory bail is aimed at safeguarding individual rights. While it serves as a crucial tool to prevent the misuse of the power of arrest and protects innocent

individuals from harassment, it also presents challenges in maintaining a delicate balance between individual rights and the interests of justice. The tight rope we must walk lies in

striking a balance between safeguarding individual rights and protecting public interest. While the right to liberty and presumption of innocence are vital, the court must also consider the gravity of the offence, the impact on society, and the need for a fair and free investigation. The court's discretion in weighing these interests in the facts and circumstances of each individual case becomes crucial to ensure a just outcome.

Ss. 438 and 439(2) - Cancellation of anticipatory bail - Distinction with setting aside an erroneous bail order Held, the cancellation of bail should be done only for substantial and compelling reasons, however, setting aside an erroneous bail order is altogether different from cancelling bail.

The Supreme Court does not intend to interfere with the judicial discretion exercised by the High Court in granting bail to an accused as a standard practice. However, it is essential to ensure that all the material facts are brought on record and thereafter only the discretionary jurisdiction is exercised in accordance with the fundamental principles of anticipatory bail laid down in various decisions over time by the Supreme Court.

Ss. 406, 420, 467, 468, 471 and 120-B of IPC - Anticipatory bail - FIR under the above said sections-Whether justified Case where facts speak for themselves and element of criminality cannot be ruled out at anticipatory bail stage - Custodial interrogation of all suspects imperative to unearth the truth - Joining investigation with protective umbrella provided by pre-arrest bail whether will render exercise of eliciting the truth ineffective - Case relating to forged and fabricated sale deed. **(Pratibha Manchanda and another v. State of Haryana and another, (2023) 8 SCC 181)**

Criminal Procedure Code, 1973 S. 378(3) Leave to appeal Rejection of application in case of acquittal under Ss. 302 and 34 IPC Whether proper - Failure of eyewitnesses to identify accused in court Eyewitnesses otherwise also not found reliable. As per prosecution, three police officials killed the deceased by firing shots at the deceased with their service rifles.

Whether proper Circumstantial and forensic/ballistic evidence in case of alleged murder by firing shots at deceased, whether rightly discarded after eyewitnesses were also found unreliable. Conduct of accused not consistent with a guilty mind.

Be that as it may, once the ocular account of PW 15 stood discarded, to clinch a conviction on the basis of circumstances, the circumstances ought to have formed a chain so far complete as to indicate that in all human probability it were the persons facing trial and none else who committed the crime. Here the circumstances found proved, do not constitute a chain so far complete as to indicate that in all human probability it were the accused persons and no one else who committed the crime. In such a situation, there was no option for the trial court but to extend the benefit of doubt to the accused.

Criminal Procedure Code, 1973 S. 378(3) Leave to appeal - Rejection of application by a cryptic order in case under Ss. 302 and 34 IPC -This infirmity, held, not material to set aside the impugned rejection order and remit the matter to High Court, particularly, when relevant record was present to assess the merit of the prosecution case - Furthermore, this was even more so when the incident occurred in 1987 and the appeal remained pending since more than a decade. **(Central Bureau of Investigation v. Shyam Bihari and others, (2023) 8 SCC 197)**

ENVIRONMENT (PROTECTION) ACT

Cumulative impact assessment study and compliance with other additional conditions - Requirement of, imposed by NGT upon conditional approval of environmental clearance (EC) Substantial compliance - therewith by project proponent - Whether sufficient to permit continuance of operation of project until there was full compliance with all the requirements imposed, within the given time frame. Factors to be considered Already operating power plant pursuant to interim orders passed by Supreme Court - Adverse effect of closure of power plants/units in power deficient State. **(IL&FS Tamil Nadu Power Company Limited v. T. Muruganandam and others, (2023) 6 SCC 585)**

General Principles of Environmental Law - Polluter Pays Principle and Remedial/Compensatory/Punitive Measures - Ex post facto/Revised environmental clearance (EC) and/or forest clearance (FC) Regularisation of breach of environmental laws upon payment of - compensation or penalty in accordance with polluter pays principle, rather than directing closure of the project/unit.

An establishment contributing to economy of country and providing livelihood to hundreds of people, held, cannot be closed down for technical irregularity of shifting its site without prior environmental clearance, without opportunity to establishment to regularise its operation by obtaining requisite clearances and permissions, even though establishment may not otherwise be violating pollution laws, or pollution, if any, can conveniently and effectively be checked. **(Electrosteel Steels Limited v. Union of India and others, (2023) 6 SCC 615)**

National Green Tribunal Act, 2010 - Object of To provide one-stop-shop solution for all types of issues such as environmental clearances, settlement of disputes relating to environment, relief and compensation for victims of pollution and environmental damage, restitution of property/environment, etc. Tribunals possess both original and appellate jurisdiction, with enormous powers not only to execute its orders as decrees of civil courts, but also to punish those who fail to comply with its orders. Tribunal also empowered to collect court fee and entertain claims preferred within period of limitation.

National Green Tribunal Act, 2010: Ss. 14 to 20 Jurisdiction and powers of NGT - Direction by NGT to Central Pollution Control Board (CPCB) as well as State Pollution Control Board to make obtaining of consent to establish (CTE) and consent to operate ("CTO") mandatory for new as well as existing petroleum retail outlets and to install vapour recovery systems (VRS), in exercise of power under S. 5 of the EP Act, 1986.

It has been held that Central Government as well as Authority constituted under S. 3(3) are competent to issue directions under S. 5 as are "necessary or expedient for purpose of protecting and improving quality of environment", which are amenable to appellate jurisdiction of NGT. **(Indian Oil Corporation Limited v. V.B.R. Menon and others, (2023) 7 SCC 368)**

HINDU MARRIAGE ACT

Hindu Marriage Act, 1955, S. 13(1), (1-A) – Divorce Petition – Questioning character of appellant wife – Husband also demanding medical examination of appellant wife – Divorce petition rejected – The allegations made by husband against wife are as serious as the allegations made by wife against husband – Both parties have moved away and settled in their respective lives – There is no need to continue the agony of a mere status without them living together – Rejection improper, granting a decree of divorce would be proper.

S. 13(1)(ia) – Cruelty – Meaning – It has got no fixed meaning, and therefore, gives a very wide discretion to the Court to apply it liberally and contextually – What is cruelty may not be the same for another. **Smt. Roopa Soni v. Kamalnarayan Soni, 2023 (3) ARC 76 (SC).**

INDIAN EVIDENCE ACT

Section 3 Indian Evidence Act

Accused persons allegedly committed murder of deceased there was no eye witness of incident. Post-mortem report indicated death as homicidal in nature, the report revealed 22 ante mortem injuries on the body of deceased, prosecution alleged that deceased along with his friend assaulted brother of accused and because of that accused assaulted deceased. Prosecution failed to establish this motive. Evidence on record also not confirmed this alleged hurling oral testimony of witnesses were at variance about the last seen theory of deceased. Panch witness of recovery also did not support prosecution. It was held by the Hon'ble Apex Court that for all the above reasons and circumstances, it is unsafe to rest on the sole testimony of PW-8 to apply the 'last seen theory' in this case against the appellants especially, going by PW-8 he had only nodding acquaintance with them.

Thus, in a nutshell the correctness of the last seen version emanating from PW-8-Chintaman becomes doubtful, especially against the appellants herein. As noticed earlier, virtually, the oral testimonies of PW-8 and PW-10 are at variance about the last seen and it becomes inconclusive for the reasons mentioned hereinbefore. We have also found that the prosecution has miserably failed to prove the alleged motive. In such circumstance, though the deceased had met with a homicidal death it cannot be said that the rest of the circumstantial evidence culled out by the courts below unerringly point to the culpability of the appellants in the homicidal death of Rahul Pundlik Meshram. Even the recovery of the weapon and the dress, at the instance of the appellant in the latter appeal cannot, by itself, be conclusive as admittedly, the panch witnesses for their recovery also did not support the prosecution. In our considered view, the remaining circumstances relied on by the prosecution and held as proved by the courts below would not unerringly point to the guilt of the appellants.

Thus, in our view, it is unsafe on the aforesaid circumstances to maintain the conviction of the appellants; we thus, extend to them the benefit of doubt. Accordingly, we order for the acquittal of the appellants. The appeals are thus

allowed, upsetting the judgments and orders of the High Court as also that of the court of Session. The bail bonds executed by the appellants stand discharged. **Shankar v. State of Maharashtra, 2023 Cri.L.J. 2515 : AIROnline 2023 SC 278**

Section 302, 364, 392, 394, 201 IPC and Section 106 Evidence Act

According to the brief facts deceased went to meet with sister and brother in law and did not returned home after four days his dead body was recovered from canal. Neighbour of the complainant deposed that deceased was last seen together with accused persons on the tractor. The evidence of last seen itself was on a week footing considering the long gap of time between last seen by neighbor and the time of death of the deceased. Regarding the recovery evidence watch, currency notes of Rs. 250, hair and 'parna' were also recovered from the residence of the accused but the currency note and hair could not identified with deceased.

It was held by the Hon'ble Supreme Court that what has to be kept in mind is that Section 106 of the Act, only comes into play when the other facts have been established by the prosecution. In this case when the evidence of last seen itself is on a weak footing, considering the long gap of time between last seen by PW10 and the time of death of the deceased, Section 106 of the Act would not be applicable under the peculiar facts and the circumstances of the case.

As far as the recovery is concerned, the recovery is again weak. The so-called alleged place of crime and the recovery of tractor or the place where the tractor was abandoned had already been disclosed by the co accused by the time the present appellant was arrested. Therefore, making a disclosure about the place of occurrence or the place where the tractor was abandoned is of no consequence. As far as the recovery of watch, currency notes of Rs. 250/, hair and 'Parna' from the residence of the appellant are concerned, the currency notes and hair have not been identified with the deceased. In a criminal trial, the prosecution has to prove its case beyond reasonable doubt. This heavy burden has to be discharged by the prosecution. It becomes even more difficult in a case of circumstantial evidence. In the present case, the nature of circumstantial evidence is weak. In order to establish a charge of guilt on the accused, the chain of evidence must be completed and the chain must point out to one and only one conclusion, which is that it is only the accused who have committed the crime and none else. We are afraid the prosecution has not been able to discharge this burden.

The factors which have to be taken into consideration by the Court in a case of circumstantial evidence, are too well settled to be stated but nevertheless these factors which are being reproduced from Anjan Kumar Sarma (supra) are as under:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned "must" or "should" and not "may be" established;

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

(3) the circumstances should be of a conclusive nature and tendency;

(4) they should exclude every possible hypothesis except the one to be proved; and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

In our considered view, in the present case the prosecution has not been able to prove its case beyond reasonable doubt. The evidence of last seen, only leads upto a point and no further. It fails to link it further to make a complete chain. All we have here is the evidence of last seen, which as we have seen looses much of its weight under the circumstances of the case, due to the long duration of time between last seen and the possible time of death. What we can call as discovery here under Section 27 of the Act, is the discovery of 'Parna' and watch of the deceased. This evidence in itself is not sufficient to fix guilt on the appellant.

In a case where there is no direct eye witness to the crime, the prosecution has to build its case on the circumstantial evidence. It is a very heavy burden cast on the prosecution. The chain of circumstances collected by the prosecution must complete the chain, which should point to only one conclusion which is that it is the accused who had committed the crime, and none else. Each evidence which completes the chain of evidences must stand on firm grounds. In our considered opinion, the evidence placed by the prosecution in this case does not pass muster the standard required in a case of circumstantial evidence.

This appeal therefore succeeds. The orders of the trial court and the High Court dated 11.03.2007 and 31.05.2017, respectively are hereby set aside. Appellant is in jail shall now be released forthwith unless his presence is required in any other case. **Binesh Kumar v. State of Haryana, 2023 Cri.L.J. 2706 : AIROnline 2023 SC 454**

Evidence Act, 1872 - S. 115

It has been held that phrases "approbate" and "reprobate" mean that no party can be allowed to accept and reject same thing, as principle behind doctrine of election is in-built in concept of approbate and reprobate i.e. person cannot be allowed to have benefit of an instrument while questioning same. Element of fair play in-built in said principle and is a species of estoppel dealing with conduct of party.

Thus, held, party to proceeding cannot be permitted to challenge the same but thereafter abide by it out of its own free will, garner benefit from it, get opposite party to effectively alter its position; then press its challenge after considerable length of time (18 yrs in instant case. **(Workmen through the Joint Secretary (Welfare), Food Corporation of India Executive Staff Union v. Employer in Relation to the Management of the Food Corporation of India and another, (2023) 8 SCC 116)**

INDIAN PENAL CODE

Secs. 279 and 304-A—Cr.P.C., 1973, Sec. 377—Reduction of sentence from two years to eight months, subject to a prior deposit of Rs. 25,000/- towards compensation to be paid to family/legal heir of the deceased—Appeal against.

In the instant case, the trial court imposed sentence of two years in rash driving case leading to death. The High Court reduced the imprisonment to the period undergone. The Apex court held that while reducing the sentence, High Court has not at all considered the gravity of the offence and the manner in which respondent/original accused committed the offence. He was driving the Scorpio in rash and negligent manner while overtaking the ambulance from the left side due to which one innocent person lost his life and two persons who were sitting in the ambulance sustained injuries. High Court has not at all considered the fact that the IPC is punitive and deterrent in nature.

The Apex Court held that the judgment and order passed by High Court interfering with the sentence imposed by trial court confirmed by first appellate court by showing undue sympathy to the accused is unsustainable and the same is quashed and set aside. Appeal is allowed. **[State of Punjab vs. Dil Bahadur, 2023 (124) ACC 980 (SC)]**

Secs. 302, 364, 392, 201—Evidence Act, 1872, Sec. 106—Facts especially within knowledge—Burden of proof—Offence of murder

The powers of a presiding judge in a criminal trial and his duty to get to the truth of the matter have been laid down in a seminal judgement of this Court authored by Justice O. Chinnappa Reddy, which is Ram Chander v. State of Haryana, AIR 1981 SC 1036. Justice O. Chinnappa Reddy in the said judgment refers to his earlier Judgment, Sessions Judge, Nellore v. Intha Ramana Reddy, ILR 1972 AP 683, given by him as a Judge of the Andhra Pradesh High Court, where it was said :

"Every criminal trial is a voyage of discovery in which truth is the quest. It is the duty of a presiding judge to explore every avenue open to him in order to discover the truth and to advance the cause of justice. For that purpose he is expressly invested by Section 165 of the Evidence Act with the right to put questions to witnesses. Indeed the right given to a judge is so wide that he may, ask any question he pleases, in any form, at any time, of any witness, or of the parties about any fact, relevant or irrelevant. Section 172(2) of the Code of Criminal Procedure enables the court to send for the police diaries in a case and use them to aid it in the trial. The record of the proceedings of the Committing Magistrate may also be perused by the Sessions Judge to further aid him in the trial."

The duty of the presiding judge of a criminal trial is not to watch the proceedings as a spectator or a recording machine but he has to participate in the trial "by evincing intelligent active interest by putting questions to witnesses in order to ascertain the truth." While referring to a decision of Lord Denning in Jones v. National Coal Board6 the learned Judge had said that it is the duty of the judge to ask questions to the witnesses when it becomes necessary to clear up any point that has been overlooked or left obscure, then he goes on to say as under:

"We may go further than Lord Denning and say that it is the duty of a judge to discover the truth and for that purpose he may "ask any question, in any form, at any time, of any witness, or of the parties, about any fact, relevant or irrelevant"

(Section 165, Evidence Act). But this he must do, without unduly trespassing upon the functions of the public prosecutor and the defence counsel, without any hint of partisanship and without appearing to frighten or bully witnesses. He must take the prosecution and the defence with him. The Court, the prosecution and the defence must work as a team whose goal is justice, a team whose captain is the judge. The judge, 'like the conductor of a choir, must, by force of personality, induce his team to work in harmony; subdue the raucous, encourage the timid, conspire with the young, flatter and (sic the) old'."

The evidence of last seen becomes an extremely important piece of evidence in a case of circumstantial evidence, particularly when there is a close proximity of time between when the accused was last seen with the deceased and the discovery of the body of the deceased, or in this case the time of the death of the deceased. This does not mean that in cases where there is a long gap between the time of last seen and the death of the deceased the last seen evidence loses its value. It would not, but then a very heavy burden is placed upon the prosecution to prove that during this period of last seen and discovery of the body of the deceased or the time of the death of the deceased, no other person but the accused could have had an access to the deceased. The circumstances of last seen together in the present case by itself cannot form the basis of guilt [See: Anjan Kumar Sarma & Others v. State of Assam, (2017) 14 SCC 359 para 19].

The circumstances of last seen together does not by itself lead to an irrevocable conclusion that it is the accused who had committed the crime. The prosecution must come out with something more to establish this connectivity with the accused and the crime committed. Particularly, in the present case when there is no close proximity between circumstances of last seen together and the approximate time of death, the evidence of last seen becomes weak [See: Malleshappa v. State of Karnataka, (2007) 13 SCC 399 para 23].

In Nizam and Anr. vs. State of Rajasthan, (2016) 1 SCC 550, where the time gap between the last seen together and the discovery of the body of the deceased was long, it was held that during this period the possibility of some other interventions could not be ruled out. Where time gap between the last seen and time of death is long enough, as in the present case, then it would be dangerous to come to the conclusion that the accused is responsible for the murder. In such cases it is unsafe to base conviction on the "last seen theory" and it would be safer to look for corroboration from other circumstance and evidence which have been adduced by the prosecution. The other circumstances here is the so called discovery, and most of these, as we have already discussed, fail to meet the requirement of Section 27 of the Evidence Act.

The factors which have to be taken into consideration by the Court in a case of circumstantial evidence, are too well settled to be stated but nevertheless these factors which are being reproduced from Anjan Kumar Sarma (supra) are as under :

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned "must" or "should" and not "may be" established;

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;
(3) the circumstances should be of a conclusive nature and tendency;
(4) they should exclude every possible hypothesis except the one to be proved; and
(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused." **[Dinesh Kumar vs. State of Haryana, AIR 2023 SC 2795]**

Secs. 376, 302—Evidence Act, 1872, Sec. 3—Rape and murder—Circumstantial evidence

A Constitution Bench of this Court, in Syed Qasim Razvi v. State of Hyderabad, AIR 1953 SC 156, in the following extract observed that when there is a lack of understanding of the language of the Court, it causes prejudice to the appellant. The bench observed:

"9. …There is no doubt that ordinary court proceedings in Hyderabad are conducted in Urdu, but Urdu is certainly not the spoken language of even the majority of the people within the Hyderabad State. If the accused in a particular case is not acquainted with the English language and if by reason of the absence of adequate arrangements to have the proceedings interpreted to him in the language he understands, he is prejudiced in his trial, obviously it might be a ground which may be raised on his behalf in an appeal against his conviction. But in Court's opinion cannot be said that the provision in the Regulation relating to proceeding being conducted in English if the tribunal so desires per se violates the equal protection clause in the Constitution." **[Prakash Nishad @ Kewat Zinak Nishad vs. State of Maharashtra, AIR 2023 SC 2938]**

Secs. 376, 452, 506—Evidence Act, 1872, Secs. 3, 118—Rape—Proof

In Takhaji Hiraji v. Thakore Kubersing Chamansing, (2001) 6 SCC 145, the Court held that-

"19. So is the case with the criticism levelled by the High Court on the prosecution case finding fault therewith for non-examination of independent witnesses. It is true that if a material witness, who would unfold the genesis of the incident or an essential part of the prosecution case, not convincingly brought to fore otherwise, or where there is a gap or infirmity in the prosecution case which could have been supplied or made good by examining a witness who though available is not examined, the prosecution case can be termed as suffering from a deficiency and withholding of such a material witness would oblige the court to draw an adverse inference against the prosecution by holding that if the witness would have been examined it would not have supported the prosecution case. On the other hand if already overwhelming evidence is available and examination of other witnesses would only be a repetition or duplication of the evidence already adduced, non-

examination of such other witnesses may not be material. In such a case the court ought to scrutinise the worth of the evidence adduced. The court of facts must ask itself — whether in the facts and circumstances of the case, it was necessary to examine such other witness, and if so, whether such witness was available to be examined and yet was being withheld from the court. If the answer be positive then only a question of drawing an adverse inference may arise. If the witnesses already examined are reliable and the testimony coming from their mouth is unimpeachable the court can safely act upon it, uninfluenced by the factum of non-examination of other witnesses…"

In Rajesh Yadav v. State of Uttar Pradesh, (2022) 12 SCC 200:

"Non-examination of witness

34. A mere non-examination of the witness per se will not vitiate the case of the prosecution. It depends upon the quality and not the quantity of the witnesses and its importance. If the court is satisfied with the explanation given by the prosecution along with the adequacy of the materials sufficient enough to proceed with the trial and convict the accused, there cannot be any prejudice. Similarly, if the court is of the view that the evidence is not screened and could well be produced by the other side in support of its case, no adverse inference can be drawn. Onus is on the part of the party who alleges that a witness has not been produced deliberately to prove it.

12. Section 3 of the Evidence Act defines "evidence", broadly divided into oral and documentary. "Evidence" under the Act is the means, factor or material, lending a degree of probability through a logical inference to the existence of a fact. It is an "adjective law" highlighting and aiding substantive law. Thus, it is neither wholly procedural nor substantive, though trappings of both could be felt.

13. The definition of the word "proved" though gives an impression of a mere interpretation, in effect, is the heart and soul of the entire Act. This clause, consciously speaks of proving a fact by considering the "matters before it". The importance is to the degree of probability in proving a fact through the consideration of the matters before the court. What is required for a court to decipher is the existence of a fact and its proof by a degree of probability, through a logical influence.

14. Matters are necessary, concomitant material factors to prove a fact. All evidence would be "matters" but not vice versa. In other words, matters could be termed as a genus of which evidence would be a species. Matters also add strength to the evidence giving adequate ammunition in the Court's sojourn in deciphering the truth. Thus, the definition of "matters" is exhaustive, and therefore, much wider than that of "evidence". However, there is a caveat, as the court is not supposed to consider a matter which acquires the form of an evidence when it is barred in law. Matters are required for a court to believe in the existence of a fact.

15. Matters do give more discretion and flexibility to the court in deciding the existence of a fact. They also include all the classification of evidence such as circumstantial evidence, corroborative evidence, derivative evidence, direct evidence, documentary evidence, hearsay evidence, indirect evidence, oral evidence, original evidence, presumptive evidence, primary evidence, real evidence, secondary evidence, substantive evidence, testimonial evidence, etc.

16. In addition, they supplement the evidence in proving the existence of a fact by enhancing the degree of probability. As an exhaustive interpretation has to be given to the word "matter", and for that purpose, the definition of the expression of the words "means and includes", meant to be applied for evidence, has to be imported to that of a "matter" as well. Thus, a matter might include such of those which do not fall within the definition of Section 3, in the absence of any express bar.

17. What is important for the court is the conclusion on the basis of existence of a fact by analysing the matters before it on the degree of probability. The entire enactment is meant to facilitate the court to come to an appropriate conclusion in proving a fact. There are two methods by which the court is expected to come to such a decision. The court can come to a conclusion on the existence of a fact by merely considering the matters before it, in forming an opinion that it does exist. This belief of the court is based upon the assessment of the matters before it. Alternatively, the court can consider the said existence as probable from the perspective of a prudent man who might act on the supposition that it exists. The question as to the choice of the options is best left to the court to decide. The said decision might impinge upon the quality of the matters before it.

18. The word "prudent" has not been defined under the Act. When the court wants to consider the second part of the definition clause instead of believing the existence of a fact by itself, it is expected to take the role of a prudent man. Such a prudent man has to be understood from the point of view of a common man. Therefore, a Judge has to transform into a prudent man and assess the existence of a fact after considering the matters through that lens instead of a Judge. It is only after undertaking the said exercise can he resume his role as a Judge to proceed further in the case.

19. The aforesaid provision also indicates that the court is concerned with the existence of a fact both in issue and relevant, as against a whole testimony. Thus, the concentration is on the proof of a fact for which a witness is required. Therefore, a court can appreciate and accept the testimony of a witness on a particular issue while rejecting it on others since it focuses on an issue of fact to be proved. However, we may hasten to add, the evidence of a witness as whole is a matter for the court to decide on the probability of proving a fact which is inclusive of the credibility of the witness. Whether an issue is concluded or not is also a court's domain." **[Davinder Singh vs. State of Punjab, AIR 2023 SC 3158]**

Secs. 302, 304 Part-1, Part-2—Cr.P.C., 1974, Sec. 386(d)—Culpable homicide not amounting to murder—Intention or knowledge to kill—Determination of

Few important principles of law discernible from the aforesaid discussion may be summed up thus:-

(1) When the court is confronted with the question, what offence the accused could be said to have committed, the true test is to find out the intention or knowledge of the accused in doing the act. If the intention or knowledge was such as is described in Clauses (1) to (4) of Section 300 of the IPC, the act will be murder even though only a single injury was caused. To illustrate : 'A' is bound hand and

foot. 'B' comes and placing his revolver against the head of 'A', shoots 'A' in his head killing him instantaneously. Here, there will be no difficulty in holding that the intention of 'B' in shooting 'A' was to kill him, though only single injury was caused. The case would, therefore, be of murder falling within Clause (1) of Section 300 of the IPC. Taking another instance, 'B' sneaks into the bed room of his enemy 'A' while the latter is asleep on his bed. Taking aim at the left chest of 'A', 'B' forcibly plunges a sword in the left chest of 'A' and runs away. 'A' dies shortly thereafter. The injury to 'A' was found to be sufficient in ordinary course of nature to cause death. There may be no difficulty in holding that 'B' intentionally inflicted the particular injury found to be caused and that the said injury was objectively sufficient in the ordinary course of nature to cause death. This would bring the act of 'B' within Clause (3) of Section 300 of the IPC and render him guilty of the offence of murder although only single injury was caused.

(2) Even when the intention or knowledge of the accused may fall within Clauses (1) to (4) of Section 300 of the IPC, the act of the accused which would otherwise be murder, will be taken out of the purview of murder, if the accused's case attracts any one of the five exceptions enumerated in that section. In the event of the case falling within any of those exceptions, the offence would be culpable homicide not amounting to murder, falling within Part 1 of Section 304 of the IPC, if the case of the accused is such as to fall within Clauses (1) to (3) of Section 300 of the IPC. It would be offence under Part II of Section 304 if the case is such as to fall within Clause (4) of Section 300 of the IPC. Again, the intention or knowledge of the accused may be such that only 2nd or 3rd part of Section 299 of the IPC, may be attracted but not any of the clauses of Section 300 of the IPC. In that situation also, the offence would be culpable homicide not amounting to murder under Section 304 of the IPC. It would be an offence under Part I of that section, if the case fall within 2nd part of Section 299, while it would be an offence under Part II of Section 304 if the case fall within 3rd part of Section 299 of the IPC.

(3) To put it in other words, if the act of an accused person falls within the first two clauses of cases of culpable homicide as described in Section 299 of the IPC it is punishable under the first part of Section 304. If, however, it falls within the third clause, it is punishable under the second part of Section 304. In effect, therefore, the first part of this section would apply when there is ‘guilty intention,’ whereas the second part would apply when there is no such intention, but there is ‘guilty knowledge’.

(4) Even if single injury is inflicted, if that particular injury was intended, and objectively that injury was sufficient in the ordinary course of nature to cause death, the requirements of Clause 3rdly to Section 300 of the IPC, are fulfilled and the offence would be murder.

(5) Section 304 of the IPC will apply to the following classes of cases: (i) when the case falls under one or the other of the clauses of Section 300, but it is covered by one of the exceptions to that Section, (ii) when the injury caused is not of the higher degree of likelihood which is covered by the expression 'sufficient in the ordinary course of nature to cause death' but is of a lower degree of likelihood which is generally spoken of as an injury 'likely to cause death' and the case does not fall under Clause (2) of Section 300 of the IPC, (iii) when the act is done with the

knowledge that death is likely to ensue but without intention to cause death or an injury likely to cause death.

To put it more succinctly, the difference between the two parts of Section 304 of the IPC is that under the first part, the crime of murder is first established and the accused is then given the benefit of one of the exceptions to Section 300 of the IPC, while under the second part, the crime of murder is never established at all. Therefore, for the purpose of holding an accused guilty of the offence punishable under the second part of Section 304 of the IPC, the accused need not bring his case within one of the exceptions to Section 300 of the IPC.

(6) The word 'likely' means probably and it is distinguished from more 'possibly'. When chances of happening are even or greater than its not happening, we may say that the thing will 'probably happen'. In reaching the conclusion, the court has to place itself in the situation of the accused and then judge whether the accused had the knowledge that by the act he was likely to cause death.

(7) The distinction between culpable homicide (Section 299 of the IPC) and murder (Section 300 of the IPC) has always to be carefully borne in mind while dealing with a charge under Section 302 of the IPC. Under the category of unlawful homicides, both, the cases of culpable homicide amounting to murder and those not amounting to murder would fall. Culpable homicide is not murder when the case is brought within the five exceptions to Section 300 of the IPC. But, even though none of the said five exceptions are pleaded or prima facie established on the evidence on record, the prosecution must still be required under the law to bring the case under any of the four clauses of Section 300 of the IPC to sustain the charge of murder. If the prosecution fails to discharge this onus in establishing any one of the four clauses of Section 300 of the IPC, namely, 1stly to 4thly, the charge of murder would not be made out and the case may be one of culpable homicide not amounting to murder as described under Section 299 of the IPC.

(8) court must address itself to the question of mens rea. If Clause thirdly of Section 300 is to be applied, the assailant must intend the particular injury inflicted on the deceased. This ingredient could rarely be proved by direct evidence. Inevitably, it is a matter of inference to be drawn from the proved circumstances of the case. The court must necessarily have regard to the nature of the weapon used, part of the body injured, extent of the injury, degree of force used in causing the injury, the manner of attack, the circumstances preceding and attendant on the attack.

(9) Intention to kill is not the only intention that makes a culpable homicide a murder. The intention to cause injury or injuries sufficient in the ordinary cause of nature to cause death also makes a culpable homicide a murder if death has actually been caused and intention to cause such injury or injuries is to be inferred from the act or acts resulting in the injury or injuries.

(10) When single injury inflicted by the accused results in the death of the victim, no inference, as a general principle, can be drawn that the accused did not have the intention to cause the death or that particular injury which resulted in the death of the victim. Whether an accused had the required guilty intention or not, is a question of fact which has to be determined on the facts of each case.

(11) Where the prosecution proves that the accused had the intention to cause death of any person or to cause bodily injury to him and the intended injury is

sufficient in the ordinary course of nature to cause death, then, even if he inflicts a single injury which results in the death of the victim, the offence squarely falls under Clause thirdly of Section 300 of the IPC unless one of the exceptions applies.

(12) In determining the question, whether an accused had guilty intention or guilty knowledge in a case where only a single injury is inflicted by him and that injury is sufficient in the ordinary course of nature to cause death, the fact that the act is done without premeditation in a sudden fight or quarrel, or that the circumstances justify that the injury was accidental or unintentional, or that he only intended a simple injury, would lead to the inference of guilty knowledge, and the offence would be one under Section 304 Part II of the IPC. **[Anbazhagan vs. State Represented by the Inspector of Police, AIR 2023 SC 3660]**

Sec. 300—Evidence Act, 1872, Secs. 3, 106—Murder—Burden of proof—accused allegedly committed murder of his wife

In the case of Dharm Das Wadhwani v. The State of Uttar Pradesh, AIR 1975 SC 241:

"13. The question then is whether the cumulative effect of the guilt pointing circumstances in the present case is such that the court can conclude, not that the accused may be guilty but that he must be guilty. We must here utter a word of caution about this mental sense of 'must' lest it should be confused with exclusion of every contrary possibility. We have in S.S. Bobade v. State of Maharashtra, AIR 1973 SC 2622, explained that proof beyond reasonable doubt cannot be distorted into a doctrine of acquittal when any delicate or remote doubt flits past a feeble mind. These observations are warranted by frequent acquittals on flimsy possibilities which are not infrequently set aside by the High Courts weakening the credibility of the judicature. The rule of benefit of reasonable doubt does not imply a frail willow bending to every whiff of hesitancy. Judges are made of sterner stuff and must take a practical view of legitimate inferences flowing from evidence, circumstantial or direct. At the same time, it may be affirmed, as pointed out by this Court in Kali Ram v. State of Himachal Pradesh, AIR 1973 SC 2773, that if a reasonable doubt arises regarding the guilt of the accused, the benefit of that cannot be withheld from him."

Cases are frequently coming before the Courts where the husbands, due to strained marital relations and doubt as regards the character, have gone to the extent of killing the wife. These crimes are generally committed in complete secrecy inside the house and it becomes very difficult for the prosecution to lead evidence. Like the present case, no member of the family, even if he is a witness of the crime, would come forward to depose against another family member.

If an offence takes place inside the four walls of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in the circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused, if the strict principle of circumstantial evidence, is insisted upon by the Courts. Reference could be made to a decision of this Court in the case of Trimukh Maroti Kirkan Vs. State of Maharashtra, reported in 2007 Criminal Law Journal, page 20, in

which this Court observed that a Judge does not preside over a criminal trial merely to see that no innocent man is punished. This Court proceeded to observe that a Judge also presides to see that a guilty man does not escape. Both are public duties. The law does not enjoin a duty on the prosecution to lead evidence of such character, which is almost impossible to be led, or at any rate, extremely difficult to be led. The duty on the prosecution is to lead such evidence, which it is capable of leading, having regard to the facts and circumstances of the case. **[Wazir Khan vs. State of Uttarakhand, AIR 2023 SC 3778]**

Secs. 504, 506—Intentional insult and criminal intimidation—What amounts to—Explained

S. 504 contemplates intentionally insulting a person and thereby provoking such person insulted to breach the peace or intentionally insulting a person knowing it to be likely that the person insulted may be provoked so as to cause a breach of the public peace or to commit any other offence. Mere abuse may not come within the purview of the section. But, the words of abuse in a particular case might amount to an intentional insult provoking the person insulted to commit a breach of the public peace or to commit any other offence. If abusive language is used intentionally and is of such a nature as would in the ordinary course of events lead the person insulted to break the peace or to commit an offence under the law, the case is not taken away from the purview of the Section merely be- cause the insulted person did not actually break the peace or commit any offence having exercised self-control or having been subjected to abject terror by the offender.

In judging whether particular abusive language is attracted by S. 504, IPC, the court has to find out what, in the ordinary circum- stances, would be the effect of the abusive language used and not what the complainant actually did as a result of his peculiar idiosyncrasy or cool temperament or sense of discipline. It is the ordinary general nature of the abusive language that is the test for considering whether the abusive language is an intentional insult likely to provoke the person insulted to commit a breach of the peace and not the particular conduct or temperament of the complainant.

Mere abuse, discourtesy, rudeness or insolence, may not amount to an intentional insult within the meaning of S. 504, IPC if it does not have the necessary element of being likely to incite the person insulted to commit a breach of the peace of an offence and the other element of the accused intending to provoke the person insulted to commit a breach of the peace or knowing that the per- son insulted is likely to commit a breach of the peace. Each case of abusive language shall have to be decided in the light of the facts and circumstances of that case and there cannot be a general proposition that no one commits an offence u/S. 504. Before an offence of criminal intimidation is made out, it must be established that the accused had an intention to cause alarm to the complainant. **[Mohammad Wajid vs. State of U.P., AIR 2023 SC 3784]**

S. 302 of the Penal Code, 1860 – Murder trial - Circumstantial evidence - High Court finding one link in chain of circumstances to be missing and not proved. - Thus, it was held that as per settled law on this issue, High Court ought to have set aside the

conviction based on circumstantial evidence - Hence, conviction of appellant was set aside. **(Laxman Prasad alias Laxman v. State of Madhya Pradesh, (2023) 6 SCC 399)**

Penal Code, 1860 Ss. 302/34 - Accessory accused: Whether liable for murder with the aid of S. 34- Determination of - Said accused holding down victim while he was struck fatal blows by main assailant(s). Presence of respondent-accused (original Accused 3) at the place of occurrence and participation in action of respondent in commission of offence and common intention to commit murder of deceased with her husband (original Accused 1), held, stands established and proved by prosecution. Hence, conviction of respondent under Ss. 302/34 IPC stands restored. **(State of Madhya Pradesh v. Jad Bai, (2023) 6 SCC 552)**

Penal Code, 1860-S. 302-Murder of wife alleged-Appeal against acquittal High Court reversed acquittal of appellant-accused and convicted him under S. 302 IPC for murdering his wife in case resting on circumstantial evidence. However, it is well settled that unless finding of trial court is found to be perverse or illegal/impossible, it is not permissible for appellate court to interfere with the same. In present case, view taken by trial court could not be said to be either perverse or illegal/ impossible to warrant interference- High Court grossly erred in interfering with well-reasoned judgment and order of acquittal passed by trial court. Hence, impugned judgment and order passed by High Court convicting appellant under S. 302 IPC was quashed and set aside. Judgment and order passed by trial court acquitting appellant was restored.

Criminal Trial-Proof - Suspicion – it has been held that it is settled principle of law that however strong a suspicion may be, it cannot take place of a proof beyond reasonable doubt.

Criminal Procedure Code, 1973-S. 378- Appeal against acquittal - Interference by appellate court - Unless a finding is found to be perverse or illegal/impossible, held, it is not permissible for the appellate court to interfere with the same. **(Nikhil Chandra Mondal v. State of West Bengal, (2023) 6 SCC 605)**

Penal Code, 1860- Ss. 302 and 376 - Rape and murder of minor alleged - Circumstantial evidence - Last seen theory - Requirements for invocation of S. 106 of the Evidence Act - Necessity of clearly establishing that deceased was last seen in the company of the accused.

Ss. 302 and 376 Child rape and murder - Absence of DNA/medical examination of accused and non-obtaining forensic report regarding salwar worn by the victim - Powers and duties of investigating agency and prosecution under Ss. 53-A and 164-A CrPC.

Criminal Procedure Code, 1973 Ss. 53-A and 164-A- Medical examination of accused and victim of rape Similarity and distinctions between provisions of S. 53-A and S. 164-A- it has been held that while S. 53-A enables the medical examination of the person accused of rape, S. 164-A enables medical examination of the victim of rape. Both these provisions are somewhat similar and can be said approximately to be a mirror image of each other. However, there are three distinguishing features.

Ss. 302 and 376-FIR- Delay in transmitting to jurisdictional Magistrate - When may vitiate prosecution case - Word "forthwith" used in S. 157(1) CrPC- Manner in which to be understood - Effect of such delay, when witnesses found not reliable and when no question put in cross-examination to the IO about delay.

S. 302 - Murder trial - FIR - External checks for determining authenticity of FIR Two such external checks are: one being the receipt of the copy of the FIR, called a special report in a murder case, by the local Magistrate; and the second being the sending of the copy of the FIR along with the dead body and its reference in the inquest report.

Criminal Procedure Code, 1973 - S. 313(1)(b) - Examination of accused Plea as to infirmity in recording statement of accused and failure of the court to comply with the mandate of S. 313(1)(b) in letter and spirit. Held, not material and declined to be gone into by the Court, when in case of rape and murder, the evidence of material witnesses found not trustworthy and, further, when the prosecution failed to subject the accused to medical examination. **(Chotkau v. State of Uttar Pradesh, (2023) 6 SCC 742)**

Ss. 302 and 201 - Alleged murder of his wife LS by appellant-accused herein, who thereafter allegedly dumped her dead body in well. Case based on circumstantial evidence - Circumstances linking appellant to crime, held, not proved at all, much less beyond reasonable doubt. It was held that there is no evidence, ocular, circumstantial or otherwise, which could establish guilt of appellant. Courts below seriously erred in passing order of appellant's conviction based on incorrect and incomplete appreciation of evidence, causing serious prejudice to appellant, also resulting into travesty of justice. Therefore, order of trial court convicting and sentencing appellant under Ss. 302 and 201, as affirmed by High Court was set aside. **(Guna Mahto v. State of Jharkhand, (2023) 6 SCC 817)**

Ss. 302 and 376- Rape and murder of minor Sentence of life imprisonment for entire biological life of convict, without any benefit of remission - Modification to reduced fixed term sentence - Necessity of balancing considerations of punishment, deterrence and reformation.

Allegations of rape and murder of a 14 yr old girl, proved against the appellant beyond reasonable doubt on account of testimony of direct eyewitnesses. Considering appellant's age at the time of commission of crime i.e. 26 yrs, chances of his reformation, held, probable. Hence, sentence directed to be modified to the fixed term sentence for a period of 30 yrs without any benefit of remission so that prime period of his life is spent in jail, as just punishment considering the severity of the offence. **(Kashi Nath Singh alias Kallu Singh v. State of Jharkhand, (2023) 7 SCC 317)**

Penal Code, 1860-S. 302 Deceased allegedly assaulted to death by two appellant-accused father and son, using "tabal" and "axe." Land dispute between appellants (Appellants 1 and 2) and deceased, alleged cause. The High Court upheld conviction of appellants under S. 302 IPC. Prosecution case whether established beyond reasonable doubt.

It has been held that the facts and circumstances of instant case show that prosecution failed to prove to the hilt that appellants were persons involved in assault and death of deceased. In absence of any credible eyewitness to incident and fact that presence of appellants at place of incident is also not well established, both appellants are entitled to benefit of doubt. FIR is also found ante-timed, losing its evidentiary value. Even if certain other minor discrepancies in oral evidence are ignored, it is a case where prosecution has miserably failed to prove that appellants have committed offence, beyond any reasonable doubt. Hence, judgment and orders of courts below are set aside

and Appellant 1- accused is acquitted by giving him benefit of doubt. **(Mohd. Muslim v. State of Uttar Pradesh (now Uttarakhand), (2023) 7 SCC 350)**

The Hon'ble Supreme Court observed that undisputedly, the present case is a case which rests on circumstantial evidence. The law with regard to conviction in the case of circumstantial evidence is very well crystallised in *Sharad Birdhichand Sarda, (1984) 4 SCC 116.*

It can thus be seen that the Supreme Court has held that the circumstances from which the conclusion of guilt is to be drawn should be fully established. That the circumstances concerned "must or should" and not "may be" established. That there is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved". That the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty. That the circumstances should be of a conclusive nature and tendency and they should exclude every possible hypothesis except the one sought to be proved, and that there must be a chain of evidence so complete so as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

It is a settled principle of law that however strong a suspicion may be, it cannot take place of a proof beyond reasonable doubt.

The law with regard to extra-judicial confession has been succinctly discussed in *Munna Kumar Upadhyay, (2012) 6 SCC 174*, wherein the Supreme Court has also referred to its earlier judgments. **(Pritinder Singh alias Lovely v. State of Punjab, (2023) 7 SCC 727)**

Penal Code, 1860 - Ss. 304 Pt. II/149, 323/149 and 148 [Ss. 302/149 and S. 300 Exception 4] - Sentencing - Standard to be adopted when role of each accused (convicted respondents herein) is practically indistinguishable - Held, impugned judgment fell into error in not considering gravity of offence - Having held all accused criminally liable under Ss. 304 Pt. II/149 and also not having found any distinguishing feature in the form of separate roles played by each of them, imposition of "sentence undergone" criteria, amounted to aberration, and sentencing is for that reason, flawed. Therefore, given totality of circumstances, appropriate sentence would be 5 yrs' RI for each of the respondent-accused. **(Uggarsain v. State of Haryana and others, (2023) 8 SCC 109)**

S. 308 or S. 338 of IPC - Alteration of conviction from S. 308 to one under S. 338 Permissibility of, by invoking S. 222(2) CrPC - Held, by applying principles incorporated in S. 222(2) CrPC, the court can consider whether the accused has committed any other offence which is a minor offence in comparison to the offence for which he is tried.

S. 338 of IPC - Sentence - Long pendency of matter, taken as factor for imposing sentence of simple imprisonment for six months - Considering serious injuries sustained by the injured at the young age of 13 yrs, amount of compensation enhanced from Rs 50,000 to 75,000. **(Abdul Ansar v. State of Kerala, (2023) 8 SCC 175)**

S. 302 or S. 304-A r/w S. 80 of IPC - Altercation between police officials in reporting room in police station resulting in accidental firing by service weapon, which

caused death of one of them. No motive established for the firing. However, firing which caused the death, resulted as change lever of service weapon/gun was not kept in safety position Culpability for negligence of failing to keep change lever of service weapon in safety position.

Evidence Act, 1872 - Ss. 6 and 24 - Statement made by accused and response of witness to such statement both made immediately after the incident - Whether met the requirements of S. 6- Whether such statements inculpatory in nature, even if they could be admitted under S. 6. **(Arvind Kumar v. State (NCT of Delhi), (2023) 8 SCC 208)**

INDIAN SUCCESSION ACT

Indian Succession Act, 1925, S. 63 – Validity and execution of Will – Principles thereunder – enumerated.

Grant of probate or letter of Administration – Application for – Will found valid and accordingly Letter (s) of Administration issued by Courts below – Legality of – The Will duly executed by testator in presence of witnesses out of his free Will in a sound disposing State of mind and the same stands proven through the testimony of one attesting witnesses namely examined as PW-2 by Civil Court – No evidence that the Will was executed under suspicious circumstances, or the presence of any element of undue influence as alleged by defendants – The Will valid. **Meena Pradhan and others v. Kamla Pradhan and another, 2023(3) ARC 88 (SC).**

INSURANCE LAW

Rescission/Repudiation of Insurance Claim/Policy/ Breach of terms and conditions - Insurance cover for persons deployed for election related work - Insurance claim - Rejection of, when there is delay in lodging claim and conditions of MoU/policy required the claim to be made immediately. **(National Insurance Company Limited v. Chief Electoral Officer and others, (2023) 6 SCC 441)**

LAND ACQUISITION, REHABILITATION AND RESETTLEMENT ACT

Land Acquisition and Requisition - Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 -S. 24(1) Word "initiated" therein Meaning of - Land acquisition 1 proceedings under the 1894 Act. Commencement of - Law clarified

Land Acquisition and Requisition - Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 -S. 24(1)(a). it has been held that when S. 24(1)(a) of the 2013 Act is applicable, the proceedings shall continue as per the LA Act, 1894. However, only for the determination of compensation amount, the provisions of the 2013 Act shall be applied.

Land Acquisition and Requisition - Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 -Ss. 24 and 114- Repeal and Savings of Land Acquisition Act, 1894 by the 2013 Act.

Land Acquisition and Requisition - Land Acquisition Act, 1894 S. 4 – Scope, Purpose and effect of issuance of notification.

Constitution of India Arts. 300-A and 21 and Pt. IV - Right to property under Art. 300-A – It has been that right to property ceased to be fundamental right. It is a

human right and a constitutional right. In matters relating to land acquisition, held, compulsory acquisition by scrupulous adherence to procedures authorised by law would not violate Art. 300-A Principle of unfairness of the procedure attracting Art. 21, further held, does not apply to the acquisition or deprivation of property under Art. 300-A giving effect to the directive principles.

Interpretation of Statutes - Basic Rules Contextual/Holistic - Contextual Construction – It has been held that statute should be construed with reference to the context and its provisions to make a consistent enactment. All interpretations must subserve and help implementation of the intention of the Act concerned.

Land Acquisition and Requisition - Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. **(Haryana State Industrial and Infrastructure Development Corporation Limited and others v. Deepak Agarwal and others, (2023) 6 SCC 512)**

Land Acquisition and Requisition Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 -S. 24(2)-Deemed lapse of acquisition proceedings-Possession could not be taken due to pending litigation/stay - In such cases, deemed lapse of proceedings under S. 24(2) is not occasioned. Further reiterated that writ petition/action by subsequent purchaser claiming lapse of proceedings is not maintainable. **(Government of NCT of Delhi and another v. Manjeet Kaur and another, (2023) 6 SCC 539)**

Government Grants, Largesse, Public Property and Public Premises - Preferential right to further allotment based on existing allotment. If any Existing allottee of shop claiming allotment of shed/auction platform located just adjacent to and/or in front of shop allotted to him and/or at any other place Tenability of such claim. Such right whether granted in applicable rules or regulations -Nature of business in shop and on auction platform – Distinguished. **(Gurjit Singh (dead) through legal representatives v. Union Territory, Chandigarh and others, (2023) 6 SCC 544)**

MOTOR VEHICLES ACT

Sec. 166—Compensation—Functional disability—

Services of appellant, working as a Gunman in a hotel, were terminated since his right leg was amputated after a road accident. With amputation of right leg, a person cannot perform the duty of a gunman. Appellant was 50 years and 5 months old at the time of accident. Tribunal was right in assessing the loss of earning capacity of the appellant as 100% High Court erred in reducing the loss of earning capacity of 80%. **[Sarnam Singh vs. Shriram General Insurance Co. Ltd., AIR 2023 SC 3601]**

Ss. 163, 166 and 173 of Motor Vehicles Act, 1988 - Compensation - Permanent disability- Loss of future income - Assessment of loss of income - Principles clarified - Held, any physical disability resulting from an accident has to be judged with reference to the nature of the work being performed by the person who suffered the disability. **(Sarnam Singh v. Shriram General Insurance Company Limited and others, (2023) 8 SCC 193)**

NATIONAL GREEN TRIBUNAL ACT

Environment Law - National Green Tribunal Act, 2010- Ss. 19, 14 and 15- Adjudication of disputes - Proper mode of disposal and basis of decision of NGT- Compliance with principles of natural justice.

The Hon'ble Supreme Court explained the law with reference to above mentioned provisions of National Green Tribunal, 2010. It is first important to differentiate Expert Committees which are set by the courts/tribunals from those set up by the Government in exercise of executive powers or under a particular statute. The latter are set up due to their technical expertise in a given area, and their reports are, subject to judicially observed restraints, open to judicial review before courts when decisions are taken solely based upon them. Precedents of the Supreme Court unanimously note that courts should be circumspect in rejecting the opinion of these committees, unless they find their decision to be manifestly arbitrary or mala fide. On the other hand, courts/ tribunals themselves set up Expert Committees on occasion. These committees are set up because the fact-finding exercise in many matters can be complex, technical and time-consuming, and may often require the committees to conduct field visits. These committees are set up with specific terms of reference outlining their mandate, and their reports have to conform to the mandate. Once these committees submit their final reports to the court/tribunal, it is open to the parties to object to them, which is then adjudicated upon. The role of these Expert Committees does not substitute the adjudicatory role of the court or tribunal.

Section 15 of the NGT Act empowers the NGT to award compensation to the victims of pollution and for environmental damage, to provide for restitution of property which has been damaged and for the restitution of the environment. NGT cannot abdicate its jurisdiction by entrusting these core adjudicatory functions to administrative Expert Committees. Expert Committees may be appointed to assist the NGT in the performance of its task and as an adjunct to its fact-finding role. But adjudication under the statute is entrusted to the NGT and cannot be delegated to administrative authorities. Adjudicatory functions assigned to courts and tribunals cannot be hived off to administrative committees.

NGT is a judicial body and therefore exercises adjudicatory function. The very nature of an adjudicatory function would carry with it the requirement that principles of natural justice are complied with, particularly when there is an adversarial system of hearing of the cases before the Tribunal or for that matter before the Courts in India. NGT though is a special adjudicatory body constituted by an Act of Parliament, nevertheless, the discharge of its function must be in accordance with law which would also include compliance with the principles of natural justice as envisaged in Section 19(1) of the NGT Act.

"Official notice" doctrine, is a device used in administrative procedure. Although an authority can rely upon materials familiar to it in its expert capacity without the need formally to introduce them in evidence, nevertheless, the parties ought to be informed of materials so noticed and be given an opportunity to explain or rebut them. The data on which an authority is acting must be apprised to the party against whom the data is to be used as such a party would then have an opportunity not only to refute it but also supplement, explain or give a different perspective to the facts upon which the authority relies. Aforesaid doctrine applies with greater force to a judicial/adjudicatory body.

Therefore, if NGT intends to rely upon an Expert Committee report or any other relevant material that comes to its knowledge, it should disclose in advance to the party so as to give an opportunity for discussion and rebuttal. Thus, factual information which comes to the knowledge of NGT on the basis of the report of the Committee constituted by it, if to be relied upon by the NGT, then, the same must be disclosed to the parties for their response and a reasonable opportunity must be afforded to present their observations or comments on such a report to the Tribunal. **(Singrauli Super Thermal Power Station v. Ashwani Kumar Dubey and others, (2023) 8 SCC 35)**

PASSPORTS ACT

Citizens, Migrants and Aliens - Passports Act, 1967 S. 10(3) r/w Ss. 91(1), 102(1), 104 & 482 CrPC- Seizure and impounding of passport- When permissible - Procedure that must be followed therefor - Provision(s) of law applicable - Primacy of Passports Act over CrPC - Conditions that may be imposed while allowing application for return - Law clarified.

It was held that the power under S. 104 CrPC cannot be invoked to impound a passport, because the provisions of the PP Act which deal with the specific subject of impounding passports shall prevail over S. 104 CrPC. Further, under S. 102(1) CrPC, the police, held, empowered only to seize the passport, but not to impound the same. Further, when the power of seizure of a passport is exercised under S. 102, the police, held, cannot withhold the said document and the same must be forwarded to the Passport Authority and, thereafter, only the Passport Authority has to decide whether the passport needs to be impounded. **(Chennupati Kranthi Kumar v. State of Andhra Pradesh and others, (2023) 8 SCC 251)**

PREVENTION OF CORRUPTION ACT

Public Accountability, Vigilance and Prevention of Corruption - Prevention of Corruption Act, 1988 Ss. 7 to 13 Quashment of FIR/ investigation in PC Act/corruption cases Approach to be adopted by the Court in such cases: it has been held that principle of non- interference is to be followed by the Court in such cases, except in cases with very special features.

Public Accountability, Vigilance and Prevention of Corruption Prevention of Corruption Act, 1988 - S. 13 - Disproportionate assets cases - Quashment of FIR/investigation -Matters to be considered by the Court and approach to be adopted.

Public Accountability, Vigilance and Prevention of Corruption Prevention of Corruption Act, 1988 S. 13 - Quashment of FIR Plea of mala fides - Secondary importance or even irrelevance in disproportionate assets cases/corruption cases, so long as there is adequate objective material/evidence for investigation/proceedings to continue to their logical end, in accordance with law. Pleadings and particulars necessary to establish mala fides - Non-impleadment of parties against whom mala fides or bias imputed by the petitioners.

S. 13- Quashment of FIR - Plea of FIR in question being registered in breach of CBI Circular - Held, not tenable, when the FIR registered on 25-2-2020 whereas CBI Circular issued on 12-11-2020, almost 9 months after registration of the FIR, and same adopted by the State almost a year later. **(State of Chhattisgarh and another v. Aman Kumar Singh and others, (2023) 6 SCC 559)**

PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT

Secs. 5, 6—Prohibition of Child Marriage Act, 2007, Sec. 10—Evidence Act, 1872, Sec. 3—Aggravated penetrative sexual assault—Appreciation of evidence

In a recent decision, in Rishipal Singh Solanki vs. State of Uttar Pradesh & Ors., 2021 (12) SCR 502 this court outlined the procedure to be followed in cases where age determination is required. The court was dealing with Rule 12 of the erstwhile Juvenile Justice Rules (which is in pari materia) with Section 94 of the JJ Act, and held as follows:

"20. Rule 12 of the JJ Rules, 2007 deals with the procedure to be followed in determination of age. The juvenility of a person in conflict with law had to be decided prima facie on the basis of physical appearance, or documents, if available. But an inquiry into the determination of age by the Court or the JJ Board was by seeking evidence by obtaining: (i) the matriculation or equivalent certificates, if available and in the absence whereof; (ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof; (iii) the birth certificate given by a corporation or a municipal authority or a panchayat. Only in the absence of either (i), (ii) and (iii) above, the medical opinion could be sought from a duly constituted Medical Board to declare the age of the juvenile or child. It was also provided that while determination was being made, benefit could be given to the child or juvenile by considering the age on lower side within the margin of one year."

Speaking about provisions of the Juvenile Justice Act, especially the various options in Section 94 (2) of the JJ Act, this court held in Sanjeev Kumar Gupta vs. The State of Uttar Pradesh & Ors, AIR 2019 SC 4364 that:

"Clause (i) of Section 94 (2) places the date of birth certificate from the school and the matriculation or equivalent certificate from the 2021 (12) SCR 502 [2019] 9 SCR 735 concerned examination board in the same category (namely (i) above). In the absence thereof category (ii) provides for obtaining the birth certificate of the corporation, municipal authority or panchayat. It is only in the absence of (i) and (ii) that age determination by means of medical analysis is provided. Section 94(2)(a)(i) indicates a significant change over the provisions which were contained in Rule 12(3)(a) of the Rules of 2007 made under the Act of 2000. Under Rule 12(3)(a)(i) the matriculation or equivalent certificate was given precedence and it was only in the event of the certificate not being available that the date of birth certificate from the school first attended, could be obtained. In Section 94(2)(i) both the date of birth certificate from the school as well as the matriculation or equivalent certificate are placed in the same category.

In Abuzar Hossain @ Gulam Hossain v State of West Bengal, AIR 2013 SC 1020, this court, through a three-judge bench, held that the burden of proving that someone is a juvenile (or below the prescribed age) is upon the person claiming it. Further, in that decision, the court indicated the hierarchy of documents that would

be accepted in order of preference. **[P.Yuvaprakash vs. State Rep. by Inspector of Police, AIR 2023 SC 3525]**

Protection of Children from Sexual Offences Act, 2012 S. 6 (as it stood prior to amendment dt. 16-8-2023) - Sentence - Imposition of less than minimum prescribed sentence (of 10 yrs' RI at the relevant time) is impermissible, even when the accused had moved ahead in life.

Protection of Children from Sexual Offences Act, 2012-S. 6- Sentence - Effect of phraseology "shall not be less than" - Held, when a penal provision uses the phraseology "shall not be less than", the courts cannot do offence to the section and impose a lesser sentence - Therefore, held, courts are powerless to do that unless there is a specific statutory provision enabling the court to impose a lesser sentence Held, there is no provision in the POCSO Act permitting the imposition of a lesser sentence than that prescribed Criminal Trial - Sentence - Minimum sentence/Minimum statutory sentence.

The POCSO Act was enacted to provide more stringent punishments for the offences of child abuse of various kinds and that is why minimum punishments have been prescribed in Sections 4, 6, 8 and 10 of the Pocso Act for various categories of sexual assaults on children. Hence, Section 6, on its plain language, leaves no discretion to the court and there is no option but to impose the minimum sentence as done by the trial court. **(State of Uttar Pradesh v. Sonu Kushwaha, (2023) 7 SCC 475)**

RAJASTHAN PREMISES (CONTROL OF RENT AND EVICTION) ACT

Rajasthan Premises (Control of Rent and Eviction) Act, 1950 (17 of 1950)-S. 14(3) Suit for eviction within five - Bar under S. 14(3)-Interpretation years of tenancy - Held, irregularity of suit filed within five years of tenancy would get cured by decree of eviction being made after expiry of such period.

Provision of S. 14(3) is for protection of a tenant and the objective is that from date a tenant acquires a right, he must have a right to continue in premises for a period of five years, subject to his fulfilment of terms and conditions of lease. Whether expression used is "shall lie" or "be entertained", held, really makes no difference. Objective is to create an impediment in institution and trial of suit for a period specified under the Act. Spirit of protection is fulfilled with passage of prescribed time period, and filing of a fresh suit would lead to unnecessary multiplicity of litigation. Objective of S. 14(3) being safeguarding of tenant for five years, held, stood subserved by proceedings going on for requisite period of time and beyond it, within which tenant could not have been evicted.

In present case, while suit may have been defectively instituted within five years of tenancy however, more than 38 yrs have now elapsed since suit was filed. This passage of time beyond period of five years, held, would wash away initial impediment against suit.

Final disposal by Supreme Court - No real question of law arising in present case which would be determined in second appeal in High Court if matter is remitted back, particularly as real question relating to interpretation of law was determined by Supreme Court itself. **(Ravi Khandelwal v. Taluka Stores, (2023) 7 SCC 720)**

SCHEDULED CASTES AND THE SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT

Sec. 14A(1)—Cr.P.C., 1974, Sec. 319—Summoning of additional accused—Prima facie case—Offence of criminal breach of trust, cheating and voluntarily causing hurt to victim belonging to SC/ST category

Section 319, Cr. PC, which envisages a discretionary power, empowers the court holding a trial to proceed against any person not shown or mentioned as an accused if it appears from the evidence that such person has committed a crime for which he ought to be tried together with the accused who is facing trial. Such power can be exercised by the court qua a person who is not named in the FIR, or named in the FIR but not shown as an accused in the charge-sheet. Therefore, what is essential for exercise of the power under section 319, Cr.P.C. is that the evidence on record must show the involvement of a person in the commission of a crime and that the said person, who has not been arraigned as an accused, should face trial together with the accused already arraigned. However, the court holding a trial, if it intends to exercise power conferred by section 319, Cr. PC, must not act mechanically merely on the ground that some evidence has come on record implicating the person sought to be summoned; its satisfaction preceding the order thereunder must be more than prima facie as formed at the stage of a charge being framed and short of satisfaction to an extent that the evidence, if unrebutted, would lead to conviction.

For the purpose of passing an order under section 319, Cr. PC, it is sufficient to form a satisfaction of the nature indicated in paragraph 106 of the decision in Hardeep Singh (supra). **[Jitendra Nath Mishra vs. State of U.P., AIR 2023 SC 2757]**

SECURITIZATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST

Secs. 34, 13(8), 17, 18—CPC, 1908, Order 39, Rr. 1, 2, O, 43, R.1—Ouster of jurisdiction of Civil Court—Interim injunction granted in favour of borrower restraining Bank from selling premises for certain period was vacated by single Judge

The issue as to the exclusion of the jurisdiction of a civil court is no more res integra. The provisions of Section 34 of the SARFAESI Act have been considered by a Bench of three Judges of this Court in the case of Mardia Chemicals Limited and Others v. Union of India and Others, AIR 2004 SC 2371.

It could thus be seen that this Court has held that the jurisdiction of the civil court is barred in respect of matters which a DRT or an Appellate Tribunal is empowered to determine in respect of any action taken "or to be taken in pursuance of any power conferred under this Act". The Court has held that the prohibition covers even matters which may be taken cognizance of by the DRT though no measure in that direction has so far been taken under subsection (4) of Section 13 of the SARFAESI Act. It has been held that the bar of jurisdiction is in respect of a

proceeding which matter may be taken to the Tribunal. It has categorically been held that any matter in respect of which an action may be taken even later on, the civil court shall have no jurisdiction to entertain any proceeding thereof. The Court held that the bar of civil court thus applies to all such matters which may be taken cognizance of by the DRT, apart from those matters in which measures have already been taken under sub-section (4) of Section 13 of the SARFAESI Act.

This Court has further held that, to a very limited extent jurisdiction of the civil court can also be invoked, where for example, the action of the secured creditor is alleged to be fraudulent or his claim may be so absurd and untenable which may not require any probe whatsoever or to say precisely to the extent the scope is permissible to bring an action in the civil court in the cases of English mortgages. **[Punjab and Sind Bank vs. Frontline Corporation Ltd., AIR 2023 SC 2786]**

SPECIFIC RELIEF ACT

Contract and Specific Relief - Specific Relief Act, 1963 - Ss. 15 and 10

Benefit of a contract of repurchase which did not show that it was intended only for the benefit of the parties contracting, could be assigned. The option given to repurchase the property sold would prima facie be assignable.

Unless the contents of the document in question and evidence in relation thereto are so clear to infer a prohibition against assignment or transfer, the right of repurchase has to be held to be assignable or transferable and cannot be treated as personal to the contracting parties. On a very unsubstantial ground that the document in question makes a mention only of "parties" and their "heirs" and not "assignees" or "transferees", it cannot be held that the right of repurchase was not assignable.

It was held that assignment of a contract might result in transfer of either rights or obligations. The transfer of obligations is not possible without the consent of the other party. The transfer of right is permissible except in cases where the contract is of personal nature. Thus, condition of right to repurchase in sale deed will not be personal to the vendor unless the terms in the documents specifically state so. Such a right can always be assigned and the contract containing such condition shall be enforceable. The only exception being that such a right should not be personal in nature. The assignment of obligations in a document is not possible without the consent of the other party. No implied prohibition of transfer or assignment can be inferred in a document. The benefit of contract is assignable in cases where it does not make any difference to the person on whom the obligations lies, to which of two persons he is to discharge.

In view of the facts of the present case, there is no term in the conditional sale deed which debars its assignment to any other person. The clause only mentions regarding right of repurchase. The option is given to the vendors with the obligations on the vendee. The right to repurchase in the present case has been assigned by S (now deceased) in favour of Respondent 1 who is none else than his daughter-in-law to whom other properties have also been gifted. **(Indira Devi v. Veena Gupta and others, (2023) 8 SCC 124)**

TRANSFER OF PROPERTY ACT

Transfer of Property Act, 1882-S. 51-Conditions for applicability of Improvements made by bona fide holders under defective titles - Improvement on property must be made by "transferee." Encroacher is not transferee.

Civil Procedure Code, 1908-Or. 14 R. 1- Non-framing of issue- Not fatal to proceedings when parties went to trial and led all evidence.

Evidence Act, 1872-S. 115- Estoppel and Acquiescence - Specific pleading needed to invoke said doctrines. Acquiescence will not apply if lapse of time is of no consequence. Question of applicability has to be decided with reference to factual position. Mere silence or inaction not sufficient to constitute acquiescence, but it must be in circumstances which require duty to speak or act. Legal status expressly denied by statute cannot be conferred on the basis of estoppel. Doctrines of estoppel and acquiescence, held, cannot be invoked by person who encroached upon another's land and without bona fides raised construction thereon, despite owner's objection.

Evidence Act, 1872 S. 115 - Mere delay in instituting suit, when filed within the period of limitation prescribed, held, cannot be held as amounting to acquiescence or a ground to claim estoppel.

Specific Relief Act, 1963 Ss. 5, 6, 38 and 39 Relief of recovery of possession Entitlement to Reasonable time taken in instituting proceedings therefor, but within limitation prescribed by law-Effect of Doctrine of laches or acquiescence whether applicable. **(Baini Prasad (dead) through legal representatives v. Durga Devi, (2023) 6 SCC 708)**

Property Law - Transfer of Property Act, 1882 S. 53-A Applicability of - Possession transferred to buyer in part-performance of agreement to sell - Protection conferred by S. 53-A and rights acquired by buyer under the agreement to sell - Scope of - Entitlement to eviction of - seller once possession stands transferred to the buyer in part-performance of the agreement to sell, and mesne profits against the seller for any wrongful occupation/possession thereafter-Licence granted by the buyer to the seller after such transfer of possession to the buyer - Effect of

It has been held that the buyer having performed his part of contract and lawfully in possession acquires possessory title which is liable to be protected in view of S. 53-A TPA-Such possessory rights of the buyer cannot be invaded by the seller/transferor or any person claiming under him. Once seller parted with possession of suit property by putting buyer in possession of it under an agreement to sell, held, seller as such, ceased to be in possession of it as an owner.

Thus, in present case, once the above said licence stood terminated vide valid notice, the seller had no right to continue in possession and was bound to vacate the premises. Hence, it was held that respondent-plaintiff buyer was rightly held entitled to decree of eviction with mesne profits against appellant- defendant seller for not having vacated the premises after the licence stood validly terminated. **(Ghanshyam v. Yogendra Rathi, (2023) 7 SCC 361)**

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

U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (13 of 1972)-S. 20(4)-Entitlement to benefit of Tender or deposit of rent - Unconditional

deposit on first hearing - Requirement of "Unconditional deposit"- Requisite amount was deposited before first date of hearing however, appellant tenant pleaded rate of rent as Rs 45 per month, which, ultimately, was found to be Rs 150 per month. It was held that above discrepancy would not render deposit conditional thereby disentitling defendant to discretionary relief under S. 20(4). **(Shanti Prasad (dead) through legal representatives v. Thakur Dass (dead) through legal representatives and others, (2023) 6 SCC 612)**

PART II – HIGH COURT

CIVIL PROCEDURE CODE

CPC, 1908 O. XXXIX, R. 1 and 2 – Temporary injunction application - Allowed – Appellate Court should not interfere within the discretion exercised judicially by T.C. in granting or refusing to grant relief of T.I. if said exercise of discretion based upon objective consideration of material placed before the Court and is supported by cogent reasons – Plaintiffs/respondents suit based upon the registered document and the boundaries indicated therein found correct by Advocate Commissioner and the case of defendant/appellant based on an unregistered letter of sale – Allowing of T.I. proper. **Ram Babu Dubey v. Sankalp Mishra and others, 2023(2) ARC 580.**

CPC, 1908, S. 100 – Suit for specific performance of an agreement to sell, further decree of the award of pendent lite and future mesne profit – Suit decreed only for relief of specific performance – Appellate Court affirmed the Trial Court's decree – Legality of – The conduct of the plaintiff in chasing the defendant to execute a sale –deed is relevant, which the Courts below have taken into consideration while exercising their discretion in granting specific performance – Decreetal of the suit proper.

CPC, 1908, O. VIII, R. 9 – Replication – Part of pleading – Acceptance of – A replication is not a part of pleadings unless the Court grants leave to present it subject to such terms as it considers fit. **Kashi Ram v. Ramji Lal, 2023(2) ARC 705.**

CPC, 1908, O. VI, R. 17 – Amendment of written statement – After reengagement of new counsel – Rejection of – Except the engagement of new Counsel, nothing has been stated in amendment application even after sincere efforts, they could not search out the fact, which is to be amdended in W.S. therefore, the condition of due diligence could not be satisfied – Change of counsel cannot be a ground for filing amendment – Rejection proper.

A party requesting a relief stemming out of a claim is required to exercise due diligence and it is a requirement which cannot be dispensed with. The term "due diligence" determines the scope of a party's constructive knowledge, claim and is very critical to the outcome of the suit. **Shri Firoz Uddin and others v. Shri Anwar Uddin, 2023 (2) ARC 728.**

CPC, 1908, O. XLI, R. 27 – Application for additional Evidence – On ground earlier counsel did not effectively pursue the case and did not tender proper advise – Application rejected – Conditions precedent mentioned under O. XLI, R. 27, CPC not satisfied as to enable the additional evidence to be admitted by appellate Court – Rejection proper. **Smt. Surendra Kaur and others v. Vivek Gupta and others, 2023(2) ARC 741.**

CPC, 1908, S. 114 – Scope of Review – Permissibility of – A new ground cannot be raised for the first time in review application.

Allahabad High Court Rules, 1952, Chapter VII, Rule 1 – Judgment – Pronouncement of – Method – The Rule does not provide any adverse consequence of the entire judgment not being pronounced in open Court immediately.

Practice and Procedure – Precedents – Scope – Only the ratio of a judgment is being as a precedent, not the order which is passed in a case. **Mata Prasad Tiwari v. State of U.P. thru. its Secy. Deptt. of Revenue Civil Sectt. and others, 2023 (3) ARC 117.**

Fact

In this matter petition has been filed seeking relief of setting aside the impugned order dated 08.02.2023 passed by Additional District & Sessions Judge, Court No. 11, Agra in SCC Suit No. 88/2020 (Mahesh Chand Agarwal vs. Bhagwan Devi Ice & Cold Storage Pvt. Ltd. and others).

In this matter SSC Suit No. 88 of 2020 was filed against the petitioners-defendants, wherein, petitioners were impleaded as defendant Nos. 2 and 3. After receiving the notice, petitioners-defendants have preferred application under Order VII Rule 11 CPC for rejection of the plaint. The SCC Court vide order dated 08.02.2023 has deferred the decision upon the application under Order VII Rule 11 CPC with the observation that the same shall be decided on merits after receiving the evidence.

Held

The law is very well settled on the point that once application under Order VII Rule 11 CPC has been filed, the same has to be decided before the commencement of the trial based upon the facts mentioned in the plaint only.

From the perusal of facts and judgments mentioned hereinabove, it is apparently clear that it is required on the part of the Court to decide first, application filed under Order VII Rule 11 CPC and thereafter proceed to decide the suit in case the said application is rejected. The purpose of legislation is to avoid unnecessary dragging of legal proceeding in case the application under Order VII Rule 11 has been filed.

On perusal of record as well as impugned order dated 08.02.2023, it is apparently clear that after filing of application under Order VII Rule 11 CPC, instead of deciding the same, the Court kept it pending for disposal at the time of final hearing, which cannot be accepted in light of facts and law discussed hereinabove.

Therefore, in view of facts and circumstances of the case, the impugned order dated 08.02.2023 is hereby quashed. Petition is allowed with direction to SCC Court to decide the application of petitioner under Order VII Rule 11 at the earliest after obtaining objection from the opposite parties. **Suresh Chand Goyal and Ors. vs. Mahesh Chand Agarwal and Ors. 2023(6) ADJ 488**

Facts

In this matter revision has been filed for challenging the order dated 27.3.2023 passed by the Additional District Judge, Court No.13, Kanpur Nagar in S.C.C. Suit No. 44 of 2017.

Plaintiff-opposite party instituted the SCC Suit No. 44 of 2017 upon which written submission were filed. Thereafter, point of determination has also been framed. Both the parties i.e. plaintiff and defendant filed their witnesses through affidavit and case was fixed for final hearing. At the time of final argument, amendment application was filed under Order VI Rule 17 of CPC read with 151 IPC only on the ground of change of new counsel and after engagement of new counsel, it was found that certain relevant facts was not taken into consideration.

Held

Order VI Rule 17 of CPC clearly provides that in case of amendment after commencement of trial, due diligence is required to be seen, but in the present case except the change of counsel, nothing has been stated.

Fault on the part of counsel or any other reason attributed to counsel cannot be ground for filing of amendment application and allow the same, which was filed after commencement of trial. In fact, in light of Order VI Rule 17 of CPC, parameters of due diligence cannot be met out by making allegation on earlier counsel and giving credit to new counsel to search out the certain new facts during the preparation of the case. Therefore, any such amendment application placed upon the efforts or mistake on the part of counsel cannot be entertained and allowed. The issue of due diligence is necessary part, which is required to be considered by the Court.

So far as due diligence as referred in Order VI Rule 17 of CPC is concerned, it is necessary requirement while allowing the amendment application after commencement of trial. In the present case, there is no dispute on the point that amendment application was filed at the stage of final hearing, therefore, while allowing the application, it is necessary requirement to see as to whether due diligence was made by the applicant for the fact, which is brought on record by filing amendment application and failure of that, amendment application cannot be allowed. In the impugned order, SCC Court has not considered this fact that only ground taken for filling amendment application is mistake on the part of earlier counsel without considering the requirement of due diligence on the part of plaintiff-opposite party.

In the present case, nothing has been stated about any due diligence made by the plaintiff-opposite party to bring the facts on record except the engagement of new counsel, who has searched out the new facts. impugned order dated 27.3.2023 passed by learned Additional District Judge, Court No.13, Kanpur Nagar is hereby quashed and revision is allowed. **Amitabh Kumar Gupta vs. Awadh Bihari Nigam, 2023(6) ADJ 455**

Facts

Present petition has been filed seeking relief that impugned order dated 13.03.2023, passed by Addl. District Judge, Court No. 8, Etawah, in SCC Revision

No. 11 of 2004, Murari Lal Srivastava Vs. Sandeep Kumar & Ors and the impugned order dated 26.04.2023, passed by Addl. District Judge, Court no. 8, Etawah, in Rent Revision No. 19 of 2023, Vishnu Kumari Vs. Sandeep Kumar & Ors. Be quashed.

Smt. Ramdevi and Smt. Saral Kumari had filed SSC Suit No. 64 of 1975 before SCC Court for eviction and recovery of arrears of rent and damages, upon which Sri Murari Lal Srivastava defendant had filed written statement. During the pendency of the suit proceeding, Smt. Saral Kumari executed a sale deed dated 29.07.1989 in favour of Sri Govind Saran Dixit (since deceased). Thereafter, Sri Govind Saran Dixit (since deceased) moved an application dated 06.01.1990 under Order XXII Rule 10, Code of Civil Procedure (hereinafter, referred to as, 'CPC') for impleadment as plaintiff. Said impleadment application was allowed vide order dated 22.04.2004. Against the said order, defendant filed SCC Revision No. 11 of 2004. The said revision was dismissed vide first impugned order dated 13.03.2023. During the pendency of the legal proceeding, Sri Govind Saran Dixit died on 21.02.2018. The SCC Court vide order dated 01.04.2023 directed the legal heirs of Sri Govind Saran Dixit(since deceased) to file application under Order I Rule 10, CPC along with Order VI Rule 17, CPC and Section 151 CPC for impleadment. Against the order dated 01.04.2023, Revision No. 19 of 2023 was filed, which was also dismissed vide second impugned order dated 26.04.2023. Issue involved is as to whether the impleadment under Order XXII Rule 10, CPC is barred by the provision of Section 109 of Transfer of Property Act, 1882.

The issue before the Court to decide is, as to whether in light of Section 109 of the Act of 1882, Sri Govind Saran Dixit(since deceased) was entitled to receive the rent or not and further, application for impleadment filed under Order XXII Rule 10, CPC is maintainable or not.

Held

From the perusal of the averment made in the sale deed dated 29.07.1989, there is no dispute on the point that there is specific mention of SCC Suit No. 64 of 1975 pending before the SCC Court, Etawah for recovery of rent and eviction. Once there is averment that suit has been filed for recovery of rent and eviction, and further, authority has been given to subsequent purchaser to contest the case, there is no dispute that it also includes right to recover the rent. Therefore, submission of learned counsel for the petitioner that there is no authority given in the sale deed dated 29.07.1989 to plaintiff-Sri Govind Saran Dixit (since deceased) is incorrect.

In regard to filing of impleadment application under Order XXII Rule 10, CPC. Order XXII Rule 10, CPC provides that in case of assignment, creation or devolution of any interest during the pendency of a suit by the leave of Court, suit may be continued by a person upon whom such interest has been devolved. In the present case, there is no dispute on the point that interest of Sri Govind Saran Dixit(since deceased) has been devolved after execution of sale deed dated 29.07.1989 in his favour.

While considering the application under Order XXII Rule 10, CPC, Court has only to be prima facie satisfied for exercising its jurisdiction in granting leave for continuation of the suit and remaining questions about the existence and validity of

the assignment or devolution can be considered at the final hearing of the proceedings.

In case devolution of interest during the pendency of a suit, it can be continued by a person on whom such interest has been devolved. There is no doubt about the fact that interest has been devolved in favour of Sri Govind Saran Dixit (since deceased) after execution of sale deed dated 29.07.1989. Further, sale deed is having specific averment about the pendency of SCC Suit No. 64 of 1975 for arrears of rent and eviction, therefore, there is no illegality in the order of trial Court dated 13.03.2023, affirmed by the impugned revisional order dated 26.04.2023. So far as second impugned order dated 26.04.2023 is concerned, the fact is that, during the pendency of suit proceedings, Sri Govind Saran Dixit-plaintiff died on 21.02.2018 and this Court exercising the power under Order I Rule 10, CPC has directed legal heirs of Sri Govind Saran Dixit to file application for impleadment under Order I Rule 10, CPC and Order VI Rule 17, CPC read with Section 151 CPC.

From the perusal of Order I Rule 10(2), it is apparently clear that Court has right to strike out or add parties at any stage and in the present case, the SCC Suit was pending since 1975, therefore, the Court has rightly proceeded to pass order dated 01.04.2023 for impleadment of legal heirs of Sri Govind Saran Dixit after his death. Against the said order, Revision No. 11 of 2004 was filed by the petitioner-defendant, which was rightly dismissed by the impugned order dated 13.03.2023 specifically in light of fact that once impleadment of Sri Govind Saran Dixit(since deceased) is valid in law, therefore, his legal heirs are also having right to be impleaded to contest the case. No illegality in the impugned orders dated 3.03.2023 and 26.04.2023 was found. Accordingly dismissed. **Vishnu Kumari vs. Sandeep Kumar and Ors., 2023(6) ADJ 417**

Facts

Present petition has been filed for setting aside the impugned order dated 15.12.2022 passed by the Court of Judge, Small Causes Court, Kanpur Nagar in S.C.C. Suit No. 188 of 2014 (Mohd. Shahid vs. Rajendra and others) and impugned order dated 15.3.2023 passed by the District Judge, Kanpur in S.C.C. Revision No. 26 of 2023 (Rajendra & others vs. Mohd Shahid)

Plaintiff-respondent has served legal notice dated 10.4.2014 claiming himself to be the owner of house in question on the basis of sale deed executed on 31.3.2013 by Jasmeet Singh. On the very same basis, he has set up his case and filed suit. In the plaint, it is mentioned that house in question has been purchased by Jasmeet Singh. Under Section 20(2) (a) of the U.P. Urban Buildings (Regulation of Letting Rent and Eviction) Act, 1972, notice is required within 30 days.

It was argued that petitioner has fully complied the provision of Order 15 Rule 5 of CPC as well as Section 20(4) of Act, 1972 by depositing the admitted arrears of rent at the rate of Rs. 300/- per month, but benefit of Section 20(4) of Act, 1972 has not been given to him.

Held

Law is very well settled on the point that after receiving legal notice, it is required on the part of petitioner-defendant to raise objection about the invalidity or

infirmity of notice at the earliest otherwise, it would deemed to have been waved. Once the content of legal notice has not been disputed in its reply dated 1.5.2014 and further not raised objection while filing written statement, same cannot be raised at this stage, therefore, argument of petitioner is having no substance on this point.

From perusal of Section 38 of U.P. Act No. 13 of 1972, it is clear that provision of U.P. Act No.13 of 1972 shall prevail over the provisions of CPC & Transfer of Property Act. Therefore, in light of provision of Sections 34 read with Rules 22 of Rules, 1972 & 38 of U.P. Act No. 13 of 1972, provision of Order 6 Rule 14 & 15 shall not be applicable in the present case. Petitioner has not taken this ground before the SCC Court as well as Revisional Court, therefore, no liberty can be granted to petitioner-defendant to raise this issue at this belated stage.

It is apparently clear that for taking benefit of Section 20(4) of U.P. Act No.13 of 1972, it is required on the part of petitioner-defendant to deposit entire dues including amount for time barred period. It is admitted case of petitioner that he has not deposited the rent from 1990 and after ex parte decree while filing application under Order 15 Rule 5 of CPC complying of Section 17 of SCC Act, 1887, he had deposited decretal amount only, therefore, in light of aforesaid judgment, benefit of Section 20(4) of U.P. Act No. 13 of 1972 cannot be extended in favour of petitioner-defendant. In light of facts and circumstances of the case as well as law discussed hereinabove, no case is made out for interference in the impugned orders. The petition lacks merit and is, accordingly, dismissed. **Rajendra and Ors. vs. Mohd. Shahid, 2023(6) ADJ 679**

Facts

In this matter Second Appeal No.108 of 2008 and Second Appeal No.26 of 2020, arose out of the same suit. The Trial Court decided the suit by the same judgment, leading to a single appeal from the original decree by one of the defendants. In this matter the suit was initially instituted for the relief of permanent prohibitory injunction alone, but later on converted into a suit for demolition and dispossession.

Held

Notice under Section 326 of the Code has not at all been served upon defendant No.1 before the suit was instituted. There is no plea regarding want of a notice under Section 326 raised in the written statement at all. No issue was framed at the instance of defendant No.1 before the Trial Court regarding the maintainability of the suit for want of notice under Section 326 aforesaid. No issue was framed to the above effect even after the plaint was amended by the plaintiff and an additional written statement filed on behalf of defendant No.1. The failure to raise a plea regarding want of notice under Section 326 in the written statement, then in failing to get an issue framed on the point before the Trial Court, and also failing to raise a ground before the Lower Appellate Court in the first appeal, constitutes a waiver of the right to statutory notice under Section 326, otherwise mandatory. The purpose of notice under Section 326 of the Act of 1916 and that under Section 80 of the Code is the same. The requirement of both these statutory notices is to extend protection from action in one case to the Government and its officers for their official acts, and

in the other to municipal bodies constituted under the Act of 1916. Once the bar under Section 326 of the Act of 1916 is not pleaded in the written statement, as already remarked, and during the subsequent course of proceedings also, in the opinion of this Court, it must be deemed to have been waived. It cannot be permitted to be raised for the first time in second appeal.

It was further held that the entry in the revenue records for the suit property as Pajawa is not at all conclusive proof of automatic vesting thereof, either in defendant No.1, or the State.

It was also held that the power of the Appellate Court is very wide under Order XLI Rule 33 of the code and the jurisdiction of the Appellate Court to interfere with a decree, vary or modify it, as to a part of it, in the absence of a cross-objection under Order XLI Rule 22 of the Code, has been the subject matter of considerable judicial debate. Nevertheless, the power of the Appellate Court in the absence of a cross-objection by the respondent under Order XLI Rule 22 of the Code has been acknowledged of course subject to well settled restrictions.

It is held that given the parameters, on which power under Order XLI Rule 33 of the Code is to be exercised, in the absence of a 'cross objection' under Order XLI Rule 22 of the Code, the Lower Appellate Court was not at all justified in granting relief to the defendants (defendant Nos.4 to 7) to recover costs of the constructions from the plaintiffs, the former raised in encroachment. **Nagar Kshetra Samiti Mathura Vs. Kanchan Singh And Others, 2023(8) ADJ 275**

Facts

In this matter second appeal has been preferred by the defendants-appellants emanating from a suit for specific performance of contract filed by the plaintiffs-respondents, wherein the trial Court by means of the judgment and decree dated 07.04.1992 refused the decree of specific performance which was assailed before the lower Appellate Court and the lower Appellate Court by means of its judgment and decree dated 02.12.1992 has set aside the decree of trial Court and has decreed the suit for specific performance.

Ganesh Prasad and Satish Kumar, both minors sons of Kanhaiya Lal, through their father and natural guardian, had instituted a suit for specific performance of contract dated 12.08.1983 in terms whereof the original vendor, namely, Sarju Prasad had agreed to sell the property in dispute bearing No. 367 (New No. 346), situate in Jawahar Nagar, District Unnao. In terms of the said agreement executed by Sarju Prasad, it was agreed that for a total sale consideration of Rs. 12,500/-, Sarju Prasad would sell the property in dispute to the minor sons of Kanhaiya Lal for which a sum of Rs. 500/-was paid by the plaintiffs to Sarju Prasad as earnest money and the remaining consideration was to be paid at the time of execution of the sale-deed. The agreement also contemplated that the sale-deed would be executed within a period of one month and the possession will be transferred to the plaintiffs at the time of execution of the sale-deed.

It was also pleaded that before the sale-deed could be executed, Sarju Prasad expired and he was survived by his wife and three children, who were impleaded as the defendants. It was also recorded in the plaint that the plaintiffs were ready and willing to perform their part of contract and they had requisite means of paying the

remaining consideration. However, the defendants were evading to perform their obligation, as a result, the plaintiffs had sent a notice dated 12.08.1983 and despite the same, the defendants did not comply with their obligations which led the plaintiffs to institute the suit for specific performance before the Court of Civil Judge, Unnao which was registered as Regular Suit No. 52/1986.

The said suit was contested by the defendants, who were the legal heirs of the original executant of the agreement Sarju Prasad and while denying the execution of the agreement, it was specifically stated that Sarju Prasad prior to his death was suffering from a respiratory disease due to which he had become very weak and was also not mentally alert. It was further pleaded that neither Sarju Prasad executed the agreement nor he had the authority to do so. Sarju Prasad did not even have the need to sell the property and as such it appears that the plaintiffs in order to usurp the property got the agreement executed through impersonation as Sarju Prasad had died on 23.09.1982 and as such the agreement which is dated 10.08.1983 could not have been executed by him. For the aforesaid reasons, it was pleaded that the suit for specific performance could not be decreed and was liable to be dismissed.

After the parties led their evidence, the trial Court recorded a finding that Sarju Prasad did not die on 23.09.1982 as the defendants failed to prove the aforesaid fact and it further found that Sarju Prasad had executed the agreement to sell dated 10.08.1983. It also returned a finding that the property belonged to Sarju Prasad and prior to his death, there was no occasion for grant of any rights to his wife and children as alleged and thus it cannot be said that Sarju Prasad did not have rights to execute the agreement to sell. Lastly, the trial Court noticed that apparently the value of the house, the subject matter of the agreement, was around Rs. 60,000/- and the agreement indicated the sale consideration to be Rs. 12,500/-against which only Rs. 500/-had been paid as earnest money. Consequently, the trial Court did not find it appropriate to grant a decree of specific performance, however, by means of its judgment and decree dated 17.04.1992, it refused the decree of specific performance but directed the defendants to refund the sum of Rs. 500/-along with interest @ 12% per annum from the date of the agreement till the date of its payment.

The defendants being aggrieved against the judgment and decree passed by the trial Court filed a regular civil appeal bearing No. 37/1992 under Section 96 CPC. The plaintiffs had also filed their cross-objection as the decree of specific performance had been refused by the trial Court and, therefore, after hearing the parties, the lower Appellate Court granted a decree of specific performance after allowing the appeal by means of the judgment and decree dated 02.12.1992.

Observation/Held

Two things are clear (i) The agreement was executed by Sarju Prasad which has been concurrently held by the two Courts. (ii) The defendants had raised a plea which was not bonafide and the defendants tried to cast a doubt over the entire transaction by resorting to different pleas including giving incorrect date of death of Sarju Prasad to shroud the execution of the agreement itself, with suspicion which could not be substantiated. Hence, the agreement, the payment of sale consideration, the issuance of notice prior to institution of the suit seeking specific performance and

also instituting the suit for getting a decree of specific performance has been sufficiently proved by the plaintiffs. The readiness and willingness has been specifically pleaded by the plaintiffs and there is no denial either in the pleadings or in the evidence by the defendants. Thus, these important ingredients stand proved. There is no plea raised by the plaintiffs which is found to be false or not in good faith and thus it would be seen that the ingredients for grant of specific performance was proved by the plaintiffs.

The only issue that requires to be resolved is whether the defendants were entitled to any discretion which was granted by the trial Court and whether it was justly reversed by the lower Appellate Court.

In this regard, upon a perusal of the material on record, neither there are any such terms in the agreement to sell which creates an unconscionable bargain in favour of the plaintiffs against the defendants. There is no circumstances pleaded or proved which may persuade this Court to hold that any discretion exercised in favour of the plaintiffs would cause an irreparable damage or injury to the defendants. However, in order to exercise the discretion, one important aspect to be considered too, is in relation to the conduct of the respective parties qua the respective plea taken by them.

From the record, it indicates that the manner in which the defendants had raised a plea in their written statement denying the execution of the agreement to sell, giving incorrect date of death of Sarju Prasad and also alleging that there are certain mala-fides of the plaintiffs who had moved certain applications in the Nagar Palika. All these were belied from the evidence on record which indicates that the defendants had not raised the defence in good faith.

Merely on the ground of escalation of price, the trial Court was not quite justified in refusing the decree of specific performance. It is now settled that mere rise in the value of the property is not enough to refuse the grant of a decree of specific performance, without any other accentuating circumstances.

Since the defence of the defendants was not in good faith and a suit for specific performance is an equitable relief and while exercising the discretion in terms of Section 20 of the Specific Relief Act, 1963, the conduct of the parties have to be seen and in this case, the conduct of the defendants was not such so as to tilt the discretion in favour of the defendants. For the aforesaid reasons, this Court is satisfied that the discretion which was exercised by the trial Court was not appropriate and the judgment and decree passed by the lower Appellate Court is justified in the facts and circumstances of the case.

The parties have been litigating since 1983 and almost 40 years have lapsed and the defendants, who are before this Court are residing in the said premises. The premises has come within the urban agglomeration with passage of time and the defendants must have made improvements too and also noticing the fact that in terms of the agreement against a sum of Rs. 12,500/-, the plaintiffs-respondents had only paid a sum of Rs. 500/-alone and considering that there are changed circumstances including escalation of price in respect of property in question, the inflationary trends and following the dictum of the Apex Court in this regard and for doing the substantial justice between the parties, this Court modifies the judgment and decree passed by the lower Appellate Court to the extent that the plaintiffs-

respondents shall be entitled to a decree of specific performance in pursuance of the agreement to sell dated 10.08.1983 provided that now the respondents-plaintiffs shall pay a total sum of Rs. 8,00,000/-to the defendants-appellants within a period of 90 days or in the alternate deposit the same before the Executing Court after adjusting any amount already paid or deposited. Upon payment of the aforesaid sum or deposit of Rs. 8,00,000/-before the Executing Court, the plaintiffs-respondents shall be entitled to get the sale-deed executed from the defendants-appellants failing which they shall be entitled to get the same executed through the Executing Court, in accordance with law. In case non-deposit of the amount by the plaintiffs-respondents in time as provided herein then the plaintiffs-respondents shall not be entitled to get the sale-deed in their favour.

Subject to the aforesaid modification in the judgment and decree dated 02.12.1992 passed in Civil Appeal No. 37 of 1992 which is affirmed, this Court does not find merit in this appeal which is accordingly dismissed. **Arjun Prasad and Ors. vs. Ganesh Prasad and Ors. 2023(7) ADJ 261**

Order XXI, Rule 1—

The question of notice in terms of sub-rule (4) to Rule 1 to Order XXI of the CPC becomes irrelevant. The interest would cease on the principal amount paid by the Judgment-debtor to the decree holder. Issue of notice is to enable the decree holder to withdraw the amount deposited. Therefore, when the deposited amount is withdrawn and gets credited in the account of the decree holder, he is not entitled to interest on the deposited amount, even when there is failure on the part of the judgment-debtor to issue notice of deposit.

The legislative intent clearly, is that the interest would cease on the principal amount paid by the judgment debtor to the decree holder. Issue of notice is to enable the decree holder to withdraw the amount deposited. Therefore, when the deposited amount is withdrawn and gets credited in the account of the decree holder, he is not entitled to interest on the deposited amount, even when there is failure on the part of the judgment debtor to issue notice of deposit. In absence of notice, the interest would cease to run from the date when the amount is transferred/credited in the account of the decree holder. If notice is issued, interest ceases to run from the date of service of notice. **[Nepa Ltd. vs. Manoj Kumar Agrawal, 2023 (160) RD 93]**

Order XXI, Rule 29 and Sec. 37—Stay of execution proceedings—Application for—Dismissal—Legality

Word “such court” used in Order XXI, Rule 29 CPC, means court in which regular suit is pending i.e. suit instituted against decree holder and execution proceedings should simultaneously be pending in same Court, even in case where decree transferred for execution to another Court. Provisions of Order XXI, Rule 29 CPC inapplicable. Thus, one Court cannot stay proceedings of another co-ordinate Court. In present case, while regular suit proceedings pending in Court of Additional Civil Judge, Senior Division, execution case pending consideration before Civil

Judge, Senior Division. Obviously both courts, different cannot be construed to be same Court to come within definition of "such Court". Petition dismissed.

It is evident that even where a decree is transferred for execution, stay of that decree cannot be sought under Order XXI, Rule 29 of the Code since it would not come within the definition of 'such court' i.e., the Court in which the Suit is pending. In view of the afore- said, even after transfer of execution proceedings, in the considered opinion of this Court the said judgment will apply with full vigour. The aforesaid judgment of Shaukat Hussain vs. Bhuneshwari Devi, (1972) 2 SCC 731 has thereafter been followed with approval in the subsequent judgment of Krishna (supra) in the following manner:

"We are fortified in our view by a decision of this Court in Shaukat Hussain @Ali Akram and others v. Smt. Bhuneshwari Devi, AIR 1973 SC 528, where this Court observed as follows:

"Rule 29 clearly shows that the power of the Court to stay execution before it flows directly from the fact that the execution is at the instance of the decree-holder whose decree had been passed by that court only. If the decree in execution was not passed by it, it had no jurisdiction to stay the execution." The provision of O.21, R. 29 of the Code being inapplicable in the case. Petition dismissed. **[Deepak vs. District Judge, Hardoi, 2023 (160) RD 484]**

Order VI, Rule 17—Amendment in plaint—Rejected by Trial Court which was affirmed by the Revisional Court—Hence. Instant petition—Respondent No.3 had executed sale deed of his part in favour of plaintiff/petitioner—Respondent No. 3 sold the area of eastern boundary of defendants/Respondent Nos. 1 and 2 on the ground that, the area concerned was wrongly mentioned in sale deed with petitioner—A suit filed by petitioner in which an amendment application was moved—Trial Court partly allowed the application while rejecting the prayer seeking amendment in eastern boundary of disputed house—Petitioner filed revision which was rejected—Hence, the present petition—Held, amendment filed by petitioner would change the nature of case.

The Court is of the opinion that the petition is liable to be dismissed on both the grounds namely the amendment filed by the petitioner will change the nature of the case and secondly there is no pleadings whatsoever made by the petitioner in the entire petition while challenging the aforesaid orders. Further nothing has been stated in the amendment application nor in the pre- sent petition regarding the latches in 195 filing the amendment application since the suit was filed in this case in the year, 2000 and amendment was sought by him in the year 2009.

In this view of the matter, the Court is of the opinion that petition is without any merit, the same is dismissed. **[Smt. Neeta Agrawal vs. Smt. Shanti Rani Agrawal, 2023 (160) RD 611]**

CRIMINAL PROCEDURE CODE

Section 173(8) Criminal Procedure Code—Further Investigation—Power of Magistrate—Filing of Charge sheet—Cognizance by the Magistrate

The question before the High Court was whether the power of further investigation could be exercised by the Magistrate after taking the cognizance of the offence also? Judgements in Vinay Tyagi v. Irshad Ali @ Deepak & Others AIR 2013 SCW 220 and Luckose Zachariah @Zak v. Joseph 2022(120) ACC 299 SC are silent about this point. However, in judgment Bikash Ranjan Rout v State through the Secretary (Home), Government of NCT of Delhi AIR 2019 SC 2002, the Apex Court specifically held that Magistrate if not satisfied with charge-sheet may direct further investigation but before taking cognizance. After taking cognizance the Magistrate will have no power to suo moto direct further investigation, it can be directed if the investigating agency seeks such direction. **[Pooja Sharma @ Pinkey Giri v. State of U.P., 2023 (124) ACC 601]**

Sections 156(3) and 397/401 Criminal Procedure Code—Application for Registration of F.I.R. and investigation of case was rejected—Revision—Maintainability Revision—Right of prospective accused— An application without supporting affidavit—Effect of—

The High Court held that the order rejecting the application u/s 156(3) CrPC is revisable. Prospective accused entitled to be heard in revision when an order rejecting an application under section 156(3) Cr.P.C. is assailed. An application u/s 156(3) CrPC cannot be entertained by Magistrate without supporting affidavit. **[Vinod Kumar vs. State of U.P., 2023 (124) ACC 91]**

Section 439 Criminal Procedure Code- Sections 366, 376, 354-A, 328, 323, 504 and 506 Indian Penal Code, 1860 -Second bail application- Maintainability of- Duty of the court while considering the second bail application- Fresh and new grounds

Question before the Court was as to whether a second bail application on behalf of the accused is maintainable. The High Court held that a second bail application on behalf of the accused is not barred and is maintainable. Second bail application is always considered on fresh and new grounds available to the accused after rejection of first bail application. Maintainability of second application is always there but consideration of the prayer for bail is subject to the availability of fresh and new grounds which if not available would amount to reviewing the earlier order rejecting the bail application which is not permissible under the law. Fresh argument in a second bail application cannot be allowed to be advanced on those very facts which were available to the accused at the time of moving and rejection of the first bail application. Subsequent bail application may be filed if there is a change in the fact situation or law which would render the previous view obsolete. No fresh and new grounds were found available in the present second bail application. Therefore, the bail application was rejected. **[Rajkaran Patel vs. State of U.P., 2023 (124) ACC 130]**

Secs. 397/401—Dispute with regard to death of one of the accused-appellants—Presumption of absconding of that accused—Legality

The High Court held that it is just not right for appellate court to presume that appellant is absconding. Separate miscellaneous case ought to have been instituted to decide fact of one of the appellants and to proceed with appeal of rest of appellants. Court below directed to separate case of appellant, whose death is disputed and to proceed to inquire into fact of his death. Appeal of rest of appellants was directed to be proceeded as per law. Revision was disposed of. **[Om Prakash Jain vs. State of U.P., 2023 (124) ACC 371]**

Section 125—Maintenance—Grant of maintenance in favour of wife and children to tune of Rs. 4,000/- and Rs. 7,000/- per month respectively—Justification—Plea of loosing job and being devoid of any regular employment—Sustainability

The High Court held that the argument of husband is not tenable. Children of revisionist will not be deprived of maintenance awarded by Family Court only on ground of their attainment of majority during pendency of proceedings. However looking in the facts and circumstances of case, quantum of maintenance was reduced. **[Pradeep Kushwaha vs. State of U.P., 2023 (124) ACC 540]**

Section 216—Alteration of charge—Application for—Allowing of—Legality

Charge can be framed on basis of evidence on record and it is not necessary to adduce new evidence for altering or modifying charge. If there are allegations in complaint, petitioner or for that matter in FIR or accompanying material, the court can alter charge. Since there was ample material to entertain application as moved by informant/complainant to alter charge of sec. 307 IPC against applicant. Therefore, no error in order impugned, application dismissed. **[Sushil vs. State of U.P., 2023 (124) ACC 760]**

Sections 482, 125, 125(3) and 126(2)—Family Courts Rules, 2006, Rule 36—Applicability of res judicata—legality.

Application for maintenance U/s. 125 was dismissed for non-prosecution. Thereafter application U/s. 126(1) was also dismissed for non-prosecution. Third time wife filled application U/s. 125 for maintenance. It was dismissed on the ground of applicability of res judicata. Section 11 CPC, which embodies principle of res judicata, clearly shows that it applies only when earlier litigation is decided on merits finally after hearing. Entire law elucidated, holding that proceedings U/s. 125 are quasi-civil and quasi-criminal. Family Court's order was set aside and matter was remanded to Family Court to decide third application on merits in accordance with law. **[Shabana Bano vs. State of U.P., 2023 (124) ACC 774]**

Sections 340 and 482—Quashing of order rejecting application U/s. 340, Cr.P.C.—Petition for—Sustainability

The High Court passed order of no coercive action against applicant accused on 20.2.2020 fixing 13.3.3020 as next date of hearing. As per law propounded by Apex Court in case of Asian Resurfacing of Road Agency Pvt. Ltd., aforesaid interim order would automatically deem to have been vacated after lapse of six months from 20.2.2020 i.e., on 20.8.2020. Thus, informant was justified in submitting application before trial court on 14.10.2020 for taking coercive measures against accused for ensuring their presence in trial of criminal case. No legal ground or justification for applicant requesting court to take criminal proceedings against informant. Petition dismissed. **[Imran Khan vs. State of U.P., 2023 (124) ACC 846]**

Secs. 227 and 228—Indian Penal Code, 1860, Sec. 308—Discharge application—Rejection—Legality

Charge can be framed against accused on grave suspicion of commission of offence. Prima facie case envisaged for framing charge is prima facie formation of opinion of trial court that there is sufficient ground to put accused on trial for said charge and not formation of opinion that said material collected during investigation, if proved, during trial would be sufficient to convict accused for said charge. Impugned order upheld. Revision dismissed. **[Jamshed vs. State of U.P., 2023 (124) ACC 867]**

Sec. 125—Hindu Marriage Act, 1955, Sec. 13—Family Courts Act, 1984, Sec. 19(4)—Maintenance— Man and woman living as husband and wife—Right to claim maintenance U/s. 125 Cr.P.C. – Meaning of expression 'wife' – Second marriage—Effect of

The High Court held that the meaning of expression 'wife' is broad and expansive and includes those cases where a man and woman are living for long period of time as husband and wife. As per Hindu Marriage Act, 1955, the second marriage is void and such marriages are illegal as per the provisions of the Act. But still they are not immoral and financially dependent women cannot be denied maintenance on this ground. No illegality was found in the order passed by the Additional Principal Judge Family Court. Revision dismissed. **[Ram Prakash Achari vs. State of U.P., 2023 (124) ACC 880]**

Secs. 125, 397 and 401—Hindu Marriage Act, 1955, Sec. 25—Maintenance U/s. 125, Cr.P.C.—Permanent alimony U/s. 25 of Act, 1955—Question is as to whether application U/s. 125, Cr.P.C. is maintainable after the order for permanent alimony has been passed U/s. 25 of the Hindu Marriage Act.

The High Court held that the application U/s. 125 Cr.P.C. is not maintainable after the order for permanent alimony has been passed U/s. 25 of the Hindu Marriage

Act. Application for enhancement of the amount may be moved before the concerned court U/s. 25(2) of the Hindu Marriage Act. It is well-settled that wife can make a claim for maintenance under different statutes, if maintenance is awarded to the wife in a previously instituted proceeding for maintenance, she is under a legal obligation to disclose the same in a subsequent proceeding for maintenance, while deciding the quantum of maintenance in the subsequent proceeding, the civil/family court shall take into account the maintenance awarded in any previously instituted proceeding. Revision allowed and impugned order set aside. **[Gyanendra Asthana vs. State of U.P., 2023 (124) ACC 883]**

Article 226—Cr.P.C. , 1973, Sections 156(3) and 73—Quashing of order dismissing application for ensuring arrest of accused— Sustainability

Magistrate is empowered to monitor investigation to ensure free and fair trial. Magistrate dismissed the application that police has not arrested one of the accused arrayed and favouring him. The High Court held that the impugned order of Magistrate is very cryptic and cursory. Petition allowed. Direction issued. **[Kalam Uddin vs. State of U.P., 2023 (124) ACC 571]**

Application for cancellation of Anticipatory Bail—By victim lady who was raped after being administered drink mixed with intoxicating substance—Ground—Was being threatened by accused for being defamed by her video of rape etc.— Accused was granted anticipatory bail—She in her grounds of bail took plea that accused is misusing his bail by threatening her and being pressurized to not give evidence etc.—She lodged complaints therefor also before police authorities.

The High Court held that mere filing of complaint in not enough. Its veracity is required to be tested. Once liberty of bail has been granted, it cannot be taken away except with procedure established by law. Applicant unable to substantiate allegations that opposite party misused the liberty. No sufficient ground for interference. Application was dismissed. **[Zeba Parveen vs. State of U.P., 2023 (124) ACC 408]**

Newspaper report relating to crime—

Newspaper report relating to crime cannot be used as a piece of primary evidence unless facts mentioned in newspaper report are independently proved by strength of evidence led by reliable and trustworthy witness. **[Gaurav Sharma @ Sonu vs. State of U.P., 2023 (124) ACC 715]**

Facts

The writ petitions filed for a writ in the nature of mandamus not to disturb the peaceful living of the petitioners in live-in-relationship.

Held

Man and a woman living together without marriage cannot be construed as an offence. It said that there was no law which prohibits live in relationships or premarital sex. Living together was interpreted as a facet of right to life. It was further held that the Observations of the Supreme Court as aforesaid however cannot be considered to promote such relationships. Law traditionally has been biased in favour of marriage. It reserves many rights and privileges to married persons to preserve and encourage the institution of marriage. The petitioners only allege that they being major are entitled to live with whomsoever they like and the mother of petitioner No.1 is unhappy with this relationship.

Writ jurisdiction being extraordinary jurisdiction is not made to resolve such type of dispute between two private parties. We believe that it is a social problem which can be uprooted socially and not by the intervention of the Writ Court in the garb of violation of Article 21 of the Constitution of India unless harassment is established beyond doubt. If there is any real grievance of a live-in couple against their parents or relatives who are allegedly interfering with their live-in status which goes to such an extent that there is a threat of life, they are at liberty to lodge an F.I.R under Section 154 (1) or Section 154 (3) Cr.P.C, with the Police, move an application under section 156 (3) before the competent Court or file a complaint case under Section 200 Cr.P.C. Similarly, in case the parents or relatives, find that illegally their son or daughter has eloped for the purpose of marriage, although he or she is underage or not inclined or the respondents are behaving violently, they are equally at liberty to take steps in a similar manner. But, when neither of the actions are taken against each other, and only a fictitious application with certain allegations, particularly by such persons as the petitioners herein enjoying a live-in relationship, is moved under Writ jurisdiction of the High Court, it appears to be a circuitous way to get the seal and signature of the High Court upon their conduct without any verification of their age and other necessary aspects required to be done by the appropriate authority.

Petitioners cannot be allowed to raise disputed questions of fact under Writ jurisdiction as it would be a wrong assumption of such extraordinary jurisdiction. The writ petition is, accordingly, dismissed. **Kiran Rawat and Ors. vs. State of U.P. and Ors. 2023(7)ADJ 679 (DB)(LB)**

Facts

Application under Section 482 Cr.P.C. has been filed by accused-applicant Mohd. Azam Khan challenging the order dated 29.10.2022, passed by Additional Sessions Judge/Special Judge (M.P./MLA), Court No.4, Rampur in Special Sessions Trial No.37 of 2018under Sections 504 and 171(G) IPC, Section 125 Representation of Peoples Act, 1951 and Section 3(1)(X) SC/ST Act, police station Tanda, district Rampur, whereby a direction has been issued to the accused-applicant to give his voice sample so that the Director F.S.L., Moradabad could examine the voice of the audio cassette to ascertain as to whether the inflammatory/derogatory speech recorded in the audio cassette is that of the accused-applicant and the order dated 22.11.2022, whereby the application filed by the accused-applicant for recall of order dated 29.10.2022 has been rejected.

The allegations made in the F.I.R. is to the effect that on 07.08.2007, accused-applicant, made a speech, which was derogatory, inasmuch as, the words used were offensive in nature as they caused hurt to the sentiments of a particular community. After aforementioned F.I.R. was lodged, Investigating Officer took statement of Gulab Rai-Naib Tehsildar was also recorded by the Investigating Officer on 21.07.2007. This witness in his statement before the Investigating Officer has stated that the entire event which occurred on 07.08.2007 including the inflammatory/ derogatory speech of the accused was recorded and the CD cassette of the same was handed over to the Station Officer of the concerned police station. Second statement of aforesaid witness was recorded on 11.01.2008, in which he has stated that the services of one Sanjay, who runs a studio by the name of Pooja Cassette Centre, were taken to record the entire event. This witness further stated that the entire event was video-graphed by the proprietor of aforementioned firm, namely, Sanjay and the video cassette of the same was submitted by him on 09.08.2007 to the police officials.

An application was filed before court below seeking permission of the court to have voice sample of the accused-applicant. No orders were passed on this application. Record further shows that the recovered cassette was sent to F.S.L., Lucknow but was returned with the observation that same be sent to F.S.L., Chandigarh. But the same was again returned by FSL, Chandigarh with an objection that it would not be possible to examine the veracity of the cassette without proper documentation/form.

During the course of investigation, no forensic report was submitted with regard to the disputed cassette. Ultimately, the Investigating Officer submitted chargesheet dated 02.03.2009. However, the disputed cassette was not made part of the charge-sheet but remained part of the case-diary, as the recovery memo of the same had been duly prepared.

Held

The issue as to what is the nature of the disputed cassette is a question of fact and will not have material bearing on the merits of the order impugned dated 29.10.2022. Once the original cassette was itself placed before the court and has been admitted into evidence as Material exhibit, the correct description of the same can be taken note of by the court in its judgement. Merely on the ground that court below without deciding the nature of the disputed cassette i.e. whether it is an audio cassette or a video cassette had directed the accused-applicant to give his voice sample, the order impugned dated 29.10.2022 cannot be said to be illegal causing prejudice to the applicant.

In the present case, an application was duly filed by the prosecution before court below during the course of investigation to direct the accused to give his voice sample. However, the said application remained pending as no order was passed thereon. No fault can be attributed to the prosecution either, nor the prosecution can be made to suffer on that account. Even otherwise, it is well settled that an act of court prejudices none. Simply because no order was passed by court concerned. On the application filed by the prosecution during the course of investigation cannot be construed to mean that the court has no jurisdiction to direct the accused-applicant to

give his voice sample subsequently. In view of above, the impugned order dated 29.10.2022 is thus not liable to be interfered with.

Application is disposed with a direction that court below shall obtain a certificate from Sanjay (proprietor of Pooja Cassette Centre) who had recorded the entire event which occurred on 07.08.2007 and thereafter handed over the cassette to Mr. Gulab Rai-Naib Tehsildar in terms of Section 65-B of the Indian Evidence Act. After such certificate has been submitted before court by Sanjay, the applicant shall give his voice sample as already directed vide order dated 29.10.2022. **Mohd. Azam Khan Vs. State of U.P. and another 2023(9) ADJ 25**

FAMILY COURTS ACT

Sec. 10 and 11—Matrimonial dispute—Application of appellant to appoint her father, for pairvi through special power of attorney—Rejected by Principal Judge, Family Court

A special power of attorney is a legal document outlining the scope of authority given to an agent, known as "an attorney in fact," by the principal. Under the special power of attorney, an agent is given the powers to act on be- half of the principal to make specific legal or financial decisions. It is also referred to as Limited Power of Attorney and is used as evidence of the principal's authority to the third person with whom the principal may be dealing with.

The Full Bench in Syed Wasif Husain Rizvi vs. Hasan Raza Khan, 2016 (116) ALR 693 (FB), answering the reference that writ petition under Article 226 of the Constitution of India can be filed through a power of attorney holder but cautioned that the institution of the petition may be filed observing adequate safeguards which include:-

(1) The power of attorney by which the donor authorises the donee, must be brought on the re- cord and must be filed together with the petition/application;

(2) The affidavit which is executed by the holder of a power of attorney must contain a statement that the donor is alive and specify the reasons for the inability of the donor to remain present before the Court to swear the affidavit; and

(3) The donee must be confined to those acts which he is authorised by the power of attorney to discharge.

The safeguard noted herein above would generally apply to power of attorney filed in court proceedings on behalf of the principal/donor or on behalf of a party to a lis. **[Smt. Monica Saravanan vs. R. Sarwanan, 2023 (160) RD 779]**

HINDU MARRIAGE ACT

Hindu Marriage Act, 1955, S. 5, 11 and 17 – Petition to declare second marriage as null and void being performed in contravention of S. 5 – Maintainability of – Court below held the first wife can file a suit for declaration of the second marriage as illegal and void – Justification of – The first wife has right to file an application under Section 11 of the Act.

In the process of beneficial construction, the Court should lean towards an interpretation that serves the interests of justice and aligns with the broader objectives of the law. By doing so, the Court can ensure that the remedies available under Section 11 are not unduly limited, and individuals seeking relief are not unjustly deprived of their rights. The ultimate aim of granting a decree of nullity is to annul a marriage that is found to be invalid from its inception, effectively treating it as if it never existed. Therefore, it is essential to interpret the relevant provisions in a manner that facilitates a fair and just outcome for the parties involved. **Garima Singh v. Pratima Singh and another, 2023 (2) ARC 509.**

INDIAN PENAL CODE

Secs. 376(2)(i) (as omitted by Criminal Law Amendment) Act, 2018, and Sec. 376(3)(a) (as inserted by Criminal Law Amendment), Act, 2018—Constitution of India, 1950, Article 20(1)—Omission of sec. 376(2)(i) and substitution of Sec. 376(3) for it—Ingredients of offence of rape would ipso facto not be omitted—As no change in definition of rape was made—By this omission and substitution only minimum sentence for rape was enhanced from 10 years to 20 years

In this case, trial court has already awarded maximum sentence of life imprisonment to appellant. Article 20(1) would not be applicable. Salient features of Amendment Act, 2018 elaborated. It is settled principle of interpretation of provisions of criminal law that provisions be strictly construed and cannot be given retrospective effect unless legislative intent and expressions are clear and beyond ambiguity. Article 20(1) also places such restriction. Trial Court framed charge U/s. 376(2)(i), read it over and explained same to appellant. This fact, at the most, can be said to be defective framing of charge by not specifically charging appellant under section 376(3). High Court after examining entire materials on record and examining evidence came to conclusion that no illegality has been committed and it is not opposed also by Article 20(1). **[Rahul vs. State of U.P., 2023 (124) ACC 373]**

Sec. 34—Law of vicarious liability contained therein—Examined and elaborate

The Court held that the expression "common intention" used in this provision, Implies pre-arranged plan for committing offence to constitute "common intention". It is necessary that the intention of each of accused be known to all others. As such, court has to face difficulty in finding out "common intention". But conduct, facts of case and other circumstances help in finding out 'common intention'. Accused who only keeps common intention, but does not do any act of at scene cannot be convicted with the aid of 'common intention'. Participation of each accused committing crime in furtherance of that common intention has to be proved by prosecution because criminal liability can be fastened on any accused only when he actually commits offence. **[Vinod vs. State of U.P., 2023 (124) ACC 797]**

Section 302, 304 147, 148, 149 IPC, Section 386 Cr.P.C.

The allegations were that accused persons slit neck of deceased with spades resulting into death of deceased. The dispute between parties arose on account of watering fields. The post mortem report reveals the death of deceased caused by ante mortem injuries by sharp edged weapon. The eye witness deposed that accused persons caught hold of deceased and accused inflicted spade on neck of deceased. The incident occurred on spur of moment and in heat of passion. It was without premeditation or planning of attack. Accused persons had knowledge to cause injuries.

On above grounds Hon'ble Court converted the conviction u/s 302 to one under Section 304-I of IPC. It was held that the both the accused appellants has knowledge and intention to cause injuries. It was also held that as the accused were convicted u/s 302 and sentenced to life imprisonment and they had already undergone 16 years of incarceration without remission thus, sentence imposed on accused was reduced the period already undergone. It was also held so far as the conviction of the accused appellants namely Raghunath, Satendra and Pappan u/s 307 IPC is concerned the doctor opined the all injuries sustained by injured were simple in nature and the accused persons remained in custody for six months the conviction and sentence set aside. **Narendra and another v. State of U.P., 2023 Cri.L.J. 2839 : AIROnline 2023 All. 646**

Section 452, 376, 386, 506, 302 IPC, Section 32 Evidence Act

The allegation were that when deceased was alone at home accused came and raped her and set her on fire and fled away. The trial court relied on two dying declaration of deceased one recorded by S.I. and the other dying declaration made to her husband. The statement was recorded by S.I. without informing senior officer. The presence of S.I. in the hospital was doubtful.

It was held that there are several loopholes in the procedure adopted while recording the dying declaration by the S.I. further cushion of husband who doused fire stated that husband had not made any effort to douse fire when deceased crying for help. It was found from medico legal certificate that deceased was admitted by some other person and not by husband. No animosity between accused and victim was brought on record. It was also held that considering the extent of burned injuries it could be concluded that victim was not in a position to give a statement. It was held that the testimony of husband was not reliable, the presence of S.I. in the hospital for recording dying declaration was doubtful. Hence, the accused was acquitted giving them benefit of doubt. **Chintoo Alias Kuldeep v. State of U.P., 2023 Cri.L.J. 2851 : AIROnline 2023 All. 762**

Section 307, 324, 452 IPC, Section 357, 386 Cr.P.C.

The matter was related to the attempt to murder and house trespass for assault. The allegation were that accused persons armed with fire arm and knife entered into the shop of complainant in order to commit murder. It was held by the

Hon'ble Court that medical report itself shows that the injury was on non vital part of complainant. Statement of prosecution witnesses failed to prove the charges u/s 307 of IPC. All witnesses had testify the specific role of accused, although no material on record was to disbelieve prosecution case against accused the intention of accused to kill complainant not prove u/s 307 of IPC. Hence, the conviction was altered to section 324 & 452 of IPC.

The Hon'ble Court while considering the compensation, trial court awarded total compensation to be paid to complainant was Rs. 1500-00. It was held that since complainant got several injuries, fine as compensation awarded was in adequate. The fine was enhance to Rs. 21500-00 and it was directed to pay Rs. 20000-00 to complainant and remaining Rs.1500-00 to be deposited to State Exchequer.

It was also held that the incident occurred 22 years ago and the accused was detained more that 1 years and 2 month, no useful purpose shall be served to again send him to jail for remaining part of sentence. It was held that the ends of justice shall be served if sentence awarded is reduced to period already undergone u/s 324, 452 of IPC. **Afjaal Husain v. State of U.P., 2023 Cri.L.J. 2983 : AIROnline 2023 All. 721**

Section 302 IPC, Section 32 Evidence Act

The matter was related to murder and reliability of dying declaration. The accused was convicted only on the basis of dying declaration all other witnesses had turned hostile. It was held by the Hon'ble Court that as per the post mortem report deceased was in hundred percent burned states. The time of recording declaration was doubtful. There were apparent inconsistencies between statement of Tehsildaar, who had recorded dying declaration and the doctor who gave the medical certificate. Doctor admitted that he had given the certificate just as a formality. It was also held that the failure to mentioned dying declaration in FIR itself created doubt as to recording of dying declaration specially when deceased had not informed any other near relative as to how she had received burn injuries. It was also held that trial court did not frame questions specifically putting incriminating material stated by deceased in her statement. Thus it was held that the dying declaration was not reliable and the conviction based on dying declaration for this reason alone would not be sustainable.

It was held that the trial court, though recorded the statement under Section 313 of Cr.P.C., omitted to put questions regarding a vital circumstance to the accused during his statement. The trial court, while convicting the accused mainly relied upon the written dying declaration Ex.Ka.-8. However, the contents of written dying declaration were not put to the accused during his statement. It is really a matter of concern that the trial court did not frame the question specifically putting the incriminating material stated by deceased in her statement. Thereby, a very important circumstance was lost. The deceased in her statement (dying declaration) stated that the accused had poured Kerosene on her person and set her on fire. Particularly, this incriminating part of dying declaration has not been put to the accused to get his explanation. Although, the dying declaration Ex.Ka-8 was treated as the basis to convict the accused, the same was not put to the accused in her

statement recorded under Section 313 Cr.P.C. Apparently, the accused was not given opportunity to explain this vital circumstance. Recording of statement under Section 313 of the Cr.P.C. is not an empty formality during trial. Section 313 Cr.P.C. prescribes the procedure to safeguard the interest of the accused. Obviously, in the absence of seeking explanation on this vital point, prejudice is caused to the accused.

We may note that considering the importance of statement under Section 313 of Cr.P.C., Sub-clause (5) has been added in Section 313 by amendment which permits the court to take help of prosecution and defence in preparing relevant questions which are put to the accused. One of the reasons for such amendment was to see that Court should not miss putting any incriminating circumstance to the accused while recording his statement.

In the result, the finding of guilt based on the written dying declaration for this reason alone would not sustain apart from the other reasons which we have recorded above. In the result, we hold that the dying declaration was not trustworthy and reliable.

To summaries we hold that, the evidence on the point of dying declaration does not inspire confidence and it cannot be relied upon. There is no reliable evidence to satisfy the judicial mind that the deponent was conscious and mentally fit at the time of giving her statement. Rather, the genesis of the case i.e. recording the statement of deceased itself becomes doubtful. From the material on record, we are absolutely not satisfied about the truthfulness of the voluntary nature of the dying declaration and the fitness of the mind of the deceased. In the aforesaid facts and circumstances, we find and hold that the prosecution failed to substantiate the charges leveled against the appellant-accused beyond all reasonable doubt by adducing consistent, cogent and reliable evidence. If dying declaration is excluded, nothing remains in the prosecution case, therefore the appellant-accused is legitimately entitled to avail the benefit of doubt. Hence, the impugned judgment and order of conviction passed by learned Addl. Sessions Judge, Court No.7, Gorakhpur could not withstand the legal position and requires to be reversed by acquitting the accused from charges leveled against him. Consequently, the appeal deserves to be allowed by setting aside the impugned judgment and order of conviction. In view of that following order :-

(I) The appeal stands allowed.

(II) The judgment and order of conviction dated 30.11.2016 passed by learned Addl. Sessions Judge, Court No.7, Gorakhpur stands quashed and set aside.

(III) The accused-appellant, Rameshwar Lal Chauhan is acquitted of the offence punishable under Section 302 of IPC.

(IV) The accused be released from jail forthwith, if not required in any other offence.

(V) The amount of fine, if deposited, be refunded to the accused. **Rameshwar Lal Chauhan v. State of U.P., 2023 Cri.L.J. 3107 : AIROnline 2023 All. 850**

JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015

Section 12, JJ act, 2015—Narcotic Drugs and Psychotropic Substance Act, 1985—Sections 8/21/29/30/22-C/25/27-A—Bail to juvenile—Application for—Rejection of—Legality

Mandatory provisions of section 12 of JJ Act, 2015 was not considered by courts below. Co-accused who is not juvenile was already enlarged on bail. Therefore, impugned orders set aside. Bail allowed. **[X-Juvenile vs. State of U.P., 2023 (124) ACC 567]**

Sec. 2(b)—Juvenile Justice (Care & Protection of Children) Act, 2000, Sec. 2(13) (as amended Act No. 33 of 2006)—Juvenility of accused—Determination of.

Date of incident is 5.3.1993, when Act, 1986 was in force. Date of birth of accused is 18.3.1977 as such he was less than 16 years on 5.3.1993, i.e., juvenile. Trial was pending, when Act, 2000 come into force on 1.4.2001. But after amendment of Act by Act, 2006, it was clarified that accused would be juvenile if he was below 18 years on date of incident. Taking into consideration facts of case, accused was below 18 years on date of incident, as such, he was juvenile. Question of juvenility has to be considered on date of incident. It was held that the accused is juvenile, as he had not completed age of 18 years on date of incident. **[Ram Nayan vs. State of U.P., 2023 (124) ACC 813]**

Facts

An appeal was filed by appellants against the judgment and order dated 05.04.1983 passed by IIIrd Additional Sessions Judge, Fatehpur in S.T. No. 119 of 1982 (Gulab Singh & others Vs. State of U.P.), by which the appellants had been convicted.

In this matter, F.I.R. lodged by PW-1 informant Brij Bhushan at Police Station Ghazipur, District Fatehpur on 05.12.1981 at about 9:30 A.M. regarding an incident which had taken place on 05.12.1981 at about 8:15 A.M., Case Crime No. 941 of 1981, under Section 147, 149, 302 & 307 I.P.C. against the appellants as well as co-accused Raghubir and Babu Singh Yadav was initiated. In the aforesaid incident, Chandra Bhushan and Ban Bihari died and Ram Kripal, Kunj Bihari and Brij Bhushan had received injuries. After investigation, the police submitted a charge sheet against all the accused persons. The trial court after considering the evidence brought on record by the prosecution and also the material brought on record convicted all the appellants. The present appeal was filed against the judgment and order dated 05.04.1983 passed by Additional Sessions Judge.

Hon'ble Allahabad High Court after hearing both the sides confirmed the judgment of the trial court. The appeal was allowed in part. After the judgment and order dated 16.08.2018, Criminal Misc. Application No. 1 of 2019 dated 06.12.2019 was filed on behalf of Kallu @ Avdhesh (A10) with a prayer that the appellant no.

10 Kallu @ Avdhesh be declared juvenile and the order of sentence against Kallu @ Avdhesh be set-aside. Further, Judgment and order dated 16.08.2018 passed in this appeal was challenged before the Hon'ble Supreme Court in Special Leave to Appeal (Cri) No. 3506-3507 of 2020. Vide its order dated 31.07.2022, the Hon'ble Supreme Court declined to interfere with the order of conviction. However, it issued a direction, directing the High Court to consider and pass orders on the application of the Kallu @ Avdhesh (A-10) claiming to be juvenile on the date of incident. After the order of Hon'ble Supreme Court dated 21.08.2020, in the said matter under Section 9(2) of Juvenile Justice (Care and Protection) of Children Act, 2015 on behalf of appellant no. 10 Kallu @ Avdhesh was heard.

Juvenile Justice Board, Fatehpur vide its order dated 06.01.2022, by a 2:1 decision, held that the appellant no. 10 Kallu @ Avdhesh was a juvenile on the date of the incident i.e. on 05.12.1981. After the order dated 06.01.2022 was passed by the Board, the same was placed on record of this appeal. On the basis of a certificate issued by Principal of the Uccha Prathmik Vidyalaya Gamhari, Bahua, Fatehpur and on the date of birth certificate issued by Principal of Jagat Inter College, Ghazipur, Fatehpur that the date of birth of appellant no. 10 Kallu @ Avdhesh is 05.03.1962 and that the appellant no. 10 was not a juvenile on the date of the incident.

Order dated 06.01.2022 passed by the Board became final as no appeal was preferred either by the informant or by the State against the order of the Board.

Held

The family register has been prepared in discharge of official duty and therefore, in absence of any evidence, to contrary the same would-be relevant evidence. As per contention, Appellant no. 10 had never attended any school. Further aforesaid documents were not filed by the State or informant before the Board when the enquiry was being conducted by the Board as to the juvenility of the Appellant. The State or the informant has also not challenged the order passed by the Board declaring the Appellant no. 10 to be a juvenile and the said order has attained finality.

Under Section 94(2) of Act of 2015, age recorded by the committee or the Board to be the age of a person so brought before it, for the purpose of Act of 2015 would be deemed to be the true age of that person. Considering the report of the Board, categorical finding recorded by the competent juvenile justice Board, which is based on cogent evidence that the appellant no. 10 was a juvenile at the time of commission of the offence i.e. 05.12.1982.

In view of the Section 18(1)(g) of 2015 Act, the most stringent action which could have been taken against applicant/appellant no. 10, was of sending the applicant to a special home for a period of three years. As the appellant has undergone the sentence for more than three years, therefore now it will be unjust to send the applicant to Juvenile Justice Board. Accordingly, application is allowed. **Gulab Singh and Others vs. State of U.P., 2023(9) ADJ 57(DB)**

Section 18(3), 19 Juvenile Justice (Care and Protection of Children) Act 2016

The charge sheet was submitted against 8 accused persons including applicant. The application was filled for the transfer of the case to the children's court. The charge sheet was filled u/s 419, 420, 467, 468, 471 and 120(B) of IPC. The applicant was declared juvenile. It was held that as per section 18(3) of the Act Magistrate has no power to retain file after declaring accused as juvenile. Trial of any accused/delinquent juvenile who is accessed to be tried as adult can only be held before children's court/ POCSO Court. It was also held that the Principal Magistrate rightly requested Additional CJM to pass appropriate order for sending matter to Juvenile Justice Board/Children's Court. Thus it was held that Addl. CJM erred in continuing with trial proceedings against the applicant. The case was transferred to the Children's Court. **Juvenile-X v. State of U.P., 2023 Cri.L.J. (NOC) 430 (All.): AIROnline 2023 All 773**

MOTOR VEHICLES ACT

Employee's compensation Act, 1923 Sec. 10(1) –Sufficient cause –Condonation of delay – There is no evidence to show employer- employee relationship between deceased and owner of vehicle who is real brother of the deceased and did not enter the witness box; no sufficient cause to condone the delay of more than 9 years; High Court's order affirmed.

The conduct of the parties it is evident from the award of the Tribunal where with a view to receive compensation from the offending vehicle, the owner of the vehicle had appeared in the witness box and stated that he was paying salary of Rs. 2,000/- to the deceased and a daily of Rs. 25/-. In case that was so, nothing prevented the owner of the vehicle, who is said to be the employer, to have appeared before the Commissioner and admitted the relationship of employer and employee. In fact, the conduct of the parties now shows that they intended to claim compensation from the offending vehicle. In a calculated move, no claim was made against the owner of the vehicle or the Insurance Company of the vehicle, being driven by the deceased, before the Tribunal. **(Shantabai Ananda Jagtap and another vs. Jayram. Ganpati Jagtap and another, 2023 ACJ 1601)**

Theft of vehicle – Whether District Forum and State Commission were justified in awarding 75 per cent of the sum insured on non-standard basis- order of National Commission set aside.

Notice shall be given in writing to the Company immediately upon the occurrence of any accidental loss or damage and in the event of any claim and thereafter the insured shall give all such information and assistance as the Company shall require. Every letter, claim, writ, summons and/or process or copy there of shall be forwarded to company immediately on receipt by the insured. Notice shall also be given in writing to the Company immediately the insured shall have knowledge of any impending prosecution, inquest or fatality inquiry in respect of

any occurrence which may give rise to a claim under this policy, in case of theft or criminal act which may be the subject of a claim under this policy the insured shall give immediate notice to the police and co-operate with the Company, in securing the conviction of the offender.

The Insured shall take all reasonable steps to safeguard the vehicle insured from loss or damage and to maintain it in efficient condition and the Company shall have at all times free and full access to examine the vehicle insured or any part thereof or any driver or employee of the insured. In the event of any accident or breakdown, the vehicle insured shall not be left unattended without proper precautions being taken to prevent further damage or loss and if the vehicle insured be driven before the necessary repairs are effected, any extension of the damage or any further damage to the vehicle shall be entirely at the insured's own risk." **(Ashok Kumar vs. New India Assurance Co. Ltd. 2023 ACJ 1604)**

Sections 35, 37, 41(5) and 55- Whether the Class Certificate was invalid and insured committed breach of warranty provisions under Marine Insurance Act- Held: yes; order of National Commission affirmed.

Class Warranty as per the policy warranted that the assured/owner's manager and superintendents shall comply with all requirements of the Classification Society regarding the reporting to the society of accident and defects in the vessel and for the purpose of any claim the assured will provide certification by the Classification by the Classification Society that the vessel's Class has been maintained. It is contended that the said warranty constitutes an express warranty in terms of Section 37 of the Marine Insurance Act, 1963 which was breached by the appellants by not disclosing the first accident and damage to the vessel. The appellant's failure to comply with the requirements of ABS Rules and warranties by not reporting the accidents and damages to the vessel discharge the respondent from any liability under the insurance policy as per Section 35(3) of the Marine Insurance Act, 1963. Reliance has been placed in this regard on Ranjan Kumar and Brothers vs. Oriental Insurance Co., (2020) 4 SCC 364.

To put the matter in perspective by keeping in view the rival contentions and the provisions as also the regulations guiding the parties under the Marine Insurance Act, 1963, and the Rules for Building and Classing, the relevant provisions are required to be noted. In this regard, Sections 35, 37, 41(5) and 55 of Act, 1963 which are relevant have been brought to the notice of this Court which read as under:

"35. Nature of warranty.—(1) A warranty, in the following sections relating to warranties, means a promissory warranty, that is to say a warranty by which the assured undertakes that some particular thing shall or shall not be done, or that some condition shall be fulfilled, or whereby he affirms or negatives the existence of a particular state of facts.

(2) A warranty may be express or implied.

(3) A warranty, as above defined, is a condition which must be exactly complied with, whether it be material to the risk or not. If it be not so complied with, then, subject to any express provision in the policy, the insurer is discharged from liability

as from the date of the breach of warranty, but without prejudice to any liability incurred by him before that date.

37. Express warranties.—(1) An express warranty may be in any form of words from which the intention to warrant is to be inferred.

(2) An express warranty must be included in, or written upon, the policy, or must be contained in some document incorporated by reference into the policy.

(3) An express warranty does not exclude implied warranty, unless it be inconsistent therewith.

41. Warranty of seaworthiness of ship. — xxxxx xxxxx

(5) In a time policy there is no implied warranty that the ship shall be seaworthy at any stage of the adventure, but where, with the privity of the assured, the ship is sent to sea in an unseaworthy state, the insurer is not liable for any loss attributable to unseaworthiness.

55. Included and excluded losses.—(1) Subject to the provisions of this Act, and unless the policy otherwise provides, the insurer is liable for any loss proximately caused by a peril insured against, but, subject as aforesaid, he is not liable for any loss which is not proximately caused by a peril insured against.

(2) In particular-

(a) the insurer is not liable for any loss attributable to the wilful misconduct of the assured, but, unless the policy otherwise provides, he is liable for any loss proximately caused by a peril insured against, even though the loss would not have happened but for the misconduct or negligence of the master or crew;

(b) unless the policy otherwise provides, the insurer on ship or goods is not liable for any loss proximately caused by delay, although the delay be caused by a peril insured against;

(c) unless the policy otherwise provides, the insurer is not liable for ordinary wear and tear, ordinary leakage and breakage, inherent vice or nature of the subject-matter insured, or for any loss proximately caused by rats or vermin, or for any injury to machinery not proximately caused by maritime perils." **(Hind Offshore Pvt. Ltd. vs. Iffco- Tokio General Ins. Co. Ltd., 2023 ACJ 1862)**

Composite negligence

The term 'negligence' means failure to exercise care towards others which a reasonable and prudent person in a circumstance would take or taking action which such a reasonable person would not. Negligence can be both intentional or accidental which is normally accidental. More particularly, it connotes reckless driving and the injured must always prove that the other side is negligent. If the injury rather death is caused by something owned or controlled by the negligent party then he is directly liable otherwise the principle of 'res ipsa loquitur' meaning thereby 'the thing speaks for itself', would apply.

Negligence means failure to exercise required degree of care and caution expected of prudent dirver. Negligence is the omission to do something which a reasonable man, guided upon the considerations, which ordinarily regulate conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do. Negligence is not always a question of direct evidence. It is an

inference to be drawn from proved facts. Negligence is not an absolute term, but is a relative one. It is rather a comparative term. What may be negligence in one case may not be so in another. Where there is no duty to exercise care, negligence in the popular sense has no legal consequence. Where there is a duty to exercise care, reasonable care must be taken to avoid acts or omissions which would be reasonably foreseen likely to cause physical injury to person. The degree of care required, of course, depends upon facts in each case. On these broad principles, the negligence of drivers is required to be assessed.

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

Court cannot dispense with proof of negligence altogether in all cases of motor vehicle accidents, it is possible to develop the law further on the following lines; when a motor vehicle is being driven with reasonable care, it would ordinarily not meet with an accident and, therefore, rule of *res ipsa loquitur* as a rule of evidence may be invoked in motor accident cases with greater frequency than in ordinary civil suits. **(National Insurance Co. Ltd. vs. Wasimunnisha and others, 2023 ACJ 1927)**

Section 147(1) – Liability of insurance company

It is well settled that when a tractor and trailer are involved, both the tractor as well as the trailer are required to be insured. Therefore, in a normal circumstance, when the appellant/ claimant was travelling in the trailer which was not insured, the liability on the Insurance Company cannot be fastened and to that extent the High Court was justified.

Whether in the peculiar facts and circumstances arising in this case, this court is required to exercise the power under Article 142 of the Constitution of India to direct the Insurance Company to pay the amount and recover the same from the owner of the vehicle. In that regard, the position is no more res-integra in view of the consideration made by this Court in the case of Oriental Insurance Company Ltd. vs. Brij Mohan & Ors. reported in (2007) 7 SCC 56. This Court in a similar circumstance where the trailer did not have insurance, has exercised the power under Article 142 taking into consideration the difficult circumstances in which the claimant therein was placed. **(Dhondubai vs. Hanmantappa Bandappa Gandigude through LRs., 2023 ACJ 1979)**

Employee's compensation Act 1923 Sec. 30(1) – Maintainability of appeal.

It is well-established that the Act is a social welfare legislation and, therefore, it must be given a beneficial construction. Matters thereunder are to be adjudicated

with due process of law and also with a keen awareness of the scope and intent of the act. This Court has, time and again, reiterated this principle. We may refer to K. Sivaraman v. P. Sathishkumar, 2020 ACJ 1361 (SC), wherein, speaking for the Court, Dr. D.Y Chandrachud J., observed:

"(25) The 1923 Act is a social beneficial legislation and its provisions and amendments thereto must be interpreted in a manner so as to not deprive the employees of the benefit of the legislation. The object of enacting the Act was to ameliorate the hardship of economically poor employees who were exposed to risks in work, or occupational hazards by providing a cheaper and quicker machinery for compensating them with pecuniary benefits. The amendments to the 1923 Act have been enacted to further this salient purpose by either streamlining the compensation process or enhancing the amount of compensation payable to the employee."

It may be noted that the Commissioner had not returned any findings in respect of the validity or invalidity of the license of the deceased nor was it one of the questions framed by the Commissioner for consideration. In such a situation, while exercising powers within the limited purview allowed by Section 30 of the Act, the learned Court below erred in making observations and giving a holding in that regard.

As a consequence thereof, the order passed by the Commissioner, Workmen Compensation Act, Bhuj (Kutch), Gujarat in W.C.F.C.No.08/10 is restored. The amount as deposited, per this order (the remaining 80%, after the release of 20% of the sum awarded being ordered by the Court below in Civil Application No.12822 of 2013 vide order dated 25th June, 2014) and placed in cumulative fixed deposits, shall become payable to the claimants forthwith, in compliance of the terms and conditions set out therein.**(Fulmati Dhramdev Yadav and another vs. New India Assurance Co. Ltd. and another, 2023 ACJ 1986)**

Section 168(1) – Award of compensation

That the salary of the deceased who was working as Deputy General Manager in Telecommunication Department was reckoned as Rs. 15,447 per month. He was aged about 48 years. The future prospects in that event will have to be awarded at 30 per cent of the salary which would be in a sum of Rs. 4,634. Hence, the total income to be taken would be Rs. 20,081, of which 1/3rd is to be deducted as self-expenses, that is, in a sum of Rs. 6,693. Hence, the loss of dependency per month would be in a sum of Rs. 13,388. If the same is reckoned on the annual basis and the multiplier of '13' is applied, the amount would be in a sum of Rs. 20,88,528. Rs. 70,000 is to be awarded towards 'conventional heads'. Total compensation, therefore, would be in a sum of Rs. 21,58,528. Since MACT had awarded a sum of Rs. 14,50,000, the claimants would be entitled to the enhanced compensation of Rs. 7,08,528. Towards enhanced portion of the compensation, we award interest at 6 per cent per annum from the date of the petition before the MACT. **(Sudesh Juneja and others vs. National Insurance Co. Ltd. and others, 2023 ACJ 2030)**

NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985

Sections 8/20, 35 and 54- Appeal against conviction- Bail application- Suspension of sentence- Bail during the trial- Post-conviction bail- Difference- Question that arises for consideration is as to whether appellants are entitled to be released on bail when they were on bail during the trial.

The High Court held that there is difference between the grant of bail under section 439 of the Cr.P.C. in the case pre-trial arrest and the suspension of sentence under section 389(1) of the Cr.P.C. and the grant of bail post-conviction. In the case of grant of bail during the trial, there is a presumption of innocence and the court may take a liberal view depending on the facts and circumstances of the case, whereas in the case of post-conviction bail, there is a finding of guilt against the accused. Discretion under section 389(1) Cr.P.C. is to be exercised judicially and the court is obliged to consider whether the accused has a strong likelihood to succeed in appeal and there is no unreasonable delay in disposal of the appeal. Huge quantity of 152 kg of Ganja was recovered from accused. Burden lies upon the accused to prove the absence of criminal intent. Considering facts and circumstances of the case, the application for suspension of sentence was rejected. Observation was made that if the appeal is not heard within two years, the appellants shall be liberty to receive the prayer for grant of bail. **[Hemraj Patwa vs. State of U.P., 2023 (124) ACC 112]**

Section 21, 8, 50 NDPS Act, Section 4, 25 Arms Act

The prosecution case in brief is that on 23.03.1994 at 11:45, the appellant/accused was arrested by the Police at the boundary of Gora Kabristan and a knife as well as 500 gms Smack was recovered from his possession. On being confronted to produce the license of keeping the knife as well as the contraband/smack, the accused-appellant failed to produce any valid document. Inspector Sunil Kumar Mishra prepared the recovery memo on the place of occurrence on the basis of which Head Constable Harful Verma scribed the First Information Report and made an entry in the GD regarding the possession of illegal arm and contraband with the accused-appellant on basis of which the First Information Report was registered and the investigation was carried by Sub-Inspector S.S. Hussain and on account of incompletion of the investigation, the investigation was entrusted to Sub-Inspector, R.K. Tiwari but also due to some reasons, he could not complete the investigation and then the investigation was entrusted to V.K. Trivedi who after completing the investigation and on the basis of FSL Report ascertaining that the contraband recovered from the possession of the appellant is Smack, filed a charge-sheet against the appellant under Section 8/21 of the NDPS Act and under Section 25/4 of the Arms Act.

Charges for the offence under Section 8/21 of the NDPS Act and Section 25/4 of the Arms Act were framed by the learned trial Court and it was read to the appellant which he denied and claimed for trial.

The prosecution, in order to prove its case produced Sub-Inspector Sadanand Rai (P.W.1) and Constable Satendra Pachori (P.W.2). Apart from the aforesaid two

witnesses, there were no other witness produced by the prosecution for the reason that the learned counsel appearing on behalf of the appellant before the learned trial Court confessed the certification of the documentary evidence.

After conclusion of the prosecution witness, the statement was recorded under Section 313 of Cr.P.C. where he denied the prosecution and stated that no recovery was made from his possession and all the documents were prepared fraudulently with a motive to falsely implicate him.

In this matter the issue was related to contravention of mandatory provision of Section 50 NDPS Act. The prosecution witness who prepared recovery memo had not been examined by prosecution and no explanation was given as to why this witness was not examined. Prosecution witnesses stated that accused was never informed regarding his statutory right to be searched by Magistrate or Gazatted Officer. In this respect Hon'ble Court while discussing this issue held that-

The Hon'ble Supreme Court in a catena of decisions, has discussed the importance of Section 50 of NDPS Act. In State of Punjab vs. Baldev Singh AIR 1999 SC 2378, the Constitutional Bench of Supreme Court has elaborately discussed the importance and scope of mandatory provisions of Section 50 of NDPS Act as follows :

"55. On the basis of the reasoning and discussion above, the following conclusions arise:

(1) That when an empowered officer or a duly authorised officer acting on prior information is about to search a person, it is imperative for him to inform the concerned person of his right under Sub-section (1) of Section 50 of being taken to the nearest Gazetted Officer or the nearest Magistrate for making the search. However, such information may not necessarily be in writing;

(2) That failure to inform the concerned person about the existence of his right to be searched before a Gazetted Officer or a Magistrate would cause prejudice to an accused;

(3) That a search made, by an empowered officer, on prior information, without informing the person of his right that, if he so requires, he shall be taken before a Gazetted Officer or a Magistrate for search and in case he so opts, failure to conduct his search before a Gazetted Officer or a Magistrate, may not vitiate the trial but would render the recovery of the illicit article suspect and vitiate the conviction and sentence of an accused, where the conviction has been recorded only on the basis of the possession of the illicit article, recovered from his person, during a search conducted in violation of the provisions of Section 50 of the Act:

(4) That there is indeed need to protect society from criminals. The societal intent in safety will suffer if persons who commit crimes are let off because the evidence against them is to be treated as if it does not exist. The answer, therefore, is that the investigating agency must follow the procedure as envisaged by the statute scrupulously and the failure to do so must be viewed by the higher authorities seriously inviting action against the concerned official so that the laxity on the part of the investigating authority is curbed. In every case the end result is important but the means to achieve it must remain above board. The remedy cannot be worse than the disease itself. The

legitimacy of judicial process may come under cloud if the court is seen to condone acts of lawlessness conducted by the investigating agency during search operations and may also undermine respect for law and may have the effect of unconscionably compromising the administration of justice. That cannot be permitted. An accused is entitled to a fair trial. A conviction resulting from an unfair trial is contrary to our concept of justice. The use of evidence collected in breach of the safeguards 50 have by Section 50 at the trial, would render the trial unfair.

(5) That whether or not the safeguards provided in Section 50 have been duly observed would have to be determined by the Court on the basis of evidence led at the trial. Finding on that issue, one way or the other, would be relevant for recording an order of conviction or acquittal. Without giving an opportunity to the prosecution to establish, at the trial, that the provisions of Section 50, and particularly the safeguards provided therein were duly complied with, it would not be permissible to cut- short a criminal trial;

(6) That in the context in which the protection has been incorporated in Section 50 for the benefit of the person intended to be searched, we do not express any opinion whether the provisions of Section 50 are mandatory or directory, but, hold that failure to inform the concerned person of his right as emanating from Sub-section (1) of Section 50, may render the recovery of the contraband suspect and the conviction and sentence of an accused bad and unsustainable in law;

(7) That an illicit article seized from the person of an accused during search conducted in violation of the safeguards provided in Section 50 of the Act cannot be used as evidence of proof of unlawful possession of the contraband on the accused though any other material recovered during that search may be relied upon by the prosecution, in other proceedings, against an accused, notwithstanding the recovery of that material during an illegal search; ....."

Hon'ble Court elaborately discussed the issue of doubtful recovery of contraband that is narcotic and illegal knife and held that-

In the present case, from the perusal of the testimonies of P.W. 1 and P.W. 2 recorded before the learned trial Court, it is evident that the appellant was never informed regarding his statutory right to be searched before the Magistrate or Gazetted Officer and being so, this Court finds that there is gross violation of the Section 50 of the NDPS Act. Thus, it is clear that if the recovery of the contraband narcotics has been made in contravention to the mandate of the Section 50 of the NDPS Act, the whole prosecution story becomes doubtful and the appellant gets entitled for acquittal.

Since the Court finds that the recovery of the contraband from the possession of the appellant is doubtful, therefore the same will lead to the inference that the recovery of knife from the possession of the appellant is also doubtful.

Thus I am of the view that prosecution has miserably failed to prove its case beyond reasonable doubt against the appellant. The trial Court has not properly discussed the evidence produced by the prosecution and has passed the impugned judgment and order against the settled principle of law including provisions

of N.D.P.S. Act. Being so there is no reason to uphold the conviction and sentence of the appellant. The appellant is entitled to be acquitted. The impugned judgment and order is liable to be set aside and accordingly, appeal is liable to be allowed.

In view of the above, impugned judgment and order dated 29.10.1998 passed by Additional Sessions and District Judge, VIIIth, District Lucknow in Session Trial No. 110 of 1994 arising out of Case Crime No. 352 of 1994 and Case Crime No. 353 of 1994 under Sections 8/21 of Narcotics Drugs and Psychotropic Substance Act, 1985 and 25/4 of the Arms Act, 1959, Police Station Hazratganj District Lucknow, is set aside and accused appellant is acquitted. Consequently, the appeal is allowed.

Keeping in view the provision of Section 437-A of the Code, appellant-Liyaqat Ali is hereby directed forthwith to furnish a personal bond of a sum of Rs. 20,000/- and two reliable sureties each of the like amount before Trial Court, which shall be effective for a period of six months, along with an undertaking that in the event of filing of Special Leave Petition against this judgment or for grant of leave, appellant-Liyaqat Ali, on receipt of notice thereof, shall appear before Hon'ble Supreme Court. **Liyaqat Ali v. State of U.P., 2023 Cri.L.J. 3457 : AIROnline 2023 All. 979**

NEGOTIABLE INSTRUMENTS ACT, 1881

Section 256 CrPC—Negotiable Instruments Act, 1881, Sec. 138—Acquittal of accused due to non-appearance of complainant—Invocation of inherent jurisdiction of High Court under section 482, Cr.P.C.—Permissibility

If a remedy of appeal available, petitioner cannot be permitted to invoke inherent jurisdiction of High Court under section 482, Cr.P.C. Since complainant has a remedy to file an appeal against acquittal in High Court after grant of special leave to appeal. Therefore, present petition not maintainable. Appeal dismissed. **[Sunil Kumar vs. State of U.P., 2023 (124) ACC 69]**

Sections 203 Code of Criminal Procedure—Negotiable Instruments Act, 1881—Section 138(b)—Dishonor of cheque—Complaint u/s. 138—Demand notice—Cost of the notice u/s. 203 Cr.P.C. recording the finding that the demand notice served on the accused is bad in as much as not only the amount of cheque but also the cost of notice was demanded.

The High Court held that the complaint u/s. 138 of Negotiable Instruments Act, 1881 cannot be dismissed merely on the ground that not only the amount of cheque but also the cost of notice was demanded. Demand notice regarding amount of cheque and also including the cost of notice is valid and as per the provisions of sec. 138(b) of Negotiable Instruments Act, 1881. Application was allowed and matter was remanded back to the trial court to pass a fresh order after hearing the party. **[Prashant Chandra vs. State of U.P., 2023 (124) ACC 116]**

Secs. 138—Cr.P.C., 1973, Secs. 482—Quashing of entire criminal case—Application for—Sustainability—Application of Sec. 210, Cr.P.C.

Cheque returned by bank on ground "cheque reported lost". Refusal on part of bank to honour cheque would not bring the matter within the penal provisions of Section 138 Negotiable Instruments Act. In this case, an FIR was lodged in Mumbai for loss of cheque on 01.01.2003. In counter blast, complaint case was filed before JM, Mathura under Section 138 NI Act for the said cheques. The High Court held that the complaint under section 138 NI Act would attract section 210 CrPC. The High Court quashed the entire complaint under section 138 NI Act as misue of process of law. **[Bobby Anand @ Yogesh Anand vs. State of U.P., 2023 (124) ACC 440]**

Sec. 138—Dishonour of Cheque—Compounding of case without consent of complainant—Permissibility

Where an appropriate amount offered/deposited by accused, the trial court may drop proceedings. Case can be disposed of without obtaining direct consent of complainant under certain circumstances. Circumstances included offering an amount just, fair and acceptable which is appropriate for duly compensating complainant. Provisions of Sec. 138 N.I. Act regarding fine may act as best guide, coupled with all peculiar facts and circumstances of each case to determine amount of compensation being fair, just and acceptable. The High Court referred to the case of M/s. Meters and Instruments Pvt. Ltd. and another vs. Kanchan Mehta AIR 2017 SC 4594 and directed that the trial courts are expected to apply its mind and judicial discretion when it proceeds to decide such types of matter. No interference warranted in order impugned. Revision dismissed. [**Smt. Rani Gaur vs. State of U.P., 2023 (124) ACC 891]**

The matter was related to dishonor of cheque and the summoning order was challenged that it was not issue against any existing debt or liability. It was held by the Hon'ble Allahabad High Court that this issue calls for adjudication on pure question of fact only by the trial court. The material on record established prima facie case against the accused. Hence the summoning order was not liable to quashed. **Bushra Khan v. State of U.P., 2023 Cri.L.J. (NOC) 394 (All.) : AIROnline 2023 All 765**

PROBATION OF OFFENDERS ACT, 1958

Sections 360 and 374, CrPC—Probation of Offenders Act, 1958, Sec. 4—Appeal against conviction—Release on probation—Benefit of probation—Award of proper sentence—Duty of trial court—Duty of appellate court

It is obligation of the trial court and also appellate court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed. Prosecution proved its case beyond reasonable doubt. No

illegality, irregularity or impropriety nor any jurisdictional error was found in the impugned judgment and order. Considering the facts and circumstances of the case the appellant was released on probation granting the benefit of section 4(1) of the Probation Act, 1958. Criminal appeal partly allowed. [**Phool Chandra vs. State of U.P., 2023 (124) ACC 32]**

PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012

Criminal Procedure Code, 1973, Secs. 376, 506 and 342—Protection of Children from Sexual Offences Act, 2012, Secs. 3 and 4—Petition challenging arrest and custody of accused for offences U/ss. 376, 506 and 342, IPC and secs. 3 and 4 of Act, 2012—On ground that petitioner is in illegal custody—Prior to filing of this petition, petitioner has already field petition U/s. 482, which is pending.

The High Court held that the victim is major and no offence has been made out. In this case, petitioner was in custody by valid order of remand passed by court below. Therefore, his custody is not illegal also and Article 21 or 14 are not attracted. Remand order was passed in accordance with law. Writ petition was dismissed holding that alternative remedy is available to the petitioner and he has already availed it. Instant writ petition is not maintainable and was dismissed. **[Yuvraj Yadav vs. Adheekshak, Kendriya Karagar, Naini, Prayagraj, 2023 (124) ACC 393]**

Section 6, 4, 29 of POCSO, Section 376 IPC

Victim stated that she had stated before police that appellant committed wrong against her but evidence of investigation officer established that victim had not made such statement. Victim also stated that whatever she had deposed was tutored to her by police. Evidence adduced by victim contained contradictory statements on vital points. Neither victim nor appellant were medically examined. Evidence adduced by other prosecution witnesses also established that there was a land dispute between parties and appellant had been threatened of dire consequences. There was failure on part of prosecution to establish essential fundamental fact to attract the provision of act. No exercise was carried out by prosecution to establish that victim was minor as on the date of occurrence as per statutory procedure.

It was held by Hon'ble Patna High Court that it is worth to note here that the trial court has not given any finding regarding the charges framed under Section 376 of the IPC and Section 4 of the POCSO Act in concluding part of its judgment which is bad in the eye of law and the concerned court has passed the judgment of conviction under Section 6 of POCSO Act.

On all counts from the analysis of evidence adduced during trial, it is crystal clear that offence under Section 6 of the POCSO Act has not been proved beyond reasonable doubt and benefit of doubt goes in favour of the appellant.

In the result, in my view, prosecution case suffers from several infirmities, as noticed above, and it was not a fit case where conviction could have been recorded. The learned trial court fell in error of law as well as appreciation of facts of the case in view of settled criminal jurisprudence. Hence, impugned judgment of

conviction and order of sentence are hereby set aside and this Patna High Court CR. APP (SJ) No.4329 of 2022 dt.12-04-2023 appeal stands allowed. The appellant is in custody. Let him be released forthwith, if he is not warranted in any other case. **Md. Suhail v. State of Bihar, 2023 Cri.L.J. 2645 : AIROnline 2023 PAT 272**

Section 4, 6, 2D, 34 of POCSO Act, Section 376(2)(i), (j) IPC and Section 94(1) Juvenile Justice (Care and Protection) Act (Act No. 2 of 2016), Rule 12(3)(B) JJ Rules 2007

Accused allegedly had sexual relationship with victim under the pretext of marriage. Victim deposed her date of birth as 19-12-2000. Headmaster of the school also deposed date of birth 19-12-2000 as per school leaving certificate. Person who had recorded the date of birth in school register was not examined. Elder siblings of victim did not disclose her date of birth. Orthopedic surgeon who opined that victim was below 18 years of age was also not examined.

The question arose regarding the age of victim and process of determination. Dentist assessed age of victim as 15 to 17 years in view of absence of third molar, which was normally referred to as wisdom tooth. It is noted that all permanent teeth except wisdom tooth erupt by time average boy or girl reaches the age of puberty, whereas, wisdom tooth erupt between the ages of 17 to 25 years.

In this respect Hon'ble Court held that-

The prosecution has also sought to prove the age of the victim on the basis of dental examination. PW4 – Dr. Hemant Suresh Kakade, the dentist attached to the Sub-District Hospital, Mangaon had examined the victim clinically as well as radiographically for age assessment. He has produced the dental examination report at Exhibit-29. The testimony of PW4 vis-a-vis the dental examination report at Exhibit-29 reveals that the first and second molar on right and left side of the mandibular as well as maxilla region had erupted. The dental examination report reveals that third molar/wisdom tooth was not clinically seen. The radiographic report indicated that crown and root of second molar were well formed whereas the crown of third molar was formed but roots were not well formed. PW4 has deposed that he did not notice the wisdom tooth i.e., the third molar and on this basis he opined that the age of the victim was approximately 15 to 17 years. In his cross-examination he has admitted that wisdom tooth can erupt at any time after 18 years of age.

The evidence of this witness clearly indicates that he has assessed the age of the victim as 15 to 17 years in view of absence of third molar, which is normally referred to as wisdom tooth. As per Modi's Medical Jurisprudence, the second molars erupt between 12 to 14 years whereas the third molar erupts between 17 to 25 years. It is thus evident that all the permanent teeth except the wisdom tooth, erupt by the time the average boy or girl reaches the age of puberty whereas, wisdom tooth erupt between the ages of 17 to 25 years. Eruption of wisdom tooth may at the most suggest that the age of the person is 17 years or above but non-eruption or absence of wisdom tooth does not conclusively prove that the person is below 18 years of age. Therefore, the mere fact that wisdom tooth have not erupted is not of great importance in assessing the age.

The evidence of PW9-Dr. Gautam Keshav Desai, Medical Superintendent in Sub-District Hospital, Mangaon reveals that the Investigating Officer had sent a requisition for ossification test of the victim. This witness has produced the said requisition letter alongwith the report (Exhibit-68) issued by the Medical Officer. The said report at Exhibit-68 reveals that the victim was examined by Dr. Patel, Orthopedic Surgeon and he had opined that Epiphysis of both wrists was not united and hence the victim was below 18 years of age.

It is to be noted that this certificate was not admitted under Section 294 of Cr.P.C. The prosecution has merely produced this certificate through PW9 -Dr. Gautam, who has stated his qualifications to be MBBS and DGO. He is not the author of the said report. The prosecution has not examined the Orthopedic Surgeon, who had examined the victim, the Medical Officer, who had submitted the report or any other Orthopedic Surgeon or Radiologist, who could explain the basis of such opinion. Hence, the report at Exhibit-68 has no evidentiary value in view of non examination of the Doctor. Moreover, the contents of the report at Exhibit-68 were not put to the Appellant in Section 313 statement, which is a great lacuna in the prosecution case.

It is also well settled that Ossification test or other medical test though is a guiding factor for determining the age, it is not conclusive or incontrovertible and leaves a margin of error of two years on either side. It is also a settled position that the benefit of doubt with regard to the age of the victim always goes in favour of the accused. In the instant case, PW4 has assessed the age of the victim approximately as 15 to 17 years. Considering the margin of error in age even as one year, the victim would be 18 years of age and would not be a child within the meaning of Section 2(d) of the POCSO Act.

The prosecution has also not adduced any evidence regarding the victim's physical growth and development and secondary sexual character. This discrepancy also leaves room for ample doubt with regard to the correct age of the victim, the benefit of which must necessarily go in favour of the Appellant.

The prosecution has therefore failed to prove beyond reasonable doubt that the victim was below 18 years of age. This was relevant as the evidence on record otherwise indicates that the physical relationship between the Appellant and the victim was consensual. In the absence of evidence to prove that the victim was below 18 years of age, the provisions of the POCSO Act cannot be invoked and consensual relationship would not constitute rape within the meaning of Section 375 of the IPC.

Under the circumstances and in view of discussion supra, the prosecution has failed to prove the guilt of the Appellant beyond reasonable doubt. Hence, the Appeal is allowed. The Appellant is acquitted of offences punishable under Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) and Sections 376(2)(i) and 376(2)(j) of the Indian Penal Code.

Appeal stands disposed of in above terms. Interim Application stands disposed of in view of disposal of Appeal. **Maherban Hasan Babu Khan v. State of Maharashtra, 2023 Cri.L.J. 3469 : AIROnline 2023 BOM 819**

Section 363, 376 IPC, Section 4, 6, 17 of POCSO Act - Appreciation of Evidence

In the instant case, the accused allegedly committed rape on prosecutrix who was minor. The prosecutrix on her own left the house and accompanied accused, where she travelled in distinct States and made no attempt to flee away. The prosecutrix had also indulged into sex warrantally with accused with her will and consent, reflecting romantic relationship between two. The evidence on record made out case for consensual sex. The trial court convicted the accused.

Evidence of prosecutrix revealed that she had love relationship with accused and she willingly accompanied accused and continued reside with him. She also took treatment of pregnancy indicating that she continued stay with accused by her free will. It was on record that she addressed letters to concerned police stations about her willingness to accompany accused, referring to Nikah being performed with accused.

Hon'ble Court while discussing the provisions of POCSO in light of the age of prosecutrix being 17 years 5 month in record and age of consent, sexual autonomy and romantic relationship held that –

Whilst all children are entitled to be protected from sexual violence, such protection should also enable young people to extend their boundaries, exercise choices and engage in necessary risk taking though not exposing them to inappropriate response, harm and danger. The penal approach towards adolescents' sexuality has impacted their life to a barrier free access to sexual and reproductive health services. The criminalization of romantic relationship has overburdened the criminal justice system by consuming significant time of the judiciary, police and the child protection system and M.M. Salgaonkar 28/31 APEAL 1184-19.odt ultimately when the victim turns hostile by not supporting the charge against the accused, in the wake of the romantic relationship she shared with him, it can only result in an acquittal. Though the POCSO Act cannot stop the natural feelings towards the opposite sex, particularly in the age which account for biological and psychological changes, punishing a minor boy, who entered into a relationship with a minor girl, who were in the grip of their hormones and biological changes would be against the best interest of child and though it is the duty of the State to safeguard the ability to take decisions and to protect the autonomy of the individual, the adolescents cannot be deprived of this right. The mere apprehension that adolescents would make an impulsive and bad decision, cannot classify them under one head and by ignoring their will and wishes. The age of consent necessarily has to be distinguished from the age of marriage as sexual acts do not happen only in the confines of marriage and not only the society, but the judicial system must take note of this important aspect.
A balance between the protection of vulnerable class and that, capable of exercising the power to decide, what is right for them, must be necessarily struck. As rightly observed by Their Lordship Dr. D.Y. Chandrachud in the case of Justice K. S.Puttaswamy (Retd). v. Union of India (2017) 10 SCC 1, "the duty of the State is to safeguard the ability to take decisions- the autonomy of the individual - and not to dictate those decisions."

A provision which does not take into consideration our societal realities and proceed on an assumption, that every sexual indulgence with a minor, irrespective of

whether she was capable of being an equal participant in the act, has definitely created a situation, resulting in acquittal of the accused in cases of consensual sexual relationship, where the gap in the age of accused and that of victim is small.

The Hon'ble Court discussing the matter in above light held that-

In the wake of the clear case of consensual sex, emerging from the prosecution case, between a girl aged 17 years and 5 months and a man aged 25, merely because the statute provide punishment for an act of sexual indulgence, as the girl has not attained the age of maturity i.e. 18, when it can be specifically inferred from her conduct that she was capable of understanding the consequences of her act, I am of the opinion that the learned Special Judge has erred in convicting the appellant for committing the offence of rape under Section 376 of IPC as well as the offences under Sections 4 and 6 of the M. M. Salgaonkar 31/31 APEAL 1184-19.odt POCSO Act and awarded him the sentence in the impugned judgment.

In the wake of the aforesaid discussion, since I am unable to concur with the conclusion derived by the learned Judge, merely on the ground that though the sexual intercourse was consensual, but the girl was minor and based on this aspect, the appellant, in my considered opinion, cannot suffer the sentence, in case of a consensual sexual act.

As a result of the above discussion, the impugned judgment dated 21/02/2019 passed by the learned Special Judge in POCSO Special Case No.203 of 2016 is set aside. **Ashik Ramjan Ansari v. State of Maharashtra, 2023 Cri.L.J. 3633 : AIROnline 2023 BOM 1398**

PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT

Secs. 23, 2(f), 2(s) and 3—Application under section 23, filed by wife—Seeking direction for permitting to husband to reside with him, i.e., in common/shared house—This application was allowed—Against this order husband filed appeal—This appeal was allowed and husband was directed to pay Rs. 10,000/- to wife for her residence in rented house

In instant revision, High Court considered entire materials on record and found that Appellate Court was legally wrong in allowing appeal. Considering fact that house in which husband was residing was a big house, consisting of 16 big rooms, wife was living in two rooms on first floor. Although that house belonged to father of husband but after death of father its other rooms are lying vacant. Under such circumstances, husband was directed not to interfere with residence of wife in two rooms at first floor. The Court rejected the argument of husband that wife wants to become owner of entire house. Revision was allowed. **[Smt. Shailja vs. State of U.P., 2023 (124) ACC 512]**

Sections 12, 18, 19, 20, 21, 22, 23 and 29—Domestic Violence—Complaint for—Grant of relief

A person against whom allegations of domestic violence could not be proved cannot be directed under provisions of sections 18 and 19 etc. under Chapter IV of

Act. The courts are not empowered to direct any person whose act does not fall in purview of Act. Impugned order passed by appellate court suffers from illegality and impropriety, set aside. Revision allowed. **[Smt. Deep Sharma vs. Smt. Binu Sharma, 2023 (124) ACC 769]**

SPECIFIC RELIEF ACT

Specific Relief Act, 1963, S. 16 and 20 – Suit for specific performance of contract for execution of sale-deed - LAC decreed the suit for execution of sale-deed - Both Courts below concurrently held execution of registered agreement to sell for total sale consideration – Readiness and willingness has been specifically pleaded by the plaintiffs and there is no denial either in the pleadings or in the evidence by the defendants – The conduct of the defendants was not such so as to tilt the discretion in favour of the defendants, hence decree given by LAC proper, however to do substantial justice plaintiffs shall pay Rs. 8,00,000/- of the amount already paid, further direction for execution of sale deed given.

Specific Relief Act, 1963, S. 20 – Decree of specific performance – In favour of subsequent purchaser – Grant of – The Courts can grant a decree of specific performance and a direction can be issued to the subsequent purchaser to joint hands with the vendor to execute the deed in favour of the plaintiff succeeding in a suit for specific performance.

Specific Relief Act, 1963, S. 20 – Decree of specific performance – Discretion thereto – Only in certain cases the Court may be justified in refusing the grant of specific performance even though it may be lawful to do so. **Arjun Prasad and others v. Ganesh Prasad and others, 2023(2) ARC 587**

TRANSFER OF PROPERTY ACT

Sec. 6— A living man has no heir— Equally, a person who may become the heir and entitled to succeed under the law upon the death of his relative would not have any right until succession to the estate is opened up— When Shri Sengalani Chettair, the father of Shri Chandran, was alive, Shri Chandran his son had at best a *spes successonis*— Unlike a co-parcener who acquires right to joint family property by his mere birth, in regard to the separate property

The property i.e., 'A' schedule, was not the ancestral property of Shri Chandran. Shri Chandran would have acquired rights over the same only if his father had died intestate. He was, thus, only a heir apparent. Transfer by an heir apparent being mere *spes successonis* is ineffective to convey any right. By the mere execution of Release Deed, in other words, in the facts of this case, no transfer took place. This is for the simple rea- son that the transferor, namely, the father of the appellants did not have any right at all which he could transfer or relinquish. However, if his conduct was such that he could be estopped then the execution of the Release Deed would imperil his right and therefore cast an irremovable shadow on the claim of the appellants. **[Elumalai @ Venkatesan vs. M. Kamala, 2023 (160) RD 656]**

Transfer of Property Act – Section 109 and Civil Procedure Code, 1908 - Issue before the Court was whether in light of Section 109 of the Transfer of Property Act of 1882, subsequent purchaser is entitled to receive the rent or not and further, application for impleadment filed under Order XXII Rule 10, CPC is maintainable or not. The Court held that it is well settled that under the provision of Section 109 of the Act of 1882, transferee is entitled to recover the arrears of rent on transfer of the property, in case right to recovery of rent is also transferred and further, he could also maintain the suit for eviction on grounds of arrears pending earlier. It is clear that in case devolution of interest during the pendency of a suit, it can be continued by a person on whom such interest has been devolved. Order I Rule 10(2), it is apparently clear that Court has right to strike out or add parties at any stage. **Smt. Vishnu Kumari Vs Sandeep Kumar And 6 Others, 2023 (41) LCD 1709**

U.P. CONSOLIDATION OF HOLDINGS ACT

Facts

The land in dispute was earmarked as 'pasture land' during second consolidation and in order to allot the same, on valuation, the procedure required to be adopted is provided under Section 19-A of the U.P Consolidation of Holdings Act, 1953, and specifically in proviso to its sub-section (2).

Since no document of allotment is placed on record as well as any document or order indicating satisfaction of Assistant Consolidation Officer 'necessity and expediency' to allot a land earmarked for public purpose, as per the mandate of section 19-A of Act, 1953, while making allotment of land to the petitioners, is also not on record.

Process of allotment cannot be an empty formality since a large chunk of land which is admittedly earmarked for public purpose was allotted to petitioners who are in large numbers and as allotments being made in devoid of observance of due process, without noting in writing the satisfaction of its being 'necessary' or 'expedient', are irregular and illegal, therefore, allotment orders cannot be sustained. Allotment order set-aside. **Basdev vs State Of U.P. And 5 Others 2023(9) ADJ 208**

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

Sections 2/3, U.P. Gangsters and Anti-Social Activities (Prevention) Rules, 2021, Rules 5(2), 5(3), 16 and 17—Cr.P.C., 1973, Sec. 482—Quashing of criminal proceedings—Stay of proceeding of predicate offence—Gang—Gangster—Anti social activities—Interpretation

It is well settled cannon of statutory interpretation that a statute should be read and understood according to its plain grammatical meaning, unless that construction leads to an absurd result or defeats the object and the very purpose of it.

The High Court held that the violation of disturbance of public order alone is not the sine qua non of a ‘gang’ as defined under the Act of 1986. The effect of a

stay order directing stay of proceedings or of coercive steps or a bail order in a crime does not to efface the crime. A perusal of material on the record and the gang chart shows due and independent application of mind by both the recommending and the approving authorities. Accused cannot challenge the FIR without challenging the gang chart. No ground found to quash the impugned proceedings. Application dismissed. **[Vinod Bihari Lal vs. State of U.P., 2023 (124) ACC 48]**

Section 14 U.P. Gangsters and Anti-Social Activities (Prevention) Act regarding attachment of property.

The property of the accused was attached by District Magistrate on the ground that he had purchased the house or land from the income earned by involving in Anti Social Activities. The accused pleaded that the property was acquired much earlier to the imposition of said act and the property was ancestral property. It was also pleaded that DM has attached property only on the basis of Police Report submitted by the Officer Incharge and no materials were supplied to DM to have reason to believe that property has acquired as a result of commission of an offence triable under act.

Hon'ble Allahabad High Court held that in view of above facts and circumstances of the case, the impugned orders passed by the courts below cannot be said to be passed in correct perspectives as they are not sustainable in the eye of law and require interference by this Court, the prosecution has failed to establish that the provisions of Sections 2 and 3 of the Gangster Act are attracted in the case of appellant, and further the appellant's property is also not attached in accordance with law, as the prosecution has failed to establish that the property in question acquired and owned by the appellant has been earned from the income indulging in anti social activities. The enquiry under Section 16 was not done in accordance with the Act, the provisions of Sections 14, 15 & 17 were also not followed in accordance with the Act, thus the entire proceeding initiated in pursuance thereof is vitiated.

Accordingly, the present appeal is allowed. The impugned order dated 13.04.2022 passed by the District Magistrate, Lucknow in Case No. 2850 of 2021 Computerized Case No. D202110460002850 (State v. Waseem Khan) under section 14(1) of Gangster Act and the impugned order dated 5.1.2023 passed by the Additional District and Sessions Judge/Special Judge, Court No. 8/Special Judge, Gangster Act, Lucknow in Criminal Appeal No. 84 of 2022 (Waseem Khan v. State of Uttar Pradesh and another) and Criminal Misc. Case No. 735 of 2022 (State of U.P. v. Waseem Khan) are hereby quashed. **Waseem Khan v. State of U.P., 2023 Cri.L.J. 2406 : AIROnline 2023 All 642**

U.P. LAND REVENUE ACT

Sec. 33 read with 39—Correction of records—Application for—Allowed—Correction directed—Challenged before the Revisional Court—Revision dismissed—Legality of

Proceedings under section 33 read with 39 of the Act are summary in nature. No finding could be recorded with regard to the title of any party where the issue of fraud is involved, certainly a finding of fraud has to be recorded where there is a fraud in the entry or the entry was surreptiously made or the prescribed procedure was not followed. Presumption of truth attached to the record of rights can be rebutted.

Having perused the records and considered the submissions made by the learned counsel for the parties, the Court finds that there is no dispute with regard to the fact that proceedings under Section 33/39 of the Land Revenue Act are summary in nature which can- not go to the extent of recording finding with regard to title of any party. Where the issue of fraud is involved, certainly a finding of fraud has to be recorded in appropriate proceedings after issues are framed and evidence is led.

Presumption of truth attached to the record-of-rights can be rebutted where there is a fraud in the entry or that the entry was surreptitiously made or that prescribed procedure was not followed.'

Fraud and forgery rob a document of all its legal effect and cannot found a claim to possessory title. **[Jokhai vs. Board of Revenue, 2023 (160) RD 515]**

U.P. REVENUE CODE

U.P. Revenue Code (8 of 212), Ss. 24, 209(h) – U.P. Revenue Code Rules (2016), R. 22 – Demarcation of boundaries – Maintainability of application for recall of ex parte order – Tenure holders of adjoining contiguous plots, would be necessary parties and therefore, would be covered within the expression 'party aggrieved' and would be entitled to move an application for setting aside of such ex parte order – Application for recall of order, maintainable.

Against ex parte order passed in a proceeding under Section 24 of U.P. Revenue Coded, 2006, a recall application cannot be held to be not maintainable, particularly when the recall is being sought by a person, who as per the scheme of the Act and the Rules made thereunder, would be a necessary party to the proceeding. This would be more so in a case where an ex parte order has been made non appealable by virtue of the bar contained under clause (h) of Section 209 of the Coe, 2006. **Tarkeshwar and others v. State of U.P. and others, 2023 AIR CC 2513 (All).**

Secs. 67 and 67(5)—Illegal encroachment on Gaon Sabha land—Eviction order—Sustainability—Held—Impugned order passed without making proper survey/demarcation of plot in dispute—Not liable to be sustained—Set aside—Matter remanded with direction—Petition partly allowed.

Considering the facts and circumstances of the case, impugned order dated 21.10.2023 passed by respondent No. 2 in all the four appeals as mentioned in prayer clause as well as order dated 03.09.2022 passed by respondent No. 3 in all the four cases as mentioned in prayer clause are liable to be set aside and are hereby set aside. The Writ petition stands allowed in part and matter is remitted back before the respondent No. 3/Tehsildar to register the aforementioned four cases under section

67 of U.P. Revenue Code, 2006 to its original number and decide the same after proper opportunity of hearing and making proper survey/demarcation of the plot in dispute, the cases shall be decided within period of four months from the date of production of certified copy of this order. It is further directed that if the proceeding under Section 67 of U.P. Revenue Code, 2006 is decided in favour of the petitioners, the petitioner's construction which has been demolished in arbitrary manner by the state authority shall be reconstructed accordingly. **[Ashok Kumar vs. State of U.P., 2023 (160) RD 726]**