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PART I – SUPREME COURT

ARBITRATION AND CONCILIATION ACT

Sec. 9—Interim relief—For securing the amount in dispute in arbitration—Application for

In Srei Infrastructure Finance Limited v. M/s. Ravi Udyog Pvt. Ltd & Anr.8, the Calcutta High Court, speaking through one of us (Indira Banerjee, J.), as Judge of that Court, said :-

"An application under section 9 of the Arbitration & Conciliation Act, 1996 for interim relief is not to be judged as per the standards of a plaint in a suit. If the relevant facts pleaded, read with the documents annexed to the petition, warrant the grant of interim relief, interim relief ought not to be refused by recourse to technicalities..."

Section 9 of the Arbitration Act confers wide power on the Court to pass orders securing the amount in dispute in arbitration, whether before the commencement of the arbitral proceedings, during the arbitral proceedings or at any time after making of the arbitral award, but before its enforcement in accordance with Section 36 of the Arbitration Act. All that the Court is required to see is, whether the applicant for interim measure has a good prima facie case, whether the balance of convenience is in favour of interim relief as prayed for being granted and whether the applicant has approached the court with reasonable expedition.

If a strong prima facie case is made out and the balance of convenience is in favour of interim relief being granted, the Court exercising power under Section 9 of the Arbitration Act should not withhold relief on the mere technicality of absence of averments, incorporating the grounds for attachment before judgment under Order 38 Rule 5 of the CPC. **[Essar House Pvt. Ltd. vs. Arcellor Mittal Nippon Steel India Ltd., AIR 2022 SC 4294]**

Arbitration and Conciliation Act, 1996-S. 31(7) and Ss. 17, 21, 23(3), 24(1), 25, 26, 29 and 85(2)(a) - Party autonomy - Emphasis on, under the 1996 Act-Use of the expression "unless otherwise agreed by the parties" in S. 31(7) and other provisions of the 1996 Act. Meaning and effect of power of the parties to derogate, by agreement, from the provisions of the 1996 Act, where the same is so permitted by the 1996 Act. Binding effect of such agreement on the arbitrator.

Arbitration and Conciliation Act, 1996 — S. 31(7) Interest (pre-award/pendente lite and post award) - Discretion available to arbitrator under the provisions of S. 31(7) when there is no agreement between the parties on the issue of award of interest.

It has been held that the 1996 Act emphasises party autonomy. Thus, the legislative intent is clear that when the parties have agreed to the contrary, on any of the aspects as mentioned in S. 31(7)(a), the Arbitral Tribunal will cease to have any discretion and would be bound by such agreement between the parties. Any interpretation which would render the phrase "unless otherwise agreed by the parties" otiose or redundant must be avoided. **(Delhi Airport Metro Express Private Limited v. Delhi Metro Rail Corporation, (2022) 9 SCC 286)**

Statute Law - Supersession of Judicial Verdict Tests for determining encroachment of judicial power by legislation and declaration of legislation as unconstitutional.

Arbitration - Kerala Revocation of Arbitration Clauses and Reopening of Awards Act, 1998 - Held, ultra vires the Constitution - State Arbitration Act of 1998- Consideration of, as an encroachment on judicial power/an attempt to interfere with the judicial process-Annulling of awards and judgments-decrees passed by the Court making awards rule of court, through legislation - Impermissibility of

Constitution of India - Art. 141 - Per incuriam judicial decision passed in ignorance of statute law-"Incuria" literally means "carelessness" and in practice per incuriam appears to mean per ignoratium-A decision or judgment can be per incuriam any provision in a statute, rule or regulation, which was not brought to the notice of the Court Further, a decision or judgment can also be per incuriam if it is not possible to reconcile its ratio with that of a previously pronounced judgment of a co-equal or larger Bench; or if the decision of a High Court is not in consonance with the views of Supreme Court-However, the per incuriam rule is strictly and correctly applicable to the ratio decidendi and not to obiter dicta

Arbitration Kerala Revocation of Arbitration Clauses and Reopening of Awards Act, 1998- Legislative competence to enact 1998 Act (State Arbitration Act) Existence of Presidential assent to the State Act under Art. 254(2) of the Constitution - Effect of - Arbitration and Conciliation Act, 1996 Non-consideration of, as an enactment referable to Art. 253 of the Constitution, so as to invalidate State Arbitration Act - Doctrine of pith and substance - Applicability of. **(Secretary to Government of Kerala, Irrigation Department and others v. James Varghese and others, (2022) 9 SCC 593)**

Arbitration and Conciliation Act, 1996 Ss. 7, 8 and 11- Essential requirements of arbitration agreement - Reference to arbitration/ Appointment of arbitrator Form of arbitration agreement - Relevance -Intention of parties as discernible from arbitration agreement, to refer Primacy of Whether agreement or clause in parties to arbitration - Primacy of - question evinces a clear intention of the

parties of reference to arbitration. **(Babanrao Rajaram Pund v. Samarth Builders and Developers and another, (2022) 9 SCC 691)**

Sec. 11—Appointment of Arbitrator—Necessity to hold inquiry as to arbitrability of dispute—Dispute, arising out of failure to comply with obligations under Addendum Agreement was not arbitrable as per contract between parties

In the case of Oriental Insurance Co Ltd. Vs. Narbheram Power and Steel (P) Ltd., (2018) 6 SCC 534, it is observed and held by this Court that the parties are bound by the Clauses enumerated in the policy and the Court does not transplant any equity to the same by rewriting a clause. It is further observed and held that an arbitration clause is required to be strictly construed. Any expression in the clause must unequivocally express the intent of arbitration. It can also lay the postulate in which situations the arbitration clause cannot be given effect to. It is further observed that if a clause stipulates that under certain circumstances there can be no arbitration and they are demonstrably clear then the controversy pertaining to appointment of Arbitrator has to be put to rest.

In the case of Rajasthan State Industrial Development and Investment Corporation Vs. Diamond and Gem Development Corporation Ltd.; (2013) 5 SCC 470, it is observed and held by this Court that a party cannot claim anything more than what is covered by the terms of the contract, for the reason that the contract is a transaction between two parties and has been entered into with open eyes and by understanding the nature of contract. It is further observed that thus the contract being a creature of an agreement between two or more parties has to be interpreted giving literal meanings unless there is some ambiguity therein. The contract is to be interpreted giving the actual meaning to the words contained in the contract and it is not permissible for the Court to make a new contract, however reasonable, if the parties have not made it themselves. It is further observed that the terms of the contract have to be construed strictly without altering the nature of a contract as it may affect the interest of either of the parties adversely.

In the case of Harsha Construction Vs. Union of India and Ors.; (2014) 9 SCC 246, it is observed and held by this Court in paragraphs 18 and 19 as under:

"18. Arbitration arises from a contract and unless there is a specific written contract, a contract with regard to arbitration cannot be presumed. Section 7(3) of the Act clearly specifies that the contract with regard to arbitration must be in writing. Thus, so far as the disputes which have been referred to in Clause 39 of the contract are concerned, it was not open to the Arbitrator to arbitrate upon the said disputes as there was a specific clause whereby the said disputes had been "excepted". Moreover, when the law specifically makes a provision with regard to

formation of a contract in a particular manner, there cannot be any presumption with regard to a contract if the contract is not entered into by the mode prescribed under the Act.

19. If a nonarbitrable dispute is referred to an Arbitrator and even if an issue is framed by the Arbitrator in relation to such a dispute, in our opinion, there cannot be a presumption or a conclusion to the effect that the parties had agreed to refer the issue to the Arbitrator. In the instant case, the respondent authorities had raised an objection relating to the arbitrability of the aforestated issue before the Arbitrator and yet the Arbitrator had rendered his decision on the said "excepted" dispute. In our opinion, the Arbitrator could not have decided the said "excepted" dispute. We, therefore, hold that it was not open to the Arbitrator to decide the issues which were not arbitrable and the award, so far as it relates to disputes regarding nonarbitrable disputes is concerned, is bad in law and is hereby quashed."

In the recent decision in the case of Vidya Drolia (supra), which, as such, is postinsertion of Section 11(6A) of the Arbitration Act, it is observed and held that the issue of nonarbitrability of a dispute is basic for arbitration as it relates to the very jurisdiction of the Arbitral Tribunal. An Arbitral Tribunal may lack jurisdiction for several reasons and nonarbitrability has multiple meanings. After referring to another decision of this Court in the case of Booz Allen & Hamiltan Inc. Vs. SBI Home Finance Ltd. [(2011) 5 SCC 532 (Para 34)], it is observed and held that there are facets of nonarbitrability, namely

"(i) Whether the disputes are capable of adjudication and settlement by arbitration? That is, whether the disputes, having regard to their nature, could be resolved by a private forum chosen by the parties (the Arbitral Tribunal) or whether they would exclusively fall within the domain of public fora (courts).

(ii) Whether the disputes are covered by the arbitration agreement? That is, whether the disputes are enumerated or described in the arbitration agreement as matters to be decided by arbitration or whether the disputes fall under the "excepted matters" excluded from the purview of the arbitration agreement.

(iii) Whether the parties have referred the disputes to arbitration? That is, whether the disputes fall under the scope of the submission to the Arbitral Tribunal, or whether they do not arise out of the statement of claim and the counterclaim filed before the Arbitral Tribunal. A dispute, even if it is capable of being decided by arbitration and falling within the scope of an arbitration agreement, will not be "arbitrable" if it is not enumerated in the joint list of disputes referred to arbitration, or in the absence of such a joint list of disputes, does not form part of the disputes raised in the pleadings before the Arbitral Tribunal."

After referring to and considering in detail the earlier decisions on the point, more particularly, with respect to nonarbitrability and the 'excepted matters', it is ultimately concluded in para 76 as under:

"76. In view of the above discussion, we would like to propound a fourfold test for determining when the subject matter of a dispute in an arbitration agreement is not arbitrable:

76.1.(1) When cause of action and subject matter of the dispute relates to actions in rem, that do not pertain to subordinate rights in personam that arise from rights in rem.

76.2.(2) When cause of action and subject matter of the dispute affects third party rights; have erga omnes effect; require centralized adjudication, and mutual adjudication would not be appropriate and enforceable;

76.3.(3) When cause of action and subject matter of the dispute relates to inalienable sovereign and public interest functions of the State and hence mutual adjudication would be unenforceable;

76.4 (4) When the subjectmatter of the dispute is expressly or by necessary implication nonarbitrable as per mandatory statute(s).

76.5 These tests are not watertight compartments; they dovetail and overlap, albeit when applied holistically and pragmatically will help and assist in determining and ascertaining with great degree of certainty when as per law in India, a dispute or subject matter is nonarbitrable. Only when the answer is affirmative that the subject matter of the dispute would be nonarbitrable.

76.6 However, the aforesaid principles have to be applied with care and caution as observed in Olympus Superstructures (P) Ltd. Vs. Meena Vijay Khetan and Ors.; (1999) 5 SCC 651:

"35. …Reference is made there to certain disputes like criminal offences of a public nature, disputes arising out of illegal agreements and disputes relating to status, such as divorce, which cannot be referred to arbitration. It has, however, been held that if in respect of facts relating to a criminal matter, say, physical injury, if there is a right to damages for personal injury, then such a dispute can be referred to arbitration (Keir v. Leeman). Similarly, it has been held that a husband and a wife may refer to arbitration the terms on which they shall separate, because they can make a valid agreement between themselves on that matter (Soilleux v. Herbst, Wilson v. Wilson and Cahill v. Cahill)."

On the question, who decides on nonarbitrability of the dispute, after referring to and considering the earlier decisions on the point, more particularly, the decisions in the cases of Garware Wall Ropes Ltd. Vs. Coastal Marine Constructions & Engg.; (2019) 9 SCC 209; United India Insurance Co. Ltd. Vs. Hyundai Engg. & Construction Co. Ltd.; (2018) 17 SCC 607, and Narbheram Power & Steel (P) Ltd. (supra), it is observed and held that the question of nonarbitrability relating to the inquiry, whether the dispute was governed by the arbitration clause, can be examined by the Courts at the reference stage itself and may not be left unanswered, to be examined and decided by the Arbitral Tribunal. Thereafter, in para 153, it is

observed and held that the expression, "existence of arbitration agreement" in Section 11 of the Arbitration Act, would include aspect of validity of an arbitration agreement, albeit the Court at the reference stage would apply the prima facie test. It is further observed that in cases of debatable and disputable facts and, good reasonably arguable case etc., the Court would force the parties to abide by the arbitration Agreement as the Arbitral Tribunal has the primary jurisdiction and authority to decide the disputes including the question of jurisdiction and non-arbitrability. Ultimately in para 154, the proposition of law is crystallized as under:

"154. Discussion under the heading 'Who decides Arbitrability?' can be crystallized as under:

154.1. Ratio of the decision in Patel Engineering Ltd. on the scope of judicial review by the court while deciding an application under Sections 8 or 11 of the Arbitration Act, post the amendments by Act 3 of 2016 (with retrospective effect from 23102015) and even post the amendments vide Act 33 of 2019 (with effect from 982019), is no longer applicable.

154.2. Scope of judicial review and jurisdiction of the court under Section 8 and 11 of the Arbitration Act is identical but extremely limited and restricted.

154.3. The general rule and principle, in view of the legislative mandate clear from Act 3 of 2016 and Act 33 of 2019, and the principle of severability and competence, is that the arbitral tribunal is the preferred first authority to determine and decide all questions of non arbitrability. The court has been conferred power of "second look" on aspects of non-arbitrability post the award in terms of subclauses (i), (ii) or (iv) of Section 34(2)(a) or subclause (i) of Section 34(2)(b) of the Arbitration Act.

154.3. Rarely as a demurrer the court may interfere at the Section 8 or 11 stage when it is manifestly and ex facie certain that the arbitration agreement is non-existent, invalid or the disputes are nonarbitrable, though the nature and facet of non-arbitrability would, to some extent, determine the level and nature of judicial scrutiny. The restricted and limited review is to check and protect parties from being forced to arbitrate when the matter is demonstrably "nonarbitrable" and to cut off the deadwood. The court by default would refer the matter when contentions relating to nonarbitrability are plainly arguable; when consideration in summary proceedings would be insufficient and inconclusive; when facts are contested; when the party opposing arbitration adopts delaying tactics or impairs conduct of arbitration proceedings. This is not the stage for the court to enter into a mini trial or elaborate review so as to usurp the jurisdiction of the arbitral tribunal but to affirm and uphold integrity and efficacy of arbitration as an alternative dispute resolution mechanism."

In the case of Vidya Drolia and Ors. Vs. Durga Trading Corporation; (2021) 2 SCC 1, it is specifically observed and held by this Court that rarely as a demurrer, the Court may interfere at Section 8 or 11 stage when it is manifestly and ex facie

certain that "the arbitration agreement is nonexistent, invalid or the disputes are non-arbitrable", though the nature and facet of non arbitrability would, to some extent, determine the level and nature of judicial scrutiny. It is further observed that the restricted and limited review is to check and protect parties from being forced to arbitrate when the matter is demonstrably "nonarbitrable and to cut off the deadwood." It is further observed that the prima facie review at the reference stage is to cut the deadwood and trim off the side branches in straightforward cases where dismissal is barefaced and pellucid and when on the facts and law the litigation must stop at the first stage. **[M/s. EMMAR India Ltd. vs. Tarun Aggarwal Projects LLP, AIR 2022 SC 4678]**

Sec. 9—Commercial Courts Act, Sec. 10—Interim measures—To deposit amount of performance bank guarantees pertaining to purchase order

The order(s) which may be passed by the Commercial Court in an application under Section 9 of the Arbitration Act, 1996 is basically and mainly by way of interim measure. It may be true that in a given case if all the conditions of Order XXXVIII Rule 5 of the CPC are satisfied and the Commercial Court is satisfied on the conduct of opposite/opponent party that the opponent party is trying to sell its properties to defeat the award that may be passed and/or any other conduct on the part of the opposite/opponent party which may tantamount to any attempt on the part of the opponent/opposite party to defeat the award that may be passed in the arbitral proceedings, the Commercial Court may pass an appropriate order including the restrain order and/or any other appropriate order to secure the interest of the parties. However, unless and until the conditions mentioned in Order XXXVIII Rule 5 of the CPC are satisfied such an order could not have been passed by the Commercial Court which has been passed by the commercial court in the present case, which has been affirmed by the High Court**. [Sanghi Industries Ltd. vs. Ravin Cables Ltd., AIR 2022 SC 4685]**

CIVIL PROCEDURE CODE

Sec. 96, O.9, R.13—Appeal—Scope of—Application for setting aside of ex-parte decree—

Firstly, we will deal with the scope of adjudication in an appeal preferred under Section 96 of CPC by a defendant against whom the trial court has proceeded ex parte and a decree has been passed. In the case of Bhanu Kumar Jain1 a Bench of three Hon'ble Judges of this Court dealt with a case where an application for setting aside ex parte decree was filed by a defendant under Rule 13 of Order IX of CPC.

The said application was dismissed. Even an appeal preferred against the order of dismissal of the said application was dismissed. An appeal under Section 96 of CPC was also preferred by the said defendant. The submission before this Court was that the subject matter of the application under Rule 13 of Order IX of CPC and the subject matter of the appeal against decree being the same, it is against the public policy to allow two parallel proceedings to continue simultaneously. In paragraph 23 of the decision, this Court noted that the question before it was whether an appeal against ex parte decree was maintainable despite the fact that an application under Rule 13 of Order IX of CPC was dismissed. Paragraphs 24 to 27 of the said decision read thus:

"24. An appeal against an ex parte decree in terms of Section 96(2) of the Code could be filed on the following grounds

(i) the materials on record brought on record in the ex parte proceedings in the suit by the plaintiff would not entail a decree in his favour, and

(ii) the suit could not have been posted for ex parte hearing.

25. In an application under Order 9 Rule 13 of the Code, however, apart from questioning the correctness or otherwise of an order posting the case for ex parte hearing, it is open to the defendant to contend that he had sufficient and cogent reasons for not being able to attend the hearing of the suit on the relevant date.

26. When an ex parte decree is passed, the defendant (apart from filing a review petition and a suit for setting aside the ex parte decree on the ground of fraud) has two clear options, one, to file an appeal and another to file an application for setting aside the order in terms of Order 9 Rule 13 of the Code. He can take recourse to both the proceedings simultaneously but in the event the appeal is dismissed as a result whereof the ex parte decree passed by the trial court merges with the order passed by the appellate court, having regard to Explanation appended to Order 9 Rule 13 of the Code a petition under Order 9 Rule 13 would not be maintainable. However, Explanation I appended to the said provision does not suggest that the converse is also true.

27. In an appeal filed in terms of Section 96 of the Code having regard to Section 105 thereof, it is also permissible for an appellant to raise a contention as regards correctness or otherwise of an interlocutory order passed in the suit, subject to the conditions laid down therein."

This Court held that though after dismissal of an appeal under Section 96 of CPC against ex parte decree, application under Rule 13 of Order IX of CPC will not be maintainable, there is no bar on unsuccessful defendant adopting both the remedies simultaneously. In such a case, if the regular appeal against the decree is dismissed, obviously the application under Rule 13 of Order IX of CPC cannot proceed. The reason is that explanation to Rule 13 of Order IX of CPC lays down that where there has been an appeal against a decree passed ex parte and the appeal

has been disposed of on any ground other than withdrawal, application for setting aside ex parte decree will not lie. However, in the event an application under Rule 13 of Order IX of CPC is dismissed, the defendant can prosecute the appeal against the decree as a right to prefer appeal under Section 96 cannot be taken away in absence of any express provision to the contrary in CPC. In paragraph 38 of the aforesaid decision, this Court held that when application under Rule 13 of Order IX of CPC filed by a defendant is dismissed, the defendant cannot be permitted to raise a contention as regards the correctness or otherwise of the order posting the suit for ex parte hearing and/or existence of a sufficient cause for nonappearance of the defendant.

In this case, the question is when the defendant did not avail the remedy under Rule 13 of Order IX of CPC, whether it is open for him to agitate in the regular appeal against the decree that the trial court had no justification for proceeding ex parte against the appellant. In such a case, though the appellant would not be entitled to lead evidence in appeal for making out a sufficient cause for his absence before the trial court, he can always argue on the basis of the record of the suit that either the suit summons was not served upon him or that even otherwise also, the trial court was not justified in proceeding ex parte against him. The reason is that under Section 105 of CPC, when a decree is appealed from, any error, defect or irregularity in any order affecting the decision of the case can be set forth as a ground of objection in the Memorandum of Appeal. Thus, in such a case, the appellant can always urge in an appeal against the decree that an interim or interlocutory order passed during the pendency of the suit affecting the decision of the case was illegal. Therefore, the appellant, while challenging ex parte decree by filing an appeal, can always point out from the record of the trial court that the order passed to proceed with the suit ex parte against him was illegal. As held in the case of Bhanu Kumar Jain1, only when the application made by a defendant under Rule 13 of Order IX of CPC is dismissed that such a defendant cannot agitate in the appeal against ex parte decree that the order directing that the suit shall proceed ex parte was illegal or incorrect. However, in this case, the appellant has not filed application under Rule 13 of Order IX of CPC. Therefore, such a contention can be raised by him. **[G.N.R. Babu @ S.N. Babu vs. Dr. B.C. Muthappa, AIR 2022 SC 4213]**

Civil Procedure Code, 1908-Or. 23 R. 3-Consent order - Necessity of compliance by all parties concerned of each of their obligations under the consent order.

Civil Contempt: Wilful disobedience/ contumacious conduct Wilful non-compliance/non-fulfilment of obligations by a party to the settlement which became a part of consent order of court with specific directions with respect to its

bindingness Consideration of, as contempt of court Opportunity to purge/fulfil obligations. Giving effect to settlement and consent order in its letter and spirit. **(Ashish Seth v. Sumit Mittal and others, (2022) 8 SCC 724)**

O.14, R. 2(2)(b)—Preliminary issue—Limitation—

Now, we will consider the first question: 'whether the issue of limitation can be determined as a preliminary issue under Order XIV, Rule 2, CPC'. It is no longer res integra. In the decision in Mongin Realty and Build Well Private Limited vs. Manik Sethi, 7 2022 SCC Online SC 156, even while holding that the course of action followed by the learned Trial Judge of directing the parties to address arguments on the issue of limitation as irregular since it being a case where adduction of evidence was required, a two-Judge Bench of this Court referred to a three-Judge Bench decision of this Court in Nusli Neville Wadia Vs. Ivory Properties8 observing that the issue therein was whether the issue of limitation could be determined as a preliminary issue under Order XIV, Rule 2, CPC. After taking note of the fact that going by the decision in Nusli Neville Wadia's case, (2020) 6 SCC 557, in a case where question of limitation could be decided based on admitted facts it could be decided as a preliminary issue under Order XIV, Rule 2(2)(b), CPC., the two- Judge Bench held that in the case before their Lordships the question of limitation could not have been decided as a preliminary issue under Order XIV, Rule 2 of CPC as determination of the issue of limitation in that case was not a pure question of law. In the said contextual situation it is worthy and appropriate to refer to paragraphs 51, in so far as it is relevant, and 52 of the decision in Nusli Neville Wadia's case8 and they read thus:-

"51.[…] As per Order 14 Rule 1, issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other. The issues are framed on the material proposition, denied by another party. There are issues of facts and issues of law. In case specific facts are admitted, and is the question of law arises which is dependent upon the outcome of admitted facts, it is open to the court to pronounce the judgment based on admitted facts and the preliminary question of law under the provisions of Order 14 Rule 2. In Order 14 Rule 2(1), the court may decide the case on a preliminary issue. It has to pronounce the judgment on all issues. Order 14 Rule 2(2) makes a departure and the court may decide the question of law as to jurisdiction of the court or a bar created to the suit by any law for the time being in force, such as under the Limitation Act.

52. […] In a case, question of limitation can be decided based on admitted facts, it can be decided as a preliminary issue under Order 14 Rule 2(2)(b). Once facts are disputed about limitation, the determination of the question of limitation also cannot be made under Order 14 Rule 2(2) as a preliminary issue or any other

such issue of law which requires examination of the disputed facts. In case of dispute as to facts, is necessary to be determined to give a finding on a question of law. Such question cannot be decided as a preliminary issue. In a case, the question of jurisdiction also depends upon the proof of facts which are disputed and the question of law is dependent upon the outcome of the investigation of the facts, such question of law cannot be decided as a preliminary issue, is settled proposition of law either before the amendment of CPC and post amendment in the year 1976."

the appellants cannot legally have any dispute or grievance in taking their statements in the plaint capable of determining the starting point of limitation for the purpose of application of Order XIV, Rule 2(2)(b) of the CPC. Though, limitation is a mixed question of law and facts it will shed the said character and would get confined to one of question of law when the foundational fact(s), determining the starting point of limitation is vividly and specifically made in the plaint averments. In such a circumstance, if the Court concerned is of the opinion that limitation could be framed as a preliminary point and it warrants postponement of settlement of other issues till determination of that issue, it may frame the same as a preliminary issue and may deal with the suit only in accordance with the decision on that issue. It cannot be said that such an approach is impermissible in law and in fact, it is perfectly permissible under Order XIV, Rule 2(2)(b), CPC and legal in such circumstances. In short, in view of the decisions and the provisions, referred above, it is clear that the issue limitation can be framed and determined as a preliminary issue under Order XIV, Rule 2(2)(b), CPC in a case where it can be decided on admitted facts**. [Sukhbiri Devi vs. Union of India, AIR 2022 SC 5058]**

O.1, R.10—Impleadment of parties—Suit for declaration, permanent injunction and recovery of possession

At the outset, it is required to be noted that the defendants in the suit filed application under Order 1 Rule 10 CPC and prayed to implead the subsequent purchasers as party defendants. The suit is for declaration, permanent injunction and recovery of possession. As per the settled position of law, the plaintiffs are the domius litis. Unless the court suo motu directs to join any other person not party to the suit for effective decree and/or for proper adjudication as per Order 1 Rule 10 CPC, nobody can be permitted to be impleaded as defendants against the wish of the plaintiffs. Not impleading any other person as defendants against the wish of the plaintiffs shall be at the risk of the plaintiffs. Therefore, subsequent purchasers could not have been impleaded as party defendants in the application submitted by the original defendants, that too against the wish of the plaintiffs.

Now so far as the reliance placed upon the decision of this Court in the case of Rahul S. Shah (supra) by the High Court is concerned, on facts, the said decision

shall not be applicable to the facts of the case on hand. The said decision was not a case of an application under Order 1 Rule 10 CPC to implead the persons not party to the suit as defendants and that too at the instance of the defendants.

However, at the same time, considering the fact that defendants have also filed counter-claim for declaration of their right, title and interest over the suit property and permanent injunction and in case the counter-claim is allowed, as the plaintiffs are opposing to implead the subsequent purchasers as party defendants, thereafter it will not be open for the plaintiffs to contend that no decree in the counter-claim be passed in absence of the subsequent purchasers. Therefore, non-impleading the subsequent purchasers as defendants on the objection raised by the plaintiffs shall be at the risk of the plaintiffs. **[Sudhamayee Pattnaik vs. Bibhu Prasad Sahoo, AIR 2022 SC 4304]**

O.2, R.2, O.6, R.17—Bar as to civil suit—Provisions of O.2, R. 2 applies only to subsequent suit and would not apply to amendment sought in existing suit

The prayer for amendment is to be allowed

(i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and (ii) to avoid multiplicity of proceedings, provided (a) the amendment does not result in injustice to the other side, (b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and (c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations). (iv) A prayer for amendment is generally required to be allowed unless (i) by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration, (ii) the amendment changes the nature of the suit, (iii) the prayer for amendment is malafide, or (iv) by the amendment, the other side loses a valid defence. (v) In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.

Our final conclusions may be summed up thus:

(i) Order II Rule 2 CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview. The plea of amendment being barred under Order II Rule 2 CPC is, thus, misconceived and hence negatived.

(ii) All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the

other side. This is mandatory, as is apparent from the use of the word "shall", in the latter part of Order VI Rule 17 of the CPC.

(iii) The prayer for amendment is to be allowed

(i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and

(ii) to avoid multiplicity of proceedings, provided

(a) the amendment does not result in injustice to the other side,

(b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and

(c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).

(iv) A prayer for amendment is generally required to be allowed unless

(i) by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration,

(ii) the amendment changes the nature of the suit,

(iii) the prayer for amendment is malafide, or

(iv) by the amendment, the other side loses a valid defence.

(v) In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.

(vi) Where the amendment would enable the court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.

(vii) Where the amendment merely sought to introduce an additional or a new approach without introducing a time barred cause of action, the amendment is liable to be allowed even after expiry of limitation.

(viii) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.

(ix) Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.

(x) Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.

(xi) Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact

that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed. (See Vijay Gupta v. Gagninder Kr. Gandhi & Ors., 2022 SCC Online Del 1897). **[Life Insurance Corporation of India vs. Sanjeev Builders Pvt. Ltd., AIR 2022 SC 4256]**

S. 151 – Inherent powers – Exercise of – Permissibility – The Civil Courts cannot exercise substantive jurisdiction to unsettle already decided issues – S. 151, CPC can only be applicable if there is no alternate remedy available in accordance with the existing provisions of law.

Section 151 of the CPC can only be applicable if there is no alternate remedy available in accordance with the existing provisions of law. Such inherent power cannot override statutory prohibitions or create remedies which are not contemplated under the Code. Section 151 cannot be invoked as an alternate to filing fresh suits, appeals, revisions, or reviews.

It is a well –established principle, both in our jurisprudence and across the world, that "(N)ot only must justice be done, it must also be seen to be done". **My Palace Mutually Aided Co-Operative Society v. B. Mahesh and others, 2022 (3) ARC 227 - SC**

O. VII, R. 10 and 11 r/w S. 9 and 30-Commercial Court Act, 2015, S. 12-A-Application for rejection of plaint-On ground the suit filed without adhering to S. 12-A of the Act 2015. S. 12-A provides a cooling period where in the parties are to be referred for mediation at hands of Skilled Mediators. S. 12-A of the Act provides for mediation.

A mediation settlement arrived at under Section 89 of the CPC must be scrutinised by the court and only on its imprimatur being given it is effective. A settlement under Section 12A of the Act is accorded the status of an award under the Arbitration & Conciliation Act, it unerringly points to the object of the legislature to make pre-litigation mediation compulsory.

The staunchest criticism against mediation has been that it is opposed to the fundamental principle of access to justice. It is in keeping with the traditional notions of the right of a person to have a dispute adjudicated by an impartial and a trained Judge. Mediation offers a completely new approach to attaining the goal of justice.

A win-win situation resulting from assigning a greater role to the parties themselves, with no doubt, a spirit of accommodation represents a better and what is more in the era of docket explosion, the only meaningful choice.

A perusal of the Act and the Rules reveal the existence of a complete Code. Mediation contemplated under Section 12A and the Rules, may not succeed in every case.

Section 12A of the Act is mandatory and hold that any suit instituted violating the mandate of Section 12A must be visited with rejection of the plaint under Order VII Rule 11. This power can be exercised even suo moto by the court. **M/S Patil Automation Private v. Rakheja Engineers Private Limited, 2022 (3) ARC 491 – SC**

O.XXXIII, R. 1 and 15 – Application seeking leave to file suit as indigent persons – The suit for declaration of title and for recovery of possession.

Order 33 Rule 7 CPC provides for procedure at hearing. Order 33 Rule 8 CPC provides for procedure if application is allowed. It appears that if the application is granted, it shall be numbered and registered, and it shall be deemed the plaint in the suit, and the suit shall proceed in all other respects as the suit instituted in the ordinary manner, except that the plaintiff shall not be liable to pay any court fee or fees payable for service of process in respect of any petition, appointment of a pleader or other proceeding connected with the suit.

Order 33 Rule 9 CPC provides for withdrawal of permission to sue as an indigent person on the application of the defendant, or of the Government pleader on the grounds stated in Order 33 Rule 9 CPC. Order 33 Rule 15 and Order 33 Rule 15A CPC which read as under:

"15. REFUSAL TO ALLOW APPLICANT TO SUE AS AN INDIGENT PERSON TO BAR SUBSEQUENT APPLICATION OF LIKE NATURE.

"15A. GRANT OF TIME FOR PAYMENT OF COURT-FEE.

When the application to sue as indigent person is rejected and/or refused, the Court may, while rejecting an application, under Order 33 Rule 15A CPC grant time to the applicant to pay the requisite Court fee within such time as may be fixed by the Court or extended by it from time to time and upon such payment and on payment of cost referred to in Rule 15 within that time, the suit shall be deemed to have been instituted on the date on which the application for permission to sue as an indigent person was presented. **Solomon Selvaraj and others v. Indirani Bhagawan Singh and others, 2022 (3) ARC 746- SC**

Civil Procedure Code, 1908 (5 of 1908), Order XIV Rule 2- Provisions- Scope & Applicability- Suit for declaration –Bar of res-judicata- Remand of case with

direction to the Trial Court for framing premilimnary issue on the plea of res-judicata- Sustainability.
Preliminary issues- Meaning & Scope.

The different judgments of the High Court referred to above are in consonance with the principles laid down by this Court in Ramesh B. Desai that not all issues of law can be decided as preliminary issues. Only those issues of law can be decided as preliminary issues which fell within the ambit of clause (a) relating to the "jurisdiction of the Court" and (b) which deal with the "bar to the suit created by any law for the time being in force." The reason to substitute Rule 2 is to avoid piecemeal trial, protracted litigation and possibility of remand of the case, where the appellate court differs with the decision of the trial court on the preliminary issues upon which the trial court had decided.

Hon'ble Supreme Court find that the order of the High Court to direct the learned trial court to frame preliminary issue on the issue of res judicata is not desirable to ensure speedy disposal of the lis between parties. Order XIV Rule 2 of the Code had salutary object in mind that mandates the Court to pronounce judgments on all issues subject to the provisions of sub-Rule (2). However, in case where the issues of both law and fact arise in the same suit and the Court is of the opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that suit first, if it relates to jurisdiction of the Court or a bar to the suit created by any law for the time being in force. It is only in those circumstances that the findings on other issues can be deferred. It is not disputed that res judicata is a mixed question of law and fact depending upon the pleadings of the parties, the parties to the suit etc. It is not a plea in law alone or which bars the jurisdiction of the Court or is a statutory bar under clause (b) of sub-Rule (2).

Keeping in view the object of substitution of sub-Rule (2) to avoid the possibility of remanding back the matter after the decision on the preliminary issues, it is mandated for the trial court under Order XIV Rule 2 and Order XX Rule 5, and for the first appellate court in terms of Order XLI Rules 24 and 25 to record findings on all the issues. **[Sathyanath and another vs. Sarojamani, 2022 (40) LCD 2148 (SC)]**

Civil Procedure Code, 1908 (5 of 1908), Order 12 Rule 6- Provisions- Nature & Scope- Held, power is discretionary which should be only exercised when specific, clear and categorical admission of facts and documents are on record.

Thus, legislative intent is clear by using the word 'may' and 'as it may think fit' to the nature of admission. The said power is discretionary which should be only exercised when specific, clear and categorical admission of facts and documents are

on record, otherwise the Court can refuse to invoke the power of Order XII Rule 6. The said provision has been brought with intent that if admission of facts raised by one side is admitted by other, and the Court is satisfied to the nature of admission, then the parties are not compelled for fullfledged trial and the judgment and order can be directed without taking any evidence. Therefore, to save the time and money of the Court and respective parties, the said provision has been brought in the statute. As per above discussion, it is clear that to pass a judgment on admission, the Court if thinks fit may pass an order at any stage of the suit. In case the judgment is pronounced by the Court a decree be drawn accordingly and parties to the case is not required to go for trial. **[Karan Kapoor vs. Madhuri Kumar, 2022 (40) LCD 2413 (SC)]**

CONSTITUTION OF INDIA

Article 223 of the Constitution of India - Appointment of District Judges/ 1 Additional District Judges - Direct recruitment quota for advocates/pleaders Bar on appointment of judicial officers of State Subordinate Judicial Services in such quota, as per law clarified in Dheeraj Mor, (2020) 7 SCC 401. Applicability of said bar, whether applicable when fully qualified advocate from State concerned on the date of application to post of District Judge in that State, had in the meantime obtained appointment in Subordinate Judicial Service of another State. **(Sunil Kumar Verma v. State of Bihar and Others, (2022) 9 SCC 686)**

Article 226 - Habeas corpus - Death of both parents- Custody of minor whether to be continued with paternal grandparents, or, be transferred to maternal aunt who has independent income, bigger family and is of younger age - Matters to be considered - Inclination of the minor - Educational prospects depending on place of residence of proposed guardian

Held, independent income, younger age and/or bigger family of maternal aunt cannot be sole criteria to tilt balance and deny custody to grandparents when capacity and/or ability of grandparents to take care of their grandson, cannot be doubted. In the facts and circumstances of the case, custody of minor corpus directed to be continued with appellant paternal grandparents. **(Swaminathan Kunchu Acharya v. State of Gujarat and others, (2022) 8 SCC 804)**

Art. 226—Reinstatement—Validity—

At the outset, it is required to be noted that the learned Single Judge has set aside the order of dismissal passed by the Disciplinary Authority on the ground that the same was in breach of principles of Natural Justice, in as much as, the copy of

the Inquiry Officer's Report was not furnished to the delinquent and his comments were not called for on the Inquiry Officer's Report. It is to be noted that the respondent - delinquent was facing the departmental inquiry with respect to a very serious charge of misappropriation. Therefore, the High Court ought to have remitted the matter back to the Disciplinary Authority to conduct the inquiry from the point that it stood vitiated.

At this stage, a recent decision of this Court in the case of Rajit Singh, AIR 2022 SC 1551, in which this Court had considered its earlier decision in the case of A. Masilamani, (2013) 6 SCC 530 is required to be referred to. In paragraph 15, it is observed and held as under:-

"15. It appears from the order passed by the Tribunal that the Tribunal also observed that the enquiry proceedings were against the principles of natural justice in as much as the documents mentioned in the charge sheet were not at all supplied to the delinquent officer. As per the settled proposition of law, in a case where it is found that the enquiry is not conducted properly and/or the same is in violation of the principles of natural justice, in that case, the Court cannot reinstate the employee as such and the matter is to be remanded to the Enquiry Officer/Disciplinary Authority to proceed further with the enquiry from the stage of violation of principles of natural justice is noticed and the enquiry has to be proceeded further after furnishing the necessary documents mentioned in the charge sheet, which are alleged to have not been given to the delinquent officer in the instant case. In the case of Chairman, Life Insurance Corporation of India v. A. Masilamani, (2013) 6 SCC 530, which was also pressed into service on behalf of the appellants before the High Court, it is observed in paragraph 16 as under:-

"16. It is a settled legal proposition, that once the court sets aside an order of punishment, on the ground that the enquiry was not properly conducted, the court cannot reinstate the employee. It must remit the case concerned to the disciplinary authority for it to conduct the enquiry from the point that it stood vitiated, and conclude the same. (Vide ECIL v. B. Karunakar [(1993) 4 SCC 727], Hiran Mayee Bhattacharyya v. S.M. School for Girls [(2002) 10 SCC 293], U.P. State Spg. Co. Ltd. v. R.S. Pandey [(2005) 8 SCC 264] and Union of India v. Y.S. Sadhu [(2008) 12 SCC 30])." **[Inspector of Panchayats and District Collector, Salem vs. S. Arichandran, AIR 2022 SC 4611]**

Constitution of India, Article 226 – Interference – Departmental Enquiry- Held, the adequacy of the evidence or reliability of evidence would not be a ground to interfere with the findings recorded in departmental enquiries.

Interference with the decision of departmental authorities is permissible only if the proceedings were conducted in violation of the principles of natural justice or

in contravention of statutory regulations regulating such proceedings or if the decision on the face of it is found to be arbitrary or capricious. The Courts would and should not act as an appellate Court and reassess the evidence led in the domestic enquiry, nor should interfere on the ground that another view is possible on the ;material on record. If the inquiry has been fairly and properly conducted, and the findings are based on evidence, the adequacy of the evidence or reliability of evidence would not be a ground to interfere with the findings recorded n the departmental enquiries. **[Muzaffar Husain vs. State of Uttar Pradesh and another, 2022 (40) LCD 2136 (SC)]**

Constitution of India Article 227 Writ petition against order of - Revisional Court rejecting plaint under Or. 7 R. 11 CPC- Maintainability of-Order rejecting plaint passed by trial court and by Revisional Court- Distinguished between, vis-à-vis remedy invocable

Section 115 of the Civil Procedure Code, 1908 and Or. 7 R. 11- Rejection of plaint under Order 7 Rule 11 by Revisional Court Permissibility.

Civil Procedure Code, 1908 - Or. 7 R. 11 - Suit seeking to restrain/ frustrate criminal/civil proceedings, as in the present case under S. 138 of the NI Act for dishonour of cheque and civil suit for recovery. Rejection of Relief/prayer sought in suit which tantamounts to seeking such restraint.

Civil Procedure Code, 1908- Or. 7 R. 11- Relief of declaration that the plaintiff not liable to perform its part of the contractual obligation.

Existence of cause of action whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself and for the said purpose the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in its entirety, a decree would be passed. **(Frost International Limited v. Milan Developers and Builders Private Limited and another, (2022) 8 SCC 633)**

Article 32 of the Constitution of India - Incident of violence leading to multiple deaths and injuries involving son of senior politician/sitting. Incident took place during public protests against Government action, in home region/State of such Minister/his son. But protests were being carried out by members of public hailing mainly from another State. Constitution of Special Investigation Team (SIT) to investigate the same. Need to ensure that justice is seen to be done as well Direction issued for reconstituting SIT with police officers who did not hail from the home region/said home State of the Minister concerned, and monitoring of the investigation by a retired High Court Judge, who too may not have his roots in home

region/said home State of the Minister concerned. **(Violence in Lakhimpur Kheri (Uttar Pradesh) leading to loss of life, In Re, (2022) 9 SCC 337)**

CONSUMER PROTECTION

Consumer Protection - Services Housing and Real Estate Possession- Delivery of possession - Delay - Refund of principal amount along with simple interest @ 10.25% p.a. to allottee. Grant of - Date of issuance of fire NOC i.e. the principle laid down in Abhishek Khanna, (2021) 3 SCC 241. Non-relevance of when flat not ready even by taking into account such date. **(IREO Private Limited v. Aloke Anand and others, (2022) 9 SCC 412)**

Consumer Protection - Cause of Action - Non-delivery of new car despite payment of full consideration, and, delivering a defective or used car instead. It was held to be an "unfair trade practice."

Consumer Protection Act, 1986- S. 21(b) - Revision - Scope- Concurrent findings recorded by District Forum and State Commission which are on proper appreciation of evidence on record. Held, in exercising of revisional jurisdiction National Commission has no jurisdiction to interfere therewith. **(Rajiv Shukla v. Gold Rush Sales and Services Limited and another, (2022) 9 SCC 31)**

Possession of Green Card of the United States of Trusts and Trustees Appointment of Trustee - Condition/ qualification for appointment of Trustee, namely, that the Trustee resides in Madras Presidency - Whether satisfied

America by person seeking such appointment Whether amounted to a disqualification - Continuous stay in India, holding property and bank accounts in India and also holding an Aadhaar card- -Sufficiency of, for establishing residency

Modern day advancements such as videoconferences, etc., enabling discharge of function as founder trustee - Effect of - Scheme of Administration providing for the Office of founder trustee as heritable - Relevance of, when applicant alone remained the surviving male descendant satisfying such criterion

Deeds and Documents Construction/Interpretation of Deeds and Documents - Basic rules Holistic construction/Contextual meaning/ Surrounding circumstances/ Contemporary meaning- Use of the expression "resides" in Trust deed - Interpretation of. **(V. Prakash alias G.N.V. Prakash v. P.S. Govindaswamy Naidu and Sons Charities represented by its Managing Trustee and others, (2022) 9 SCC 36)**

CRIMINAL PROCEDURE CODE

Criminal Procedure Code, 1973 S. 482- Inherent powers of High Court under, to quash criminal proceedings in view of compromise arrived at between parties in case of matrimonial disputes - Exercise of - When warranted

Since parties buried hatchet and decided to give quietus to proceedings which were lodged inter se, hence, going by law declared in Gian Singh, (2012) 10 SCC 303, held, case was eminently suitable to be considered for exercise of jurisdiction under S. 482 CrPC for quashment of the criminal proceedings. **(Jasmair Singh and another v. State of Haryana and another, (2022) 9 SCC 73)**

Sec. 227—Discharge application—Scrutiny of prima facie case—Simple and necessary inquiry to be conducted for proper adjudication of discharge application—Threshold of scrutiny required to adjudicate discharge application is to consider broad probabilities of matter and total effect of material on record

Legal provision and precedents: Section 227 of the Cr.P.C relating to discharge is as under:

"227. Discharge — If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing."

The threshold of scrutiny required to adjudicate an application under Section 227 of the Cr.P.C., is to consider the broad probabilities of the case and the total effect of the material on record, including examination of any infirmities appearing in the case. In Prafulla Kumar Samal (supra), it was noted that:

"10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:

(1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that

the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced court cannot act merely as a Post Office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."

In Sajjan Kumar v. Central Bureau of Investigation, (2010) 9 SCC 368, the Court cautioned against accepting every document produced by the prosecution on face value, and noted that it was important to sift the evidence produced before the Court. It observed that:

"21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge: ...

……(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case..."

Summarising the principles on discharge under Section 227 of the Cr.P.C, in Dipakbhai Jagdishchandra Patel v. State of Gujarat, (2019) 16 SCC 547, this Court recapitulated:

"23. At the stage of framing the charge in accordance with the principles which have been laid down by this Court, what the court is expected to do is, it does not act as a mere post office. The court must indeed sift the material before it. The material to be sifted would be the material which is produced and relied upon by the prosecution. The sifting is not to be meticulous in the sense that the court dons the mantle of the trial Judge hearing arguments after the entire evidence has been adduced after a fullfledged trial and the question is not whether the prosecution has made out the case for the conviction of the accused. All that is required is, the court must be satisfied that with the materials available, a case is made out for the accused to stand trial. A strong suspicion suffices. However, a strong suspicion must be

founded on some material. The material must be such as can be translated into evidence at the stage of trial. The strong suspicion cannot be the pure subjective satisfaction based on the moral notions of the Judge that here is a case where it is possible that the accused has committed the offence. Strong suspicion must be the suspicion which is premised on some material which commends itself to the court as sufficient to entertain the prima facie view that the accused has committed the offence." **[Kanchan Kumar vs. State of Bihar, AIR 2022 SC 4288]**

Sec. 439—IPC, Secs. 302, 352, 34, 147, 148, 149—Bail—Grant of—On ground of parity—Challenge as to—Allegations of murder with common object

In Mahipal vs Rajesh Kumar, (2020) 2 SCC 118, which was relied on by Ms Bansuri Swaraj, learned counsel for the State of UP. Speaking for a two-Judge Bench, one of us (Justice D Y Chandrachud, J) observed:

"25. Merely recording "having perused the record" and "on the facts and circumstances of the case" does not subserve the purpose of a reasoned judicial order. It is a fundamental premise of open justice, to which our judicial system is committed, that factors which have weighed in the mind of the Judge in the rejection or the grant of bail are recorded in the order passed. Open justice is premised on the notion that justice should not only be done, but should manifestly and undoubtedly be seen to be done. The duty of Judges to give reasoned decisions lies at the heart of this commitment. Questions of the grant of bail concern both liberty of individuals undergoing criminal prosecution as well as the interests of the criminal justice system in ensuring that those who commit crimes are not afforded the opportunity to obstruct justice. Judges are duty-bound to explain the basis on which they have arrived at a conclusion.

27. Where an order refusing or granting bail does not furnish the reasons that inform the decision, there is a presumption of the non-application of mind which may require the intervention of this Court." **[Aminuddin vs. State of U.P., AIR 2022 SC 4546]**

Section 451 & 457 of the Criminal Procedure Code, 1973 - Civil suit pending between financier of vehicle and its registered owner, with order of status quo passed. Temporary release of vehicle directed by Magistrate in favour of its registered owner, subject to execution of bond with condition to produce the vehicle when required and subject to any variation of the order by the civil court in pending proceedings. It was held that proper in present case. Proper remedy of financier was to approach civil court in the pending suit if aggrieved by the abovesaid order of the Magistrate. **(Manoj and another v. Shriram Transport Finance Company Limited and others, (2022) 9 SCC 558)**

Section 482 Cr.P.C.

It was held by the Hon'ble Supreme Court that issuing interim order staying further criminal proceeding and resultantly staying further investigation while exercising power under Section 482 would only be exercised in rarest of rare cases.

Hon'ble Apex Court held that the interim order which stayed further criminal proceeding was quashed and the investigating officer was directed to complete investigation at the earliest and preferably within three months to file appropriate report/charge sheet before the concerned court having jurisdiction. It was also held that the impugned order passed by the High Court the Learned Single Judge was not properly appreciated the earlier judgment of Hon'ble Supreme Court in Niharika Infrastructure Pvt. Ltd., AIR 2021 SC 1918. (**Siddharth Mukesh Bhandari v. State of Gujarat, 2022 Cri.L.J. 3889 :** AIR Online **2022 SC 1203**)

Criminal Procedure Code, 1973-Ss. 432(7), 433 and 433-A and S. 406 - Application for grant of premature release - Appropriate Government of that place/State where crime was committed, and not the place/State where trial was conducted is determinative of the matter.

In instant case, crime was committed in State of Gujarat, but case pending before trial court there was transferred by Supreme Court to competent court in State of Maharashtra for trial and disposal. It was held that once crime was committed in State of Gujarat, after trial had been concluded and judgment of conviction came to be passed, all further proceedings have to be considered including remission or premature release, as the case may be, in terms of policy which is applicable in State of Gujarat where crime was committed and not State where trial stands transferred and concluded for exceptional reasons under orders of Supreme Court. Hence, respondents are directed to consider application of petitioner for premature release in terms of Gujarat State policy which was applicable on date of conviction. **(Radheshyam Bhagwandas Shah alias Lala Vakil v. State of Gujarat and another, (2022) 8 SCC 552)**

Article 21 of Constitution of India - Rights of victims of crime to participate in criminal proceedings at various stages, including at stage of bail proceedings. Scope of particularly after insertion of S. 2(wa) vide CrPC Amendment Act of 2008.

Criminal Procedure Code, 1973- S. 439 r/w Ss. 372 and 2(wa) [as inserted by CrPC (Amendment) Act, 2008] - Bail - Right of victim to participate in bail proceedings.

Criminal Procedure Code, 1973 S. 2(wa) [as inserted by CrPC - (Amendment) Act, 2008] Expression "victim" Meaning and his rights at different

stages of trial. It was held that “victim" means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression "victim" includes his or her guardian or legal heir.

Section 439 of Criminal Procedure Code, 1973 - Incident of violence leading to multiple deaths and injuries involving son of senior politician/sitting Minister of the Union Government. During public protests against Government action. Remission of matter for consideration afresh in accordance with law, when bail granted by taking into account irrelevant considerations and by ignoring relevant considerations and established parameters. **(Jagjeet Singh and others v. Ashish Mishra alias Monu and another, (2022) 9 SCC 321)**

The issue of bail is one of liberty, justice, public safety and burden of the public treasury, all of which insist that a developed jurisprudence of bail is integral to a socially sensitized judicial process.

It is well-settled that the factors to be borne in mind while considering an application for bail are:

(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
(ii) nature and gravity of the accusation;
(iii) severity of the punishment in the event of conviction;
(iv) danger of the accused absconding or fleeing, if released on bail;
(v) character, behaviour, means, position and standing of the accused;
(vi) likelihood of the offence being repeated;
(vii) reasonable apprehension of the witnesses being influenced; and
(viii) danger of justice being thwarted by grant of bail.

For grant or denial of bail, the "nature of crime" has a huge relevancy.

Section 439 of the Criminal Procedure Code, 1973 - Murder case - Case of R-2 himself shooting deceased, resulting in victim's death in hospital. Previous enmity between him and deceased with regard to some land, being cause of Charge-sheet was filed against R-2 and co-accused under Ss. 302 and 34 IPC. However, grant of bail to R-2 only on basis of parity (co-accused was granted bail by High Court), held shows that impugned order passed by High Court suffers from vice of non-application of mind rendering it unsustainable. High Court has not taken into consideration criminal history of R-2, nature of crime, material evidence available, involvement of R-2 in said crime and recovery of weapon from his possession - In such facts and circumstances of present case, bail granted to R-2 cancelled. **(Deepak Yadav v. State of Uttar Pradesh and another, (2022) 8 SCC 559)**

Criminal Procedure Code, 1973- S. 439 - Bail - Case of kidnapping for ransom of child, murder and recovery of his dead body next day. Considering nature and gravity of offence, role which was attributed to second respondent and crucial witnesses which remain to be examined. It was held that High Court was not justified in granting bail to second respondent. Hence, grant of bail quashed. **(Mamta and another v. State (NCT of Delhi) and another, (2022) 8 SCC 598)**

Sec.1 167(2), Proviso (As amended by 2015 Act)—Gujarat Control of Terrorism and Organized Crime Act, Sec. 20(2)—Extension of custody—Complete investigation—Effect of non-production of accused

No Magistrate shall authorize detention of the accused in custody of the police under this section unless the accused is produced before him in person for the first time and subsequently every time till the accused remains in the custody of the police, but the Magistrate may extend further detention in judicial custody on production of the accused either in person or through the medium of electronic video linkage. Thus, the requirement of the law is that while extending the remand to judicial custody, the presence of the accused has to be procured either physically or virtually. This is the mandatory requirement of law. This requirement is sine qua non for the exercise of the power to extend the judicial custody remand. The reason is that the accused has a right to oppose the prayer for the extension of the remand. The reason is that the accused has a right to oppose the prayer for the extension of the remand. The logical and legal consequence of the grant of extension of time is the deprivation of the indefeasible right available to the accused to claim a default bail.

The grant of the extension of time takes away the right of the accused to get default bail which is intrinsically connected with the fundamental rights guaranteed under Article 21 of the Constitution. The procedure contemplated by Article 21 of the Constitution which is required to be followed before the liberty of a person is taken away has to be a fair and reasonable procedure. In fact, procedural safeguards play an important role in protecting the liberty guaranteed by Article 21. The failure to procure the presence of the accused either physically or virtually before the Court and the failure to inform him that the application made by the Public Prosecutor for the extension of time is being considered, is not a mere procedural irregularity. It is gross illegality that violates the rights of the accused under Article 21 of the Constitution. The failure to produce the accused before the Court at the time of consideration of the application for extension of time will amount to a violation of the right guaranteed under Article 21 of the Constitution. Thus, prejudice is inherent and need not be established by the accused.

Grant of extension of time to complete investigation by extending custody of accused by Court is not an empty formality. The Public Prosecutor has to apply his

mind before he submits a report/an application for extension. Firstly, in the report of the Public Prosecutor, the progress of the investigation should be set out the secondly, the report must disclose specific reasons for continuing the detention of the accused beyond the period of 90 days. Thus, prosecution has to make out a case in terms of both the aforesaid requirements and the Court must apply its mind to the contents of the report before accepting the prayer for grant of extension. **[Jigar @ Jimmy Pravinchandra Adatiya vs. State of Gujarat, AIR 2022 SC 4641]**

Sec. 239—Discharge—Prima facie case—Offence of cheating, amassing of wealth and demand of bribe

It is a well settled law that at the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing of charge the Court must apply it's judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible. Indeed, the Court has limited scope of enquiry and has to see whether any primafacie case against the accused is made out or not. At the same time, the Court is also not expected to mirror the prosecution story, but to consider the broad probabilities of the case, weight of primafacie evidence, documents produced and any basic infirmities etc. In this regard the judgment of "Union of India Vs. Prafulla Kumar Samal, (1979) 3 SCC 4" can be profitably referred for ready reference. **[Pushpendra Kumar Sinha vs. State of Jharkhand, AIR 2022 SC 3983]**

S.313 – Examination of accused under section 313 – Extent to Which may be used against accused, including inculpatory Statement.

Held, though no conviction can be based on the statement of the accused and the prosecution has to prove the guilt of the accused by leading independent and cogent evidence, nonetheless when the accused makes inculpatory and exculpatory statements, the inculpatory part of the statement can be taken aid of to lend credence to the case of prosecution --- However, if the prosecution - evidence does not inspire confidence to sustain the conviction of the accused, the inculpatory part of his statement under S. 313 cannot be made the sole basis of his conviction. **[Mohd. Firoz v. State of M.P. (2022) 3 S.C.C. (Cri.) 165]**

Ss. 157 and 159 – Delay in sending FIR to Magistrate – Duty of court, effect of unexplained inordinate delay and parpose of sending report promptly—Principal explained.

The Magistrate must be immediately informed of every serious offence so that he may be in a position to act under Section 159 Cr.P.C, if so required. The object of the statutory provision is to keep the Magistrate informed of the investigation so as to enable him to control the investigation and, if necessary, to give appropriate direction. However, it is not that as if every delay in sending the report to the Magistrate would necessarily lead to the inference that the FIR has not been lodged at the time stated or has been ante-timed or ante-dated or the investigation is not fair and forthright. In a given case, there may be an explanation for delay. An unexplained inordinate delay in sending the copy of the FIR to the Ilaqa Magistrate may affect the prosecution case adversely. However, such an adverse inference may be drawn on the basis of attending circumstances involved in a case. **[Jafaruddin and Other v. State of Kerala, (2022) 3 S.C.C. (Cri.)436]**

S. 378 – Appeal against acquittal – Relevant consideration and scope of reversal of acquittal – Principal reiterated.

While dealing with an appeal against acquittal by invoking Section 378 Cr.PC, the appellate court has to consider whether the trial court's view can be termed as a possible one, particularly when evidence on record has been analysed. The reason is that an order of acquittal adds up to the presumption of innocence in favour of the accused. Thus, the appellate court has to be relatively slow in reversing the order of the trial court rendering acquittal. Therefore, the presumption in favour of the accused does not get weakened but only strengthened. Such a double presumption that enures in favour of the accused has to be disturbed only by thorough scrutiny on the accepted legal parameters.

General principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal are:

1. An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.
2. The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.
3. Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

4. An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.
5. If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.
6. Only in cases where conclusion recorded by the trial court is not a possible view, then only the High Court can interfere and reverse the acquittal to that of conviction. If the view taken by the trial court is a "possible view", the High Court ought not to reverse the acquittal to that of the conviction.
7. If the "possible view" of the trial court is not agreeable for the High Court, even then such "possible view" recorded by the trial court cannot be interdicted. So long as the view of the trial court can be reasonably formed, regardless of whether the High Court agrees with the same or not, verdict of cannot be interdicted and the High Court cannot supplant over the view of the trial court. **[Jafaruddin and Oth. V. State of Kerala, (2022)3 S.C.C. (Cri.)436]**

S.161 – Delay in recording statement by Police – Effect and necessity of explanation.

The investigating officer is expected to kick start his investigation immediately after registration of a cognizable offence. An inordinate and unexplained delay may be fatal to the prosecution's case but only to be considered by the court, on the facts of each case. There may be adequate circumstances for not examining a witness at an appropriate time. However, non-examination of the witness despite being available may call for an explanation from the investigating officer. It only causes doubt in the mind of the court, which is required to be cleared.

Similarly, a statement recorded, the investigation report is expected to be sent to the jurisdictional Magistrate at the earliest. A long, unexplained delay, would give room for suspicion. **[Jaffaruddin and oth. V. State of Kerala, (2022) 3 S.C.C (CRI.) 436]**

S. 439 – Grant of bail – Duty of court and relevant Considerations needed to he kept in mind, reiterated.

It will be beneficial at this stage to recapitulate the principles that a Court must bear in mind while deciding an application for grant of bail. This Court in Prasanta Kumar Sarkar v. Ashis Chatterjee[1]3, after taking into account several precedents, elucidated the following.

"9.... However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are.

i. whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
ii. nature and gravity of the accusation;
iii. severity of the punishment in the event of conviction;
iv. danger of the accused absconding or fleeing, if released on bail:
v. character, behaviour, means, position and standing of the accused;
vi. likelihood of the offence being repeated;
vii. reasonable apprehension of the witnesses being influenced; and
viii. danger, of course, of justice being thwarted by grant of bail. **[Jagjeet Singh v. Ashish Mishra @ Manu and another (2022)3 S.C.C (Cri.) 560]**

Interim Bail, Quashing of FIR or Clubbing of Investigation (Section 439 Cr.P.C., Article 32, 226 Constitution of India)

Hon'ble Apex Court held that the courts while imposing bail conditions must balance liberty of accused and necessity of a fair trial as Section 438(2) stipulates that the High Court or the Court of Sessions can direct a person to be released on conditional bail. The bail condition imposed by the court must not only have a nexus to the purpose that they seek to serve but must also be proportional to the purpose of imposing them.

The brief facts were as such that complaints were filed against accused Journalist arising from posts made by him in social media platform. It was held that the blanket anticipatory order preventing him from tweeting cannot be made as it would be disproportionate to purpose of imposing conditions on bail and would tantamount to a gag order and this would also be violative of freedom of speech and expression and freedom to practice profession.

Tweets would out by accused were subject matter of FIRs registered in Delhi and police stations within different district of Uttar Pradesh under the provision of Section 153a, 295a, 298 & 505 of IPC and Section 67 of I.T. Act. It was held that as accused is subjected to sustained investigation by Delhi Police, there is no

justification for deprivation of liberty of accused to persist any further and to keep accused in continued custody.

Police Officers have a duty to apply their mind to case and ensure that conditions in Section 41Cr.P.C. are met before they conduct an arrest, when power to arrest is exercised without application of mind and without due regard to law, it amounts to an abuse of power. It was also held investigation by Delhi Police in concerned FIRs pertained to offences of cognate nature to those invoked in FIRs lodged in Police Station in Uttar Pradesh. It was held that overlapping in FIRs emphasizes need for consolidated investigation. Hence, all FIRs registered against accused were directed to be transferred for investigation to Special Cell of Delhi Police. The accused enlarged on interim bail. **(Mohammed Zobair v. State of NCT of Delhi, 2022 Cri.L.J. 3665 :** AIR Online **2022 SC 1135**)

Section 226, 227, 228 Cr.P.C., Framing of Charge, Duty of Court

In a matter related to Section 302, 304 part II IPC Hon'ble Supreme Court discussed in detail the validity of discharge as the trial Court discharged accused u/s 302 and framed charges u/s 304 part II of IPC by merely relying upon postmortem report. It was held that High Court also overlooked such fundamental infirmity and affirmed order of Trial Court. Hon'ble Apex Court held that-

"Section 226 of the CrPC, over a period of time has gone, in oblivion. Our understanding of the provision of Section 226 of the CrPC is that before the Court proceeds to frame the charge against the accused, the Public Prosecutor owes a duty to give a fair idea to the Court as regards the case of the prosecution.

This Court in the case of Union of India v. Prafulla Kumar Samal and another, (1979) 3 SCC 4, considered the scope of enquiry a judge is required to make while considering the question of framing of charges. After an exhaustive survey of the case law on the point, this Court, in paragraph 10 of the judgment, laid down the following principles:

"(1) That the Judge while considering the question of framing the charges under section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be, fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to

some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under section 227 of the Code the Judge which under the present Code is a senior and experienced Judge cannot act merely as a Post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."

There are several other judgments of this Court delineating the scope of Court's powers in respect of the framing of charges in a criminal case, one of those being Dipakbhai Jagdishchndra Patel v. State of Gujarat, (2019) 16 SCC 547, wherein the law relating to the framing of charge and discharge is discussed elaborately in paragraphs 15 and 23 reply and the same are reproduced as under:

"15. We may profitably, in this regard, refer to the judgment of this Court in State of Bihar v. Ramesh Singh wherein this Court has laid down the principles relating to framing of charge and discharge as follows:

"4…..Reading Sections 227 and 228 together in juxtaposition, as they have got to be, it would be clear that at the beginning and initial stage of the trial the truth, veracity and effect of the evidence which the prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under Section 227 or Section 228 of the Code. At that stage the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of

deciding prima facie whether the court should proceed with the trial or not. If the evidence which the prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial…."

If the scales of pan as to the guilt or innocence of the accused are something like even at the conclusion of the trial, then, on the theory of benefit of doubt the case is to end in his acquittal. But if, on the other hand, it is so at the initial stage of making an order under Section 227 or Section 228, then in such a situation ordinarily and generally the order which will have to be made will be one under Section 228 and not under Section 227."

"At the stage of framing the charge in accordance with the principles which have been laid down by this Court, what the Court is expected to do is, it does not act as a mere post office. The Court must indeed sift the material before it. The material to be sifted would be the material which is produced and relied upon by the prosecution. The sifting is not to be meticulous in the sense that the Court dons the mantle of the Trial Judge hearing arguments after the entire evidence has been adduced after a full-fledged trial and the question is not whether the prosecution has made out the case for the conviction of the accused. All that is required is, the Court must be satisfied that with the materials available, a case is made out for the accused to stand trial. A strong suspicion suffices. However, a strong suspicion must be founded on some material. The material must be such as can be translated into evidence at the stage of trial. The strong suspicion cannot be the pure subjective satisfaction based on the moral notions of the Judge that here is a case where it is possible that accused has committed the offence. Strong suspicion must be the suspicion which is premised on some material which commends itself to the court as sufficient to entertain the prima facie view that the accused has committed the offence."

" In Sajjan Kumar v. CBI [(2010) 9 SCC 368 : (2010) 3 SCC (Cri) 1371] , this Court had an occasion to consider the scope of Sections 227 and 228 CrPC. The principles which emerged there from have been taken note of in para 21 as under: (SCC pp. 37677)

"On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:

(i) The Judge while considering the question of framing the charges under Section 227 CrPC has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima

facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

(ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.

(iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging there from taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to dis charge the accused and at this stage, he is not to see whether the trial will end in conviction or ac quittal."

The exposition of law on the subject has been further considered by this Court in State v. S. Selvi, (2018) 13 SCC 455 : (2018) 3 SCC (Cri) 710, followed in Vikram Johar v. State of Uttar Pradesh, (2019) 14 SCC 207 : 2019 SCC OnLine SC 609 : (2019) 6 Scale 794.

Discussing the duty of Trial Court while framing the charges Hon'ble Apex Court also held in this particular case that –

"Once the trial court decides to discharge an accused person from the offence punishable under Section 302 of the IPC and proceeds to frame the lesser charge for the offence punishable under Section 304 Part II of the IPC, the prosecution thereafter would not be in a position to lead any evidence beyond the charge as

framed. To put it otherwise, the prosecution will be thereafter compelled to proceed as if it has now to establish only the case of culpable homicide and not murder. On the other hand, even if the trial court proceeds to frame charge under Section 302 IPC in accordance with the case put up by the prosecution still it would be open for the accused to persuade the Court at the end of the trial that the case falls only within the ambit of culpable homicide punishable under Section 304 of IPC. In such circumstances, in the facts of the present case, it would be more prudent to permit the prosecution to lead appropriate evidence whatever it is worth in accordance with its original case as put up in the charge-sheet. Such approach of the trial court at times may prove to be more rationale and prudent.

In view of the aforesaid discussion, the order of the High Court as well as the order of the trial court deserve to be set aside.

In the result, this appeal succeeds and is hereby allowed. The orders passed by the High Court and the trial court are hereby set aside. The trial court shall now proceed to pass a fresh order framing charge in accordance with law keeping in mind the observations made by this Court.

We clarify that we have otherwise not expressed any opinion on the merits of the case. The observations in this judgment are absolutely prima facie and relevant only for the purpose of deciding the legality and validity of the order discharging the accused persons of the offence of murder punishable under Section 302 of the IPC. We once again clarify that ultimately it is for the trial court to take an appropriate decision as regards the nature of the offence at the end of the trial."

Thus, Hon'ble Court set a side order discharging accused u/s 302 IPC. The appeal was allowed. **(Gulam Hasan Beigh v. Mohammad Maqbol Magrey, 2022 Cri.L.J. 4398: AIR Online 2022 SC 1130)**

FAMILY LAW

Hindu Law- Ancestral Property- Hindu Undivided Family –Alienation of some portion of property by the Father/ Karta of Family to the stranger through execution of gift-deed without consent of co-parceners validity.
Limitation Act, 1963, Article 109 –Scope-Held, Article 109 is the special article to apply where alienation of the father is challenged by the son and the property is ancestral and parties are governed by Mitakshara law.

Article 58 of the Second Schedule to the Limitation Act provides for the period of limitation to file a suit to obtain any other declaration. The period of limitation under this article is three years from the date when the right to sue first accrues. It is a residuary article governing all those suits for declaration which are not specifically governed by any other articles in the Limitation Act. Article 109 is

the special Article to apply where the alienation of the father is challenged by the son and the property is ancestral and the parties are governed by Mitakshara law. Generally, where a statute contains both general provision as well as specific provision, the later must prevail. Therefore, Article 58 has no application to the instant case.

It is trite law that Karta/Manager of a joint family property may alienate joint family property only in three situations, namely, (i) legal necessity (ii) for the benefit of the estate and (iii) with the consent of all the coparceners of the family. In the instant case, the alienation of the joint family property under Ex.P1 was not with the consent of all the coparceners. It is settled law that where an alienation is not made with the consent of all the coparceners, it is voidable at the instance of the coparceners whose consent has not been obtained (See: Thimmaiah and Ors. Vs. Ningamma and Anr.1). Therefore, the alienation of the joint family property in favour of the second defendant was voidable at the instance of the plaintiff whose consent had not been obtained as a coparcener before the said alienation.

16. In view of the above, we are of the view that the settlement deed/gift deed dated 22.03.1980 (Ex.P1) executed by the first defendant in favour of the second defendant was rightly declared as null and void by the first Appellate Court and the High Court. **[K.C. Laxmana vs. K.C. Chandrappa Gowda and another, 2022 (40) LCD 1874 (SC)]**

HINDU SUCCESSION ACT, 1956

Family and Personal Laws - Hindu Succession Act, 1956- Ss. 4 and 5- Faridkot Princely State - Inheritance Rule of primogeniture -Applicability - Held, rule of primogeniture is not applicable to erstwhile Faridkot Princely State - In any case, held, on merger of Faridkot Princely State with Dominion of India, rule of primogeniture, if any, ceased to exist on account of Act of State - Hence, held, succession to properties of Ruler of erstwhile Faridkot Princely State would be by principles of intestate succession

Family and Personal Laws - Hindu Succession Act, 1956- Ss. 4, 5 and 8- Succession to properties of Ruler of erstwhile Faridkot Princely State found to be by principles of intestate succession as Law of Primogeniture, not applicable (see Shortnote A) - Will executed by mother of Ruler of erstwhile Faridkot Princely State, who was alive at time of death of the Ruler, her son- Share to which mother of the Ruler succeeded and efficacy of the will executed by her - Said will having been found valid by High Court, held, the legatees thereunder would succeed to proportionate share of the testatrix on basis of the will executed by her - Testatrix, mother of the Ruler was alive at time of death of Ruler and she being one of first class heirs of Ruler would have succeeded to proportionate share in estate/properties

of late Raja. **(Maharani Deepinder Kaur (since deceased) through legal representatives and others v. Rajkumari Amrit Kaur and others, (2022) 9 SCC 658)**

HUMAN AND CIVIL RIGHTS

Penal Code, 1860-S. 302 or S. 304 [S. 300 Exception 2] and Ss. 96 to 103-Alleged smuggler shot dead by BSF Constable on patrol duty in self- defence, when armed intruders (of whom deceased was a member) advanced menacingly towards him ready to launch assault on him.

Penal Code, 1860 - S. 100 - Right of private defence of body Circumstances stretching such right to the extent of voluntarily causing death. It was held that claim such a right, the accused must be able to demonstrate that the circumstances were such that there existed a reasonable ground to apprehend that he would suffer grievous hurt that would even cause death. Thus, necessity of averting an impending danger was held to be the core criteria for exercising such a right.

Sections 96 to 103 of Indian Penal Code, 1860 - Doctrine of right of private defence -Principles underlying such doctrine, summarized. **(Ex-Ct. Mahadev v. Director General, Border Security Force and others, (2022) 8 SCC 502)**

INCOME TAX ACT

Income Tax Act, 1961-Ss. 260-A, 269 and 120- Appropriate High Court for filing appeal or reference against order of ITAT Bench exercising jurisdiction over more than one State - Determination of - Held, appellate jurisdiction of High Court under S. 260-A is exercisable by a High Court within whose territorial jurisdiction the assessing officer is located

Income Tax Act, 1961-Ss. 260-A, 269, 120 and 127-Administrative transfer order under S. 127, whereby case of an assessee gets transferred from an assessing officer in one State to another assessing officer, situated in another State under jurisdiction of a different High Court Appropriate High Court for filing appeal or reference against an order of ITAT Bench exercising jurisdiction over more than one State.

When case(s) of an assessee are transferred in exercise of power under S. 127 of the 1961 Act, held, High Court within whose jurisdiction the transferor assessing officer i.e. the original assessing officer who has passed the order under S. 127, shall continue to exercise jurisdiction of appeal - This principle is applicable even if transfer is under S. 127 for same assessment year(s) Jurisdiction of a High Court is not dependent on location of ITAT, as sometimes ITAT Bench exercises jurisdiction

over plurality of States-Nor would the jurisdiction of the High Court be affected by the location of the transferee assessing officer

Income Tax Act, 1961-S. 127(4) Expln.-Expression "case" in, held, does not include proceedings before ITAT or before a High Court - Words and Phrases-"Case"

Interpretation of Statutes Particular Statutes or Provisions - Judicial remedies/Judicial jurisdictional related statutes - Interpretation of While interpreting a judicial remedy, a constitutional court should not adopt an approach where identity of appellate forum would be contingent upon or vacillates subject to exercise of some other power Binding nature of decisions of an appellate court established under a statute on subordinate courts and tribunals within territorial jurisdiction of State, is a larger principle involving consistency, certainty and judicial discipline, and it has a direct bearing on rule of law- This need for order and consistency in decision making must inform the Court's interpretation of judicial remedies-Income Tax Act, 1961, Ss. 260-A, 269 and 127

Practice and Procedure - Transfer Transfer of case from one judicial forum to another judicial forum, without intervention of a court of law-Held, is against independence of judiciary - This is true, particularly, when such a transfer can occur in exercise of pure executive power Thus, - held, such non-judicial transfer of the case would not alter the judicial forum which has jurisdiction over the case concerned. **(Principal Commissioner of Income Tax-I, Chandigarh v. ABC Papers Limited, (2022) 9 SCC 1)**

INDIAN EVIDENCE ACT, 1872

S.27 R/W Ss. 24 to 26 --- Recovery evidence scope of admissibility U/S 27 – Duty of prosecution and court – Principles summarized.

Admissibility under Section 27 is relatable to the information pertaining to a fact discovered. This provision merely facilitates proof of a fact discovered in consequence of information received from a person in custody, accused of an offence. Thus, it incorporates the theory of "*confirmation by subsequent facts*" facilitating a link to the chain of events. It is for the prosecution to prove that the information received from the accused is relatable to the fact discovered. The object is to utilise it for the purpose of recovery as it ultimately touches upon the issue pertaining to the discovery of a new fact through the information furnished by the accused. Therefore, Section 27 is an exception to Sections 24 to 26 meant for a specific purpose and thus be construed as a proviso.

The onus is on the prosecution to prove the fact discovered from the information obtained from the accused. This is also for the reason that the information has been

obtained while the accused is still in the custody of the police. Having understood the aforesaid object behind the provision, any recovery under Section 27 will have to satisfy the court's conscience. One cannot lose sight of the fact that the prosecution may at times take advantage of the custody of the accused, by other means. The court will have to be conscious of the witness's credibility and the other evidence produced when dealing with a recovery under Section 27 of the Evidence Act**. [Jafarudheen and Oth. v. State of Kerala, (2022) 3 S.C.C (Cri.) 436]**

Section 32(1) of the Evidence Act, 1872: Dying declaration - When sufficient to ground conviction.

The "dying declaration" is the last statement made by a person at a stage when he is in serious apprehension of his death and expects no chances of his survival. At such time, it is expected that a person will speak the truth and only the truth. Normally in such situations the courts attach the intrinsic value of truthfulness to such statement. Once such statement has been made voluntarily, it is reliable and is not an attempt by the deceased to cover up the truth or falsely implicate a person, then the courts can safely rely on such dying declaration and it can form the basis of conviction. More so, where the version given by the deceased as dying declaration is supported and corroborated by other prosecution evidence, there is no reason for the courts to doubt the truthfulness of such dying declaration.

Multiple dying declarations, including oral dying declarations and significant contradictions and inconsistencies found. Hence it was held that accused entitled to benefit of doubt and acquitted. **(Uttam v. State of Maharashtra, (2022) 8 SCC 576)**

Sections **300, 302, 307, 149 IPC, Section 3, 118 Evidence Act**

Hon'ble Apex Court stated the brief of this case as under-

"The prosecution case in brief is thus:

The marriage of two daughters of deceased Prakash was to be solemnized on 1st May 2002. On 27th April 2002 at around 08.00 am, when deceased Prakash and his wife Kripa were going to extend invitation to their relatives, near the house of accused Deepi, all the accused persons who were hiding themselves inside the house, came out carrying weapons. Accused Deepi and Kanhaiya were having farsa with them whereas accused Khema @ Khem Chandra was having a club. Accused Jasram, Balveer and Mahaveer were having country made pistols with them. All of them started assaulting deceased Prakash and threw him on the brick road. Inder (PW2), brother of deceased Prakash, his sister Omwati and wife Kripa came forward to save the life of deceased Prakash. However, accused persons assaulted them as well. In the said assault, Inder (PW2) suffered gunshot injury. On the basis of information

given by Omveer (PW1), brother of deceased Prakash, an FIR came to be lodged on 27th April 2002 at 10.10 am. On the basis of the said FIR, a crime for the offences punishable under Sections 147, 148, 149, 307, 302 and 506 of the IPC came to be registered against the accused persons. After completion of investigation, a charge-sheet came to be filed in the trial court.

Since the case was triable exclusively by the Sessions Judge, it was committed to the learned Sessions Judge. The learned Sessions Judge framed the charges against the accused persons for the offences punishable under Sections 147, 148, 302 read with 149 and 307 read with 149 of the IPC. Charge was also framed against accused Balveer under Section 25 of the Arms Act, 1959 (hereinafter referred to as the "Arms Act") and against accused Deepi under Section 4/25 of the Arms Act. The accused persons pleaded not guilty and claimed to be tried. At the conclusion of the trial, the trial court convicted the appellants as aforesaid. Being aggrieved thereby, the appellants had filed appeals before the High Court, which were also dismissed, thereby confirming the judgment and order of conviction and sentence passed by the trial court. Being aggrieved thereby, the appellants have approached this Court."

Hon'ble Apex Court while appreciating the testimony of interested witness in the matter of murder and attempt to murder by unlawful assembly observed that when deceased along with his brothers went to extend invitations to relatives the accused persons assaulted them and as a result death was caused deceased and serious injuries were caused to his brother. One brother of deceased inside house at the time of incident and could not witnessed the incident. Testimony of injured eye witness has serious discrepancies and inconsistencies as to the regard of time of injuries and medical examination, doctor changed his stance on several occasions and his testimony was found totally contrary to that of the brother of the deceased. It was held that the conviction cannot be based on the sole testimony of injured witness if it is not reliable. It was also held that accused was entitled to benefit of doubt.

It was also held that there were no independent 'panchas' of seizure memo. The memorandum statement of accused as required to be recorded under section 27 was also not brought on record. Further when two co-accused surrendered the search for weapon was made but I.O. could not recover any weapon. However ten days later recoveries alleged to have been made at the instance of co-accused. The recovery memo was not signed by any independent panch witness. Thus the recovery witnesses were held unreliable.

It was also seen that immediately after the incident brothers of deceased including injured witness informed about incident to police on telephone. The third brother of deceased was neither examined nor station diary entry mentioned about any telephonic messages. Injured witness also admitted that incident was witnesses by other local residents, but none of them were examined as such.

Thus the appeals were allowed. Thus Sessions Trial were quashed and set-a-side. **(Khema alias Khem Chandra Etc. v. State of Uttar Pradesh, 2022 Cri.L.J. 4083: AIR Online 2022 SC 1247**)

Section 376, 302 IPC, Section 3 Evidence Act

In the instant matter accused allegedly committed rape of minor victim aged 6 years, his niece and later murdered her. Hon'ble Allahabad High Court discussed the circumstantial evidence in this matter and found several contradiction regarding place where dead body was first seen by police, person who took dead body and place to which dead body was taken. It was also found that as to whether dead body was ever taken to police station and if so how, when and why. There were different version regarding date time and place of conduct of inquest. There were three different versions regarding colour of salwar of victim and two version regarding presence of blood on salwar. There were no report of Forensic Science Laboratory.

It was also held that there was delay in forwarding the FIR regarding offence rape and murder which was registered on 08-03-2012 and was received by Court of Chief Judicial Magistrate on 13-03-2012. No question was put in cross examination to investigating officer about delay it is not even known as to who took first information report and submitted before jurisdictional court. It was held that delay of five days in transmitting FIR to jurisdictional court fatal.

Prosecution did not care to subject accused to examination by medical practitioner. Report of FSL to whom salwar was forwarded, was also not obtained by investigating officer failure to obtain the report of FSL on blood, semen, stain on salwar worn by victim, compound failure of prosecution.

It was held that investigating agency failed to conduct investigation properly; prosecution has done injustice to family of victim by fixing culpability upon accused without any shred of evidence which would stand scrutiny. Accused was so poor that he could not afford to engage lawyer after his repeated requests to court of District & Sessions Judge, service of an advocate was provided as amicus. It was held that responsibility of court in such cases becomes more onerous the guilt of accused was not established beyond the reasonable doubt. The chain of circumstances where doubtful hence the conviction was set aside. (**Chotkau v. State of Uttar Pradesh, 2022 Cri.L.J. 4579 : AIR Online 2022 SC 337)**

Section 302, 149 IPC Section 3 Evidence Act

The matter was regarding an allegation that 22 accused armed with deadly weapons trespass to house of deceased and committed murder in furtherance of

common objects. There was conviction of only 2 out of 22 accused that too only for offence of murder.

There was logic of multiple FIRs regarding offence of murder. The police officer claimed that after receiving oral complaint of informant he recorded FIR late at night and sent same to the court. According to the same officer wife of deceased also gave written complaint at hospital on the basis of which he registered second FIR that included various allegation including that of racial abuse. Rather no explanation was provided as to why 2 FIRs were lodged. Police Officer was unable to explain that what happen to second FIR. This was fatal the prosecution case.

The prosecution case rested on ocular testimony of mother and maternal uncle of deceased. Both the witness deposed about accused assaulting decease after trespassing in house. It was held that High Court rightly held that testimony of eye witnesses cannot be rejected by invoking principle of falsus in uno falsus in omnibus. There were glaring contradiction, however found in testimonies of witnesses as regards type of material object used and roll of each accused which was the very foundation of prosecution case. Thus, stood shaken due to such contradiction. Hence, the testimony of eye witness was held unreliable. It was also held by Hon'ble Apex Court that trial court had disbelieved evidence of eye witnesses and acquitted all accused person including appellants. To overturn such verdict of acquittal, High Court had to come up with more stronger and cogent reasons than reasons already recorded. Hence it was held that the order of conviction by High Court cannot be set to be in accordance with law and appellant were entitled for acquittal. **(Ramabora alias Ramaboraiah and another v. State of Karnataka, 2022 Cri.L.J. 4775: AIR Online 2022 SC 1242)**

INDIAN PENAL CODE, 1860

Secs. 381, 120B—Evidence Act, S. 3—Theft in furtherance of criminal conspiracy—Proof

In the decision of State of Kerala v. P. Sugathan and Anr., (2000) 8 SCC 203, this Court noted that an agreement forms the core of the offence of conspiracy, and it must surface in evidence through some physical manifestation:

"12. ...As in all other criminal offences, the prosecution has to discharge its onus of proving the case against the accused beyond reasonable doubt. ...A few bits here and a few bits there on which the prosecution relies cannot be held to be adequate for connecting the accused with the commission of the crime of criminal conspiracy...

13. ...The most important ingredient of the offence being the agreement between two or more persons to do an illegal act. In a case where criminal

conspiracy is alleged, the court must inquire whether the two persons are independently pursuing the same end or they have come together to pursue the unlawful object. The former does not render them conspirators but the latter does. For the offence of conspiracy some kind of physical manifestation of agreement is required to be established. The express agreement need not be proved. The evidence as to the transmission of thoughts sharing the unlawful act is not sufficient..." (emphasis supplied)

The charge of conspiracy alleged by the prosecution against the Appellant must evidence explicit acts or conduct on his part, manifesting conscious and apparent concurrence of a common design with A-1 and A-2. In State (NCT of Delhi) v. Navjot Sandhu, (2005) 11 SCC 600 this Court held:

"101. One more principle which deserves notice is that the cumulative effect of the proved circumstances should be taken into account in determining the guilt of the accused rather than adopting an isolated approach to each of the circumstances. Of course, each one of the circumstances should be proved beyond reasonable doubt. Lastly, in regard to the appreciation of evidence relating to the conspiracy, the Court must take care to see that the acts or conduct of the parties must be conscious and clear enough to infer their concurrence as to the common design and its execution." (emphasis supplied)

In accepting the story of the prosecution, the Trial Court, as well as the High Court, proceeded on the basis of mere suspicion against the Appellant, which is precisely what this Court in Tanviben Pankajkumar Divetia v. State of Gujarat, (1997) 7 SCC 156 had cautioned against:

"45. The principle for basing a conviction on the basis of circumstantial evidences has been indicated in a number of decisions of this Court and the law is well settled that each and every incriminating circumstance must be clearly established by reliable and clinching evidence and the circumstances so proved must form a chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn and no other hypothesis against the guilt is possible. This Court has clearly sounded a note of caution that in a case depending largely upon circumstantial evidence, there is always a danger that conjecture or suspicion may take the place of legal proof. The Court must satisfy itself that various circumstances in the chain of events have been established clearly and such completed chain of events must be such as to rule out a reasonable likelihood of the innocence of the accused. It has also been indicated that when the important link goes, the chain of circumstances gets snapped and the other circumstances cannot, in any manner, establish the guilt of the accused beyond all reasonable doubts. It has been held that the Court has to be watchful and avoid the danger of allowing the suspicion to take the place of legal proof for sometimes, unconsciously it may happen to be a short step between moral certainty and legal proof. It has been

indicated by this Court that there is a long mental distance between "may be true" and "must be true" and the same divides conjectures from sure conclusions. (Jaharlal Das v. State of Orissa, (1991) 3 SCC 27)"

It is not necessary that there must be a clear, categorical and express agreement between the accused. However, an implied agreement must manifest upon relying on principles established in the cases of circumstantial evidence. Accordingly, in the majority opinion of Ram Narayan Popli v. CBI, (2003) 3 SCC 641 this Court had held:

"354. ... For the offence of conspiracy some kind of physical manifestation of agreement is required to be established. The express agreement need not be proved. The evidence as to the transmission of thoughts sharing the unlawful act is not sufficient..." **[Ram Sharan Chaturvedi vs. State of M.P., AIR 2022 SC 4002]**

Penal Code, 1860 S. 302 Murder trial - Alleged money transaction between appellant-accused and deceased leading to dispute between them, resulting in appellant allegedly murdering deceased using firearm. The case based on circumstantial evidence Links in the chain of circumstances not found established. Hence, acquittal of appellant by trial court, restored.

It was held that while dealing with case of circumstantial evidence, motive assumes significance though, motive may pale into insignificance in case involving eyewitnesses and it may not be so when accused is implicated based upon circumstantial evidence.

It was also held that report of ballistic expert is obviously scientific evidence in nature of opinion-Such evidence is required to be used along with other substantive evidence available. **(Ravi Sharma v. State (Government of NCT of Delhi) and another, (2022) 8 SCC 536)**

Sections 86 and 302 of Penal Code, 1860 - Patricide (killing of father) - Defence of being under the influence of liquor. Necessity of satisfaction of Mere intoxication, held, not enough to attract S. 86.

Section 300 Exception 4 Murder or culpable homicide: Benefit of S. 300 Exception 4 Non-entitlement if act is done in a cruel and brutal manner taking advantage of the situation even if there was no premeditation. **(Chherturam alias Chainu v. State of Chhattisgarh, (2022) 9 SCC 571)**

Penal Code, 1860 - S. 411 r/w S. 24 - Dishonestly receiving stolen property - Ingredients for establishing offence under S. 411 r/w S. 24- What are Failure of prosecution in establishing mens rea or knowledge that property in question was stolen property.

Penal Code, 1860 S. 411 r/w S. 24 Receiving stolen property Confession of co-accused, resulting in recovery of stolen property from possession of appellant Held, not sufficient to convict the appellant, when the prosecution had not established essential ingredient of mens rea or knowledge of the appellant that such goods were stolen property.

It has been held that interference with concurrent findings of facts is not impermissible, when the fundamental evidence found not available against the appellant and the law found leaning in appellant's favour. It was held that in such situation, notwithstanding the concurrent finding, the Supreme Court has to exercise corrective jurisdiction as the circumstances justify. **(Shiv Kumar v. State of Madhya Pradesh, (2022) 9 SCC 676)**

Penal Code, 1860-Ss. 299 and 300-Culpable homicide, or, murder - Determination of - Principles for Clarified-Use of the word "likely" in several places in S. 299 and absence thereof in S. 300- Significance of, explained-Intention to cause death- Circumstances (non-exhaustive) from which may be inferred - Words and Phrases - "Likely"

Penal Code, 1860 Ss. 302 or 304, 323, 324, 341 and 427 r/w S. 34 -Murder or culpable homicide-Absence of premeditation - Incident of assault by means of sticks and a brick, resulting in one death and three injured, proved by prompt FIR, recovery of weapons, ocular and medical evidence. Considering entire materials on record, incident, held, occurred without premeditation of mind. Resultantly, proper conviction of the appellants, held, would be under S. 304 Pt. II-Sentence reduced to period already undergone, of 7 years. Conviction and sentence for other offences, maintained. **(Ajmal v. State of Kerala, (2022) 9 SCC 766)**

Penal Code, 1860 - Conviction with aid of S. 34 - When a part of the evidence produced by the prosecution to bring the accused within the fold of S. 34 is disbelieved, held, the remaining part must be examined with adequate care and caution.

Penal Code, 1860 Ss. 302 and 34-Stock eyewitness - Whether can be relied on- Absence of corroborative evidence.

Penal Code, 1860-Ss. 302 and 34 - Related eyewitness - When not believable - Testimony of such witness strong belied by other evidence on record, and several infirmities found therein. **(Shishpal alias Shishu v. State (NCT of Delhi), (2022) 9 SCC 782)**

Sections 302 and 376(2)(i) of Indian Penal Code, 1860 - Child rape and murder -Defect in investigation, such as non-conducting DNA profiling in terms of

S. 53-A CrPC - Effect and duty of court. When links in the chain of circumstantial evidence fully establish guilt of the accused - Conviction confirmed.

As appellant found guilty of committing brutal rape and murder of an eight-year-old girl child who was daughter of his own cousin, held, he is punishable with life imprisonment, with actual imprisonment for minimum period of 30 (thirty) yrs without application of the provisions of premature release/remission.

Dispute over age of victim - Mother, maternal grandfather and maternal grandmother of victim, deposed that deceased was aged 7-8 years. Mother further deposed that the deceased was studying in Class I in certain government school. Doctor also deposed that deceased appeared to be of 8 years old. School record brought on record by the Headmistress in charge of the Government School also supported the said claim of the prosecution. Resultantly, challenge made by the defence as to age of the victim held not sustainable (Evidence Act, 1872, S. 35).

Penal Code, 1860-S. 302- Cause of death - Evidentiary value of medical opinion and duty of court-Held, though the opinion of the doctor given with the support of post-mortem report is entitled to get great weight, the court cannot abdicate its function as the ultimate opiner, because taking into account the ocular and medical evidence and upon their deeper analysis, the court has to form and record its opinion as to the cause of death for the purpose of finding out whether the death involved in a given case is accidental or suicidal or homicidal, in nature (Evidence Act, 1872, S. 45).

Life imprisonment with minimum non-remittable term of imprisonment. Appellant held guilty of committing brutal rape and murder of an eight-year-old girl child who was the daughter of his own cousin. This, held, definitely an aggravating circumstance Therefore, death sentence converted to life imprisonment by providing for an actual imprisonment for a period of 30 (thirty) yrs without application of the provisions of premature release/remission

Death sentence - Permissibility, when case based on circumstantial evidence - Held, though rarely, death penalty would be awarded in cases based on circumstantial evidence, but even in such cases existence of exceptional circumstances/special circumstances would make death penalty awardable.

Cross-examination - Repudiation - of suggestion given to witness-Effect of - Held, a suggestion to a witness when repudiated can have no relevance at all in the absence of any material produced, in accordance with law, to prove the factum suggested, certainly, subject to admissibility.

Evidence Act, 1872-S. 6- Doctrine of res gestae Essence of, held, is that a fact which, though not in issue, is so connected with the fact in issue "as to form part of the same transaction" that it becomes relevant by itself. Thus, conduct of the accused after the incident may become admissible under S. 6, though not in issue, if it is so connected with the fact in issue.

Constitution of India – Article 136- Appeal by special leave - Scope of interference, where appellant handed down capital sentence for conviction under S. 302 IPC, based on circumstantial evidence - Held, in such an appeal, unlike in a regular appeal, Supreme Court would not undertake the exercise of an in depth consideration by way of reappreciation of evidence and, normally, in such an appeal only in rare and exceptional cases wherein manifest illegality appears to have infected the impugned judgment (going by the case of the appellant) concerned that Supreme Court will go beyond the stated scope of an appeal by special leave. **(Veerendra v. State of Madhya Pradesh, (2022) 8 SCC 668)**

Penal Code, 1860-Ss. 302, 307 and 328- Testimony of sole surviving victim - When cannot form the sole basis of conviction - Other evidence when coupled with such testimony, when may provide sufficient basis for conviction.

Multiple murders — Deposition of surviving victim, held, could not form sole basis of conviction in present case, as in a number of statements recorded of such witness, name of appellant-accused surfaced only in the last. However, there was other unimpeachable evidence, particularly the recovery evidence, coupled with which, held, conviction of appellant-accused can be confirmed. **(Hajabhai Rajashibhai Odedara v. State of Gujarat, (2022) 9 SCC 75)**

Penal Code, 1860-Ss. 302, 363, 365 and 376(2)(f)-Death sentence- Whether to be confirmed/imposed, or, not, upon application of "crime test", "criminal test" and "rarest of the rare test."

Penal Code, 1860 - Ss. 302, 363, 365 and 376(2)(f) — Death sentence - Scope of reformation and rehabilitation - When can be ruled out - Extremely brutal and merciless rape and murder of physically and mentally challenged minor of about 7-8 yrs- Death sentence, confirmed

Penal Code, 1860-Ss. 302, 363, 365 and 376(2)(f) Circumstantial evidence Last seen evidence Whether established against appellant- accused, of having abducted minor girl Determination of - - Appellant known to parents of abducted minor girl but his name not mentioned in initial missing persons report Relevance, if any

Penal Code, 1860-Ss. 302, 363, 365 and 376(2)(f)- Circumstantial evidence-Recovery and forensic evidence whether established culpability of appellant-accused in abduction, rape and murder of minor. Medical evidence whether established brutal rape and merciless killing of minor victim by appellant-accused.

Penal Code, 1860-Ss. 302, 363, 365 and 376(2)(f) - Death sentence Cases based on circumstantial evidence Concept of "residual doubt", held, not applicable either under Indian law or even under US law

Penal Code, 1860-Ss. 302, 363, 365 and 376(2)(f) - Kidnapping, rape and murder- Challenge as to commission of rape and plea as to absence of intention of killing

Penal Code, 1860-Ss. 302, 363, 365 and 376(2)(f)-Kidnapping, rape and murder of a physically and mentally challenged 7-yr-old girl- Challenge as to mental and physical disabilities of the victim - Held, not sustainable, when the same supported by medical evidence on record and, there held no merit in the defence contention that the certificate issued from school to prove her mental calibre could not be relied upon because the person who issued such certificate was never examined - Crimes Against Women and Children - Protection of Children from Sexual Offences Act, 2012, S. 6

Penal Code, 1860-Ss. 302, 363, 365 and 376(2)(f) - Kidnapping, rape and murder of a physically and mentally challenged 72-yr-old girl - Investigation Challenge as to procedural aspects - Held, not tenable, when chronology of the events and steps in the investigation left nothing to doubt that the investigating officers and other police officers indeed methodically discharged their duties and every step found to be appropriately and punctually taken and all the relevant processes methodically documented and where the charge-sheet swiftly presented to the court with all relevant particulars-Crimes Against Women and Children-Protection of Children from Sexual Offences Act, 2012-S. 6- Criminal Procedure Code, 1973, S. 157

Penal Code, 1860 Ss. 302, 363, 365 & 376(2)(f) - Kidnapping, rape and murder of a physically and mentally challenged 7½-yr-old girl - Investigation - Challenge as to procedural lapse and plea of lack of impartiality and false implication regarding collection of various kinds of evidence against appellant-accused - When not tenable

Penal Code, 1860-Ss. 302, 363, 365 and 376(2)(f) — Kidnapping, rape and murder of a physically and mentally challenged 72-yr-old girl — Right of defence - Plea by accused as to depriving him of such right - Held, not acceptable, when such plea not taken before the courts below and legal aid counsel appointed at the request of the appellant left no stone unturned to defend the appellant and thoroughly cross-examined each and every witness to the minutest and minor details - Constitution of India - Art. 22(1) — Criminal Procedure Code, 1973, S. 304

Penal Code, 1860-S. 376(2)(f) r/w S. 302- Child rape and murder - Conviction under both POCSO and IPC-Held, not barred by S. 42 POCSO

Criminal Procedure Code, 1973 Ss. 235(2) and 354(3) r/w S. 360- Imposition of sentence/death sentence - Mandate of provisions, explained

Penal Code, 1860 S. 302-Life imprisonment Imposition with minimum non-remittable term of imprisonment i.e. with rider that the convict shall not be released

from prison for the rest of his life or shall not be released before serving a particular term-When warranted

Penal Code, 1860-S. 302-Death sentence-Comparative analysis of the case before the Court with other purportedly similar cases - Held, would be in the fitness of the scheme of the Constitution. Comparison will presuppose an identification of a pool of equivalently circumstanced capital defendants. Gravity, nature and motive relating to crime will play a role in this analysis

Constitution of India Arts. 134 and 136 - Regular appeal to Supreme Court against conviction and an appeal by special leave. Regular appeals against any judgment/final order or sentence in a criminal proceeding of High Court to Supreme Court, held, envisaged in relation to the eventualities specified in Article 134 and Section 2 of the 1970 Act. **(Manoj Pratap Singh v. State of Rajasthan, (2022) 9 SCC 81)**

Section 302 of Indian Penal Code, 1860: Sentence/punishment less than imprisonment for life, when accused is convicted for offence punishable under S. 302. It was held to be impermissible, as punishment for murder under S. 302 is death or imprisonment for life and fine. Any punishment less than imprisonment for life under S. 302 would be contrary to S. 302. **(State of Madhya Pradesh v. Nandu alias Nandua, (2022) 9 SCC 184)**

Secs. 498-A, 306—Evidence Act, S. 3—Cruelty and abetment of suicide—Proof—Unnatural death of deceased

While analyzing the provisions of Section 306 IPC along with the definition of abetment under Section 107 IPC, a two-Judge Bench of this Court in Geo Varghese Vs. State of Rajasthan and Another5 has observed as under:-

"13. In our country, while suicide in itself is not an offence as a person committing suicide goes beyond the reach of law but an attempt to suicide is considered to be an offence under Section 309 IPC. The abetment of suicide by anybody is also an offence under Section 306 IPC. It would be relevant to set out Section 306 of the IPC which reads as under :- "306. Abetment of suicide. -If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

14. Though, the IPC does not define the word 'Suicide' but the ordinary dictionary meaning of suicide is 'self-killing'. The word is derived from a modern latin word 'suicidium', 'sui' means 'oneself' and 'cidium' means 'killing'. Thus, the word suicide implies an act of 'self-killing'. In other words, act of death must be

committed by the deceased himself, irrespective of the means adopted by him in achieving the object of killing himself.

15. Section 306 of IPC makes abetment of suicide a criminal offence and prescribes punishment for the same.

16. The ordinary dictionary meaning of the word 'instigate' is to bring about or initiate, incite someone to do something. This Court in the case of Ramesh Kumar Vs. State of Chhattisgarh1 has defined the word 'instigate' as under :- "Instigation is to goad, urge forward, provoke, incite or encourage to do an act."

17. The scope and ambit of Section 107 IPC and its corelation with Section 306 IPC has been discussed repeatedly by this Court. In the case of S.S.Cheena Vs. Vijay Kumar Mahajan and Anr6, it was observed as under:-

> "Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the legislature and the ratio of the cases decided by the Supreme Court is clear that in order to convict a person under Section 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and that act must have been intended to push the deceased into such a position that he committed suicide."

The ingredients of Section 306 IPC have been extensively laid out in M. Arjunan Vs. State, represented by its Inspector of Police7 which are as under: -

"The essential ingredients of the offence under Section 306 I.P.C. are: (i) the abetment; (ii) the intention of the accused to aid or instigate or abet the deceased to commit suicide. The act of the accused, however, insulting the deceased by using abusive language will not, by itself, constitute the abetment of suicide. There should be evidence capable of suggesting that the accused intended by such act to instigate the deceased to commit suicide. Unless the ingredients of instigation/abetment to commit suicide are satisfied, accused cannot be convicted under Section 306 I.P.C."

In order to convict an accused under Section 306 IPC, the state of mind to commit a particular crime must be visible with regard to determining the culpability. With regard to the same, a two-judge bench of this Court in Ude Singh & Ors. Vs. State of Haryana8 observed as under:-

"16. In cases of alleged abetment of suicide, there must be a proof of direct or indirect act/s of incitement to the commission of suicide. It could hardly be disputed that the question of cause of a suicide, particularly in the context of an offence of abetment of suicide, remains a vexed one, involving multifaceted and complex attributes of human behavior and responses/reactions. In the case of accusation for abetment of suicide, the Court would be looking for cogent and convincing proof of the act/s of incitement to the commission of suicide. In the case of suicide, mere

allegation of harassment of the deceased by another person would not suffice unless there be such action on the part of the accused which compels the person to commit suicide; and such an offending action ought to be proximate to the time of occurrence. Whether a person has abetted in the commission of suicide by another or not, could only be gathered from the facts and circumstances of each case.

16.1. For the purpose of finding out if a person has abetted commission of suicide by another; the consideration would be if the accused is guilty of the act of instigation of the act of suicide. As explained and reiterated by this Court in the decisions abovereferred, instigation means to goad, urge forward, provoke, incite or encourage to do an act. If the persons who committed suicide had been hypersensitive and the action of accused is otherwise not ordinarily expected to induce a similarly circumstanced person to commit suicide, it may not be safe to hold the accused guilty of abetment of suicide. But, on the other hand, if the accused by his acts and by his continuous course of conduct creates a situation which leads the deceased perceiving no other option except to commit suicide, the case may fall within the four-corners of Section 306 IPC. If the accused plays an active role in tarnishing the selfesteem and self-respect of the victim, which eventually draws the victim to commit suicide, the accused may be held guilty of abetment of suicide. The question of mens rea on the part of the accused in such cases would be examined with reference to the actual acts and deeds of the accused and if the acts and deeds are only of such nature where the accused intended nothing more than harassment or snap show of anger, a particular case may fall short of the offence of abetment of suicide. However, if the accused kept on irritating or annoying the deceased by words or deeds until the deceased reacted or was provoked, a particular case may be that of abetment of suicide. Such being the matter of delicate analysis of human behaviour, each case is required to be examined on its own facts, while taking note of all the surrounding factors having bearing on the actions and psyche of the accused and the deceased."

To convict a person under Section 306 IPC, there has to be clear mens rea to commit offence. It also requires an active act or direct act which leads deceased to commit suicide finding no other option and the act must be such reflecting intention of the accused to push deceased into such a position that he commits suicide. The prosecution has to establish beyond reasonable doubt that the deceased committed suicide and Appellant No. 1 abetted the commission of suicide of the deceased. In the present case, both the elements are absent.

This Court has time and again reiterated that before convicting an accused under Section 306 IPC, the Court must scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out whether cruelty and harassment meted out to the victim had left the victim with no other alternative but to put an end to her life. It is also to be borne in mind that in

cases of alleged abetment of suicide, there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without their being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of Section 306 IPC is not sustainable. **[Mariano Anto Bruno vs. Inspector of Police, AIR 2022 SC 4994]**

Sec. 302—Evidence Act, Sec. 3—Murder—Circumstantial evidence

At the outset, it is required to be noted that the case rests on the circumstantial evidence. There is no direct evidence by which it can be said that the appellants killed or committed the murder of the deceased. There is no direct evidence recorded indicating involvement of the appellants in the crime and as observed hereinabove, the case of the prosecution is based on the circumstantial evidence. As held by this Court in a catena of decisions, in case of a circumstantial evidence, the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else and the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence. **[Raju @ Rajendra Prasad vs. State of Rajasthan, AIR 2022 SC 4397]**

S. 302 I.P.C. and S. 8 Evidence Act

The matter was related to murder and Hon'ble Apex Court discussed about the circumstantial evidence. It was observed and held that witness deposed about last seen evidence only when family of deceased raised strong suspicion against him. Brother deposed about animosity between parties due to past transactions, however, father deposed that there was no animosity and he was also unaware about the transactions. Motive to kill, was not established. Recovery evidence was not credible, ballistic expert's report not credible. The last seen theory was not established. Recovery of wooden piece of the butt of a gun alongwith cartridges from place of occurrence was also not credible, as many people available near dead body but neither their statements were recorded nor anyone signed recovery memo. There was also discrepancy on mode of travelling to the place from where recovery was made. The credibility of ballistic report was also doubtful with respect to firearm belonging to accused was not corroborated by other substantive piece of evidence. Hence, the link in chain of circumstance was incomplete and the

conviction was set aside. **(Ravi Sharma v. State (Government of NCT of Delhi) and another, 2022 Cri.L.J. 4379: AIR Online 2022 SC 973)**

Ss. 302, 376 (2) (i) and 376 (2)(m) R/W S.376-A (as come into W.E.F. 2013) – Death sentence – non-Mentioning of S.376-A in the charge – when not material.

Since the death of the victim was caused due to the injuries inflicted by the appellant while committing offence under Sections 376(2)(i) and 376(2)(m) IPC, the provisions of Section 376-A IPC would also get attracted which had come into force w.e.f. 3-2-2013 i.e. prior to the alleged incident in question, and which provided for wide range of punishments up to death penalty. The High Court in the impugned order, though made observation in this regard, did not consider it on the ground that the charge under Section 376-A IPC was not framed by the Sessions Court against the accused.

However, it may be noted that in view of Section 215 Cr.PC an omission to state the offence or its particulars in the charge could not be regarded as material, unless the accused was in fact misled by such error or omission, and it had occasioned a failure of justice. In the instant case, the accused was already charged for the offence under Section 302 IPC which is punishable with death or life imprisonment, and was also charged for the offences under Sections 376(2)(i) and 376(2)(m), as covered in Section 376-A IPC, which is also punishable up to death sentence amongst other lesser punishments. Hence, non-mentioning of Section 376-A in the charge could not be said to have misled the accused, nor any failure of justice could be said to have occasioned. **[Mohd. Firoz v. State of M.P., (2022) 3 S.C.C. (Cri.)165]**

Ss. 302 and 376 (2) (i) – Child rape and murder – Defect in investigation, such as non-conducting DNA profiling in terms of S 53A Cr.p.C – Effect of , if any and duty of court.

The function of the criminal courts should not be wasted in picking out the lapses in investigation and by expressing unsavoury criticism against investigating f officers. If offenders are acquitted only on account of flaws or defects in investigation, the cause of criminal justice becomes the victim. Effort should be made by courts to see that criminal justice is salvaged despite such defects in investigation.

Thus, lapse or omission (purposeful or otherwise) to carry out DNA profiling by itself, cannot be permitted to decide the fate of a trial for the offence of rape especially, when it is combined with the commission of the offence of murder as in case of acquittal only on account of such a flaw or defect in the investigation the

cause of criminal justice would become the victim. Even if such a flaw had occurred in the investigation in a given case, the court has still a duty to consider whether the materials and evidence available on record before it, are enough and cogent to prove the case of the prosecution**. [Veerendra v. State of M.P. , (2022) 3 S.C.C (Cri.) 770]**

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

The submission on behalf of the accused that as the original informant – Mahendran has not been examined and that the other independent witnesses have not been examined and that the recovery of the weapon has not been proved and that there is a serious doubt about the timing and place of the incident, the accused are to be acquitted cannot be accepted. Merely because the original complainant is not examined cannot be a ground to discard the deposition of PW1. As observed hereinabove, PW1 is the eye witness to the occurrence at both the places. Similarly, assuming that the recovery of the weapon used is not established or proved also cannot be a ground to acquit the accused when there is a direct evidence of the eye witness. Recovery of the weapon used in the commission of the offence is not a sine qua non to convict the accused. If there is a direct evidence in the form of eye witness, even in the absence of recovery of weapon, the accused can be convicted. Similarly, even in the case of some contradictions with respect to timing of lodging the FIR/complaint cannot be a ground to acquit the accused when the prosecution case is based upon the deposition of eye witness. **[State Through the Inspector of Police vs. Laly @ Manikandan, AIR 2022 SC 5034]**

INTEGRATED GOODS AND SERVICES TAX ACT, 2017

Sections 15 & 16 of the Integrated Goods and Services Tax Act, 2017 - Interest on account of delay in refund - Extent to which can be granted - Interest on delayed refund -Grant of @ 6% p.a. when delay not highly inordinate and matter not covered by proviso to S. 56.

Maintainability of writ petition - Petition seeking interest on tax refund - Issue involved in the appeal was whether High Court was justified in awarding interest @ 9% p.a. on delayed refund of tax (GST). **(Union of India and others v. Willowood Chemicals Private Limited and another, (2022) 9 SCC 341)**

JAMMU AND KASHMIR LAND ACQUISITION ACT, 1990

Sec. 4—Land Acquisition Act, Sec. 23—Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, S.

24(1)(a)—Applicability of—Provisions of 2013 Act shall not apply with respect to lands acquired under provisions of Jammu and Kashmir Act, 1990.

In the case of Indore Development Authority Vs. Manoharlal and Ors.; (2020) 8 SCC 129, it is observed and held by this Court that:

(i) Lapse of acquisition takes place only in case of default by the authorities acquiring the land, not caused by any other reason or order of the court;

(ii) If it was not possible for the acquiring authorities, for any reason not attributable to them or the Government, to take requisite steps, the period has to be excluded;

(iii) In case the authorities are prevented by the court's order, obviously, as per the interpretation of the provisions such period has to be excluded;

(iv) The intent of the Act, 2013 is not to benefit landowners only. The provisions of Section 24 by itself do not intend to confer benefits on litigating parties as such, while as per Section 114 of the Act, 2013 and Section 6 of the General Clauses Act the case has to be litigated as per the provisions of the Act, 1894;

(v) It is not the intendment of the Act, 2013 that those who have assailed the acquisition process should get benefits of higher compensation as contemplated under Section 24;

(vi) It is not intended by the provisions that in case, the persons, who have litigated and have obtained interim orders from the Civil Courts by filing suits or from the High Court under Article 226 of the Constitution should have the benefits of the provisions of the Act, 2013 except to the extent specifically provided under the Act, 2013;

(vii) In cases where some landowners have chosen to take recourse to litigation and have obtained interim orders restraining taking of possession or orders of status quo, as a matter of practical reality it is not possible for the authorities or the Government to take possession or to make payment of compensation to the landowners. In several instances, such interim orders also have impeded the making of an award;

(viii) The litigation initiated by the landowners has to be decided on its own merits and the benefits of Section 24(2) should not be available to the litigants in a straightjacket manner. In case there is no interim order, they can get the benefits they are entitled to, not otherwise. Delays and dilatory tactics and sometimes wholly frivolous pleas cannot result in benefitting the landowners under subsection (1) of Section 24 of the Act, 2013;

(ix) Any type of order passed by this Court would inhibit action on the part of the authorities to proceed further, when a challenge to acquisition is pending;

(x) Interim order of stay granted in one of the matters of the landowners would cause a complete restraint on the authorities to proceed further to issue declaration;

(xi) When the authorities are disabled from performing duties due to impossibility, it would be a sufficient excuse for them to save them from rigour of provisions of Section 24. A litigant may have a good or a bad cause, be right or wrong. But he cannot be permitted to take advantage of a situation created by him by way of an interim order passed in his favour by the Court at his instance. Although provision of Section 24 does not discriminate between landowners, who are litigants or nonlitigants and treat them differently with respect to the same acquisition, it is necessary to view all of them from the stand point of the intention of the Parliament. Otherwise, anomalous results may occur and provisions may become discriminatory in itself;

(xii) The law does not expect the performance of the impossible;

(xiii) An act of the court shall prejudice no man;

(xiv) When there is a disability to perform a part of the law, such a charge has to be excused. When performance of the formalities prescribed by a statute is rendered impossible by circumstances over which the persons concerned have no control, it has to be taken as a valid excuse;

(xv) The Court can under its inherent jurisdiction ex debito justitiae has a duty to mitigate the damage suffered by the defendants by the act of the Court;

(xvi) No person can suffer from the act of Court and an unfair advantage of the interim order must be neutralised; (xvii) No party can be permitted to take shelter under the cover of Court's order to put the other party in a disadvantageous position;

(xviii) If one has enjoyed under the Court's cover, that period cannot be included towards inaction of the authorities to take requisite steps under Section 24 as the State authorities would have acted and passed an award determining compensation but for the Court's order.

Therefore also, the original writ petitioners – land owners shall not be entitled to enhanced amount of compensation under Section 24(1)(a) of the Act, 2013 on the ground that as the award has not been declared they shall be entitled to compensation under the Act, 2013. **[Bharat Petroleum Corporation Ltd. (BPCL) vs. Nisar Ahmed Ganai, AIR 2022 SC 5026]**

JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT 2015

Secs. 7-A, 15—Juvenile Justice (Care and Protection of Children) Rules, 2007, R. 12(3)(b)—Claim of juvenility—Determination of age—Reliance on Family Register

If the Family Register on record is ultimately found to be authentic and genuine, then Court may not have to fall upon the ossification test report. In such

circumstances, the Presiding Officer concerned shall pay adequate attention towards this document and try to ascertain the authenticity and genuineness of the same**.** **[Vinod Katara vs. State of U.P., AIR 2022 SC 4771]**

Juvenile Justice and Children's Acts - Juvenile Justice (Care and Protection of Children) Act, 2015- Ss. 9(2), (3) and 94-Claim of juvenility before court Burden of proof Presumption in favour of claimant - When may be drawn Rebuttability of such presumption - Law summarised

It was held that when a claim for juvenility is raised, the burden is on the person raising the claim to satisfy the court to discharge the initial burden -However, the documents mentioned in Rules 12(3)(a)(i), (ii) and (iii) of the JJ Rules, 2007 made under the JJ Act, 2000, or, the documents mentioned in S. 94(2) of the JJ Act, 2015, shall be sufficient for prima facie satisfaction of the court, once the document(s) in question have been proved in accordance with S. 35 and other provisions of the Evidence Act, 1872. On the basis of the aforesaid documents a presumption of juvenility may be raised. It was further held that the said presumption raised on the basis of the abovesaid documents is however not conclusive proof of the age of juvenility and the same may be rebutted by contra evidence let in by the opposite side. **(Rishipal Singh Solanki v. State of Uttar Pradesh and others, (2022) 8 SCC 602)**

Ss. 9 (2), (3) and 94 – Claim of Juvenility before Court – Law summarized.

The legal principles for determination of juvenility under the JJ Act, 2015 can be summarized as follows:

1. A claim of juvenility may be raised at any stage of a criminal proceeding, even after a final disposal of the case. A delay in raising the claim of juvenility cannot be a ground for rejection of such claim. It can also be raised for the first time before the Supreme Court.
2. An application claiming juvenility could be made either before the court or the JJ Board
3. When the issue of juvenility arises before a court, it would be under sub-sections (2) and (3) of Section 9 of the JJ Act, 2015 but when a person is brought before a committee or JJ Board, Section 94 of the JJ Act, 2015 applies.
4. If an application is filed before the court claiming juvenility, the provision of sub-section (2) of Section 94 of the JJ Act, 2015 would have to be applied or read along with sub-section (2) of Section 9 so as to seek evidence for the purpose of recording a finding stating the age of the person as nearly as may be.

5. When an application claiming juvenility is made under Section 94 of the JJ Act, 2015 before the JJ Board when the matter regarding the alleged commission of offence is pending before a court, then the procedure d contemplated under Section 94 of the JJ Act, 2015 would apply. Under the said provision if the JJ Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Board shall undertake the process of age determination by seeking evidence and the age recorded by the JJ Board to be the age of the person so brought before it shall, for the purpose of the JJ Act, 2015, be deemed to be true age of that person. Hence the degree of proof required in such a proceeding before the JJ Board, when an application is filed seeking a claim of juvenility when the trial is before the criminal court concerned, is higher than when an inquiry is made by a court before which the case regarding the commission of the offence is pending (vide Section 9 of the JJ Act, 2015).
6. When a claim for juvenility is raised, the burden is on the person raising the claim to satisfy the court to discharge the initial burden. However, the documents mentioned in Rules 12(3)(a)(i), (ii) and (iii) of the JJ Rules, 2007 made under the JJ Act, 2000 or sub-section (2) of Section 94 of the JJ Act, 2015, shall be sufficient for prima facie satisfaction of the court. On the basis of the aforesaid documents a presumption of juvenility may be raised.
7. The said presumption is however not conclusive proof of the age of juvenility and the same may be rebutted by contra evidence let in by the opposite side.

8. Under Section 94 of the JJ Act, 2015, a presumption is raised that when a person is brought before the JJ Board or the Child Welfare Committee ("the Committee") (other than for the purpose of giving evidence) and the said person is a child, the JJ Board or the Committee shall record such observation stating the age of the child as nearly as may be, and proceed with the inquiry under Section 14 or Section 36, as the case may be, without waiting for further confirmation of the age. Thus, in the initial stage a presumption that the child brought before the Committee or the JJ Board is a juvenile has to be drawn by the said authorities. The said presumption has to be drawn on observation of the child. However, the said presumption may not be drawn when the Committee or the Board has reasonable grounds for doubt regarding the person brought before it is a child or not.
9. Thus, where the said Board or the Committee has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the JJ Board or the Committee, as the case may be, shall undertake the process of age determination by seeking evidence by obtaining:

a. The date of birth certificate from the school, or the matriculation or equivalent certificate from the examination Board concerned, if available; and in the absence thereof;
b. The birth certificate given by a corporation or a municipal authority or a panchayat;
c. And only in the absence of (a) and (b) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board.

Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.

10. The age recorded by the Committee or the Board to be the age of the person so brought before it shall for the JJ Act, 2015 be deemed to be the true age of the person. The deeming provision in sub-section (3) of Section 94 of the JJ Act, 2015 is also significant inasmuch as the controversy or the doubt regarding the age of the child brought before the Committee or the JJ Board is sought to be set at rest at the level of the JJ Board or the Committee itself.
11. The procedure of an inquiry by a court is not the same thing as declaring the age of the person as a juvenile sought before the JJ Board when the case is pending for trial before the criminal court concerned. In case of an inquiry, the court records a prima facie conclusion but when there is a determination of age as per sub-section (2) of Section 94 of the 2015 Act, a declaration is made on the basis of evidence. Also the age recorded by the JJ Board shall be deemed to be the true age of the person brought before it. Thus, the standard of proof in an inquiry is different from that required in a proceeding where the determination and declaration of the age of a person has to be made on the basis of evidence scrutinized and accepted only if worthy of such acceptance.
12. It is neither feasible nor desirable to lay down an abstract formula to determine the age of a person. It has to be on the basis of the material on record and on appreciation of evidence adduced by the parties in each case.
13. A hyper technical approach should not be adopted when evidence is adduced on behalf of the accused in support of the plea that he was a juvenile
14. If two views are possible on the same evidence, the court should lean in favour of holding the accused to be a juvenile in borderline cases. This is in to ensure that the benefit of the JJ Act, 2015 is made applicable to the juvenile in conflict with law. At the same time, the court should ensure that

the JJ Act, 2015 is not misused by persons to escape punishment after having committed serious offences.

15. When the determination of age is on the basis of evidence such as school records, it is necessary that the same would have to be considered as per Section 35 of the Evidence Act, inasmuch as any public or official document maintained in the discharge of official duty would have greater credibility than private documents.
16. Any document which is in consonance with public documents, such as matriculation certificate, could be accepted by the court or the JJ Board provided such public document is credible and authentic as per the provisions of the Evidence Act viz. Section 35 and other provisions.
17. Ossification test or any other medical age determination test, cannot be the sole criterion for age determination and a mechanical view regarding the age of a person cannot be adopted solely on the basis of medical opinion by radiological examination. Such evidence is not conclusive evidence but only a very useful guiding factor to be considered in the absence of documents mentioned in Section 94(2) of the JJ Act, 2015**. [Rishipal Singh Solanki v. State of UP and other (2022) 3 S.C.C (Cri.) 703]**

KERALA ABKARI ACT, 1902

Narcotics, Intoxicants and Liquor - Kerala Abkari Act, 1902 (1 of 1077 ME)- S. 55(a) - Sentence-Trauma of litigation for 23 yrs and absence of criminal antecedents against the appellant, taken as factors for modifying sentence of two years to simple imprisonment for one year and to pay a fine of Rs 1,00,000, in default of payment of fine, to further undergo simple imprisonment for six months instead of one year as directed by High Court. **(Sunil Kumar v. State of Kerala and another, (2022) 8 SCC 499)**

LAND ACQUISITION ACT

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 S. 24(2) Acquisition proceedings whether had lapsed under Quashment of proceedings on ground of non-compliance with S. 5-A of the 1894 Act. Nature of such judgment, held, is in personam and not in rem.

Lapsing of acquisition proceedings. It being found that possession of entire land vested with Government/State Authorities and compensation in respect of entire land stood deposited. Hence, held, purchaser of the acquired land not entitled to any declaration of lapsing of acquisition proceedings. **(Delhi Development Authority v. Godfrey Phillips (I) Limited and others, (2022) 8 SCC 771)**

Land Acquisition Act, 1894, Part III, Section 28A- Re-determination of Compensation- Ground-Award of Lok-Adalat- Permissibility- Held, an award under Section 20 of the Act of 1987 passed by the Lok Adalat cannot be the basis of invoking provisions of Section 28A of the Act of 1894.

Lok Adalat- Scope of Jurisdiction- Held, the Lok Adalat is only a facilitator of settlement and compromise in regard to matters referred to it and has no adjudicatory role.

The Act provides for acquisition of land and for compensation to be provided thereunder.

The proceedings are commenced by a notification under Section 4. Compensation is determined with reference to the date of the said notification. After the procedures are undergone, an Award is passed. While Section 18 provides for a right with a person dissatisfied with the amount inter alia awarded by the Land Acquisition Officer to seek enhancement, Section 28A contemplates situations where a person has not availed of the right under Section 18 but any other person has utilized the provisions of Section 18 and obtained an enhancement. Other conditions obtaining in CA No. 901/2022 (@ SLP (C) No.9927/2020 etc.) Section 28A being present, a person who has not filed application under Section 18 inter alia is entitled to claim redetermination of the compensation.

The scheme of Section 28A of the Act is unmistakably clear from its very opening words. What section 28A contemplates is a redetermination of compensation under an award passed under Part III. Part III takes in Section 23. Section 23 deals with the matters to be taken into consideration. Various aspects including the market value on the date of the notification under Section 4(1) are indicated. What we wish to emphasise is that elements of Section 23 are not in consonance as such with the guiding principles set out in Section 19(4) of the '1987 Act' which are to guide a Lok Adalat. When the Court deals with the matter under Section 18, in other words, it is bound to look into the evidence and arrive at findings based on the evidence applying the legal principles which have been enunciated and arrive at the compensation. While it may be true that there is reference to 'other legal principles' in Section 19(4) of the 1987 Act, the Lok Adalat also can seek light from the principles of justice, equity, and fair play. The Lok Adalat by virtue of the express provisions is only a facilitator of settlement and compromise in regard to matters which are referred to it. It has no adjudicatory role.

Section 28A, undoubtedly, has been introduced by parliament in the year 1984 to bring solace to those land owners or persons having interest in land to claim the just amount due to them even though they have omitted to file application under Section 18 of the Act seeking enhancement.

The award which is passed by the Lok Adalat cannot be said to be an award passed under Part III. It is the compromise arrived at between the parties before the Lok Adalat which culminates in the award by the Lok Adalat. In fact, an award under Part III of the Act contemplates grounds or reasons and therefore, adjudication is contemplated and Section 26(2) of the Act is self- explanatory.

We would, therefore, approve the view taken by the Bombay High Court in Umadevi Rajkumar Jeure (supra) and the learned single Judge of the Karnataka High Court in Vasudave (supra) and hold that an Award passed under Section (20) of the 1987 Act by the Lok Adalat cannot be the basis for invoking Section 28A. **[New Okhla Industrial Development Authority (NOIDA) vs. Yunus and others, 2022 (40) LCD 1601 (SC)]**

Section 28A of Land Acquisition Act, 1894 - Re-determination under S. 28-A of the 1894 Act, of amount of compensation granted in Lok Adalat award. It was held that it is not permissible when there is no determination of compensation by court in terms of the 1894 Act.

Legal Services Authorities Act, 1987- Ss. 20 and 21 - Nature of Lok Adalat award and its executability. Implication of S. 21, under which Lok Adalat award is to be treated as a decree. Legal fiction that Lok Adalat award is to be treated as decree.

Land Acquisition Act, 1894-Ss. 28-A and 2(1) Re-determination under S. 28-A of the 1894 Act, of amount of compensation granted in Lok Adalat award. Plea of estoppel arising out of a consent decree or from Lok Adalat award which can be even likened to a consent decision. Held, cannot be basis for redetermination of compensation. What S. 28-A indeed insists is on decision by a civil court as defined in S. 2(1). **(New Okhla Industrial Development Authority (NOIDA) v. Yunus and others, (2022) 9 SCC 516)**

MAHARASHTRA RESTORATION OF LANDS TO SCHEDULED TRIBES ACT, 1974

Effect of cancellation of benefit conferred on the basis of the invalidated certificate. Restoration of land to legal heirs of deceased on basis of caste certificate in terms of the 1974 Act, thus cancelled. **(Terraform Magnum Limited (formerly known as Everest Buildcon Limited) v. State of Maharashtra and others, (2022) 8 SCC 556)**

MOTOR VEHICLES ACT

Sec. 168—Compensation—Enhancement—High Court scaled down compensation granted by Tribunal from Rs. 32,39,000/- to Rs. 19,70,000/-

Determination of Compensation for loss of dependency

While determining compensation under the Act, section 168 of the Act makes it imperative to grant compensation that appears to be just. The Act being social welfare legislation operates through economic conception in the form of compensation, which renders way to corrective justice [See Gregory C. Keating, 'Distributive and Corrective Justice in the Tort Law of Accidents' (2000) 74 S Cal L Rev 193]. Compensation acts as a fulcrum to bring equality between the wrongdoer and the victim, whenever the equality gets disturbed by the wrongdoer's harm to the victim. It also endeavors to make good the human suffering to the extent possible and to also save families which have lost their breadwinners from being pushed to vagrancy. Adequate compensation is considered to be fair and equitable compensation. Courts shoulder the responsibility of deciding adequate compensation on a case to case basis. However, it is imperative for the courts to grant such compensation which has nexus to the actual loss.

This Court, in the case of Sarla Verma and Ors. v. DTC and Ors., (2009) 6 SCC 121, laid down an objective formula for calculating just compensation. According to the dictum, the three factors that need to be established are: (a) age of the deceased; (b) income of the deceased; and (c) the number of dependents.

Further, the issues that are to be determined by the Tribunal to arrive at the loss of dependency are: "(i) additions/deductions to be made for arriving at the income; (ii) the deduction to be made towards the personal living expenses of the deceased; and (iii) the multiplier to be applied with reference to the age of the deceased." The purpose of standardizing these determinants was to bring uniformity to the decisions and settle claims without delay**. [Manusha Sreekumar vs. United India Insurance Co. Ltd., AIR 2022 SC 5161]**

Motor Vehicles Act, 1988 Ss. 166 & 168 - Fatal accident - Just compensation - Future prospects and rise in income - Consideration of - Deceased, a mason, aged 48/52 yrs, died in January, 2002 survived by his widow and children. **(Sumathy and others v. Babu and another, (2022) 9 SCC 702)**

NARCOTICS DRUGS AND PSYCHOTROPIC SUBSTANCE ACT

Secs. 20(b)(ii)(C), 54—Illegal possession of ganja—Presumption as to—

At the outset we would take note of some propositions of law on which there can be no controversy. They are, (i) that as per the decision of the Constitution Bench of this Court in Mukesh Singh, (2020) 10 SCC 120, the fact that the informant also happened to be the investigator, may not by itself vitiate the investigation as unfair or biased; (ii) that it is not always necessary that the evidence of the police witnesses have to be corroborated by independent witnesses, as held in Dharampal Singh, (2010) 9 SCC 608 and Mukesh Singh, (2020) 10 SCC 120 (supra); (iii) that the independent witnesses turning hostile need not necessarily result in the acquittal of the accused, when the mandatory procedure is followed and the other police witnesses speak in one voice as held in Rizwan Khan, (2020) 9 SCC 627; and (iv) that once it is established that the contraband was recovered from the accused's possession, a presumption arises under Section 54.

But if the Court has (i) to completely disregard the lack of corroboration of the testimony of police witnesses by independent witnesses; and (ii) to turn a Nelson's eye to the independent witnesses turning hostile, then the story of the prosecution should be very convincing and the testimony of the official witnesses notably trustworthy. If independent witnesses come up with a story which creates a gaping hole in the prosecution theory, about the very search and seizure, then the case of the prosecution should collapse like a pack of cards. It is no doubt true that corroboration by independent witnesses is not always necessary. But once the prosecution comes up with a story that the search and seizure was conducted in the presence of independent witnesses and they also choose to examine them before Court, then the Court has to see whether the version of the independent witnesses who turned hostile is unbelievable and whether there is a possibility that they have become turncoats. **[Sanjeet Kumar Singh @ Munna Kumar Singh vs. State of Chhattisgarh, AIR 2022 SC 4051]**

NEGOTIABLE INSTRUMENTS ACT

Negotiable Instruments Act, 1881 -Ss. 143-A and 145(2)- Right to cross-examine complainant/witnesses - Denial of, on account of failure on part of the accused to deposit interim compensation i.e. 20% of the cheque amount as directed by the Magistrate under S. 143-A(1)- Held, not permissible. **(Noor Mohammed v. Khurram Pasha, (2022) 9 SCC 23)**

Secs. 138, 139—Offence of cheque dishonor—Ingredients of—Stated.

Drawer of a cheque is deemed to have committed the offence if the following ingredients are fulfilled:

(i) A cheque drawn for the payment of any amount of money to another person;

(ii) The cheque is drawn for the discharge of the 'whole or part' of any debt or other liability. 'Debt or other liability' means legally enforceable debt or other liability; and

(iii) The cheque is returned by the bank unpaid because of insufficient funds.

However, unless the stipulations in the proviso are fulfilled the offence is not deemed to be committed. The conditions in the proviso are as follows:

(i) The cheque must be presented in the bank within six months from the date on which it was drawn or within the period of its validity;

(ii) The holder of the cheque must make a demand for the payment of the 'said amount of money' by giving a notice in writing to the drawer of the cheque within thirty days from the receipt of the notice from the bank that the cheque was returned dishonoured; and

(iii) The holder of the cheque fails to make the payment of the 'said amount of money' within fifteen days from the receipt of the notice.

when a part-payment is made after the issuance of a post-dated cheque, the legally enforceable debt at the time of encashment is less than the sum represented in the cheque. A part-payment or a full payment may have been made between the date when the debt has accrued to the date when the cheque is sought to be encashed. Where the borrower agrees to repay the loan within a specified timeline and issues a cheque for security but defaults in repaying the loan within the timeline, the cheque matures for presentation. When the cheque is sought to be encashed by the debtor and is dishonoured, Section 138 of the Act will be attracted;

However, the cardinal rule when a cheque is issued for security is that between the date on which the cheque is drawn to the date on which the cheque matures, the loan could be repaid through any other mode. It is only where the loan is not repaid through any other mode within the due date that the cheque would mature for presentation; and (iii) If the loan has been discharged before the due date or if there is an 'altered situation', then the cheque shall not be presented for encashment.

In this case, the accused had borrowed money from the complainant. To discharge his liability, accused issued a cheque for that sum. Alleged cheque when presented before bank by complainant, was dishonoured due to insufficient funds. As per accused he had made part- payment after debt was incurred and before cheque was encashed upon maturity and this fact was admitted by the complainant.

Held, the sum represented on the cheque could not be taken as 'legally enforceable debt' on date of its maturity. Accused thus cannot be deemed to have

committed the offence of cheque dishonour, when cheque was dishonoured for insufficient funds. Offence u/S. 138 is tipped by the dishonour of the cheque when it is sought to be encashed. Though a post-dated cheque might be drawn to represent a legally enforceable debt at the time of its drawing, for the offence to be attracted, the cheque must represent a legally enforceable debt at the time of encashment. If there has been a material change in the circumstance such that the sum in the cheque does not rep- resent a legally enforceable debt at the time of maturity or encashment, then the offence un- der Section 138 is not made out.

Cheque was issued by the accused for security on the date when the loan was borrowed. It was also categorically recorded by the trial Court that certain sum was paid by the accused, to partly fulfil the debt. Complainant has stated that a 'cheque against a cheque was given when he loaned the sum to accused. Accused has made part-payments after the debt was incurred and before the cheque was encashed upon maturity. The sum represented on the cheque was not the legally enforceable debt' on the date of maturity. Thus, the accused cannot be deemed to have committed an offence u/S. 138 when the cheque was dishonoured for insufficient funds. **[Dashrathbhai Trikambhai Patel vs. Hitesh Mahendrabhai Patel, AIR 2022 SC 4961]**

PERSONAL LAWS

Family Property, Succession and Inheritance Person in question whether sole heir Alleged subsequent discovery by defendants at first appellate stage that person in question was not the sole heir Proper. Mode of challenge to the same, held, would have been to seek amendment to written statement joining alleged other heirs as parties to the suit. The same having not been done, issue of sole heirship of person concerned had attained finality.

Transfer of interest in the property concerned shall take place according to the rules of intestate succession.

Transfer of Property Act, 1882 - Ss. 7, 8 and 54 - Nemo dat quod non habet- Purported co-owner by inheritance, vendor herein (D-1), not able to establish his inheritance Held, as D-1 was not having any title and interest in the property, therefore, he cannot pass the title which he does not have. Thus, on the basis of the sale deed executed on - 4-5-2006 by D-1 in favour of D-2 and D-3, the latter cannot acquire better title than that of D-1. **(Aman Sharma and another v. Umesh and others, (2022) 8 SCC 798)**

PREVENTION OF CORRUPTION ACT, 1988

Public Accountability, Vigilance and Prevention of Corruption - Prevention of Corruption Act, 1988 Ss. 13(1)(d) & 13(2)- Discharge Whether warranted - Determination of - Alleged disproportionate expenditure Proper computation of Articles allegedly constituting part of this disproportionate expenditure - Whether acquired during the check period-Necessity of establishing Upon correct computation of expenditure during the check period, held, prima facie case not made out against accused - Hence, appellant discharged

Sections 227 and 228 of Criminal Procedure Code, 1973 - Framing of charge(s) or discharge of accused. Duty of court-Material produced and relied upon by the prosecution. Extent to which to be examined or sifted through by the court. **(Kanchan Kumar v. State of Bihar, (2022) 9 SCC 577)**

RAJASTHAN RENT CONTROL ACT, 2001

Rajasthan Rent Control Act, 2001 (1 of 2003) Ss. 32(3) and 20-Mesne profits to the extent of three times of the standard rent in terms of S. 20 of the 2001 Act, in case the premises are let out for commercial purposes. Entitlement to - Inapplicability of, to pending proceedings Suit or proceedings pending on date of coming into force of the 2001 Act, held, would continue under the 1950 Act. The 2001 Act would have no application in such a case, as pending proceedings under the old Act are expressly saved under S. 32(3) of the 2001 Act.

Rent Control and Eviction Mesne profits - After passing decree of eviction, tenancy terminates and from said date landlord is entitled to mesne profits or compensation depriving him from use of premises

Rent Control and Eviction-Mesne profits depends on facts and circumstances of each case considering place where property is situated i.e. village or city or metropolitan city, location, nature of premises i.e. commercial or residential area and rate of rent precedent on which premises can be let out are guiding factors in facts of individual case. **(Martin and Harris Private Limited and another v. Rajendra Mehta and others, (2022) 8 SCC 527)**

SERVICE LAW

Service Law Promotion - Particular Schemes Assured Career Progression Scheme (ACP Scheme) of State Government - Applicability of, to autonomous public undertaking such as the respondent herein - Terms on which ACP Scheme adapted by the autonomous public undertaking- Binding nature of

ACP Scheme adapted by respondent herein applied only to staff appointed after a particular date, without any retrospective effect - Hence, held, persons appointed prior to that date in the autonomous public undertaking concerned, not entitled to benefit of the adapted ACP Scheme

Constitution of India - Art. 14 Cut-off date - Held, decision pertaining to cut-off date can be interfered with only in case of mala fides or ulterior motive-In instant case, date for applicability of ACP Scheme was date on which it was adapted and hence, consequences thereof would befall employees equally across the board. **(Mohd. Islam and others v. Bihar State Electricity Board and others, (2022) 9 SCC 67)**

SPECIFIC RELIEF ACT

Sec. 34—Prohibition of Benami Property Transactions Act (45 of 1988), Sec. 4(3)(a) (Before deletion in 2016)—Suit for declaration of title—Benami property

The court's approach in cases, where the claim is that a property or set of properties, are benami, was outlined, after considering previous precedents, in Binapani Paul v. Pratima Ghosh, (2007) 6 SCC 100, where this court cited with approval extracts from Valliammal v. Subramaniam, (2004) 7 SCC 233:

"47. Burden of proof as regards the benami nature of transaction was also on the respondent. This aspect of the matter has been considered by this Court in Valliammal (D) By LRS. v. Subramaniam and Others [(2004) 7 SCC 233] wherein a Division Bench of this Court held:

"13. This Court in a number of judgments has held that it is well established that burden of proving that a particular sale is benami lies on the person who alleges the transaction to be a benami. The essence of a benami transaction is the intention of the party or parties concerned and often, such intention is shrouded in a thick veil which cannot be easily pierced through. But such difficulties do not relieve the person asserting the transaction to be benami of any part of the serious onus that rests on him, nor justify the acceptance of mere conjectures or surmises, as a substitute for proof. Ref to Refer to Jaydayal Poddar v. Bibi Hazra [(1974) 1 SCC 3], Krishnanand Agnihotri v. State of M.P. [(1977) 1 SCC 816 : 1977 SCC (Cri) 190] , Thakur Bhim Singh v. Thakur Kan Singh [(1980) 3 SCC 72] , Pratap Singh v. Sarojini Devi [1994 Supp (1) SCC 734] and Heirs of Vrajlal J. Ganatra v. Heirs of Parshottam S. Shah [(1996) 4 SCC 490]. It has been held in the judgments referred to above that the question whether a particular sale is a benami or not, is largely one of fact, and for determining the question no absolute formulas or acid test, uniformly applicable in all situations can be laid. After saying so, this Court spelt out the

following six circumstances which can be taken as a guide to determine the nature of the transaction:

1. the source from which the purchase money came;
2. the nature and possession of the property, after the purchase;
3. motive, if any, for giving the transaction a benami colour;
4. the position of the parties and the relationship, if any, between the claimant and the alleged benamidar;
5. the custody of the title deeds after the sale; and (6) the conduct of the parties concerned in dealing with the property after the sale. (Jaydayal Poddar v. Bibi Hazra [(1974) 1 SCC 3], SCC p. 7, para 6)

14. The above indicia are not exhaustive and their efficacy varies according to the facts of each case. Nevertheless, the source from where the purchase money came and the motive why the property was purchased benami are by far the most important tests for determining whether the sale standing in the name of one person, is in reality for the benefit of another. We would examine the present transaction on the touchstone of the above two indicia.

18. It is well settled that intention of the parties is the essence of the benami transaction and the money must have been provided by the party invoking the doctrine of benami. The evidence shows clearly that the original plaintiff did not have any justification for purchasing the property in the name of Ramayee Ammal. The reason given by him is not at all acceptable. The source of money is not at all traceable to the plaintiff. No person named in the plaint or anyone else was examined as a witness. The failure of the plaintiff to examine the relevant witnesses completely demolishes his case.""

As a matter of law, the principle that one who alleges that a property is benami and is held, nominally, on behalf of the real owner - in cases which form the exception, under Section 4 (3) – has to displace the initial burden of proving that fact. Such proof can be through evidence, or cumulatively through circumstances. This fact was brought home, by this court, in Marcel Martins v. M. Printer11. In that case, the issue was whether the transfer of rights in favour of one of the siblings, in the absence of a will, by the person having interest (as a tenant in the property), after her death, operated to exclude the other heirs. The court held that the transfer was made to fulfil a municipality's requirement, and the property was held by the one in whose name it was mutated, in a fiduciary capacity, under Section 4(3)(a) of the Act, on behalf of the siblings:

"22. It is manifest that while the expression "fiduciary capacity" may not be capable of a precise definition, it implies a relationship that is analogous to the relationship between a trustee and the beneficiaries of the trust. The expression is in

fact wider in its import for it extends to all such situations as place the parties in positions that are founded on confidence and trust on the one part and good faith on the other.

23. In determining whether a relationship is based on trust or confidence, relevant to determining whether they stand in a fiduciary capacity, the Court shall have to take into consideration the factual context in which the question arises for it is only in the factual backdrop that the existence or otherwise of a fiduciary relationship can be deduced in a given case. Having said that, let us turn to the facts of the present case once more to determine whether the appellant stood in a fiduciary capacity vis-à-vis the plaintiffs-respondents. **[Pushpalata vs. Vijay Kumar (Dead) Thr. LRs., AIR 2022 SC 4118]**

Sec. 20—Agreement to sell—Suit for specific performance—Delay in filing—Mere delay alone in filing suit for specific performance, without reference to conduct of vendee, could not be a ground for refusing said relief, when suit was filed within statutory time limit by vendee

As regards, the delay in filing the suit, it is very pertinent to note that the rule of equity that exists in England, does not apply in India, and so long as a suit for specific performance is filed within the period of limitation, delay cannot be a ground to refuse the relief of specific performance to the plaintiff. In Mademsetty Satyanarayana vs. G. Yelloji Rao, AIR 1965 SC 1405 it has been observed as under:

"7. Mr Lakshmaiah cited a long catena of English decisions to define the scope of a court's discretion. Before referring to them, it is necessary to know the fundamental difference between the two systems— English and Indian—qua the relief of specific performance. In England the relief of specific performance pertains to the domain of equity; in India, to that of statutory law. In England there is no period of limitation for instituting a suit for the said relief and, therefore, mere delay — the time lag depending upon circumstances — may itself be sufficient to refuse the relief; but, in India mere delay cannot be a ground for refusing the said relief, for the statute prescribes the period of limitation. If the suit is in time, delay is sanctioned by law; it is beyond time, the suit will be dismissed as barred by time; in either case, no question of equity arises."

The aforesaid ratio has also been followed recently by this Court in R. Lakshmikantham V. Devaraji, (2019) 8 SCC 62. We, therefore, have no hesitation in holding that mere delay alone in filing the suit for specific performance, without reference to the conduct of the plaintiff, could not be a ground for refusing the said relief, when the suit was filed within the statutory time limit by the respondent-plaintiff.

As per the recent decision of the three-judge bench of this Court, in case of Smt. Katta Sujatha Reddy v. Siddamsetty Infra Projects Ltd., Civil Appeal No. 5822 of 2022 decided on 25th August, 2022, the said Act 18/2018 amending the Specific Relief Act is prospective in nature and cannot apply to those transactions that took place prior to its coming into force.

The Specific Performance of the contract, may in the discretion of the court, be enforced, when the act agreed to be done, was such that compensation in money for its non-performance would not afford adequate relief, and that the breach of a contract to transfer immoveable property could not be adequately relieved by compensation in money. It also emerges that specific performance of a contract could not be enforced in favour of a person, who failed to aver and prove that he had performed or had always been ready and willing to perform the essential terms of the contract, which were to be performed by him. It could also not be enforced in favour of a person who failed to aver in the plaint the performance of, or readiness and willingness to perform the contract according to its true construction.

Readiness and willingness are not one, but two separate elements. Readiness means the capacity of the plaintiff to perform the contract, which would include the financial position to pay the purchase price. Willingness refers to the intention of the plaintiff as a purchaser to perform his part of the contract. Willingness is inferred by scrutinising the conduct of the plaintiff/purchaser, including attending circumstances1. Continuous readiness and willingness on the part of the plaintiff/purchaser from the date the balance sale consideration was payable in terms of the agreement to sell, till the decision of the suit, is a condition precedent for grant of relief of specific performance.

The expression "readiness and willingness" used in Section 16 (c) of the said Act, has been interpreted in catena of decisions by this Court, in the light of facts and circumstances of the cases under consideration for the purpose of granting or refusing to grant the relief of Specific Performance of a contract. The said expression cannot be interpreted in a straitjacket formula. In a very apt decision of this Court in case of Syed Dastagir vs. T.R. Gopalakrishna Setty, (1999) 6 SCC 337, a three-Judge Bench of this Court, construing a plea of "readiness and willingness to perform" in view of the requirement of Section 16(c) and its explanation, observed as under:

"9. So the whole gamut of the issue raised is, how to construe a plea specially with reference to Section 16(c) and what are the obligations which the plaintiff has to comply with in reference to his plea and whether the plea of the plaintiff could not be construed to conform to the requirement of the aforesaid section, or does this section require specific words to be pleaded that he has performed or has always been ready and is willing to perform his part of the contract. In construing a plea in any pleading, courts must keep in mind that a plea is not an expression of art and

science but an expression through words to place fact and law of one's case for a relief. Such an expression may be pointed, precise, sometimes vague but still it could be gathered what he wants to convey through only by reading the whole pleading, depending on the person drafting a plea. In India most of the pleas are drafted by counsel hence the aforesaid difference of pleas which inevitably differ from one to the other. Thus, to gather true spirit behind a plea it should be read as a whole. This does not distract one from performing his obligations as required under a statute. But to test whether he has performed his obligations, one has to see the pith and substance of a plea. Where a statute requires any fact to be pleaded then that has to be pleaded maybe in any form. The same plea may be stated by different persons through different words; then how could it be constricted to be only in any particular nomenclature or word. Unless a statute specifically requires a plea to be in any particular form, it can be in any form. No specific phraseology or language is required to take such a plea. The language in Section 16(c) does not require any specific phraseology but only that the plaintiff must aver that he has performed or has always been and is willing to perform his part of the contract. So the compliance of "readiness and willingness" has to be in spirit and substance and not in letter and form. So to insist for a mechanical production of the exact words of a statute is to insist for the form rather than the essence. So the absence of form cannot dissolve an essence if already pleaded".

It was further observed therein that:

"It is significant that this explanation carves out a contract which involves payment of money as a separate class from Section 16(c). Explanation (i) uses the words "it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court". (emphasis supplied) This speaks in a negative term what is not essential for the plaintiff to do. This is more in support of the plaintiff that he need not tender to the defendant or deposit in court any money but the plaintiff must [as per Explanation (ii)] at least aver his performance or readiness and willingness to perform his part of the contract".

In Sukhbir Singh v. Brij Pal Singh, (1997) 2 SCC 200 this Court had laid down that Law is not in doubt and it is not a condition that the respondents (Plaintiffs) should have ready cash with them. It is sufficient for the respondents to establish that they had the capacity to pay the sale consideration. It is not necessary that they should always carry the money with them from the date of the suit till the date of the decree. The said principle was followed in case of A. Kanthamani v. Nasreen Ahmed, (2017) 4 SCC 654 in case of C.S. Venkatesh v. A.S.C. Murthy, (2020) 3 SCC 280 etc.

Time, it is stated, is not the essence of the contract in the case of immovable properties, unless there are grounds to hold to the contrary. This doctrine is applied,

without being unfair and inequitable to the defendant/seller, as the court should not ignore that a person sells the property when he needs money, and, therefore, expects the money in the stipulated or reasonable time, which would meet the purpose of the sale. The purpose of sale can vary from the need for liquid cash to be invested to earn interest, medical, educational, child's marriage or purchasing another property. To save capital gains, the seller has to purchase another immovable property, unless the proceeds are exempt. There has been a steep rise in the prices of land in the last quarter of the 20th Century in India. With the rise in property value, the value of money has fallen. At times, delay in payment would defeat the defendant/seller's purpose8. Therefore, the offer of the plaintiff/purchaser in writing and the time and occasion when the offer to pay the balance amount to the defendant/seller is an important factor which would matter when the court examines the question of discretion, that is, whether or not to grant a decree of specific performance. While examining these aspects, the quantum of money paid by the plaintiff/seller to the defendant/purchaser may become a relevant fact that merits due consideration. There is a distinction between limitation and delay and laches. Limitation is a ground for dismissing a suit even if the plaintiff is otherwise entitled to specific performance, while delay operates to determine the discretion and exercise under Section 20 of the Specific Relief Act, even if the suit is not dismissed on account of limitation. However, not one but several aspects have to be considered when the court, in terms of Section 20 of the Specific Relief Act, exercises discretion, guided by judicial principles, sound and reasonable. **[P. Daivasigamani vs. S. Sambandan, AIR 2022 SC 5009]**

PART II – HIGH COURT

CIVIL PROCEDURE CODE

O.7 R. 14, O. 13 R. 1, S. 151 – Production of additional evidence - Permissibility

While exercising the inherent power, the court will be doubly cautious, as there is no legislative guidance to deal with the procedural situation and the exercise of power depends upon the discretion and wisdom o the court, and the facts and circumstances of the case. **Colonel Mukul Dev v. Deveshwari Devi, 2022 AIR CC 3220 (All).**

Or. XLI, R. 33 – Power of Appellate Court under the provision.

Under the Order 41 Rule 33 of the CPC the Appellate Court has the power to pass any decree and to make any order which ought to have been passed and thus power can be exercised by the Appellate Court notwithstanding that the Appeal is with regard to only a part of the decree. **Jagdev Singh and others v. Hajarilal and others, 2022 (3) ARC 274**

O.V, R. 20 – Substituted service-Permissibility of—O.V, R. 1 – Issuance of notice – Summons-Purpose – The purpose of issuing summons is to give effect to the rule of audi alteram partem - O.IX, R. 7 – 'At or before such hearing'-Meaning.

The main issues are as to whether notice of the case can be held to have been served on the defendant - petitioner in accordance with law and whether the application filed by the petitioner under Order 9 Rule 7 CPC was maintainable.

A substituted service under Order 5 Rule 20 CPC would not be a valid service in law if the conditions mentioned in Rule 20 do not exist. Service of notice by the modes prescribed in Order 5 Rule 20 would not be a valid service if the order does not indicate application of mind by the court and its satisfaction that there was reason to believe that the defendant was keeping out of the way for the purpose of avoiding service or that for any other reason, the summons could not be served in the ordinary way.

The phrase "at or before such hearing' only signifies that the application under Order 9 Rule 7 CPC can be filed by the defendant if he appears on any date fixed in the case before the hearing in the case is concluded and if he assigns good cause for his absence on the previous dates, he has the right to set the clock back and be heard in answer to the suit as if he had appeared on the day fixed for his

appearance in the summons while the suit is at the trial stage but such an application would not be maintainable if the hearing has completed and only judgment is to be pronounced. **Smt. Kusum v. Smt. Bhawana and others, 2022(3) ARC 811- HC, Lko.Bench**

Recovery- Retiral dues

However, it is not the case of the Meerut Development Authority that any undertaking was sought from the petitioner or was given by him at the time of his initial pay fixation as far back as in 1986, when the Revenue Department's Lekhpal pay scale of Rs. 950-1,500/- was given to him, and consequently, next promotional pay scale of higher pay scale were also given to him. In view of the observations made by the Supreme Court in the case of State of Punjab and others vs. Rafiq Masih (White Washer) and others, AIR 2015 SC 796 and also in the case of Thomas Daniel vs. State of Kerala, 2022 SCC Online SC 536, wherein the excess payment if any paid to the petitioner due to the fault on the part of the Authority themselves without any misrepresentation of fraud having been played by the petitioner cannot be now recovered from him. **[Om Pal Singh vs. Meerut Development Authority and others, 2022(12) ADJ 169 (Alld. H.C.)]**

Sections 24 and 115

On a reference made by the learned Single Judge vide order dated December 10, 2021 to a larger Bench and constitution thereof by Hon'ble the Chief Justice, on administrative side, for consideration of the following questions, the matter has been placed before us :

> "(i) Whether the order passed by District judge under Section 24 CPC is revisable under Section 115 CPC as applicable in the State of U.P.?
>
> (ii) Whether another application under Section 24 CPC by the same applicant based on the same cause would be maintainable before the High Court, without challenging an order of the District Judge which has also been passed under Section 24 CPC under Section 115 CPC or Article 227 of the Constitution of India, as the case may be?
>
> (iii) Whether pronouncements of this Court in the case of Sunit Devi and Indian Oil Corporation (supra) lay down the law correctly on the subject matter in issue or it is the decision by a Co-ordinate Benches in the case of Jagdish Kumar and Amit Pachauri (supra) which understand and lay down the law correctly on the issues aforesaid?"

In view of what we have held above, our answers to the questions referred are these:

(i) The question is answered in the affirmative and it is held that an order passed by the District Judge under Section 24 CPC is revisable under Section 115 CPC as applicable in the State of U.P.

(ii) The question stands answered in the negative and it is held that another application under Section 24 CPC by the same applicant based on the same cause of action would not be maintainable before this Court without challenging the order passed by the District Judge, on the application disposed of by the District Judge under Section 24 CPC through a revision under Section 115 CPC. Normally, the order of the District Judge passed on an application under Section 24 CPC being revisable, the constitutional remedy under Article 227, though not barred, may not be invoked on the sound principle of the availability of an equally efficacious statutory alternative remedy under Section 115 CPC.

(iii) The question is answered by holding that the law laid down by this Court in Sunita Devi's case (supra) and Indian Oil Corporation's case (supra) lay down the law correctly on the subject matter in issue and the decision in Jagdish Kumar's case (supra) and Amit Kumar Pachauri's case (supra) do not lay down the correct law. **[Babu Singh and others vs. Raj Bahadur Singh and others, 2022(11) ADJ 178 (Alld. H.C.) (DB) (LB)]**

CONSTITUTION OF INDIA

Constitution of India, Art 226 – Public interest litigation – Entertainability – Question of great public importance regarding allotment of public utility land in favour of private persons in an arbitrary and illegal manner.

Uttar Pradesh Zaminadari Abolition and Land Reforms Act (1 of 1951), Ss. 117, 132 – Resumption of land.

U.P. Revenue Code (8 of 2012), S. 101 – Exchange of land by Bhumidhar – Permissibility.

Held, the land which was a public utility land, was resumemd and allotted in favour of a private trust, by the then District Magistrate in purported exercise of the power under Section 117(6) of the UPZA and LR Act, 1950 for charitable purpose and thereafter it was being used for commercial purposes. Therefore, such a land could not be exchanged in any manner. Even otherwise, under Section 101 of the UP Revenue Code, 2006 the land in which bhumidhari rights cannot get accrued, cannot be exchanged. Section 101 of the UP Revenue Code, 2006 empowers the Sub-Divisional Officer for exchange of land, but this power does not extend to the land of the Gram Sabha, which is public utility land and in which no bhumidhari right can be accrued.

In respect of the public utility land, no bhumidhari right can be accrued. Section 101 of the UP Revenue Code, 2006 empowers the Sub-Divisional Officer for exchange of land, but this power does not extend to the land of the Gram Sabha, which is a public utility land and in which no bhumidhari right can be accrued. **Sharad Kumar Dwivedi v. State of U.P. and others, 2022 AIR CC 2833 (All) (HC Lucknow Bench)**

CRIMINAL PROCEDURE CODE

Rape, Section 8 Evidence Act, Sections 53, 53A, 54 Cr.P.C.

While discussing the evidence in a matter of rape Hon'ble Allahabad High Court observed that the accused allegedly raped a girl aged 11 months. The FIR was lodged within reasonable time. The place of occurrence proved by eye witnesses and I.O. who prepared and proved site plans of spot. It was also held that ocular testimonies of witnesses corroborated the medical evidence and mere absence of blood on place of incident would not make the whole incident untruthful when trustworthy ocular evidence as well as medical evidence was produced.

While discussing the conduct under Section 8 of Evidence Act, it was held that the conduct of family members of victim in going to the police station before taking the girl to the hospital was not unnatural. Specially when they are villagers and illiterate persons. It was also held that mere non-examination of accused medically after the incident would not render the evidence of eye witnesses well supported by medical evidence doubtful. Thus the conviction was held proper. (**Shrawan Kumar Maurya v. State of U.P., 2022 Cri.L.J. 3810 : AIR Online 2022 All 4369)**

Section 439 – Entitlement of Bail

The matter was related to the offences u/s 420, 467, 468, 471, 447, 201, 120B IPC and Section 3 of Prevention of Damage to Public Property Act.

The disputed land was declared as enemy property allegedly usurped by applicant the applicant was senior citizen suffering from several ailment in the matter charge-sheet was already filled. Hon'ble Allahabad High Court held that by applying the principles that bail is a right and Jail is an exception, applicant was entitled to bail in humanitarian grounds. Concerned District Magistrate was also directed to take possession of land. It was also held that interim bail granted to applicant would be converted to a regular bail after D.M. takes possession of land. **(Mohammad Azam Khan v. State of U.P., 2022 Cri.L.J.(NOC)533 (All): AIR Online 2022 All. 2330)**

Brain Mapping/ Narco/ Lie Detector Test

The evidentiary value of a narco analysis test has been considered threadbare and it has been recorded that revelations brought out during Narco Analysis under the influence of a particular drug cannot be taken as a conscious act or statement given by a person. The possibility of accused himself making exculpatory statement to support his defence also cannot be ruled out. There is no mechanism or the present Investigating Agency is also not equipped to assess the credibility of such revelations of the accused. The Investigating Officers also would find themselves difficult to come to a definite conclusion regarding the varacity of the revelations so made and the other evidence already collected.

We are also in agreement with the opinion expressed by the Kerala High Court considering the aforesaid discussions as the result of the brain mapping test or narco or lie detector test would not be admissible in evidence, therefore, we see no reason to issue any such mandamus for disposal of the petitioners/ acc;used application for undertaking such exercise by the Investigating Officer. This of course does not mean that if the Investigating Officer on his own decides to get the said tests conducted then he cannot do so, meaning thereby that if he so decides he can always get the test conducted subject to consent of the accused. **[Saroj Kumar and others vs. State of U.P. and others, 2022(12) ADJ 41 (Alld. H.C.)(DB) (LB)]**

Section 207

Therefore, in view of law laid down by the Hon'ble Supreme Court in P. Gopalkrishnan's case (supra), it is clear that a C.D. is also an electronic document. Therefore, a copy of the same ought to be supplied to the accused under Section 207 Cr.P.C. The supply of any such electronic document could be denied only in the exceptional case specified in pars 50 of p. Gupalkrishnan's case (supra) itself.

It appears that the learned trial Court has denied the applicant the copy of C.D. on the ground that the process of cloning may lead to deletion of data or may also lead to tempering with the same which is hypothetical and without any basis. Therefore, the same cannot be sustained particularly keeping in view the fact that the object behind incorporation of Section 207 Cr.P.C. is to enable the accused to defend himself properly which is achieved by supplying of v ital documents only. **[Varun vs. State of U.P. and another, 2022(12) ADJ 317 (Alld. H.C.)(LB)]**

FAMILY COURTS ACT, 1984

Section 19

A Muslim husband has the legal right to take a second wife even while the first marriage subsists, but if he does so, and then seeks the assistance of the Civil Court to compel the first wife to live with him against her wishes on pain of severe penalties, she is entitled to raise the question whether the court, as a court of equity, ought to compel her to submit to co-habitation with such a husband. In that case the circumstances, in which his second marriage took place, are relevant and material in deciding whether his conduct in taking a second wife was in itself an act of cruelty to the first. In other words, if the husband, after taking a second wife against the wishes of the first, also wants the assistance of the Civil Court to compel the first to live with him, the Court will respect the sanctity of the second marriage, but it will not compel the first wife, against her wishes, to live with the husband under the altered circumstances and share his consortium with another woman, if it concludes, on a review of the evidence, that it will be inequitable to compel her to do so. Even in the absence of satisfactory proof of the husband's cruelty, the Court will not pass a decree for restitution in favour of the husband if, on the evidence, it feels that the circumstances are such that it will be unjust and inequitable to compel her to live with him. **[Azizurrahman vs. Hamidunnisha @ Sharifunnisha, 2022(11) ADJ 282 (Alld. H.C.) (DB)]**

Section 19

Thus, we find no difficulty to hold that the period mentioned in Section 13 B(2) of the Hindu Marriage Act, 1955 is not mandatory but directory and it is open to the Court to exercise its discretion in the facts and circumstances of each case. The factors for exercising the discretion have been enumerated by Hon'ble Supreme Court in the cases of Amardeep Singh (supra) and Amit Kumar (supra) which have been reproduced above. **[Smt. Shyamshri vs. Sumant Kumar, 2022(10) ADJ 650 (DB) (Alld. H.C.)]**

GUARDIANS AND WARDS ACT, 1890

S. 8, 10 and 25 – Petition for custody of minor child –

It is well settled that the word 'welfare' used in this Section must be taken in its widest sense. The moral and ethical welfare of the child must also weigh, with the Court as well as its physical wellbeing. **Ms. Nasrin Begum and another v. Prof. Mohd. Sajjad and another, 2022 (3) ARC 259**

Sections 8, 10 and 25

In any case, a child as a human being cannot be deprived of the company of her birth parents under a concealed identity of the respondents being her real parents. The mother who gave birth to the child cannot be deprived of the company of her daughter just for the fact that for some time the child was given in the foster care of her maternal uncle and aunt. It is not about the right of the applicants (the parents) or the respondents (the maternal uncle and aunt) rather it is about the right of the child as a human being. A minor has a birth right to remain in the custody of her/his birth parents, who are the best persons on earth to know the welfare of the child. The maternal uncle and aunts/foster parents of the child have not acted in a matured manner in the situation in which they fall. Their emotions on the one hand and the welfare of the child on the other are pitted against each other. The attitude and behaviour of the foster parents in the whole scenario is also not understandable. Had it been a case of legal adoption with the wishes of the parents of the child, the situation would be otherwise. Without there being any legal adoption but only under an arrangement within the family, in our considered opinion, the foster parents (the respondents) should have though fostered the child as their own but should have allowed the child to know as to who her birth parents are, to meet them, to spend time with them and then take an informed decision, an intelligent preference as to with whom she wanted to stay, to spend her childhood. **[Ms. Nasrin Begum and others vs. Prof. Mohd. Sajjad and another, 2022(10) ADJ 539 (Alld. H.C.) (DB)]**

HINDU MARRIAGE ACT, 1955

S. 13 – Divorce petition – On ground of mental cruelty.

Cruelty – Meaning – it has been used in S. 13(i) (i-a) of Act, 1955 in context of human conduct or behaviour in relation to or in respect to matrimonial duties or obligations – It is a course of conduct of one which is adversely affecting the other – The cruelty may be mental or physical.

Law for divorce – Principles thereunder – Summarised.

The cruelty may be mental or physical. It may be intentional or unintentional. If it is physical, it is question of fact and degree. If it is mental, the inquiry must begin as to the nature of cruel treatment and then as to the impact of such treatment on the mind of the spouse as to whether it caused reasonable apprehension that it would be harmful or injurious to live with the other. **Smt. Gayatri Mohapatra v. Ashit Kumar Panda, 2022(3) ARC 433.**

S. 13-B – Civil Procedure Code, 1908, O. IX, R. 13 – Recall application – To recall decree of divorce under S. 13-B of Act,,1955 – On ground the application under S. 13-B not filed by her rather it was result of collusion and fraud committed by respondent/husband.
S. 13-B – Decree of divorce – Grant of-Mandatory requirement.

The Court cannot act to protect perpetuation of legal fraud. The courts are obliged to do justice. Fraud and justice never dwell together (Frans Et Jus Nunquam Cohabitant). This maxim has never lost its temper over all the centuries. The courts are not meant to permit dishonesty even on technical pleas.

The applicant-appellant / wife was not aware of the judgement dated 31.05.1999 and decree of divorce under Section 13B of the Act, 1955. The said judgement is an ex-parte judgement. The appellant has not given her consent for divorce under Section 13B of the Act, 1955. The impugned judgement and decree set aside. The appeal is allowed. **Smt. Usha Kiran Rai v. Umesh Chandra Rai Deceased and others, 2022 (3) ARC 648**

Section 13(1)(i-a) and (i-b).

Thus, the principles of law for divorce under Section 13 of the Act, 1955, on the ground of cruelty, desertion or irretrievable breakdown of marriage, may be briefly summarised as under:

(i) The foundation of a sound marriage is tolerance, adjustment and respecting one another. Tolerance to each other's fault to a certain bearable extent has to be inherent in every marriage. Petty quibbles, trifling differences should not be exaggerated and magnified to destroy married life. Too technical and hypersensitive approach in matrimonial matters would be counterproductive to the institution of marriage. Therefore, approach should be to make effort to reconcile differences as far as possible.

(ii) The word “cruelty” has not been defined in the Act, 1955. It has been used in Section 13(i) /(i-a) of the Act 1955 in the context of human conduct or behaviour in relation to or in respect to matrimonial duties or obligations. It is a course of conduct of one which is adversely affecting the other. The cruelty may be mental or physical. It may be intentional or unintentional. If it is physical, it is question of fact and degree. If it is mental, the inquiry must begin as to the nature of cruel treatment and then as to the impact of such treatment on the mind of the spouse as to whether it caused reasonable apprehension that it would be harmful or injurious to live with the other. It is a matter of inference to be drawn by considering the nature of the conduct and its effect on the complaining spouse.

(iii) The human mind is extremely complex and human behaviour is equally complicated. Similarly human ingenuity has no bound, therefore, to assimilate the entire human behaviour in one definition is almost impossible. What is cruelty in one case may not amount to cruelty in the other case. The concept of cruelty differs from person to person depending upon his upbringing, level of sensitivity, educational, family and cultural background, financial position, social status, customs, traditions, religious beliefs, human values and their value system. Concept of mental cruelty cannot remain static; it is bound to change with the passage of time, impact of modern culture through print and electronic media and value system, etc. etc. What may be mental cruelty now may not remain a mental cruelty after a passage of time or vice versa.

(vii) Instances of cruelty given by Hon'ble Supreme Court in the case of Samar Ghosh (supra) and K. Srinivas Rao (supra) are not exhaustive but illustrative which have been reproduced in para 26 above.

(iv) Mental cruelty is the conduct of other spouse which causes mental suffering or fear to the matrimonial life of the other. “Cruelty”, therefore, postulates a treatment of the petitioner with such cruelty as to cause a reasonable apprehension in his or her mind that it would be harmful or injurious for the petitioner to live with the other party. Cruelty, however, has to be distinguished from the ordinary wear and tear of family life.

(v) What is cruelty in one case may not amount to cruelty in another case. Unlike the case of physical cruelty, mental cruelty is difficult to be established by direct evidence. It is necessarily a matter of inference to be drawn from the facts and circumstances of the case. The approach should be to take the cumulative effect of the facts and circumstances emerging from the evidence on record and then draw a fair inference whether the petitioner in the divorce petition has been subjected to mental cruelty due to conduct of the other.

(vi) First, the enquiry must begin as to the nature of the cruel treatment. Second, the impact of such treatment on the mind of the spouse, Whether it caused reasonable apprehension that it would be harmful or injurious to live with the other. There may, however, be cases where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or the injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted.

(viii) In the case of K. Srinivas Rao (supra) another instance of mental cruelty was added stating that making unfounded indecent defamatory allegations against the spouse or his or her relatives in the pleadings, filing of complaints or issuing notices or news items which may have adverse impact on the business prospect or the job of the spouse and filing repeated false complaints and cases in the

court against the spouse would, in the facts of a case, amount to causing mental cruelty to the other spouse.

(ix) In Mangayakarasi (supra) Hon'ble Supreme Court further explained the scope of cruelty stating that unsubstantiated allegation of dowry demand or such other allegation made by the wife against the husband and his family members which exposed them to criminal litigation and ultimately it is found that such allegation is unwarranted and without basis and if that act of the wife itself forms the basis for the husband to allege that mental cruelty has been inflicted on him, certainly, in such circumstance, if a petition for dissolution of marriage is filed on that ground and evidence is tendered before the original court to allege mental cruelty it could well be appreciated for the purpose of dissolving the marriage on that ground.

(xi) "Desertion", for the purpose of seeking divorce under the Act, 1955, means the intentional permanent forsaking and abandonment of one spouse by the other without that other's consent and without reasonable cause. In other words it is a total repudiation of the obligations of marriage. Desertion is not the withdrawal from a place but from a state of things. Desertion, therefore, means withdrawing from the matrimonial obligations i.e. not permitting or allowing and facilitating the cohabitation between the parties. The proof of desertion has to be considered by taking into consideration the concept of marriage which in law legalises the sexual relationship between man and woman in the society for the perpetuation of race, permitting lawful indulgence in passion to prevent licentiousness and for procreation of children. Desertion is not a single act complete in itself, it is a continuous course of conduct to be determined under the facts and circumstances of each case. If a spouse abandons the other in a state of temporary passion, for example, anger or disgust without intending permanently to cease cohabitation, it will not amount to desertion. Two elements are essential so far as the deserted spouse is concerned: (1) the absence of consent, and (2) absence of conduct giving reasonable cause to the spouse leaving the matrimonial home to form the necessary intention aforesaid. The offence of desertion commences when the fact of separation and the animus descend coexist. But it is not necessary that they should commence at the same time.

(xii) Irretrievable breakdown of marriage is not a ground for divorce under the Hindu Marriage Act, 1955. Because of the change of circumstances and for covering a large number of cases where the marriages are virtually dead and unless this concept is pressed into service, the divorce cannot be granted. Once the parties have separated and the separation has continued for a sufficient length of time and one of them has presented a petition for divorce, it can well be presumed that the marriage has broken down. The court, no doubt, should seriously make an endeavour to reconcile the parties; yet, if it is found that the breakdown is irreparable, then divorce should not be withheld. The consequences of preservation in law of the

unworkable marriage which has long ceased to be effective are bound to be a source of greater misery for the parties. The power to dissolve marriage on the ground of irretrievable breakdown is exercised in rare cases, and not in routine, in the absence of legislation in this behalf. In a recent judgment in Munish Kakkar (supra), it has been held that it is only the Supreme Court which can dissolve marriage on the ground of irretrievable breakdown, in exercise of its power under Article 142 of the Constitution of India, where it is found that a marriage is totally unworkable, emotionally dead, beyond salvage and has broken down irretrievably.

(xiii) Hon'ble Supreme Court in the case of Naveen Kohli (supra) has recommended to the Union of India to seriously consider bringing an amendment in the Hindu Marriage Act, 1955 to incorporate irretrievable breakdown of marriage as a ground for the grant of divorce and a copy of the said judgment was sent to the Secretary, Ministry of law and justice department of legal affairs Government of India for taking appropriate steps. In the case of Samar Ghosh (supra) Hon'ble Supreme Court referred to 71st report of Law Commission of India submitted to Government of India on 7.4.1978 in which it was mentioned that in case the marriage has ceased to exist in substance and in reality there is no reason for denying divorce. Nothing has been brought on record to indicate the steps, if any, taken by the Union of India either with respect to 71st report of Law commission of India or pursuant to the recommendation of Hon'ble Supreme Court in para 91 of the judgment in the case of Naveen Kohli (supra). Therefore, we remind the Union of India the recommendation made by Hon'ble Supreme Court in the case of Naveen Kohli (supra) and the 71st report of the Law Commission of India dated 7.4.1978 and request to consider it. **[Smt. Gayatri Mohapatra vs. Ashit Kumar Panda, 2022(12) ADJ 76 (DB) (Alld. H.C.)]**

INDIAN EVIDENCE ACT, 1872

Section 65-B(4)- Admissibility of electronic records (CDRs) - Admissibility of the CDRs without the certificate.

Before we proceed to determine whether each of the above narrated circumstances have been proved beyond reasonable doubt, we would t deal with the legal submission of the learned counsel for the appellant with regard to the admissibility of the CDRs brought on record without the certificate as contemplated under Section 65-B(4) of the Evidence Act. It is now settled by a three judge Bench decision of the Supreme Court in Arjun Panditrao Khotkar vs. Kailash Kushanrao Gorantya and others, (2020) 7 SCC 1, following an earlier three judge Bench decision in Anvar P.V. vs. P.K. Basheer and others, (2014) 10 SCC 473, that the certificate required under Section 65-B(4) of the Evidence Act is a condition

precedent to the admissibility of secondary evidence of an electronic record and that the secondary h evidence is admissible only if led in the manner stated and not otherwise. In that decision it was held that Section 65-B differentiates between the original information contained in the computer itself and copies made therefrom - the former is the primary evidence and the latter being secondary evidence. It was held that certificate required under Section 65(4) is unnecessary if the primary evidence, such as a laptop, computer, computer tablet or even a mobile phone, etc is produced and proved by its owner by entering the witness box and proving that the device concerned, on which the original information is first stored, is owned and/or operated by him. How- ever, where the computer happens to be a part of the computer system or computer network and it becomes impossible to physically bring such system or network to the Court, then the only means of providing information contained in such electronic record can be in accordance with S.65- B (1), together with the requisite certificate under Section 65-B (4).

In this case the issue that arises for our consideration is a bit different. Here, we notice from the trial Court record that the genuineness of the call detail records (CDRs) was admitted by Sri S. Raizada Advocate, counsel representing the accused appellants. On the basis of his admission, the CDRs were exhibited as Exb. Ka-15 to Exb. Ka-20 and Exb. Ka-21. However, there is no certificate on record as contemplated by Section 65-B (4) of the Evidence Act. In this context, the moot question that arises for our consideration is whether, once the secondary evidence of the CDRS is taken on record as an exhibited document consequent to acceptance of its genuineness by the counsel for the accused- appellants, the same is to be eschewed from consideration for want of a certificate as contemplated by Section 65-B(4) of the Evidence Act. This issue is no longer res integra. In Sonu alias Amar vs. State of Haryana, (2017) 8 SCC 570, an identical issue came up for consideration before the Supreme Court. The Supreme Court relying on earlier decisions including one in R. V.E. Venkatchala Gounder vs. Arulmigu Viswesaraswami and V.P. Temple, (2003) 8 SCC 752, held that objections regarding admissibility of documents which are per se inadmissible can be taken even at the appellate stage but where objection is with regard to the mode or method of proof, the same being procedural, if not taken at trial, cannot be permitted at appellate stage. The Supreme Court held that it is nobody's case that CDRs which are a form of an electronic record printed on paper are not inherently admissible in evidence. The objection is only in respect of mode or method of proof. If an objection was taken to CDRs being marked without a certificate, the trial Court, could have given the prosecution an opportunity to rectify the deficiency. The Supreme Court observed that an objection relating to mode or method of proof is to be raised at the time of marking of document as an exhibit i.e. at the trial stage, and not later. With the above reasoning, upon finding that the CDRs were already exhibited in the records of the trial Court

and the objection was only with regard to the mode of proof, the Supreme Court overruled the objection as to the admissibility of the CDRS without the certificate contemplated under Section 65-B(4). The above decision of the Supreme Court was followed in Rajender alias Rajesh alias Raju vs. State (NCT of Delhi), (2019) 10 SCC 623, where also, the Supreme Court did not allow raising of objection at the appellate forum as to the admissibility of CDRs for want of certificate under Section 65-B (4) of the Evidence Act. In light of the decisions noticed above, we are of the view that once genuineness of the CDRs was admitted by the counsel representing the appellants before the trial Court and, consequent to that admission, they were marked Exb. Ka-15 to Exb. Ka-20 and Exb. Ka-21, objection with regard to their admissibility for want of certificate contemplated under Section 65-B(4) of the Evidence Act, raised for the first time before appellate Court, is liable to be rejected and is, accordingly, rejected.

Relevance of the CDRs

Although the CDRs may be admissible in evidence but as to how far they are relevant to indicate the involvement of the appellants in the crime is another issue altogether. It be noted that the exhibited CDRs only indicate exchange of calls between two mobiles, namely, No. 8954197544 and No. 9808068517. The latter is claimed to be in use of the deceased, though it stands in the name of her son, whereas the former is of the appellant. The CDRs produced do not indicate the tower location as to show that at any time the two instruments were found at one location. Further, there is no voice call recording to indicate as to who was talking with whom. In these circumstances, the CDRS produced would only indicate some kind of acquaintance between the caller and the recipient of the call and nothing more. Had the CDRs indicated that the mobile instrument seized had used both SIMs, that is, one of the accused appellant Pratap and the other of the deceased, then an inference could have been drawn that both instruments at some stage were in possession of one person. But here the CDRS do not indicate that same instrument was used for making calls by using both SIMs. In these circumstances, the relevance of CDRS is only to show that the caller and recipient of the call were acquainted with each other. **[Pratap Singh and another vs. State of U.P., 2022(11) ADJ 295 (Alld. H.C.) (DB)]**

INDIAN PENAL CODE

Section 364, 300, 201 IPC, Section 34 Evidence Act

Hon'ble Allahabad High Court in a matter related to abduction and murder for ransom discussed circumstantial evidence in a detail manner and held that "These three appeals are against a common judgment and order dated 23.01.2007 passed by

the Additional Sessions Judge, Court No.3, Pilibhit in S.T. No.797 of 2003 connected with S.T. No.212 of 2004, arising out of Case Crime No.320 of 2003, P.S. Bilsanda, District Pilibhit, whereby, the appellants Sanjay Singh @ Bhooray (appellant in Criminal appeal No.1407 of 2007), Vipin Singh (appellant in Criminal appeal No.1069 of 2007), Sompal Singh (whose Criminal appeal no.1063 of 2007 was abated by order dated 19.01.2022) and Bare (appellant in Criminal Appeal No.1223 of 2007) were convicted under Sections 364, 302 / 34, 201 and 420 IPC and were sentenced to imprisonment for life and fine of Rs.2500/- coupled with default sentence of additional six months each under Section 364 IPC and Section 302/34 IPC; three years R.I. and fine of Rs.2,500/- coupled with a default sentence of additional six months under section 201 IPC; and three years R.I. and fine of Rs.2500/- under Section 420 IPC coupled with a default sentence of additional six months. All sentences to run concurrently. It be clarified that in S.T. No.797 of 2003, three accused, namely, Sanjay Singh @ Bhooray (appellant in Criminal Appeal No.1407 of 2007); Vipin Singh (appellant in Criminal Appeal No.1069 of 2007); and Sompal Singh (appellant in Criminal Appeal No.1063 of 2007), were tried; whereas, in S.T. No.212 of 2004, Bare (appellant in Criminal Appeal No.1063 of 2007) was tried. Criminal Appeal No.1063 of 2007 separately filed by Sompal Singh was abated vide order dated 19.01.2022 consequent to his death.

Hon'ble Court while discussing the circumstantial evidence and motive behind the crime held that-

"Ordinarily in a case based on direct ocular account of the crime, the existence of motive is not of much importance but where a case is based on circumstantial evidence, motive assumes importance and at times serves as a vital link to the chain of circumstances because, absence of a motive may serve as a catalyst to strengthen the alternative hypothesis, if there is a room for any, consistent with the innocence of the accused. In the instant case, the prosecution set up twin motive for the crime. One was ransom and the other was annoyance of Sanjay @ Bhooray with the deceased on account of his relationship with Manju i.e. cousin of Sanjay @ Bhooray. In so far as the latter is concerned, admittedly, Manju was a widow and the deceased was unmarried. In such circumstances, if the deceased wanted to marry Manju whether it would be a strong motive for the crime is anybody's guess. Further, from the testimony of PW-4 we have noticed that the brothers and father of Manju raised no objection to this relationship. But, assuming that the accused party was annoyed on that score and this annoyance was known to the informant then, if the deceased had gone to Sanjay's place after informing the informant and had not returned thereafter, there would have been a prompt report because of the underlying suspicion of an untoward event. But, here, there was no missing report or FIR. It is only after a month of the deceased having gone missing, the report was lodged. To explain this delay, it appears to us, the story was

developed that a ransom call was received from Sanjay Singh and negotiations were on to settle for an amount to secure release of the deceased. This story does not appeal to us for the reason that had there been a ransom call by Sanjay, and Sanjay had denied making the ransom call on 05.04.2003, as is alleged by PW-4, there would have been a prompt report as, after denial by Sanjay, the caller's identity became uncertain. PW-4 tries to explain this by saying that he tried to lodge a report but it was not taken. This statement has no basis. In fact, PW-7 has stated that PW-4 never came to the police station Bilsanda to lodge a report. Assuming that PW-4 had gone to P.S. Bilsanda to lodge a report but the same was not taken, why PW-4 made no effort to lodge a report at P.S. Pooranpur, more so when the deceased had gone missing from within its jurisdiction, is inexplicable. Therefore, the delay in lodging the report after 05.04.2003 seems inexplicable. Further, if the ransom amount was resettled and paid on 18.04.2003, yet, the deceased was not returned, there was no occasion to wait till 02.05.2003 to lodge a report.

In Mukesh and another Vs. State (NCT of Delhi) (2017) 6 SCC 1, a three judges Bench of the Supreme Court, in para 50 of its judgment, observed as under:-

> "50. Delay in setting the law into motion by lodging of complaint in court or FIR at police station is normally viewed by courts with suspicion because there is possibility of concoction of evidence against an accused. Therefore, it becomes necessary for the prosecution to satisfactorily explain the delay. Whether the delay is so long as to throw a cloud of suspicion on the case of the prosecution would depend upon a variety of factors. Even a long delay can be condoned if the informant has no motive for implicating the accused."

Ordinarily, in matters relating to kidnapping or abduction for ransom, victim party awaits return of the kidnapee or abductee for fear or danger to his or her life therefore, in such matters, mere delay in setting the law into motion may not prove fatal to the prosecution story. But where hope of return of the abductee disappears, delay in lodging the report would, in absence of plausible explanation, raise suspicion as regards the credibility of the prosecution story. In the instant case, the prosecution story is in three parts, namely, (a) pre receipt of ransom call; (b) post receipt of ransom call; and (c) post payment of ransom. Not lodging the report till receipt of ransom call has explanation to the effect that the deceased often used to be out for days therefore, his not returning back did not raise suspicion. Ransom call was received on 05.04.2003. According to PW-4, the caller for ransom, as per his belief, was Sanjay @ Bhooray therefore, he went to Majhgawa to confirm. Notably, on 05.04.2003 the informant was informed by Sanjay that he never made that ransom call and the informant was also informed that the accused persons were not aware as to where the deceased went after having lunch on 04.04.2003. In such a scenario, the delay in lodging report after 05.04.2003 required a plausible explanation. The explanation given was that information was given at P.S. Bilsanda

in the evening of 05.04.2003, upon which, Sanjay @ Bhooray was called but, after enquiry he was let off. Yet, no formal report was lodged. Interestingly, P.W.-7, constable posted at P.S. Bilsanda, during cross-examination, stated that PW-1 never came to P.S. Bilsanda before registration of the FIR. Notably, PW-4 also states during cross examination that he had not given any written application at P.S. Bilsanda. Even in the written report (Ex. Ka-1) dated 02.05.2003 there is no disclosure about any written information given earlier. This would suggest that the explanation for not lodging the report earlier is not credible. Further, if, allegedly, ransom was paid on 18.04.2003 to Sanjay @ Bhooray on a promise that he would secure the release of the deceased and, after payment of ransom, deceased was not released and no further promise was allegedly extended, there was no plausible reason not to report the matter promptly. The explanation that PW-1 waited thereafter under the expectation that his son might be released does not inspire our confidence. More so, because PW-1 did not disclose the phone number from where the ransom call was made. He also did not disclose the phone number on which the call was made. Most importantly, PW-4 states that ransom money of Rs. 50,000/- was arranged from his maternal uncle Gurbux Singh but that was not disclosed during investigation and, admittedly, Gurbux Singh was not produced as a witness to enable us to be satisfied about the authenticity of the story. Further, there is no corroboratory recovery of the cash. Thus, for all the reasons above, the inordinate delay in lodging the FIR shrouds the prosecution story with suspicion as regards demand and payment of ransom.

As we have already discarded PW-5 i.e. the witness of last seen circumstance (vide para 29 (d) above), what remains is the testimony of PW-2, PW-3 and PW-4 in respect of going to Majhgawa to enquire about the deceased. The witnesses do state that the accused party admitted that the deceased had come to Majhgawa and that they had lunch with him on 04.04.2003 at Som Pal's place at Rautapur, but this circumstance is denied by the accused persons in their statement under Section 313 CrPC. No witness of that village has been examined to confirm deceased's presence at Majhgawa. No call detail records are available to show deceased's presence with the accused. Under these circumstances, when the FIR was so delayed, it is difficult for us to hold that the prosecution was successful in proving beyond reasonable doubt that the deceased had come to Majhgawa on 3/4.04.2003. The statement of cycle stand owner (PW-1) that the deceased had parked his cycle with him to go to Majhgawa does not inspire our confidence at all, firstly, because why would the decease travel to that place (Pooranpur) on a cycle when he had a motorcycle and could go to Majhgawa directly and, secondly, even if he had parked his motorcycle, why would the decease tell the cycle stand owner as to whose house he had to go. When we notice these circumstances in conjunction with introduction of his name in the FIR lodged on 4.5.2003, when it was not necessary to disclose, it appears to us,

that PW-1 is a witness set up on legal advise to provide a link evidence. We, therefore, do not propose to rely on PW-1 to lend credence to the prosecution story of the deceased visiting Majhgawa on 03.04.2003. We may hasten to clarify that we do not rule out the possibility of PW-2, PW-3 and PW-4 visiting Majhgawa to enquire about the deceased as, admittedly, Sanjay @ Bhooray was friend of the deceased and the deceased and Sanjay were on visiting terms. We also do not rule out the possibility of PW-4 suspecting Sanjay @ Bhooray having a hand in his son's disappearance, perhaps, on information that the deceased had an eye on Sanjay @ Bhooray's cousin. But it is well settled that suspicion cannot take the place of proof. Once this the position, the only worthwhile circumstance that remains is of recovery."

It was held by the Hon'ble Court that the motive was not established and the circumstance of last seen was not proved. There was in ordinate delay in lodging FIR, the recovery of dead body at the instance of accused was doubtful. The prosecution story was developed on strong suspicion and gas work. Thus, the accused were entitled to benefit of doubt. Hence, acquitted. (**Sanjay Singh alias Bhoorayt v. Stae of U.P., 2022 Cri.L.J. 3701 : AIR Online 2022 All 3320)**

Section 376AB, 300, 201 IPC, Section 3 Evidence Act

The matter was related to rape on minor and murder, while evaluating circumstantial evidence Hon'ble Allahabad High Court held that there where consistent testimonies of mother and elder sister of deceased that deceased entered into house of accused to have water, thereafter she could not be traced and later on her body was dug out from pit inside house of the accused. Thus it was consistent circumstance of last seen. There was no suggestion to contrary in cross-examination. This last seen fact was proved beyond reasonable doubt.

It was also observed by the Hon'ble Court that as circumstantial evidence regarding the circumstance that on next day of the incident, father of deceased met the accused at his house with scratch mark on his neck, no suggestion in cross-examination to the father of the deceased contradicting his meeting accused at his house and the accused having scratch mark was put. Statement in FIR was that father of the deceased could not meet accused at his house is of no consequence as father was confronted with FIR in cross-examination.

Hon;'ble Court also discussed the effect of delay in lodging FIR. It was held that where a minor daughter went missing, delay of three days in lodging FIR is not very material because family member of missing member to hide shame and proving question, before making their grievance public, make all efforts to trace out the missing girl. It was also held that there was no reason to falsly implicate the accused,

informant deposed that he had searched the deceased but when his efforts could not bear fruit, he lodged FIR. Thus this delay is not fatal to prosecution case.

Hon'ble court while evaluating the presence of accused and its proof held that the presence of accused in his house on the day and next day of incident was proved by elder sister of deceased, accused did not deny his presence said days. The inference was drawn that on the day of the incident when the deceased entered the house of the accused, he was present in his house. There was no evidence that his other family members were also present in the house. Thus, on the day of the incident, the accused was alone in his house, was proved.

Hon'ble Court while evaluating the recovery of the dead body and its reliability. Held that prosecution established beyond doubt that dead body was recovered from a pit inside of the house of accused. Defence took plea that the dead body was planted in the house of the accused was rejected because it was found that there was no enmity of the prosecution witnesses with accused. Thus, discovery and recovery of dead body of the victim from a pit inside the house of the accused was proved.

Hon'ble court discussed about the legality of arrest and recovery of cloth of the accused and deceased and it was found that the time of arrest and by whom the accused was arrested was not disclosed as accused was arrested near Chandigarh there was nothing on record to show whether before and after the arrest any information was provided to local authorities of Chandigarh administration or not. Even an arrest memo was not prepared. It was held that arrest of accused was made in most casual an cursory manner without following due procedure and the arrest appeared to be illegal. While discussing the admissibility of recovery evidence prosecution case was that the cloth of the accused and deceased were recovered from the pit at the instance of the accused. There was no clear evidence regarding the place from where recovery of cloths etc was made was a dug out pit from where dead body of deceased already recovered. Thus the alleged recovery cannot be accepted.

It was held that autopsy and medical evidence confirmed rape and murder of the deceased on or about six to seven days before the autopsy. It was proved that the deceased was raped and murdered on or about the day when she entered the house of accused to have water. Discussing about the circumstantial evidence it was held the chain of circumstances relied on by the prosecution was complete. Post-mortem report and the statement of doctor clearly suggested that deceased was subjected to sexual assault and strangulated. Medical evidence showed that accused committed penetrative sexual assault on deceased, as age of deceased was below 12 years, accused committed offence of aggravated penetrative sexual assault punishable under section 6 of POCSO Act.

Hon'ble Court also discussed regarding the sentence to be awarded as the offence of 376AB IPC and Section 5(m), 6 POCSO Act was also proved as the woman was under the age of 12 year. While discussing section 42 of POCSO Act Hon'ble Court held that conviction under section 376AB IPC and Section 6 of POCSO Act, keeping in view the alternate punishment the convict may be sentenced under the provision which provide and prescribed greater punishment. Identical punishment is prescribed for both the offences, POCSO Act being a special Act it would be appropriate that accused is punished under that Act. Thus, the convict sentenced under S. 6 of POCSO Act instead of S. 376 AB IPC in addition to other offenses for which he was held guilty. It was also held by the Hon'ble Court that death penalty can be awarded even if case was based on circumstantial evidence. AIR online 2019 SC 2028 was followed. It was held that the matter was regarding the rape on minor and murder. The death penalty was ordered without considering mitigating circumstances because convict is a young man with no criminal antecedents. There was nothing on record to rule out the possibility of reformation and rehabilitation. Hence, the reference for confirmation of death penalty was rejected. Conviction was held proper. The death penalty was modified to life imprisonment. (**Harendra v. State of U.P., 2022 Cri.L.J. 4177: AIR Online 2022 All. 32)**

Section 378, 311 Cr.P.C. Section 353, 504, 506 IPC, Section 3, 154 Indian Evidence Act

In the instant case accused was tried on the allegation that enraged with order of complainant Jailor for frisking of visitors, accused prisoner, and influential political personality abuse the Jailor and took revolver from one of the visitors and pointed it towards the complainant. Trial Court acquitted accused of all the charges. The complainant was not cross-examined in the trial initially. However later on witness was recalled and there upon turned hostile to some extent. Hon'ble High Court re appreciated the evidence against acquittal and held that reading together testimony of complainant and the testimonies of the other prosecution witness, charges against the accused for committing offence u/s 504,506, 353 IPC were proved beyond reasonable doubt. Trial Court had completely ignored the evidence of complainant in examination in chief and had only considered his cross-examination. The approach of the Trial Court was palpably erroneous and against the well settled legal position. Testimony of complainant in his examination in chief was fully in tuned with the prosecution case. The said witness did not have any enmity with the accused and there where no reason to falsely implicate the accused for commission of the offence for which the accused was charge. There were no reason to disbelieve his testimony given in examination in chief. It was also held that the testimony in the

cross examination which took place after he could have been won over did not appear to be credible. It was also held that submission that the application for his recall came to be filed after said witness was won over for threat or some other reason, was acceptable. The impugned judgment and order passed by the trial court was thus, unsustainable.

It was also held that intentional insult with intent to provoke breach of peace (504 IPC), evidence on record showed that the accused prisoner abused the complainant jailor and insulted him knowing fully well that it would undermine the authority of the Jailor and would cause breach of peace inside the jail and outside since if a public servant can be humiliated and abuse then authority of public functionary would get diminished and people would not respect the lawful authority. Evidence on record also proved that accused used criminal force by pointing pistol towards complainant with intent to prevent and deter the complainant from discharging his duty as a Jailor. Hence, offence u/s 353 IPC was proved. Judgment of acquittal was liable to be set aside. (**State of U.P. v. Mukhtar Ansari, 2022 Cri.L.J. 4561 : AIR Online 2022 All. 45)**

MATERNITY BENEFIT ACT, 1961

Section 27- Financial Handbook- Volume-II, Part 2 to 4, Chapter XIII Rule 153(I)

The moot question in the opinion of the Court is thus regarding the applicability of the Maternity Benefit Act, 1961 to the case of the petitioner. (In this case petitioners were Assistant Teachers in Primary School managed by Uttar Pradesh Basic Education Department. There is no dispute with regard to the applicability of the Fundamental Rules i.e. Rule 153 91) of Chapter XIII of U.P. Fundamental Rules in Financial Handbook Volume-II, Part 2 to 4. The parties are at variance only with regard to the applicability of the Maternity Benefit Act, 1961.

In conclusion it can safely be said that the Maternity Benefit Act, 1961 has been enacted by the Parliament in exercise of powers under Entry 24 in List-III of the Seventh schedule of the Constitution of India and to secure the goals stated in Articles 38, 39, 42 and 43 of the Constitution of India and also to give effect to the provisions contained in Article 15(3) of the Constitution. The provisions of Financial Handbook are merely executive instructions and would be subsidiary to the Act of the Parliament and in case of any inconsistency, the statutory enactment framed by the Parliament would prevail and hence, the provisions of the Maternity Benefit Act,. 1961 would prevail over the provisions of the Financial Handbook and consequently, the provisions of Rule 153(1) of the Financial Handbook Volume II to IV are read down with regard to the admissibility of leave to a women with regard

to second pregnancy which would be governed by the Maternity Benefit Act, 1961 and not Rule 153 (1) of the Financial Handbook Volume II to IV. The State Government already having adopted the provisions of the Maternity Benefit Act, 1961 as recorded by the Division Bench of this Court and followed by the Single Bench in the case of Anshu Rani vs. State of U.P. passed in 2019(4) ADJ 809, it is clear that the provisions of the Maternity Benefit Act, 1961 would prevail over any law. **[Smt. Anupam Yadav vs. State of U.P. and others, 2022(11) ADJ 669(Alld. H.C.)]**

Section 2- Fundamental Rules –Rule 153- 3rd Proviso)

Rule 153 of the Fundamental Rules provides for grant of maternity leave to female Government servant whether permanent or temporary provided that no such leave shall be admissible unless a period of 2 years have elapsed from the date of expiry of the last maternity leave granted under this rules.

It is not disputed between the parties that first maternity leave was sanctioned on 27-12-2021 and therefore, second maternity leave which was sought by the petitioner within two years, is not admissible under Rule 153.

So far as grant of maternity leave under the Maternity Benefit Act, 1961is concerned, the same are applicable to every establishment being a factory, mine or plantation including any such establishment belonging to Government and to every establishment wherein persons are employed for the exhibition or equestrian, acrobatic and other performances. It also applies to establishment within the meaning of any law for the time being in force in relation to shops and establishments in a State, in which ten or more person are employed, or were employed, on any day of the preceding twelve months.

It is not disputed that petitioner is a Government servant and it is also not disputed that she is an employee of the State Government and the Fundamental Rules 153 applies for service of Government employees as also for the grant of maternity leave. Petitioner is not an employee under an establishment as defined in Section 3 of sub-section (e) of the Maternity Benefit Act, 1961, read with Section 2 of sub-section (i).

Obviously, the petitioner is not an employee in the department, mine or plantation in a establishment so as to exhibit of equestrian, acrobatic and other performance etc. as provided under Act, 1961. Hence it is evident that petitioner is not an employee of establishment. This question has been considered and decided by this Court in Renu Chaudhary vs.State of U.P. and others, 2022(2) ADJ 14.

From the aforesaid, it is clear that second application for maternity leave of the petitioner is within two years from the date of expiry of the first maternity leave and in view of 3rd proviso to Rule 153 of the Fundamental Rules, the maternity leave

could not be4 granted to the petitioner. The petitioner is a Government employee and not an employee as provided in Section 3(e) of the Maternity Benefit Act, 1961 read with Section 2(1) thereof. **[Smt. Kiran Verma vs. State of U.P. and others, 2022(11) ADJ 453 (Alld. H.C.)]**

MOTOR VEHICLES ACT, 1988

Negligence—Contributory negligence—Apportionment of liability—Accident between a bus and motor cycle resulting in death of motor-cyclist

The evidence of PW 2 and DW 1 read with each other goes to show that the motorcyclist while trying to save a cyclist dashed with the bus of UPSRTC. Had the driver of the bus of UPSRTC which was a bigger vehicle taken more caution, the accident could have been avoided but as there was head-on collision, the Tribunal has apportioned the liability on the basis of head-on collision. Rather the driver of UPSRTC bus has taken stand that his vehicle did not dash with the motorcyclist. Injury goes to show that the impact was such that the deceased died due to accidental injuries caused by the big vehicle. The driver driving bigger vehicle on the highway is supposed to take more caution. Court, therefore, hold the driver of the bus of UPSRTC 75 per cent negligent and the deceased to be 25 per cent negligent.

This takes us to the issue of quantum of compensation awarded. It is submitted by learned counsel for the appellant that the finding of fact of the Tribunal that income tax return of earlier years cannot be considered which was just preceding the year when the deceased died is perverse. The accident occurred in the month of December, 2007, the income tax return, payslip and other material were before the Tribunal. The Tribunal has not properly scrutinized the same, and has wrongly considered the minimum amount as income and considered that the deceased was earning only Rs 3,000 per month. The income was below the taxable limit but as he was service personnel, the income tax return was filed which is on record. The finding is not only perverse finding but absurdity has percolated in the award of the Tribunal. The salary certificate shows the income of the deceased to be Rs 7,500 per month. **[Shalini Srivastava and others vs. U.P. State Road Trans. Corpn., 2022 ACJ 2422]**

Negligence – Contributory negligence—Apportionment of liability—Truck dashed against a car and car driver sustained fatal injuries—Tribunal held that truck driver and car driver were equally negligent in causing the accident—F.I.R. was lodged against the truck driver—Truck driver did not enter the witness-box—Appellate court relying on evidence observed that car was slightly on the right side of the road and considering that car was pushed back due to

the impact held that truck was driven at high speed and truck driver was more negligent—Appellate court further observing that truck being a bigger vehicle its driver ought to have been more cautious held that truck driver was negligent to the extent of 70 per cent and car driver contributed to the accident to the extent of 30 per cent.

Quantum—Fatal accident—Principles of assessment—Income—Determination o f—Whether Tribunal was justified in assessing income taking average of income as per last three income tax returns—Held: no; income assessed as per last income tax return filed before the death of deceased.

The court found that the accident occurred on 7.5.2016 causing death of Gyan Prasad Uttam who was 48 years of age at the time of accident. The Tribunal assessed his income to be Rs. 3,58,676 per year. According to the High Court, it would be at least Rs 4,00,000 per year looking to his vocation and the income tax return as per the decision of Apex Court in Sangita Arya 2020 ACJ 1881 (SC) and held that taking mean of income of three years is bad as reflected in tax returns The income as per income tax return by increasing and hence income of last year return latter most income tax return every year has to be considered taking of average has been deprecated by Apex Court in the case titled Sangita Arya which the Court followed. **[Sheela Devi and others vs. Sumit Kumar and others, 2022 ACJ 2456]**

Quantum—Injury—Injured a girl aged 2 suffered locomotor disability at 75 per cent and neuro-physical disability at 40 per cent—Medical Board opined that disability suffered by injured is almost 100 per cent—Injured cannot stretch her legs and cannot stand without support—Tribunal dismissed the claim application—High Court awarded Rs. 5,04,000 for loss of earning plus Rs. 2,00,000 for permanent disability, Rs. 1,50,000 towards pain and suffering, Rs. 1,50,000 for loss of amenities, Rs. 1,00,000 for mental agony, Rs. 1,00,000 for future medical expenses, Rs. 10,000 for transportation and Rs. 10,000 for extra nourishment; total Rs. 13,34,000—Apex Court further allowed Rs. 17,00,000 for attendant charges, Rs. 3,00,000 for pain and suffering and loss of amenities, Rs. 3,00,000 for loss of marriage prospects, Rs. 1,00,000 for future medical expenses, Rs. 90,000 for special diet and enhanced the award from Rs. 13,34,000 to Rs. 38,24,000.

In **Kajal vs. Jagdish Chand, 2020 ACJ 1042 (SC)** case, the Supreme Court referred to an early decision in Rajkumar vs. Ajay Kumar, 2011 ACJ 1 (SC) case. Para 5 of judgment in Rajkumar's case regarding awarding compensation for personal injuries. Reads:

"(5). The heads under which compensation is awarded in personal injury cases are the following:

Pecuniary damages (Special damages)

i. Expenses relating to treatment, hospitalisation, medicines, transportation, nourishing food, and miscellaneous expenditure.
ii. Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:
    (a) Loss of earning during the period of treatment;
    (b) Loss of future earnings on account of permanent disability.
iii. Future medical expense.

Non-pecuniary damages (General damages)

iv. Damages for pain, suffering and trauma as a consequence of the injuries.
v. Loss of amenities (and/or loss of prospects of marriage).
vi. Loss of expectation of life (shortening of normal longevity).

In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii)(b), (iii), (iv) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life….." **[Divya vs. National Insurance Co. Ltd., 2022 ACJ 2533]**

Sec. 149(2)(a)(ii)—Motor insurance—Driving licence—Fake licence—Liability of insurance company—Insurance company disputes its liability on the ground that as per report of its investigator driver of offending truck was holding a fake licence.

In the present case opposite party No. 1/respondent No. 3-owner the offending vehicle had stated in his written statement that on the date of accident Ram Naresh was driver on his vehicle. He had a valid driving licence. It was issued by the office of District Transport Officer, Muzaffarpur. On investigation by the insurance company/appellant, this driving licence was found to be fake as per report of Investigator, Mr. Arvind Kumar Misra. But he had not entered into the witness-box to prove the contents of his report which was based on the observation of dealing assistant. Even the dealing assistant of the office of District Transport Officer, Muzaffarpur has also not been examined to prove that the seal and signature of

District Transport Officer in the photocopy of driving licence were not found to be correct.

Further it was also not proved by the appellant that the owner/ respondent No. 3 had not taken adequate care and caution to verify the genuineness of the driving licence of the driver at the time of his employment and that the owner was aware or had notice that the licence was fake or invalid and still permitted him to drive the offending vehicle. In such circumstances, it cannot be said that the insured-owner is at fault in having employed a person whose licence has been found to be fake by the insurance company before the learned Tribunal. Therefore, there exists no cause to disturb the findings recorded by learned Tribunal in this regard. **[National Insurance Co. Ltd. vs. Kewal Krishna Arora and others, 2022 ACJ 2551]**

Quantum—Fatal accident—Deceased aged 31, engaged in various businesses and income tax assessee—Claimants: widow, two minor children and parents—Death of father during pendency of appeal before High Court—Tribunal taking average of income as per last three years' income tax returns awarded Rs. 4,29,37,700

To facilitate Court's analysis, it would be pertinent to divide the income as mentioned in the audit reports into two parts—(a) Income from business ventures and other investments and (b) Income from house property and agricultural land. It should be emphasized that these audit reports only showcase amounts which specifically stem from the shares and interest held by the deceased in the businesses and it is not a case wherein the entire turnover of businesses are depicted as deceased's income. Moreover, it deserves to be clarified that the income under the above-mentioned two parts has been computed at gross value as per the audit reports and include the deductions such as interest paid on loans and expenses incurred by the deceased.

As a rule of prudence, computation of any individual's managerial skills should lie between 10 and 15 per cent of the total rental income but the acceptable range can be increased in light of specific circumstances. The appropriate approach, therefore, is to determine the value of managerial skills along with any other factual considerations. **[K. Ramya and others vs. National Insurance Co. Ltd. and others, 2022 ACJ 2602]**

Quantum—Injury—Spine—Injured suffered fracture of D12 vertebra resulting in paraplegia—Injured aged 19, selling utensils, earning Rs. 9,000 p.m., suffered permanent disability at 45 per cent to whole body and remained hospitalized for 19 days—Injured is unable to walk, sit, squat and stand—

Tribunal awarded Rs. 6,13,000 which was enhanced to Rs. 9,26,800 by the High Court—Apex Court enhanced the award of Rs. 9,26,800 to Rs. 21,78,600

It is now a well settled position of law that even in cases of permanent disablement incurred as a result of a motor accident, the claimant can seek apart from compensation for future loss of income, amounts for future prospects as well. We have come across many orders of different Tribunals and unfortunately affirmed by different High Courts, taking the view that the claimant is not entitled to compensation for future prospects in accident cases involving serious injuries resulting in permanent disablement. That is not a correct position of law. There is no justification to exclude the possibility of compensation for future prospects in accident cases involving serious injuries resulting in permanent disablement. Such a narrow reading is illogical because it denies altogether the possibility of the living victim progressing further in life in accident cases and admits such possibility of future prospects in case of the victim's death. **[Sidram vs. Divisional Manager, United India Insurance Co. Ltd. and another, 2022 ACJ 2611]**

Evidence—Documentary evidence—Appreciation of—Claimants produced salary certificate and payslip of the deceased—High Court did not believe the said documents on the ground that person who issued the said documents was not examined and took income as per minimum wag0es fixed by the State—Whether documents produced by claimants which were corroborated by the statement of co-workers of the deceased were conclusive proof of the income of deceased—Held: yes; income re-fixed as per salary certificate and payslip

It is well settled that Motor Vehicles Act, 1988 is a beneficial piece of legislation and as such, while dealing with compensation cases, once the actual occurrence of the accident has been established, the Tribunal's role would be to award just and fair compensation. As held by this Court in Sunita, 2019 ACJ 801 (SC), and Kusum Lata, (2011) 3 SCC 646, strict rules of evidence as applicable in a criminal trial, are not applicable in motor accident compensation cases, i.e., to say, "the standard of proof to be borne in mind must be of preponderance of probability and not the strict standard of proof beyond all reasonable doubt which is followed in criminal cases".

In view of the above, the Supreme Court did not agree with the view taken by the High Court while rejecting the salary certificate (Exh. 19) and pay slip (Exh. 20) of the deceased merely on the ground that the person issuing the two aforementioned documents was not examined before the Learned Tribunal. The said documents are conclusive proof of the income of the deceased and were also corroborated by the statements of the deceased's wife (Appellant No. 1 herein) and his co-workers. As

such, the High Court was not justified in assessing the income of the deceased at Rs.4,836/- per month on the basis of minimum wages fixed by the State at the relevant time. Resultantly, the Supreme Court affirmed the findings of the Learned Tribunal so far as they relate to assessing the deceased's income at Rs.11,225/- per month on the basis of aforementioned two documents. Annual income of the deceased, therefore, amounts to, Rs.11,225/- x 12 = Rs.1,34,700/-. **[Rajwati and others vs. United India Insurance Co. Ltd. and others, 2022 ACJ 2754]**

Secs. 164 and 166 read with section 149 (as amended by Motor Vehicles Amendment Act, 2019)—Claim application—Delay in disposal of claim cases—Apex Court to curb the delay in disposal of claim cases issued various directions

The Apex Court issued the following directions:

i. The appeal filed by the owner challenging the issue of liability is hereby dismissed confirming the order passed by the High Court and MACT.

ii. On receiving the intimation regarding road accident by use of a motor vehicle at public place, the SHO concerned shall take steps as per Section 159 of the M.V. Amendment Act.

iii. After registering the FIR, Investigating Officer shall take recourse as specified in the M.V. Amendment Rules, 2022 and submit the FAR within 48 hours to the Claims Tribunal. The IAR and DAR shall be filed before the Claims Tribunal within the time limit subject to compliance of the provisions of the Rules.

iv. The registering officer is duty bound to verify the registration of the vehicle, driving licence, fitness of vehicle, permit and other ancillary issues and submit the report in coordination to the police officer before the Claims Tribunal.

v. The flow chart and all other documents, as specified in the Rules, shall either be in vernacular language or in English language, as the case may be and shall be supplied as per Rules. The Investigating Officer shall inform the victim(s)/legal representative(s), driver(s), owner(s), insurance companies and other stakeholders with respect to the action taken following the M.V. Amendment Rules and shall take steps to produce the witnesses on the date, so fixed by the Tribunal.

vi. For the purpose to carry out the direction No. (iii), distribution of police stations attaching them with the Claim Tribunals is required. Therefore, distribution memo attaching the police stations to the Claim Tribunals shall be issued by the Registrar General of the High Courts from time to time, if not already issued to ensure the compliance of the Rules.

vii. In view of the M.V. Amendment Act and Rules, as discussed hereinabove, the role of the Investigating Officer is very important. He is required to comply with the provisions of the Rules within the time limit, as prescribed therein. Therefore, for effective implementation of the M.V. Amendment Act and the Rules framed thereunder, the specified trained police personnel are required to be deputed to deal with the motor accident claim cases. Therefore, we direct that the Chief Secretary/Director General of Police in each and every State/Union Territory shall develop a specialized unit in every police station or at town level and post the trained police personnel to ensure the compliance of the provisions of the M.V. Amendment Act and the Rules, within a period of three months from the date of this order.

viii. On receiving FAR from the police station, the Claims Tribunal shall register such FAR as Miscellaneous Application. On filing the IAR and DAR by the Investigating Officer in connection with the said FAR, it shall be attached with the same Miscellaneous Application. The Claims Tribunal shall pass appropriate orders in the said application to carry out the purpose of Section 149 of the M.V. Amendment Act and the Rules, as discussed above.

ix. The Claim Tribunals are directed to satisfy themselves with the offer of the Designated Officer of the insurance company with an intent to award just and reasonable compensation. After recording such satisfaction, the settlement be recorded under Section 149(2) of the M.V. Amendment Act, subject to consent by the claimant(s). If the claimant(s) is not ready to accept the same, the date be fixed for hearing and affording an opportunity to produce the documents and other evidence seeking enhancement, the petition be decided. In the said event, the said enquiry shall be limited only to the extent of the enhancement of compensation, shifting onus on the claimant(s).

x. The General Insurance Council and all insurance companies are directed to issue appropriate directions to follow the mandate of Section 149 of the M.V. Amendment Act and the amended Rules. The appointment of the Nodal Officer prescribed in Rule 24 and the Designated Officer prescribed in Rule 23 shall be immediately notified and modified orders be also notified time to time to all the police stations/stakeholders.

xi. If the claimant(s) files an application under Section 164 or 166 of the M.V. Amendment Act, on receiving the information, the Miscellaneous Application registered under Section 149 shall be sent to the Claims Tribunal where the application under Section 164 or 166 is pending immediately by the Claims Tribunal.

xii. In case the claimant(s) or legal representative(s) of the deceased have filed separate claim petition(s) in the territorial jurisdiction of different High Courts, in the said situation, the first claim petition filed by the

claimant(s)/legal representative(s) shall be maintained by the said Claims Tribunal and the subsequent claim petition(s) shall stand transferred to the Claims Tribunal where the first claim petition was filed and pending. It is made clear here that the claimant(s) are not required to apply before this Court seeking transfer of other claim petition(s) though filed in the territorial jurisdiction of different High Courts. The Registrar Generals of the High Courts shall take appropriate steps and pass appropriate order in this regard in furtherance to the directions of this Court.

xiii. If the claimant(s) takes recourse under Section 164 or 166 of the M.V. Amendment Act, as the case may be, he/they are directed to join Nodal Officer/Designated Officer of the insurance company as respondents in the claim petition as proper party of the place of accident where the FIR has been registered by the police station. Those officers may facilitate the Claims Tribunal specifying the recourse as taken under Section 149 of the M.V. Amendment Act.

xiv. Registrar General of the High Courts, States Legal Services Authority and State Judicial Academies are requested to sensitize all stakeholders as early as possible with respect to the provisions of Chapters XI and XII of the M.V. Amendment Act and the M.V. Amendment Rules, 2022 and to ensure the mandate of law.

xv. For compliance of mandate of Rule 30 of the M.V. Amendment Rules, 2022, it is directed that on disputing the liability by the insurance company, the Claims Tribunal shall record the evidence through Local Commissioner and the fee and expenses of such Local Commissioner shall be borne by the insurance company.

xvi. The State Authorities shall take appropriate steps to develop a joint web portal/platform to coordinate and facilitate the stakeholders for the purpose to carry out the provisions of M.V. Amendment Act and the Rules in coordination with any technical agency and be notified to public at large. **[Gohar Mohammad vs. U.P. State Road Trans. Corpn. and others, 2022 ACJ 2771]**

SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITIES INTEREST ACT, 2002

Section 14

In view of the above discussion, it is held that the CMM/DM acting under Section 14 of the SARFAESI Act, 2002 is not required to give notice to the borrower at the stage of the decision or passing order as no hearing can be demanded by the

borrower at this stage. However, it is clarified that the order passed by such Magistrate has to be duly served upon the borrower before taking any steps for his forcible dispossession by such steps or use of force, as may be necessary in the opinion of the Magistrate, and the date fixed for such forcible action shall be duly intimated to such borrower in advance giving him sufficient time to remove his belongings, or to make alternative arrangement. **[Shipra Hotels Limited and another vs. State of U.P. and others, 2022(12) ADJ 473 (Alld. H.C.)(DB)]**

UP CONSOLIDATION OF HOLDINGS ACT

S. 49 – UP Zamindari Abolition and Land Reforms Act (1 of 1951), S. 123 – Declaration and injunction –

Legality or otherwise of insertion of names of purchasers in Record of Rights and deletion of name of the plaintiff from such record can only be decided by Revenue Court since the names of the purchasers had already been entered into. Only Revenue Court can record a finding whether such an action was in accordance with law or not and it cannot be decided by a Civil Court.

On the question of maintainability of civil suit by plaintiff who is not recorded in revenue record the civil suit filed by plaintiff cannot be entertained by civil Court. **Matashiromani v. State of U.P. and another, 2022 AIR CC 2962 (All)**

UP ENTERTAINMENT AND BETTING TAX ACT, 1979

Sections 12, 2(I)(iii)

On the basis of the submissions made at the bar this Court is to consider the scope of Section 2(l)(iii) of the 1979 Act and as to whether the orders impugned which are without any opportunity of hearing, satisfies the tax under Section 12 of the 1979 Act?

To consider the first submission that the charge of costume would not fall within the definition of Section 2 (l)(iii) of the 1979 Act. It is essential to produce Section 2(l)(iii), which is as under: "(1)**.** **'**payment for admission' includes –

(i) …

(ii) …

(iii) any payment made for the loan or use of any instrument or contrivance which enables a person to get a normal or better view or hearing or enjoyment of the entertainment, which without the aid of such instrument or contrivance such person would not get."

11. The payment for admission, includes any payment made for loan or use of any 'instrument' or 'contrivance' which enables a person to get a normal or a better view or hearing or enjoyment of the entertainment which without the aid of such instrument or contrivance such person would not get. Thus to include any amount under Section 2(l)(iii), it is essential that there should be a use of 'instrument' or 'contrivance' which enables the person to use the benefits and without which such entertainment or enjoyment is not possible. A costume used in the water park, as stated by the Counsel for the petitioner, is provided to the person who wants to take it on rent. There is no material on record to suggest that the costumes would be an 'instrument' or 'contrivance'. Further there is no material to state that such costume enhances the enjoyment of the persons to enjoy the entertainment of water park and further there is no material on the record to state that without such costume being provided, the person entering into the water park would not in a position to enjoy the entertainment.

15. In the present case, the costume used in the water park would neither fall within the definition of words ‘instrument’ or ‘contrivance’, thus I am inclined to accept the submission of the Counsel for the petitioner that the renting on ‘costumes’ cannot be included in the term ‘payment for admission’ as defined under Section 2(l), thus on that score alone, the assessment order is beyond the authority of law and is violative of Article 265 of the Constitution of India. **[Anandi Water Park Resorts and Club Pvt. Ltd. vs. State of U.P., 2022(11) ADJ 370 (Alld.H.C.) (LB)]**

UP GOVERNMENT SERVANTS (DISCIPLINE AND APPEAL) RULES, 1999

Rules 9(3), 7 and 9(1)

The question which arises for consideration is regarding the validity of the order dated 22.7.2019 ordering re-inquiry on the grounds that there were two conflicting enquiry reports in existence, and clearly, no infirmity or defect was pointed out or considered in the second enquiry report dated 31.12.2018.

In the instant case the first inquiry re- port was submitted by the inquiry officer on 4.7.2016 holding the petitioner guilty of all the 11 charges. On 14.8.2018 the decision was taken by the State Government for re-enquiry after considering the reply submitted by the petitioner. In his reply he had submitted that according to 1 the order dated 22.12.2005 passed by NOIDA giving the responsibility of removing the illegal encroachments was of the Project Engineer and not the petitioner, and consequently the petitioner was not responsible for removal of illegal encroachments. The said reply seemed logical and reasonable to the disciplinary authority, and he was of the considered opinion that the inquiry officer had not

considered the reply of the petitioner in the correct perspective, and it was thought fit to have the matter re-enquired.

It is noticed that the State Government was of the considered view that the earlier inquiry dated 4.7.2016 stood vitiated, as the reply of the petitioner was not considered and more specifically when there was a specific order holding the Project Engineer responsible for removal of any encroachment coming up in the area under by NOIDA, then how could the petitioner be found to be guilty of the said charges, was a question which was posed in the said order it- self.

The State Government itself had found infirmity in the enquiry report dated 4.7.2016, and according to the judgment of the Supreme Court in the case of State of U.P. vs. Saroj Kumar Sinha the first/previous inquiry report was vitiated and ceased to exist.

On 22.7.2019 when the State Government was considering the second enquiry report then previous enquiry report dated 4.7.2016 had ceased to exist. The only enquiry report which should have been considered by the disciplinary authority was the subsequent enquiry report dated 31.12.2018. The reason stated in the impugned order dated 22.7.2019 that there are "two contradictory inquiry reports" is based on a fallacious belief that the previous inquiry report dated 4.7.2016 was in existence and could be acted upon, which is clearly erroneous, arbitrary and illegal.

As discussed earlier, the moment decision is taken by the disciplinary authority invoking the provisions of Rule 9(1) of the rules of 1999, the previous inquiry report ceases to exist because of the infirmities as pointed out by the disciplinary authority and consequently the previous enquiry report dated 4.7.2016 was non est and of no consequence, and therefore, could not be taken into consideration by the Disciplinary authority. It is only the subsequent inquiry report dated 31.1.2018 which only could have be considered by the disciplinary authority for further proceedings.

The order dated 22.7.2019 is also illegal and arbitrary for the reason that the disciplinary authority did not find any infirmity with the inquiry report dated 31.12.2018, nor any such infirmity has been disclosed in his order. It is the defects/infirmities found in the enquiry report by disciplinary authority which clothes him which with the authority to exercise the power vested in Rule 9(1) of the rules of 1999, in other words pointing out of such infirmity in the enquiry report is a precondition for exercise of power on the disciplinary authority under Rule 9(1) of the rules of 1999. It is only when there is an infirmity in conduct of the inquiry in violation of any of the provisions of Rule 7 of the Rules of 1999, or there is any other allegation of grave misconduct against the inquiry officer in con- ducting the said enquiry can the disciplinary authority exercises jurisdiction under Rule 9(1) of the rules of 1999, after recording such reasons. No such infirmity has been pointed out considered or stated in the order dated 22.7.2019 for rejecting the inquiry report

dated 31.12.2018 which renders the exercise of power by the Disciplinary Authority without jurisdiction, illegal and arbitrary.

This Court is of the considered view that disciplinary authority while exercising power under Rule 9 would exercise the power in the following manner:

(I) In case there is any procedural defect in conduct of the enquiry as provided for in Rule 7 of the Rules of 1999 or some grave misconduct has been conducted by the Inquiry Officer then the Disciplinary Authority can exercise power under Rule 9(1) of the Rules, 1999.

(II) Where in case the Disciplinary Authority disagrees with the Inquiry Officer on the merits of the case or findings recorded by the Inquiry Officer, he must record his disagreement and proceed according to u nder Rule 9(2) of the Rules, 1999, following the procedure prescribed under Rule 9(4) of the Rules, 1999.

(III) When Inquiry Officer has exonerated the Government employee and Disciplinary Authority agrees with the inquiry report he shall proceed in accordance with Rule 9(3) of the Rules, 1999.

It is also noticed that by not following the mandatory provisions for conduct of the inquiry can itself cause prejudice to the Government servant. Procedural fairness is the hallmark or the conduct of disciplinary proceedings. The Rules of 1999 are mere incorporation of the principles of natural justice which deserve to be rigorously followed by the enquiry officer. It is trite law that so far as the statutory provisions are concerned, the law is clear to the effect that if the same requires a thing to be done in a particular manner, then it cannot e done in a different manner and has to be done in that manner alone. The law, therefore, right from 1876 Chancery Division Taylor vs. Taylor till date is the same. **[Ajai Kumar vs. State of U.P. and others, 2022(11) ADJ 37 (LB) (Alld. H.C.)]**

Civil Services Regulations- Article 351-A(a)(ii)

Disciplinary proceedings can be initiated and proceeded with against a Government Servant in accordance with the provisions of U.P. Government Servant (Discipline & Appeal) Rules, 1999. In case the disciplinary proceedings are initiated after his superannuation, where the link of employer and employee has ceased to exist, then provisions of Article 351-A of the Civil Service Regulations have to be mandatorily followed. The provisions of Article 351A of the Civil Services Regulations provide the preconditions for initiation of inquiry against a retired Government servant. The approval from the Governor is necessary, and the charges sought to be inquired into should not be prior than 4 years from the date of institution of such proceedings. In case any of such conditions is infringed, then the inquiry will be illegal and liable to be set aside. The conditions stated in Article

351A of CSR confers jurisdiction in the competent authority to proceed against a retired Government servant. Inquiry against a Government servant which is initiated prior to his superannuation, same can be continued subsequent to his superannuation only as per the provision stated in the said Regulations. **[Dr. Rudra Pratap vs. State of U.P. and another, 2022(11) ADJ 214 (LB) (Alld. H.C.)]**

UP RETIREMENT BENEFIT RULES, 1961

Rules 3, 6, 7- U.P. Government Servant Conduct Rules, 1956- Rule 29- Hindu Marriage Act, 1956- Section 11, 29 and 5.

Thus, Hindus cannot contract marriage after the enforcement of the Hindu Marriage Act, if any of them is having a living spouse, the marriage would be a nullity and would also not be protected under the Conduct Rules, as well as, the pension rules, therefore, it follows that the "second wife" as referred to under the Rules, 1961 would only include second wife whose marriage was otherwise permissible under the personal law or law prevalent at the time of marriage, but in the case of Hindus the second wife will have no right, whatsoever, as the law prohibits second marriage, as long as, the Government servant has a spouse who is alive. Thus for harmonious construction of the Rules governing pension, wherever, the rule provides for 'wives', it has to be interpreted as per the law governing marriage as applicable to the Government servant and in cases where the second marriage is void under the law, second wife will have no status of a widow of the Government servant. In the facts of the case in hand admittedly the second marriage is stated to have been contracted after enforcement of the Hindu Marriage Act, therefore, the marriage is void. The petitioner would have no right in law to claim family pension, nor can she claim the status of widow of the deceased employee. **[Smt. Vimla Devi vs. State of U.P. and others, 2022 (11) ADJ 7 (Alld. H.C.)]**

UP REVENUE CODE, 2012

S. 24 – Disputes regarding boundaries – Powers of District Magistrate –

In our Constitution, there is clear separation of judicial and executive powers. The civil disputes are to be decided by the Civil Court and unsuccessful litigant has a right to file an appeal. The Administrative Officials cannot enter into any such dispute in exercise of the power conferred on them under the provisions of CrPC and the Revenue Code to fill in the gap and pass executive orders which explicitly belongs to the realms of Civil Court or the revenue court respectively. The due process of law has to be followed in all respect and the executive authorities are not

supposed usurp the power bestowed on the civil/revenue courts as it would not only be exercise of excessive jurisdiction not permissible under law but would also lead to overlapping jurisdiction which is against the tenets of the basic structure of our Constitution. **Vijai v. State of U.P. and others, 2022 AIR CC 3254 (All)**

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

S. 21 (1) – UP Urban Buildings (Regulation of Letting, Rent and Eviction) Rules (1972), R. 15(2) – Release of premises – Bona fide personal need of landlord-

In deciding the question of bonafide requirement, it is unnecessary for the Court to make an endeavour to find out as to how else the landlord could have adjusted himself. **Geeta Shukla and another v. District Judge, Unnao and others, 2022 AIR CC 3006 – Lucknow Bench**

S. 20(2)(a) & (4) – Transfer of Property Act, 1882, S. 106- Service of notice – Presumption thereto

Even if he tenant has been paying rent under Section 30 of the Act No. 12 of 1972, once he received notice, he should pay over rent to the land lord directly and I he refused, he should send money order to him and then if the money order is refused, he must make deposit under Section 20(4) of the Act No. 13 of 1972. To get the statutory protection, the tenant is required to deposit rent directly in Court on the first date of hearing alongwith advocate fee etc. as have been prescribed for under Section 20(4) of the Act No. 13 of 1972. **Ram Babu v. Raj Kumar Singh, 2022(3) ARC 368**

S. 21)1)(a)- Advocate Commissioner Report – Called for in release proceeding under S. 21 (1)(b) of Act, 1972

Unless the objections against the commissioner's report are disposed of, the report does not become final and cannot be taken into consideration. The objection filed by the petitioner had remained undisposed of even at the stage of final hearing of the mater while the Court proceeded to believe that Advocate Commissioner's report that was seriously objected.

Matter is remitted to the Prescribed Authority to be decided afresh after considering the objections of the petitioner to the Advocate Commissioner's report and disposing of the same first. **Siya Ram Verma (Deceased) v. Pooranmal Verma (Deceased) and others, 2022(3) ARC 668.**

Section 21(I)(a)

This Court is, therefore, of opinion that the tenant has unequivocally by his inaction in failing to raise the plea of a bar to the proceedings for want of six months' notice before the Prescribed Authority while filing his written statement, waived the bar. The Authority below, which bears reference merely to the Appellate Authority in this case, has rightly held the application under Section 21(1)(a)of the Act, maintainable. **[Prem Singh vs. Additional District and Sessions Judge/ Spl. Judge -3, Gorakhpur and others, 2022(12) ADJ 492 (Alld. H.C.)]**

AMENDMENTS

[85] English translation of Griha (Police) Anubhag-9, Noti. No. 1456/VI-P-9-22-31(01)-2022, dated July 6, 2022 and published in the UP. Gazette, Extra., Part 4, Section (Kha), dated 6th July, 2022, pp. 8-14

In exercise of the powers conferred by Section 2 of the Police Act, 1861 (Act 5 of 1861) read with Section 174 of the Code of Criminal Procedure, 1973 (Act 2 of 1974) and Section 21 of the General Clauses Act, 1897 (Act 10 of 1897), the Governor is pleased to make the following amendments in the Uttar Pradesh Police Regulations, 1861 for effective implementation of the said Act, for inclusion of body sketches in the post-mortem report and photograph and videography of the post-mortem of the deceased in cases of police actions or death in police custody to include provisions relating to making site plan of crime scene.

1. Short title, extent and commencement.--(1) These regulations may be called the Uttar Pradesh Police (Amendment) Regulations, 2022.
   (2) They shall be applicable to the whole of Uttar Pradesh.
   (3) They shall come into force with immediate effect.
2. Amendment of Regulation 114.-In the Uttar Pradesh Police Regulations, 1861 (hereinafter referred to as the "said regulations" for Regulation 114 the following regulation in Column II shall be substituted, namely—

Para-114. Scene Mahazar/Spot Panchanama-I. A site plan of the place of occurrence of an incident shall be appended by the Investigating Officer to the scene mahazar or spot panchnama.

ii. The site plan shall be prepared by the Investigating Officer by hand, and shall disclose-

a) the place of occurrence;
b) the place where the body (or bodies) was/were found;
c) the place where material exhibits and/or weapons; blood stains and/or body fluids had fallen;
d) the place where bullet shells, if any, were found or have caused impact;
e) the source of light, if any;
f) adjoining natural and man-made structures or features such as walls, pits, fences, trees/bushes, if any; and
g) elevation of structures and their location.

iii. The preparation of this sketch by the Investigating Officer shall be followed a scaled site plan prepared by police draftsman, if available, or such other

authorized or nominated draftsman by the State Government, who shall prepare the scaled site plan after visiting the spot.

iv. The relevant details in the mahazar or panchnama shall be marked and correlated in the said site plan.

3. Insertion of new Regulation 139 (A)- In the said regulations, after Regulation 139 the following new regulation shall be inserted, namely---

"139 (A) Photographs and video graphs of post-mortem in certain cases – (i) In case of death of a person in police action [under Section 46 Criminal Procedure Code, 1973. ('Cr.PC) or Sections 129 to 131 Cr.PC] or death while in police custody, the Magistrate or the Investigating Officer, as the case may be, shall inform the hospital or doctor in charge to arrange for photographs or videography for conducting the post-mortem examination of the deceased. The photographs of the deceased shall also be arranged to be taken in all cases.

ii. Such photograph and videographs shall be taken either by arranging a police photographer or a nominated photographer of the State Government, and where neither of the above are available, an independent or private photographer shall be engaged.

iii. Such photographs or videographs shall be seized under a panchnama or seizure memo and all steps taken to ensure proper proof of such photographs/videographs during trial.

iv. The Investigating Officer shall ensure that such photographs and videographs, if taken electronically, are seized under a panchnama or seizure memo and steps are taken to preserve the original, and ensure that certificate under Section 65B Indian Evidence Act.1872 is obtained and taken to be proved during trial.

v. The video or photographs shall be stored on a separate memory card, accompanied by a duly certified certificate under Section 65B Indian Evidence Act, 1872.

vi. Where post-mortems are recorded in electronic form, the file containing the post-mortem proceedings, duly certified, should be placed with the memory card as an

vii. attachment unless individual memory cards are not capable of being produced. before Court."

4. Amendment of Regulation 144- In the said regulations for Regulation 144 before the regulation shall be substituted, namely--

144. Injury or post-mortem report made by the Medical Officer (i) The Medical Officer shall prepare an injury or post-mortem report in triplicate. The original copy of the report will be forwarded to the Superintendent of Police through the normal

channel. the duplicate copy will be handed over in a sealed cover to the constable accompanying the injured or the dead body, and the third copy will be retained by the Medical Officer as the office copy.

(ii) Body sketch to accompany Medico Legal Certificate, Post-Mortem Report and Inquest Report-Every Medico Legal Certificate, Post-Mortem Report shall contain a printed format of the human body on its reverse and injuries, if any, shall be indicated on such sketch.

Explanation.--- The printed format of the human body shall contain both a frontal and rear view of the human body, as prescribed in Appendix III-A.

(iii) If in the course of investigation, it becomes necessary to seek information on certain points pertaining to the injury or post-mortem report, the Superintendent of Police may depute an officer not below the rank of Sub Inspector of Police, with a written letter of request, to obtain such information from the Medical Officer who had prepared the injury or post-mortem report. The Medical Officer shall supply the information and keep a record of such replies.

5. Insertion of new Appendix III-A.-- In the said regulations, after Appendix-Ill the following Appendix-III-A shall be inserted, namely--

WORDS AND PHRASES

Victim – meaning of

"Victim"- Meaning and his rights at different stages of trial - Held, "victim" means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression "victim" includes his or her guardian or legal heir. **[Jagjeet Singh v. Ashish Mishra @ Monu and Oth., (2022)3 S.C.C. (Cri.)560]**