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SUBJECT INDEX
(SUPREME COURT)

Sl. No.	Name of Act	Page No.
1.	Arbitration and Conciliation Act	8
2.	Code of Civil Procedure	10
3.	Commercial Courts Act	23
4.	Constitution of India	23
5.	Criminal Procedure Code	31
6.	Foreign Exchange Regulation Act	47
7.	Hindu Marriage Act	47
8.	Hindu Succession Act	50
9.	Indian Evidence Act	51
10.	Indian Penal Code	68
11.	Limitation Act	89
12.	Marine Insurance Act	96
13.	Medical Termination of Pregnancy Act	96
14.	Motor Vehicles Act	98
15.	Narcotic Drugs and Psychotropic Substances Act	101
16.	Negotiable Instruments Act	106
17.	Protection of Children from Sexual Offences Act	109
18.	Protection of Children from Sexual Offences Rules, 2020	110
19.	Registration Act	111
20.	Service Law	112
21.	Specific Relief Act	112
22.	Stamp Act	113
23.	Transfer of Property Act	115

SUBJECT INDEX
(HIGH COURT)

Sl. No.	Name of Act	Page No.
1.	Civil Procedure Code	118
2.	Constitution of India	125
3.	Criminal Procedure Code	125
4.	Indian Penal Code	130
5.	Indian Succession Act	131
6.	Juvenile Justice (Care and Protection of Children) Act, 2015	131
7.	Limitation Act	131
8.	Motor Vehicles Act	132
9.	Negotiable Instruments Act	139
10.	Probation of Offenders Act	140
11.	Prosecution of Women from Domestic Violence Act, 2005	140
12.	Registration Act	141
13.	Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act	141
14.	Specific Relief Act	142
15.	U.P. Advocate Welfare Fund Act, 1974	143
16.	U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986	143
17.	U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act	144

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

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

Sl. No.	Name of the Case & Citation	Page No.
1.	A. Sreenivasa Reddy v. Rakesh Sharma and another, (2023) 8 SCC 711	33
2.	A. Sreenivasa Reddy vs. Rakesh Kumar, 2023 (125) ACC 998 (Supreme Court)	36
3.	Abhishek Sharma vs. State (Govt. of NCT of Delhi), AIR 2023 SC 5271	89
4.	Aditya Khaitan and others v. IL and FS Financial Services Limited, (2023) 9 SCC 570	23
5.	Ajay Kumar Radheyshyam Goenka v. Tourism Finance Corporation of India Limited, (2023) 10 SCC 545	106
6.	Ameena Begum v. State of Telangana and others, (2023) 9 SCC 587	28
7.	Animal Welfare Board of India and others v. Union of India, (2023) 9 SCC 322	26
8.	Arup Bhuyan v. State of Assam and another, (2023) 8 SCC 745	27
9.	Ashok Gulabrao Bondre v. Vilas Madhukarrao Deshmukh and other, (2023) 9 SCC 539	33
10.	Ashok Shewakaramani vs. State of U.P., 2023 (125) ACC 258 (Supreme Court)	107
11.	Bachpan Bachao Andolan v. Union of India and others, (2023) 9 SCC 133	110
12.	Bachpan Bachao Andolan vs. Union of India, 2023 (125) ACC 931 (Supreme Court)	111
13.	Balla @ Farhat vs. State of M.P., AIR 2023 SC 4566	69
14.	Balvir Singh vs. State of Uttarakhand, AIR 2023 SC 5551	66
15.	Balwinder Singh (Binda) vs. Narcotics Control Bureau, AIR 2023 SC 4684	106
16.	Bhagwan Singh vs. Dilip Kumar @ Deepu @ Depak, AIR 2023 SC 4165	46
17.	Bhaktu Gorain and another v. State of West Bengal, (2023) 10 SCC 749	72
18.	Bhasker and another v. Ayodhya Jewellers, (2023) 9 SCC 281	12
19.	Bichitrananda Behera vs. State of Orissa, AIR 2023 SC 5064	24
20.	Central Bureau of Investigation vs. Narottam Dhakad, 2023 (125) ACC 610 (Supreme Court)	35
21.	Central Bureau of Investigation vs. Narottam Dhakad, AIR 2023 SC 4066	39
22.	Chen Khoi Kui v. Liang Miao Sheng and others, (2023) 9 SCC 376	26
23.	Derha v. Vishal and another, (2023) 10 SCC 524	50
24.	Dilip Kumar vs. Brajraj Srivastava, 2023 (125) ACC 684 (Supreme Court)	34
25.	First Global Stockbroking Pvt. Ltd. vs. Anil Rishiraj, AIR 2023 SC 4524	47
26.	Government of Kerala vs. Joseph, AIR 2023 SC 3988	96
27.	H J Baker and Brothers Inc v. Minerals and Metals Trade	9

	Corporation Limited (MMTC), (2023) 9 SCC 424	
28.	H.D. Sundara and others v. State of Karnataka, (2023) 9 SCC 581	69
29.	Hind Offshore Private Limited v. Iffco-Tokio General Insurance Company Limited, (2023) 9 SCC 407	96
30.	IFFCO Tokio General Insurance Co. Ltd. vs. Geeta Devi, AIR 2023 SC 5545	101
31.	Indrakunwar vs. State of Chhattisgarh, AIR 2023 SC 5221	47
32.	Iqbal alias Bala and others v. State of Uttar Pradesh and others, (2023) 8 SCC 734	26
33.	Irfan @ Naka vs. State of U.P., AIR 2023 SC 4129	79
34.	K M Krishna Reddy v. Vinod Reddy and another, (2023) 10 SCC 248	113
35.	K. Hymavathi vs. State of U.P., 2023 (125) ACC 617 (Supreme Court)	107
36.	Kamal Prasad and others v. State of Madhya Pradesh, (2023) 10 SCC 172	34
37.	Khema alias Khem Chandra and others v. State of Uttar Pradesh, (2023) 10 SCC 451	71
38.	Kum. Geetha, D/o Late Krishna vs. Nanjundaswamy, AIR 2023 SC 5516	22
39.	M. Sivadasan (Dead) Through Lrs. vs. A. Soudamini (Dead) Through Lrs., AIR 2023 SC 4074	50
40.	M/S Bharat Petroleum Corporation v. ATM Constructions Pvt. Ltd., 2023 (41) LCD 2869	14
41.	M/s. Larsen Air Conditioning and Refrigeration Company vs. Union of India, AIR 2023 SC 4452	10
42.	M/s. Paul Rubber Industries Pvt. Ltd. vs. Amit Chand Mitra, AIR 2023 SC 4658	117
43.	Md. Asfak Alam v. State of Jharkhand and another, (2023) 8 SCC 632	32
44.	Meena Pradhan vs. Kamla Pradhan, AIR 2023 SC 4680	68
45.	Mukesh Singh vs. State (NCT of Delhi), AIR 2023 SC 4097	65
46.	Munna Pandey vs. State of Bihar, AIR 2023 SC 5709	86
47.	Naresh alias Nehru v. State of Haryana, (2023) 10 SCC 134	70
48.	Naveen @ Ajay vs. State of M.P., AIR 2023 SC 5254	87
49.	Nirmala Devi vs. State of H.P., 2023 (125) ACC 287(Supreme Court)	73
50.	NTPC Limited v. SPML Infra Limited, (2023) 9 CC 385	9
51.	P. Yuvaprakash vs. State Rep. By Inspector of Police, 2023 (125) ACC 310 (Supreme Court)	110
52.	Phulel Singh v. State of Haryana, (2023) 10 SCC 268	71
53.	Pradeep Mehra v. Harijivan J. Jethwa, 2023 (41) LCD 2595	14
54.	R. Hemalatha v. Kashthuri, (2023) 10 SCC 725	111
55.	Rahimal Bathu and others v. Ashiyal Beevi, 2023(3) ARC 326 (SC)	15
56.	Rajesh Jain vs. Ajay Singh, AIR 2023 SCC 5018	67
57.	Rajesh Jain vs. Ajay Singh, AIR 2023 SCC 5018	109
58.	Rajo @ Rajwa @ Rajendra Mandal vs. State of Bihar, AIR 2023 SC 4084	43

59.	Ramisetty Venkatanna vs. Nasyam Jamal Saheb, 2023 (161) RD 146 (SC)	15
60.	Ranjan Kumar Chadha vs. State of H.P., AIR 2023 SC 5164	102
61.	Ranjan Kumar Chadha vs. State of H.P., AIR 2023 SC 5164	105
62.	Razia Khan v. State of Madhya Pradesh, (2023) 8 SCC 592	69
63.	Revanasiddappa and another v. Mallikarjun and others, (2023) 10 SCC 1	50
64.	Sharanappa alias Sharanappa v. State of Karnataka (2023) 10 SCC 168	71
65.	Sheo Raj Singh (deceased) through legal representatives and others v. Union of India and another, (2023) 10 SCC 531	90
66.	Sheo Raj Singh (Deceased) Through Lrs. vs. Union of India, AIR 2023 SC 5109	90
67.	Shiva Kumar alias Shiva alias Shivamurthy v. State of Karnataka, (2023) 9 SCC 817	70
68.	Smt. Ved Kumari (Dead through Her Legal Representative) Dr. Vijay Agarwal vs. Municipal Corporation of Delhi through Its Commissioner, AIR 2023 SC 4155	17
69.	State Bank of India and others v. P. Zadenga, (2023) 10 SCC 675	112
70.	State of Haryana vs. Dharamraj, 2023 (125) ACC 965 (Supreme Court)	34
71.	State of U.P. vs. Ehsan, AIR 2023 SC 5142	30
72.	State of Rajasthan v. G, (2023) 10 SCC 516	72
73.	Sub-Registrar, Amudalavalasa and another v. Dankuni Steels Limited and others, (2023) 10 SCC 601	115
74.	Sudesh Kumar Goyal v. State of Haryana and others, (2023) 10 SCC 54	112
75.	Vikrant Kapila vs. Pankaja Panda, AIR 2023 SC 5579	21
76.	Vipan Aggarwal and another v. Raman Gandotra and others, (2023) 10 SCC 529	13
77.	Wazir Khan v. State of Uttarakhand, (2023) 8 SCC 597	51
78.	Wazir Khan vs. State of Uttarakhand, 2023 (125) ACC 275 (Supreme Court)	73
79.	X v. Principal Secretary, Health and Family Welfare Department, Government of NCT of Delhi and another, (2023) 9 SCC 433	98
80.	Yadaiah and another v. State of Telangana and others, (2023) 10 SCC 755	14
81.	Yashodhan Singh and others v. State of Uttar Pradesh and another, (2023) 9 SCC 108	32
82.	Yashodhan Singh vs. State of U.P., 2023 (125) ACC 356 (Supreme Court)	36
83.	Yashpal Jain v. Sushila Devi and others, 2023(3) ARC 337 (SC)	15
84.	Yashpal Jain vs. Sushila Devi, AIR 2023 SC 5652	30

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

Sl. No.	Name of the Case & Citation	Page No.
1.	Arvind vs. State of U.P., 2023 (125) ACC 77	143
2.	Aryavrat Bank Branch, Ramghat Road, District Aligarh v. Smt. Malka Bansal and others, 2023(3) ARC 573	124
3.	Bachpan Bachao Andolan vs. Union of India, 2023 (125) ACC 931	131
4.	Bajaj Allianz General Ins. Co. Ltd. vs. Rambha Devi and others, 2023 ACJ 2841	139
5.	Bhanwar Singh @ Karamvir vs. State of U.P., 2023 (125) ACC 740	129
6.	Brijesh vs. State of U.P., 2023 (161) ACC 451	129
7.	Chhote Lal Sharma vs. State of U.P., 2023 (125) ACC 601	125
8.	Commanding Officers, Railway Protection Special Force vs. Bhavanaben Dinshbhai Bhabhor and others, 2023 ACJ 2810	138
9.	Committee of Management, D.P. Public High School, Mirzapur vs. State of U.P., 2023 (161) RD 297	120
10.	D.S. Sharma vs. State of Uttarakhand, 2023 (125) ACC 808	129
11.	Data Ram vs. State of U.P., 2023 (125) ACC 841	130
12.	Dev Narain vs. State of U.P., 2023 (125) ACC 384	127
13.	Dr. Amitabh Kumar Gupta v. Awadh Bihari Nigam, 2023(2) ARC 312	124
14.	Essemm Logistics vs. Darcl Logistics Ltd., 2023 (161) RD 602	123
15.	Firoz Uddin vs. Anwar Uddin, 2023 (161) RD 521	121
16.	Gaddipati Divija vs. Pathuri Samrajyam, 2023 (161) RD 249	143
17.	Grijesh Pandey vs. State of U.P., 2023 (125) ACC 16	125
18.	Heera Lal Chhabra vs. Nawal Kishore Agrawal, 2023 (161) RD 315	120
19.	Jini Dhanrajgir vs. Shibu Mathew, 2023 (161) RD 605	123
20.	Jose Papachen vs. State of U.P., 2023 (161) ACC 439	142
21.	Karan @ Fatiya vs. State of M.P., 2023 (125) ACC 981	131
22.	Kusum Devi vs. State of U.P., 2023 (125) ACC 93	126
23.	M.A. Biviji vs. Sunita and others, 2023 ACJ 2638	136
24.	Mahesh vs. State of U.P., 2023 (125) ACC 105	126
25.	Mohammad Arif vs. State of U.P., 2023 (125) ACC 109	126
26.	Mohd. Zubair v. Additional District Judge Court, Lucknow and others, 2023 AIR CC 3067(All)	144
27.	Mohit Kumar Goyal vs. State of U.P., 2023 (125) ACC 751	129
28.	Munesh vs. State of U.P., 2023 (125) ACC 761	129
29.	Nagar Kshetra Samiti, Sadabad, District Mathura through its Officer-in-Charge/Chairman vs. Kanchan Singh, 2023 (161) RD 51	119
30.	Naveen Kumar Sharma vs. State of U.P., 2023 (125) ACC 35	140
31.	Noor Ahmad v. Mohd. Ahmad, 2023(3) ARC 276	124
32.	Oriental Insurance Co. Ltd. v. Usha Devi and others, 2023 ACJ 2869	139
33.	Pradeep Mohan Chaudhary and others v. State of U.P. and others, 2023 (3) ARC 303	131
34.	Pradeep Mohan Chaudhary and others v. State of U.P. and others,	131

	2023 (3) ARC 629	
35.	R. Hemlatha vs. Kashthuri, 2023 (161) RD 754	141
36.	Radhey Shyam vs. State of U.P., 2023 (161) ACC 434	128
37.	Rakesh Kumar Jain v. Zulfakar Ali, 2023 (41) LCD 3058	118
38.	Ram Kishor v. Mukesh Kumar Sahu and others, 2023 (3) ARC 639	144
39.	Ram Milan v. Kripa Shanker and others, 2023(3) ARC 656, HC, Lucknow Bench	124
40.	Rohit Yadav vs. State of U.P., 2023 (125) ACC 40	140
41.	Shah Abdul Haq vs. State of U.P. Thru. Prin. Secy. Deptt. Of Home, 2023 (125) ACC 239	127
42.	Shanti Swaroop (Deceased) Through his L.Rs. vs. Onkar Prasad (Deceased) Through his L.Rs., 2023 (161) RD 70	132
43.	Shivanshu Mugdal vs. State of U.P., 2023 (125) ACC 130	143
44.	Shyam Bahadur Singh vs. State of U.P., 2023 (125) ACC 392	128
45.	Siddhant @ Aashu vs. State of U.P., 2023 (125) ACC 405	128
46.	Smt. Urmila Devi vs. Garima Varshney, 2023(161) RD 559	122
47.	Sujan Singh Bundela and another v. Kripal Singh Yadav and others, 2023(3) ARC 652	132
48.	Suresh Chandra Srivastava and others v. S.D.O. and others, 2023 (3) ARC 316	125
49.	Tarak Nath Keshari vs. State of W.B., 2023 (125) ACC 960	140
50.	Trilok Singh vs. Manager, Cholamandalam MS General Ins. Co. Ltd. and others, 2023 ACJ 2394	134
51.	Uday Rajgarhia vs. State of U.P., 2023 (125) ACC 134	126
52.	United India Insurance Co. Ltd. vs. Rajesh Kumar Tripathi and other, 2023 ACJ 2508	135
53.	United India Insurance Co. Ltd. vs. Sheela and others, 2023 ACJ 2491	134
54.	Vijendra Kapoor vs. State of U.P., 2023 (125) ACC 58	126
55.	Vishwanath Singh Rathaur vs. State of U.P., 2023 (125) ACC 908	130
56.	Yashpal Singh vs. State of U.P., 2023 (125) ACC 914	130

PART I – SUPREME COURT

Arbitration and Conciliation Act

It has been held that the Court may for legitimate reasons, to prevent wastage of public and private resources, can exercise judicial discretion to conduct an intense yet summary prima facie review while remaining conscious that it is to assist the arbitration procedure and not usurp jurisdiction of the Arbitral Tribunal. Undertaking a detailed full review or a long-drawn review at the referral stage would obstruct and cause delay undermining the integrity and efficacy of arbitration as a dispute resolution mechanism. Conversely, if the Court becomes too reluctant to intervene, it may undermine effectiveness of both the arbitration and the Court. There are certain cases where the prima facie examination may require a deeper consideration. The Court's challenge is to find the right amount and the context when it would examine the prima facie case or exercise restraint. The legal order needs a right balance between avoiding arbitration obstructing tactics at referral stage and protecting parties from being forced to arbitrate when the matter is clearly non-arbitrable.

The pre-referral jurisdiction of the Courts under Section 11(6) of the 1996 Act is very narrow and inheres two inquiries. The primary inquiry is about the existence and the validity of an arbitration agreement, which also includes an inquiry as to the parties to the agreement and the applicant's privity to the said agreement. These are matters which require a thorough examination by the Referral Court. The secondary inquiry that may arise at the reference stage itself is with respect to the non-arbitrability of the dispute.

While exercising jurisdiction under Section 11 as the judicial forum, the Court may exercise the prima facie test to screen and knockdown ex facie meritless, frivolous, and dishonest litigation. Limited jurisdiction of the Courts would ensure expeditious and efficient disposal at the referral stage. At the referral stage, the Court can interfere "only" when it is "manifest" that the claims are ex facie time-barred and dead, or there is no subsisting dispute.

The standard of scrutiny to examine the non-arbitrability of a claim is only prima facie. Referral Courts must not undertake a full review of the contested facts; they must only be confined to a primary first review and let facts speak for themselves. This also requires the Courts to examine whether the assertion on arbitrability is bona fide or not. The prima facie scrutiny of the facts must lead to a clear conclusion that there is not even a vestige of doubt that the claim is non-arbitrable. On the other hand, even if there is the slightest doubt, the rule is to refer the dispute to arbitration.

The limited scrutiny, through the eye of the needle, is necessary and compelling. It is intertwined with the duty of the Referral Court to protect the parties from being forced to arbitrate when the matter is demonstrably non- arbitrable. It has been termed as a legitimate interference by Courts to refuse reference in order to prevent wastage of public and private resources. Further, if this duty within the limited compass is not exercised, and the Court becomes too reluctant to intervene, it may undermine the effectiveness of both, arbitration and the Court. Post the 2015 Amendments, the jurisdiction of the Court under Section 11(6) of the 1996 Act is

limited to examining whether an arbitration agreement exists between the parties "nothing more, nothing less".

Therefore, the Supreme Court or a High Court, as the case may be, while exercising jurisdiction under Section 11(6) of the 1996 Act, is not expected to act mechanically merely to deliver a purported dispute raised by an applicant at the doors of the chosen arbitrator**. (NTPC Limited v. SPML Infra Limited, (2023) 9 CC 385)**

Arbitration and Conciliation Act, 1996 Ss. 34 and 37- Award on quantum of damages and mitigation of losses Interference with - When not warranted Concurrent affirmation by Courts below None of the grounds for interference with arbitral award made out.

Contract and Specific Relief Damages Remedies for Breach of Contract Measure/Quantification of damages - Furnishing of proof regarding measure of damages by claimant Necessity of Measure of damages in accord with the provisions underlying S. 73 of the Contract Act i.e. the market price of goods on the date of breach, less the contract price.

Arbitration and Conciliation Act, 1996 - Ss. 31(7), 34 and 37 –Rate of interest on awarded claim - Non-adherence to LIBOR rates plus the prevailing rate in percentage points i.e. as noted in Vedanta, (2019) 11 SCC 465 - Whether amounted to patent illegality.

As far as the issue of interest is concerned, interestingly, Baker had sought it pendente lite and future interest till payment @ 18% p.a. besides any relief. MMTC's reply did not refute this claim and was entirely silent on this aspect. Furthermore, no argument appears to have been addressed on the question before the Tribunal, which granted 12% p.a. The judgments of this Court, notably in Vedanta Ltd. v. Shenzen Shandong Nuclear Power Construction Co. Ltd., (2019) 11 SCC 465: (2019) 4 SCC (Civ) 724: (2018) 12 SCR 829" (hereafter "Vedanta") have disapproved a uniform award of interest in foreign currency, and recommended that LIBOR rates plus the prevailing rate in percentage points, should be awarded. However, this Court notes that on the rate of interest, there have been concurrent findings; moreover, the distinction noted by Vedanta, per se does not constitute "patent illegality", that vitiates the award. For instance, if the parties agree to a particular rate of interest that would undoubtedly prevail. **(H J Baker and Brothers Inc v. Minerals and Metals Trade Corporation Limited (MMTC), (2023) 9 SCC 424)**

Secs. 34, 31, 37—Modification of arbitral award—Reduction of interest rate from 18% to 9%-- Powers of Court—Where award does not contain any direction towards rate of interest

Unlike in the case of the old Act, the court is powerless to modify the award and can only set aside partially, or wholly, an award on a finding that the conditions spelt out under Section 34 of the 1996 Act have been established. The scope of interference by the court, is well defined and delineated [refer to Associate Builders v. Delhi Development Authority, (2014) 13 SCR 895, Ssangyong Engineering Construction Co. Ltd v. National Highways Authority of India (NHAI), (2019) 7

SCR 984, and Delhi Airport Metro Express Pvt. Ltd. v Delhi Metro Rail Corporation Ltd., (2021) 5 SCR 984.

The limited and extremely circumscribed jurisdiction of the court under Section 34 of the Act, permits the court to interfere with an award, sans the grounds of patent illegality, i.e., that "illegality must go to the root of the matter and cannot be of a trivial nature"; and that the tribunal "must decide in accordance with the terms of the contract, but if an arbitrator construes a term of the contract in a reasonable manner, it will not mean that the award can be set aside on this ground" [ref: Associate Builders (supra)]. The other ground would be denial of natural justice. In appeal, Section 37 of the Act grants narrower scope to the appellate court to review the findings in an award, if it has been upheld, or substantially upheld under Section 34. It is important to notice that the old Act contained a provision14 which enabled the court to modify an award. However, that power has been consciously omitted by Parliament, while enacting the Act of 1996. This means that the Parliamentary intent was to exclude power to modify an award, in any manner, to the court. This position has been iterated decisively by this court in Project Director, National Highways No. 45E and 220 National Highways Authority of India v M. Hakeem, (2021) 5 SCR 368:

"42. It can therefore be said that this question has now been settled finally by at least 3 decisions [McDermott International Inc. v. Burn Standard Co. Ltd., (2006) 11 SCC 181] , [Kinnari Mullick v. Ghanshyam Das Damani, (2018) 11 SCC 328 : (2018) 5 SCC (Civ) 106] , [Dakshin Haryana Bijli Vitran Nigam Ltd. v. Navigant Technologies (P) Ltd., (2021) 7 SCC 657] of this Court. Even otherwise, to state that the judicial trend appears to favour an interpretation that would read into Section 34 a power to modify, revise or vary the award would be to ignore the previous law contained in the 1940 Act; as also to ignore the fact that the 1996 Act was enacted based on the Uncitral Model Law on International Commercial Arbitration, 1985 which, as has been pointed out in Redfern and Hunter on International Arbitration, makes it clear that, given the limited judicial interference on extremely limited grounds not dealing with the merits of an award, the "limited remedy" under Section 34 is coterminous with the "limited right", namely, either to set aside an award or remand the matter under the circumstances mentioned in Section 34 of the Arbitration Act, 1996." **[M/s. Larsen Air Conditioning and Refrigeration Company vs. Union of India, AIR 2023 SC 4452]**

Code of Civil Procedure

The issue which arose for consideration in this appeal was what is the starting point of limitation for filing an application under Rule 95 of Order 21 of the Code of Civil Procedure, 1908.

The property, subject-matter of this appeal, held by the appellants was sold in execution of a decree passed against the appellants in a public auction. The respondent was the purchaser of the property. The order of confirmation of sale in accordance with sub-rule (1) of Rule 95 of Order 21 CPC was passed on 16-7-2009. The sale certificate under Rule 94 of Order 21 CPC was issued by the executing court to the respondent on 5-2-2010. On 27-7-2010, the respondent filed an

application under Rule 95 of Order 21 CPC before the executing court. The said application was allowed by the executing court. The appellants applied for a review of the said order. The prayer for review was dismissed by the executing court.

Referring the matter to larger Bench, the Supreme Court discussed the matter as below:

On the one hand, Order 21 Rule 95 CPC mandates that an application for possession of the auctioned property can be made by the auction-purchaser only after a sale certificate in accordance with Order 21 Rule 94 is issued. But on the other hand, the starting point for making an application under Order 21 Rule 95, in accordance with Article 134 of the Limitation Act, is the date on which the sale is made absolute in accordance with Order 21 Rule 95. It is the obligation of the executing court to issue the sale certificate as per Order 21 Rule 94 CPC. In practice, there is a substantial delay in issuing the sale certificate. In the present case, the delay is of more than six months. In many cases, there is a procedural delay in issuing the sale certificate for which no fault can be attributed to the auction-purchaser.

However, in para 11 of the decision in Pattam Khader Khan, (1996) 5 SCC 48 it has been laid down that title of the court auction-purchaser becomes complete on the confirmation of the sale under Order 21 Rule 92, and by virtue of the thrust of Section 65 CPC, the property vests in the purchaser from the date of sale; the certificate of sale, by itself, not creating any title but merely evidence thereof. The sale certificate rather is a formal acknowledgment of a fact already accomplished, stating as to what stood sold. Such act of the court is pristinely a ministerial one and not judicial. It is in the nature of a formalization of the obvious.

Para 11 of the decision of the Supreme Court in Pattam Khader Khan case takes the view that there is nothing in Order 21 Rule 95 CPC which makes it incumbent for the purchaser to file a sale certificate along with the application. However, on a plain reading of Order 21 Rule 95 CPC, unless a certificate of sale is granted under Order 21 Rule 94 CPC, the auction-purchaser does not get a right to apply for delivery of possession by invoking Order 21 Rule 95 CPC. Therefore, the view expressed in para 11 of the decision of the Supreme Court in Pattam Khader Khan case, prima facie, may not be correct. The said view is not supported by the plain language of Order 21 Rule 95 CPC.

The Supreme Court in United Finance, (2017) 3 SCC 123 has already expressed a prima facie view that what is held in para 11 of Pattam Khader Khan case, may require reconsideration by a larger Bench.

There are twin conditions which should be fulfilled as a condition precedent for enabling the executing court to pass an order of delivery of possession in favour of the auction-purchaser. One of the two conditions is that the auction-purchaser, who applies under Order 21 Rule 95 CPC for delivery of possession, must possess a sale certificate issued under Order 21 Rule 94 CPC. Once there is a confirmation of an auction-sale in accordance with sub-rule (1) of Order 21 Rule 95 CPC, the executing court, in the absence of the prohibitory order of a superior court, is under an obligation to issue a sale certificate to the auction-purchaser in accordance with Order 21 Rule 94 CPC. However, the law does not provide for a specific time-limit within which, a certificate under Order 21 Rule 94 CPC should be issued. In a given

case, there can be a long procedural delay in issuing the sale certificate for which the auction-purchaser cannot be blamed. In the present case, the delay is of morethan six months.

The Supreme Court disagreed with decision of the Supreme Court in Pattam Khader Khan case, that an application under Order 21 Rule 95 can be made even before the certificate of sale is granted to the auction-purchaser in accordance with Order 21 Rule 94 CPC.

Therefore, in prima facie view, the order of confirmation of sale under sub-rule (1) of Order 21 Rule 95 CPC does not give a cause of action to the auction-purchaser to apply for possession by invoking Order 21 Rule 95 CPC. He cannot make such an application unless the executing court issues a sale certificate. Though CPC does not permit an application under Order 21 Rule 95 to be filed before the sale certificate is issued, Article 134 of the Limitation Act proceeds on the footing that cause of action becomes available to the auction-purchaser to apply for possession on the basis of the order of confirmation of sale made under sub- rule (1) of Order 21 Rule 95 CPC.

Therefore, there is an apparent inconsistency between the provisions of Order 21 Rule 95 CPC and Article 134 of the Limitation Act. The question is whether the rule of purposive interpretation can be used to set right the inconsistency or anomaly. Even if the delay is on the part of the executing court in the issue of the sale certificate, the delay in filing an application under Order 21 Rule 95 CPC cannot be condoned as Section 5 of the Limitation Act is not applicable to the applications filed under Order 21 CPC.

The Court construing a provision should not easily read into it words which have not been expressly enacted but having regard to the context in which a provision appears and the object of the statute in which the said provision is enacted the court should construe it in a harmonious way to make it meaningful. An attempt must always be made so to reconcile the relevant provisions as to advance the remedy intended by the statute.

Prima facie, the only way of avoiding inconsistency between Order 21 Rule 95 CPC and Article 134 of the Limitation Act is to read into Article 134 that the starting point for making an application under Order 21 Rule 95 CPC is the date on which a certificate recording confirmation of auction-sale is actually issued to the purchaser. Such interpretation will satisfy the three tests laid down in Inco, (2000) 1 WLR 586 (HL). Therefore, the decision of the Supreme Court in Pattam Khader Khan, (1996) 5 SCC 48 and especially, what is held in SCC para 11, requires reconsideration by a larger Bench. The larger Bench will have to decide the issue relating to the starting point of limitation for making an application under Order 21 Rule 95 CPC. **(Bhasker and another v. Ayodhya Jewellers, (2023) 9 SCC281)**

Civil Procedure Code, 1908 Or. 23 R. 2 and Or. 43 R. 1-A Compromise decree - Application for recalling the same, filed before court which granted decree. Application was held, maintainable. Person aggrieved against compromise decree, held, both has a right to file an application for recalling it before court which granted decree, or, an appeal in terms of Or. 43 R. 1-A. Therefore, application filed by appellants before court which granted decree cannot be said to be without

jurisdiction. Order of High Court affirming finding of trial court that such application was not maintainable, set aside. Matter remanded to High Court for fresh decision on application for recalling of decree, in accordance with law. **(Vipan Aggarwal and another v. Raman Gandotra and others, (2023) 10 SCC 529)**

Civil Procedure Code, 1908 S. 11 - Res judicata - Only determinations which are essential or fundamental to the substantive decision, and not collateral thereto, held, would result in application of doctrine of res judicata.

Only those findings, without which court cannot adjudicate a dispute and also form vital steps in the reasoning of a definite conclusion on an issue on merits, constitute res judicata between same set of parties in subsequent proceedings - However, in process of arriving at a final conclusion, if court makes any incidental, supplemental or non-essential observations which are not foundational to final determination, same would not tie down hands of courts in future.

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

Once it is determined that the regulatory regime which was in vogue and held the field as on 21-10-1961 will govern the assignments, then it also stands crystallised that the 1958 Circular as well as GOMs No. 1122 being in force at that time, are clearly applicable to the subject land. As a necessary corollary, it is held that there was a conditional bar on alienation of the subject land as provided in the 1958 Circular and GOMs No. 1122. The question whether the lands were assigned under "regular" or "special laoni" under the Laoni Rules, 1950 consequently becomes academic and the Supreme Court did not deem it necessary to express any opinion in relation thereto.

The assignments such as those under Section 58 of the 1317 Fasli Act are free from the rigours specified under Section 58-A of the 1317 Fasli Act. It goes without saying that the assignment of the subject land was not under Section 54 of the 1317 Fasli Act as may be seen from the contents of the 1958 Circular which draws a clear distinction between (a) Land assigned on payment of market value after making an application to the Collector and (b) Land Assigned to the Landless poor persons. The former is the case of assignment under Section 54 of the 1317 Fasli Act and the latter is covered within the ambit of Section 58 of the 1317 Fasli Act. The instant case unambiguously falls in the latter category i.e. "Land Assigned to the Landless Poor Persons".

The term "transfer" as defined under the 1977 Act is much more inclusive than the one employed in the Transfer of Property Act, 1882. The definition under the 1977 Act uses the phrase "any other transaction", which necessarily includes the GPA executed as an instrument to surrender ownership and possessory rights in favour of M in the present case. The intent of "transfer" through the said GPA by the assignees authorising the attorney holder to sell or transfer the subject property without any restriction as is evident from its recitals and for which they admittedly

received consideration from M, is beyond any doubt. Therefore, said GPA falls within the ambit of the term "transfer", especially in view of the objective of the 1977 Act, which was manifestly intended to save the landless poor persons from the clutches of the rich and the resourceful, who deprived them of the precious title assigned to them by the Government for their occupation and the source of livelihood. **(Yadaiah and another v. State of Telangana and others, (2023) 10 SCC 755)**

Civil Procedure Code, 1908 : Order 2 Rule 2 : Order 7 Rule 11 :

Second suit for damages for use and occupation weather barred under Order 2 Rule 2 and the plaint is to be rejected under Order 7 Rule 11 : Suit for possession and suit for claiming damages for use and occupation of the property are two distinct cause of action. There being different consideration for adjudication second suit for claiming damages for use and occupation was maintainable. **M/S Bharat Petroleum Corporation v. ATM Constructions Pvt. Ltd., 2023 (41) LCD 2869**

Civil Procedure Code, 1908 : Section 47 : Nature and Scope :

Under section 47 questions between the parties can be decided by the executing court but the questions are only limited to the execution of decree. The executing court cannot go behind the decree. Executing Court cannot examine the validity of order which allowed the execution of the decree. The difficulties of a litigant in India begin when he has obtained the decree. The execution proceedings which are supposed to be handmaid of justice and subserve the cause of justice are, in effect, becoming tools which are being misused to obstruct justice. **Pradeep Mehra v. Harijivan J. Jethwa, 2023 (41) LCD 2595**

Order VII, Rule 11—Rejection of the application of the appellants-defendant Nos. 9 and 10 under Order VII, Rule 11 of CPC—Appeal against—On going through the averments made in the plaint, it appears that the suit is essentially based upon the premise that there was an error in partition and in partition deed survey number was wrongly mentioned—Deliberately and purposely, the plaintiffs have not prayed for any relief with respect to partition deed—By not asking for any relief with respect to partition deed, the plaintiffs have tried to circumvent the provision of Limitation Act and have tried to maintain the suit which is nothing but abuse of process of court and the law—Held, on considering the averments in the plaint as they are, the plaint ought to have been rejected being vexatious, illusory cause of action and barred by limitation and it is a clear case of clever drafting—The judgment and order passed by High Court and that of trial court rejecting the application under Order VII, Rule 11 are unsustainable and are quashed and set aside

In the case of Ram Singh vs. Gram Panchayat Mehal Kalan, (1986) 4 SCC 364, this Court observed and held that when the suit is barred by any law, the plaintiff cannot be allowed to circumvent that provision by means of clever drafting

so as to avoid mention of those circumstances, by which the suit is barred by law of limitation. Similar view has been expressed by this Court in the case of Raj Narain Sarin vs. Laxmi Devi and others, (2002) 10 SCC 501.

Applying the law laid down by this Court in the aforesaid decisions on the applicability of Order VII, Rule 11 to the facts of the case on hand, Court is of the opinion that the plaint ought to have been rejected in exercise of powers under Order VII, Rule 11(a) and (d) of C.P.C. being vexatious, illusory cause of action and barred by limitation. By clever drafting and not asking any relief with respect to partition have tried to circumvent the provision of limitation act and have tried to maintain the suit which is nothing but abuse of process of court and the law. **[Ramisetty Venkatanna vs. Nasyam Jamal Saheb, 2023 (161) RD 146 (SC)]**

CPC, 1908 – S. 96, 114 and 115 – Revision – Against an order of Subordinate Court rejecting on merits an application for review of an appealable decree passed in Civil Court. Where an appealable decree has been passed in a suit, no revision should be entertained under S. 115, CPC against an order rejecting on merits a review of that decree – The proper remedy for the party whose application for review of an appealable decree has been rejected on merits is to file an appeal against that decree and if in the meantime, the appeal is rendered barred by time, the time spent in diligently pursuing the review application can be condoned by the Court to which an appeal is filed – The revision not maintainable. **Rahimal Bathu and others v. Ashiyal Beevi, 2023(3) ARC 326 (SC)**

CPC, 1908, S.2(11) and O. XXII, R. 3- Application for substitution as legal representative of original plaintiff – Allowed – Civil Revision against dismissed – High Court allowed the writ petition against rejecting application of appellant, thereby restoring original order whereby ‘x’ was ordered for being substituted as legal representative of original plaintiff on strength of registered Will – Legality of – The right of appellant by virtue of adoption and veracity of the Will in favour of ‘x’ is to be decided in appropriate proceedings – Impugned orders set aside and that of Trial Court and Revisional Court affirmed in fact and circumstance of present case.

Practice and Procedure – ‘Speedy justice’ – Direction for – Hon’ble the Chief Justices of the High Courts and to Trial Courts – Issuance of. **Yashpal Jain v. Sushila Devi and others, 2023(3) ARC 337 (SC)**

Order 21, Rr. 97, 101—Decree for possession—Executability

In “Brahmdeo Chaudhary vs. Rishikesh Prasad Jaiswal & Anr.” (1997) 3 SCC 694, this Court has observed that Order XXI of the CPC lays down a complete code for resolving all disputes pertaining to execution of the decree for possession obtained by a decree-holder and whose attempts at executing the said decree meet with rough weather. Referring to its earlier judgment in the matter of “Bhanwar Lal vs. Satyanarain” (1995) 1 SCC 6 this Court concluded thus:

‘11. In view of the aforesaid settled legal position, therefore, and in the light of the statutory scheme discussed by us earlier it must be held that Respondent 1 decree-holder's application dated 6-5-1991 praying for issuance of warrant for

delivery of possession with the aid of armed force, was in substance for removal of obstruction offered by the appellant and others under Order 21, Rule 97 CPC and had to be adjudicated upon as enjoined by Order 21, Rule 97, sub-rule (2) read with Order 21, Rule 101 and Order 21, Rule 98. In this connection the Court had also to follow the procedure laid down by Order 21, Rule 105 which enjoins the executing court to which an application is made under any of the foregoing rules of the order to fix a date of hearing of the application. As the executing court refused to adjudicate upon the obstruction and the claim of the appellant who obstructed to the execution proceedings it had clearly failed to exercise jurisdiction vested in it by law. The High Court in revision also committed the same error by taking the view that such an application was not maintainable. It is of course true as submitted by learned counsel for the decree-holder that in para 4 of the judgment under appeal the High Court has noted that there was some discrepancy about the khasra number. But these are passing observations. On the contrary in the subsequent paragraphs of the judgment the High Court has clearly held that such an application by the objector was not maintainable and his only remedy was to move an application under Order 21, Rule 99 after handing over possession and consideration of objection to delivery of possession by a stranger to the decree at any earlier stage was premature. It must, therefore, be held that neither the executing court nor the High Court in revision had considered the objection of the appellant against execution on merits. Consequently the impugned judgment of the High Court as well as the order of the of 1990 dated 15-2-1996 are quashed and set aside and proceedings are remanded to the Court of Munsif II, Munger to re-decide the application of Respondent 1 decree-holder dated 6-5-1991 by treating it to be one under Order 21, Rule 97 for removal of obstruction of the appellant and after hearing the decree- holder as well as the appellant to adjudicate the claim of the appellant and to pass appropriate orders under Order 21, Rule 97, sub-rule (2) CPC read with Order 21, Rule 98 CPC as indicated in the earlier part of this judgment.'

Similarly, in "Shreenath & Anr. Vs. Rajesh & Ors." (1998) 4 SCC 543 this Court observed thus:

'10. Under sub-clause (1) Order 21 Rule 35, the executing court delivers actual physical possession of the disputed property to the decree-holder and, if necessary, by removing any person bound by the decree who refuses to vacate the said property. The significant words are by removing any person bound by the decree. Order 21 Rule 36 conceives of immovable property when in occupancy of a tenant or other person not bound by the decree, the court delivers possession by fixing a copy of the warrant in some conspicuous place of the said property and proclaiming to the occupant by beat of drum or other customary mode at some convenient place, the substance of the decree in regard to the property. In other words, the decree-holder gets the symbolic possession. Order 21 Rule 97 conceives of resistance or obstruction to the possession of immovable property when made in execution of a decree by "any person". This may be either by the person bound by the decree, claiming title through the judgment-debtor or claiming independent right of his own including a tenant not party to the suit or even a stranger. A decree-holder, in such a case, may make an application to the executing court complaining such resistance for delivery of possession of the property. Sub-clause (2) after 1976

substitution empowers the executing courts when such claim is made to proceed to adjudicate upon the applicant's claim in accordance with the provisions contained hereinafter. This refers to Order 21 Rule 101 (as amended by 1976 Act) under which all questions relating to right, title or interest in the property arising between the parties under Order 21 Rule 97 or Rule 99 shall be determined by the court and not by a separate suit. By the amendment, one has not to go for a fresh suit but all matter pertaining to that property even if obstruction by a stranger is adjudicated and finally given even in the executing proceedings. We find the expression "any person" under sub-clause (1) is used deliberately for widening the scope of power so that the executing court could adjudicate the claim made in any such application under Order 21 Rule 97. Thus by the use of the words "any person" it includes all persons resisting the delivery of possession, claiming right in the property, even those not bound by the decree, including tenants or other persons claiming right on their own, including a stranger.'

In "Sameer Singh & Anr. Vs. Abdul Rab & Ors." (2015) 1 SCC 379, this Court again observed that the Executing Court has the authority to adjudicate all the questions pertaining to right, title or interest in the property arising between the parties including the claim of a stranger who apprehends dispossession from the immovable property. This is provided to avoid multiplicity of proceedings and if a court declines to adjudicate by stating that it lacks jurisdiction, that by itself would occasion failure on part of the Executing Court to exercise the jurisdiction vested in it.

In most recent judgment in "Jini Dhanrajgir & Anr. Vs. Shibu Mathew & Anr." (2023) SCC Online SC 643, the legal position has been reiterated that Rules 97 to 103 of Order XXI of the CPC provide the sole remedy both to the parties to a suit as well as to a stranger to the decree put to execution.

In view of the settled legal position, as noted, it was the duty of the Executing Court to issue warrant of possession for effecting physical delivery of the suit land to the decree-holder in terms of suit schedule property and if any resistance is offered by any stranger to the decree, the same be adjudicated upon in accordance with Rules 97 to 101 of Order XXI of the CPC. The Executing Court could not have dismissed the execution petition by treating the decree to be inexecutable merely on the basis that the decree-holder has lost possession to a third party/encroacher. If this is allowed to happen, every judgment-debtor who is in possession of the immoveable property till the decree is passed, shall hand over possession to a third party to defeat the decree-holder's right and entitlement to enjoy the fruits of litigation and this may continue indefinitely and no decree for immovable property can be executed. **[Smt. Ved Kumari (Dead Through Her Legal Representative) Dr. Vijay Agarwal vs. Municipal Corporation of Delhi Through Its Commissioner, AIR 2023 SC 4155]**

Order 12, Rule 6, Order 15, Rr. 1, 2, Order 8, R.5—Evidence Act, 1872, Secs. 17, 58, 68—Judgment on admission—Admission in pleadings—Meaning and duty of Court stated

The judicial discretion conferred on the Court is structured on the definition of admission under Section 17 of the Evidence Act, 1872 and Rule 5 of Order VIII, Rule 6 of Order XII and Rules 1 & 2 of Order XV of the CPC.

An "admission" means, 'a statement, oral or documentary or contained in electronic form, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances, hereinafter mentioned'. [P Ramanatha Aiyar's Advanced Law Lexicon, 5th Edition, Volume 1 (A-C), p. 140]

Admission in pleadings means a statement made by a party to the legal proceedings, whether oral, documentary, or contained in an electronic form, and the said statement suggests an inference with respect to a fact in issue between the parties or a relevant fact. It is axiomatic that to constitute an admission, the said statement must be clear, unequivocal and ought not to entertain a different view. Coming to admission in pleadings, these are averments made by a party in the pleading, viz., plaint, written statement, etc., in a pending proceeding of admitting the factual matrix presented by the other side. To constitute a valid admission in pleading, the said admission should be unequivocal, unconditional, and unambiguous, and the admission must be made with an intention to be bound by it. Admission must be valid without being proved by adducing evidence and enabling the opposite party to succeed without trial. A court, while pronouncing a judgment on admission, keeps in its perspective the requirements in Order VIII Rule 5, Order XII Rule 6 and Order XV Rules 1 & 2, CPC read with Sections 17, 58 and 68 of the Indian Evidence Act.

The logic behind such jurisprudential examination of an admission is that a judgment pronounced on admission, not only denies the right of trial on an issue but denies the remedy of appeal. Hence, discretion has to be exercised judiciously and objectively while making a judgment on admission in a pleading. The existence of the power to pronounce a judgment on admission under Rule 6 of Order XII and Rules 1 and 2 of Order XV, is not an issue in the appeal but Order XII Rule 6 Judgment on alleged admission is valid and legal

When the admissions are categorical and unequivocal, the remedies available against such a decree are limited. In a given case, as in the present appeal, if there is an argument on whether there is an admission of a fact or a document, before examining the merits of the matter, this Court ought to verify whether admission exists or not and also whether the circumstances relied upon by the Learned Single Judge can be constituted as admission for rendering a Judgment. At this juncture, we would like to place on record the answer of the Learned Counsel appearing for the Plaintiffs and Defendant Nos. 1 and 3, to our query, whether their clients are admitting the existence of the Will dated 18.11.1999 or the Will is contested. We notice that the Learned Counsel, going by the pleadings, reply that their clients do not admit the existence and the execution of the Will dated 18.11.1999, which is said to have been executed by Sheila Kapila.

In Uttam Singh Dugal v. United Bank of India, (2000) 7 SCC 120, reiterating the objects and reasons set out while amending Rule 6 of Order XII, CPC, it was stated that "where a claim is admitted, the court has jurisdiction to enter a judgment for the plaintiff and to pass a decree on the admitted claim. The object of the Rule is

to enable the party to obtain a speedy judgment at least to the extent of the relief to which according to the admission of the defendant, the plaintiff is entitled".

Further, the Trial Court can refuse to pass a decree "when a statement is made to a party and such statement is brought before the court showing admission of liability by an application filed under Order XII, Rule 6 and the other side has sufficient opportunity to explain the said admission and if such explanation is not accepted by the court."

In the same judgment, the scope and effect of "admissions" was examined and it was held that "admissions generally arise when a statement is made by a party in any of the modes provided under Sections 18 to 23 of the Evidence Act, 1872".

Further, this Court in Uttam Singh Duggal, while adverting to Section 17, Indian Evidence Act, 1872, which provides for admissions through statements in oral, documentary and in electronic form, expanded the scope of admissions and recognised that "admissions are of many kinds: they may be considered as being on the record as actual if that is either in the pleadings or in answer to interrogatories or implied from the pleadings by non-traversal. Secondly as between parties by agreement or notice". The case on hand considers an alleged admission in the pleading including the reply given on admission and denial of documents. The provisions under Rule 5 of Order VIII, Rule 6 of Order XII, and Rules 1 and 2 of Order XV of the CPC, enable a court to pronounce a judgment on admission. The court is called upon to exercise judicial discretion conferred on it by the CPC and the Indian Evidence Act, 1872. The judicial discretion shall always be in addition to the provisions covering the judgment on admission and guided by the best of wit and wisdom of the Court in pronouncing a judgment on admission. The bottom line is that while ensuring judicial discretion, the court does not avoid a trial on an issue where a trial is needed, and findings recorded; alternatively, the court does not try an issue in which there is no contest between the parties. The weighing of options or judicial discretion is dependent on the peculiar circumstances of the case or the nature of the controversy that the court is considering.

In Himani Alloys Ltd. v. Tata Steel Ltd, (2011) 15 SCC 273, it is held that 'Admissions' should be categorical and intentional, as Order XII, Rule 6, CPC allows discretion rather than obligation. Admissions result in judgments without trial which permanently deny any remedy to the defendant, by way of an appeal on merits. Therefore, unless the admission is clear, unambiguous, and unconditional, the discretion of the Court is not exercised to deny the valuable right of a defendant to contest the claim. Hence, discretion should be used only where there is a clear and unequivocal admission. The relevant paragraphs read thus:

"11. It is true that a judgment can be given on an "admission" contained in the minutes of a meeting. But the admission should be categorical. It should be a conscious and deliberate act of the party making it, showing an intention to be bound by it. Order 12 Rule 6 being an enabling provision, it is neither mandatory nor peremptory but discretionary. The court, on examination of the facts and circumstances, has to exercise its judicial discretion, keeping in mind that a judgment on admission is a judgment without trial which permanently denies any remedy to the defendant, by way of an appeal on merits. Therefore, unless the admission is clear, unambiguous and unconditional, the discretion of the Court

should not be exercised to deny the valuable right of a defendant to contest the claim. In short the discretion should be used only when there is a clear "admission" which can be acted upon. There is no such admission in this case."

The controversy is on the applicable legal principle to the dispute of partition between the parties. The crux of consideration narrows down to the existence, execution and validity of the alleged Will dated 18.11.1999. A will in legal parlance is a testament of a testator/testatrix and is a posthumous disposition of the estate of the testator, directing the distribution of his/her estate upon his/her death. The Indian Succession Act, 1925 provides for legal requisites of a will, and proof of the execution is a sine quo non for giving effect to a will. The reasoning of limited assumption of the Will dated 18.11.1999 for interpretative purposes of the operative portion of clauses ignores the method and manner of establishing a will as governing the estate of the testator/testatrix. It is useful to refer to Gopal Swaroop v. Krishna Murari Mangal and others, (2010) 14 SCC 266, wherein this Court held that as per the provisions of Section 63 of the Indian Succession Act, 1925, the due execution of the Will consists of the following:

i. The testator should sign or affix his mark to the Will;

ii. The testator's signature or the mark of the testator should be so placed that it should appear that it was intended to give effect to the writing as a Will;

iii. Two or more witnesses should attest the Will;

iv. Each of the said witnesses must have seen the testator signing or affixing his mark to the Will, and each of them should sign the Will in the presence of the testator.

Section 63(c) of the Indian Succession Act, 1925 and Section 68 of the Indian Evidence Act, 1872, stipulate the proof required of a Will. The proof of execution and attestation of a Will are strictly by the scheme of the Indian Evidence Act, and the Indian Succession Act. A Will by the execution is an instrument and becomes an enforceable legal document by proof in accordance with law. A court treats a Will as a legally enforceable document only upon proof in accordance with law. This Court in Ramesh Verma (D) Through Lrs. v. Lajesh Saxena (D) By Lrs. and another, (2017) 1 SCC 257 referred to Savithri and others v. Karthyayani Amma and other, (2007) 11 SCC 621, and held as follows:

"14. In Savithri v. Karthyayani Amma [Savithri v. Karthyayani Amma, (2007) 11 SCC 621] this Court has held as under : (SCC p. 629, para 17) "17. … A will like any other document is to be proved in terms of the provisions of the Succession Act and the Evidence Act. The onus of proving the will is on the propounder. The testamentary capacity of the testator must also be established. Execution of the will by the testator has to be proved. At least one attesting witness is required to be examined for the purpose of proving the execution of the will. It is required to be shown that the will has been signed by the testator with his free will and that at the relevant time he was in sound disposing state of mind and understood the nature and effect of the disposition. It is also required to be established that he has signed the will in the presence of two witnesses who attested his signature in his presence or in the presence of each other. Only when there exists suspicious circumstances, the onus would be on the propounder to explain them to the satisfaction of the court

before it can be accepted as genuine." **[Vikrant Kapila vs. Pankaja Panda, AIR 2023 SC 5579]**

Order 7, Rule 11—Rejection of plaint—Cause of action—Suit for partition and separate possession—High Court rejected plaint on ground that plaint did not disclose cause of action and property was sold long back—Plea of plaintiff that Karta habitually used "nominal sale deeds" to temporarily mortgage properties for financial purposes and after settling dues, reconveyance deeds were executed—Further plea of plaintiff that although RTC records stood in name of financiers, the joint family continued to be in undisrupted possession of property—Whether property was available for partition or not was matter of trial—High Court committed error by examining merits of matter—Order of High Court rejecting plaint was liable to be set aside

The relevant principles have been succinctly explained in a recent decision of this Court in Dahiben v. Arvindbhai Kalyanji Bhanusali,3 as follows:

"23.2. The remedy under Order 7 Rule 11 is an independent and special remedy, wherein the court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision.

23.3. The underlying object of Order 7 Rule 11(a) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11(d), the court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted. 23.4. In Azhar Hussain v. Rajiv Gandhi [Azhar Hussain v. Rajiv Gandhi, 1986 Supp SCC 315. Followed in Manvendrasinhji Ranjitsinhji Jadeja v. Vijaykunverba, 1998 SCC OnLine Guj 281 : (1998) 2 GLH 823] this Court held that the whole purpose of conferment of powers under this provision is to ensure that a litigation which is meaningless, and bound to prove abortive, should not be permitted to waste judicial time of the court, in the following words : (SCC p. 324, para 12) "12. … The whole purpose of conferment of such powers is to ensure that a litigation which is meaningless, and bound to prove abortive should not be permitted to occupy the time of the court, and exercise the mind of the respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even in an ordinary civil litigation, the court readily exercises the power to reject a plaint, if it does not disclose any cause of action." 23.5. The power conferred on the court to terminate a civil action is, however, a drastic one, and the conditions enumerated in Order 7 Rule 11 are required to be strictly adhered to.

23.6. Under Order 7 Rule 11, a duty is cast on the court to determine whether the plaint discloses a cause of action by scrutinising the averments in the plaint [Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I, (2004) 9 SCC 512] , read in conjunction with the documents relied upon, or whether the suit is barred by any law.

...

23.9. In exercise of power under this provision, the court would determine if the assertions made in the plaint are contrary to statutory law, or judicial dicta, for deciding whether a case for rejecting the plaint at the threshold is made out.

23.10. At this stage, the pleas taken by the defendant in the written statement and application for rejection of the plaint on the merits, would be irrelevant, and cannot be adverted to, or taken into consideration. [Sopan Sukhdeo Sable v. Charity Commr., (2004) 3 SCC 137] 23.11. The test for exercising the power under Order 7 Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed. This test was laid down in Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I [Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I, (2004) 9 SCC 512] which reads as : (SCC p. 562, para 139) "139. 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. 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 their entirety, a decree would be passed." 23.12. In Hardesh Ores (P) Ltd. v. Hede & Co. [Hardesh Ores (P) Ltd. v. Hede & Co., (2007) 5 SCC 614] the Court further held that it is not permissible to cull out a sentence or a passage, and to read it in isolation. It is the substance, and not merely the form, which has to be looked into. The plaint has to be construed as it stands, without addition or subtraction of words. If the allegations in the plaint prima facie show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact. D. Ramachandran v. R.V. Janakiraman [D. Ramachandran v. R.V. Janakiraman, (1999) 3 SCC 267; See also Vijay Pratap Singh v. Dukh Haran Nath Singh, AIR 1962 SC 941] . 23.13. If on a meaningful reading of the plaint, it is found that the suit is manifestly vexatious and without any merit, and does not disclose a right to sue, the court would be justified in exercising the power under Order 7 Rule 11 CPC. 23.14. The power under Order 7 Rule 11 CPC may be exercised by the court at any stage of the suit, either before registering the plaint, or after issuing summons to the defendant, or before conclusion of the trial, as held by this Court in the judgment of Saleem Bhai v. State of Maharashtra [Saleem Bhai v. State of Maharashtra, (2003) 1 SCC 557] . The plea that once issues are framed, the matter must necessarily go to trial was repelled by this Court in Azhar Hussain case [Azhar Hussain v. Rajiv Gandhi, 1986 Supp SCC 315. Followed in Manvendrasinhji Ranjitsinhji Jadeja v. Vijaykunverba, 1998 SCC OnLine Guj 281 : (1998) 2 GLH 823].

23.15. The provision of Order 7 Rule 11 is mandatory in nature. It states that the plaint "shall" be rejected if any of the grounds specified in clauses (a) to (e) are made out. If the court finds that the plaint does not disclose a cause of action, or that the suit is barred by any law, the court has no option, but to reject the plaint"

In simple terms, the true test is first to read the plaint meaningfully and as a whole, taking it to be true. Upon such reading, if the plaint discloses a cause of action, then the application under Order VII Rule 11 of the CPC must fail. To put it negatively, where it does not disclose a cause of action, the plaint shall be rejected. **[Kum. Geetha, D/o Late Krishna vs. Nanjundaswamy, AIR 2023 SC 5516]**

Commercial Courts Act

Commercial Courts Act, 2015 - S. 16 r/w Or. 8 R. 1 CPC (as amended by Commercial Courts Act 4 of 2016) - Written statement in commercial suit - Delay in filing Condonation held, liable to be condoned.

Outer limit within which the court or tribunal can condone the delay is 120 days from the date of summons.

In present case while summons was served on 7-2-2020, the 30 days' period expired on 8-3-2020 and the outer limit of 120 days expired on 6-6-2020. The application for taking on record the written statements and the extension of time was filed on 20-1-2021. Applying the orders of 8-3-2021 and the orders made thereafter and excluding the time stipulated therein, the applications filed by the applicants on 19-1-2021 are well within time. The judgment passed by the High Court needs to be set aside. The principle underlying the orders of the Supreme Court dated 8-3-2021, 27-4-2021 and 23-9-2021, in Cognizance for Extension of Limitation, In re, albeit those orders being passed, subsequent to the impugned order, would enure to the benefit of the applicants-defendants.

For the reasons stated above, the appeals are allowed and the written statements filed on 20-1-2021 are directed to be taken on record. **(Aditya Khaitan and others v. IL and FS Financial Services Limited, (2023) 9 SCC 570)**

Constitution of India

Art. 226—Orissa Education Act, 1969, Ss. 7B, 24B—Appointment—Correctness of

Union of India v N Murugesan, (2022) 2 SCC 25: "Delay, laches and acquiescence

"20. The principles governing delay, laches, and acquiescence are overlapping and interconnected on many occasions. However, they have their distinct characters and distinct elements. One can say that delay is the genus to which laches and acquiescence are species. Similarly, laches might be called a genus to a species by name acquiescence. However, there may be a case where acquiescence is involved, but not laches. These principles are common law principles, and perhaps one could identify that these principles find place in various statutes which restrict the period of limitation and create non- consideration of condonation in certain circumstances. They are bound to be applied by way of practice requiring prudence of the court than of a strict application of law. The underlying principle governing these concepts would be one of estoppel. The question of prejudice is also an important issue to be taken note of by the court.

Laches

21. The word "laches" is derived from the French language meaning "remissness and slackness". It thus involves unreasonable delay or negligence in pursuing a claim involving an equitable relief while causing prejudice to the other party. It is neglect on the part of a party to do an act which law requires while

asserting a right, and therefore, must stand in the way of the party getting relief or remedy.

22. Two essential factors to be seen are the length of the delay and the nature of acts done during the interval. As stated, it would also involve acquiescence on the part of the party approaching the court apart from the change in position in the interregnum. Therefore, it would be unjustifiable for a Court of Equity to confer a remedy on a party who knocks its doors when his acts would indicate a waiver of such a right. By his conduct, he has put the other party in a particular position, and therefore, it would be unreasonable to facilitate a challenge before the court. Thus, a man responsible for his conduct on equity is not expected to be allowed to avail a remedy.

23. A defence of laches can only be allowed when there is no statutory bar. The question as to whether there exists a clear case of laches on the part of a person seeking a remedy is one of fact and so also that of prejudice. The said principle may not have any application when the existence of fraud is pleaded and proved by the other side. To determine the difference between the concept of laches and acquiescence is that, in a case involving mere laches, the principle of estoppel would apply to all the defences that are available to a party. Therefore, a defendant can succeed on the various grounds raised by the plaintiff, while an issue concerned alone would be amenable to acquiescence. Acquiescence

24. We have already discussed the relationship between acquiescence on the one hand and delay and laches on the other.

25. Acquiescence would mean a tacit or passive acceptance. It is implied and reluctant consent to an act. In other words, such an action would qualify a passive assent. Thus, when acquiescence takes place, it presupposes knowledge against a particular act. From the knowledge comes passive acceptance, therefore instead of taking any action against any alleged refusal to perform the original contract, despite adequate knowledge of its terms, and instead being allowed to continue by consciously ignoring it and thereafter proceeding further, acquiescence does take place. As a consequence, it reintroduces a new implied agreement between the parties. Once such a situation arises, it is not open to the party that acquiesced itself to insist upon the compliance of the original terms. Hence, what is essential, is the conduct of the parties. We only dealt with the distinction involving a mere acquiescence. When acquiescence is followed by delay, it may become laches. Here again, we are inclined to hold that the concept of acquiescence is to be seen on a case-to-case basis." **[Bichitrananda Behera vs. State of Orissa, AIR 2023 SC 5064]**

Presidential assent with regard to three State Amendments – Validity

The Presidential assent was sought for by the three States in terms of Article 254(2) of the Constitution. The petitioners questioned the very act of assent of the President on the grounds that complete details were not disclosed before the President and that the legislation did not relate to an entry in List III of Schedule VII to the Constitution.

Thus, the five questions referred to are answered in the following terms:

The Tamil Nadu Amendment Act is not a piece of colourable legislation. It relates, in pith and substance, to Schedule VII List III Entry 17 to the Constitution. It minimizes cruelty to animals in the sports concerned and once the Amendment Act, along with their Rules and Notification are implemented, the bovine sports would not come within the mischief sought to be remedied by Sections 3, 11(1)(a) and (m) of the PCA Act, 1960.

The Tamil Nadu Amendment Act is not in pith and substance, to ensure survival and well-being of the native breeds of bulls. The said Act is also not relatable to Article 48 of the Constitution. The incidental impact of the said Amendment Act may fall upon the breed of a particular type of bull and affect agricultural activities, but in pith and substance, the Act is relatable to Schedule VII List III Entry 17 to the Constitution.

Jallikattu is a type of bovine sport and on the basis of materials disclosed it is going on in the State of Tamil Nadu for at least the last few centuries. This event essentially involves a bull which is set free in an arena and human participants are meant to grab the hump to score in the "game".

But whether this has become an integral part of Tamil culture or not requires religious, cultural and social analysis in greater detail, is an exercise that cannot be undertaken by the Judiciary. The question as to whether the Tamil Nadu Amendment Act is to preserve the cultural heritage of a particular State is a debatable issue which has to be concluded in the House of the People. This ought not be a part of judicial inquiry and particularly having regard to the activity in question and the materials in the form of texts cited before the Court by both the petitioners and the respondents, this question cannot be conclusively determined in the writ proceedings. Since legislative exercise has already been undertaken and Jallikattu has been found to be part of the cultural heritage of Tamil Nadu, the Court would not disrupt this view of the legislature.

The Court did not accept the view reflected in A. Nagaraja case, that performance of Jallikattu is not a part of the cultural heritage of the people of the State of Tamil Nadu. In the Preamble to the Amendment Act, Jallikattu has been described to be part of the culture and tradition of Tamil Nadu. In A. Nagaraja case, the Court found the cultural approach unsubstantiated and referring to the manner in which the bulls are inflicted pain and suffering, the Court concluded that such activities offended Sections 3 and 11(1)(a) and (m) of the PCA Act, 1960.

The Tamil Nadu Amendment Act does not go contrary to Articles 51-A(g) and 51-A(h) and it does not violate the provisions of Articles 14 and 21 of the Constitution. The Court does not find any flaw in the process of obtaining Presidential assent having regard to the provisions of Article 254(2) of the Constitution.

The Tamil Nadu Amendment Act read along with the Rules framed in that behalf is not directly contrary to the ratio of the judgment in A. Nagaraja case and judgment of the Supreme Court delivered on 16-11-2016 dismissing the plea for review of A. Nagaraja case judgment as the defects pointed out have been removed.

The decision on the Tamil Nadu Amendment Act would also guide the Maharashtra and the Karnataka Amendment Acts and all the three Amendment Acts are valid legislations.

However, it was directed that the law contained in the Act/Rules/Notification should be strictly enforced by the authorities. In particular, the District Magistrates/ competent authorities should be responsible for ensuring strict compliance with the law, as amended along with its Rules/Notifications. **(Animal Welfare Board of India and others v. Union of India, (2023) 9 SCC 322)**

Associations, Societies and Clubs - W.B. Societies Registration Act, 1961 (26 of 1961) - Ss. 7 and 26 - Cancellation of registration by Registrar in absence of any specific provision granting such authority - Whether permissible: Applicability of S. 22 of the Bengal GCA - Powers of Registrar - Whether limited only to procedural review as against substantive review.

Criminal Procedure Code, 1973 Ss. 169 and 227-Closure report/ Discharge of accused-Effect of - Held, filing of closure report or discharge of accused does not result in final determination of dispute between parties on adjudication of allegations of filing false and fabricated documents public officer (before Registrar of Societies in present case) - Associations, Societies and Clubs W.B. Societies Registration Act, 1961 (26 of 1961), Ss. 7 and 26

On this point, we would add that in the event the respondents cannot demonstrate their right to run the school on the land owned by the said Association without their permission, that factor may also be taken into consideration by the Registrar and that could also be a ground for cancellation of registration. But any decision on that count shall be subject to final adjudication by the civil court if an action on that count is pending before the civil court. **(Chen Khoi Kui v. Liang Miao Sheng and others, (2023) 9 SCC 376)**

Constitution of India - Art. 226 Quashment/Discharge/Stay Prayer for quashment of FIR Matters: Absence of any specific date, time, etc. of alleged offences in FIR-Effect of Fact that investigation had been completed and charge-sheet ready to be filed in court- Proper remedy of accused in such case, held, is to prefer discharge application before trial court, which would be considered in accordance with law.

Criminal Procedure Code, 1973 - S. 482 - Quashment of FIR or criminal proceedings - Prayer for, under S. 482 CrPC or Art. 226 of the Constitution, essentially on ground that such proceedings are manifestly frivolous or vexatious or instituted with ulterior motive for wreaking vengeance. Duty to look at overall attending circumstances over and above the averments and materials collected during investigation, depending on stage of the proceedings. **(Iqbal alias Bala and others v. State of Uttar Pradesh and others, (2023) 8 SCC 734)**

Constitution of India - Arts. 19(1)(c) & (a) and Arts. 19(2), (3) & (4) and Arts. 21 and 14- Banned organisation or unlawful association Criminal liability imposed therefor under special statutes (UAPA and TADA) on basis of doctrine of "guilt by (continuing) association" - Whether should be read down to include the conditions of actus reus and mens rea.

Nature, scope and applicability of S. 10(a)(i) r/w Ss. 3 and 4 UAPA explained in detail.

It was held that a true interpretation of Ss. 10(a)(i) 3 and 4 UAPA, a person cannot be punished merely because he was the member of such unlawful association -If person has been a member but does not continue to be a member after the declaration, that does not attract mischief of S. 10 UAPA rather, the intention is that, to be punishable under S. 10(a)(i) UAPA, not only was he a member on the day when the association is declared unlawful but he continues to be a member after such declaration has been made in accordance with law

Constitution of India - Arts. 19(1)(c) & (a) and Arts. 19(2), (3) & (4) - Words "sovereignty and integrity of India" added in Arts. 19(2), (3) & (4) as ground for imposition of reasonable restrictions vide Constitution (Sixteenth Amendment) Act, 1963 - Enlargement of Parliament's power to make reasonable restrictions, clarified.

Constitution of India - Art. 13 and Pt. III and Arts. 32, 226 and 136 - Judicial review of primary legislation. Held, parliamentary law cannot be read down without giving the Central Government an opportunity to be heard. When any provision of parliamentary legislation is read down in the absence of Union of India it is likely to cause enormous harm to the interest of the State. The question is not about the power of the Court to interpret the law but whether such interpretation could be done without hearing the Union of India. **(Arup Bhuyan v. State of Assam and another, (2023) 8 SCC 745)**

Preventive Detention - Detention order - Criminal prosecution against detenu - Liability to and/or pendency of criminal prosecution against detenu - Effect of - Whether make preventive detention impermissible - Preventive detention whether impermissible when ordinary criminal law of the land sufficient to deal with the situation - Preventive detention proceedings and ordinary criminal law proceedings - Relative scope.

The right of life and personal liberty is placed on such a high pedestal by the Court that it has always insisted that whenever there is any deprivation of life or personal liberty, the authority responsible for such deprivation must satisfy the Court that it has acted in accordance with the law. This is an area where the Court has been most strict and scrupulous in ensuring observance with the requirements of the law, and even where a requirement of the law is breached in the slightest measure, the court has not hesitated to strike down the order of detention or to direct the release of the detenu even though the detention may have been valid till the breach occurred. The Court has always regarded personal liberty as the most precious possession of mankind and refused to tolerate illegal detention, regardless of the social cost involved in the release of a possible renegade.

In the circumstances of a given case, a constitutional court when called upon to test the legality of orders of preventive detention would be entitled to examine whether:

(1) The order is based on the requisite satisfaction, albeit subjective, of the detaining authority, for, the absence of such satisfaction as to the existence of a matter of fact or law, upon which validity of the exercise of the power is predicated, would be the sine qua non for the exercise of the power not being satisfied;

(2) In reaching such requisite satisfaction, the detaining authority has applied its mind to all relevant circumstances and the same is not based on material extraneous to the scope and purpose of the statute;

(3) Power has been exercised for achieving the purpose for which it has been conferred, or exercised for an improper purpose, not authorised by the statute, and is therefore ultra vires;

(4) The detaining authority has acted independently or under the dictation of another body;

(5) The detaining authority, by reason of self-created rules of policy or in any other manner not authorised by the governing statute, has disabled itself from applying its mind to the facts of each individual case;

(6) The satisfaction of the detaining authority rests on materials which are of rationally probative value, and the detaining authority has given due regard to the matters as per the statutory mandate:

(7) The satisfaction has been arrived at bearing in mind existence of a live and proximate link between the past conduct of a person and the imperative need to detain him or is based on material which is stale;

(8) The ground(s) for reaching the requisite satisfaction is/are such which an individual, with some degree of rationality and prudence, would consider as connected with the fact and relevant to the subject-matter of the inquiry in respect whereof the satisfaction is to be reached;

(9) The grounds on which the order of preventive detention rests are not vague but are precise, pertinent and relevant which, with sufficient clarity, inform the detenu the satisfaction for the detention, giving him the opportunity to make a suitable representation; and

(10) The timelines, as provided under the law, have been strictly adhered to.

Preventive detention, conceived as an extraordinary measure by the Framers of our Constitution, has been rendered ordinary with its reckless invocation over the years as if it were available for use even in the ordinary course of proceedings. To unchain the shackles of preventive detention, it is important that the safeguards enshrined in our Constitution, particularly under the "golden triangle" formed by Articles 14, 19 and 21, are diligently enforced. **(Ameena Begum v. State of Telangana and others, (2023) 9 SCC 587)**

Arts. 32, 141, 142—Inherent powers of Court—Speedy disposal of pending cases—As regards pendency of civil cases, Court issued certain directions to trial Courts for their speedy disposal

The following directions are issued:

i. All courts at district and taluka levels shall ensure proper execution of the summons and in a time bound manner as prescribed under Order V Rule (2) of CPC and same shall be monitored by Principal District Judges and after collating the statistics they shall forward the same to be placed before the committee constituted by the High Court for its consideration and monitoring.

ii. All courts at District and Taluka level shall ensure that written statement is filed within the prescribed limit namely as prescribed under Order VIII Rule 1 and preferably within 30 days and to assign reasons in writing as to why the time limit is being extended beyond 30 days as indicated under proviso to sub-Rule (1) of Order VIII of CPC.

iii. All courts at Districts and Talukas shall ensure after the pleadings are complete, the parties should be called upon to appear on the day fixed as indicated in Order X and record the admissions and denials and the court shall direct the parties to the suit to opt for either mode of the settlement outside the court as specified in sub-Section (1) of Section 89 and at the option of the parties shall fix the date of appearance before such forum or authority and in the event of the parties opting to any one of the modes of settlement directions be issued to appear on the date, time and venue fixed and the parties shall so appear before such authority/forum without any further notice at such designated place and time and it shall also be made clear in the reference order that trial is fixed beyond the period of two months making it clear that in the event of ADR not being fruitful, the trial would commence on the next day so fixed and would proceed on day-to-day basis.

iv. In the event of the party's failure to opt for ADR namely resolution of dispute as prescribed under Section 89(1) the court should frame the issues for its determination within one week preferably, in the open court.

v. Fixing of the date of trial shall be in consultation with the learned advocates appearing for the parties to enable them to adjust their calendar. Once the date of trial is fixed, the trial should proceed accordingly to the extent possible, on day-to-day basis.

vi. Learned trial judges of District and Taluka Courts shall as far as possible maintain the diary for ensuring that only such number of cases as can be handled on any given day for trial and complete the recording of evidence so as to avoid overcrowding of the cases and as a sequence of it would result in adjournment being sought and thereby preventing any inconvenience being caused to the stakeholders.

vii. The counsels representing the parties may be enlightened of the provisions of Order XI and Order XII so as to narrow down the scope of dispute and it would be also the onerous responsibility of the Bar Associations and Bar Councils to have periodical refresher courses and preferably by virtual mode.

viii. The trial courts shall scrupulously, meticulously and without fail comply with the provisions of Rule 1 of Order XVII and once the trial has commenced it shall be proceeded from day to day as contemplated under the proviso to Rule (2).

ix. The courts shall give meaningful effect to the provisions for payment of cost for ensuring that no adjournment is sought for procrastination of the litigation and the opposite party is suitably compensated in the event of such adjournment is being granted.

x. At conclusion of trial the oral arguments shall be heard immediately and continuously and judgment be pronounced within the period stipulated under Order XX of CPC. xi. The statistics relating to the cases pending in each court beyond 5 years shall be forwarded by every presiding officer to the Principal District Judge once in a month who (Principal District Judge/District Judge) shall collate the same

and forward it to the review committee constituted by the respective High Courts for enabling it to take further steps.

xii. The Committee so constituted by the Hon'ble Chief Justice of the respective States shall meet at least once in two months and direct such corrective measures to be taken by concerned court as deemed fit and shall also monitor the old cases (preferably which are pending for more than 05 years) constantly.

It is also made clear that further directions for implementation of the above directions would be issued from time to time, if necessary, and as may be directed by this Court. **[Yashpal Jain vs. Sushila Devi, AIR 2023 SC 5652]**

Art. 236—Urban Land (Ceiling and Regulation) Act, 1976, Sec. 10(3)—Urban Land (Ceiling and Regulation) Repeal Act, 1999, Sec. 4—Writ jurisdiction—Exercise of—Land ceiling proceedings

In support of the submissions, the learned counsel for the appellants relied on several decisions, which are noticed, and discussed in brief :

(v) Banda Development Authority vs. Moti Lal Agarwal, (2011) 5 SCC 394. In this case, this Court culled out principles concerning the mode of taking possession of a piece of land from the landholder. The relevant portion of the judgment is extracted below:

"37. The principles which can be culled out from the above-noted judgments are:

(i) No hard-and-fast rule can be laid down as to what act would constitute taking of possession of the acquired land.

(ii) If the acquired land is vacant, the act of the State authority concerned to go to the spot and prepare a panchnama will ordinarily be treated as sufficient to constitute taking of possession.

(iii) If crop is standing on the acquired land or building/structure exists, mere going on the spot by the authority concerned will, by itself, be not sufficient for taking possession. Ordinarily, in such cases, the authority concerned will have to give notice to the occupier of the building/structure or the person who has cultivated the land and take possession in the presence of independent witnesses and get their signatures on the panchnama. Of course, refusal of the owner of the land or building/structure may not lead to an inference that the possession of the acquired land has not been taken.

(iv) If the acquisition is of a large tract of land, it may not be possible for the acquiring/designated authority to take physical possession of each and every parcel of the land and it will be sufficient that symbolic possession is taken by preparing appropriate document in the presence of independent witnesses and getting their signatures on such document.

(iv) If beneficiary of the acquisition is an agency/instrumentality of the State and 80% of the total compensation is deposited in terms of Section 17(3-A) and substantial portion of the acquired land has been utilised in furtherance of the particular public purpose, then the court may reasonably presume that possession of the acquired land has been taken. **[State of U.P. vs. Ehsan, AIR 2023 SC 5142]**

Criminal Procedure Code

Section 227 CrPC provides for discharge of an accused if the court finds that there is no a sufficient ground or reasons for proceeding against him. Consequently, the proceeding against discharged person is dropped. On the other hand, under Section 319 CrPC, a person who has not been named as an accused is summoned to be tried along with other accused while Section 227 CrPC results in conclusion of proceedings against a person who is an accused on his discharge. On the other hand, a person who is not an accused is summoned to be tried along with other accused under Section 319 CrPC.

It is necessary to state that discharge as contemplated under Section 227 CrPC is at a stage prior to the commencement of the trial and immediately after framing of charge but when power is exercised under Section 319 CrPC to summon a person to be added as an accused in the trial to be tried along with other accused, such a person cannot seek discharge as the court would have exercised the power under Section 319 CrPC based on a satisfaction derived from the evidence that has emerged during the evidence recorded in the course of trial and such satisfaction is of a higher degree than the satisfaction which is derived by the court at the time of framing of charge.

Moreover, there is no finality attached to Section 319 CrPC. It only indicates commencement of trial qua the added accused. The rationale is that a person need not be heard before being added on or arrayed as an accused. Reference to and reliance placed upon the opportunity of hearing to a complainant in the form of protest petition when a closure report is filed is wholly misplaced because there is finality in a closure report; therefore the complainant is given an opportunity.

A person who is summoned in exercise of the power under Section 319 CrPC cannot hijack the trial so to say and deviate from its focus and take it to a tangent in order to bolster his own case in a bid to escape trial. All that is contemplated when a person is summoned to appear is to ascertain that he is the very person who was summoned and if any summoned person fails to appear on the given date. On the appearance of the summoned person, no procedure of an inquiry or opportunity of being heard is envisaged before being added as an accused to the list of accused already facing trial unless such a summoned person had already been discharged, in which event, an inquiry is contemplated.

Once the trial court finds that there is some "evidence" against such a person on the basis of which it can be gathered that he appears to be guilty of the offence, there can be exercise of power under Section 319 CrPC. The evidence in this context means the material that is brought before the court during trial. Insofar as the material or evidence collected by the investigating officer (IO) at the stage of inquiry is concerned, it can be utilised for corroboration and to support the evidence recorded by court to invoke the power under Section 319 CrPC.

The degree of satisfaction arrived at while exercising power under Section 319 CrPC is greater than the degree which is warranted at the time of framing of charges against others in respect of whom charge-sheet was filed. Only where strong and cogent evidence occurs against a person from the evidence led before the court, that such power should be exercised. Such power should not be exercised in a casual

or a cavalier manner. The prima facie opinion which is to be formed requires stronger evidence than mere probabilities of a person's complicity. **(Yashodhan Singh and others v. State of Uttar Pradesh and another, (2023) 9 SCC 108)**

Criminal Procedure Code, 1973 Ss. 41, 41-A and 438. Powers of arrest of police - Authorisation of detention by Magistrate - Cases/offences punishable with imprisonment for term which may be less than seven years or which may extend to seven years, whether with or without fine, and cases under S. 498-A IPC or S. 4 of the Dowry Prohibition Act - Directions issued for strict compliance with directions issued in Arnesh Kumar, (2014) 8 SCC 273: (2014) 3 SCC (Cri) 449.

It has been held that the High Court shall frame the directions issued in Arnesh Kumar case in the form of notifications and guidelines to be followed by the Sessions Courts and all other criminal courts dealing with various offences Likewise, the Director General of Police in all States shall ensure that strict instructions are issued in terms of the directions issued in Arnesh Kumar case. Both the High Courts and the DGPs of all States shall ensure that such guidelines and Directives/Departmental Circulars are issued for guidance of all lower courts and police authorities in each State within eight weeks from the date of this decision i.e. 31-7-2023. Affidavits of compliance shall be filed before Supreme Court within ten weeks by all the States and High Courts, through their Registrars. **(Md. Asfak Alam v. State of Jharkhand and another, (2023) 8 SCC 632)**

Criminal Procedure Code, 1973 — S. 197. It has been held that S. 197 protects only public servants whose appointing authority is the Central Government or the State Government and not every public servant. Thus, held, appellant, Assistant General Manager in State Bank of India, not being public servant who could be removed from his office save by or with the sanction of the Government, not protected by S. 197 CrPC. Hence, proceedings under S. 120-B r/w Ss. 420, 468 and 471 IPC against appellant could not be quashed on ground of absence of sanction under S. 197. Though bank officials would be protected by S. 19 of the PC Act, 1988.

Criminal Procedure Code, 1973 - S. 482 - Quashment of proceedings under IPC-On ground of denial of sanction for prosecution under PC Act, 1988 - Quashment sought by contending that as sanction under S. 19 of the PC Act not granted, the appellant (Assistant General Manager in SBI) cannot be prosecuted for the offences under IPC alone and he should be discharged from the criminal proceedings. Tenability of - Relative scope and applicability of S. 197 CrPC and S. 19 of the PC Act, 1988 – Relevance of, for determining the same - Law clarified.

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

The test in the case under Section 197 CrPC is of the "nexus" between the act of commission or omission and the official duty of the public servant. To commit an offence punishable under law can never be a part of the official duty of a public servant. It is too simplistic an approach to adopt and to reject the necessity of sanction under Section 197 CrPC on such reasoning. The "safe and sure test", is to ascertain if the omission or neglect to commit the act complained of would have made the public servant answerable for the charge of dereliction of his official duty. He may have acted "in excess of his duty", but if there is a "reasonable connection" between the impugned act and the performance of the official duty, the protective umbrella of Section 197 CrPC cannot be denied, so long as the discharge of official duty is not used as a cloak for illicit acts. **(A. Sreenivasa Reddy v. Rakesh Sharma and another, (2023) 8 SCC 711)**

Criminal Procedure Code, 1973 - Ss. 195(1)(b)(ii) and 340 - Embargo under S. 195(1)(b)(ii) When applies Law clarified - Embargo under S. 195(1)(b)(ii), held, not applicable when documents sought to be used as evidence were allegedly fabricated and forged before being filed in court as evidence

Appellant filed complaint under Ss. 191, 192, 196, 463, 464, 465, 467, 470 and 471 r/w S. 34 IPC and mainly alleged that R-2 prepared false and forged personal recognizance bond and surety bond in certain criminal case and the rest of the respondents conspired and actively helped R-2 in forging said documents Appellant further alleged that said forged documents were eventually filed on record in the said criminal case pending against the appellant before JMFC Complaint not only dismissed by JMFC, but the dismissal order affirmed in revision by holding that such a complaint could not have been filed except in writing of the court concerned or some other court, that too a subordinate one - This dismissal order also upheld by High Court

It was held that S. 195(1)(b)(ii) would be attracted only when the offence enumerated therein was committed in respect of a document after it has been produced or filed in evidence during proceedings before any court i.e. during the time when the document is custodia legis. Therefore, when the document which is allegedly fabricated before it was produced in court, the embargo created by S. 195(1)(b)(ii), held, would not come into play

Thus, in such a case, the court, held, will be entitled to take cognizance of the offence only on the basis of the complaint made by the complainant Resultantly, the contrary view taken by the Revisional Court as well as High Court, held, not sustainable and, therefore impugned judgment and order passed by these Courts quashed and set aside and the matter remitted to JMFC for considering the complaint of the appellant on its own merits Penal Code, 1860, Ss. 191, 192, 196, 463, 464, 465, 467, 470 and 471 r/w S. 34. **(Ashok Gulabrao Bondre v. Vilas Madhukarrao Deshmukh and other, (2023) 9 SCC 539)**

Criminal Procedure Code

Criminal Procedure Code, 1973 - S. 154 - FIR - Delay in lodging - When not fatal - Incident of attack by means of country- made bombs, lathis and tabbal, resulted in two deaths and informant injured.

Penal Code, 1860 - Ss. 302 and 307 r/w S. 149 and S. 148 - Defence plea of attack by others - Criminal history of deceased, as factor - Held, not material - Simply because the deceased had a chequered past which constituted several run-ins with the law, courts cannot give benefit particularly when such claims are bald assertions, to those accused of committing such a person's murder and in any event, such a plea is merely presumptive.

The principles regarding the plea of alibi are as follows:

(1) It is not part of the General Exceptions under IPC and is instead a rule of evidence under Section 11 of the Evidence Act, 1872.

(2) This plea being taken does not lessen the burden of the prosecution to prove that the accused was present at the scene of the crime and had participated therein.

(3) Such plea is only to be considered subsequent to the prosecution having discharged, satisfactorily, its burden.

(4) The burden to establish the plea is on the person taking such a plea. The same must be achieved by leading cogent and satisfactory evidence.

(5) It is required to be proved with certainty so as to completely exclude the possibility of the presence of the accused at the spot of the crime. In other words, a standard of "strict scrutiny" is required when such a plea is taken. **(Kamal Prasad and others v. State of Madhya Pradesh, (2023) 10 SCC 172)**

Secs. 82 and 438—Appeal seeking cancellation of anticipatory bail

The respondent was declared a proclaimed offender on 05.02.2021, and sought anticipatory bail from High Court only in October, 2021. As such, it was not correct for High Court to brush aside such fact, on the basis of averments alone. The respondent, without first successfully assailing the order declaring him as a proclaimed offender, could not have proceeded to seek anticipatory bail. The respondent's application under Section 438 Cr.P.C. should not have been entertained, as he was a proclaimed offender. Held, order granting anticipatory bail to the respondent is set aside. Appeal is allowed. **[State of Haryana vs. Dharamraj, 2023 (125) ACC 965 (Supreme Court)]**

Sec. 202(1) CrPC- Magistrate conducted inquiry himself- Examined only the complainant and dismissed the complaint without examining any of the complainant's witnesses- Order over- turned by High Court- Appeal against –

Held, before dismissing complaint the Magistrate has to examine the complainant and his witnesses. In this case Magistrate did not examine any witnesses. No error in High Court remanding the matter back to Magistrate. Appeal dismissed. **[Dilip Kumar vs. Brajraj Srivastava, 2023 (125) ACC 684 (Supreme Court)]**

Section 272 CrPC- First respondent- accused seeking a direction to supply a Hindi translation of the charge-sheet filed by the appellant in English language-

High Court held that Hindi was the only language of the criminal courts in the State and therefore, the first respondent was entitled to seek a translation of the charge-sheet into the language of the court. Appeal against. There is no specific provision in Cr.P.C. which requires the investigating agency/officer to file charge-sheet in the language of the court determined in accordance with section 272 of Cr.P.C. A finding of fact was recorded by trial court that the respondent is an educated person. The offence relates to an examination for which one of the eligibility conditions was having a knowledge of the English language. Moreover, it was found that the advocate engaged by him also knows the English language. Held, in the facts of the cases in hand, it cannot be said that non-supply of translation of the charge-sheet and other documents to the accused in both appeals will occasion a failure of justice. Appeal is allowed.

Secs. 173 and 272 CrPC

The power under section 272 is not a power to decide which language shall be used by the investigating agencies or the police for the purposes of maintaining the record of the investigation. At the highest, for that purpose, the provisions regarding the law governing the official language of the State may apply subject to the provisions contained in such enactment. In a given case, while prescribing a form as required by sub-section (2) of section 173, the State Government may provide that the charge-sheet must be filed in the official language of the State. Therefore, section 272 deals with only the language of the Courts under CrPC. Wherever the legislature intended, there is a specific provision incorporated requiring the court to mandatorily use the language of the court in the proceedings. There is no such requirement laid down in respect of the report/charge-sheet under section 173 of CrPC. Appeal is allowed. [**Central Bureau of Investigation vs. Narottam Dhakad, 2023 (125) ACC 610 (Supreme Court)]**

Sec. 197—Prevention of Corruption Act, 1988, Sec. 19—Discharge from the prosecution—

The appellant who at the relevant point of time was serving as an Assistant General Manager, SBI, is alleged to have conspired with other co-accused to cheat the Bank by sanctioning a corporate loan of Rs. 22.50 Crore. Special Court at Hyderabad by its order discharged the appellant from the prosecution under the PC Act, 1988 for want of sanction. Special Court, however, declined to discharge the appellant for the offences under the IPC. It is not disputed that the appellant is not holding a post where he could not be removed from service except by or with the sanction of the Government. Even if it is alleged that the appellant is a public servant, still the provisions of section 197 of the CrPC are not attracted at all. The appellant is deemed to be a "public servant" for the purpose of provisions under the PC Act, 1988. However, the same cannot be extended to the IPC. The offences under the IPC and offences under the PC Act, 1988 are different and distinct. In the present matter as sanction was declined essentially on the ground that what has been alleged is mere procedural irregularities in discharge of essential duties. Whether such procedural irregularities constitute any offence under the IPC or not will be looked

into by trial court. Appeal is dismissed. **[A. Sreenivasa Reddy vs. Rakesh Kumar, 2023 (125) ACC 998 (Supreme Court)]**

Sec. 319- Summoning under- Appeal against order summoning the accused

The exercise of power under section 319 Cr.P.C. is not at the initial stage where cognizance is taken of the offence and the summoning order is passed before committal of the matter to the Sessions Court. Power exercised under section 190 of the Cr.P.C. is quite distinct from the power exercised by the trial court/Sessions Court under section 319 of the Cr.P.C. Merely because in certain proceedings the persons summoned had been provided an opportunity of being heard cannot be the same thing as stating that it is a mandatory requirement or a pre-condition that at the time of summoning a person under section 319 of the Cr.P.C., he should be given an opportunity of being heard. All that is contemplated when a person is summoned to appear is to ascertain that he is the very person who was summoned and if any summoned person fails to appear on the given date. The principle of hearing a person who is summoned cannot be read into section 319 Cr.P.C. Such a procedure is not at all contemplated therein. Also the level of satisfaction at this stage is higher than the satisfaction which is derived by the court at the time of framing of charge. Appeal is dismissed. **[Yashodhan Singh vs. State of U.P., 2023 (125) ACC 356 (Supreme Court)]**

Secs. 272, 173—Copy of charge-sheet—Prayer to supply it in language of Court—Entitlement—No provision under Cr.P.C. makes it obligatory to file charge-sheets in language of Court

Court is giving a summary of the relevant provisions of CrPC which have some bearing on the issue of the language of the Court:
a. Subsection (6) of Section 211 provides that the charge shall be written in the language of the Court. However, Section 215 provides that no error in the charge shall be regarded at any stage of the case as material unless the accused was in fact misled due to error or omission and it has occasioned a failure of justice. Therefore, in a given case, even if the charge is not framed in the language of the Court, the omission to frame the charge in the language of the Court shall not be material unless it is shown that the accused was misled and it resulted in failure of justice.
b. Section 228 forms part of Chapter XVIII, which deals with trial before a Court of Sessions. Subsection (2) of Section 228 mandates that the Court must read over and explain the charge to the accused. It follows that if the accused does not understand the language in which the charge is framed, the Court will have to explain the charge to him in the language which he understands.
c. Section 240 which forms part of Chapter XVIII dealing with the trial of warrant cases by Magistrates provides that the charge shall be framed in writing and the learned Magistrate shall read over and explain the charge to the accused. Though the Section does not make it mandatory, normally, the charge will be framed in the language of the Court determined in accordance with Section 272 of CrPC. Therefore, if the accused is not conversant with the language in which the charge is

framed, it is the duty of the Magistrate to explain the charge to the accused in a language which he understands.

d. If Court compares provisions of Chapters XVIII, XIX, XX, and XXI which deal with sessions triable cases, warrant triable cases, summons triable cases, and summary trials, either there is a requirement of explaining the charge to the accused, or there is a requirement of stating the particulars of the offence to the accused. These requirements can be fulfilled only by explaining to the accused in the language which he understands.

e. Only in the case of summary trials under Chapter XXI, there is a specific provision under Section 265 that the record of the case shall be in the language of the Court.

f. Section 277 (b) permits a witness to give evidence in any other language which is not the language of the Court. It lays down the procedure for recording such evidence.

g. There is a salutatory provision in the form of Section 279 under Chapter XXIII dealing with evidence in inquiries and trials. Section 279 reads thus:

"279. Interpretation of evidence to accused or his pleader.-

(1) Whenever any evidence is given in a language not understood by the accused, and he is present in Court in person, it shall be interpreted to him in open Court in a language understood by him.

(2) If he appears by pleader and the evidence is given in a language other than the language of the Court, and not understood by the pleader, it shall be interpreted to such pleader in that language.

(3) When documents are put for the purpose of formal proof, it shall be in the discretion of the Court to interpret as much thereof as appears necessary."

Thus, where evidence is recorded in the language of the Court which is not understood by the accused or his pleader, there is an obligation on the part of the Court to explain the evidence to the accused or his lawyer, as the case may be.

h. Section 281 provides that if the examination of the accused made by the Court is reduced into writing in a language which the accused does not understand, the statement is required to be interpreted to him in a language which he understands and after such interpretation is made, the accused has the liberty to explain and add to his answers.

i. Under Section 354, it is provided that judgment in every trial of a Criminal Court must be written in the language of the Court. Either in Section 353 or 354, there is no provision which requires the Court to interpret the judgment to the accused even if the accused does not understand the language of the Court.

The conclusion which can be drawn from the provisions of CrPC and in particular the provisions referred to above is that wherever the legislature intended, there is a specific provision incorporated requiring the Court to mandatorily use the language of the Court in the proceedings. There is no such requirement laid down in respect of the report/charge sheet under Section 173 of CrPC.

There are two provisions in CrPC which deal with the effect of error, omission, or irregularity in the proceedings of the trial of a criminal case. The first is Section 464 which deals with the effect of omission to frame, or absence of, or error in, charge. It lays down that only on the ground of such omission, absence, or error,

the ultimate finding, sentence or order will not be invalid unless a failure of justice has in fact been occasioned thereby.

Section 465 incorporates the same test of the failure of justice while dealing with any error, omission, or irregularity in the proceedings. While deciding whether there is a failure of justice occasioned due to error, omission, or irregularity in the trial, the Court is required to consider the fact whether the objection could and should have been raised at an earlier stage in the proceedings. There is a specific provision to that effect under subsection (2) of Section 465.

Therefore, in a given case, if something which CrPC specifically requires to be done in the language of the Court is done in any other language, per se, the proceedings will not be vitiated unless it is established that the omission has resulted in failure of justice. While deciding the issue of whether there is a failure of justice, the Court will have to consider whether the objection was raised at the earliest available opportunity.

Now, coming to the issue of the language of the final report/charge sheet under Section 173, there is no specific provision in CrPC which requires the investigating agency/officer to file it in the language of the Court determined in accordance with Section 272 of CrPC. Even if such a requirement is read into Section 173, per se, the proceedings will not be vitiated if the report is not in the language of the Court. The test of failure of justice will have to be applied in such a case as laid down in Section 465 of CrPC.

Under Section 207, it is the obligation of the learned Judicial Magistrate to supply a copy of the report and other documents as provided in Section 207 to the accused. In a case triable by the Court of Sessions, Section 208 provides for the learned Magistrate to provide copies of the statements and documents to the accused including the statements and confessions recorded under Section 164 of CrPC. When a copy of the report and the documents are supplied to the accused under Section 207 and/or Section 208, an opportunity is available for the accused to contend that he does not understand the language in which the final report or the statements or documents are written.

But he must raise this objection at the earliest. In such a case, if the accused is appearing in person and wants to defend himself without opting for legal aid, perhaps there may be a requirement of supplying a translated version of the charge sheet and documents or the relevant part thereof concerning the said accused to him. It is, however, subject to the accused satisfying the Court that he is unable to understand the language in which the charge sheet is submitted.

When the accused is represented by an advocate who fully understands the language of the final report or charge sheet, there will not be any requirement of furnishing translations to the accused as the advocate can explain the contents of the charge sheet to the accused. If both the accused and his advocate are not conversant with the language in which the charge sheet has been filed, then the question of providing translation may arise.

The reason is that the accused must get a fair opportunity to defend himself. He must know and understand the material against him in the charge sheet. That is the essence of Article 21 of the Constitution of India. With the availability of various

software and Artificial Intelligence tools for making translations, providing translations will not be that difficult now.

In the cases mentioned aforesaid, the Courts can always direct the prosecution to provide a translated version of the charge sheet. But Court must hasten to add that a charge sheet filed within the period provided either under Section 167 of CrPC or any other relevant statute in a language other than the language of the Court or the language which the accused does not understand, is not illegal and no one can claim a default bail on that ground.

There is one more aspect of the matter. There are central agencies like the National Investigation Agency, Central Bureau of Investigation, etc. These agencies investigate serious offences or offences having wide ramifications. Obviously, such central agencies, in every case will not be in a position to file the final report in the language of the concerned Court as determined by Section 272 of CrPC. **[Central Bureau of Investigation vs. Narottam Dhakad, AIR 2023 SC 4066]**

Secs. 432, 433A—Prisons Act, 1894, Sec. 59—Bihar Hail Manual, 1925, R. 529(iv)(b)—Premature release—Rejection of application for—Petitioner being convicted for the offence of murder was sentenced to life imprisonment

Section 432(1) of the Code of Criminal Procedure, 1973 (hereafter 'CrPC') empowers the appropriate government to suspend or remit sentences and applies only in the case of additional remission, over and above what is earned as per the jail manual or statutory rules.4

Section 432(2) prescribes the procedure whereby the appropriate government may seek the opinion of the Presiding Judge of the court before, or by which the applicant had been convicted, on whether the applications should be allowed or rejected, along with reasoning. Section 432(2) of the CrPC is extracted for ready reference:

"432. Power to suspend or remit sentences.-(1)****

(2) Whenever an application is made to the appropriate Government for the suspension or remission of a sentence, the appropriate Government may require the Presiding Judge of the Court before or by which the conviction was had or confirmed, to state his opinion as to whether the application should be granted or refused, together with his reasons for such opinion and also to forward with the statement of such opinion a certified copy of the record of the trial or of such record thereof as exists."

8. This statutory power to grant remission is limited by Section 433A (which was incorporated in the CrPC subsequently5) when it comes to those convicted for an offence where death is one of the punishments:

"433-A. Restriction on powers of remission or commutation in certain cases.-

Notwithstanding anything contained in Section 432, where a sentence of imprisonment for life is imposed on conviction of a person for an offence for which death is one of the punishments provided by law, or where a sentence of death imposed on a person has been commuted under Section 433 into one of imprisonment for life, such person shall not be released from prison unless he had served at least fourteen years of imprisonment."

Sentencing is a judicial exercise of power. The act thereafter of executing the sentence awarded, however, is a purely executive function - which includes the grant of remission, commutation, pardon, reprieves, or suspension of sentence.6 This executive power is traceable to Article 72 and 161 of the Constitution of India, by which the President of India, and Governor of the State, respectively, are empowered to grant pardons and to suspend, remit or commute sentences in certain cases.

Whilst the statutory (under Section 432 CrPC) and constitutional (under Articles 72 and 161 of the Constitution) powers are distinctthe former limited power, is still an imprint of the latter (much wider power), and must be understood as such and placed in this context. This framework of executive power and how it is to be exercised, is lucidly explained, in the judgment of State of Haryana v. Jagdish7:

"27. Nevertheless Court may point out that the power of the sovereign to grant remission is within its exclusive domain and it is for this reason that our Constitution makers went on to incorporate the provisions of Article 72 and Article 161 of the Constitution of India. This responsibility was cast upon the executive through a constitutional mandate to ensure that some public purpose may require fulfilment by grant of remission in appropriate cases.

This power was never intended to be used or utilised by the executive as an unbridled power of reprieve. Power of clemency is to be exercised cautiously and in appropriate cases, which in effect, mitigates the sentence of punishment awarded and which does not, in any way, wipe out the conviction. It is a power which the sovereign exercises against its own judicial mandate. The act of remission of the State does not undo what has been done judicially.

The punishment awarded through a judgment is not overruled but the convict gets benefit of a liberalised policy of State pardon. However, the exercise of such power under Article 161 of the Constitution or under Section 433-A CrPC may have a different flavour in the statutory provisions, as short-sentencing policy brings about a mere reduction in the period of imprisonment whereas an act of clemency under Article 161 of the Constitution commutes the sentence itself."

That this executive power which is inherently discretionary in nature, has to be exercised fairly, reasonably, and not arbitrarily, has been held by this court in numerous cases.8 Absence to do so, would - like is the case for other executive action - compel the court to exercise its judicial review, and in appropriate cases remit the matter for reconsideration.9 The procedure laid out in Section 432(2), has been held to be mandatory by a five-judge bench of this court, in Union of India v. V. Sriharan10. The court also observed how the said procedure operated as a safeguard, much like the ones provided under Article 72 and 161 of the Constitution:

"141. [...] Therefore, when in the course of exercise of larger constitutional powers of similar kind under Articles 72 and 161 of the Constitution it has been opined by this Court to be exercised with great care and caution, the one exercisable under a statute, namely, under Section 432(1)CrPC which is lesser in degree should necessarily be held to be exercisable in tune with the adjunct provision contained in the same section. Viewed in that respect, we find that the procedure to be followed whenever any application for remission is moved, the safeguard provided under Section 432(2)CrPC should be the sine qua non for the ultimate power to be exercised under Section 432(1)CrPC.

142. By following the said procedure prescribed under Section 432(2), the action of the appropriate Government is bound to survive and stand the scrutiny of all concerned, including the judicial forum. It must be remembered, barring minor offences, in cases involving heinous crimes like, murder, kidnapping, rape, robbery, dacoity, etc. and such other offences of such magnitude, the verdict of the trial court is invariably dealt with and considered by the High Court and in many cases by the Supreme Court.

Thus, having regard to the nature of opinion to be rendered by the Presiding Officer of the court concerned will throw much light on the nature of crime committed, the record of the convict himself, his background and other relevant factors which will enable the appropriate Government to take the right decision as to whether or not suspension or remission of sentence should be granted.

It must also be borne in mind that while for the exercise of the constitutional power under Articles 72 and 161, the Executive Head will have the benefit of act and advice of the Council of Ministers, for the exercise of power under Section 432(1)CrPC, the appropriate Government will get the valuable opinion of the judicial forum, which will definitely throw much light on the issue relating to grant of suspension or remission."

The court then proceeded to approve the following reasoning in Sangeet v. State of Haryana11 on this point (Sangeet SCR pp. 119-120):

"63. It appears to us that an exercise of power by the appropriate Government under sub-section (1) of Section 432CrPC cannot be suo motu for the simple reason that this sub-section is only an enabling provision. The appropriate Government is enabled to "override" a judicially pronounced sentence, subject to the fulfilment of certain conditions. Those conditions are found either in the Jail Manual or in statutory rules. Sub-section (1) of Section 432CrPC cannot be read to enable the appropriate Government to "further override" the judicial pronouncement over and above what is permitted by the Jail Manual or the statutory rules.

The process of granting "additional" remission under this section is set into motion in a case only through an application for remission by the convict or on his behalf. On such an application being made, the appropriate Government is required to approach the Presiding Judge of the court before or by which the conviction was made or confirmed to opine (with reasons) whether the application should be granted or refused.

Thereafter, the appropriate Government may take a decision on the remission application and pass orders granting remission subject to some conditions, or refusing remission. Apart from anything else, this statutory procedure seems quite reasonable inasmuch as there is an application of mind to the issue of grant of remission. It also eliminates "discretionary" or en masse release of convicts on "festive" occasions since each release requires a case-by-case basis scrutiny."

This court, in various judgments, has outlined the parameters to be considered, when considering grant of remission. In Jagdish (supra) this court held:

"38. At the time of considering the case of premature release of a life convict, the authorities may require to consider his case mainly taking into consideration whether the offence was an individual act of crime without affecting the society at large; whether there was any chance of future recurrence of committing a crime;

whether the convict had lost his potentiality in committing the crime; whether there was any fruitful purpose of confining the convict any more; the socio-economic condition of the convict's family and other similar circumstances."

This was based on an earlier judgment (though not expressly cited in Jagdish) - Laxman Naskar v. State of W.B12 which prescribed five guiding factors.

In Sriharan (supra), the court went on to discuss specifically, the role of the report submitted by the presiding officer, and held that the "ultimate order of suspension or remission should be guided by the opinion to be rendered by the Presiding Officer of the court concerned."13 This in turn, was relied upon, and explained recently, in Ram Chander v. State of Chhattisgarh14 as follows:

"20. In Sriharan [Union of India v. V. Sriharan, (2016) 7 SCC 1 : (2016) 2 SCC (Cri) 695] , the Court observed that the opinion of the Presiding Judge shines a light on the nature of the crime that has been committed, the record of the convict, their background and other relevant factors. Crucially, the Court observed that the opinion of the Presiding Judge would enable the Government to take the "right" decision as to whether or not the sentence should be remitted.

Hence, it cannot be said that the opinion of the Presiding Judge is only a relevant factor, which does not have any determinative effect on the application for remission. The purpose of the procedural safeguard under Section 432(2)CrPC would stand defeated if the opinion of the Presiding Judge becomes just another factor that may be taken into consideration by the Government while deciding the application for remission. It is possible then that the procedure under Section 432(2) would become a mere formality.

21. However, this is not to say that the appropriate Government should mechanically follow the opinion of the Presiding Judge. If the opinion of the Presiding Judge does not comply with the requirements of Section 432(2) or if the Judge does not consider the relevant factors for grant of remission that have been laid down in Laxman Naskar v. Union of India [Laxman Naskar v. Union of India, (2000) 2 SCC 595 : 2000 SCC (Cri) 509], the Government may request the Presiding Judge to consider the matter afresh.

22. In the present case, there is nothing to indicate that the Presiding Judge took into account the factors which have been laid down in Laxman Naskar v. Union of India [Laxman Naskar v. Union of India, (2000) 2 SCC 595 : 2000 SCC (Cri) 509] . These factors include assessing:

(i) whether the offence affects the society at large;
(ii) the probability of the crime being repeated;
(iii) the potential of the convict to commit crimes in future; (iv) if any fruitful purpose is being served by keeping the convict in prison; and
(v) the socio-economic condition of the convict's family.

In Laxman Naskar v. State of W.B. [Laxman Naskar v. State of W.B., (2000) 7 SCC 626: 2000 SCC (Cri) 1431] and State of Haryana v. Jagdish [State of Haryana v. Jagdish, (2010) 4 SCC 216 : (2010) 2 SCC (Cri) 806], this Court has reiterated that these factors will be considered while deciding the application of a convict for premature release.

23. In his opinion dated 21-7-2021 the Special Judge, Durg referred to the crime for which the petitioner was convicted and simply stated that in view of the

facts and circumstances of the case it would not be appropriate to grant remission. The opinion is in the teeth of the provisions of Section 432(2)CrPC which require that the Presiding Judge's opinion must be accompanied by reasons. Halsbury's Laws of India (Administrative Law) notes that the requirement to give reasons is satisfied if the authority concerned has provided relevant reasons. Mechanical reasons are not considered adequate. The following extract is useful for our consideration:

"[005.066] Adequacy of reasons Sufficiency of reasons, in a particular case, depends on the facts of each case. It is not necessary for the authority to write out a judgment as a court of law does. However, at least, an outline of process of reasoning must be given. It may satisfy the requirement of giving reasons if relevant reasons have been given for the order, though the authority has not set out all the reasons or some of the reasons which had been argued before the court have not been expressly considered by the authority. A mere repetition of the statutory language in the order will not make the order a reasoned one.

Mechanical and stereotype reasons are not regarded as adequate. A speaking order is one that speaks of the mind of the adjudicatory body which passed the order. A reason such as 'the entire examination of the year 1982 is cancelled', cannot be regarded as adequate because the statement does explain as to why the examination has been cancelled; it only lays down the punishment without stating the causes therefor." [Halsbury's Laws of India (Administrative Law) (Lexis Nexis, Online Edition).]

24. Thus, an opinion accompanied by inadequate reasoning would not satisfy the requirements of Section 432(2)CrPC. Further, it will not serve the purpose for which the exercise under Section 432(2) is to be undertaken, which is to enable the executive to make an informed decision taking into consideration all the relevant factors." **[Rajo @ Rajwa @ Rajendra Mandal vs. State of Bihar, AIR 2023 SC 4084]**

Sec. 439—Penal Code, 1860, Secs. 376D, 384, 506—Cancellation of bail

The grant of bail is a discretionary relief which necessarily means that such discretion would have to be exercised in a judicious manner and not as a matter of course. The grant of bail is dependant upon contextual facts of the matter being dealt with by the Court and may vary from case to case. There cannot be any exhaustive parameters set out for considering the application for grant of bail. However, it can be noted that;

(a) While granting bail the court has to keep in mind factors such as the nature of accusations, severity of the punishment, if the accusations entails a conviction and the nature of evidence in support of the accusations;

(b) reasonable apprehensions of the witnesses being tempered with or the apprehension of there being a threat for the complainant should also weight with the Court in the matter of grant of bail.

(c) While it is not accepted to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought to be always a prima facie satisfaction of the Court in support of the charge.

(d) Frivility of prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to have an order of bail. Court may also profitably refer to a decision of this Court in Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav and another (2004) 7 SCC 528 where the parameters to be taken into consideration for grant of bail by the Courts has been explained in the following words:

"11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious of- fence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

(b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

(c) Prima facie satisfaction of the court in support of the charge. (See Ram Govind Upadhyay v. Sudarshan Singh [(2002) 3 SCC 598 : 2002 SCC (Cri) 688] and Puran v. Rambilas [(2001) 6 SCC 338 : 2001 SCC (Cri) 1124] .)"

It is also required to be borne in mind that when a prayer is made for the cancellation of grant of bail cogent and overwhelming circumstances must be present and bail once granted cannot be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it in conducing to allow fair trial. This proposition draws support from the Judgment of this Court in Daulat Ram and others v. State of Haryana reported in (1995) 1 SCC 349, Kashmira Singh v. Duman Singh (1996) 4 SCC 693 and xxx v. State of Telangana (2018) 16 SCC 511.

This Court in Daulat Ram's case has held that the cancellation of the bail has to be dealt on a different footing in comparison to a proceeding for grant of bail. It has also been held that there can be supervening circumstances which may develop post the grant of bail and are non-conducive to the fair trial, making it necessary to cancel the bail and this principle has been reiterated time and again and more recently in the Judgment of Ms. X v. State of Telangana.

This Court in Vipin Kumar Dhir v. State of Punjab 2021 SCC Online SC 854 has added caveat to the above principles and has further held that bail can also be revoked where the Court has considered irrelevant factors or has ignored relevant material available on record which renders the order granting bail legally untenable. The gravity of the offence, conduct of the accused and societal impact of an undue indulgence by Court when the investigation is at the threshold, are also amongst a

few situations, where a Superior Court can interfere in an order of bail to prevent the miscarriage of justice and to bolster the administration of criminal justice system.

No doubt each case would have unique facts peculiar to its own and the same would hold key for adjudication of bail matters including cancellation thereof. There may be circumstances where interference to or attempt to interfere with the course of administration of justice or evasion or attempt to evade to due course of justice are abuse of concession granted to the accused in any manner.

The offence alleged in the instant case is heinous and would be a onslaught on the dignity of the womanhood and the age old principle of ;= uk;ZLrq iwT;Urs r= nsork% (where women are respected Gods live there) would recede to the background and the guilty not being punished by process of law or accused persons are allowed to move around freely in the society or in spite of there being prima facie material being present they are allowed to move around freely in the society before guilt is proved and are likely to indulge in either threatening the prosecution witnesses or inducing them in any manner to jettison the criminal justice system, then the superior court will have to necessarily step in to undo the damage occasioned due to erroneous orders being passed by courts below.

This Court in Ram Govind Upadhyay v. Sudarshan Singh, (2002) 3 SCC 598 has held as under:

"9. Undoubtedly, considerations applicable to the grant of bail and considerations for cancellation of such an order of bail are independent and do not overlap each other, but in the event of non-consideration of considerations relevant for the purpose of grant of bail and in the event an earlier order of rejection available on the records, it is a duty incumbent on the High Court to explicitly state the reasons as to why the sudden departure in the order of grant as against the rejection just about a month ago. The subsequent FIR is on record and incorporated therein are the charges under Sections 323 and 504 IPC in which the charge-sheet have already been issued — the court ought to take note of the facts on record rather than ignoring them. In any event, the discretion to be used shall always have to be strictly in accordance with law and not dehors the same. The High Court thought it fit not to record any rea- son, far less any cogent reason, as to why there should be a departure when in fact such a petition was dismissed earlier not very long ago. The consideration of the period of one year spent in jail cannot in our view be a relevant consideration in the matter of grant of bail, more so by reason of the fact that the offence charged is that of murder under Section 302 IPC having the punishment of death or life imprisonment — it is a heinous crime against the society and as such the court ought to be rather circumspect and cautious in its approach in a matter which stands out to be a social crime of a very serious nature."

Similar is the opinion of this Court in Prashanta Kumar Sarkar v. Ashish Chatterjee and another (2010) 14 SCC 496 has held as under:

"9. We are of the opinion that the impugned order is clearly unsustainable. It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. 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." **[Bhagwan Singh vs. Dilip Kumar @ Deepu @ Depak, AIR 2023 SC 4165]**

Sec. 313—Constitution of India, Art. 21—Principles to be followed while considering statements made u/S. 313 of Cr.P.C.—Stated

The following principles, as evolved over time when considering statements made u/S. 313 of Cr.P.C. -

1. The object, evident from the Section itself, is to enable the accused to themselves explain any circumstances appearing in the evidence against them.
2. The intent is to establish a dialogue be- tween the Court and the accused. This process benefits the accused and aids the Court in arriving at the final verdict.
3. The process enshrined is not a matter of procedural formality but is based on the cardinal principle of natural justice, i.e., audi alterum partem.
4. The ultimate test when concerned with the compliance of the Section is to enquire and ensure whether the accused got the opportunity to say his piece.
5. In such a statement, the accused may or may not admit involvement or any incriminating circumstance or may even offer an alternative version of events or interpretation. The accused may not be put to prejudice by any omission or inadequate questioning.
6. The right to remain silent or any answer to a question which may be false shall not be used to his detriment, being the sole reason.
7. This statement cannot form the sole basis of conviction and is neither a substantive nor a substitute piece of evidence. It does not discharge but reduces the prosecution's burden of leading evidence to prove its case. They are to be used to examine the veracity of the prosecution's case.
8. This statement is to be read as a whole. One part cannot be read in isolation.
9. Such a statement, as not on oath, does not qualify as a piece of evidence u/S. 3 of the Indian Evidence Act, 1872; however, the inculpatory aspect as may be borne from the statement may be used to lend credence to the case of the prosecution.
10. The circumstances not put to the accused while rendering his statement under the Section are to be excluded from consideration as no opportunity has been afforded to him to explain them.
11. The Court is obligated to put, in the form of questions, all incriminating circum- stances to the accused so as to give him an opportunity to articulate his defence. The defence so articulated must be carefully scrutinized and considered.

12. Non-compliance with the Section may cause prejudice to the accused and may impede the process of arriving at a fair decision.
AIROnline 2022 SC 1102, Followed. **[Indrakunwar vs. State of Chhattisgarh, AIR 2023 SC 5221]**

Foreign Exchange Regulation Act

Secs. 56, 57, 61, 3(e)—Foreign Exchange Management Act, 1999, Sec. 49—Cognizance of offence—Filing of complaint—Competence of authorized person—During the sunset period, the authorization of the Enforcement Officers to file the complaints continues to be valid for the limited purposes of S.49(3) of FEMA—Prosecution will continue to be governed by the provisions of FERA as if the same had not been repealed

In the instant case, the first respondent, who was an Enforcement Officer appointed under S.3(e) of the Foreign Exchange Regulation Act (FERA), filed a complaint in the Court of the Chief Metropolitan Magistrate against the appellants for various offences punishable under FERA and S. 120 B of the IPC. According to the appellants cognisance of the offences punishable under Ss. 56 and 57 could be taken by a Court only on a complaint in writing made by an Officer specified under S. 61(2)(ii) of the FERA. The Foreign Exchange Management Act (FEMA) was brought into force with effect from 1st June 2000. By virtue of S. 49(1) of the FEMA, FERA stood repealed. It was submitted on behalf of the appellants that the Enforcement Officer who may have been authorised earlier, cannot perform duties of his office from 1st June 2000, as he ceased to be an Enforcement Officer.

Held, during the sunset period, the authorisation of the Enforcement Officers to file the complaints continues to be valid for the limited purposes of S. 49(3) of FEMA. In view of S. 49(4), for the purposes of the prosecution of offences punishable under Ss. 56 and 57 of FERA, by a legal fiction, the provisions of the repealed Act will continue to apply. However, the same will continue to apply only for the purposes of prosecution of the offences which are saved by S. 49(3) of FEMA. That is how the complaint filed by the Enforcement Officer, duly authorised under S.61(2)(ii) of FEMA, will continue to be valid, inasmuch as by virtue of the legal fiction incorporated in S. 49(4), the prosecution will continue to be governed by the provisions of FERA as if the same had not been repealed. **[First Global Stockbroking Pvt. Ltd. vs. Anil Rishiraj, AIR 2023 SC 4524]**

Hindu Marriage Act

Family and Personal Laws - Hindu Succession Act, 1956 - Ss. 6, 8, 10, 15 and 16 r/w S. 16 HMA - Child born from void or voidable marriage conferred legitimacy under S. 16 HMA, held, is not a coparcener in Hindu Mitakshara joint family However, such child would be entitled to share of parents in coparcenary property in accordance with mandate of S. 6 HSA (as subs. in 2005) where the parent dies after the commencement of the HSA (Amendment) Act, 2005 w.e.f. 9-9-2005 Quaere whether the same position obtains when parent(s) died prior to

commencement of HSA (Amendment) Act, 2005, where the case falls under original unsubstituted S. 6 proviso r/w Explns. 1 & 2 HAS.

The reference before the three-Judge Bench essentially raised the following issue: whether a child who is conferred with legislative legitimacy under Section 16(1) or 16(2) HMA is, by reason of Section 16(3) HMA, entitled to the ancestral/coparcenary property of the parents or is the child merely entitled to the self-earned/separate property of the parents. The questions that arose were:

(1) First, whether the legislative intent is to confer legitimacy on a child covered by Section 16 in a manner that makes them coparceners, and thus entitled to initiate or get a share in the partition actual or notional;

(2) Second, at what point does a specific property transition into becoming the property of the parent. For, it is solely within such property that children endowed with legislative legitimacy hold entitlement, in accordance with Section 16(3).

The answer to the latter question would primarily depend on interpretation of the phrase "any rights in or to the property of any person, other than the parents".

Thus, it can be concluded as follows:

(1) In terms of sub-section (1) of Section 16, a child of a marriage which is null and void under Section 11 HMA is statutorily conferred with legitimacy irrespective of whether: (i) such a child is born before or after the commencement of the amending Act, 1976; (ii) a decree of nullity is granted in respect of that marriage under the Act and the marriage is held to be void otherwise than on a petition under the enactment;

(2) In terms of sub-section (2) of Section 16 HMA where a voidable marriage has been annulled by a decree of nullity under Section 12 HMA, a child "begotten or conceived" before the decree has been made, is deemed to be their legitimate child notwithstanding the decree, if the child would have been legitimate to the parties to the marriage if a decree of dissolution had been passed instead of a decree of nullity;

(3) While conferring legitimacy in terms of sub-section (1) on a child born from a void marriage and under sub-section (2) of Section 16 HMA to a child born from a voidable marriage which has been annulled, the legislature has stipulated in sub-section (3) of Section 16 HMA that such a child will have rights to or in the property of the parents and not in the property of any other person;

(4) While construing the provisions of Section 3(j) HSA including the proviso, the legitimacy which is conferred by Section 16 HMA on a child born from a void or, as the case may be, voidable marriage has to be read into the provisions of HSA. In other words, a child who is legitimate under sub-section (1) or sub-section (2) of Section 16 HMA would, for the purposes of Section 3(j) HSA, fall within the ambit of the explanation "related by legitimate kinship" and cannot be regarded as an "illegitimate child" for the purposes of the proviso;

(5) Section 6 HSA continues to recognise the institution of a joint Hindu family governed by the Mitakshara law and the concepts of a coparcener, the acquisition of an interest as a coparcener by birth and rights in coparcenary property. By the substitution of Section 6. equal rights have been granted to daughters, in the same manner as sons as indicated by sub-section (1) of Section 6 HSA;

(6) Section 6 HSA provides for the devolution of interest in coparcenary property. Prior to the substitution of Section 6 with effect from 9-9-2005 by the amending Act of 2005, Section 6 stipulated the devolution of interest in a Mitakshara coparcenary property of a male Hindu by survivorship on the surviving members of the coparcenary. The exception to devolution by survivorship was where the deceased had left surviving a female relative specified in Class I of the Schedule or a male relative in Class I claiming through a female relative, in which event the interest of the deceased in a Mitakshara coparcenary property would devolve by testamentary or intestate succession and not by survivorship. In terms of sub-section (3) of Section 6 HSA as amended, on a Hindu dying after the commencement of the amending Act of 2005 his interest in the property of a joint Hindu family governed by the Mitakshara law will devolve by testamentary or intestate succession, as the case may be, under the enactment and not by survivorship. As a consequence of the substitution of Section 6, the rule of devolution by testamentary or intestate succession of the interest of a deceased Hindu in the property of a joint Hindu family governed by Mitakshara law has been made the norm;

(7) Section 8 HSA provides general rules of succession for the devolution of the property of a male Hindu dying intestate. Section 10 HSA provides for the distribution of the property among heirs of Class I of the Schedule. Section 15 HSA stipulates the general rules of succession in the case of female Hindus dying intestate. Section 16 HSA provides for the order of succession and the distribution among heirs of a female Hindu;

(8) While providing for the devolution of the interest of a Hindu in the property of a joint Hindu family governed by Mitakshara law, dying after the commencement of the amending Act of 2005 by testamentary or intestate succession, Section 6(3) lays down a legal fiction, namely, that "the coparcenary property shall be deemed to have been divided as if a partition had taken place". According to the Explanation, the interest of a Hindu Mitakshara coparcener is deemed to be the share in the property that would have been allotted to him if a partition of the property has taken place immediately imm his death irrespective of whether or not he is entitled to claim partition; before

(9) For the purpose of ascertaining the interest of a deceased Hindu Mitakshara coparcener, the law mandates the assumption of a state of affairs immediately prior to the death of the coparcener, namely, a partition of the coparcenary property between the deceased and other members of the coparcenary. Once the share of the deceased in property that would have been allotted to him if a partition had taken place immediately before his death is ascertained, his

heirs including the children who have been conferred with legitimacy under Section 16 HMA, will be entitled to their share in the property which would have been allotted to the deceased upon the notional partition, if it had taken place; and

(10) The provisions of HSA have to be harmonised with the mandate in Section 16(3) HMA which indicates that a child who is conferred with legitimacy under sub-sections (1) and (2) will not be entitled to rights in or to the property of any person other than the parents. The property of the parent, where the parent had an interest in the property of a joint Hindu family governed under the Mitakshara law has to be ascertained in terms of the Explanation to sub-section (3), as interpreted above.**(Revanasiddappa and another v. Mallikarjun and others, (2023) 10 SCC 1)**

Suit for partition—By daughters of original owner—Suit dismissed on ground that as per law existing at relevant time, agricultural property would devolve upon male child only

In Ram Vishal (dead) by Lrs. and Ors. v. Jagan Nath and Another, reported in (2004) 9 SCC 302 : AIR Online 2002 SC 380 the position of possession being a prerequisite to sustain a claim under sub-section (1) of Section 14 of the 1956 Act was confirmed in Para 16 which is quoted below:

"16. In our view, the authority in Raghubar Singh case [(1998) 6 SCC 314] can be of no assistance to the respondent. As has been held by this Court, a preexisting right is a sine qua non for conferment of a full ownership under Section 14 of the Hindu Succession Act. The Hindu female must not only be possessed of the property but she must have acquired the property. Such acquisition must be either by way of inheritance or devise, or at a partition or "in lieu of maintenance or arrears of maintenance" or by gift or by her own skill or exertion, or by purchase or by prescription....." **[M. Sivadasan (Dead) Through Lrs. vs. A. Soudamini (Dead) Through Lrs., AIR 2023 SC 4074]**

Hindu Succession Act

Hindu Succession Act, 1956 - S. 6 proviso & Expln. 1 [as they stood prior to subs. of S. 6 in 2005], S. 8 and Class I - Larger coparcenary standing partitioned in 1964 between the descendants, after death in 1959 of coparcener concerned. Coparcener concerned Det having one son and two daughters - Determination of share of each heir of coparcener concerned, in the share which stood allotted to coparcener concerned from larger coparcenary after the abovesaid partition.

Reiterated, each heir will get his or her share in interest which deceased had in coparcenary property at time of his death, in addition to share which he or she received or must be deemed to have received in notional partition. **(Derha v. Vishal and another, (2023) 10 SCC 524)**

It was held that undoubtedly, burden is on prosecution to prove guilt of accused beyond reasonable doubt. If prosecution fails to discharge its initial burden beyond reasonable doubt, accused has to be acquitted. Further, it is settled law that prosecution cannot take recourse of S. 106 of the Evidence Act without establishing the foundational facts.

It was further held that when an incriminating circumstance is put to accused and said accused either offers no explanation or offers explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete.

The principle of proof beyond reasonable doubt cannot be distorted into a doctrine of acquittal when any delicate or remote doubt flits past a feeble mind, and that aforesaid observations are warranted by frequent acquittals on flimsy possibilities which are not infrequently set aside by the High Courts weakening the credibility of the judicature. The rule of benefit of reasonable doubt does not imply a frail willow bending to every whiff of hesitancy. Judges are made of sterner stuff and must take a practical view of legitimate inferences flowing from evidence, circumstantial or direct.

If an offence takes place inside the four walls of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in the circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused, if the strict principle of circumstantial evidence, is insisted upon by the courts. A Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. Both are public duties. The law does not enjoin a duty on the prosecution to lead evidence of such character, which is almost impossible to be led, or at any rate, extremely difficult to be led. The duty on the prosecution is to lead such evidence, which it is capable of leading, having regard to the facts and circumstances of the case.

Where accused is alleged to have committed murder of his wife and prosecution succeeds in leading evidence to show, like in present case, that shortly before commission of crime they were seen together or offence took place in dwelling home where husband also normally resided, it has been consistently held that if accused does not dispute his presence at home at relevant time and does not offer any explanation how wife received injuries or offers explanation which is found to be false, it is strong circumstance which indicates that he is responsible for commission of crime. **(Wazir Khan v. State of Uttarakhand, (2023) 8 SCC 597)**

Sec. 9—Criminal P.C., 1974, Sec. 54-A—Constitution of India, Art. 20(3)—Test Identification Parade ('TIP')—Refusal by accused

The following questions fall for consideration:-

(i) Whether the High Court committed any error in dismissing the appeal filed by the appellant convict and thereby affirming the judgment and order of conviction and sentence passed by the Trial Court for the alleged offences?

(ii) Whether an accused can decline to participate in the TIP on the ground that he was already shown to the eye witnesses prior to the conduct of the TIP and in such circumstances, the TIP would be nothing short of creating evidence against him?

(iii) Can an accused decline to participate in the TIP that the investigating officer may propose to hold in the course of investigation on the ground that no person accused of any offence shall be compelled to be a witness against himself? To put it in other words, can an accused decline to subject himself to the TIP on the ground that the same violates his fundamental right under Article 20(3) of the Constitution?

(iv) To what extent the Court can draw an adverse inference against the accused for having refused to participate in the TIP? Whether by virtue of drawing such adverse inference, is it open for the Court to accept the substantive evidence of identification before the Trial Court without any corroboration to such identification?

(v) What is the true purport of Section 54A of the CrPC?

(vi) Whether the Courts below were justified in placing reliance on the discovery of weapon of offence and the currency notes from the residence of the appellant convict as one of the incriminating circumstances against the appellant convict?

Whether TIP violates the fundamental right of an accused under Article 20(3) of the Constitution

Article 20(3) of the Constitution reads thus:-

"Article 20(3):─No person accused of any offence shall be compelled to be a witness against himself."

The true purport of clause (3) of Article 20 of the Constitution referred to above was laid down by this Court in the case of M.P. Sharma v. Satish Chandra, AIR 1954 SC 300. Jagannadhadas J., delivering the judgment of the Court, observed:-

"Indeed, every positive volitional act, which furnishes evidence is testimony, and testimonial compulsion connotes coercion which procures the positive volitional evidentiary acts of the person, as opposed to the negative attitude of silence or submission on his part."

Court is conscious of the fact that M.P. Sharma (supra) referred to above came to be overruled in K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1, to the extent that it had observed that privacy is not a right guaranteed by the Indian Constitution. It was held in M.P. Sharma (supra) that in absence of a provision like the Fourth Amendment to the U.S. Constitution, a right to privacy could not be read into the Indian Constitution. In the case on hand, Court is not concerned with the right of privacy of an accused when it comes to putting him to TIP. What has been ruled in K.S. Puttaswamy (supra) in context of Article 21, is that an invasion of privacy must be fulfilled on the basis of a law which stipulates a procedure which is fair, just and reasonable.

What is prohibited by Article 20(3) of the Constitution is procuring by compulsion of the positive volitional evidentiary acts of an accused. It is true that an accused may be said to be compelled to attend a test identification parade, but this compulsion does not involve any positive volitional evidentiary act. His mere attendance or the exhibition of his body at a test identification parade even though

compelled, does not result in any evidentiary act until he is identified by some other agency. The identification of him by a witness is not his act, even though his body is exhibited for the purpose. His compelled attendance at a test identification parade is comparatively remote to the final evidence and cannot be said by itself to furnish any positive volitional evidentiary act. [See : Peare Lal Show v. The State, AIR 1961 Cal 531]

In Peare Lal Show (supra), Mitter, J. of the Calcutta High Court in his separate judgment observed thus:-

"5. True, we are to construe Article 20(3), but the language of Article 20(3) is as to the material part tolidem verbis the 5th Amendment of the American Constitution. Dealing with the point, Holmes, J. in Holt v. United States, (1910) 218 US 245, observed:

"A question arose as to whether a blouse belonged to the prisoner. A witness testified that the prisoner put it on and it fitted him. It is objected that he did this under the same duress that made his statements inadmissible, and that it should be excluded for the same reasons. But the prohibition of compelling a man in a criminal court to be witness against himself is a prohibition of the use of physical or moral compulsion to extort communications from him, not an exclusion of his body as evidence when it may be material. The objection in principle would forbid a jury to look at a prisoner and compare his features with a photograph in proof. Moreover, we need not consider how far a court would go in compelling a man to exhibit himself. For when he is exhibited, whether voluntarily or by order, and even if the order goes too far, the evidence, if material, is competent".

6. In the same strain are to be found comments in Wigmore on Evidence, Volume VIII (3rd Edition), Section 2263 at page 363. The emphasis is upon the testimonial status of the accused and not upon any compulsion which might be a step in obtaining the final evidence against the man. Dealing with, this topic, Wigmore observed:

"Such, finally, is the practical requirement that follows from the necessity of recognizing other unquestioned methods of procuring evidence: for if the privilege extended beyond these limits, and protected an accused otherwise than in his strictly testimonial status, -- if, in other words, it created inviolability not only for his physical control of his own vocal utterances, but also for his physical control in whatever form exercised then it would be possible for a guilty person to shut himself up in his house, with all the tools and indicia of his crime, and defy the authority of the law to employ in evidence anything that might be obtained by forcibly overthrowing his possession and compelling the surrender of the evidential articles, a clear "reductio ad absurdum"."

7. The foregoing principles were embodied in the judgement of the Supreme Court in M.P. Sharma v. Satish Chandra, AIR 1954 SC 300, and the statement of the law set out earlier in this judgment furnishes, to my mind, the real test for determining whether any particular accused is compelled to be a witness against himself. As I have pointed out, the identification of an accused at a test identification parade by someone is not the accused's own act. His mere attendance or the exhibition of his body cannot be regarded as furnishing any positive volitional

evidentiary act. That being the position, the impugned order cannot be regarded as violative of Article 20(3) of the Constitution." [Emphasis supplied]

Bhattacharya, J. by his separate but concurring judgment observed thus:-

"10. In M.P. Sharma v. Satish Chandra, AIR 1954 SC 300, it is pointed out that the guarantee under Article 20(3) of the Constitution is available to the person against whom a first information report has been recorded. As was observed in Collector of Customs v. Calcutta Motor and Cycle Co., AIR 1958 Cal 682, no formal complaint is necessary and even if a person has been named as one who committed an offence, particularly by officers who are competent to launch a prosecution against him, he has been accused of an offence within the meaning of Article 20(3) and he can claim protection under that provision of law and, therefore, the extortion of any evidentiary material even at the stage of investigation, as in the present case, which may aid in the making out of a case against him may be within the meaning of condemnation of the Article. After the decision of the Supreme Court in Sharma's case, referred to above, it cannot be said that the guarantee in Article 20(3) is confined to the oral evidence of the accused. Their Lordships pointedly observed:

"We can see no reason to confine the contents of the constitutional guarantee to this barely literal import. So to limit it would be to rob guarantee of its substantial purpose and to miss the substance for the sum as stated in certain decisions. A person can be a witness not merely by giving oral evidence but also by producing documents or making intelligible gestures as in the case of a dumb witness or the like. To be a witness is nothing more than to furnish evidence and such evidence can be furnished through the lips or by production of a thing or of a document or any other means".

11. The Magistrate has directed the production of the petitioner in a test identification parade. The petitioner has objected to this procedure.
Consequently, there is an element of coercion and therefore no question of acquiescence arises. This kind of objection may be raised, in my opinion, by an accused person not only at the time of passing of such an order by a Magistrate orally or in writing, personally or through his lawyer, but also at the time of actual collection of his evidence which, according to the accused, may be self-incriminatory in character. The objection of the petitioner is in time. There is, therefore, no technical bar.

14. Apart from the question of coercion as opposed to acquiescence the fundamental idea stressed is 'positive volitional evidentiary act'. This is distinct from 'negative attitude of silence or submission'. It is clear that the Supreme Court did not lay down only the negative principle of silence or acquiescence. What stands out prominently in the judgment is 'a positive volitional evidentiary act'. If coercion is sought to be imposed in getting from an accused evidence which cannot be procured save through positive volitional act on his part, the Constitutional guarantee will step in to protect him. This was the view of this Court in the case of Farid Ahmed v. The State, AIR 1960 Cal 32, in connection with a case in which the Magistrate allowed an investigating officer to take specimen writing and signatures of the accused. But if that evidence can be procured without any positive volitional evidentiary act on the part of the accused, Article 20(3) of the Constitution will have

no application. In so far as the above ratio decidendi laid down by the Supreme Court was not kept in view fully in Bhaluka Behara v. The State, AIR 1957 Orissa 172; Brij Bhusan v. The State, AIR 1957 Madh Pra 106; Nazir Singh v. The State, AIR 1959 Madh Pra 411, or Sailendra Nath v. The State, AIR 1955 Cal 247, or Ram Swarup v. The State, AIR 1958 Cal 119, we would with due deference dissent from the views in these decisions. In Bhaluka Behara v. The State, the Orissa High Court seems to have been of the opinion that any direction asking the accused to give his thumb impression would amount to asking him to furnish evidence which is prohibited under Article 20(3). In this case, however, there was no element of coercion or compulsion and no objection had been raised by the accused persons at the time of taking the thumb impression. In Brij Bhusan v. The State, the Madhya Pradesh High Court held that Section 5 of the Madhya Bharat Identification of Prisoners Act, in so far as it conferred powers on the Magistrate to direct an accused person to give his thumb impression, specimen writing and signature for comparison to be used against him in a trial, was repugnant to Article 20(3) of the Constitution and was, therefore, void. In Sailendra Nath v. The State and Ram Swarup v. The State it was pointed out that taking specimen writing did not offend Article 20(3) of the Constitution, -- a view that was dissented from in Farid Ahmed v. The State.

18. It will appear from People v. Swallow, 165 New York Supp. 915, that the rule against self- incrimination is not violated when the accused is compelled to exhibit himself or part of his body to the court or to allow a record of his finger prints to be taken. In State v. Ah Chuey, (1879) 33 Am Re 530, the Court held that an order directing the accused to exhibit certain tattoo marks On his person would not amount to an infringement of the rule against self- incrimination.

19. Negativing the contention that taking of finger prints is a violation of the privilege against self- incrimination, Willis in Constitutional Law of the United States (1936 Edition, page 522) observed inter alia:

"The accused does not exercise a volition or give oral testimony. He is passive. He is not giving testimony about his body, but is giving his body". Speaking of inspection of bodily features by the Tribunal or by witnesses, Wigmore in Evidence, Vol. VIII, page 375, Section 2265 comments that what is obtained from the accused by such action is not testimony about his body but his body itself. This aspect, I cannot help repeating, was also stressed by Holmes, J. in the case of (1910) 218 US 245 by observing:

"But the prohibition of compelling a man in a criminal court to be witness against himself is a prohibition of use of physical or moral compulsion to extort communications from him, not an exclusion of his body as evidence when it may be material".

20. If, as we find, taking of thumb impression is not violative of Article 20(3), with greater force the reasons set out above mutatis mutandis will be applicable to a case directing the production of the accused in a test identification parade, apart from such consideration as interposition of a magisterial order. It is not the accused who is called upon to testify against himself but somebody else on seeing him and others now in the parade may have something to say later on. The accused does not produce any evidence or perform any evidentiary act. It may be a positive act and even a volitional act, but only to a limited extent, when he walks to

the place where the test identification parade is to be held, as has been urged by Mr. Dutt, but certainly it is not his evidentiary act. The view that we take in the instant case is in full accord with the test of positive volitional evidentiary act laid down by the Supreme Court in the case of M.P. Sharma v. Satish Chandra, AIR 1954 SC 300."

SECTION 54A OF THE CODE OF CRIMINAL PROCEDURE, 1973

In the aforesaid context, we shall now look into Section 54A of the CrPC. Section 54A reads thus:-

"Section 54A. Identification of person arrested.— Where a person is arrested on a charge of committing an offence and his identification by any other person or persons is considered necessary for the purpose of investigation of such offence, the Court, having jurisdiction may, on the request of the officer in charge of a police station, direct the person so arrested to subject himself to identification by any person or persons in such manner as the Court may deem fit.

Provided that, if the person identifying the person arrested is mentally or physically disabled, such process of identification shall take place under the supervision of a Judicial Magistrate who shall take appropriate steps to ensure that such person identifies the person arrested using methods that person is comfortable with:

Provided further that if the person identifying the person arrested is mentally or physically disabled, the identification process shall be videographed."

The newly inserted Section 54A provides for the identification of the arrested person where it is considered necessary for the purpose of investigation by the officer-in- charge of a police station. The said Section empowers the court, on the request of the officer-in-charge of a police station, to direct for placing the accused at test identification parade for identification by any person or persons in such manner as the court may deem fit. It is provided in the "objects and reasons":-

"This clause seeks to insert a new section 54A to empower the Court to direct specifically the holding of the identification of the arrested person at the request of the prosecution."

First Proviso : Identifier mentally or physically disabled.— When the person identifying the suspect is mentally or physically disabled, the process of identification must be under the supervision of a Judicial Magistrate. This mandatory requirement of law has been incorporated in the statute by the amending Act 13 of 2013 w.e.f. 03.02.2013. It is the duty of the Magistrate supervising TIP to take appropriate steps to ensure that such identifier identifies the suspect using methods to which he was comfortable with. The Magistrate cannot discharge his duty lightly or in a slip-shod manner.

Second Proviso : Identification when suspect is mentally or physically disabled. — The second proviso to Section 54A has been inserted in the statute by the amending Act 13 of 2013 w.e.f. 03.02.2013. It relates to identification of a suspect who is mentally or physically disabled. It appears that the requirements specified in the first proviso are not attracted for the second proviso. But it is obligatory that the process of identification of the person arrested shall have to be videographed. Unless this requirement is complied with, the identification shall fall to the ground and no reliance can be placed on it at any stage of the trial.

This Section is restricted to identification of persons only. So this Section has no application where the question of identification of articles arises. TIP is part of investigation and the investigation of a case is to be conducted by the investigating agency and it is their statutory prerogatives. There was no statutory provision authorizing the accused to pray for placing him in the test parade. Some High Courts approved this right, while some other High Courts took a contrary view. In State of Uttar Pradesh v. Rajju, AIR 1971 SC 708, this Court observed, "If the accused felt that the witnesses would not be able to identify them─they should have requested for an identification parade." This observation indirectly approves the right to ask for test parade by the accused. In another case, the accused voluntarily accepted the risk of being identified in a parade but he was denied that opportunity. This Court observed that this was an important point in his favour ─ Shri Ram v. State of U.P., (1975) 3 SCC 495.

This provision for giving directions by the Court as to the manner in which test parade is to be conducted may be viewed as treating the Court as part of the investigating agency. Without having any provision like Section 54A there has been so long no difficulty in holding test identification parades. There are plenty of judicial pronouncements to show the safeguards to be followed while holding identification parade.

Thus Court is of the view that after the introduction of Section 54A in the CrPC referred to above, an accused is under an obligation to stand for identification parade. An accused cannot resist subjecting himself to the TIP on the ground that he cannot be forced or coerced for the same. If the coercion is sought to be imposed in getting from an accused evidence which cannot be procured save through positive volitional act on his part, the constitutional guarantee as enshrined under Article 20(3) of the Constitution will step in to protect him. However, if that evidence can be procured without any positive volitional evidentiary act on the part of the accused, Article 20(3) of the Constitution will have no application. The accused while subjecting himself to the TIP does not produce any evidence or perform any evidentiary act. As explained very succinctly by the learned Judges of the Calcutta High Court as above, it may be a positive act and even a volitional act, but only to a limited extent, when the accused is brought to the place where the TIP is to be held. It is certainly not his evidentiary act. The accused concerned may have a legitimate ground to resist facing the TIP saying that the witnesses had a chance to see him either at the police station or in the Court, as the case may be, however, on such ground alone he cannot refuse to face the TIP. It is always open for the accused to raise any legal ground available to him relating to the legitimacy of the TIP or the evidentiary value of the same in the course of the trial. However, the accused cannot decline or refuse to join the TIP.

Thus, our aforesaid discussion answers two of the six questions framed by us i.e. (i) whether an accused can decline to submit himself to the TIP on the ground that the same is violative of Article 20(3) of the Constitution and (ii) the true purport of any order that the Magistrate may pass in exercise of powers under Section 54A of the CrPC directing any person to subject himself or herself to the TIP.

IMPORTANCE AND EVIDENTIARY VALUE OF TIP

Facts which establish the identity of any person or thing whose identity is relevant are, by virtue of Section 9 of the Evidence Act, always relevant. The term 'identification' means proving that a person, subject or article before the Court is the very same that he or it is alleged, charged or reputed to be. Identification is almost always a matter of opinion or belief.

The identification has by itself no independent value. As stated by Viscount Haldane L. C. in Rex v. Christie, (1914) A. C. 545 (551) (E):-

"its relevancy is to show that the witness "was able to identify at the time and to exclude the idea that the identification of the prisoner in the dock was an afterthought or a mistake."

Lord Moulton (with whom Viscount Haldane L. J. agreed) said at page 558 :

"Identification is an act of the mind, and the primary evidence of what was passing in the mind of a man is his own testimony, where it can be obtained."

During the investigation of a crime committed by persons unknown to the witnesses, the persons arrested on suspicion of their complicity in the crime have got to be confronted by the investigating authority with the witnesses so that they can find out whether they are the persons who committed the crime or not. Before the investigating authorities send up a case to Court, they must be satisfied that the persons arrested by them are the persons accused of having committed the crime.

If they were known to the witnesses, the witnesses would have given their names and that would have established their identity, but when they were not known, their identity could be established only if the witnesses on seeing them say that they are the offenders. Since it would be very easy for a witness who has little regard for truth, to say that the person arrested on suspicion was the offender, he is confronted with the suspect mixed with innocent men. If he picks him out, that would add to the credibility of his statement that he was the offender. This is the primary object of identification proceeding.

Phipson writes in his Law of Evidence, Edn. 8, p. 392:-

"In criminal cases it is improper to identify the accused only when in the dock; the police should place him, beforehand, with others, and ask the witness to pick him out."

A three-Judge Bench of this Court in the case of Rajesh v. State of Haryana, (2021) 1 SCC 118, had the occasion to consider (i) the purpose of conducting a TIP, (ii) the source of the authority of the investigator to do so, (iii) the manner in which these proceedings should be conducted, (iv) the weight to be ascribed to identification in the course of a TIP, and (v) the circumstances in which an adverse inference can be drawn against the accused who refuses to undergo the process. After due consideration of the aforesaid, this Court summarised the principles as follows:-

"43.1 The purpose of conducting a TIP is that persons who claim to have seen the offender at the time of the occurrence identify them from amongst the other individuals without tutoring or aid from any source. An identification parade, in other words, tests the memory of the witnesses, in order for the prosecution to determine whether any or all of them can be cited as eyewitness to the crime.

43.2 There is no specific provision either in CrPC or the Evidence Act, 1872 ("the Evidence Act") which lends statutory authority to an identification parade.
Identification parades belong to the stage of the investigation of crime and there is no provision which compels the investigating agency to hold or confers a right on the accused to claim a TIP.

43.3 Identification parades are governed in that context by the provision of Section 162 CrPC. 43.4 A TIP should ordinarily be conducted soon after the arrest of the accused, so as to preclude a possibility of the accused being shown to the witnesses before it is held.

43.5 The identification of the accused in court constitutes substantive evidence.

43.6 Facts which establish the identity of the accused person are treated to be relevant under Section 9 of the Evidence Act.

43.7 A TIP may lend corroboration to the identification of the witness in court, if so required. 43.8 As a rule of prudence, the court would, generally speaking, look for corroboration of the witness' identification of the accused in court, in the form of earlier identification proceedings. The rule of prudence is subject to the exception when the court considers it safe to rely upon the evidence of a particular witness without such, or other corroboration.

43.9 Since a TIP does not constitute substantive evidence, the failure to hold it does not ipso facto make the evidence of identification inadmissible. 43.10 The weight that is attached to such identification is a matter to be determined by the court in the circumstances of that particular case. 43.11 Identification of the accused in a TIP or in court is not essential in every case where guilt is established on the basis of circumstances which lend assurance to the nature and the quality of the evidence.

43.12 The court of fact may, in the context and circumstances of each case, determine whether an adverse inference should be drawn against the accused for refusing to participate in a TIP. However, the court would look for corroborating material of a substantial nature before it enters a finding in regard to the guilt of the accused."

In the very same judgment referred to above, this Court observed as under:-

"46. … In this backdrop, the contention of the appellants that the refusal to undergo a TIP is borne out by the fact that Sandeep and Rajesh were known to each other prior to the occurrence and that PW 4, who is a prime eyewitness, had seen Rajesh when he would attend the court during the course of the hearings, cannot be brushed aside. Consequently, in a case, such as the present, the Court would be circumspect about drawing an adverse inference from the facts, as they have emerged. In any event, as we have noticed, the identification in the course of a TIP is intended to lend assurance to the identity of the accused. The finding of guilt cannot be based purely on the refusal of the accused to undergo an identification parade. In the present case, we have already indicated that the presence of the alleged eyewitnesses PW 4 and PW 5 at the scene of the occurrence is seriously in doubt. The ballistics evidence connecting the empty cartridges and the bullets recovered from the body of the deceased with an alleged weapon of offence is contradictory and suffers from serious infirmities. Hence, in this backdrop, a refusal to undergo a

TIP assumes secondary importance, if at all, and cannot survive independently in the absence of it being a substantive piece of evidence." [Emphasis supplied]

In Munshi Singh Gautam (D) & Ors. v. State of M.P., reported in (2005) 9 SCC 631, this Court observed as under:-

"16. … The whole idea of a test identification parade is that witnesses who claim to have seen the culprits at the time of occurrence are to identify them from the midst of other persons without any aid or any other source. The test is done to check upon their veracity. In other words, the main object of holding an identification parade, during the investigation stage, is to test the memory of the witnesses based upon first impression and also to enable the prosecution to decide whether all or any of them could be cited as eyewitnesses of the crime. The identification proceedings are in the nature of tests and significantly, therefore, there is no provision for it in the Code and the Evidence Act. It is desirable that a test identification parade should be conducted as soon as after the arrest of the accused. This becomes necessary to eliminate the possibility of the accused being shown to the witnesses prior to the test identification parade. This is a very common plea of the accused and, therefore, the prosecution has to be cautious to ensure that there is no scope for making such an allegation. If, however, circumstances are beyond control and there is some delay, it cannot be said to be fatal to the prosecution.

17. It is trite to say that the substantive evidence is the evidence of identification in court. Apart from the clear provisions of Section 9 of the Evidence Act, the position in law is well settled by a catena of decisions of this Court. The facts, which establish the identity of the accused persons, are relevant under Section 9 of the Evidence Act. As a general rule, the substantive evidence of a witness is the statement made in court.

The evidence of mere identification of the accused person at the trial for the first time is from its very nature inherently of a weak character. The purpose of a prior test identification, therefore, is to test and strengthen the trustworthiness of that evidence. It is, accordingly, considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witnesses in court as to the identity of the accused who are strangers to them, in the form of earlier identification proceedings. This rule of prudence, however, is subject to exceptions, when, for example, the court is impressed by a particular witness on whose testimony it can safely rely, without such or other corroboration. The identification parades belong to the stage of investigation, and there is no provision in the Code which obliges the investigating agency to hold or confers a right upon the accused to claim a test identification parade. They do not constitute substantive evidence and these parades are essentially governed by Section 162 of the Code. Failure to hold a test identification parade would not make inadmissible the evidence of identification in court. The weight to be attached to such identification should be a matter for the courts of fact. In appropriate cases it may accept the evidence of identification even without insisting on corroboration. …"

In Ramanbhai Naranbhai Patel v. State of Gujarat, (2000) 1 SCC 358, after considering the earlier decisions this, Court observed:- (SCC p. 369, para 20) "20. It becomes at once clear that the aforesaid observations were made in the light of the peculiar facts and circumstances wherein the police is said to have given the names

of the accused to the witnesses. Under these circumstances, identification of such a named accused only in the Court when the accused was not known earlier to the witness had to be treated as valueless. The said decision, in turn, relied upon an earlier decision of this Court in the case of State (Delhi Admn.) v. V.C. Shukla [(1980) 2 SCC 665 : 1980 SCC (Cri) 561 : AIR 1980 SC 1382] wherein also Fazal Ali, J., speaking for a three-Judge Bench made similar observations in this regard. In that case the evidence of the witness in the Court and his identifying the accused only in the Court without previous identification parade was found to be a valueless exercise. The observations made therein were confined to the nature of the evidence deposed to by the said eyewitnesses. It, therefore, cannot be held, as tried to be submitted by learned counsel for the appellants, that in the absence of a test identification parade, the evidence of an eyewitness identifying the accused would become inadmissible or totally useless; whether the evidence deserves any credence or not would always depend on the facts and circumstances of each case. It is, of course, true as submitted by learned counsel for the appellants that the later decisions of this Court in the case of Rajesh Govind Jagesha v. State of Maharashtra [(1999) 8 SCC 428 : 1999 SCC (Cri) 1452 : AIR 2000 SC 160] and State of H.P. v. Lekh Raj [(2000) 1 SCC 247 : 2000 SCC (Cri) 147 : AIR 1999 SC 3916] had not considered the aforesaid three-Judge Bench decisions of this Court. However, in our view, the ratio of the aforesaid later decisions of this Court cannot be said to be running counter to what is decided by the earlier three-Judge Bench judgments on the facts and circumstances examined by the Court while rendering these decisions. But even assuming as submitted by learned counsel for the appellants that the evidence of these two injured witnesses i.e. Bhogilal Ranchhodbhai and Karsanbhai Vallabhbhai identifying the accused in the Court may be treated to be of no assistance to the prosecution, the fact remains that these eyewitnesses were seriously injured and they could have easily seen the faces of the persons assaulting them and their appearance and identity would well remain imprinted in their minds especially when they were assaulted in broad daylight. They could not be said to be interested in roping in innocent persons by shielding the real accused who had assaulted them."

In Malkhansingh v. State of M.P., (2003) 5 SCC 746, a three-Judge Bench of this Court considered the evidentiary value of the identification of the appellant in that case by the prosecutrix in the Court without holding a TIP in the course of the investigation. It was argued before the Court that the identification in Court not preceded by a TIP is of no evidentiary value. On the other hand, it was argued on behalf of the prosecution that the substantive evidence is the evidence of identification in Court and, therefore, the value to be attached to such identification depends on facts and circumstances of each case. The Court ultimately answered as under:-

"7. It is trite to say that the substantive evidence is the evidence of identification in court. Apart from the clear provisions of Section 9 of the Evidence Act, the position in law is well settled by a catena of decisions of this Court. The facts, which establish the identity of the accused persons, are relevant under Section 9 of the Evidence Act. As a general rule, the substantive evidence of a witness is the statement made in court. The evidence of mere identification of the accused person at the trial for the first time is from its very nature inherently of a weak character.

The purpose of a prior test identification, therefore, is to test and strengthen the trustworthiness of that evidence. It is accordingly considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witnesses in court as to the identity of the accused who are strangers to them, in the form of earlier identification proceedings. This rule of prudence, however, is subject to exceptions, when, for example, the court is impressed by a particular witness on whose testimony it can safely rely, without such or other corroboration. The identification parades belong to the stage of investigation, and there is no provision in the Code of Criminal Procedure which obliges the investigating agency to hold, or confers a right upon the accused to claim a test identification parade. They do not constitute substantive evidence and these parades are essentially governed by Section 162 of the Code of Criminal Procedure. Failure to hold a test identification parade would not make inadmissible the evidence of identification in court. The weight to be attached to such identification should be a matter for the courts of fact. In appropriate cases it may accept the evidence of identification even without insisting on corroboration."

It is well settled that the substantive evidence is the evidence of identification in court and the test identification parade provides corroboration to the identification of the witness in court, if required. However, what weight must be attached to the evidence of identification in court, which is not preceded by a test identification parade, is a matter for the courts of fact to examine.

In Prem Singh v. State of Haryana, (2011) 9 SCC 689, a two-Judge Bench of this Court expressed conflicting opinion, H.S. Bedi, J. observed in para 19 as under:-

"19. … It must be borne in mind that it is impossible for an accused to prove by positive evidence that he had been shown to a witness prior to the identification parade but if suspicion can be raised by the defence that this could have happened, no adverse inference can be drawn against the accused in such a case."

Gyan Sudha Misra, J. while disagreeing with H.S. Bedi, J. took the view that it is not open to accused to refuse to participate in the TIP. The learned Judge observed in para 27 as under:-

"27. In my considered view, it was not open to the accused to refuse to participate in the TI parade nor was it a correct legal approach for the prosecution to accept refusal of the accused to participate in the test identification parade. If the appellant-accused had reason to do so, specially on the plea that he had been shown to the eyewitnesses in advance, the value and admissibility of the evidence of TI parade could have been assailed by the defence at the stage of trial in order to demolish the value of the test identification parade. But merely on account of the objection of the accused, he could not have been permitted to decline from participating in the test identification parade from which adverse inference can surely be drawn against him at least in order to corroborate the prosecution case."

Ultimately, the matter was heard by a three-Judge Bench in the case titled Prem Singh v. State of Haryana, (2013) 14 SCC 88, and the appeal filed by the convict was allowed. However, Court does not find any discussion in the said judgment as regards the issue whether the accused can refuse to participate in the TIP. This Court on its own looked into the entire evidence and ultimately acquitted the appellant accused.

In Munna v. State (NCT of Delhi), (2003) 10 SCC 599, this Court took the view that if an accused himself refused to participate in the TIP, then it is not open to him to contend that the statement of the witnesses made for the first time should not be relied upon. The Court held as under:-

"10. In a case where an accused himself refuses to participate in a test identification parade, it is not open to him to contend that the statement of the eyewitnesses made for the first time in court, wherein they specifically point towards him as a person who had taken part in the commission of the crime, should not be relied upon. This plea is available provided the prosecution is itself responsible for not holding a test identification parade. However, in a case where the accused himself declines to participate in a test identification parade, the prosecution has no option but to proceed in a normal manner like all other cases and rely upon the testimony of the witnesses, which is recorded in court during the course of the trial of the case." [Emphasis supplied] It is relevant to note that in the aforesaid decision, the accused in his statement under Section 313 CrPC had not stated that he had been shown to the witnesses at the police station. In the case on hand, it is the case of the appellant convict that he along with other co-accused was shown to the witnesses not only prior to the conduct of the TIP but even before the identification in the Court.

In Ravindra Laxman Mahadik v. State of Maharashtra, 1997 CriLJ 3833, in a case involving Section 395 of the CrPC, it was opined:-

"10. I find merit in Mr. Mooman's submission that it would not be safe to accept the identification evidence of Manda Sahani. Manda Sahani in her examination- in-chief stated that on the place of the incident, there was no light. In her cross-examination (para 6) she stated that it was dark at the place of the incident but, slight light was emanating from the building situate on the shore. The distance between the building and the place where Manda Sahani and her husband were looted has not been unfolded in the evidence. The learned trial Judge has observed that the evidence of Vinod Sahani is that the incident took place at a distance of about 100 ft from the Gandhi statue, where the meeting was held. What he wanted to convey was that hence there must have been light at the place of incident. In my view, on the face of the definite statement of Manda that it was dark as there was only slight light, and bearing in mind that the incident took place at 9.30 p.m. in the month of February, 1992, it would not be safe to conclude that there was sufficient light on the place of the incident enabling Manda Sahani to identify the appellant."

In Kanan & Ors. v. State of Kerala, AIR 1979 SC 1127, this Court held:-

"…It is well settled that where a witness Identifies an accused who is not known to him in the Court for the first time, his evidence is absolutely valueless unless there has been a previous T. I. parade to test his powers of observations. The Idea of holding T. I. parade under Section 9 of the Evidence Act is to test the veracity of the witness on the question of his capability to identify an unknown person whom the witness may have seen only once. If no T. I. parade is held then it will be wholly unsafe to rely on his bare testimony regarding the identification of an accused for the first time in Court. …" [Emphasis supplied]

In Sidhartha Vashisht @ Manu Sharma v. State (NCT of Delhi), (2010) 6 SCC 1, this Court noticed the importance of TIP and logic behind it. It is the practice

not borne out of procedure but out of prudence. In this case, this Court has exhaustively examined the entire case law on the subject. It was observed:-

"254. Even a TIP before a Magistrate is otherwise hit by Section 162 of the Code. Therefore to say that a photo identification is hit by Section 162 is wrong. It is not a substantive piece of evidence. It is only by virtue of Section 9 of the Evidence Act that the same i.e. the act of identification becomes admissible in court. The logic behind TIP, which will include photo identification lies in the fact that it is only an aid to investigation, where an accused is not known to the witnesses, the IO conducts a TIP to ensure that he has got the right person as an accused. The practice is not borne out of procedure, but out of prudence. At best it can be brought under Section 8 of the Evidence Act, as evidence of conduct of a witness in photo identifying the accused in the presence of an IO or the Magistrate, during the course of an investigation."

This Court has further referred to its earlier decisions which state:-

"256. The law as it stands today is set out in the following decisions of this Court which are reproduced as hereinunder:

Munshi Singh Gautam v. State of M.P. [(2005) 9 SCC 631 : 2005 SCC (Cri) 1269]: (SCC pp. 642-45, paras 16-17 & 19)

"16. As was observed by this Court in Matru v. State of U.P. [(1971) 2 SCC 75 : 1971 SCC (Cri) 391] identification tests do not constitute substantive evidence. They are primarily meant for the purpose of helping the investigating agency with an assurance that their progress with the investigation into the offence is proceeding on the right lines. The identification can only be used as corroborative of the statement in court. (See Santokh Singh v. Izhar Hussain [(1973) 2 SCC 406 : 1973 SCC (Cri) 828]) The necessity for holding an identification parade can arise only when the accused are not previously known to the witnesses. The whole idea of a test identification parade is that witnesses who claim to have seen the culprits at the time of occurrence are to identify them from the midst of other persons without any aid or any other source. The test is done to check upon their veracity. In other words, the main object of holding an identification parade, during the investigation stage, is to test the memory of the witnesses based upon first impression and also to enable the prosecution to decide whether all or any of them could be cited as eyewitnesses of the crime. The identification proceedings are in the nature of tests and significantly, therefore, there is no provision for it in the Code and the Evidence Act. It is desirable that a test identification parade should be conducted as soon as after the arrest of the accused. This becomes necessary to eliminate the possibility of the accused being shown to the witnesses prior to the test identification parade. This is a very common plea of the accused and, therefore, the prosecution has to be cautious to ensure that there is no scope for making such an allegation. If, however, circumstances are beyond control and there is some delay, it cannot be said to be fatal to the prosecution.

17. It is trite to say that the substantive evidence is the evidence of identification in court. Apart from the clear provisions of Section 9 of the Evidence Act, the position in law is well settled by a catena of decisions of this Court. The facts, which establish the identity of the accused persons, are relevant under Section 9 of the Evidence Act. As a general rule, the substantive evidence of a witness is the

statement made in court. The evidence of mere identification of the accused person at the trial for the first time is from its very nature inherently of a weak character. The purpose of a prior test identification, therefore, is to test and strengthen the trustworthiness of that evidence. It is, accordingly, considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witnesses in court as to the identity of the accused who are strangers to them, in the form of earlier identification proceedings. This rule of prudence, however, is subject to exceptions, when, for example, the court is impressed by a particular witness on whose testimony it can safely rely, without such or other corroboration. The identification parades belong to the stage of investigation, and there is no provision in the Code which obliges the investigating agency to hold or confers a right upon the accused to claim a test identification parade. They do not constitute substantive evidence and these parades are essentially governed by Section 162 of the Code. Failure to hold a test identification parade would not make inadmissible the evidence of identification in court. The weight to be attached to such identification should be a matter for the courts of fact. In appropriate cases it may accept the evidence of identification even without insisting on corroboration. (See Kanta Prashad v. Delhi Admn. [AIR 1958 SC 350:1958 Cri LJ 698], Vaikuntam Chandrappa v. State of A.P. [AIR 1960 SC 1340:1960 Cri LJ 1681], Budhsen v. State of U.P. [(1970) 2 SCC 128:1970 SCC (Cri) 343] and Rameshwar Singh v. State of J&K [(1971) 2 SCC 715 : 1971 Cri LJ 638])

x x x x

19. In Harbajan Singh v. State of J&K [(1975) 4 SCC 480 : 1975 SCC (Cri) 545] , though a test identification parade was not held, this Court upheld the conviction on the basis of the identification in court corroborated by other circumstantial evidence. In that case it was found that the appellant and one Gurmukh Singh were absent at the time of roll call and when they were arrested on the night of 16-12-1971 their rifles smelt of fresh gunpowder and that the empty cartridge case which was found at the scene of offence bore distinctive markings showing that the bullet which killed the deceased was fired from the rifle of the appellant. Noticing these circumstances this Court held : (SCC p. 481, para 4) '4. In view of this corroborative evidence Court finds no substance in the argument urged on behalf of the appellant that the investigating officer ought to have held an identification parade and that the failure of Munshi Ram to mention the names of the two accused to the neighbours who came to the scene immediately after the occurrence shows that his story cannot be true. As observed by this Court in Jadunath Singh v. State of U.P. [(1970) 3 SCC 518 : 1971 SCC (Cri) 124] absence of test identification is not necessarily fatal. The fact that Munshi Ram did not disclose the names of the two accused to the villagers only shows that the accused were not previously known to him and the story that the accused referred to each other by their respective names during the course of the incident contains an element of exaggeration. The case does not rest on the evidence of Munshi Ram alone and the corroborative circumstances to which we have referred to above lend enough assurance to the implication of the appellant.' " **[Mukesh Singh vs. State (NCT of Delhi), AIR 2023 SC 4097]**

Sec. 106—Burden of proof—Distinction from burden of going forward with evidence—Explained

A manifest distinction exists between the burden of proof and the burden of going for- ward with the evidence. Generally, the bur- den of proof upon any affirmative proposition necessary to be established as the foundation of an issue does not shift, but the bur- den of evidence or the burden of explanation may shift from one side to the other according to the testimony. Thus, if the prosecution has offered evidence which if believed by the Court would convince them of the guilt of accused beyond a reasonable doubt, the accused is in a position where he should go forward with counter-vailing evidence if he has such evidence. When facts are peculiarly within the knowledge of the accused, the burden is on him to present evidence of such facts, whether the proposition is an affirmative or negative one. He is not required to do so even though a prima facie case has been established, for the Court must still find that he is guilty beyond a reasonable doubt before it can convict accused. However, the failure of accused to present evidence on his behalf may be regarded by the Court as con- firming the conclusion indicated by the evidence presented by the prosecution or as confirming presumptions which might have been rebutted. Although not legally required to produce evidence on his own behalf, the accused may therefore as a practical matter find it essential to go forward with proof. This does not alter the burden of proof resting upon the prosecution. **[Balvir Singh vs. State of Uttarakhand, AIR 2023 SC 5551]**

Secs. 101, 102—Burden of Proof—Concept explained

Term 'burden of proof' is employed in two distinct senses. One pertains to the legal bur- den, which remains constant and unchanging throughout a trial, and is concerned with the obligation to establish the facts and contentions supporting a party's case. The party failing to meet this burden would lose its case. The legal burden is generally evident from the pleadings, typically placed on the plaintiff or complainant to prove what they have asserted. In contrast, the evidential burden can shift during a trial based on the evolving balance of evidence, residing with the party that would fail if no evidence were presented by either side. This distinction is delineated in Section 101 and Section 102 of the Evidence Act.

Presumptions, on the other hand, can be categorized into presumptions of fact and presumptions of law. Presumptions of fact involve logical inferences drawn from one fact to deduce the existence of other facts, and they can be refuted by opposing evidence. Presumptions of law may be either conclusive (irrebuttable) or rebuttable. Rebuttable presumptions of law are legal rules invoked by the Court when there is a lack of conflicting evidence. These presumptions further classify into discretionary ('may presume') and compulsive ('shall presume') presumptions, where the Court may choose to raise the former but must necessarily raise the latter when applicable. The Evidence Act encompasses these categories of presumptions: 'may presume' (rebuttable presumptions of fact), 'shall presume' (rebuttable presumptions of law), and conclusive presumptions (irrebuttable presumptions of law). When the Court opts to raise a 'may presume' presumption, the distinction between these

categories vanishes, and the presumed fact stands until disproved. **[Rajesh Jain vs. Ajay Singh, AIR 2023 SCC 5018]**

Secs. 276, 63—Evidence Act, 1872, Sec. 68—Grant of probate—Execution of Will—Validity

Section 68 of Indian Evidence Act 1872

Proof of Execution of document required by law to be attested— If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence:

xxx"

Thus, a bare reading of the abovementioned provisions would show that the requirements enshrined under Section 63 of the Succession Act have to be categorially complied with for the execution of the Will to be proven in terms of Section 68 of the Evidence Act.

A Will is an instrument of testamentary disposition of property. It is a legally acknowledged mode of bequeathing a testator's property during his lifetime to be acted upon on his/her death and carries with it an element of sanctity. It speaks from the death of the testator. Since the testator/testatrix, at the time of testing the document for its validity, would not be available for deposing as to the circumstances in which the Will came to be executed, stringent requisites for the proof thereof have been statutorily enjoined to rule out the possibility of any manipulation.

Relying on H. Venkatachala Iyengar v. B.N. Thimmajamma, 1959 Supp (1) SCR 426 (3Judge Bench), Bhagwan Kaur v. Kartar Kaur, (1994) 5 SCC 135 (3Judge Bench), Janki Narayan Bhoir v. Narayan Namdeo Kadam, (2003) 2 SCC 91(2Judge Bench) Yumnam Ongbi Tampha Ibema Devi v. Yumnam Joykumar Singh, (2009) 4 SCC 780 (3Judge Bench) and Shivakumar v. Sharanabasappa, (2021) 11 SCC 277 (3Judge Bench), Court can deduce/infer the following principles required for proving the validity and execution of the Will:

i. The court has to consider two aspects: firstly, that the Will is executed by the testator, and secondly, that it was the last Will executed by him;

ii. It is not required to be proved with mathematical accuracy, but the test of satisfaction of the prudent mind has to be applied.

iii. A Will is required to fulfil all the formalities required under Section 63 of the Succession Act, that is to say:

(a) The testator shall sign or affix his mark to the Will or it shall be signed by some other person in his presence and by his direction and the said signature or affixation shall show that it was intended to give effect to the writing as a Will;

(b) It is mandatory to get it attested by two or more witnesses, though no particular form of attestation is necessary;

(c) Each of the attesting witnesses must have seen the testator sign or affix his mark to the Will or has seen some other person sign the Will, in the presence and

by the direction of the testator, or has received from the testator a personal acknowledgment of such signatures;

(d) Each of the attesting witnesses shall sign the Will in the presence of the testator, however, the presence of all witnesses at the same time is not required;

iv. For the purpose of proving the execution of the Will, at least one of the attesting witnesses, who is alive, subject to the process of court, and capable of giving evidence, shall be examined;

v. The attesting witness should speak not only about the testator's signatures but also that each of the witnesses had signed the will in the presence of the testator;

vi. If one attesting witness can prove the execution of the Will, the examination of other attesting witnesses can be dispensed with;

vii. Where one attesting witness examined to prove the Will fails to prove its due execution, then the other available attesting witness has to be called to supplement his evidence;

viii. Whenever there exists any suspicion as to the execution of the Will, it is the responsibility of the propounder to remove all legitimate suspicions before it can be accepted as the testator's last Will. In such cases, the initial onus on the propounder becomes heavier.

ix. The test of judicial conscience has been evolved for dealing with those cases where the execution of the Will is surrounded by suspicious circumstances. It requires to consider factors such as awareness of the testator as to the content as well as the consequences, nature and effect of the dispositions in the Will; sound, certain and disposing state of mind and memory of the testator at the time of execution; testator executed the Will while acting on his own free Will;

x. One who alleges fraud, fabrication, undue influence et cetera has to prove the same. However, even in the absence of such allegations, if there are circumstances giving rise to doubt, then it becomes the duty of the propounder to dispel such suspicious circumstances by giving a cogent and convincing explanation.

xi. Suspicious circumstances must be 'real, germane and valid' and not merely 'the fantasy of the doubting mind' 1. Whether a particular feature would qualify as 'suspicious' would depend on the facts and circumstances of each case. Any circumstance raising suspicion legitimate in nature would qualify as a suspicious circumstance for example, a shaky signature, a feeble mind, an unfair and unjust disposition of property, the propounder himself taking a leading part in the making of the Will under which he receives a substantial benefit, etc.

In short, apart from statutory compliance, broadly it has to be proved that (a) the testator signed the Will out of his own free Will, (b) at the time of execution he had a sound state of mind, (c) he was aware of the nature and effect thereof and (d) the Will was not executed under any suspicious circumstances. **[Meena Pradhan vs. Kamla Pradhan, AIR 2023 SC 4680]**

Indian Penal Code

Penal Code, 1860 - Ss. 333, 353 and 451 - Voluntarily causing grievous hurt to deter public servant from discharge of his duty. Considering the facts and circumstances of the case, and conduct of appellant-accused, cumulatively, held,

appellant deserves to be shown leniency when it comes to substantive sentence. But distinct factors, taken individually, do not constitute a ground by itself to show leniency. Sentences reduced accordingly. **(Razia Khan v. State of Madhya Pradesh, (2023) 8 SCC 592)**

Secs. 411, 120B—Dishonestly receiving stolen property—Criminal conspiracy—Ground on which accused was convicted was that he was only person who knew about availability of huge amounts of money in truck accused persons was set aside

Section 120-A of the IPC defines criminal conspiracy. An agreement by two or three persons is required to constitute a criminal conspiracy. There cannot be a conspiracy by only one accused, and it is necessary for the applicability of Section 120-B of the IPC that there must be two or more persons agreeing for the purpose of the conspiracy. This proposition of law finds support in a decision of a Bench of three Hon'ble Judges of this Court in Topandas vs. The State of Bombay2. Therefore, the conviction of accused no.5 - Balla @ Farhat for the offence under Section 120-B of the IPC cannot be sustained. **[Balla @ Farhat vs. State of M.P., AIR 2023 SC 4566]**

Penal Code, 1860 - Ss. 304 Pt. I and 324 r/w S. 149 - Acquittal - Reversal in State appeal - Whether proper - Interference with acquittal in appeal - When permissible - A fight over property between the accused and the family of the complainant, resulted in one death and one injured from the complainant side and one of the accused, A-1 also sustained a grievous injury, namely, his thumb disfigured.

It has been held that the appellate court cannot overturn acquittal only on the ground that after reappreciating evidence, it is of the view that the guilt of the accused was established beyond a reasonable doubt Further, only by recording such a conclusion an order of acquittal cannot be reversed unless the appellate court also concludes that it was the only possible conclusion- Thus, the appellate court must see whether the view taken by trial court while acquitting an accused can be reasonably taken on the basis of the evidence on record - If the view taken by trial court is a possible view, the appellate court cannot interfere with the order of acquittal on the ground that another view could have been taken Further held, while dealing with appeal against acquittal, the appellate court must keep in mind the aspect that trial court had the additional advantage of closely observing the prosecution witnesses and their demeanour. **(H.D. Sundara and others v. State of Karnataka, (2023) 9 SCC 581)**

There is no manner of doubt that even in a case where capital punishment is not imposed or is not proposed, the constitutional courts can always exercise the power of imposing a modified or fixed-term sentence by directing that a life sentence, as contemplated by "secondly" in Section 53 IPC, shall be of a fixed period of more than fourteen years, for example, of twenty years, thirty years and so on. The fixed punishment cannot be for a period less than 14 years in view of the mandate of Section 433-A CrPC

This is one case where a constitutional court must exercise the power of imposing a special category of modified punishment. The High Court expressed the view that the punishment imposed by the trial court was justified after considering the balance sheet of aggravating and mitigating circumstances. It is the duty of the Court to consider all attending circumstances. The Court, while considering the possibility of reformation of the accused, must note that showing undue leniency in such a brutal case will adversely affect the public confidence in the efficacy of the legal system. The Court must consider the rights of the victim as well. After having considered these circumstances, we are of the opinion that this is a case where a fixed-term sentence for a period of thirty years must be imposed.

Accordingly the order of sentence of the trial court for the offence punishable under Section 302 IPC. We direct that the appellant shall undergo imprisonment for life. We also direct that the appellant shall be released only after he completes thirty years of actual sentence. The appeal is partly allowed to the above extent. **(Shiva Kumar alias Shiva alias Shivamurthy v. State of Karnataka, (2023) 9 SCC 817)**

Penal Code, 1860 -S. 302 r/w S. 149 - Murder by forming unlawful assembly - Appellants whether shared common object to murder with the other accused - Absence of motive and overt act of appellants.

As per prosecution, accused persons including two juveniles, tried separately, and appellants, namely, N, IR & SK came on some motorcycles and one of them being a pillion rider fired at the deceased, resulting in his death in the hospital on the next day of the occurrence - Incident claimed to be seen by M, cousin of the deceased - Whether believable.

It has been held that the evidence of the eyewitness should be of very sterling quality and calibre and it should not only instil confidence in the court to accept the same but it should also be a version of such nature that can be accepted at its face value and, further, it should be natural and consistent with the case of the prosecution qua the accused and there should not be any prevarication in the version of such a witness - Further, ocular version should have co- relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion - Hence, considering entire factual and legal position, presence of M on the spot, held, not proved beyond doubt. **(Naresh alias Nehru v. State of Haryana, (2023) 10 SCC 134)**

Penal Code, 1860 - Ss. 302 and 201 - Circumstantial evidence Last seen theory and recovery of weapon - Whether established guilt in present case - Delay in reporting matter to police - Accused husband allegedly killed his wife by means of a knife, because of her adulterous relationship. Furthermore, though his wife went missing on 28-5-2004, he lodged the missing report on 31-5-2004, though dead body recovered on 30-5-2004-Conviction reversed.

Held, the case being based on circumstantial evidence, prosecution has to establish all the circumstances forming a part of the chain. Though, sole witness to last seen theory stated in examination-in-chief that he was a contractor and the appellant used to come for work as a helper for fitting tiles and on 28-5-2004 when

he was proceeding towards certain Church where he used to go in connection with his work, he saw the appellant along with his wife near certain bus stop. However, in his cross-examination, this witness clearly stated that he not stated anything in his initial statement made before the police under S. 161 CrPC Further, he, clearly admitted in the cross-examination that: (a) he did not state before the police that the appellant used to come for doing the work of fixing tiles; (b) he did not state before the police when he was proceeding towards the Church, he saw the appellant and his wife at the bus stop; and (c) he did not identify the woman after he saw the dead body because the face was in bad shape. Further, in the cross-examination this witness stated that only when he went to the police station he came to know who the accused was and also whose dead body it was Thus, deposition of this witness in his examination-in-chief, held, a complete improvement, resulting in, not reliable. (**Sharanappa alias Sharanappa v. State of Karnataka (2023) 10 SCC 168)**

Penal Code, 1860 - S. 304-B - Dying declaration - Conviction when may be based solely on dying declaration - Held, before basing conviction solely on dying declaration, the court must come to a conclusion that the dying declaration is trustworthy, reliable and one which inspires confidence.

Penal Code, 1860 S. 304-B - Harassment on account of dowry demand - Not established beyond reasonable doubt by evidence on record - Held, case under S. 304-B cannot succeed. **(Phulel Singh v. State of Haryana, (2023) 10 SCC 268)**

Penal Code, 1860-Ss. 302/149, 307/149 and 148- Alleged assault of deceased victim by appellant-accused (6 in numbers) using farsa, lathi, country-made pistols and rifle, resulting in death of deceased-PW 2 (brother of deceased), his sister and wife of deceased, who came forward to save life of deceased, were also assaulted by appellants, which led to PW 2 suffering gunshot injury Courts below convicted appellants under Ss. 302/149, 307/149 and 148 IPC, sentencing them to undergo imprisonment for life with fine of Rs 5000 each. However, courts below failed to take into consideration vital discrepancies and inconsistencies in evidence of prosecution witnesses Hence, held, appellants are entitled to benefit of doubt, and were acquitted of all charges. **(Khema alias Khem Chandra and others v. State of Uttar Pradesh, (2023) 10 SCC 451)**

Penal Code, 1860 - S. 376(2)(m)(i) r/w S. 376-E (as introduced w.e.f. 3-2-2013) - Ingredients of S. 376(2)(m) - Explained - Sentence warranted under - Reduction from life imprisonment (for the remainder of natural life) to rigorous imprisonment for 12 yrs - Relevance of factors such as, accused not a habitual offender, his caste, financial condition, young age and period of custody - Factors which are relevant, and which are not relevant - Distinguished - Accused held guilty for committing alleged crime against victim aged only 5-6 yrs and convicted under Ss. 363, 342 and 376(2)(m)(i) r/w Ss. 3, 4, 8 and 10 of the POCSO Act.

Criminal Procedure Code, 1973 - S. 354 - Cause-title of judgment - Mentioning of caste of accused - Held, not justified, as an accused has no caste or religion when the court deals with his case. Therefore, caste or religion of a litigant should never be mentioned in the cause-title of the judgment.

Whenever a child is subjected to sexual assault, the State or the Legal Services Authorities should ensure that the child is provided with a facility of counselling by a trained child counsellor or child psychologist. It will help the victim children to come out of the trauma, which will enable them to lead a better life The State needs to ensure that the children who are the victims of the offence continue with their education. The social environment around the victim child may not always be conducive to the victim's rehabilitation. Only the monetary compensation is not enough. Only the payment of compensation will not amount to rehabilitation in a true sense. Perhaps the rehabilitation of the girl victims in life should be part of the "Beti Bachao Beti Padhao" campaign of the Central Government. As a welfare State, it will be the duty of the Government to do so. It is directed that the copies of this judgment should be sent to the Secretaries of the departments concerned of the State. **(State of Rajasthan v. G, (2023) 10 SCC 516)**

Penal Code, 1860 Ss. 302/34 and 341 Common intention to murder - Murder of woman for allegedly practising witchcraft - Conviction confirmed.

Ss. 302/34 and 341 - Common intention to murder - Absence of assault and not carrying any weapon by the co-accused-Held, not material, when the co-accused clearly proved a part of the team that surrounded the deceased with the common intention to murder after having an altercation with her on the previous night on the subject of practising witchcraft.

Right to claim remission Ss. 302/34 and 341 Life imprisonment Entitlement - As per detention certificate, one of the accused served a total period of 15 yrs, 9 months and 24 days and the second accused served 11 yrs, 7 months and 5 days (without remission) Resultantly, both these accused, held, entitled and permitted to seek remission in accordance with the prevailing policy of the State and their application/ representation, if, made by them, directed to be duly considered on its own merits. **(Bhaktu Gorain and another v. State of West Bengal, (2023) 10 SCC 749)**

Secs. 302 and 201-Reversal of judgment of acquittal into conviction under-Appeal against- Evidence Act, 1872, Section 106

Appellant has allegedly committed murder of his wife by inflicting injuries all over her body with a knife. Appellant has put forward a defence that robbers got into his house and killed his wife. He too suffered injuries. There is nothing on record to indicate that the appellant had suffered any injuries. The entire defence put forward by the appellant, could be termed as false defence. In a case based on circumstantial evidence, where no eye witness is available, the principle is that when an incriminating circumstance is put to the accused and the said accused and either offers no explanation or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete. If the accused does not dispute his presence at home at the relevant time and does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is

responsible for commission of the crime. Appeals are dismissed. **[Wazir Khan vs. State of Uttarakhand, 2023 (125) ACC 275 (Supreme Court)]**

Secs. 302 and 201- Conviction and sentences under- Appeal against-

Appellant-accused is wife of deceased as stated by PW-1, daughter of deceased and appellant, her mother asked her father to give 500/- to her. Even then, the father did not provide the said amount. Thereafter, a quarrel started between her father and mother. Her mother gave blows with a stick on the head and legs of her father. Her father sustained injuries, which led to his death. The weapon used in the crime is a stick which was lying in the house and which, by no means, can be called a deadly weapon. Therefore, the possibility of the appellant causing the death of the deceased while being deprived of the power of self-control, due to the provocation on account of the deceased not agreeing to pay 500/-, cannot be ruled out. Held, the appellant is entitled to benefit of doubt, in-as much as the offence committed shall fall under Exception I of section 300 IPC. Thus, the conviction of the appellant is altered from section 302 of the IPC to Part-I of Section 304 of the IPC. Appeal is allowed. **[Nirmala Devi vs. State of H.P., 2023 (125) ACC 287(Supreme Court)]**

Secs. 302, 436, 326A—Evidence Act, 1872, Secs. 32, 8—Murder—Dying declarations—

The juristic theory regarding the acceptability of a dying declaration is that such declaration is made in extremity, when the party is at the point of death and when every hope of this world is gone, when every motive to falsehood is silenced, and the man is induced by the most powerful consideration to speak only the truth.

Notwithstanding the same, great caution must be exercised in considering the weight to be given to this species of evidence on account of the existence of many circumstances which may affect their truth. The situation in which a man is on the deathbed is so solemn and serene, is the reason in law to accept the veracity of his statement. It is for this reason, the requirements of oath and cross-examination are dispensed with.

Since the accused has no power of cross-examination, the courts insist that the dying declaration should be of such a nature as to inspire full confidence of the court in its truthfulness and correctness. The court, however, should always be on guard to see that the statement of the deceased was not as a result of either tutoring or prompting or a product of imagination. [See: Laxman v. State of Maharashtra, (2002) 6 SCC 710]

The justification for the sanctity/presumption attached to a dying declaration, is twofold; (i) ethically and religiously it is presumed that a person while at the brink of death will not lie, whereas (ii) from a public policy perspective it is to tackle a situation where the only witness to the crime is not available.

One of the earliest judicial pronouncements where the rule as above can be traced is the King's Bench decision of the King v. William Woodcock reported in (1789) 1 Leach 500 : 168 ER 352, where a dying woman blamed her husband for her mortal injuries, wherein Judge Eyre held this declaration to be admissible by observing: -

"the general principle on which this species of evidence is admitted is, that they are declarations made in extremity, when the party is at the point of death and when every hope of this world is gone: when every motive to falsehood is silent, and the mind is induced by the most powerful consideration to speak the truth; a situation so solemn, and so awful, is considered by the law as creating obligation equal to that which is imposed by a positive oath administered in a Court of Justice.
(b) But a difficulty also arises with respect to these declarations; for it has not appeared and it seems impossible to find out, whether the deceased herself apprehended that she was in such a state of morality as would inevitably oblige her soon to answer before her Maker for the truth or falsehood of her assertions. Declarations so made are certainly entitled to credit; they ought therefore to be received in evidence: but the degree of credit to which they are entitled must always be a matter for the sober consideration of the Jury, under all the circumstances of the case."

Interestingly, the last observation of Judge Eyre showcases, even at the inception of this principle, that the Courts were wary of the inherent weakness of dying declarations and cautioned for great care to be adopted.

It is significant to note the observations made by Taylor that "Though these declarations, when deliberately made under a solemn sense of impending death, and concerning circumstances wherein the deceased is not likely to be mistaken, are entitled to great weight, if precisely identified, it should always be recollected that the accused has not the power of cross examination, a power quite as essential to the eliciting of the truth as the obligation of an oath can be, and that, where a witness has not a deep sense of accountability to his Maker, feelings of anger or revenge, or, in the case of mutual conflict, the natural desire of screening his own misconduct, may effect the accuracy of his statements and give a false colouring to the whole transaction.". [See: Taylor on "Treatise on the Law of Evidence", 1931, 12th Edition Pg. 462]

It is observed in Corpus Juris Secundum Vol XL, Page 1283 that:
"In weighing dying declarations, the jury may consider the circumstances under which they were made, as, whether they were due to outside influence or were made in a spirit of revenge, or when declarant was unable or unwilling to state the facts, the inconsistent or contradictory character of the declarations, and the fact that deceased has not appeared and accused has been deprived of the opportunity to crossexamine him, and may give to them the credit and weight to which they believe, under all the circumstances, they are fairly and reasonably entitled."

In India in the relevant provision of Section 32 of the Act 1872, the first exception to the rule against admissibility of hearsay evidence, is as under:

"32(1). When it relates to cause of death.-

When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question. Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

Jon R. Waltz, American Jurist observed that, "It has been thought, rightly or wrongly, that Dying Declarations have intrinsic assurances of trustworthiness, making cross examination unnecessary. The notion is that a person who is in the process of dying, and knows it, will be truthful immediately before departing to meet his Maker. (Of course, the validity of this hearsay exceptions is open to some debate. What about the person who is not deeply religious? What of the person who, as his last act, seeks revenge by falsely naming a life-long enemy as his killer? How reliable is the perception and memory of a person who is dying?)" [See: Waltz, J.R. (1975) Criminal Evidence, Chicago: Nelson-Hall. pp.75-76]

The Privy Council in Neville Nembhard v. The Queen reported in (1982) 1 AII ER 183, on Section 32(1) of the Act 1872 opined that the evidence of dying declaration under the Indian law lacks the special quality as in Common Law and hence, the weight to be attached to a dying declaration admitted under Section 32 of the Act 1872 would necessarily be less than that attached to a dying declaration admitted under the common law rules.

The below cited observations from the decision of Nembhard (supra) are of significant importance:

"final observation should be made concerning the cases al ready mentioned that have been decided in the Court of Appeal for Eastern Africa. It appears that rule of practice has been developed that when a dying declaration has been the only evidence implicating an accused person a conviction usually cannot be allowed to stand where there had been a failure to give a warning on the necessity for corroboration: see for example Pius Jasunga s/o Akumu v. The Queen (1954) 21 E.A.C.A. 331 and Terikabi v. Uganda [1975] E.A. 60.

But it is important to notice that in the countries concerned, the admissibility of a dying declaration does not depend upon the common law test: upon the deceased having at the time a settled hopeless expectation of impending death. Instead there is the very different statutory provision contained in section 32 (1) of the Indian Evidence Act 1872. That section provides that statements of relevant facts made by a person who is dead are themselves relevant facts:

"When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question. Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question."

In Pius Jasunga s/o Akumu v. The Queen it was pointed out (for the reason associated with the italicised words in the subsection) that the weight to be attached to a dying declaration admitted by reference to section 32 of the Indian Evidence Act 1872 would necessarily be less than that attached to a dying declaration admitted under the common law rules.

The first kind of statement would lack that special quality that is thought to surround a declaration made by a dying man who was conscious of his condition and who had given up all hope of survival. Accordingly it may not seem surprising that the courts dealing with such statements have felt the need to exercise even more

caution in the use to be made of them than is the case where the common law test is applied.""

The general principle on which this species of evidence is admitted is that they are declarations made in extremity, when the party is at the point of death and when every hope of this world is gone, when every motive to falsehood is silenced, and the mind is induced by the most powerful considerations to speak the truth; a situation so solemn and so lawful is considered by the law as creating an obligation equal to that which is imposed by a positive oath administered in a court of justice.

These aspects have been eloquently stated by Eyre, L.C.B. in R. v. Woodcock ((1789) 1 Leah 500 : 168 ER 352). Shakespeare makes the wounded Melun, finding himself disbelieved while announcing the intended treachery of the Dauphin Lewis explain:

"Have I met hideous death within my view, Retaining but a quantity of life, Which bleeds away even as a form of wax, Resolveth from his figure 'gainst the fire? What is the world should make me now deceive, Since I must lose the use of all deceit? Why should I then be false since it is true That I must die here and live hence by truth?"

The principle on which dying declaration is admitted in evidence is indicated in the legal maxim "nemo moriturus praesumitur mentire - a man will not meet his Maker with a lie in his mouth".

14. The situation in which a person is on the deathbed is so solemn and serene when he is dying that the grave position in which he is placed, is the reason in law to accept veracity of his statement. It is for this reason that the requirements of oath and cross-examination are dispensed with. Besides, should the dying declaration be excluded it will result in miscarriage of justice because the victim being generally the only eyewitness in a serious crime, the exclusion of the statement would leave the court without a scrap of evidence.

15. Though a dying declaration is entitled to great weight, it is worthwhile to note that the accused has no power of cross-examination. Such a power is essential for eliciting the truth as an obligation of oath could be. This is the reason the court also insists that the dying declaration should be of such a nature as to inspire full confidence of the court in its correctness. The court has to be on guard that the statement of the deceased was not as a result of either tutoring, or prompting or a product of imagination.

The court must be further satisfied that the deceased was in a fit state of mind after a clear opportunity to observe and identify the assailant. Once the court is satisfied that the declaration was true and voluntary, undoubtedly, it can base its conviction without any further corroboration. It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence."

This Court in Nallapati Sivaiah v. Sub-Divisional Officer, Guntur, Andhra Pradesh reported in (2007) 15 SCC 465 and Bhajju alias Karan Singh v. State of Madhya Pradesh reported in (2012) 4 SCC 327 had explained the meaning and principles of dying declarations upon which its admissibility is founded, with the following observations: -

"20. There is a historical and a literary basis for recognition of dying declaration as an exception to the hearsay rule. Some authorities suggest the rule is of Shakespearian origin. In The Life and Death of King John, Shakespeare had made Lord Melun utter "Have I met hideous death within my view, retaining but a quantity of life, which bleeds away, lose the use of all deceit" and asked, "Why should I then be false, since it is true that I must die here and live hence by truth?" William Shakespeare, The Life and Death of King John, Act 5, Scene 4, lines 22-29.

22. It is equally well settled and needs no restatement at our hands that dying declaration can form the sole basis for conviction. But at the same time due care and caution must be exercised in considering weight to be given to dying declaration inasmuch as there could be any number of circumstances which may affect the truth.

This Court in more than one decision has cautioned that the courts have always to be on guard to see that the dying declaration was not the result of either tutoring or prompting or a product of imagination. It is the duty of the courts to find that the deceased was in a fit state of mind to make the dying declaration. In order to satisfy itself that the deceased was in a fit mental condition to make the dying declaration, the courts have to look for the medical opinion.

23. It is not difficult to appreciate why dying declarations are admitted in evidence at a trial for murder, as a striking exception to the general rule against hearsay. For example, any sanction of the oath in the case of a living witness is thought to be balanced at least by the final conscience of the dying man. Nobody, it has been said, would wish to die with a lie on his lips. A dying declaration has got sanctity and a person giving the dying declaration will be the last to give untruth as he stands before his creator.

24. There is a legal maxim "nemo moriturus praesumitur mentire" meaning, that a man will not meet his Maker with a lie in his mouth. Woodroffe and Amir Ali, in their Treatise on Evidence Act state:

"when a man is dying, the grave position in which he is placed is held by law to be a sufficient ground for his veracity and therefore the tests of oath and cross-examination are dispensed with".

25. The court has to consider each case in the circumstances of the case. What value should be given to a dying declaration is left to court, which on assessment of the circumstances and the evidence and materials on record, will come to a conclusion about the truth or otherwise of the version, be it written, oral, verbal or by sign or by gestures."

This Court in Bhajju (supra) has observed as under:

"23. The "dying declaration" essentially means the statement made by a person as to the cause of his death or as to the circumstances of the transaction resulting into his death. The admissibility of the dying declaration is based on the principle that the sense of impending death produces in a man's mind, the same feeling as that of a conscientious and virtuous man under oath.

The dying declaration is admissible upon the consideration that the declaration was made in extremity, when the maker is at the point of death and when every hope of this world is gone, when every motive to file a false suit is silenced in the mind and the person deposing is induced by the most powerful considerations to

speak the truth. 26. The law is well settled that a dying declaration is admissible in evidence and the admissibility is founded on the principle of necessity."

60. Since time immemorial, despite a general consensus of presuming that the dying declaration is true, they have not been stricto-sensu accepted, rather the general course of action has been that judge decides whether the essentials of a dying declaration are met and if it can be admissible, once done, it is upon the duty of the court to see the extent to which the dying declaration is entitled to credit.

61. In India too, a similar pattern is followed, where the Courts are first required to satisfy themselves that the dying declaration in question is reliable and truthful before placing any reliance upon it. Thus, dying declaration while carrying a presumption of being true must be wholly reliable and inspire confidence. Where there is any suspicion over the veracity of the same or the evidence on record shows that the dying declaration is not true it will only be considered as a piece of evidence but cannot be the basis for conviction alone.

62. There is no hard and fast rule for determining when a dying declaration should be accepted; the duty of the Court is to decide this question in the facts and surrounding circumstances of the case and be fully convinced of the truthfulness of the same. Certain factors below reproduced can be considered to determine the same, however, they will only affect the weight of the dying declaration and not its admissibility: -

(1) Whether the person making the statement was in expectation of death?

(ii) Whether the dying declaration was made at the earliest opportunity? "Rule of First Opportunity"

(iii) Whether there is any reasonable suspicion to believe the dying declaration was put in the mouth of the dying person?

(iv) Whether the dying declaration was a product of prompting, tutoring or leading at the instance of police or any interested party?

(v) Whether the statement was not re- corded properly?

(vi) Whether, the dying declarant had opportunity to clearly observe the incident?

(vii) Whether, the dying declaration has been consistent throughout?

(viii) Whether, the dying declaration in it- self is a manifestation / fiction of the dying person's imagination of what he thinks transpired?

(ix) Whether, the dying declaration was itself voluntary?

(x) In case of multiple dying declarations, whether, the first one inspires truth and consistent with the other dying declaration?

(xi) Whether, as per the injuries, it would have been impossible for the deceased to make a dying declaration?

It is the duty of the prosecution to establish the charge against the accused be- yond the reasonable doubt. The benefit of doubt must always go in favour of the accused. It is true that dying declaration is a substantive piece of evidence to be relied on provided it is proved that the same was voluntary and truthful and the victim was in a fit state of mind. It is just not enough for the court to say that the dying declaration is reliable as the accused is named in the dying declaration as the assailant.

It is unsafe to record the conviction on the basis of a dying declaration alone in the cases where suspicion, like the case on hand is raised, as regards the correctness of the dying declaration. In such cases, the Court may have to look for some corroborative evidence by treating the dying declaration only as a piece of evidence. The evidence and material available on record must be properly weighed in each case to arrive at an appropriate conclusion. The reason why we say so is that in the case on hand, al- though the appellant-convict has been named in the two dying declarations as a person who set the room on fire yet the surrounding circumstances render such statement of the declarants very doubtful.

In Sujit Biswas v. State of Assam re- ported in (2013) 12 SCC 406: (AIR 2013 SC 3817), this Court, while examining the distinction between "proof beyond reason- able doubt" and "suspicion" in para 13 has held as under:

"13. Suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that "may be" proved, and something that "will be proved". In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. This is for the reason that the mental distance between "may be" and "must be" is quite large, and divides vague conjectures from sure conclusions. In a criminal case, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. The large distance between "may be" true and "must be" true, must be covered by way of clear. cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict, and the basic and golden rule must be applied. In such cases, while keeping in mind the distance between "may be" true and "must be" true, the court must maintain the vital distance between mere conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny, based upon a complete and comprehensive appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record. The court must ensure, that miscarriage of jus- tice is avoided, and if the facts and circum- stances of a case so demand, then the benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely probable doubt, but a fair doubt that is based upon rea- son and common sense."

It may be true as said by this Court, speaking through Justice Krishna Iyer in Dharm Das Wadhwani v. State of Uttar Pradesh reported in (1974) 4 SCC 267: (AIR 1975 SC 241), that the rule of benefit of reasonable doubt does not imply a frail wil- low bending to every whiff of hesitancy. Judges are made of sterner stuff and must take a practical view of the legitimate inferences flowing from the evidence, circumstantial or direct. Even applying this principle, we have a doubt as regards the complicity of the appellant-convict in the crime. **[Irfan @ Naka vs. State of U.P., AIR 2023 SC 4129]**

Secs. 376, 300—Criminal P.C., 1974, Secs. 53, 53A—Rape and murder—Failure to conduct medical examination of accused

Section 53(1) of the CrPC enables a police officer not below the rank of sub-inspector to request a registered medical practitioner, to make such an examination of the person arrested, as is reasonably necessary to ascertain the facts which may afford such evidence, whenever a person is arrested on a charge of committing an

offence of such a nature that there are reasonable grounds for believing that an examination of his person will afford evidence as to the commission of an offence. Section 53(1) reads as follows:-

"Section 53. Examination of accused by medical practitioner at the request of police officer.—(1) When a person is arrested on a charge of committing an offence of such a nature and alleged to have been committed under such circumstances that there are reasonable grounds for believing that an examination of his person will afford evidence as to the commission of an offence, it shall be lawful for a registered medical practitioner, acting at the request of a police officer not below the rank of sub-inspector, and for any person acting in good faith in his aid and under his direction, to make such an examination of the person arrested as is reasonably necessary in order to ascertain the facts which may afford such evidence, and to use such force as is reasonably necessary for that purpose."

By Act 25 of 2005, a new Explanation was substituted under Section 53, in the place of the original Explanation. The Explanation so substituted under Section 53 by Act 25 of 2005 reads as follows:-

"Explanation.—In this section and in Sections 53A and 54—

(a) "examination" shall include the examination of blood, blood stains, semen, swabs in case of sexual offences, sputum and sweat, hair samples and finger nail clippings by the use of modern and scientific techniques including DNA profiling and such other tests which the registered medical practitioner thinks necessary in a particular case;

(b) "registered medical practitioner" means a medical practitioner who possess any medical qualification as defined in clause (h) of Section 2 of the Indian Medical Council Act, 1956 (102 of 1956) and whose name has been entered in a State Medical Register."

Simultaneously with the substitution of a new Explanation under Section 53, Act 25 of 2005 also inserted a new provision i.e. Section 53A. Section 53A reads as follows:-

"Section 53A. Examination of person accused of rape by medical practitioner.—(1) When a person is arrested on a charge of committing an offence of rape or an attempt to commit rape and there are reasonable grounds for believing that an examination of his person will afford evidence as to the commission of such offence, it shall be lawful for a registered medical practitioner employed in a hospital run by the Government or by a local authority and in the absence of such a practitioner within the radius of sixteen kilometers from the place where the offence has been committed by any other registered medical practitioner acting at the request of a police officer not below the rank of a Sub-Inspector, and for any person acting in good faith in his aid and under his direction, to make such an examination of the arrested person and to use such force as is reasonably necessary for that purpose.

(2) The registered medical practitioner conducting such examination shall, without delay, examine such person and prepare a report of his examination giving the following particulars, namely—

(i) the name and address of the accused and of the person by whom he was brought,

(ii) the age of the accused,

(iii) marks of injury, if any, on the person of the accused,

(iv) the description of material taken from the person of the accused for DNA profiling, and

(v) other material particulars in reasonable detail.

(3) The report shall state precisely the reasons for each conclusion arrived at.

(4) The exact time of commencement and completion of the examination shall also be noted in the report. (5) The registered medical practitioner shall, without delay, forward the report to the investigating officer, who shall forward it to the Magistrate referred to in Section 173 as part of the documents referred to in clause (a) of sub-section (5) of that section."

A three-Judge Bench of this Court in Chotkau v. State of Uttar Pradesh, (2023) 6 SCC 742, had the occasion to consider Sections 53, 53A and 164 of the CrPC in details. This Court observed in para 80 to 83 as under:-

"80. After saying that Section 53-A is not mandatory, this Court found in para 54 of the said decision that the failure of the prosecution to produce DNA evidence, warranted an adverse inference to be drawn. Para 54 reads as follows : (Rajendra Pralhadrao Wasnik case [Rajendra Pralhadrao Wasnik v. State of Maharashtra, (2019) 12 SCC 460 : (2019) 4 SCC (Cri) 420], SCC p. 485) "54. For the prosecution to decline to produce DNA evidence would be a little unfortunate particularly when the facility of DNA profiling is available in the country. The prosecution would be well advised to take advantage of this, particularly in view of the provisions of Section 53-A and Section 164-ACrPC. We are not going to the extent of suggesting that if there is no DNA profiling, the prosecution case cannot be proved but we are certainly of the view that where DNA profiling has not been done or it is held back from the trial court, an adverse consequence would follow for the prosecution."

81. It is necessary at this stage to note that by the very same Amendment Act 25 of 2005, by which Section 53-A was inserted, Section 164-A was also inserted in the Code. While Section 53-A enables the medical examination of the person accused of rape, Section 164-A enables medical examination of the victim of rape. Both these provisions are somewhat similar and can be said approximately to be a mirror image of each other. But there are three distinguishing features. They are:

81.1 Section 164-A requires the prior consent of the woman who is the victim of rape. Alternatively, the consent of a person competent to give such consent on her behalf should have been obtained before subjecting the victim to medical examination. Section 53-A does not speak about any such consent.

81.2 Section 164-A requires the report of the medical practitioner to contain among other things, the general mental condition of the woman. This is absent in Section 53-A.

81.3 Under Section 164-A(1), the medical examination by a registered medical practitioner is mandatory when, "it is proposed to get the person of the woman examined by a medical expert" during the course of investigation. This is borne out by the use of the words, "such examination shall be conducted". In contrast, Section 53-A(1) merely makes it lawful for a registered medical practitioner to make an examination of the arrested person if "there are reasonable

grounds for believing that an examination of his person will afford evidence as to the commission of such offence".

82. In cases where the victim of rape is alive and is in a position to testify in court, it may be possible for the prosecution to take a chance by not medically examining the accused. But in cases where the victim is dead and the offence is sought to be established only by circumstantial evidence, medical evidence assumes great importance. The failure of the prosecution to produce such evidence, despite there being no obstacle from the accused or anyone, will certainly create a gaping hole in the case of the prosecution and give rise to a serious doubt on the case of the prosecution. We do not wish to go into the question whether Section 53-A is mandatory or not. Section 53-A enables the prosecution to obtain a significant piece of evidence to prove the charge. The failure of the prosecution in this case to subject the appellant to medical examination is certainly fatal to the prosecution case especially when the ocular evidence is found to be not trustworthy.

83. Their failure to obtain the report of the Forensic Science Laboratory on the blood/semen stain on the salwar worn by the victim, compounds the failure of the prosecution."

Thus, medical examination of an accused assumes great importance in cases where the victim of rape is dead and the offence is sought to be established only by circumstantial evidence.

There is in our opinion nothing in Section 162 of the CrPC which prevents a Trial Judge from looking into the papers of the chargesheet suo motu and himself using the statement of a person examined by the police recorded therein for the purpose of contradicting such person when he gives evidence in favour of the State as a prosecution witness. The Judge may do this or he may make over the recorded statement to the lawyer for the accused so that he may use it for this purpose. We also wish to emphasise that in many sessions cases when an advocate appointed by the Court appears and particularly when a junior advocate, who has not much experience of the procedure of the Court, has been appointed to conduct the defence of an accused person, it is the duty of the Presiding Judge to draw his attention to the statutory provisions of Section 145 of the Evidence Act, as explained in Tara Singh v. State reported in AIR 1951 SC 441 and no Court should allow a witness to be contradicted by reference to the previous statement in writing or reduced to writing unless the procedure set out in Section 145 of the Evidence Act has been followed. It is possible that if the attention of the witness is drawn to these portions with reference to which it is proposed to contradict him, he may be able to give a perfectly satisfactory explanation and in that event the portion in the previous statement which would otherwise be contradictory would no longer go to contradict or challenge the testimony of the witness.

In the aforesaid context, we may refer to and rely on a three-Judge Bench decision in the case of V.K. Mishra v. State of Uttarakhand, (2015) 9 SCC 588, wherein this Court, after due consideration of Section 161 of the CrPC and Section 145 of the Evidence Act, observed as under:-

"16. Section 162 CrPC bars use of statement of witnesses recorded by the police except for the limited purpose of contradiction of such witnesses as indicated there. The statement made by a witness before the police under Section 161(1) CrPC

can be used only for the purpose of contradicting such witness on what he has stated at the trial as laid down in the proviso to Section 162(1) CrPC. The statements under Section 161 CrPC recorded during the investigation are not substantive pieces of evidence but can be used primarily for the limited purpose: (i) of contradicting such witness by an accused under Section 145 of the Evidence Act; (ii) the contradiction of such witness also by the prosecution but with the leave of the Court; and (iii) the re-examination of the witness if necessary.

The court cannot suo motu make use of statements to police not proved and ask questions with reference to them which are inconsistent with the testimony of the witness in the court. The words in Section 162 CrPC "if duly proved" clearly show that the record of the statement of witnesses cannot be admitted in evidence straightaway nor can be looked into but they must be duly proved for the purpose of contradiction by eliciting admission from the witness during cross-examination and also during the cross-examination of the investigating officer. The statement before the investigating officer can be used for contradiction but only after strict compliance with Section 145 of the Evidence Act that is by drawing attention to the parts intended for contradiction.

Section 145 of the Evidence Act reads as under:

"145.Cross-examination as to previous statements in writing.—A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him."

Under Section 145 of the Evidence Act when it is intended to contradict the witness by his previous statement reduced into writing, the attention of such witness must be called to those parts of it which are to be used for the purpose of contradicting him, before the writing can be used. While recording the deposition of a witness, it becomes the duty of the trial court to ensure that the part of the police statement with which it is intended to contradict the witness is brought to the notice of the witness in his cross-examination. The attention of witness is drawn to that part and this must reflect in his cross-examination by reproducing it. If the witness admits the part intended to contradict him, it stands proved and there is no need to further proof of contradiction and it will be read while appreciating the evidence. If he denies having made that part of the statement, his attention must be drawn to that statement and must be mentioned in the deposition. By this process the contradiction is merely brought on record, but it is yet to be proved. Thereafter when investigating officer is examined in the court, his attention should be drawn to the passage marked for the purpose of contradiction, it will then be proved in the deposition of the investigating officer who again by referring to the police statement will depose about the witness having made that statement. The process again involves referring to the police statement and culling out that part with which the maker of the statement was intended to be contradicted. If the witness was not confronted with that part of the statement with which the defence wanted to contradict him, then the court cannot suo motu make use of statements to police not proved in compliance with Section

145 of the Evidence Act that is, by drawing attention to the parts intended for contradiction."

What is important to note in the aforesaid decision of this Court is the principle of law that if the witness was not confronted with that part of the statement with which the defence wanted to contradict him, then the Court cannot suo motu make use of statements to police not proved in compliance with Section 145 of the Evidence Act. Therefore, it is of utmost importance to prove all major contradictions in the form of material omissions in accordance with the procedure as established under Section 145 of the Evidence Act and bring them on record. It is the duty of the defence counsel to do so.

This Court in Raghunandan v. State of U.P. reported in (1974) 4 SCC 186, it was observed:-(SCC p. 191, para 16)

"16. We are inclined to accept the argument of the appellant that the language of Section 162, Criminal Procedure Code, though wide, is not explicit or specific enough to extend the prohibition to the use of the wide and special powers of the Court to question a witness, expressly and explicitly given by Section 165 of the Indian Evidence Act in order to secure the ends of justice. ….Therefore, we hold that Section 162, Criminal Procedure Code, does not impair the special powers of the Court under Section 165, Indian Evidence Act. …"

This Court in Dandu Lakshmi Reddy v. State of A.P., (1999) 7 SCC 69, it was held:-

"20. It must now be remembered that the said procedure can be followed only when a witness is in the box. Barring the above two modes, a statement recorded under Section 161 of the Code can only remain fastened up at all stages of the trial in respect of that offence. In other words, if the court has not put any question to the witness with reference to his statement recorded under Section 161 of the Code, it is impermissible for the court to use that statement later even for drawing any adverse impression regarding the evidence of that witness. What is interdicted by Parliament in direct terms cannot be obviated in any indirect manner."

This Court in State of Rajasthan v. Ani @ Hanif and Ors. (1997) 6 SCC 162, made very relevant and important observations as under:-

"11. … Section 165 of the Evidence Act confers vast and unrestricted powers on the trial court to put "any question he pleases, in any form, at any time, of any witness, or of the parties, about any fact relevant or irrelevant" in order to discover relevant facts. The said section was framed by lavishly studding it with the word "any" which could only have been inspired by the legislative intent to confer unbridled power on the trial court to use the power whenever he deems it necessary to elicit truth. Even if any such question crosses into irrelevancy the same would not transgress beyond the contours of powers of the court. This is clear from the words "relevant or irrelevant" in Section 165. Neither of the parties has any right to raise objection to any such question.

12. Reticence may be good in many circumstances, but a Judge remaining mute during trial is not an ideal situation. A taciturn Judge may be the model caricatured in public mind. But there is nothing wrong in his becoming active or dynamic during trial so that criminal justice being the end could be achieved. Criminal trial should not turn out to be a bout or combat between two rival sides with the Judge

performing the role only of a spectator or even an umpire to pronounce finally who won the race. A Judge is expected to actively participate in the trial, elicit necessary materials from witnesses in the appropriate context which he feels necessary for reaching the correct conclusion. There is nothing which inhibits his power to put questions to the witnesses, either during chief examination or cross-examination or even during re-examination to elicit truth. The corollary of it is that if a Judge felt that a witness has committed an error or a slip it is the duty of the Judge to ascertain whether it was so, for, to err is human and the chances of erring may accelerate under stress of nervousness during cross- examination. Criminal justice is not to be founded on erroneous answers spelled out by witnesses during evidence-collecting process. It is a useful exercise for trial Judge to remain active and alert so that errors can be minimised."

In the above context, it is apposite to quote the observations of Chinnappa Reddy, J. in Ram Chander v. State of Haryana, (1981) 3 SCC 191:-

"2. The adversary system of trial being what it is, there is an unfortunate tendency for a judge presiding over a trial to assume the role of a referee or an umpire and to allow the trial to develop into a contest between the prosecution and the defence with the inevitable distortions flowing from combative and competitive element entering the trial procedure. If a criminal court is to be an effective instrument in dispensing justice, the presiding judge must cease to be a spectator and a mere recording machine. He must become a participant in the trial by evincing intelligent active interest by putting questions to witnesses in order to ascertain the truth. …"

According to Section 366 when a Court of Session passes a sentence of death, the proceedings must be submitted to the High Court and the sentence of death is not to be executed unless it is confirmed by the High Court. Section 367 then proceeds to lay down the power of the High Court to direct further enquiry to be made or additional evidence to be taken. Section 368, thereafter, lays down the power of the High Court to confirm the sentence so imposed or annul the conviction. One of the powers which the High Court can exercise is one under Section 368(c) of the CrPC and that is to "acquit the accused person". Pertinently, the power to acquit the person can be exercised by the High Court even without there being any substantive appeal on the part of the accused challenging his conviction. To that extent, the proceedings under Chapter XXVIII which deal with "submission of death sentences for confirmation" is a proceeding in continuation of the trial. These provisions thus entitle the High Court to direct further enquiry or to take additional evidence and the High Court may, in a given case, even acquit the accused person. The scope of the chapter is wider. Chapter XXIX of the CrPC deals with "Appeals". Section 391 also entitles the appellate court to take further evidence or direct such further evidence to be taken. Section 386 then enumerates powers of the appellate court which inter alia includes the power to "reverse the finding and sentence and acquit or discharge the accused, or order him to be re-tried by a court of competent jurisdiction subordinate to such appellate court or committed for trial". The powers of the appellate court are equally wide. The High Court in the present case was exercising powers both under Chapters XXVIII and XXIX of the CrPC.

Ordinarily, in a criminal appeal against conviction, the appellate court, under Section 384 of the CrPC, can dismiss the appeal, if the Court is of the opinion that there is no sufficient ground for interference, after examining all the grounds urged before it for challenging the correctness of the decision given by the Trial Court. It is not necessary for the appellate court to examine the entire record for the purpose of arriving at an independent decision of its own whether the conviction of the appellant is fully justified. The position is, however, different where the appeal is by an accused who is sentenced to death, so that the High Court dealing with the appeal has before it, simultaneously with the appeal, a reference for confirmation of the capital sentence under Section 366 of the CrPC. On a reference for confirmation of sentence of death, the High Court is required to proceed in accordance with Sections 367 and 368 respectively of the CrPC and the provisions of these Sections make it clear that the duty of the High Court, in dealing with the reference, is not only to see whether the order passed by the Sessions Judge is correct, but to examine the case for itself and even direct a further enquiry or the taking of additional evidence if the Court considers it desirable in order to ascertain the guilt or the innocence of the convicted person. It is true that, under the proviso to Section 368, no order of confirmation is to be made until the period allowed for preferring the appeal has expired, or, if an appeal is presented within such period, until such appeal is disposed of, so that, if an appeal is filed by a condemned prisoner, that appeal has to be disposed of before any order is made in the reference confirming the sentence of death. In disposing of such an appeal, however, it is necessary that the High Court should keep in view its duty under Section 367 CrPC and, consequently, the Court must examine the appeal record for itself, arrive at a view whether a further enquiry or taking of additional evidence is desirable or not, and then come to its own conclusion on the entire material on record whether conviction of the condemned prisoner is justified and the sentence of death should be confirmed. [See: Bhupendra Singh (supra)] **[Munna Pandey vs. State of Bihar, AIR 2023 SC 5709]**

Secs. 363, 366A, 376(A), 376(2)(i), 376(2)(j), 376(2)(k), 376(2)(m), 302, 201—Protection of Children from Sexual Offences Act, 2012, Ss. 5(m), 5(i), 6—Rape and murder—Denial of fair trial—Trial was conducted in hurried manner without giving proper opportunity to accused to defend—Conviction was set aside—Matter was remitted to trial court for de novo trial by affording proper opportunity to accused to defend

In the case of Manoj & Ors. Vs. State of M.P., (2023) 2 SCC 353, it was held that if DNA evidence is not properly documented, collected, packaged, and preserved, it will not meet the legal and scientific requirements for admissibility in a court of law. Because extremely small samples of DNA can be used as evidence, greater attention to contamination issues is necessary while locating, collecting, and preserving DNA evidence as it can be contaminated when DNA from another source gets mixed with DNA relevant to the case. This can happen even when someone sneezes or coughs over the evidence or touches his/her mouth, nose, or other part of the face and then touches the area that may contain the DNA to be tested. The exhibits having biological specimen, which can establish link among victim(s),

suspect(s), scene of crime for solving the case should be identified, preserved, packed, and sent for DNA Profiling.

In the case of Anil @ Anthony Arikswamy Joseph Vs. State of Maharashtra, (2014) 4 SCC 69, the following has been held in paragraph 18 as under:-

"18. Deoxyribonucleic acid, or DNA, is a molecule that encodes the genetic information in all living organisms. DNA genotype can be obtained from any biological material such as bone, blood, semen, saliva, hair, skin, etc. Now, for several years, DNA profile has also shown a tremendous impact on forensic investigation. Generally, when DNA profile of a sample found at the scene of crime matches with the DNA profile of the suspect, it can generally be concluded that both the samples have the same biological origin. DNA profile is valid and reliable, but variance in a particular result depends on the quality control and quality procedure in the laboratory." **[Naveen @ Ajay vs. State of M.P., AIR 2023 SC 5254]**

Sec. 302—Evidence Act, 1872, Sec. 32—Murder—Multiple dying declarations—Reliability

In Jagbir Singh v. State (NCT of Delhi), (2019) 8 SCC 779 (2-Judge Bench), the following principles were observed:

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

….

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

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

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

In Uttam v. State of Maharashtra, 16 (2022) 8 SCC 576 (2-Judge Bench) this court observed:

"15. In cases involving multiple dying declarations made by the deceased, the question that arises for consideration is as to which of the said dying declarations ought to be believed by the court and what would be the guiding factors for arriving

at a just and lawful conclusion. The problem becomes all the more knotty when the dying declarations made by the deceased are found to be contradictory. Faced with such a situation, the court would be expected to carefully scrutinise the evidence to find out as to which of the dying declarations can be corroborated by other material evidence produced by the prosecution. Of equal significance is the condition of the deceased at the relevant point in time, the medical evidence brought on record that would indicate the physical and mental fitness of the deceased, the scope of the close relatives/family members having influenced/tutored the deceased and all the other attendant circumstances that would help the court in exercise of its discretion."

Having considered various pronouncements of this court, the following principles emerge, for a Court to consider when dealing with a case involving multiple dying declarations:

The primary requirement for all dying declarations is that they should be voluntary and reliable and that such statements should be in a fit state of mind;

All dying declarations should be consistent. In other words, inconsistencies between such statements should be 'material' for its credibility to be shaken;

When inconsistencies are found between various dying declarations, other evidence available on record may be considered for the purposes of corroboration of the contents of dying declarations.

The statement treated as a dying declaration must be interpreted in light of surrounding facts and circumstances.

Each declaration must be scrutinized on its own merits. The court has to examine upon which of the statements reliance can be placed in order for the case to proceed further.

When there are inconsistencies, the statement that has been recorded by a Magistrate or like higher officer can be relied on, subject to the indispensable qualities of truthfulness and being free of suspicion.

In the presence of inconsistencies, the medical fitness of the person making such declaration, at the relevant time, assumes importance along with other factors such as the possibility of tutoring by relatives, etc.

We must also notice certain judgments of this court where the extent of burn injuries sustained by the deceased was considered.

In Chacko v. State of Kerala, (2003) 1 SCC 112(2-Judge Bench) this court declined to accept a dying declaration made by a person, 70 years of age, having sustained 80% burns. Therein, the declaration was recorded 8-9 hours after burns, giving minute details as to motive and manner. It was opined that the condition of the patient described as "conscious, talking" in the wound certificate would in and of itself not testify to the condition of the patient making such declaration, nor would the oral evidence of the doctor or Investigating Officer.

In P.V. Radhakrishna v. State of Karnataka, (2003) 6 SCC 443(2-Judge Bench) it was observed that there cannot be any hard and fast rule, lending itself to uniform application on the question whether the percentage of burns suffered is a determinative factor to affect the credibility of the dying declaration. The same would depend on the nature of the burns, the body parts affected, and the effect thereof on mental faculties, as well as other factors.

In Surinder Kumar v. State of Haryana, (2011) 10 SCC 173 (2-Judge Bench) the dying declaration made by a person having 95-97% burn injuries was not accepted given that at the time of making the declaration, the deceased was under the influence of Fortwin and Pethidine injections, because of which she could not have had normal alertness.

This Court in Uttam followed the principle as held in Khushal Rao v. State of Bombay, AIR 1958 SC 22 (3-Judge Bench) that in order to test the reliability of a dying declaration, the court has to keep in view, the circumstances like the opportunity of the dying man for observation, for example, whether there was sufficient light if the crime was committed at night; whether the capacity of the man to remember the fact stated, had not been impaired at the time he was making the statement, by circumstances beyond his control; that the statement has been consistent throughout if he had several opportunities of making a dying declaration apart from the official record of it; and that the statement had been made at the earliest opportunity and was not the result of tutoring by interested parties. **[Abhishek Sharma vs. State (Govt. of NCT of Delhi), AIR 2023 SC 5271]**

Limitation Act

Sec. 5—Delay in filing appeal—Condonation—Discretionary powers of Court to condone delay—Interference with—A court of appeal cannot ordinarily interfere with discretion exercised by subordinate court, unless it is clearly wrong

In Postmaster General & Ors. v. Living Media India Limited & Anr., (2012) 3 SCC 563, this Court noted that in cases when there was no gross negligence, deliberate inaction, or lack of bona fides, a liberal concession ought to be adopted to render substantial justice but on the facts before the Court, the appellant could not take advantage of the earlier decisions of this Court. Further, merely because the State was involved, no different metric for condonation of delay could be applied to it. Importantly, it noted that the appellant department had offered no proper and cogent explanation before this Court for condonation of a huge delay of 427 days apart from simply mentioning various dates. The claim on account of impersonal machinery and inherited bureaucratic methodology of making file notes, it was held, not acceptable in view of the modern technologies being used and available. Also, holding that the law of limitation undoubtedly binds everybody, including the Government, this Court went on to reject the prayer for condonation.

G. Ramegowda v. Spl. Land Acquisition Officer9, while summarising the position of law on 'sufficient cause', had the occasion to observe that the contours of the area of discretion of the courts in the matter of condonation of delays in filing appeals have been set out in a number of pronouncements of this Court. It was observed to be true that there is no general principle saving the party from all mistakes of its counsel. Noting that there is no reason why the opposite side should be exposed to a time-barred appeal if there was negligence, deliberate or gross inaction or lack of bona fides on the part of the party or its counsel, it was further observed that each case will have to be considered on the particularities of its own special facts. However, this Court reiterated that the expression 'sufficient cause'

in section 5 must receive a liberal construction so as to advance substantial justice and generally delays in preferring appeals are required to be condoned in the interest of justice where no gross negligence or deliberate inaction or lack of bona fides is imputable to the party seeking condonation of the delay. This was followed by these words:

"15. In litigations to which Government is a party there is yet another aspect which, perhaps, cannot be ignored. If appeals brought by Government are lost for such defaults, no person is individually affected; but what, in the ultimate analysis, suffers is public interest. The decisions of Government are collective and institutional decisions and do not share the characteristics of decisions of private individuals. ***

17. Therefore, in assessing what, in a particular case, constitutes 'sufficient cause' for purposes of Section 5, it might, perhaps, be somewhat unrealistic to exclude from the considerations that go into the judicial verdict, these factors which are peculiar to and characteristic of the functioning of the government. Governmental decisions are proverbially slow encumbered, as they are, by a considerable degree of procedural red tape in the process of their making. A certain amount of latitude is, therefore, not impermissible. It is rightly said that those who bear responsibility of Government must have 'a little play at the joints'. Due recognition of these limitations on governmental functioning — of course, within reasonable limits — is necessary if the judicial approach is not to be rendered unrealistic. It would, perhaps, be unfair and unrealistic to put government and private parties on the same footing in all respects in such matters. Implicit in the very nature of governmental functioning is procedural delay incidental to the decision-making process." **[Sheo Raj Singh (Deceased) Through Lrs. vs. Union of India, AIR 2023 SC 5109]**

Limitation Act, 1963 - S. 5 - Condonation of delay "Sufficient cause" - Interpretation of - Methodology in deciding application for condonation of delay - Approach of courts where State is applicant - Principles summarized.

Limitation Act, 1963 S. 5- Condonation of delay - "Sufficient cause Reasons offered for condonation of delay Court to distinguish between an "explanation" and an "excuse" while appreciating reasons for condonation of delay. Application for condonation of delay needs to be decided on facts of individual cases.

Land Acquisition Act, 1894 - Ss. 54 and 18 - Delay in filing appeals - Lethargic approach of government departments and public bodies in preferring appeal - Deprecated Limitation Act, 1963 - Ss. 3 and 5 Practice and Procedure - Appeal - Delay/Laches/ Limitation - State as a Litigant/Party - Words and Phrases - "Sufficient cause." **(Sheo Raj Singh (deceased) through legal representatives and others v. Union of India and another, (2023) 10 SCC 531)**

Art. 65—Adverse possession—Scope—Possession must be open, clear, continuous and hostile to the claim or possession of other parties—All three classic requirements must coexist-nec vi, i.e. adequate in continuity; nec clam, i.e., adequate in publicity; and nec precario, i.e., adverse to competitor, in denial of title and knowledge

The principle of adverse possession has been defined by the Privy Council in Perry v. Clissold, [1907] A.C. 73 in the following terms:

"It cannot be disputed that a person in possession of land in the assumed character of the owner and exercising peaceably the ordinary rights of ownership has a perfectly good title against all the world but the rightful owner. And if the rightful owner does not come forward and assert his title by the process of law within the period prescribed by the provisions of the statute of Limitation applicable to the case, his right is forever extinguished and the possessory owner acquires an absolute title."

Before proceeding to do so, it is essential to take note of the law governing such a claim. After a perusal and consideration of various judgements rendered by this Court, the following principles can be observed :

Possession must be open, clear, continuous and hostile to the claim or possession of the other party; all three classic requirements must coexist nec vi, i.e., adequate in continuity; nec clam, i.e., adequate in publicity; and nec precario, i.e., adverse to a competitor, in denial of title and knowledge;

(a) In Radhamoni Debi v. Collector of Khulna, 1900 SCC OnLine PC 4, the Privy Council held that-

"The possession required must be adequate in continuity, in publicity, and in extent to show that it is possession adverse to the competitor."

(b) Further, the Council Maharaja Sri Chandra Nandi v. Baijnath Jugal Kishore, AIR 1935 PC 36 observed-

"It is sufficient that the possession should be overt and without any attempt at concealment, so that the person against whom time is running ought, if he exercises due vigilance, to be aware of what is happening."

(c) A Bench of three judges of this Court in Parsinni v. Sukhi, 10 (1993) 4 SCC 375 held that "Party claiming adverse possession must prove that his possession must be 'nec vi, nec clam, nec precario' i.e. peaceful, open and continuous. The possession must be adequate, in continuity, in publicity and in extent to show that their possession is adverse to the true owner."

(d) In Karnataka Board of Wakf v. Govt. of India, (2004) 10 SCC 779 (two- Judge Bench) it was held:-

"It is a well-settled principle that a party claiming adverse possession must prove that his possession is "nec vi, nec clam, nec precario", that is, peaceful, open and continuous. The possession must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period." This case was relied on in the case of M. Venkatesh v. Bangalore Development Authority, (2015) 17 SCC 1 (three-Judge Bench), Ravinder Kaur Grewal v. Manjit Kaur, (2019) 8 SCC 729 (three-Judge Bench).

(e) This Court in a recent case of M Siddiq (D) through LRs v. Mahant Suresh Das & Ors., (2020) 1SCC 1 (five-Judge Bench) reiterated this principle as under -

"748. A person who sets up a plea of adverse possession must establish both possession which is peaceful, open and continuous - possession which meets the

requirement of being 'nec vi nec claim and nec precario'. To substantiate a plea of adverse possession, the character of the possession must be adequate in continuity and in the public because the possession has to be to the knowledge of the true owner in order for it to be adverse. These requirements have to be duly established first by adequate pleadings and second by leading sufficient evidence." 21.2 The person claiming adverse possession must show clear and cogent evidence substantiate such claim;

This Court in Thakur Kishan Singh v. Arvind Kumar, (1994) 6 SCC 591 (two-Judge Bench) held that –

"5. A possession of a co-owner or of a licensee or of an agent or a permissive possession to become adverse must be established by cogent and convincing evidence to show hostile animus and possession adverse to the knowledge of real owner. Mere possession for howsoever length of time does not result in converting the permissive possession into adverse possession…" Reference may also be made to M. Siddiq (supra). 21.3 Mere possession over a property for a long period of time does not grant the right of adverse possession on its own;

(a) In Gaya Prasad Dikshit v. Dr. Nirmal Chander and Anr. (two-Judge Bench), (1984) 2 SCC 286 , this court observed-

"1… It is not merely unauthorised possession on termination of his licence that enables the licensee to claim title by adverse possession but there must be some overt act on the part of the licensee to show that he is claiming adverse title. It is possible that the licensor may not file an action for the purpose of recovering possession of the premises from the licensee after terminating his licence but that by itself cannot enable the licensee to claim title by adverse possession. There must be some overt act on the part of the licensee indicating assertion of hostile title. Mere continuance of unauthorised possession even for a period of more than 12 years is not enough."

Reference may also be made to Arvind Kumar; Mallikarjunaiah v. Nanjaiah, (2019) 15 SCC 756 (two-Judge Bench); Uttam Chand.

Such clear and continuous possession must be accompanied by animus possidendi- the intention to possess or in other words, the intention to dispossess the rightful owner; in Karnataka Board of Wakf it was observed-

"…Physical fact of exclusive possession and the animus possidendi to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of this nature…"

(a) The case of Annakili v. A. Vedanayagam, (2007) 14 SCC 308 (two-Judge Bench) also shed light on this principle as under -

"24. Claim by adverse possession has two elements: (1) the possession of the defendant should become adverse to the plaintiff; and (2) the defendant must continue to remain in possession for a period of 12 years thereafter. Animus possidendi as is well known is a requisite ingredient of adverse possession. It is now a well-settled principle of law that mere possession of the land would not ripen into possessory title for the said purpose. Possessor must have animus possidendi and hold the land adverse to the title of the true owner.

For the said purpose, not only animus possidendi must be shown to exist, but the same must be shown to exist at the commencement of the possession…"

(b) In Des Raj and Others v. Bhagat Ram, (2007) 9 SCC 641 (two- Judge Bench) this Court observed -

"21. In a case of this nature, where long and continuous possession of the plaintiff-respondent stands admitted, the only question which arose for consideration by the courts below was as to whether the plaintiff had been in possession of the properties in hostile declaration of his title vis-à-vis his co- owners and they were in know thereof."

(c) This court in L.N. Aswathama v. P. Prakash, (2009) 13 SCC 229 (two-Judge Bench) had observed that permissive possession or possession in the absence of Animus possidendi would not constitute the claim of adverse possession.

(d) It was also held in the case of Chatti Konati Rao v. Palle Venkata Subba Rao, (2010) 14 SCC 316 (two-Judge Bench) - "15. Animus possidendi as is well known is a requisite ingredient of adverse possession. Mere possession does not ripen into possessory title until the possessor holds the property adverse to the title of the true owner for the said purpose. The person who claims adverse possession is required to establish the date on which he came in possession, nature of possession, the factum of possession, knowledge to the true owner, duration of possession and that possession was open and undisturbed…"

Referring to the above judgement Subha Rao (supra) this Court has reiterated the cardinality of the presence of Animus possidendi in a case concerning adverse possession in Brijesh Kumar & Anr. v. Shardabai (dead) by LRs., 22 (2019) 9 SCC 369 (two- Judge Bench).

Such a plea is available not only as a defence when title is questioned, but is also available as a claim to a person who has perfected his title;

The prior position of law as set out in Gurudwara Sahab v. Gram Panchayat Village Sirthala, (2014) 1 SCC 669 (two-Judge Bench) was that the plea of adverse possession can be used only as a shield by the defendant and not as a sword by the plaintiff. However, the position was changed later by the decision of this Hon'ble Court in the case of Ravinder Kaur (supra) had held that - "…Title or interest is acquired it can be used as a sword by the plaintiff as well as a shield by the defendant within ken of Article 65 of the Act and any person who has perfected title by way of adverse possession, can file a suit for restoration of possession in case of dispossession…"

The position in Ravinder Kaur was followed in Narasamma & Ors. v. A. Krishnappa (Dead) Through LRs., AIR 2020 SC 4178 (three-Judge Bench).

Mere passing of an ejectment order does not cause brake in possession neither causes his dispossession;

In Balkrishna v. Satyaprakash, (2001) 2 SCC 498 (two-Judge Bench) this Court held :

"…Mere passing of an order of ejectment against a person claiming to be in adverse possession neither causes his dispossession nor discontinuation of his possession which alone breaks the continuity of possession."

21.7 When the land subject of proceedings wherein adverse possession has been claimed, belongs to the Government, the Court is duty-bound to act with greater seriousness, effectiveness, care and circumspection as it may lead to Destruction of a right/title of the State to immovable property.

In State of Rajasthan v. Harphool Singh, (2000) 5 SCC 652 (two-Judge Bench) it was held :

"12. So far as the question of perfection of title by adverse possession and that too in respect of public property is concerned, the question requires to be considered more seriously and effectively for the reason that it ultimately involves destruction of right/title of the State to immovable property and conferring upon a third-party encroacher title where he had none." Further, in Mandal Revenue Officer v. Goundla Venkaiah, (2010) 2 SCC 461 (two-Judge Bench) it was stated :

"…It is our considered view that where an encroacher, illegal occupant or land grabber of public property raises a plea that he has perfected title by adverse possession, the court is duty-bound to act with greater seriousness, care and circumspection. Any laxity in this regard may result in destruction of right/title of the State to immovable property and give an upper hand to the encroachers, unauthorised occupants or land grabbers." 21.8 A plea of adverse possession must be pleaded with proper particulars, such as, when the possession became adverse. The court is not to travel beyond pleading to give any relief, in other words, the plea must stand on its own two feet.

This Court has held this in the case of V. Rajeshwari v. T.C. Saravanabava, (2004) 1 SCC 551 (two-Judge Bench) :

"…A plea not properly raised in the pleadings or in issues at the stage of the trial, would not be permitted to be raised for the first time at the stage of appeal…" It has also been held in the case of State of Uttrakhand v. Mandir Sri Laxman Sidh Maharaj, (2017) 9 SCC 579 (two-Judge Bench) :

"…The courts below also should have seen that courts can grant only that relief which is claimed by the plaintiff in the plaint and such relief can be granted only on the pleadings but not beyond it. In other words, courts cannot travel beyond the pleadings for granting any relief…" Mandir Sri Laxman Sidh Maharaj (supra) was relied on in Dharampal (Dead) v. Punjab Wakf Board, (2018) 11 SCC 449 (two-Judge Bench) on the same principle.

Claim of independent title and adverse possession at the same time amount to contradictory pleas. The case of Annasaheb Bapusaheb Patil v. Balwant, (1995) 2 SCC 543 (two-Judge Bench) elaborated this principle as :

"15. Where possession can be referred to a lawful title, it will not be considered to be adverse. The reason being that a person whose possession can be referred to a lawful title will not be permitted to show that his possession was hostile to another's title. One who holds possession on behalf of another, does not by mere denial of that other's title make his possession adverse so as to give himself the benefit of the statute of limitation.

Therefore, a person who enters into possession having a lawful title, cannot divest another of that title by pretending that he had no title at all." This principle was upheld in the case of Mohan Lal v. Mirza Abdul Gaffar31 (two-Judge Bench) –

"4. As regards the first plea, it is inconsistent with the second plea. Having come into possession under the agreement, he must disclaim his right thereunder and plead and prove assertion of his independent hostile adverse possession to the knowledge of the transferor or his successor in title or interest and that the latter had acquiesced to his illegal possession during the entire period of 12 years, i.e., up to

completing the period of his title by prescription nec vi, nec clam, nec precario. Since the appellant's claim is founded on Section 53-A, it goes without saying that he admits by implication that he came into possession of the land lawfully under the agreement and continued to remain in possession till date of the suit. Thereby the plea of adverse possession is not available to the appellant." The Court in Uttam Chand (supra) has reiterated this principle of adverse possession.

Burden of proof rests on the person claiming adverse possession.

This Court, in P.T. Munichikkanna Reddy v. Revamma, (2007) 6 SCC 59 (two-Judge Bench), it held that initially the burden lied on the landowner to prove his title and title. Thereafter it shifts on the other party to prove title by adverse possession. It was observed: –

"34. The law in this behalf has undergone a change. In terms of Articles 142 and 144 of the Limitation Act, 1908, the burden of proof was on the plaintiff to show within 12 years from the date of institution of the suit that he had title and possession of the land, whereas in terms of Articles 64 and 65 of the Limitation Act, 1963, the legal position has underwent complete change insofar as the onus is concerned : once a party proves its title, the onus of proof would be on the other party to prove claims of title by adverse possession…." The Court reiterated this principle in the case of Janata Dal Party v. Indian National Congress, (2014) 16 SCC 731 (two-Judge Bench):

"…the entire burden of proving that the possession is adverse to that of the plaintiffs, is on the defendant…" 21.11 The State cannot claim the land of its citizens by way of adverse possession as it is a welfare State.

[State of Haryana v. Mukesh Kumar, (2011) 10 SCC 404 (two-Judge Bench)]

In Harphool Singh, this Court observed :

"12. So far as the question of perfection of title by adverse possession and that too in respect of public property is concerned, the question requires to be considered more seriously and effectively for the reason that it ultimately involves destruction of right/title of the State to immovable property and conferring upon a third-party encroacher title where he had none. The decision in P. Lakshmi Reddy v. L. Lakshmi Reddy [AIR 1957 SC 314 : 1957 SCR 195] adverted to the ordinary classical requirement — that it should be nec vi, nec clam, nec precario— that is the possession required must be adequate in continuity, in publicity and in extent to show that it is possession adverse to the competitor. It was also observed therein that whatever may be the animus or intention of a person wanting to acquire title by adverse possession, his adverse possession cannot commence until he obtains actual possession with the required animus. In the decision reported in Secy. of State for India in Council v. Debendra Lal Khan [(1933) 61 IA 78 : 1934 All LJ 153 (PC)] strongly relied on for the respondents, the Court laid down further that it is sufficient that the possession be overt and without any attempt at concealment so that the person against whom time is running, ought if he exercises due vigilance, to be aware of what is happening and if the rights of the Crown have been openly usurped it cannot be heard to plead that the fact was not brought to its notice. In Annasaheb Bapusaheb Patil v. Balwant [(1995) 2 SCC 543 : AIR 1995 SC 895] it was observed that a claim of adverse possession being a hostile assertion involving expressly or impliedly in denial of title of the true owner, the burden is always on the person who

asserts such a claim to prove by clear and unequivocal evidence that his possession was hostile to the real owner and in deciding such claim, the courts must have regard to the animus of the person doing those acts." **[Government of Kerala vs. Joseph, AIR 2023 SC 3988]**

Marine Insurance Act

Maritime and Admiralty Law - Maritime/Marine insurance- Marine Insurance Act, 1963 - Ss. 35, 37, 41(5) and 55 - Waiver and acquiescence - Non-establishment of - Mere formal issuance of marine insurance policy - Whether amounted to "acceptance"/waiver of vessel's classification or lack thereof - Held, mere knowledge on the part of the insurer that there was a breach of warranty would not amount to a waiver in the absence of an express representation to that effect - In the facts of the present case, held, there was no waiver on the part of the respondent insurer.

Mere knowledge on the part of the insurer that there was a breach of warranty would not amount to a waiver in the absence of an express representation to that effect.

The appellant has not established that the defects were brought to the notice of the Classification Society and thereafter the certificate had been obtained. In such a situation when it is subsequently noticed that these defects were not intimated and the warranty class had not been complied, the classification certificate would automatically become invalid. In fact, in the instant case, the fact that the replacement of the engine crankshaft had not been made had come to the knowledge of the insurer only when the final surveyor report was submitted on 19-2-2007 after the policy had already been issued on 9-11-2006 and the accident had occurred on 3-12-2006. As such there is no waiver on the part of the respondent insurer in this case. **(Hind Offshore Private Limited v. Iffco-Tokio General Insurance Company Limited, (2023) 9 SCC 407)**

Medical Termination of Pregnancy Act

Art. 21 - Right to reproductive autonomy: Autonomy to choose one's course of life - Right to dignity inherent in every individual merely by being a human being. Recognizes every woman's right to make reproductive choice to terminate unwanted pregnancy, without undue interference of State. Forcing a woman to continue with unwanted pregnancy violative of her right to dignity.

The Hon'ble Supreme Court observed that the appellant averred that she is the eldest amongst five siblings and that her parents are agriculturists. The appellant is an unmarried woman aged about twenty-five years, and had become pregnant as a result of a consensual relationship. The appellant wished to terminate her pregnancy as "her partner had refused to marry her at the last stage". The appellant while carrying a single intrauterine pregnancy corresponding to a gestational age of twenty-two weeks filed a writ petition before the High Court seeking permission to terminate her pregnancy in terms of Section 3(2)(b) of the Medical Termination of Pregnancy Act, 1971 and Rule 3-B(c) of the Medical Termination of Pregnancy

Rules, 2003 (as amended on 12-10-2021). She stated that she did not want to carry the pregnancy to term since she was wary of the "social stigma and harassment" pertaining to unmarried single parents, especially women.

The High Court dismissed the writ petition and the criminal miscellaneous petition observing that Section 3(2)(b) of the MTP Act was inapplicable to the facts of the present case since the appellant, being an unmarried woman, whose pregnancy arose out of a consensual relationship, was not covered by any of the clauses of Rule 3-B of the MTP Rules. The order of the High Court gave rise to the present appeal. Notice was issued on the petition for special leave to appeal on 21-7-2022. The Supreme Court, by its interim order dated 21-7-2022 modified the order of the High Court and permitted the appellant to terminate her pregnancy.

Purposive Interpretation

The question that arises is whether Rule 3-B includes unmarried women, single women, or women without a partner under its ambit. The answer may be discerned by imparting a purposive interpretation to Rule 3-B.

The cardinal principle of the construction of statutes is to identify the intention of the legislature and the true legal meaning of the enactment. The intention of the legislature is derived by considering the meaning of the words used in the statute, with a view to understanding the purpose or object of the enactment, the mischief, and its corresponding remedy that the enactment is designed to actualize. Ordinarily, the language used by the legislature is indicative of legislative intent. But when the words are capable of bearing two or more constructions, they should be construed in the light of the object and purpose of the enactment. The purposive construction of the provision must be "illumined by the goal, though guided by the word". A statute must be read in its context when attempting to interpret its purpose. Context includes reading the statute as a whole, referring to the previous state of law, the general scope of the statute, surrounding circumstances and the mischief that it was intended to remedy. However, a court's power to purposively interpret a statutory text does not imply that a Judge can substitute legislative intent with their own individual notions. The alternative construction propounded by the Judge must be within the ambit of the statute and should help carry out the purpose and object of the Act in question.

Object and purpose of the MTP Act

The purpose or object of an enactment is the mischief at which the enactment is directed and the remedy which the lawmakers have devised to address the mischief. The whole tenor of the MTP Act is to provide access to safe and legal medical abortions to women. The MTP Act is primarily a beneficial legislation, meant to enable women to access services of medical termination of pregnancies provided by an RMP. Being a beneficial legislation, the provisions of the MTP Rules and the MTP Act must be imbued with a purposive construction. The interpretation accorded to the provisions of the MTP Act and the MTP Rules must be in consonance with the legislative purpose. In view of the serious social malady due to

illegal and unsafe abortions, the MTP Amendment Act, 2021 intended to improve the availability and quality of legal abortion care for women by liberalizing certain restrictive features of the unamended MTP Act and by increasing the legal limit of the gestational period within which abortions could be conducted.

The expression "mental health" has a wide connotation and means much more than the absence of a mental impairment or a mental illness. The determination of the status of one's mental health is located in one's self and experiences within one's environment and social context.

An RMP's decision to provide medical termination of a pregnancy is also influenced by social stigma surrounding unmarried women and pre-marital sex, gender stereotypes about women taking on the mantle of motherhood, and the role of women in society. Due to a widespread misconception that termination of pregnancies of unmarried women is illegal, a woman and her partner may resort to availing of abortions by unlicensed medical practitioners in facilities not adequately equipped for such medical procedures, leading to a heightened risk of complications and maternal mortality. The social stigma that women face for engaging in pre-marital sexual relations prevents them from realizing their right to reproductive health in a variety of ways. They have insufficient or no access to knowledge about their own bodies due to a lack of sexual health education, their access to contraceptives is limited, and they are frequently unable to approach healthcare providers and consult them with respect to their reproductive health. Consequently, unmarried and single women face additional obstacles. **(X v. Principal Secretary, Health and Family Welfare Department, Government of NCT of Delhi and another, (2023) 9 SCC 433)**

Motor Vehicles Act

Secs. 168, 149—Compensation—Right of recovery of insurance company—Denial of—Challenge against

Useful reference in this regard may be made to Skandia Insurance Co. Ltd. vs. Kokilaben Chandravadan and others1, wherein this Court, in the context of Section 96(2)(b)(ii) of the Motor Vehicles Act, 1939, which is in pari materia with Section 149(2)(a)(ii) of the Act of 1988, observed as under: -

'14. Section 96(2)(b)(ii) extends immunity to the insurance company if a breach is committed of the condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified from holding or obtaining a driving licence during the period of disqualification. The expression 'breach' is of great significance. The dictionary meaning of 'breach' is 'infringement or violation of a promise or obligation' (see Collins English Dictionary).

It is therefore abundantly clear that the insurer will have to establish that the insured is guilty of an infringement or violation of a promise that a person who is duly licensed will have to be in charge of the vehicle. The very concept of infringement or violation of the promise that the expression 'breach' carries within

itself induces an inference that the violation or infringement on the part of the promisor must be a wilful infringement or violation.

If the insured is not at all at fault and has not done anything he should not have done or is not amiss in any respect how can it be conscientiously posited that he has committed a breach? It is only when the insured himself places the vehicle in charge of a person who does not hold a driving licence, that it can be said that he is 'guilty' of the breach of the promise that the vehicle will be driven by a licensed Driver.

It must be established by the insurance company that the breach was on the part of the insured and that it was the insured who was guilty of violating the promise or infringement of the contract. Unless the insured is at fault and is guilty of a breach the insurer cannot escape from the obligation to indemnify the insured and successfully contend that he is exonerated having regard to the fact that the promisor (the insured) committed a breach of his promise.

Not when some mishap occurs by some mischance. When the insured has done everything within his power inasmuch as he has engaged a licensed Driver and has placed the vehicle in charge of a licensed Driver, with the express or implied mandate to drive himself, it cannot be said that the insured is guilty of any breach.'

The correctness of the aforesaid decision was considered by a 3-Judge Bench of this Court in Sohan Lal Passi vs. P. Sesh Reddy and others2 and it was duly approved, with the following observations: -

'In other words, once there has been a contravention of the condition prescribed in sub-section (2)(b)(ii) of Section 96, the person insured shall not be entitled to the benefit of sub-section (1) of Section 96. According to us, Section 96(2)(b)(ii) should not be interpreted in a technical manner. Sub-section (2) of Section 96 only enables the insurance company to defend itself in respect of the liability to pay compensation on any of the grounds mentioned in sub-section (2) including that there has been a contravention of the condition excluding the vehicle being driven by any person who is not duly licensed.

This bar on the face of it operates on the person insured. If the person who has got the vehicle insured has allowed the vehicle to be driven by a person who is not duly licensed then only that clause shall be attracted. In a case where the person who has got insured the vehicle with the insurance company, has appointed a duly licensed Driver and if the accident takes place when the vehicle is being driven by a person not duly licensed on the basis of the authority of the Driver duly authorised to drive the vehicle whether the insurance company in that event shall be absolved from its liability?

The expression 'breach' occurring in Section 96(2)(b) means infringement or violation of a promise or obligation. As such the insurance company will have to establish that the insured was guilty of an infringement or violation of a promise. The insurer has also to satisfy the Tribunal or the court that such violation or infringement on the part of the insured was wilful.

If the insured has taken all precautions by appointing a duly licensed Driver to drive the vehicle in question and it has not been established that it was the insured who allowed the vehicle to be driven by a person not duly licensed, then the

insurance company cannot repudiate its statutory liability under sub-section (1) of Section 96.'

Thereafter, in National Insurance Co. Ltd. vs. Swaran Singh and others3, a 3-Judge Bench of this Court dealt with the interpretation of Section 149 of the Act of 1988. The cases before the Bench involved, amongst others, instances where the driving licence produced by the driver or owner of the vehicle was a fake one. The Bench noted that Section 149(2)(a) opened with the words: 'that there has been a breach of a specified condition of the policy', which would imply that the insurer's defence of the action would depend upon the terms of the policy.

It was observed that an insurance company which wished to avoid its liability is not only required to show that the conditions laid down in Section 149 (2)(a) or (b) are satisfied but is further required to establish that there has been a breach on the part of the insured. Such a breach on the part of the insured must be established by the insurer to show that the insured used or caused or permitted to be used the insured vehicle in breach of the provisions. The Bench went on to state that where the insurer, relying upon the violation of law by the assured, takes exception to pay the assured or a third party, it must prove a willful violation of the law by the assured.

Noting that the proposition of law is no longer res integra that the person who alleges breach must prove the same, the Bench observed that an insurance company would be required to establish the said breach by cogent evidence and in the event an insurance company fails to prove that there has been breach of the conditions of the policy on the part of the insured, such an insurance company cannot be absolved of its liability.

Further, in the context of cases where the driver's licence was found to be fake, the Bench observed that the question would be whether the insurer could prove that the owner was guilty of willful breach of the conditions of the insurance policy. It was pointed out that the defence to the effect that the licence held by the person driving the vehicle was a fake one would be available to the insurance company but whether, despite the same, the plea of default on the part of the owner has been established or not would be a question which would have to be determined in each case.

The earlier decision in United India Insurance Co. Ltd. vs. Lehru and others4 was considered and the Bench observed that the ratio therein must not be read to mean that an owner of a vehicle can, under no circumstances, have any duty to make an inquiry with regard to the genuineness of the driving licence and the same would again be a question which would arise for consideration in each individual case.

The argument that the decision in Lehru (supra) meant that, for all intent and purport, the right of the insurer to raise a defence that the licence was fake was taken away was, however, rejected as not being correct and it was held that such a defence can certainly be raised, but it will be for the insurer to prove that the insured did not take adequate care and caution to verify the genuineness or otherwise of the licence held by the driver. The findings summed up by the Bench, to the extent presently relevant, are as under:

'(iii) The breach of policy condition e.g. disqualification of the driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of Section

149, has to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by a duly licensed driver or one who was not disqualified to drive at the relevant time.

(iv) Insurance companies, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish "breach" on the part of the owner of the vehicle; the burden of proof wherefor would be on them.

(v) The court cannot lay down any criteria as to how the said burden would be discharged, inasmuch as the same would depend upon the facts and circumstances of each case.

(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards the insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insurer under Section 149(2) of the Act.

(vii) The question, as to whether the owner has taken reasonable care to find out as to whether the driving licence produced by the driver (a fake one or otherwise), does not fulfil the requirements of law or not will have to be determined in each case.'

More recently, in Ram Chandra Singh vs. Rajaram and others5, the issue before this Court was whether an insurance company could be absolved of liability on the ground that the insured vehicle was being driven by a person who did not have a valid driving licence at the time of the accident. This Court found that no attempt was made to ascertain whether the owner was aware of the fake driving licence possessed by the driver and held that it is only if the owner was aware of the fact that the licence was fake but still permitted such driver to drive the vehicle that the insurer would stand absolved. It was unequivocally held that the mere fact that the driving licence was fake, per se, would not absolve the insurer. **[IFFCO Tokio General Insurance Co. Ltd. vs. Geeta Devi, AIR 2023 SC 5545]**

Narcotic Drugs and Psychotropic Substances Act

Sec. 50—Conditions for search—Phrase "to search any person" occurring in S. 50—Scope—Explained

Ordinarily, it could be said or argued that "to search any person" would mean, to search the articles on the person or body of the per- son to be searched and would normally not include the articles which are not on the body of the person to be

searched. The main object of S. 50 of the NDPS Act is to avoid the allegation of planting something or fabricating evidence by the prosecution or the authorised officer.

The phrase "to search any person" would mean only search of the body or wearing apparels of such person and in that case the procedure which is required to be followed would be the one prescribed under S. 50 of the NDPS Act. In contrast, if search of any building, conveyance or place, including a public place, is to be carried out, then there is no question of following the procedure prescribed under S. 50. However, when a suspected or arrested person is to be searched, then the procedure prescribed under S. 50 comes into operation and the procedure thereunder is required to be followed. **[Ranjan Kumar Chadha vs. State of H.P., AIR 2023 SC 5164]**

Sec. 50—Conditions for search of person—Essential requirements of S.50—Stated

The requirements envisaged by S. 50 can be summarised as follows:-

(i) S. 50 provides both a right as well as an obligation. The person about to be searched has the right to have his search conducted in the presence of a Gazetted Officer or Magistrate if he so desires, and it is the obligation of the police officer to in- form such person of this right before proceeding to search the person of the suspect.

(ii) Where, the person to be searched de- clines to exercise this right, the police officer shall be free to proceed with the search. However, if the suspect declines to exercise his right of being searched before a Gazetted Officer or Magistrate, the empowered officer should take it in writing from the suspect that he would not like to exercise his right of being searched before a Gazetted Officer or Magistrate and he may be searched by the empowered officer.

(iii) Before conducting a search, it must be communicated in clear terms though it need not be in writing and is permissible to convey orally, that the suspect has a right of being searched by a Gazetted Officer or Magistrate.

(iv) While informing the right, only two options of either being searched in presence of a Gazetted Officer or Magistrate must be given, who also must be independent and in no way connected to the raiding party.

(v) In case of multiple persons to be searched, each of them has to be individually communicated of their right, and each must exercise or waive the same in their own capacity. Any joint or common communication of this right would be in violation of S. 50.

(vi) Where the right under S. 50 has been exercised, it is the choice of the police officer to decide whether to take the suspect before a Gazetted Officer or Magistrate but an endeavour should be made to take him before the nearest Magistrate.

(vii) S. 50 is applicable only in case of search of person of the suspect under the provisions of the NDPS Act, and would have no application where a search was conducted under any other statute in respect of any offence.

(viii) Where during a search under any statute other than the NDPS Act, a contra-band under the NDPS Act also happens to be recovered, the provisions relating to the NDPS Act shall forthwith start applying, al- though in such a situation S. 50 may

not be required to be complied for the reason that search had already been conducted.

(ix) The burden is on the prosecution to establish that the obligation imposed by S. 50 was duly complied with before the search was conducted.

(x) Any incriminating contraband, possession of which is punishable under the NDPS Act and recovered in violation of S. 50 would be inadmissible and cannot be relied upon in the trial by the prosecution, however, it will not vitiate the trial in respect of the same Any other article that has been recovered may be relied upon in any other independent proceedings.

This Court ultimately summed up its findings with the following ten conclusions reproduced below:-

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

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

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

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

(4) That there is indeed need to protect society from criminals. The societal intent in safety will suffer if persons who commit crimes are let off because the evidence against them is to be treated as if it does not exist. The answer, therefore, is that the investigating agency must follow the procedure as envisaged by the statute scrupulously and the failure to do so must be viewed by the higher authorities seriously inviting action against the concerned official so that the laxity on the part of the investigating authority is curbed. In every case the end result is important but the means to achieve it must remain above board. The remedy cannot be worse than the disease itself. The legitimacy of judicial process may come under cloud if the court is seen to condone acts of lawlessness conducted by the investigating agency during search operations and may also undermine respect for law and may have the effect of unconscionably compromising the administration of justice. That cannot be permitted. An accused is entitled to a fair trial. A conviction resulting from an unfair trial is contrary to our concept of justice. The use of evidence collected in breach of the safeguards provided by Section 50 at the trial, would render the trial unfair.

(5) That whether or not the safeguards provided in Section 50 have been duly observed would have to be determined by the Court on the basis of evidence led at the trial.

Finding on that issue, one way or the other, would be relevant for recording an order of conviction or acquittal. Without giving an opportunity to the prosecution to establish, at the trial, that the provisions of Section 50, and particularly the safeguards provided therein were duly complied with, it would not be permissible to cut- short a criminal trial;

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

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

(8) A presumption under Section 54 of the Act can only be raised after the prosecution has established that the accused was found to be in possession of the contraband in a search conducted in accordance with the mandate of Section 50. An illegal search cannot entitle the prosecution to raise a presumption under Section 54 of the Act.

(9) That the judgment in Pooran Mal v. Director of Inspection (Investigation), (1974) 1 SCC 345, cannot be understood to have laid down that an illicit article seized during a search of a person, on prior information, conducted in violation of the provisions of Section 50 of the Act, can by itself be used as evidence of unlawful possession of the illicit article on the person from whom the contraband has been seized during the illegal search;

(10) That the judgment in Ali Mustaffa's case correctly interprets and distinguishes the judgment in Pooran Mal's case and the broad observations made in State of H.P. v. Pirthi Chand, (1996) 2 SCC 37, and State of Punjab v. Jasbir Singh, (1996) 1 SCC 288, case are not in tune with the correct exposition of law as laid down in Pooran Mal's case."

Whether Section 50 is applicable while searching a bag of the accused?

Baldev Singh (supra), discussed above, gave rise to a debate as to what would be included within "search of a person" as stipulated under Section 50. This Court started interpreting the expression giving a literal or strict interpretation of the word "person", thereby distinguishing the search of a person from that of a bag or vehicle or premises. As a result, even if there was no compliance with Section 50 while searching the accused person's bag, the evidence of recovery would still be deemed admissible. However, over a period of time, this Court started reading the word "person" in a slightly broader sense so as to mandate that Section 50 be complied with even while conducting a search of anything that is inextricably linked

to the accused. As a result, a bag which was being carried by the accused was considered to be inextricably linked to the accused, and therefore, any recovery of a contraband from such a bag without complying with Section 50 would be inadmissible. Section 50 does not cover a bag being carried by the accused

In Kalema Tumba v. State of Maharashtra reported in (1999) 8 SCC 257, 2 kgs of heroin was recovered from a bag belonging to the accused. It was argued that as the requirements under Section 50 were not complied with, the contraband recovered in the course of the search would be inadmissible. This Court, while rejecting such argument and relying upon Baldev Singh (supra), held that Section 50 would not apply to the search of a bag belonging to the accused. The relevant paragraph is as under:-

"4. … As rightly pointed out by the High Court search of baggage of a person is not the same thing as search of the person himself. In State of Punjab v. Baldev Singh this Court has held that the requirement of informing the accused about his right under Section 50 comes into existence only when person of the accused is to be searched. The decision of this Court in State of Punjab v. Jasbir Singh, wherein it was held that though poppy straw was recovered from the bags of the accused, yet he was required to be informed about his right to be searched in presence of a Gazetted Officer or a Magistrate, now stands overruled by the decision in Baldev Singh's case (supra). If a person is carrying a bag or some other article with him and narcotic drug or the psychotropic substance is found from it, it cannot be said that it was found from his "person". In this case heroin was found from a bag belonging to the appellant and not from his person and therefore it was not necessary to make an offer for search in presence of a Gazetted Officer or a Magistrate." **[Ranjan Kumar Chadha vs. State of H.P., AIR 2023 SC 5164]**

Secs. 21(c), 8, 31A—Evidence Act, 1872, Sec. 25—Conviction under Ss. 13 and 22—Solely on the basis of confessional statement— Any confessional statement made by an accused to an officer invested with powers under S. 53 of NDPS Act is barred—Because such officers are "police officers" within meaning of S. 25 of Evidence Act

158.1. That the officers who are invested with powers under Section 53 of the NDPS Act are "police officers" within the meaning of Section 25 of the Evidence Act, as a result of which any confessional statement made to them would be barred under the provisions of Section 25 of the Evidence Act, and cannot be taken into account in order to convict an accused under the NDPS Act.

158.2. That a statement recorded under Section 67 of the NDPS Act cannot be used as a confessional statement in the trial of an offence under the NDPS Act."

16. Thus, it can be seen that the initial burden is cast on the prosecution to establish the essential factors on which its case is premised. After the prosecution discharges the said burden, the onus shifts to the accused to prove his innocence. However, the standard of proof required for the accused to prove his innocence, is not pegged as high as expected of the prosecution. In the words of Justice Sinha, who speaking for the Bench in Noor Aga38 (supra), had observed that:

"58. ……. Whereas the standard of proof required to prove the guilt of the accused on the prosecution is "beyond all reasonable doubt" but it is "preponderance of probability" on the accused. If the prosecution fails to prove the foundational facts so as to attract the rigours of Section 35 of the Act, the actus reus which is possession of contraband by the accused cannot be said to have been established."

The essence of the discussion in the captioned case was that for attracting the provisions of Section 54 of the NDPS Act, it is essential for the prosecution to establish the element of possession of contraband by the accused for the burden to shift to the accused to prove his innocence. This aspect of possession of the contraband has to be proved by the prosecution beyond reasonable doubt. **[Balwinder Singh (Binda) vs. Narcotics Control Bureau, AIR 2023 SC 4684]**

Negotiable Instruments Act

Negotiable Instruments Act, 1881 Ss. 141 and 138 and Ss. 7 to 10, 14, 31 and 38 to 41 IBC — Criminal proceedings under NI Act against Director/signatory for dishonour of cheque, during the pendency of proceedings under IBC - Held (per curiam), permissible.

The scope and nature of proceedings under the two Acts are quite different and would not intercede each other. In fact, a bare reading of Section 14 IBC would make it clear that the nature of proceedings which have to be kept in abeyance do not include criminal proceedings, which is the nature of proceedings under Section 138 NI Act.

Section 138 NI Act are not recovery proceedings. They are penal in character. A person may face imprisonment or fine or both under Section 138 NI Act. It is not a recovery of the amount with interest as debt recovery proceedings would be. They are not akin to suit proceedings.

The criminal liability and the fines are built on the principle of not honouring a negotiable instrument, which affects trade. This is apart from the principle of financial liability per se. To say that under a scheme which may be approved, a part amount will be recovered or if there is no scheme a person may stand in a queue to recover debt would absolve the consequences under Section 138 NI Act, is unacceptable. **(Ajay Kumar Radheyshyam Goenka v. Tourism Finance Corporation of India Limited, (2023) 10 SCC 545)**

Secs. 138 and 141-Dismissal of application for quashing complaint- Appeal against-

The appellants have been described as the Directors of the accused No.1-company. The cheques were signed by accused No.2 who is the Managing Director of the accused No.1 Company. The appellants are neither the signatories to the cheques nor are whole time Directors. In the present case, the statutory notice was admittedly not served to the accused. There is non-compliance on the part of the second respondent-complainant with the requirements of sub-section (1) of Section 141 of the NI Act-

The allegation in paragraph 1 of the complaints is that the appellants are managing the company and are busy with day-to-day affairs of the company. The requirement of sub-section (1) of section 141 of the NI Act is something different and higher merely because somebody is managing the affairs of the company, per se, he does not become in charge of the conduct of the business of the company or the person responsible for the company for the conduct of the business of the company. For example, in a given case, a manager of a company may be managing the business of the company only on the ground that he is managing the business of the company, he cannot be roped in based on sub-section (1) of Section 141. Only by saying that a person was in charge of the company at the time when the offence was committed is not sufficient to attract sub-section (1) of Section 141 of the NI Act. Appeals are allowed. **[Ashok Shewakaramani vs. State of U.P., 2023 (125) ACC 258 (Supreme Court)]**

Section 138 NI Act- Quashing of criminal proceedings under- Appeal against- Limitation Act, 1963, Article 34-

Due to their acquaintance respondent No. 2 borrowed a sum of 20,00,000/- from the appellant-complainant. In order to assure the re-payment, respondent No. 2 executed a promissory note on 25.07.2012, it was agreed that the amount was to be repaid in full and final by December, 2016. Respondent No. 2 issued a cheque for a sum of 10,00,000/- towards partial discharge of the debt. The cheque was returned by the Bank on 15.05.2017 due to insufficient funds to honour the cheque. The limitation would be as provided under Article 34 to the Schedule in the Limitation Act, 1963. In respect of a promissory note payable at a fixed time, the period of limitation being three years would begin to run when the fixed time expires. Therefore, in the instant case, the time would begin to run from the month of December, 2016 and the period of limitation would expire at the end of three years thereto i.e. during December, 2019. In that fight, the cheque issued for 10,00,000/- which is the subject-matter is dated 28.04.2017 which is well within the period of limitation. The complaint was filed in the court of the Chief Metropolitan Magistrate on 11.07.2017, so is the case in the analogous complaints. Therefore, in the instant case not only the amount was a legally recoverable debt which is evident on the face of it, the complaint was also filed within time. Held, there was no occasion whatsoever in the instant case to exercise the power under Section 482 to quash the complaint. The complaints are restored to the file of the Chief Metropolitan Magistrate. Appeal is allowed. **[K. Hymavathi vs. State of U.P., 2023 (125) ACC 617 (Supreme Court)]**

Sec. 139— Legally enforceable debt—Presumption of—Shifting of Onus of Proof-Explained.

Section 139 of the Negotiable Instruments Act, 1881, establishes a presumption that the holder of a cheque received it for the dis- charge of whole or part of any debt or liability. This presumption is central to a Section 138 conviction. The Court presumes the cheque was issued to discharge a legally enforceable

debt/liability in two situations: when the drawer admits cheque issuance or when the complainant demonstrates the cheque was issued in their favor.

Once the complainant establishes that the accused issued the cheque to settle a debt, the presumption under Section 139 transfers the evidential burden to the accused. To rebut the presumption, the accused need not prove the negative - that the instrument was not issued for debt/liability. Instead, they can make a probable defense contesting the existence of a legally enforceable debt/liability. If the accused provides evidence that, on a preponderance of probabilities, no debt/liability exists as stated in the complaint, the burden shifts back to the complainant, who must prove the debt/liability's existence as a matter of fact. Failure to do so leads to the dismissal of the complaint, and the presumption under Section 139 no longer applies. Subsequently, the Court considers both parties' evidence, and the burden of proof becomes less significant.

In Gimpex Private Limited vs. Manoj Goel, (2022) 11 SCC 705, this Court has unpacked the ingredients forming the basis of the offence under Section 138 of the NI Act in the following structure:

(1) The drawing of a cheque by person on do account maintained by him with the banker for the payment of any amount of money to another from that account;

(i) The cheque being drawn for the discharge in whole or in part of any debt or other liability;

(iii) Presentation of the cheque to the bank arranged to be paid from that account,

(iv) The return of the cheque by the drawee bank as unpaid either because the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount

(v) A notice by the payee or the holder in due course making a demand for the payment of the amount to the drawer of the cheque within 30 days of the receipt of information from the bank in regard to the return of the cheque; and

(vi) The drawer of the cheque failing to make payment of the amount of money to the payee or the holder in due course within 15 days of the receipt of the notice.

The Court will necessarily presume that the cheque had been issued towards discharge of a legally enforceable debt/liability in two circumstances. Firstly, when the drawer of the cheque admits issuance/execution of the cheque and secondly, in the event where the complainant proves that cheque was issued/executed in his favour by the drawer. The circumstances set out above form the fact(s) which bring about the activation of the presumptive clause. [Bharat Barrel Vs. Amin Chand] [(1999) 3 SCC 35]

Recently, this Court has gone to the extent of holding that presumption takes effect even in a situation where the accused contends that 'a blank cheque leaf was voluntarily signed and handed over by him to the complainant. [Bir Singh v. Mukesh Kumar11]. Therefore, mere admission of the drawer's signature, without admitting the execution of the entire contents in the cheque, is now sufficient to trigger the presumption.

As soon as the complainant discharges the burden to prove that the instrument, say a cheque, was issued by the accused for discharge of debt, the presumptive device under Section 139 of the Act helps shifting the burden on the accused. The effect of the presumption, in that sense, is to transfer the evidential burden on the accused of proving that the cheque was not received by the Bank towards the discharge of any liability. Until this evidential burden is discharged by the accused, the presumed fact will have to be taken to be true, without expecting the complainant to do anything further.

The standard of proof to discharge this evidential burden is not as heavy as that usually seen in situations where the prosecution is required to prove the guilt of an accused. The accused is not expected to prove the non-existence of the presumed fact beyond reasonable doubt. The accused must meet the standard of 'preponderance of probabilities', similar to a defendant in a civil proceeding. [Rangappa vs. Mohan (AIR 2010 SC 1898)]

In order to rebut the presumption and prove to the contrary, it is open to the accused to raise a probable defence wherein the existence of a legally enforceable debt or liability can be contested. The words 'until the contrary is proved' occurring in Section 139 do not mean that accused must necessarily prove the negative that the instrument is not issued in discharge of any debt/liability but the accused has the option to ask the Court to consider the non-existence of debt/liability so probable that a prudent man ought, under the circumstances of the case, to act upon the supposition that debt/liability did not exist. [Basalingappa Vs. Mudibasappa (AIR 2019 SC 1983) See also Kumar Exports Vs. Sharma Carpets (2009) 2 SCC 513] **[Rajesh Jain vs. Ajay Singh, AIR 2023 SCC 5018]**

Protection of Children from Sexual Offences Act

The enactment and bringing into force of the Protection of Children from Sexual Offences Act, 2012 was not merely in furtherance of this country's commitment to international instruments, but its resolve to and attempt at creating a world as secure and as free from fear, for the most innocent and vulnerable section of its citizens i.e. children and young adults. Behaviour physical, verbal, and non-verbal, ranging from what discomfits a child to as horrifying as rape and physical sexual abuse have been criminalized. Special mechanisms to provide access to the justice delivery system, and ensure speedy justice, have been devised. Yet, a society's commitment to such a cause does not cease by mere enactment of any law, but its willingness, and those governing and administering it, to create and ensure effective overall frameworks which support and strengthen its institutions.

From the point of registering an FIR under the POCSO Act, the victim and their family are required to interact with the police machinery, medical officers and hospitals, the Magistrate, Special Court and/or Juvenile Justice Board, the Child Welfare Committee concerned, and other stakeholders which in itself can be daunting and overwhelming (over and above the already traumatic experience of the crime itself), often dissuading them from pursuing the case altogether. Noticing the need for support at various stages, the role of a "support person" was institutionalized in the POCSO Rules, 2020, to fill this lacuna.

In crimes against children, it is not only the initiating horror or trauma that is deeply scarring; that is aggravated by the lack of support and handholding in the days that follow. In such crimes, true justice is achieved not merely by nabbing the culprit and bringing him to justice, or the severity of punishment meted out, but the support, care, and security to the victim (or vulnerable witness), as provided by the State and all its authorities in assuring a painless, as less an ordeal an experience as is possible, during the entire process of investigation, and trial. The support and care provided through State institutions and offices is vital during this period. Furthermore, justice can be said to have been approximated only when the victims are brought back to society, made to feel secure, their worth and dignity, restored. Without this, justice is an empty phrase, an illusion. The POCSO Rules, 2020, offer an effective framework in this regard, it is now left to the State as the biggest stakeholder in it to ensure its strict implementation in letter and spirit.

The State of Uttar Pradesh was directed to file a report of compliance of these directions on or before 4-10-2023. The Ministry of Women and Child Development, Government of India, is requested to bring this judgment to the notice of the NCPCR, which in turn is directed to file - in furtherance of its obligation under Rule 12(1)(c)-a consolidated status report outlining the progress of all States in framing of guidelines as prescribed under Section 39 of the POCSO Act by 4-10-2023. The Union of India and the NCPCR shall also file an affidavit in this regard before 4-10-2023. A copy of this order shall be marked directly by the Registry to the Union Secretary, Department of Women and Child Development and Chairperson NCPCR, for necessary action. (**Bachpan Bachao Andolan v. Union of India and others, (2023) 9 SCC 133)**

Sec. 6—Prohibition of Child Marriage Act, 2006, Section 10- Conviction and sentences under- Appeal against-

In the victim's statements under section 161 and 164 of the Cr. P.C., she stated that she had known the accused, and both loved each other, for about a year. This was known to her father and grandmother, who objected to their relationship. She also stated that the appellant and his relatives solemnized her marriage with him, and they lived as a married couple. She further clarified that she was never abducted nor married forcibly and that she married the appellant as per her wishes. The prosecution, however, did not provide any evidence to establish that the victim's age was under 18 years. All the facts proved in this case clearly indicate prosecutrix's willingness to accompany the appellant and even celebrate their marriage. Held, the charges against him, under section 6 of the POCSO Act as well as section 10 of the Prohibition of Child Marriage Act cannot be sustained. The appellant is not guilty of the offences he was charged with he is acquitted. Appeal is allowed. **[P. Yuvaprakash vs. State Rep. By Inspector of Police, 2023 (125) ACC 310 (Supreme Court)]**

Protection of Children from Sexual Offences Rules, 2020

Rules 2(1)(f), 3 and Form-A—The role of a 'support person'

A support person is to provide information, emotional and psychological support, and practical assistance which are often crucial to the recovery of the child. This can go a long way in helping them cope with the aftermath of the crime and with the strain of any criminal proceedings. In many ways a support person, acts as guardian ad litem for the child. Form-A re-emphasizes the importance of a support person in each case, and is also indicative of the stages at which such a support person can play a role. The specific Rules read with 'Form-A' confirm that the availability of services of a support person is not merely directory or suggestive but a legal entitlement. Directions issued to the Principal Secretary, Department of Women and Child Welfare, in the State of Uttar Pradesh. **[Bachpan Bachao Andolan vs. Union of India, 2023 (125) ACC 931 (Supreme Court)]**

Registration Act

Registration Act, 1908-S. 49 proviso and S. 17(1-A)-Relative scope and combined effect of Explained.

Held, S. 17(1-A) is an exception to operation of S. 49 proviso Otherwise, S. 49 proviso shall be applicable with respect to the documents other than those referred to in S. 17(1-A) - Thus, unregistered documents affecting immovable property and required by the Registration Act or the Transfer of Property Act, 1882 to be registered, may be received as evidence of a contract in a suit for specific performance, or as evidence of any collateral transaction not required to be effected by registered instrument, however, subject to S. 17(1-A)

Suit for specific performance of agreement to sell - Unregistered agreement to sell, held, can be received in evidence considering fact that suit in question is a suit for specific performance, which falls within first exception carved out in proviso to S. 49 - Though S. 17(1) of the Registration Act has been amended by the Tamil Nadu Act, 2012 by inserting S. 17(1)(g), making agreement to sell/agreement affecting any immovable property compulsorily required to be registered, there is no corresponding amendment to S. 49, more particularly proviso to S. 49 of the Registration Act.

Under the circumstances, as per the proviso to Section 49 of the Registration Act, an unregistered document affecting immovable property and required by the Registration Act or the Transfer of Property Act, 1882 to be registered, may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877, or as evidence of any collateral transaction not required to be effected by registered instrument, however, subject to Section 17(1-A) of the Registration Act. It is not the case on behalf of either of the parties that the document/agreement to sell in question would fall under the category of document as per Section 17(1-A) of the Registration Act. **(R. Hemalatha v. Kashthuri, (2023) 10 SCC 725)**

Service Law

Service Law Judiciary - Recruitment process - Recruitment to higher judicial service in State of Haryana - Notified vacancies - Adjustment against vacancy caused due to resignation of selected candidate - Whether permissible.

Held, vacancy arisen due to resignation of selected candidate can be filled only after issuing proper advertisement and following fresh selection process - Besides, procedure for selection was was initiated 16 yrs back and it would be travesty of justice to keep open selection process for such long time and direct appointment on basis thereof. **(Sudesh Kumar Goyal v. State of Haryana and others, (2023) 10 SCC 54)**

Service Law - Departmental Enquiry - Criminal proceedings - Disciplinary proceedings as well as criminal prosecution initiated for alleged embezzlement Cl. 4 of MoS dt. 10-4-2002 providing that in such case disciplinary proceedings "shall be stayed pending completion of criminal trial" - Applicability - Explained

Held, it may be desirable or in certain circumstances advisable for disciplinary proceedings to be stayed pending criminal proceedings but it is not "matter of course" - Proceedings to be stayed only for reasonable period of time depending on circumstances of each case - Completion of trial to be construed as completion "within reasonable time-frame" and Cl. 4 cannot aid employee, more so for prolongation of trial. **(State Bank of India and others v. P. Zadenga, (2023) 10 SCC 675)**

Specific Relief Act

Specific Relief Act, 1963 - Ss. 38 and 34 - Maintainability of suit for permanent injunction - Declaration of title - When necessary to claim in such suit, and when not - "Cloud over title" - Held, there is no need to claim a declaration of title where there is no cloud of doubt over title.

Property Law - Adverse Possession - Defence of adverse possession, or, suit for perfection of title based - Whether implies admission as to title of person against whom adverse possession is claimed.

In Para 9 of the written statement-cum-counterclaim filed by the respondents, it was specifically admitted that the appellant's father owned the suit property.

Thus, the respondents admitted the title of the appellant's father to the suit property. What was disputed by the respondents was the claim of the appellant that the suit property was allotted to his share under the family settlement dated 25-4-1993. Thus, even if the document of family settlement is ignored, the appellant was one of the co-owners of the suit property after the demise of his father.

Hence, the respondents admitted the ownership of the appellant's father through whom the appellant claims title. Even going by the respondents' case, the appellant was the co-owner of the property, and the respondents admittedly had no title in respect of the suit property. Therefore, there was no dispute about the appellant's title as pleaded in the suit. The issue was whether the plea of adverse possession defeated that title. The burden of proving the plea of adverse possession

was on the respondents. The burden on the appellant was to prove his possession on the date of the suit.

The question is whether it was necessary for the appellant to claim a declaration of title.

A prayer for declaration will be necessary only if the denial of title by the defendant or challenge to the plaintiff's title raises a cloud on the title of the plaintiff to the property. A cloud is said to raise over a person's title, when some apparent defect in his title to a property, or when some prima facie right of a third party over it, is made out or shown. An action for declaration is the remedy to remove the cloud on the title to the property.

On the other hand, where the plaintiff has clear title supported by documents, if a trespasser without any claim to title or an interloper without any apparent title, merely denies the plaintiff's title, it does not amount to raising a cloud over the title of the plaintiff and it will not be necessary for the plaintiff to sue for declaration and a suit for injunction may be sufficient.

Only two questions were required to be dealt with by the High Court in the present case. The first was whether the appellant had established that he was in possession of the suit property on the date of the institution of the suit. If the appellant fails to prove this issue, the suit will be liable to be dismissed. The burden was on the respondents to prove their plea of adverse possession, as there was a counterclaim seeking a declaration of ownership based on adverse possession. The counterclaim is in the nature of a cross-suit.

The High Court has decided only one issue: whether the amendment was barred by limitation. Therefore, in view of the above conclusion, the High Court will have to decide the other issues.

The finding of the High Court that the amendment was barred by limitation, considering the date of the cause of action pleaded and the date of applying for amendment, is liable to be approved. However, it was not the case of the respondents that the suit as originally filed was barred by limitation. Therefore, the first question does not survive. The second question, as framed, is not a substantial question of law.

The High Court was directed to frame additional substantial questions of law by exercising power under the proviso of sub-section (5) of Section 100 CPC. The High Court was directed to decide the regular second appeal in accordance with the law. Except for the issue of amendment of the plaint being barred by limitation, all other issues left open to be decided by the High Court. **(K M Krishna Reddy v. Vinod Reddy and another, (2023) 10 SCC 248)**

Stamp Act

Stamp Acts and Rules - Stamp Act, 1899 Ss. 4 to 6 r/w Ss. 3 and 8 TPA Plant and machinery embedded in/attached to the earth - Exigibility of, to stamp duty when property of Company under liquidation sold to auction-purchaser.

Property that was intended to be conveyed Determination of, from the sale agreement/terms of the auction Intention of vendor to convey, all things, which inter alia stood attached to the earth. Failure to make express reference to plant and

machinery in the recital clause-Conduct of purchaser, namely, its intent to use the plant and machinery for business and not to remove and sell.

The question whether a machinery which is embedded in the earth is movable property or an immovable property, depends upon the facts and circumstances of each case. Primarily, the court will have to take into consideration the intention of the parties when it decided to embed the machinery, whether such embedment was intended to be temporary or permanent.

Section 8 TPA declares that in the absence of an express or implied indication, a transfer of property passes to the transferee all the interests, which the transferor was capable of passing in the property and in the legal incidents thereof. Such incidents includes, inter alia, where the property is land, all things attached to the earth. When the property is machinery attached to the earth, the movable parts thereof also are comprehended in the transfer.

The mere fact that there is no express reference to plant and machinery in the recital clause cannot mean that the interest in the plant and machinery which stood attached to the land, which was scheduled, was not conveyed to the first respondent. The value of, what was actually purchased, has been expressly set out in the Preamble to the sale deed. The value has been reflected as Rs 8.35 crores. The sum of Rs 8.35 crores had been, in unambiguous terms, indicated as the total sale consideration for the asset sold to the first respondent, comprising of land, building, civil works, plant and machinery and current assets, etc. The first respondent has taken out the value of the land, building and civil works, and shown it at Rs 1,01,05,000, and then indicating only the said amount as value. This is apparently to tide over the liability to stamp duty for what was actually, in law, conveyed to the first respondent.

The proviso to Section 27 of the Stamp Act, added by the Andhra Pradesh Amendment Act (8 of 1988), does empower the Officer to inspect the property. make local inquiries in the facts, call for connected records, examine them and satisfy that the provisions of Section 27 are complied with. Section 27, undoubtedly, provides that the consideration, if any, and the other facts and circumstances, affecting the chargeability of any instrument or the amount of duty, must be fully and correctly set forth. Equally, Section 47-A of the Andhra Pradesh Amendment Act (8 of 1988), empowers the Registering Officer to deal with undervalued instruments.

In the nature of the transaction, and what was actually sold by the Official Liquidator, plant and machinery, such as would answer the description of immovable property, must also be found part of the property for the purpose of the stamp duty and other charges as per law.

At the request of the second respondent, the Company Court ordered that the sale deed be executed in favour of its nominee viz. the first respondent. The first respondent, accordingly, became the vendee under the sale deed. It is the first respondent, which is liable in law as vendee to pay the stamp duty.

Another aspect is that the matter may have to go back to consider the actual plant and machinery as would answer the description of immovable property as correctly pointed out by the Amicus. The passage of time may have its bearing. But it may have to be carried out.

The second appellant will also go into the question, whether the first respondent would be entitled to the benefit of the exemption of stamp duty, etc., as claimed while taking a decision and make available the exemption, if entitled in law. **(Sub-Registrar, Amudalavalasa and another v. Dankuni Steels Limited and others, (2023) 10 SCC 601)**

Transfer of Property Act

Secs. 105, 106, 107—Registration Act, 1908, Secs. 17, 49—Suit for recovery of possession—Plea of expiry of lease and default in payment of monthly rent

49. Effect of non-registration of documents required to be registered.— No document required by section 17 [or by any provision of the Transfer of Property Act, 1882 (4 of 1882)], to be registered shall—
(a) affect any immovable property comprised therein, or
(b) confer any power to adopt, or
(c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered:
[Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (3 of 1877), or as evidence of any collateral transaction not required to be effected by registered instrument.]"

The aforesaid provisions were analysed by this Court in the case of Anthony -vs- K.C. Ittoop & Sons and Others [(2000) 6 SCC 394], and this authority was also cited before the High Court. This was a case in which the respondent was inducted into possession of a premises under a lease deed for a period of five years, but the deed was not registered. It has been held in this judgment:-

"11. The resultant position is insurmountable that so far as the instrument of lease is concerned there is no scope for holding that the appellant is a lessee by virtue of the said instrument. The Court is disabled from using the instrument as evidence and hence it goes out of consideration in this case, hook, line and sinker (vide Shantabai v. State of Bombay [AIR 1958 SC 532 : 1959 SCR 265] , Satish Chand Makhan v. Govardhan Das Byas [(1984) 1 SCC 369] and Bajaj Auto Ltd. v. Behari Lal Kohli [(1989) 4 SCC 39 : AIR 1989 SC 1806] .

12. But the above finding does not exhaust the scope of the issue whether the appellant is a lessee of the building. A lease of immovable property is defined in Section 105 of the TP Act. A transfer of a right to enjoy a property in consideration of a price paid or promised to be rendered periodically or on specified occasions is the basic fabric for a valid lease. The provision says that such a transfer can be made expressly or by implication. Once there is such a transfer of right to enjoy the property a lease stands created. What is mentioned in the three paragraphs of the first part of Section 107 of the TP Act are only the different modes of how leases are created. The first para has been extracted above and it deals with the mode of creating the particular kinds of leases mentioned therein. The third para can be

read along with the above as it contains a condition to be complied with if the parties choose to create a lease as per a registered instrument mentioned therein.

All other leases, if created, necessarily fall within the ambit of the second para. Thus, dehors the instrument parties can create a lease as envisaged in the second para of Section 107 which reads thus:

"All other leases of immovable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession."

13. When lease is a transfer of a right to enjoy the property and such transfer can be made expressly or by implication, the mere fact that an unregistered instrument came into existence would not stand in the way of the court to determine whether there was in fact a lease otherwise than through such deed."

The same view was broadly reflected in the cases of Shri Janki Devi Bhagat Trust, Agra vs. Ram Swarup Jain (Dead) by Lrs. [(1995) 5 SCC 314] and Satish Chand Makhan and Others vs. Govardhan Das Byas and Others [(1984) 1 SCC 369]. Section 107 of the 1882 Act which Court has quoted above stipulates that a lease of immovable property from year to year or for any term exceeding one year can be made only by a registered instrument. So far as Section 106 of the said statute is concerned, in which distinction is made between lease of immovable property for agricultural or manufacturing purpose and lease of immovable property for any other purpose, the same provides that a lease of immovable property for agricultural or manufacturing purpose shall be deemed to be a lease from year-to-year terminable by six months' notice. In other cases, termination would require fifteen days' notice. The subject agreement had a duration of five years with a provision for renewal for a further period of five years. Hence under the first part of Section 107, for the said lease agreement to be admissible, registration of the same would have been necessary.

The deeming provision of sub-section (1) of Section 106 so far the same related to lease for agriculture or manufacturing purpose would not be applicable as the deed was not registered. The appellant has argued that the Trial Court had admitted the lease agreement in evidence, and for determining the purpose of lease, Court can examine the deed. But this argument is flawed. This provision contemplates lease for manufacturing purpose, in absence of contract or local law to the contrary, shall be deemed to be year to year lease. In that case, it would require six months' notice for termination. But here, the agreement itself provides a five year duration, and hence ex-facie becomes a document that requires compulsory registration. That is the mandate of Section 107 of the 1882 Act and Sections 17 and 49 of the 1908 Act. The Court cannot admit it in evidence, as per the judgment in the case of Anthony (supra). A coordinate Bench in the case of Shyam Narayan Prasad -vs- V. Krishna Prasad and Ors. [(2018) 7 SCC 646] has re-affirmed this view, referring to Section 49 of the Registration Act. This is a prohibition for the Court to implement and even if the Trial Court has taken it in evidence, the same cannot confer legitimacy to that document for being taken as evidence at the appellate stage. The parties cannot by implied consent confer upon such document its admissibility.

In the case of K.B. Saha and Sons Private Limited -vs- Development Consultant Limited [(2008) 8 SCC 564]. The position of law on this point has been summarized in paragraph 34 (of the report) in this judgment:-

"34*. From the principles laid down in the various decisions of this Court and the High Courts, as referred to hereinabove, it is evident that:

1. A document required to be registered, if unregistered is not admissible into evidence under Section 49 of the Registration Act.
2. Such unregistered document can however be used as an evidence of collateral purpose as provided in the proviso to Section 49 of the Registration Act.
3. A collateral transaction must be independent of, or divisible from, the transaction to effect which the law required registration.
4. A collateral transaction must be a transaction not itself required to be effected by a registered document, that is, a transaction creating, etc. any right, title or interest in immovable property of the value of one hundred rupees and upwards.
5. If a document is inadmissible in evidence for want of registration, none of its terms can be admitted in evidence and that to use a document for the purpose of proving an important clause would not be using it as a collateral purpose." **[M/s. Paul Rubber Industries Pvt. Ltd. vs. Amit Chand Mitra, AIR 2023 SC 4658**

PART II – HIGH COURT

Civil Procedure Code

Civil Procedure Code, 1908 : Order 9 Rule 13 :

Even in absence of formal application for condonation of delay, the delay can be condoned if there is sufficient material on record disclosing sufficient cause for delay. Separate formal application for condonation of delay under Section 5 of The Limitation Act is not required, in case sufficient ground is made out to prove bona-fide conduct of the applicant. **Rakesh Kumar Jain v. Zulfakar Ali, 2023 (41) LCD 3058**

Sec. 100, Order XLI, Rules 22 and 33- A suit of prohibitory injunction- Prayer was not to interfere with the plaintiff's title or possession-

Plaintiffs were the purchaser of suit land and the name was duly mutated in revenue records. A part of the suit property was also sold to one Ranveer Singh. Objection was that defendant Nos. 1 and 2 intended to assign the suit property to defendant Nos. 5, 6 and 7 for the purpose of construction of police Chowki. Suit was decreed. Defendants were ordered to deliver possession of a part of suit land and to remove the construction. Appeal filed by defendants was dismissed however, plaintiff was directed to pay cost of construction to the defendants, hence, instant two second appeals by defendant No. 1 and plaintiffs. Held, suit properly prior to abolition of Zamindari was vested in the ancestors of plaintiffs. Defendant No. 1 failed to prove before the Courts below that proceeding of acquisition by the State for defendant No. 1 was ever done and thereafter they acquired the title. Contention of defendant No. 1, that the dumped ashes on the suit property would lead to vesting of the suit property could not be countenanced. Constructions were raised by defendant No. 4 pending suit in violation of a temporary injunction. Lower appellate court had not at all exercised powers within the settled parameters of Order XLI, Rule 33, C.P.C. to vary the decree of demolition, substituting it by a direction to the plaintiffs to pay for the constructions raised. Second appeal filed by defendant No. 1 dismissed with costs and the second appeal of plaintiffs allowed with costs.

In the opinion of this Court, the failure to raise a plea regarding want of notice under Section 326 in the written statement, then in failing to get an issue framed on the point before the Trial Court, and also failing to raise a ground before the Lower Appellate Court in the first appeal, constitutes a waiver of the right to statutory notice under Section 326, otherwise mandatory.

This Court finds that the reason assigned by the Lower Appellate Court to vary the decree of demolition, and, instead, granting a decree for valuing those constructions as fall on the part of the land for which possession has been decreed, to be valued on the date these were raised and the price of constructions paid by the plaintiffs to defendant Nos. 4 to 7, rests on the edifice that defendant Nos. 4 to 7 raised these constructions under the belief that this part of the suit property was

owned by defendant No.1. This belief, in turn, came about in consequence of the letter of the Collector, Mathura purporting to give this land to the Police.

The constructions were raised by defendant No. 4 pending suit, which necessitated the amendment of the plaint seeking a decree for possession after demolition of those constructions. There was a temporary injunction in operation, and, obviously, on the other findings, which the Lower Appellate Court has not disturbed, the constructions in question were raised in violation of a temporary injunction passed by the Court. In any case, the constructions were raised pendente lite on the part of the suit property, of which both the Courts have found the plaintiffs to be holders of title, entitled to a decree of possession. The plaintiffs have also been found to be in possession of the suit property on the date the suit was instituted. **[Nagar Kshetra Samiti, Sadabad, District Mathura through its Officer-in-Charge/Chairman vs. Kanchan Singh, 2023 (161) RD 51]**

Sec. 114 and Order XLVII, Rule 1(1)—Land Acquisition Act, 1894—Secs. 4, 5, 6 17(i) and 17(5)—Review jurisdiction under section 114 and Order XLVII, Rule 1(1)—Ambit of—Law relating to—Reiterated by help of case relating to—Reiterated by help of case laws—Clarifying that review is permissible only when there is material and manifest error apparent on face of order or decision under review—Which undermines its soundness or results in miscarriage of justice—High Court elaborated concept of error apparent on face of order or decision—Holding that court cannot in disguise of review, reappreciate, evidence and come to different view, as is done by appellate court—If detection of error is required by detecting process—It does not come within ambit of error 'apparent'—Exercise of power by court in review—Is limited—Matters decided cannot be reargued or reagitated or readdressed—High Court clarified each and every aspect of review and found that in this case land was acquired by invoking urgency provisions of sections 5, 17 (1) and 17 (5)—In decision under review, High Court gathered from materials on record that State Government failed to consider vital issues while invoking urgency provisions and allowed writ petitions by setting aside notifications of acquisition—In instant review applications, High Court applied test of review—Came to conclusion that there was no apparent error on face of order/decision—As such, review of that order/decision is not permissible

It can be argued by the counsel for the review applicant that some material such as Master plan, the nature of the project, the land use of the acquired land were not taken into consideration by the Court in the original judgment (under review), however, consideration of the said arguments would require us to appreciate the material on record which was allegedly ignored by the Court in the original order and the said exercise of re-hearing being impermissible within the scope of review, we do not find any good ground to exercise the power of review conferred upon us, in the facts and circumstances of the instant case. The judgment and order of this Court under review having attained finality between the parties, in case of any mistake on the part of the Court in ignoring the pleadings on record and arriving at a different conclusion by considering the other material on re- cord, only remedy

before the review applicant was to approach the Apex Court placing the alleged wrong in the judgment under review

In view of the above, the review applications are dismissed being beyond the scope of review under Order XLVII, Rule 1 read with Section 114 of the Code of Civil Procedure. **[Committee of Management, D.P. Public High School, Mirzapur vs. State of U.P., 2023 (161) RD 297]**

Order XVII, Rules 1 and 2—Order to proceed ex-parte—Recall application—Dismissal—Legality—Adjournment—Has to be granted on bona fide reasons and unavoidable circumstances for limited occasion and not for many occasions—Absence of counsel or his engagement in other Court—Cannot be ground for adjournment—Since approximately 22 adjournments sought by defendant-petitioner—Therefore, such acts are wholly reprehensible and against majesty of law—No case made out for interference in impugned orders

From perusal of the judgments cited here-in-above as well as Order XVII, Rule 1 and 2 of C.P.C., it is apparently clear that intention of legislation is to complete the hearing of the suit at the earliest for which number of adjournments have been confined to three times only and further rigorous conditions have been imposed for grant of adjournment, which also negates engagement of counsel in another Court.

In light of interpretation made by the Apex Court, this Court is also of the view that adjournment has to be granted on bonafide reasons and un- avoidable circumstances for limited occasion not for many occasions as the case is hear and further absence of counsel or his engagement in other Court cannot be ground for adjournment coupled with this fact that several adjournments were earlier sought.

In view of facts and circum- stances of the case as well as law dis- cussed hereinabove, no case is made out for interference in the impugned orders. **[Heera Lal Chhabra vs. Nawal Kishore Agrawal, 2023 (161) RD 315]**

Order VI, Rule 17—Amendment in plaint—Amendment in written statement—Due diligence—Question is as to whether it is necessary to fulfill the requirement of due diligence as provided under Order VI, Rule 17 CPC in case of amendment in plaint and written statement both—Held, whether it is a case of amendment in plaint or a case of amendment in written statement, it is necessary to fulfil the requirement of due diligence as provided under Order VI, Rule 17 CPC—Law is very much settled that change of counsel cannot be a ground was found in the impugned order.

From the perusal of Order VI, Rule 17, C.P.C., it is apparently clear that there is no discrimination for filing amendment application either for plaint or written statement and proviso of due diligence is very much applicable in both the cases amendment is filed after commencement of trial. In fact, it is beneficial legislation enabling the par- ties to bring the some relevant facts on record, if it was not available at the time of filing of plaint or written statement even after commencement of trial. Therefore, a condition of due diligence has also been made,

which has to be complied with, otherwise this provision may be misused to delay the proceeding. Therefore, it would be equally applicable for plaint and written statement.

So far as judgments referred herein above are concerned, those are also of the same view. There is no doubt that about the facts mentioned in amendment application, Court should have been more liberal while considering the amendment application in writ- ten statement, but at the same time Court cannot ignore the proviso of due diligence otherwise provision would have been misused. Therefore, Courts were conscious while interpreting the provision of Order VI, Rule 17, Č.P.C. and no liberty is given to either of the parties to skip away with the condition of due diligence. Courts have taken a categorical view that either it is a case of amendment in plaint or written statement, it is necessary to fulfill the requirement of due diligence as provided in Order VI, Rule 17, C.P.C.

So far as present case is concerned, there is no dispute on the point that except the engagement of new counsel, nothing has been stated in amendment application even after sincere efforts, they could not search out the fact, which is to be amended in writ- ten statement. Therefore, the condition of due diligence could not be satisfied. Law is very much settled that change of counsel cannot be a ground for filing amendment. Therefore, no interference is required in the impugned order dated 11.04.2023. **[Firoz Uddin vs. Anwar Uddin, 2023 (161) RD 521]**

Order XXXIX, Rules 1 and 2-Court Fees Act, 1870-Section 6-A and Articles 17(iii) and 7(iv-A) of Schedule II- Constitution of India, 1950-Article 227- Recall application-Issue of valuation of suit- Issue of sufficiency of court fee-Jurisdiction of trial court- Issue regarding maintainability of the suit-Application for temporary injunction- Order was passed on application for temporary injunction- Court of Civil Judge directed to decide the pending temporary injunction application-Question is as to whether application for temporary injunction may be decided without deciding the issue of valuation and sufficiency of court fee- Held, application for temporary injunction may be decided without deciding the issue of valuation and sufficiency of court fee-No illegality was found in the order directing the trial court to decide the application for temporary injunction

In the opinion of the Court, the remarks of my esteemed Brother Manoj Misra in Pratap Narayan are a complete answer to the point urged by Mr. Birla in aid of his plea to postpone determination of the temporary injunction application until the issue of undervaluation and proper court fee payable are decided. The provision of sub-Section (2) of Section 6A of the Act of 1870 as applicable in the State of U.P. read with Order VII Rule II (b) & (c) of the Code of Civil Procedure, 1908 take adequate care of the interests of the revenue, should the plaintiff indulge in undervaluation or avoidance of proper court fee payable. The legislative scheme of the Act of 1870 as applicable in the State of U.P. and the Code together are designed to advance the cause of substantial justice on the one hand, and protection of the interest of the revenue on the other. It would indeed lead to grave injustice if the defendant were permitted to raise objections about undervaluation or insufficient

court fees and stall consideration of the temporary injunction application until time that irremediable mischief is done. The remarks of this Court in Pratap Narayan do not need reiteration, which, in the opinion of this Court, reconcile the principle in Arun Kumar Tiwari with the requirements of urgent consideration of the temporary injunction matter, particularly where the Trial Court is a Court of unlimited pecuniary jurisdiction.

In the present case also, the Trial Court is the Civil Judge (Senior Division) of the district and therefore, a Court of unlimited pecuniary jurisdiction. This is a case where the plaint has been registered on payment of court fee, without any objection by the officers empowered in thus behalf. It is true that even if an objection about court fee payable is raised, otherwise than under sub-Section (3) of Section 6, that is to say, by an officer envisaged under Section 24-A of the Act of 1870, the Court is obliged to decide such question before deciding any other issue. This is the opinion clearly expressed by the Division Bench in Ajay Tiwari. But, Ajay Tiwari does not hold that pending decision about the proper court fee payable, upon objection of the defendant, consideration of the temporary injunction matter must be adjourned. That is not the principle in Ajay Tiwari, as the learned Counsel for the applicant suggests. **[Smt. Urmila Devi vs. Garima Varshney, 2023(161) RD 559]**

Order VII, Rule 11 and Order VIII, Rule 6 A(4)-Carriers Act, 1865-Section 10 Carriage by Road Act, 2007-Section 16-Rejection of plaint-For want of issuance of mandatory of notice-Before counter-claim- Legality- Section 16 of the act 20 applicable in respect of institution of a suit or legal proceeding against a common carrier for any loss of, or damage to, consignment-Suit and legal proceedings in connection with loss or damage to consignment- Alone covered by it for which purpose a notice is mandatory-This provision has no application in reference to loss of any other kind or suit or legal proceedings- Instituted for recovery of damage in respect of loss of different nature- Damages claimed through counter-claim in respect of loss set up by appellant first defendant in connection with loss of business opportunity, loss of reputation and loss on account of idling of area, machine and over heads- Counter-claim not instituted for any loss or damage to any consignment-Thus, no notice require for instituting counter-claim- Impugned orders set aside- Appeal allowed.

It is well recognized that in view of Order VIII, Rule 6-A (4), CPC, a counter-claim is a virtually a plaint and an independent suit. It is also a settled proposition of law that a plaint which falls within the teeth of the conditions laid down under Rule 11 of Order VII, CPC is liable to be rejected at the threshold for which the plaint allegations alone are required to be considered and nothing else.

A reading of the counter-claim clearly reveals that the damages claimed are in respect of loss set up by the appellant-first defendant in connection with aid the loss of business opportunity, loss of reputation and loss on account of idling of el- of men, machine and overheads. It had not instituted any suit or legal proceedings such as counter-claim for any loss or damage to any consignment. The courts below have clearly lost sight of the above aspect of the matter and without making any

distinction between the various kinds of claims otherwise arising other than claims for loss or damage to the consignment, illegally directed to reject the counter-claim.

In view of the aforesaid facts and circumstances, Court is of the opinion that no notice under Section 16 of the new Act was necessary for instituting any suit or legal proceedings much less counter-claim against the common carrier for recovering the loss other than the loss of or damage to the consignment, and, therefore, the courts below manifestly erred in rejecting the counter-claim under Order VII, Rule 11, CPC as barred by Section 16 of the new Act. **[Essemm Logistics vs. Darcl Logistics Ltd., 2023 (161) RD 602]**

Sec. 47 read with Order XXI, Rule 97—Executing Court held several objections filed by the respondents to be maintainable and deemed it necessary to adjudicate the same on their own merits, after due recording of evidence—Appeals against—What is intended by conferring exclusive jurisdiction on the Executing Court is to prevent needless and unnecessary litigation and to achieve speedy disposal of the questions arising for discussion in relation to the execution, discharge or satisfaction of the decree—Executing Court shall proceed to deal with the application of the appellants under Rule 97 of Order XXI of the CPC together with the objections raised by the respondents on their own merits and without being influenced by any observation made in this order which has been necessitated only for disposal of the present appeals—Appeals are dismissed

Section 47 of the CPC, being one of the most important provisions relating to execution of decrees, mandates that the court executing the decree shall determine all questions arising between the parties to the suit or their representatives in relation to the execution, discharge, or satisfaction of the decree and that such questions may not be adjudicated in a separate suit. What is intended by conferring exclusive jurisdiction on the executing court is to prevent needless and unnecessary litigation and to achieve speedy disposal of the questions arising for discussion in relation to the execution, discharge or satisfaction of the decree. Should there be any resistance offered or obstruction raised impeding due execution of a decree made by a court of competent jurisdiction, the provisions of Rules 97, 101 and 98 of Order XXI enable the executing court to adjudicate the inter se claims of the decree-holder and the third parties in the execution proceedings themselves to avoid prolongation of litigation by driving the parties to institute independent suits. No wonder, the provisions contained in Rules 97 to 106 of Order XXI of the C.P.C. under the sub-heading "Resistance to delivery of possession to decree-holder or purchaser" have been held by this Court to be a complete code in itself in Brahmdeo Chaudhary, (1997) 3 SCC 694, as well as in a decision of recent origin in Asgar v. Mohan Verma. In the latter decision, it has been noted that Rules 97 to 103 of Order XXI provide the sole remedy both to parties to a suit as well as to a stranger to the decree put to execution. **[Jini Dhanrajgir vs. Shibu Mathew, 2023 (161) RD 605]**

CPC, 1908 – S. 96 – Suit for eviction from shop and godown, upper portion of disputed house and damages for wrongful use and occupation – Plaintiff claiming

title on basis of registered gift deed and defendants his step brothers who requested plaintiffs to permit them to continue with occupation in disputed property for sometimes later refused to vacate the same – Suit decreed awarding possession to plaintiff over the disputed property, damages also awarded – Legality of – IN present case issue of licence not significant nor its non-framing had any impact – The alleged gift set up by defendants could not be cogently proved whereas the fit made by in favour of plaintiff which was reduced in writing and duly registered before the office of Sub-Registrar has been proved and that it is not bad as the gift of undivided 'Musha' – Decreetal of suit proper. **Noor Ahmad v. Mohd. Ahmad, 2023(3) ARC 276.**

CPC, 1908, O. VI, R. 17 – Amendment of pleadings – On engagement/change of new counsel – Permissibility of – Fault on the part of Counsel or any other reason attributed to counsel cannot be ground for filing of amendment application and allow the same, which was filed after commencement of trial – Parameters of due diligence cannot be met out by making allegation on earlier counsel and giving credit to new counsel to search out the certain new facts during the preparationof the case – Amendment upon the efforts or mistake on the part of counsel cannot be entertained and allowed. **Dr. Amitabh Kumar Gupta v. Awadh Bihari Nigam, 2023(2) ARC 312**

CPC, 1908, O. VII, R. 11- Rejection of plant – Application for – On ground suit barred by Section 34 of SARFAESI Act – Application rejected – The plaint in this case is clearly an instance of abuse of process of Court, designed to avoid the bar under S. 34 of the SARFAESI Act – The plaint is clearly barred on a wholesome understanding of the plaintiff opposite parties' case, including that deliberately suppressed, under S. 34 of the SARFAESI Act – Application allowed, plaint rejected. **Aryavrat Bank Branch, Ramghat Road, District Aligarh v. Smt. Malka Bansal and others, 2023(3) ARC 573.**

CPC, 1908 – S. 100 – Suit for injunction -

CPC, 1906 – S. 100- Suit for injunction – To rest rain defendants from interfering in possession of plaintiffs – Suit dismissed – LAC reversed the decree passed by Trial Court while doing so came to conclusion alleged family settlement which was reduced in writing and was placed on record as Exhibit – 5 was a photocopy and unregistered document, hence, could not be treated as cogent evidence – Legality of – The family settlement for the first time was reduced in writing and by virtue of the said document, the parties re-adjusted their shares, hence required registration.

CPC, 1908 - S. 2 – Consent decree – A consent decree does not create an estoppels against the parties subject to the condition that it is not vitiated by fraud, misrepresentation or mistake byt at the same time it also needs to be seen that if the decree creates rights for the first time then the decree requires registration but if it declares pre-existing right then it does not rquire registration – Explained. **Ram Milan v. Kripa Shanker and others, 2023(3) ARC 656, HC, Lucknow Bench.**

Constitution of India

Constitution of India, 1950, Art. 226 – Writ of mandamus seeking possession as well for quashing of impugned order – Prayer for – The order of Revenue Court dated 20.7.1996 has been declared null and void by the Civil Court vide order dated 10.4.2015, which has been affirmed by the Appellate Court vide order dated 8.4.2021, no relief can be granted to petitioner – In facts and circumstances f the case no mandamus can be issued for grant of possession to petitioner as prayed – Writ petition dismissed. **Suresh Chandra Srivastava and others v. S.D.O. and others, 2023 (3) ARC 316**

Article 227- Stay of effect and operation of impugned order on the basis of stay order of High Court- Prayer for- Sustainability- Whether "six months stay" shall apply to all pending proceedings or just to cases where "trial" in its legal sense has commenced- Question of-Consideration of-

Supreme Court intended in its ruling given in Asian Resurfacing of Road Agency Pvt. Ltd. v. Central Bureau of Investigation to apply wherever stay is granted, whether at stage of investigation or at stage of inquiry or at stage of committal or stages after commencement of trial in a criminal case. Therefore, contention that above ruling only applicable where stage of framing of charge already reached at, not tenable. Petition dismissed. **[Chhote Lal Sharma vs. State of U.P., 2023 (125) ACC 601]**

Criminal Procedure Code

Secs. 439 and 362—Bail granted under sections 120-B read with 409, 420, 467, 468 and 471 read with section 13(2) read with 13(1)(d) of Prevention of Corruption Act, subject to conditions—Application was filed to modify the condition directing the applicant to furnish two local sureties to be diluted.

Court after passing an order on the bail application does not have the jurisdiction under the Cr.P.C. to modify its own order by virtue of the bar contained in section 362 Cr.P.C. Application for modification of earlier bail was rejected. **[Grijesh Pandey vs. State of U.P., 2023 (125) ACC 16]**

Sec. 102- Constitution of India, 1950, Article 226—Indian Penal Code, 1860, Sections 120-B, 272, 273, 304, 420, 467, 468 and 171—U.P. Excise Act, 1910, Sections 60-A and 60-Order passed by Superintendent of Police under section 102—Freezing saving bank account of Bank, standing in name of petitioners

The ground being the involvement in matter of hooch tragedy on account of sale of ethyl alcohol and rectified sprit. For which F.I.R. was lodged against them under various provisions of I.P.C. and two provisions of U.P. Excise Act. Petitioners challenged the order of S.S.P. by filing instant writ petition. Held, an analysis of

section 102 along with case laws reveals that police officer can freeze the account. As charge-sheet has been filed in case, petitioners are directed to approach trial court for release of their saving bank account. **[Vijendra Kapoor vs. State of U.P., 2023 (125) ACC 58]**

Sec. 438 CrPC—Indian Penal Code, 1860, Sec. 306—Anticipatory bail-Application

After proceedings under sections 82 and 83, Cr.P.C. have been undertaken against the applicants, application under section 438, Cr.P.C. not maintainable. Deceased committed suicide within precincts of applicants. Proclamation against them under sections 82 and 83 Cr.P.C. completed. They have already relinquished opportunity granted under section 482, Cr.P.C. No fit case to grant anticipatory bail. Application rejected. **[Kusum Devi vs. State of U.P., 2023 (125) ACC 93]**

Secs. 155 and 482—Indian Penal Code, 1860, Secs. 504 and 506—Quashing of entire criminal proceedings—Application-- Sustainability—

Applicants charged with offences under sections 504 and 506, IPC. Offence under section 506 IPC is a cognizable offence. Considering express provision of sub-section (4) of section 155, Cr.P.C., they have to be tried for both offences in manner prescribed for trial of cognizable offences. Application to treat case as a complaint case not sustainable. Application rejected. **[Mahesh vs. State of U.P., 2023 (125) ACC 105]**

Sec. 125—Evidence Act, 1872, Sec.112— Maintenance—Grant of maintenance to female child—Revision against order of maintenance challenging paternity of child—Sustainability

In absence of any scientific proof of paternity of respondent No. 2/female child, there will be presumption of legitimacy in her favour as she was born during continuance of marriage between her mother and revisionist and that too within 280 days after their separation. Therefore, plea of revisionist challenging paternity of respondent No.2 not sustainable, Plea declined. Revision dismissed. **[Mohammad Arif vs. State of U.P., 2023 (125) ACC 109]**

Sec. 173(8)— Indian Penal Code, 1860, Secs. 419, 420, 467, 468, 471, 406 and 506—Writ petition—Further investigation—Effective investigation—Proper, fair and impartial investigation—Reinvestigation—Permission of Magistrate for further investigation—Requirement of—Unfettered power of investigation-

Held, Police has unfettered power of investigation. Investigation can continue even after the charge-sheet has been filed under section 173(8) Cr.P.C. and cognizance has been taken thereon. No formal permission of the magistrate is required for carrying out further investigation even after taking cognizance. Writ petition dismissed. **[Uday Rajgarhia vs. State of U.P., 2023 (125) ACC 134]**

Sec. 239— Indian Penal Code, 1860, Secs. 420, 467, 468 and 471—Discharge application—Rejection—Legality

Charge-sheet filed against eight persons including revisionist. Common allegations made against all of the accused and charge-sheet filed against all on identical grounds. Supreme Court quashed proceedings with regard to co-accused. Case of revisionist is not distinguishable from co-accused. Trial Court while deciding application for discharge did not distinguish case of revisionist from that of co-accused. Hence, impugned order not sustainable, set aside. Revision allowed. Impugned order as well as criminal proceedings initiated against revisionist quashed. **[Shah Abdul Haq vs. State of U.P. Thru. Prin. Secy. Deptt. Of Home, 2023 (125) ACC 239**

Sections 216, 222(2), 397 and 401 CrPC- Case under Indian Penal Code, 1860, Sections 498- A, 304-B and 323 and Dowry Prohibition Act, 1961, Section 3/4- Revision- Alteration of charge-Deletion of charge-Trial for major offence-Punishment for minor offence- Scope of section 216 Cr.P.C.-Question is as to whether the court can delete the charge by exercising the power under section 216 Cr.P.C.-

Held, the trial court can alter but cannot delete the charge by exercising the power under section 216 Cr.P.C. When a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence, although he is not charged with it. No illegality was found in the impugned order rejecting the application for alteration of charge. Revision dismissed. **[Dev Narain vs. State of U.P., 2023 (125) ACC 384]**

Sections 125, 397 and 399 CrPC- Writ petition under Article 226 and 227 of the Constitution

Instant writ petition was filed under Article 226 challenging order passed by revisional court under sections 397 and 401, in proceedings under section 125 CrPC. Although in view of law, petition is not entertainable, but it is settled law that non-mentioning of correct provision of law or mentioning wrong provision of law should not be treated as an obstacle in proceeding with the case. As ordinarily, litigants are not expected to know the exact provision of law. As such, courts shall be failing in their duty, if they throw case in waste paper basket on such technical mistakes of non- mentioning of correct provision of law. Consequently, High Court treated this petition to be under Article 227 and entertained it with view to do justice between parties and decided impugned dispute.

Petition claiming maintenance filed by wife earlier dismissed in 1995 and criminal revision filed against it, also dismissed. Thereafter, wife filed fresh petition in 2003 on ground of change in facts and circumstances. This second petition was allowed in 2004 and revision filed against it by husband, dismissed in 2006. Law permits filing of second petition if circumstances are changed. As such order passed

in earlier petition would not operate as res judicata against order passed in second petition. High Court referred to object of section 125, holding that liability to maintain wife is continuing one. If wife is precluded from filing second petition in changed circumstance object of section 125 shall be frustrated. **[Shyam Bahadur Singh vs. State of U.P., 2023 (125) ACC 392]**

Sections 173 and 439 CrPC- Indian Penal Code, 1860, Sections 363, 366 and 376-D- Protection of Children from Sexual Offences Act, 2012, Sections 5 (g) and 6- Bail application-First Informant- Victim- Declared hostile-Report of Child Welfare Committee-Evidentiary value of

Held, CWC report is not a part of the investigations made by the Police into the offences under Section 173 Cr.P.C.. Further held, the report cannot be equated with the statements of the victim made under the relevant provisions of the Cr.P.C. CWC has to adhere to norms of legal propriety and act within the bounds of its jurisdiction in order to achieve its statutory purpose. Dysfunctions of the CWCs and neglect of their reports stymies the operation of the POCSO Act, 2012. Considering the facts and circumstances of the case including the inordinate delay in concluding the trial the applicant was found entitled for bail. Directions were issued to the State Government to frame a training programme for Child Welfare Committees. Bail application allowed. **[Siddhant @ Aashu vs. State of U.P., 2023 (125) ACC 405]**

Sections 155 and 397/401 CrPC- Indian Penal Code, 1860, Sections 323 and 504- Probation of Offenders Act, 1958, Sections 4 and 12- Revision against conviction and sentence- Offence under section 323 IPC-Existence of injury report- Proof by medical officer- Released on probation of good conduct-Effect of

Held, to prove the charge under section 323 IPC the existence of injury report or its proof by medical officer concerned is not necessary. Medical evidence is essentially an opinion evidence and even in the absence of medical evidence the charge under section 323 IPC may be proved on the basis of oral testimony of the witnesses. A person released on probation of good conduct will not incur any disqualification due to conviction recorded by Trial Court as provided under section 12 of Probation of Offenders Act, 1958. Revision partly allowed. **[Radhey Shyam vs. State of U.P., 2023 (161) ACC 434]**

Section 438 CrPC - Indian Penal Code, 1860, Sections 376, 323, 504, 506 and 328- Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Section 3(2) (v), 18 and 18-A- Anticipatory bail application-Maintainability of- Proclaimed offender- Entitlement for anticipatory bail-

Held, if no offence is made out under the provisions of SC/ST Act, the anticipatory bail application would be maintainable under section 438 Cr.P.C. It is a normal rule that when an accused is absconding and declared as proclaimed offender, there is no question of granting anticipatory bail to him but it is not a

universal rule. If there is not a willful default on the part of the applicant and the coercive processes were issued against him during the interregnum period when he was engaged in adopting legal recourse to defend himself, he may be entitled for anticipatory bail. However, considering the facts and circumstances of the case it was found not a fit case to grant anticipatory bail to the applicant. Anticipatory bail application rejected. **[Brijesh vs. State of U.P., 2023 (161) ACC 451]**

Section 439 CrPC—Indian Penal Code, 1860, Secs. 147, 148, 149 and 302—Criminal Law Amendment Act, Sec. 7—Bail—Grant of

Applicant has no criminal history apart from this case. He always co-operated with investigations and joined trial proceedings. Delay in trial not due to fault of applicant. Bail allowed. **[Bhanwar Singh @ Karamvir vs. State of U.P., 2023 (125) ACC 740]**

Sections 173 and 438 CrPC—Transit remand—Anticipatory bail

Transit anticipatory bail differs from ordinary bail. Transit bail is a protection from arrest for a definite period as granted by court granting such transit anticipatory bail. Upon grant of transit anticipatory bail, accused person, who has been granted such transit anticipatory bail has to apply for anticipatory bail or regular bail before regular court. Since transit anticipatory bail granted to revisionist for limited period. Therefore, concerned Magistrate committed no error in not granting protection to revisionist. Revision dismissed. **[Mohit Kumar Goyal vs. State of U.P., 2023 (125) ACC 751]**

Sec. 216 CrPC—Deletion of charge—Application for—Rejection—Legality

Word delete has not been used in Sec. 216 Cr.P.C. Therefore, charge once framed cannot be deleted, no legal justification to interfere in impugned order passed by Court below Revision dismissed. **[Munesh vs. State of U.P., 2023 (125) ACC 761]**

Sec. 482—Indian Penal Code, 1860, Sec. 420—Quashing of summoning order—Case of civil nature—No element of criminality—Breach of contract—Cheating

Held, every breach of contract would not give rise to an offence of cheating and only in those cases breach of contract would amount to cheating where there was any deception played at the very inception. If the intention to cheat has developed later on, the same cannot amount to cheating. No initial intention of deception was found. It was found that the case is purely of civil nature and without any element of criminality. Petition allowed and the entire proceedings of the case quashed. **[D.S. Sharma vs. State of Uttarakhand, 2023 (125) ACC 808]**

Sections 197 and 482 CrPC—Indian Penal Code, 1860, Secs. 323, 342, 379, 504 and 506—Quashing of summoning order—Maintainability of application—Want of sanction—Abuse of the process of the court—

It is well settled that an application under section 482, Cr.P.C. is maintainable to quash the proceeding for want of sanction or if same are frivolous or in abuse of process of the court. Further held, if there is no reasonable relationship with the official/public duty the protection under section 197, Cr.P.C. will not be available to such a public servant. However, for the alleged offence committed by the Police personnel which may be in excess of his official/public duty, without sanction the court is barred to take cognizance of the offence. In the absence of sanction, criminal proceeding against the applicants would be non-est and void and the same are liable to be quashed. Application allowed and the proceedings quashed. **[Vishwanath Singh Rathaur vs. State of U.P., 2023 (125) ACC 908]**

Sections 397/401—Indian Penal Code, 1860, Secs. 307, 504 and 506—Revision against acquittal—Cross cases—Duty of the court—Trial of cross cases

If two cases are cross-cases of each other, both the cases should be decided together to avoid difference of opinion and also to conclude as to which party was the aggressor and which party acted in exercise of private defence. Further held, the Investigating Officer in cross-cases should be the same. Prosecution failed to prove its case beyond reasonable doubt. Trial court rightly passed the order of acquittal in favour of the opposite party Nos. 2 to 5. Criminal revision dismissed. **[Yashpal Singh vs. State of U.P., 2023 (125) ACC 914]**

Indian Penal Code

Secs. 279 and 304-A—Criminal Procedure Code, 1973, Secs. 397/401—Revision against conviction—Accident—Inevitable accident—Act of God—Rash or reckless driving—Negligence

Accused left the left side and reached the right side against the traffic rules and hit the deceased. Held, accused was rash and negligent while driving the bus at the time of accident. In a rash act the person does the act with indifference as to its consequence whereas negligence is an omission to do something which a reasonable man would do or doing something which a prudent and reasonable person would not do. Section 304-A needs to be revisited so that rash and negligent driving which claims nearly 400 lives on Indian roads everyday may be punished more severely. No illegality was found in the impugned judgment and order of conviction and sentence. Criminal revision dismissed. **[Data Ram vs. State of U.P., 2023 (125) ACC 841]**

Secs. 363, 376(2)(i), 302 and 201—Protection from Children from Sexual Offences Act, 2012—Secs. 5(M) and 6—Juvenile Justice (Care and Protection of Children) Act, 2015—Section 9(2)—Death sentence—Punishment of—Legality

Appellant held to be less than 16 years at time of incident. Therefore, maximum punishment that could be awarded is upto 3 years. Appellant has already undergone more than 5 years. Therefore, his incarceration beyond 3 years is illegal. Accordingly, upholding conviction of appellant sentence awarded to him set aside. Appeal partly allowed. **[Karan @ Fatiya vs. State of M.P., 2023 (125) ACC 981]**

Indian Succession Act

Indian Succession Act, 1925, S. 278 – Grant of letters of administration – Application for – Pending – Petition seeking direction to Court concerned to decide letter of Administration case – Consideration of – Pending application/ petition for grant of letters of Administration with two wills annexed not maintainable – Petitioner may move withdrawl of the petition with liberty to file two separate petitions. **Pradeep Mohan Chaudhary and others v. State of U.P. and others, 2023 (3) ARC 303.**

Indian Succession Act, 1925, S .278 – Grant of letters of administration of two Wills – Prayer for – To be decided within time bound Schedule – Consideration of – A single application for grant of letters of administration with two Wills annexed executed by two testators, respectively would not be maintainable in view of the provisions of the Succession Act – It is left open to the petitioner to move an application for withdrawl of the aforesaid petition for letters of administration with liberty to file two separate petitions. **Pradeep Mohan Chaudhary and others v. State of U.P. and others, 2023 (3) ARC 629.**

Juvenile Justice (Care and Protection of Children) Act, 2015

Sec. 3-Protection of Children from Sexual Offences Rules, 2020-Rule 2(1)(f)-

The support person, should bear in mind the principles enunciated in section 3 of the Juvenile Justice (Care and Protection of Children) Act, 2015 while engaging with the child victim, and their families. These include the principles of dignity and worth, participation, best interest, safety, positive measures, non-stigmatising semantics, non-waiver of rights, equality and non-discrimination, and right to privacy and confidentiality. There are numerous aids prepared, to help in understanding the role of the support person, and how to maximise their impact. Directions issued to the Principal Secretary, Department of Women and Child Welfare, in the State of Uttar Pradesh. **[Bachpan Bachao Andolan vs. Union of India, 2023 (125) ACC 931]**

Limitation Act

Articles 59 and 113—Registration Act, 1908, Secs. 17 and 47—Cancellation of Will—Suit of plaintiff was dismissed—Appeal filed against was also dismissed—Hence, instant second appeal—Question arose regarding delay in

filing the suit—Held, no right to sue for cancellation of Will accrues in any person during the life time of the testator—Cause of action for cancelling an instrument would be complete only when the instrument affects the rights of parties to possession or title—Knowledge of the Will before the death of testator is not relevant to decide as to whether the suit for cancellation of Will was instituted within the limitation prescribed by the Statute—Article 113 of the Act, 1963 will apply in cases of Will—Suit was filed within three years of the death of testator—Rights of plaintiffs were invaded by the defendant Nos. 2 to 6 when they got their name mutated—Orders of courts below set aside—Second appeal allowed

Original Suit No. 13 of 1978 was filed within three years of the death of the testator. The Will of Brij Lal excluded the plaintiff and the cause of action to institute a suit for cancellation of Will did not accrue in favour of plaintiff till the death of Brij Lal, the testator. The rights of the plaintiff in the suit property were, for the first time, invaded by the defendant nos. 2 to 6 when they got their name mutated in the revenue records on the basis of the Will of Brij Lal. In any case, the cause of action for instituting a suit for cancellation of Will could not have accrued in favour of the plaintiff before 05.11.1976 and the suit for cancellation of Will would have been within the time, under Article 113 of the Limitation Act, till 04.11.1979. The suit was registered on 04.01.1978. Apparently, Original Suit No. 13 of 1978 was filed within time.

If the plaintiff appellant had instituted a suit for cancellation of Will during the lifetime of Brij Lal himself, a document which could have been revoked by Brij Lal, the said suit would have been a ridiculous one as observed by the Division Bench of this Court in Rambhajan Kunwar, 1905 ILR 27 (All.)14. The plaintiff - appellant cannot be non-suited for not having instituted a ridiculous suit. The judgment was delivered by the Division Bench of this Court in 1904, i.e., almost 120 years back. It is unfortunate that the trial court and the lower appellate court have non-suited the plaintiff for not having filed a ridiculous suit. The judgments and decrees of the courts below are contrary to law and liable to be set-aside. **[Shanti Swaroop (Deceased) Through his L.Rs. vs. Onkar Prasad (Deceased) Through his L.Rs., 2023 (161) RD 70]**

Limitation Act, 1963, S. 5 – Delay condonation application – Consideration of – A complete careless and reckless long delay on the pat of the applicant which has remain virtually unexplained at all – Delay condonation application rejected. **Sujan Singh Bundela and another v. Kripal Singh Yadav and others, 2023(3) ARC 652.**

Motor Vehicles Act

Motor insurance - Repudiation of claim- Insured vehicle was stolen.

"(1) Notice shall be given in writing to the Company immediately upon the occurrence of any accidental loss or damage in the event of a claim and thereafter the

insured shall give all such information and assistance as the Company shall require. Every letter, claim, written summons and/ or process or copy thereof shall be forwarded to the Company immediately on receipt by the insured. Notice shall also be given in writing to the Company immediately the insured shall have knowledge of any impending prosecution. Inquest or fatality inquiry in respect of any occurrence which may give rise to a claim under this policy. In case of theft or criminal act which may be the subject of a claim under this policy the insured shall give immediate notice to the police and cooperate with the company in securing the conviction of the offender.

The due observance and fulfillment of the terms, conditions and endorsements of this policy in so far as they relate anything to be done or complied with by the insured and the truth of the statements and answers in the said proposal shall be conditions precedent to any liability of the company to make any payment under this policy."

In case of theft, immediate intimation is required to be given to the police, by which the prosecution agency may be in a position to register a criminal case and start investigation. The object behind giving immediate information to the police was that the prosecution agency may come in motion and take steps for recovery of the vehicle expeditiously. If the said recovery is not possible then the rule of the insurance company in the matter of payment of compensation accrues. Thus, to expedite the recovery of the vehicle, immediate intimation is necessitated, failing which the insurance company may be asked to indemnify the loss due to theft of vehicle. Therefore, the second part of condition No. 1 rightly separates the ordinary claims in the case of accident, loss or damage from theft and in that case, after immediate notice to police, cooperation with the insurance company in securing the conviction of the offender has been specified. Therefore, it clear that the second part of condition No. 1 does not cause any impediment if immediate information to the insurance company in case of theft was not given, but it contemplates immediate notice to the police and cooperation by the insured. Noticing the two conflicting decisions of the two-Judge Bench of this court in the case of **Om Prakash** vs. **Reliance General Ins. Co. Ltd**., 2017 ACJ 2747 (SC) and **Oriental Insurance Co. Ltd**. vs. **Parvesh Chander Chadha**, (2018) 9 SCC 798, on the question, as to whether the delay in informing the occurrence of theft of the vehicle to the insurance company when the F.I.R. was registered immediately would disentitle the claimant of the insurance claim, a three Judge Bench of this court in Gurshinder Singh, 2020 ACJ 1029 (SC), having similar facts as at hand, interpreted the very condition No. 1 and observed as thus:

"(13) In our view, applying the aforesaid principles, condition No. 1 of the standard form for commercial vehicles package policy will have to be divided into two parts. The perusal of the first part of condition No. 1 would reveal that it provides that 'a notice shall be given in writing to the insurance company immediately upon the occurrence of any accidental loss or damage'. It further provides that in the event of any claim and thereafter, the insured shall give all such information and assistance as the insurance company shall require. It provides that every letter, claim, writ, summons and/or process or copy thereof shall be forwarded to the insurance company immediately on receipt by the insured. It further provides

that a notice shall also be given in writing to the insurance company immediately by the insured if he shall have knowledge of any impending prosecution inquest or fatality inquiry in respect of any occurrence, which may give rise to a claim under this policy. ”

When an insured has lodged the F.I.R. immediately after the theft of a vehicle occurred and when the police after investigation have lodged a final report after the vehicle was not traced and when the surveyors/ investigators appointed by the insurance company have found the claim of the theft to be genuine, then mere delay in intimating the insurance company about the occurrence of the theft cannot be a ground to deny the claim of the insured. **(Trilok Singh vs. Manager, Cholamandalam MS General Ins. Co. Ltd. and others, 2023 ACJ 2394)**

Section 149(2)- Liability of insurance company

Section 149 provides for statutory protection available to the company, which clearly shows that no sum shall be payable by the insurer under sub-section (1) in respect of any judgment or award and the insurer can defend the action on the ground as provided under Section 149 which also includes that it can avoid its liability if the person driving the vehicle was not duly licensed. For this purpose, needless to say that the requirement of Section 3 and Section 14 of the Act of 1988 and Rule 9 and Rule 132(5) of the Central Motor Vehicles Rules, 1989, which have already been noted above and need no repetition, are to be fulfilled or complied with for holding a valid licence.”

(iv) Insurance companies, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish “breach” on the part of the owner of the vehicle; the burden of proof where for would be on them.

(v) The court cannot lay down any criteria as to how the said burden would be discharged, inasmuch as the same would depend upon the facts and circumstances of each case.

(viii) If a vehicle at the time of accident was driven by a person having a learner’s licence, the insurance companies would be liable to satisfy the decree.

(ix) The Claims Tribunal constituted under Section 165 read with Section 168 is empowered to adjudicate all claims in respect of the accidents involving death or of bodily injury or damage to property of third party arising in use of motor vehicle. The said power of the Tribunal is not restricted to decide the claims inter se between claimant or claimants on one side and insured, insurer and driver on the other. In the course of adjudicating the claim for compensation and to decide the availability of defence or defences to the insurer, the Tribunal has necessarily the power and jurisdiction to decide disputes inter se between the insurer and the insured. The decision rendered on the claims and disputes inter se between the insurer and insured in the course of adjudication of claim for compensation by the claimants and the award made thereon is enforceable and executable in the same manner as provided in Section 174 of the Act for enforcement and execution of the award in favour of the claimants. **(United India Insurance Co. Ltd. vs. Sheela and others, 2023 ACJ 2491)**

Motor Vehicles Act, 1988, Sections 166 and 165- Negligence

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

In view of the fast and constantly increasing volume of traffic, motor vehicles upon roads may be regarded to some extent as coming within the principle of liability defined in Rylands vs. Fletcher, (1868) LR 3 HL 330. From the point of view of pedestrian, the roads of this country have been rendered by the use of motor vehicles, highly dangerous. 'Hit and run' cases where drivers of motor vehicles who have caused accidents, are unknown. In fact such cases are increasing in number. Where a pedestrian without negligence on his part is injured or killed by a motorist, whether negligently or not, he or his legal representatives, as the case may be, should be entitled to recover damages if principle of social justice should have any meaning at all. **(United India Insurance Co. Ltd. vs. Rajesh Kumar Tripathi and other, 2023 ACJ 2508)**

Medical –negligence

"(49)(1) Negligence is the breach of a duty caused by omission to do something which a reasonable man guided by those considerations which ordinarily regulate the conduct of human affairs would do or doing something which a prudent and reasonable man would not do. The definition of negligence as given in Law of Torts, Ratanlal & Dhirajlal (edited by Justice G.P. Sing), referred to hereinabove, holds good. Negligence becomes actionable on account of injury resulting from the act or omission amounting to negligence attributable to the person sued. The essential components of negligence are three: 'duty', 'breach', and 'resulting damage'.

(2) Negligence in the context of medical profession necessarily calls for a treatment with a difference. To infer rashness or negligence on the part of a professional, in particular a doctor additional considerations apply. A case of occupational negligence is different from the one of professional negligence. A simple lack of care, an error of judgment or an accident, is not proof of negligence on the part of a medical professional. So long as a doctor follows a practice acceptable to the medical profession of that day, he cannot be held liable for

negligence merely because a better alternative course or method of treatment was also available or simply because a more skilled doctor would not have chosen to follow or resort to that practice or procedure which the accused followed. When it comes to the failure of taking precautions, what has to be seen is whether those precautions were taken which the ordinary experience of men has found to be sufficient; a failure to use special or extraordinary precautions which might have prevented the particular happening cannot be the standard for judging the alleged negligence. So also, the standard of care, while assessing the practice as adopted, is judged in the light of the knowledge available at the time of the incident, and not at the date of trial. Similarly, when the charge of negligence arises out of failure to use some particular equipment, the charge would fail if the equipment was not generally available at that particular time (that is, the time of the incident) at which it is suggested it should have been used.

(3) A professional maybe held liable for negligence on one of the two findings: either he was not possessed of the requisite skill which he professed to have possessed, or he did not exercise, with reasonable competence in the given case, the skill which he did possess. The standard to be applied for judging, whether the person charged has been negligent or not, would be that of an ordinary competent person exercising ordinary skill in that profession. It is not possible for every professional to possess the highest level of expertise or skills in that branch which he practices. A highly skilled professional may be possessed of better qualities, but that cannot be made the basis or the yardstick for judging the performance of the professional proceeded against on indictment of negligence."

To hold a medical practitioner liable for negligence, a higher threshold limit must be met. This is to ensure that these doctors are focused on deciding the best course of treatment as per their assessment rather than being concerned about possible persecution or harassment that they may be subjected to in high-risk medical situations. Therefore, to safeguard these medical practitioners and to ensure that they are able to freely discharge their medical duty, a higher proof of burden must be fulfilled by the complainant. The complainant should be able to prove a breach of duty and the subsequent injury being attributable to the aforesaid breach as well, in order to hold a doctor liable for medical negligence. On the other hand, doctors need to establish that they had followed reasonable standards of medical practice. **(M.A. Biviji vs. Sunita and others, 2023 ACJ 2638)**

Workmen's compensation Act, 1923 Sec. 2(1)(n)(i) read with Railways Act, 1989, Sec. 2(34) and Railway Protection Force Act, 1957, Section 3.
Whether provisions of the 1923 Act applies to a member of the RPF?:

The 1923 Act as it stood at the relevant time (i.e., the date of the accident out of which the claim has arisen) was an Act to provide for the payment by certain class of employers to their workman, compensation for injury by accident. Section 3 of the 1923 Act, as it stood at the time of the accident in question, provided that if personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provision of Chapter II of the 1923 Act. Thus, to sustain a claim against an

employer under the 1923 Act, there must be a workman-employer relationship; there must be a personal injury to the workman by an accident; and that accident must arise out of and in the course of his employment.

"Employer" is defined by clause (e) of sub- section (1) of Section 2 of the 1923 Act as:

> "e 'employer' includes anybody of persons whether incorporated or not and any managing agent of an employer and the legal representative of a deceased employer, and, when the services of a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service or apprenticeship, means such other person while the workman is working for him."

By use of the phrase 'anybody of persons whether incorporated or not' the legislative intent is clear as to include a juristic person whether incorporated or not. However, to maintain a claim against an "employer" under the 1923 Act, there must be, (a) a workman and an employer relationship; (b) the workman must suffer personal injury in an accident; and (c) that accident must arise out of and in the course of his employment.

At the time of the accident in question, "workman" was defined by clause (n) of sub-section (1) of Section 2 of the 1923 Act. As per the then definition clause workman meant any one of the persons specified in sub clauses (i), (ia) and (ii) of clause (n) of sub-section (1) of Section 2 of the 1923 Act; but would not include any person working in the capacity of a member of the Armed Forces of the Union.

Importantly, neither the 1923 Act nor The General Clauses Act, 1897 defines "The Armed Forces of the Union". What is also interesting is that the phrase "armed forces of the Union" came, with effect from 26 January 1950, as a replacement for the words "His Majesty's naval, military or air forces", vide the "Adaptation of Laws Order, 1950" issued by the President of India in exercise of powers under Article 372(2) of the Constitution of India.

Clause (2) of Article 372 of the Constitution of India confers power on the President of India to make such adaptations and modifications in any law in force in the territory of India, whether by way of repeal or amendment, as may be necessary or expedient, to bring the provisions of that law into accord with the provisions of the Constitution.

In Ramesh Birch and others v. Union of India and others4, this Court while dealing with the executive power to extend an existing law of one territory to another, had the occasion to deal with the scope of such power of the Executive. Relying upon the observations made by a Constitution Bench of this Court In re. Delhi Laws Act, 1912, AIR 1952 SC 332, it was observed:

> "23. But, these niceties apart, we think that Section 87 is quite valid even on the "policy and guideline" theory if one has proper regard to the context of the Act and the object and purpose sought to be achieved by Section 87 of the Act. The judicial decisions referred to above make it clear that it is not necessary that the legislature should "dot all the i's and cross all the t's" of its policy. It is sufficient if it gives the broadest indication of a general policy of the legislature. If we bear this in mind and have regard to the history of this type of legislation, there will be no difficulty at all. Section 87, like the

provisions of Acts I, II and III, is a provision necessitated by changes resulting in territories coming under the legislative jurisdiction of the Centre. These are territories situated in the midst of contiguous territories which have a proper legislature. They are small territories falling under the legislative jurisdiction of Parliament which has hardly sufficient time to look after the details of all their legislative needs and requirements. To require or expect Parliament to legislate for them will entail a disproportionate pressure on its legislative schedule. It will also mean the unnecessary utilisation of the time of a large number of members of Parliament for, except the few (less than ten) members returned to Parliament from the Union territory, none else is likely to be interested in such legislation. In such a situation, the most convenient course of legislating for them is the adaptation, by extension, of laws in force in other areas of the country. As Fazl Ali, J. pointed out in the Delhi Laws Act case (1951) SCC 568 : AIR 1951 SC 332 : 1951 SCR 747, it is not a power to make laws that is delegated but only a power to "transplant" laws already in force after having undergone scrutiny by Parliament or one of the State legislatures, and that too, without any material change. There is no dispute before us — and it has been unanimously held in all the decisions — that the power to make modifications and restrictions in a clause of this type is a very limited power, which permits only changes that the different context requires and not changes in substance. There is certainly no power of modification by way of repeal or amendment as is available under Section 89." (Emphasis supplied)

In the light of the above decision, it would be useful to explore the purpose of the amendment brought by the Adaptation Order of 1950 (supra) with reference to Article 372(2) of the Constitution of India. Indisputably, the 1923 Act is a pre-independence statute therefore, on India being declared a Republic by our Constitution, the use of the phrase "His Majesty's naval, military or air forces" appearing therein became antithetical to our Constitution. Hence, to make it in accord with our Constitution, it was considered necessary to substitute the said phrase with the phrase "armed forces of the Union." However, neither the Constitution of India (see Article 366) nor The General Clauses Act, 1897 or the 1923 Act defines "armed forces of the Union". Therefore, in our view, mere declaration in Section 3 of the 1957 Act that the RPF shall be an "armed force of the Union" is not sufficient to take it out of the purview of the 1923 Act. In our view, what assumes importance is the legislative intent. That is, whether by declaring a member of the RPF as a member of the armed force of the Union, the legislature intended to take away the benefits which he would have otherwise got by virtue of being a railway servant within the meaning of Section 2 (34) of the 1989 Act. **(Commanding Officers, Railway Protection Special Force vs. Bhavanaben Dinshbhai Bhabhor and others, 2023 ACJ 2810)**

Motor Vehicles Act, 1988, Sec. 3- Driving license- guide lines.

(i) Since the enactment of the *Motor Vehicles Act 1988*, there has been a rapid evolution of the transport sector, particularly in the last few years with the

emergence of new infrastructure and new arrangements for putting into place private transport arrangements;

(ii) Any interpretation or formulation of the law must duly take into account valid concerns of road safety bearing on the safety of users of public transport facilities;

(iii) Any change in the position of law as expressed in *Mukund Dewangan* (supra) would undoubtedly have an impact on persons who have obtained insurance relying on the law declared by this Court and who may be driving commercial vehicles with LMV licences. A large number of persons would be dependent on the sector for earning their livelihood; and

(iv) The decision in *Mukund Dewangan* (supra) has held the field for nearly six years and the impact of the reversal of the decision, at this stage, particularly on the social sector, is a facet which would have to be placed in balance by the policy arm of the Government. **(Bajaj Allianz General Ins. Co. Ltd. vs. Rambha Devi and others, 2023 ACJ 2841)**

Motor Vehicles Act, 1988, Sec. 147(1) and 149(2) Evidence Driving licence

The driving license is a photocopy issued by the Licensing Authority, Motor Vehicles Department, Mathura. It is valid from 18.09.2003 to 17.09.2006. The photocopy on record has been marked as Paper No. 6C/9. On a perusal of the record, this Court finds that there is no endorsement either admitting or denying the said document. The question whether a photocopy of a driving license can be accepted as good evidence by the Tribunal.

The principle in Anbari, no doubt, a precedent which unfailingly binds this court, has to be understood in the context of the facts obtaining there. In Anbari, the contention about the validity of the driving licence, that was not produced in original, but in the shape of a photocoy, was not at all examined by the Tribunal. In the present case, it appears that though an issue about the validity of the driving licence was raised, but to dispute it, in view of the decision of the Division Bench in Mahfooza Begum, it was the liability of the insurer to have verified the veracity of the driving licence with reference to its number by approaching the Licensing Authority which had issued it. This was admittedly not done. Therefore, there seems to be no force in this contention advanced by Mr. Jaiswal that the insurer is not liable because a photocopy of the licence was filed on behalf of the claimants, and not the original. **(Oriental Insurance Co. Ltd. v. Usha Devi and others, 2023 ACJ 2869).**

Negotiable Instruments Act

Section 138 N I Act—Criminal Procedure Code, 1973, Secs. 200, 202 and 204—Constitution of India, 1950, Article 227—Complaint filed under section 138 by complainant due to account blocked.

The cheque issued by accused was returned by bank as account was blocked. Trial court after entertaining complaint and taking evidence of complainant's witnesses under section 202, issued summoning order against the accused. Revision

filed against this order was dismissed. In instant writ petition, accused-petitioner challenged orders of trial court and revisional court, on ground that if cheque is returned with endorsement that account is blocked, such return does not come within section 138. It was held, this Court does not agree with this view and refused to interfere under its jurisdiction with impugned orders, holding that such return of cheque also comes within section 138. As such, trial court rightly issued summoning order and revisional court also rightly endorsed trial courts order. Other grounds of complaint and its reply will be considered during trial of complaint. **[Naveen Kumar Sharma vs. State of U.P., 2023 (125) ACC 35]**

Probation of Offenders Act

Sec. 4—Essential Commodities Act, 1955—Sec. 7(1)(a)(ii)—West Bengal Pulses, Edible Oil (Dealers Licensing) Order, 1978—Para 3(1)—Conviction and sentence—Legality—Stock of mustard oil and vegetable oil found at shop of appellant more than permissible limit. Thus, violation of para 3(1) of Order, 1978—Established—Conviction upheld

However, even if there is a minimum sentence provided in EC Act, 1955, same will not be a hurdle for invoking applicability of provisions of Probation of Offenders Act. Considering facts and circumstances of case, appeal disposed of directing to release appellant on probation. **[Tarak Nath Keshari vs. State of W.B., 2023 (125) ACC 960]**

Prosecution of Women from Domestic Violence Act, 2005

Sections 12, 17 to 22, 2(f), 2(s), 3 and 23- Right of widow from in-laws

Ex parte order was passed on application of widow under section 12 allowing her complaint and directing her brother-in-law, sister-in-law, mother-in-law and married sister-in-law and her husband (Nanad and Nandoi)—To provide her residence, pay maintenance to her and her two minor daughters and all other reliefs sought by her—This order was affirmed by appellate court—In instant revision by in-laws of widow, ex parte order was passed, because in-laws were bent upon to delay proceedings, by seeking adjournments after adjournment and not filing their reply—In revision too, they did not say that they are unable to pay maintenance-Their only stand was that property claimed by widow to be of her husband, is under dispute—Held, brother-in-law, sister-in-law and mother-in-law are directed to comply with all directions of courts below—But Nanad and Nandoi relieved from complying with directions, because they were living separately in another city and not liable for domestic violence. **[Rohit Yadav vs. State of U.P., 2023 (125) ACC 40]**

Registration Act

Sec. 17(1-A) and 49- Respondent (plaintiff) instituted civil suit for specific performance of the Agreement to Sell- High Court directing that the agreement in question shall be received in evidence in the suit for specific performance- Appeal against-

As per proviso to section 49, an unregistered document affecting the immovable property and required by Registration Act to be registered may be received as evidence of a contract in a suit for specific performance or as evidence of any collateral transaction not required to be effected by registered document. It is not the case on behalf of either of the parties that the document/Agreement to Sell in question would fall under the category of document as per section 17 (1-A) of the Registration Act. Held, in the facts and circumstances of the case, High Court has rightly observed and held relying upon proviso to section 49 of the Registration Act that the unregistered document in question namely unregistered Agreement to Sell in question shall be admissible in evidence in a suit for specific performance and the proviso to exception to the first part of section. Appeal is dismissed.

Thus, as per proviso to Section 49, an unregistered document affecting the immovable property and required by Registration Act to be registered may be received as evidence of a contract in a suit for specific performance under Chapter-II of the Specific Relief Act, 1877, or as evidence of any collateral transaction not required to be effected by registered document.

Under the circumstances, as per proviso to Section 49 of the Registration Act, an unregistered document affecting immovable property and required by Registration Act or the Transfer of Property Act to be registered, may be received as evidence of a contract in a suit for specific performance under Chapter-II of the Specific Relief Act, 1877, or as evidence of any collateral transaction not required to be effected by registered instrument, however, subject to Section 17(1-A) of the Registration Act. It is not the case on behalf of either of the parties that the document/ Agreement to Sell in question would fall under the category of document as per Section 17(1-A) of the Registration Act. Therefore, in the facts and circumstances of the case, the High Court has rightly observed and held relying upon proviso to Section 49 of the Registration Act that the unregistered document in question namely unregistered Agreement to Sell in question shall be admissible in evidence in a suit for specific performance and the proviso is exception to the first part of Section 49. **[R. Hemlatha vs. Kashthuri, 2023 (161) RD 754]**

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act

Sections 3(1)(Dha) and 14-A SC ST Act, 1989—Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act, 2021, Secs. 3, 4 and 5(i)—Appeal against order dismissing bail application—Mass conversion—Allegation of

First Information Report was not lodged by a competent person. First Information Report is hit by section 4 of the Act, 2021. No offence is made out

under sections 3 and 5(i) of Act, 2021. There is nothing on record to show that appellants had used any undue influence or allurement to the villagers for mass conversion. Appellants were involved in providing good teachings to the children and promoting the spirit of brotherhood amongst the villagers. Considering the facts and circumstances of the case appeal was allowed and the appellants were directed to be released on bail. **[Jose Papachen vs. State of U.P., 2023 (161) ACC 439]**

Specific Relief Act

Sec. 16—High Court allowed appeal filed by Respondent No. 1 directing appellants to execute sale deed in favour of Respondent No. 1 after receiving balance sale consideration—Appeal against—High Court has rightly held that the defendants failed to perform their obligation with regard to the demarcation of the property, while plaintiff had established that she was always ready and willing to perform her part of contract by paying the balance sale consideration which is the primary requirement as per Section 16 (c) of the Act—Held, High Court was justified in allowing the appeal and decreeing the suit for specific performance filed by Respondent No. 1—Appeals are dismissed.

In Aniglase Yohannan vs Ramlatha & Ors., (2005) 7 SCC 534, this Court held:-

"11. Lord Campbell in Cort v. Ambergate, Nottingham and Boston and Eastern Junction Rly. Co. [(1851) 117 ER 1229:17 QB 127] observed that in common sense the meaning of such an averment of readiness and willingness must be that the non- completion of the contract was not the fault of the plaintiffs, and that they were disposed and able to complete it, had it not been renounced by the defendant.

12. The basic principle behind Section 16(c) read with Explanation (ii) is that any person seeking benefit of the specific performance of contract must manifest that his conduct has been blemishless throughout entitling him to the specific relief. The provision imposes a personal bar. The Court is to grant relief on the basis of the conduct of the person seeking relief. If the pleadings manifest that the conduct of the plaintiff entitles him to get the relief on perusal of the plaint he should not be denied the relief."

In our view, the High Court has rightly held that the deceased G. Venugopala Rao or his legal heirs (Defendants in the suit, including the Appellants herein) failed to perform their obligation with regard to the demarcation of the property, while the Plaintiff had established that she was always ready and willing to perform her part of contract by paying the balance sale consideration which is the primary requirement as per Section 16 (c) of the Act.

In light of the aforementioned Aniglase Yohannan judgment, and as held by the High Court, the primary requirement to seek relief under Section 16 (c) of the Act is that the Plaintiff was ever ready and willing to perform his part of the contract. It is clear from the facts of the case at hand that the Plaintiff (Respondent No. 1 herein) was ever ready and willing to pay the balance sale consideration. In the

sale agreement, it was clearly mentioned that within three months the deceased G. Venugopala Rao will get the suit schedule property measured and demarcated and the Plaintiff (Respondent No. 1 herein) shall pay the balance sale consideration. It appears that, at first, the deceased G. Venugopala Rao while agreeing to sell 90 cents of land, concealed that he is the owner of only 50 cents of the land. Subsequently, he failed to measure and demarcate the land. On the other hand, the Plaintiff (Respondent No. 1 herein), from the outset, has been clear and blemishless in his conduct. She had paid the advance sale consideration of Rs. 4,00,000/-. When the deceased G. Venugopala Rao failed to measure and demarcate the land, the question of the Plaintiff (Respondent No. 1 herein) paying the balance sale consideration does not arise. However, even then the averments of the Plaintiff, her conduct and the testimony of her husband show that the Plaintiff, since the signing of the sale agreement, was ever ready and willing to pay the balance consideration. **[Gaddipati Divija vs. Pathuri Samrajyam, 2023 (161) RD 249]**

U.P. Advocate Welfare Fund Act, 1974

Sec. 9—Non-fixation of welfare stamp on vakalatnama—Effect of—

If Advocate welfare stamp absent from power/vakalatnama submitted before court concerned, Advocate cannot be permitted to proceed in matter. However, no occasion available before District and Sessions Judge, Agra to comment upon conduct of an advocate while adjudicating application for withdrawal of vakalatnama. Impugned order set aside. Application allowed. **[Shivanshu Mugdal vs. State of U.P., 2023 (125) ACC 130]**

U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986

Conviction under section 3(1)- Imposing sentence of 10 years R.I. and fine of 15,000/- - By this appeal only sentence was challenged

High Court after considering brief resume of sentencing policy and going through various case laws found that the law required imposition of adequate sentence. Its prime object is that just and proportionate sentence commensurate with nature and gravity of crime is imposed on convict. In India there is no structured sentencing policy. In absence of it courts are required to formulate their formula, although there can be no strait jacket formula. However, there is twin object of sentencing principle. First is that it should meet ends of justice and second is that accused be given opportunity of reformation. In this case accused was 35 years of age Sentence of 10 years R.I. appears to be harsh. His sentence, as such, reduced to period already undergone, which was found to be 9 years and 7 months. His fine of ₹ 15,000/- be kept intact. **[Arvind vs. State of U.P., 2023 (125) ACC 77]**

U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act

U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, S. 21 (1)(a) – Release application – For need of landlord to establish himself in business of hosiery from shop in dispute – Release application allowed by Courts below – Challenged uder on ground the landlord passed away during Rent appeal and since the release was not sought for bona fide need of a member of his family or his own together with family, the bona fide need would not survive – Held – Landlord's wife a widow at a young age, wishes to carry on the occupation of hosiery, that her husband wished to establish, there is no reason why for the purpose, the shop ought not to be released in favour of present landlord – Comparative hardship in favour of landlord-Allowing of release application proper petition dismissed with cost of Rs. 25,000/-, time to vacate on conditions granted. **Ram Kishor v. Mukesh Kumar Sahu and others, 2023 (3) ARC 639.**

U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act (13 of 1972, S. 20(4) – Civil P.C.(5 of 1908), O. 15 R. 5 - Suit for eviction– Landlord preferred application under O. 15 R. 5 in both small cause suits– Tenant filed single application under S. 20(4) of 1972 Act on claim that it was composite tenancy – No explanation had been tendered by tenant for arrears of rent.

The application filed by tenant purportedly under Section 20(4) of the Act is not in conformity with such provisions but in view of discussion made hereinabove, it is evident that the application is not in conformity with provisions of order XV Rule 5 of the Code either.

The application filed by tenant purportedly under Section 20(4) of the Act No. XIII of 1972 was not maintainable under either of the provisions and was therefore rightly rejected. **Mohd. Zubair v. Additional District Judge Court, Lucknow and others, 2023 AIR CC 3067(All).**