JUDICIAL TRAINING & RESEARCH INSTITUTE, U.P., LUCKNOW

Quarterly Digest

CONSTITUTIONAL, CIVIL, CRIMINAL & REVENUE LAWS

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

April – June, 2015

Volume: XXXIX **Issue No.: 2**

FROM THE CHAIRMAN'S DESK

A Constitution Bench (5 judges) of the Supreme Court on 23.07.2015 (as reported in the Newspapers of next day) vacated its order passed about an year before (07.09.2014) through which State Governments had been restrained from granting remission of sentence to life convicts who had completed fourteen years jail. However, while vacating the earlier order some riders have also been placed one of which is that those sentenced to life for rape with murder will not be released. The seven life convicts involved in the assassination of Rajiv Gandhi can also not be released by the Tamil Nadu Government. The reason for the last direction is that the Supreme Court (Constitution Bench) is yet to decide that which is appropriate Government to grant remission in those cases which are investigated by a central agency such as C.B.I. It has further been clarified that if High Court and Supreme Court has specified the period of life sentence say 20 years, 25 years or 30 years etc. then remission after 14 years would not be admissible. Power of remission may be exercised by the President or the Governor under Articles 72 and 161 of the Constitution.

The Supreme Court observed that imprisoning the convicts for the rest of their lives would not persuade them to behave properly and show good conduct in jail and their hopes would be dashed. If provision of remission is there, then they may show good conduct for 14 years and thereafter be a good citizen on being released.

In Times of India dated 24.07.2015, it has also

been reported that Supreme Court on 23.07.2015 observed in a case that live-in relationship is no more a taboo in Indian Society and law should evolve according to changing times.

The Constitution Bench of 5 Judges of the Supreme Court hearing PIL against National Judicial Appointments Commission reserved the Judgment after conclusion of argument on 15.07.2015.

Through judgment dated 22.01.2015 the Supreme Court had constituted a committee of 3 Hon'ble Judges headed by Justice R.M. Lodha, Ex- Chief Justice of India to decide the quantum of punishment to be awarded to Maiyappan and others including Chennai Super Kings and Rajasthan Royals, the two teams participating in the IPL. The Supreme Court had also held that Board of Cricket Control of India (BCCI) was a public body. The Lodha Committee imposed life ban on Guranth Maiyappan and Raj Kundra through order / report dated 14.7.2015. The Supreme Court had stated that the committee's order would be final and binding on the BCCI and the parties concerned. The Committee also suspended the India Cements Ltd. (ICL) which owns the Chennai Super Kings and Jaipur IPL Cricket Pvt. Ltd. (JIPL) which owns Rajasthan Royals Team. The result is that these two teams will not be able to participate in the IPL games for two years. Gurunath Maiyappan, CSK Official and son-in-law of N. Srinivasan, head of ICL and former BCCI President has been suspended for life from any involvement in any type of cricket matches. Raj Kundra who earlier was part owner of Rajasthan Royals has been banned for life from any involvement with the BCCI in any type of cricket matches. Both of them have also been suspended from participating in the sport of cricket of

any type for 5 years the maximum sentence. The general expectation was that the punishment would be lighter. The severe punishments have sent strong signals. The fate of the players of two teams hangs in balance. They may opt for other teams. The IPL may also consider for two more teams otherwise matches with only six teams would not create as much frenzy as the IPL has been able to generate in the public directly affecting TV coverage, advertisements and financial deals.

For about a century no census regarding castes particularly scheduled castes, scheduled tribes and the castes included in the Other Backward Classes was done. Recently, Government got conducted poverty - cum – caste survey. Demand from different quarters is being made for making public the results of the survey.

On 15.06.2015, the Supreme Court cancelled All India Pre-Medical Test and directed CBSE to hold fresh examination / entrance test. It was found that at certain centers hi-tech cheating had taken place something which was depicted in the film “Munnabhai MBBS”. It is strange that in 2015 entrance tests for MBBS conducted by several other Institutes also were marred by the allegations of hi-tech cheating. Times of India Lucknow Edition dated 17.06.2015 wrote editorial under the heading no Band-Aid please – AIPMT cheating symptom of deeper malaise requiring systematic education reforms.

In Times of India Lucknow Edition dated 18.5.2015 on page 1 it is reported that the National Commission for Backward Classes is learnt to have told the Government that the more advanced are cornering benefits of the reservation among OBC to the detriment of the real downtrodden among them. It is further

reported that the Commission has sought the approval of the Government to categorize backward castes in the central list of OBCs into three groups and limit each group's claim to a fraction of 27 per cent reservation.

In the Hindu, dated 18.5.2015, it is reported that the Supreme Court has issued special directions for implementation of Section 436A Cr.P.C. according to which under trials should be released on personal bond if they have spent half of the maximum period of punishment in the jail. The Supreme Court noted that two third of the prisoners were under trials. It directed that within one month under trial review committee should start functioning in every district.

On 11.5.2015, Jayalalitha was acquitted by Karnataka High Court by setting aside the Judgment of the Trial Court awarding sentence to her due to which she had to leave the post of Chief Minister. Afterwards, she again became Chief Minister and won by-election by a huge margin.

On 9.5.2015, a very disturbing incident took place in Madras High Court where one Judge of the High Court issued contempt notice against the Chief Justice of the same High Court. The order was stayed by the Supreme Court.

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

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108. **Sursari Tarang Misra v. U.P. Sainik School Society, Sarojini Nagar, Lucknow and others, 2015(110) ALR 412**
109. **Tula Ram v. State of U.P., 2015 (89) ACC 35 (Alld.)**
110. **Tulasi Ram Patodia v. State of U.P. and others, 2015(109) ALR 783**
111. **Udai Bhan Kanwariya v. State of U.P., 2015 (89) ACC 805 (HC)**
112. **Uma Shanker v. Stateof U.P., 2015 (89) ACC 421 (Alld.)**
113. **Union of India through Defence Estate Officer and another v. Arun Saluza, 2015(109) ALR 789**
114. **Vakil v. State of U.P., 2015 (89) ACC 129 (Alld.)**
115. **Veer Pal v. State, 2015 (89) ACC 444 (Alld.)**
116. **Wasi-ur-Rehman v. Commissioner, Moradabad Division, 2015(2) AWC 1744**
117. **Yagya Narain Jaiswal and another v. State of U.P. and others, 2015(127) RD 200**

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PART – 1 (SUPREME COURT)

Agricultural Lands Matters

Auction of 60 *bigha* land and purchase by State for Rs. 1/- under Assam Land and Revenue Regulation 1886, Section 70 for recovery of Rs. 732/- as arrears of land revenue:

Under the aforesaid provision for recovery of arrears of land revenue it is mandatory that proper notice of demand shall be served on the defaulter. Defaulters were recorded land holders. For realization of arrears of land revenue amounting to Rs. 732/-, their 59 *bighas* agricultural land was put to auction in which no bidder participated either on the first date or on few adjourned dates, hence, the State stepped in and purchased the entire land for Rs. 1 as provided under Rule 141. Thereafter, State allotted 40 *bighas* land out of total land to Indian Oil Corporation (IOC) on payment of yearly premium of Rs. 26000/- per katha (part of a Bhigha). In addition, the State also directed the IOC to deposit Rs. 38,50,600/- as compensation with the State Government which was accordingly deposited. The Board (of Revenue) set-aside the sale by allowing the appeal on the ground that firstly the defaulters were not given any notice, secondly they were not aware of auction proceedings and thirdly, no publicity was given to the auction, hence, no bidder came forward. Board also held that land of about Rs. 50 lakhs should not have been put to sale for realization of Rs. 732/-. Thereafter, the defaulters deposited the requisite arrears. It was further directed by the Board that remaining 19 *bighas* land should be returned to the recorded land holders and the compensation paid by IOC for 40 *bighas* land i.e. Rs. 38.5 lakh should be given to the land holders. As the compensation was not paid, hence, writ petition was filed by the land holders and the Assam High Court directed the State to pay the aforesaid amount of compensation of Rs. 38.5 lakhs to the land holder. Appeal was also dismissed by the Division Bench. However, the said order was set aside by the Supreme Court and the matter was remanded by the Supreme Court to the Division Bench. Thereafter, State filed writ petition challenging the order of the Board also. Both the matters were consolidated and Division Bench of the High

Court held that auction had rightly taken place and allowed the writ petition as well as writ appeal. The Supreme Court set aside the order of the High Court holding that the auction was neither legal nor in conformity with the requirement contained in the Regulation, hence, it was rightly set aside by the Board.

Regarding service of notices of demand and sale the Supreme Court held that firstly the finding in this regard recorded by the Board was finding of facts and the High Court should not have interfered therewith. Secondly, the Supreme Court held that it was clear from the record that notice was not served as required by Section 72 read with Rules 133, 134, 136 and 136A (paras 24 to 27).

Thereafter, it was held that in view of Article 300-A of the Constitution no one could be deprived of his property save by authority of law and as auction was conducted without knowledge of the defaulter, hence, it was without authority of law. A new point was also discussed by the Supreme Court in paras 30 to 34 to the effect that in view of Section 69 first Deputy Commissioner should have made efforts to recover the arrears by directing attachment and sale of so much of the movable property as may be necessary to satisfy the dues but it was not done.

Paras 36 and 37 are quoted below:

> *"36. It is a trite law that taking recourse to auction proceedings for sale of defaulter's immoveable property for realization of the State dues is an extreme remedy. It is also discernable in the facts of this case when we read Sections 69, 70 and Rule 155. Time and again this Court has held that once the State take recourse to a remedy of disposing of the defaulter's property by means of public auction as provided in Regulation for realization of State dues then its dominant consideration should always be to secure the best price for the property put to sale. This can, however, be achieved only when there is maximum public participation in the process of sale and every one has an opportunity to offer the best offer to purchase the property. The reason is that the public auction held after adequate publicity ensures participation of*

every person interested in purchasing the property and in that process, the State and, in turn, the defaulter gets the best price of his property which was put to auction sale. [See Chairman and Managing Director, SIPCOT, Madras and others v. Contromix Pvt. Ltd., (1995) 4 SCC 595 : (AIR 1995 SC 1632) and Haryana Financial Corporation and another v. Jagdamba Oil Mills and another, (2002) 3 SCC 496 : (AIR 2002 SC 834)]

37. Keeping this well settled principle in mind and applying the same to the facts of this case, we find that the auction was not held by the Deputy Commissioner in conformity with the aforesaid principle. It seems that the auction was held only on papers to show compliance of the Rules to enable the State to invoke Rule 141 and acquire the land for Rs. 1/- as provided therein. As a matter of fact, no efforts were made by the State to file any document to prove that adequate publicity was given on all adjourned dates and despite such publicity no bidder participated in the auction. It is indeed inconceivable that a land in Kamrup district when put to auction sale despite publicity would go unnoticed and no person would come forward to bid for such land. It appears to us that the State had decided to allot the land to the IOC, who were interested to use the land for their own purpose and hence recourse to remedy of disposal of land by auction as provided in Section 70 followed by invocation of Rule 141 was taken to acquire the land on payment of Rs.1/- by the State and then its major part was allotted to the IOC on payment of yearly premium and further payment of compensation by the IOC." **Probin Ram Phukan v. State of Assam, AIR 2015 SC 1252**

A. A.P. (Tilangana Area) Record of Rights in land Regulation (1358 Fasli) and Section 166B of A.P. (Telangana Area) Land Revenue Act 1317 Fasli (1907).

B. No limitation prescribed, still proceedings to be initiated within reasonable time.

Sou motu power of revision cannot be exercised after 5 decades. Even if no period of limitation is prescribed still *sou motu* power of revision for correction of revenue record (khasra) may be exercised within reasonable period otherwise it would be arbitrary and against the very concept of rule of law. What is reasonable period depends upon the nature of the statutes, rights

and liabilities there under and other relevant factors. (13 Supreme Court authorities considered)

Jagirdars granted lease/*patta* to certain persons and their (pattadars) names were entered in *Khasra Pahani* for the year 1954-55. Thereafter *pattedars* sold the lands to other persons. Thereafter, the said land was allotted in the year 1991 to a co-operative society by the Government which was challenged by the transferees of the *pattedars*. Thereafter, in 2004, under section 166B of the relevant Act notice was issued proposing to exercise *sou motu* power of revision for correction of revenue record of 1954-55 entering the names of the *pattedars* in the revenue record on the ground that the *Patwari* wrongly entered the names of *pattedars*. The said notice was also challenged through writ petition. High Court allowed both the writ petitions directed against allotment to the cooperative society and notice of revision. The Supreme Court approved the view of the High Court. Regarding *khasra*, in para 9, second edition (1997) of the Law Lexicon by P. Ramanatha Aiyer (at page 1053) was quoted giving definition of *khasra* as follows:-

> *"Khasra is a register recording the incidents of a tenure and is a historical record. Khasra would serve the purpose of a deed of title, when there is no other title deed."*

The main judgment was delivered by Hon'ble C. Nagappan, J. Hon' ble Mr. Justice T.S. Thakur, the other member of the Bench, even though entirely agreed with the conclusions drawn by Hon'ble Mr. Justice C. Nagappan, J, however, his lordship added his own views also from paras 14 to 26.

Para 24 is quoted below:-

> *"To sum up, delayed exercise of revisional jurisdiction is frowned upon because if actions or transactions were to remain forever open to challenge, it will mean avoidable and endless uncertainty in human affairs, which is not the policy of law. Because, even when there is no period of limitation prescribed for exercise of such powers, the intervening delay, may have led to creation of third party rights, that cannot be trampled by a belated exercise of a discretionary power especially when no cogent explanation for the delay is in sight. Rule of law it is said must run closely with the rule of life. Even in cases where*

the orders sought to be revised are fraudulent, the exercise of power must be within a reasonable period of the discovery of fraud. Simply describing an act or transaction to be fraudulent will not extend the time for its correction to infinity; for otherwise the exercise of revisional power would itself be tantamount to a fraud upon the statute that vests such power in an authority." **Joint Collector Ranga Reddi District v. D. Narsingh Rao, AIR 2015 SC 1021**.

Annotation:

Same principle will apply to similar proceedings under Section 39 of U.P.L.R. Act. In U.P. *khatauni* is record of right and *khasra* of possession.

In *Ram Karan (Dead) through L.Rs. v. State of Rajasthan*, *2014 (8) SCC 282* under Rajasthan Land Revenue Act a member of schedule caste had sold his agricultural land to a non-scheduled caste which is prohibited under the Act. The seller filed the suit for possession against the purchaser after 30 years. Supreme Court held that even though no limitation was prescribed for such suit still it could not be filed after 30 years.

Allotment of plot by authority

Allotment of plot by authority, cancellation for delayed payment, estoppel

Delhi State Industrial Development Corporation (DSIDC) allotted a plot. Delay in depositing installment was made by the allottee. On the application by the allottee, the officer of the corporation made an endorsement asking the concerned bank to accept the payment of installment. Delayed payment was made along with interest. Thereafter, allotment was cancelled on the ground that the delayed payment directly made to the bank was wrong. As the endorsement of the officer concerned authorized the allottee to make payment directly to the bank, for several years the amount deposited by the allottee to the bank was not returned to the allottee, the corporation also did not take any action against the officer who permitted the allottee to make the payment directly in the Bank hence the corporation was held to be estopped from asserting that the payment was wrongly made. Ultimately, it was held by

the Supreme Court that cancellation order was rightly set aside, by the High Court. **Delhi SIDC v. Ashok Kumar Madhan, AIR 2015 SC 993.**

Arbitration and Conciliation Act

Section 2, Jurisdiction of Court:

If, in the agreement it is stipulated that the contract is to be governed and interpreted according to English Law then the affect of such clause is that the seat of arbitration would be at London for conducting arbitration proceedings and no Court in India would have jurisdiction as its jurisdiction is impliedly excluded. *AIR 2002 SC 1432* and *AIR 2012 SC (supp.) 444* distinguished. Reliance was placed upon *AIR 2012 SC 3218.* Several authorities were also considered. **Harmony Innovation Shipping Ltd. v. Gupta Coal India Ltd., AIR 2015 SC 1504.**

A. Section 8, Jurisdiction of Court –

B. Vehicle snatching by Bank/ Financial Institution, hire purchase

Plaintiff instituted suit against finance company which had advanced loan to him to purchase a car, seeking to restrain it and its men from illegally taking away from the possession of the plaintiff the car or interfering with the use and enjoyment of the same. Under the agreement of loan there was arbitration clause also. Accordingly, on coming to know of the institution of suit defendant-finance company pleaded the bar of the jurisdiction of the Civil Court. The Trial Court as well as High Court held that jurisdiction of the Civil Court was not barred as relief sought in the plaint was only against the illegal acts of the defendants which are against public policy and per se illegal, hence, suit was maintainable. Supreme Court did not agree and reversed the order. Para 15 is quoted below:-

> *15. "Once an application in due compliance of Section 8 of the Arbitration Act is filed, the approach of the civil court should be not to see whether the court has jurisdiction. It should be to see whether its jurisdiction has been ousted. There is a lot of difference between the two approaches. Once it is brought to the notice of the court that its jurisdiction has been taken away in terms of the procedure prescribed*

under a special statue, the civil court should first see whether there is ouster of jurisdiction in terms or compliance of the procedure under the special statute. The general law should yield to the special law - generalia specialibus non derogant. In such a situation, the approach shall not be to see whether there is still jurisdiction in the civil court under the general law. Such approaches would only delay the resolution of disputes and complicate the redressal of grievance and of course unnecessarily increase the pendency in the court."

Reliance was placed upon 5 earlier judgments of the Supreme Court particularly 2006 (2) SCC 598 and AIR 2010 SC 488. **M/s Sundaram Finance Limited v. T. Thankam, AIR 2015 SC 1303**

Annotation

In *Manager ICIC Bank v. Praksh Kuar, AIR 2007 SC 1349,* not considered in the above authority, it was held in para2 of the judgment by Dr. A.R. Lakshmanan as follows:-

"In conclusion we say that we are govern by the rule of law in the Country. The recovery of loans or seizer of vehicles could be done only through legal means. The bank cannot employee gundas *to take possession by force."*

In the judgment by Dr. Lakshamanan, role of recovery agents, use of abusive language, due process of law, R.B.I. guidelines were considered. Four of the points summarized in para I are quoted below:-

- Now the bank is the aggressor and the public is the victim. The first step to recovery of the money due is through the so called RECOVERY/COLLECTION AGENTS. A very dignified term used for paid recovery agents who are individual and independent contractors hired by the Banks to trace the defaulters and to both physically, mentally and emotionally torture and force them into submitting their dues.
- A man's self respect, stature in society are all immaterial to the agent who is only primed at recovery. This is the modernized version of Shylock's pound of flesh. No explanation is given regarding the interest charge and the bank takes cover under

the guise of the holder of the card or loan having signed the agreement whose fine print is never read or explained to the owner.

- When a harassed man approaches the Court or the police station he is not armed with a recording phone and finds it difficult to give evidence of the abuse he has suffered. Here the bank gets away with everything. Young and Old members of the family threatened on streets, institutions and also at home at godforsaken hours by these agents who have the full support of their contractor bank. The stance taken by the bank in any suit alleging such incidents is that no such agent has been appointed by them or their agents do not misbehave in the manner aforesaid and if found guilty the agents have to bear the cross and the bank gets away scot free.
- Using of the abusive language for recovery is the norm of the day for most nationalized or multinational bank or non-nationalized bank. Though some are smart enough to record the abuse and proceed to establish the same through Court of Law, most of them are unfortunate not to have recourse to it. Such people form the majority and such litigations are pending in large volumes before the Civil and Consumer Courts. Again the banks escape liability since these agents are not salaried employees of the bank and hence not directly liable for anything.

Sections 11, 34 and 42, Jurisdiction of the Court to challenge the award

Para 10 is quoted below:-

"*10. Indisputably, the Arbitration proceeding has been conducted within the jurisdiction of Raichur court, which has jurisdiction as per Section 20 of the Code of Civil Procedure and is subordinate to the High Court of Karnataka which entertained Section 11 Application. Hence, the Award cannot be challenged before a Court subordinate to the High Court of Bombay. Exercise of jurisdiction by such court shall be against the provision of Section 42 of the Act."* **M/s. Bhandari Udyog Limited v. Industrial Facilitation Council, AIR 2015 SC 1320**

S. 11(6) – Appointment of arbitrator contrary to procedure agreed upon in arbitration agreement- Impermissibility-

Strict compliance with agreement procedure by parties and institutions nominated in agreement procedure. Appointment as fait accompli, does not bar/oust jurisdiction of court unless it is in compliance with agreement

procedure.

Held- In instant case, option given to respondent to go beyond panel submitted by ICADR and to appoint any person of its choice was not procedure agreed upon- Agreed upon procedure between parties contemplated appointment of arbitrator by second party within 30 days of receipt of notice from first party and upon failure to do so, appointment of arbitrator by ICADR. Further, rules of ICADR also do not contemplate an alternative procedure giving respondent liberty to appoint arbitrator of its choice once it failed to appoint its arbitrator within agreed upon period of thirty days. Thus held, appointment of arbitrator of its choice by respondent is contrary to provisions of rules governing appointment of arbitrators by ICADR, which parties had agreed to abide by. Contention that as arbitrator was already appointed prior to filing of present application, and appointment is not liable to be interfered in view of decision in *Datar Switchgears Ltd., (2000) 8 SCC 151,* rejected, since said decision gives flexibility in time frame agreed upon by parties, but does not save appointments made contrary to procedure agreed upon by parties. Thus, held, appointment of arbitrator by respondent is invalid in law and hence does not bar Supreme Court from exercising powers under S.11(6) to appoint arbitrator on behalf of respondent. **Water Bau AG v. Municipal Corpn. of Greater Mumbai & Another's, (2015) 3 SCC 800**

Army Act and the Rules **(See under Service Law)**

Civil Procedure Code

A. Section 9 C.P.C. Jurisdiction—

B. Order 7, Rule 11 (d) C.P.C. Rejection of Plaint

Haryana Public Moneys (Recovery of Dues) Act 1979 under Section 3(4) bars the jurisdiction of the Civil Court to entertain or adjudicate upon any case relating to the recovery of any sum due from the defaulter in respect of financial assistance given by Government, Government Company etc. The defaulter filed a suit seeking a decree for declaration that the agreement executed by him with Haryana Financial Corporation was null, void ab initio and liable to be set aside. It was held that the suit was clearly barred and plaint was rightly rejected under Order 7 Rule 11(d) C.P.C. An earlier authority of the

Supreme Court reported in *Unique Butyle Tube Industries v. U.P. Financial Corporation, AIR 2003 SC 2103* under similar U.P. Act was held to be not applicable as in the said case firstly instead of suit writ petition had been filed in the High Court and secondly, it was decided in the said case that proceedings initiated under U.P. Public Moneys (Recovery of Dues) Act 1972 were not maintainable in view of overriding effect of the Central Act i.e. Recovery of Debts Due to Bank and Financial Institution Act 1993, Section 34 (2) **Om Agarwal v. Haryana Financial Corporation, AIR 2015 SC 1288**

Section 9—See also under Public Money Recovery

Section 11 - Res judicata:-

In case of fraud or appointment being nullity doctrine of res judicata does not apply. Para 15 is quoted below.

> *"15. When the appointment is made de hors the rules, the same is a nullity. In such an eventuality, the statutory bar like doctrine of res judicata is not attracted. In the case of Meghmala & Ors. v. G. Narasimha Reddy & Ors., (2010) 8 SCC 383, this Court held as under:-*
>
> > *From the above, it is evident that even in judicial proceedings, once a fraud is proved, all advantages gained by playing fraud can be taken away. In such an eventuality the questions of non-executing of the statutory remedies or statutory bars like doctrine of res judicata are not attracted. Suppression of any material fact/document amounts to a fraud on the court. Every court has an inherent power to recall its own order obtained by fraud as the order so obtained is non est."*

Since respondent No.1 obtained appointment on the basis of bogus certificates, in our considered view, the principle of res judicata will not be attracted to the case on hand." **Krishna Hare Gaur v. Vinod Kumar Tyagi AIR 2015 SC 1248**

A. Section 96

B. Appeal, right of; effect of change of law curtailing the right

C. Securities and Exchange Board of India Act, 1992

Right of appeal is a substantive, vested right and accrues the moment original proceedings e.g. suit, application etc. are instituted. If by amendment the right is curtailed or taken away it does not affect pending proceedings unless it is specifically or by necessary implication provided. If right of appeal is curtailed through amendment in the Statute during pendency of the proceedings at the first stage still after decision of the same right of appeal as it existed before amendment of the Statute would be available to the aggrieved party. However, this principle does not apply to mere change of forum of appeal.

In the case in question Section 15-Z of SEBI Act was amended in 2002. Prior to the amendment, second appeal was provided to the High Court on any question of fact or law. After amendment, second appeal was to be filed before the Supreme Court and was confined only to question of law. The Supreme Court held that it was not merely a change of forum but of appellate package i.e. earlier second appeal could be filed questioning the decision on facts also, however, after amendment, it could be filed only on question of law. In the said case, after the decision of first appellate court (Securities Appellate Tribunal) but before filing second appeal Section 15-Z had been amended. The Supreme Court held that it did not make any difference and the appeal to the High Court would be available and in that appeal decisions of fact by the first/ trial authority could also be questioned.

The Supreme Court has discussed 28 authorities including the Constitution Bench Authority reported in *G. Beereja v. N.S. Chaudhari, AIR 1957 SC 540* and in para 15 quoted some of the paragraphs of the Constitution Bench including para 23 which is quoted below:-

"23. From the decisions cited above the following principle clearly emerge:

(i) That the legal pursuit of a remedy, suit, appeal and second appeal are really but steps in a series of proceedings all connected by an intrinsic unity and are to be regarded as one legal proceeding.

(ii) The right of appeal is not a mere matter of procedure but is a substantive right.

(iii) The institution of the suit carries with it the implication that all rights

of appeal then in force are preserved to the parties there to till the rest of the career of the suit.

(iv) The right of appeal is a vested right and such a right to enter the superior Court accrues to the litigant and exists as on and from the date the lis commences and although it may be actually exercised when the adverse judgment is pronounced such right is to be governed by the law prevailing at the date of the institution of the suit or proceeding and not by the law that prevails at the date of its decision or at the date of the filing of the appeal.

(v) This vested right of appeal can be taken away only by a subsequent enactment, if it so provides expressly or by necessary intendment and not otherwise."

In para 27 it was held that if amendment has enlarged the package then its benefit will be available to the parties in the pending proceedings. Para 27 is quoted below:-

"27. Where the appellate package, as in the present case, is expressed differently at the "pre" and "post" amendment stages, there could only be two eventualities. Firstly, the pre-amendment appellate package, could have been decreased by the amendment. Or alternatively, the post-amendment package, could have been increased by the amendment. In the former situation, all that was available earlier, is now not available. In other words, the right of an individual to the appellate remedy, stands reduced or curtailed. In the latter situation, the amendment enhances the appellate package. The appellate remedy available prior to the amendment, stands included in the amendment, and some further addition has been made thereto. In the latter stage, all that was available earlier continues to subsist. The two situations contemplated hereinabove, will obviously lead to different consequences, because in the former position, the amendment would adversely affect the right, as was available earlier. In the latter position, the amendment would not affect the right of appeal, as was available earlier, because the earlier package is still included in the amended package." **Videocon International Ltd. v. SEBI, AIR 2015 SC 1042**

A. Order 1, Rule 10, Correction of description / capacity of plaintiff –

B. Section 99 decree not to be reversed in appeal or revision on trivial errors:

One R.K. was owner of suit property in possession of tenant. After his death, his brother SKD instituted a suit for eviction of the tenant on the ground of default in his capacity as heir of RK. During pendency of suit SKD died and was substituted by his two sons KK and PK and widow of SKD. Plaintiffs themselves filed Will executed by R.K. in favour of KK and PK sons of original plaintiff SKD. Suit was decreed. However, District Judge in revision set aside the decree on the ground that KK and PK were substituted as hairs of SKD while it was not SKD but KK and PK themselves who were owners of the property under the Will. Allahabad High Court upheld the decision of the revisional Court. Supreme Court reversed the judgment of the District Judge and the High Court holding that error of description was trivial and it did not make any difference whether KK and PK were described as owners or legal representatives of SKD and in any case the error in description could be corrected by the Court under Order 1 Rule 10 C.P.C. even at the stage of Supreme Court unless the other party was in any manner prejudiced.

It was further held that in view of Section 99 C.P.C. the error or irregularity if any did not affect merit of the case, hence, revisional court could not reverse the decree on the said ground. **Kuldeep Kumar Dubey v. Ramesh Chandra Goel, 2015 SC 1135**

Section 9 C.P.C. Civil Court jurisdiction barred after 16.07.1999 when D.R.T. came into existence.

See under Public Money Recovery at serial no. 1B.

Section 96 C.P.C. Right to appeal, curtailment *pendante lite*

See under Appeal, right of; effect of change of law pendent lite.

A. Order 1, Rule 10 - Impleadement of party

B. S.R. Act; Suit for specific performance

In a suit instituted against trustees for specific performance, if a beneficiary of the trust property files impleadment application and the trial court allows the same, the High Court should not interfere in such order in

revision petition under Article 227 of the Constitution. The applicant for impleadment had pleaded that the property in dispute had been agreed to be sold at a throw away price. The trial court had held that the applicant was not stranger to the subject matter of the dispute, hence, he was entitled to be impleaded as a party. Reliance was placed upon *AIR 2010 SC 3109.* In para 15 it was held as follows:-

> *"In the present case the appellant could not be held to be a stranger being beneficiary of the trust property. The trial court was justified in impleading him as a party. The High court erred in interfering in the order of the trial court."* **Balu Ram v. P. Chellathangam, AIR 2015 SC 1264**

Order VI and XIV

Fraud/Forgery/Mala Fides. Fraud on court- Setting aside of order on ground of. When permissible. Pleading and proof necessary. High Court setting aside decree of dissolution of marriage on ground of fraud on Family Court setting aside decree of fraud on Family Court. Sustainability.

By the impugned judgment in Sakshi, MFA No. 2201 of 2013, decided on 9-7-2014 (KAR) the High Court while allowing appeal preferred by R-1 wife, set aside the decree of dissolution of marriage passed by the Family Court, by imposing costs of Rs. 25,000 on the appellant husband and directed the Family Court to lodge a complaint through Court Sheristedar with the police against the appellant husband for the offences punishable under Sections 193, 417, 419, 426, 464, 468 IPC.

Allowing the appeal, the Supreme Court.

The High Court exceeded its jurisdiction and recorded its finding on presumption, surmises and conjectures without framing any question as to whether the appellant husband played fraud on the family court and obtained the decree of dissolution of marriage or whether the appellant husband committed any offence punishable under the provisions of the Penal Code, 1860. The only question framed by the High Court is "whether the impugned judgment and decree call for our interference?

The High Court failed to notice that this is a case in which there is a disputed question of fact which cannot be decided without framing a proper issue and in absence of evidence on record, the main allegation made by R-1 wife being that the husband played fraud on the Family Court and obtained the decree of dissolution of marriage or whether the appellant-husband committed any offence punishable under the provisions of Indian Penal Code was framed by the High Court.

The High Court giving reference to the plaint and the written statement presumed that 1st respondent-wife never appeared before the Family Court and failed to notice the aforesaid order dated 17th September, 2012 which make it clear that 1st respondent-wife, who was the respondent in the said case, was present in the court and one Shri B.M. Chougale, Advocate filed Vakalatnama for the 1st respondent wife with permission. It is clear from the record that only after hearing both the parties the ex parte order against 1st respondent-wife was set aside. The matter was then sent for conciliation to 27th September, 2012. On 27th September, 2012 and 5th November, 2013, the parties were absent. The case was adjourned to 27th November, 2012 on which date the appellant-husband was present and the 1st respondent-wife was absent. The Family Court adjourned the case to 3rd January, 2013 for appellant-husband's evidence observing that 1st respondent-wife had not filed objections. On 7th January, 2013, the appellant-husband was present. He filed affidavit evidence, got himself examined as PW1 and got marked Exts. P1 to P4.

It cannot be presumed that the Family Court in its order dated 17-9-2012 wrongly noted the presence of the appellant-husband and the 1st respondent-wife. In fact, this part of the order sheet has not been referred by the High Court while coming to a conclusion that the appellant-husband has played fraud upon the Family Court as to get a decree of divorce in his favour. Merely, because of the fact that print out of the case papers of both the parties have been taken from one and the same computer software it cannot be presumed that blank Vakalatnama signed by the 1st respondent-wife was misused by the appellant-husband or he played fraud and used the same to engage some other senior counsel. Such finding of the High Court is not based on evidence but on mere presumption and conjecture. For the reason aforesaid, the impugned judgment passed by the Division bench of the High Court in *Sakshi vs. Sunil, MFA No. 22031 of 2013, decided on 9-7-2014 (KAR)* is set aside. **Sunil v. Sakshi, (2015) 4 SCC 196**

Or. 6 R. 17 and Or. 12 R. 6 – Amendment of plaint - Admission by

defendant on issue concerned – Amendment for enhancing value of suit in keeping with market value of property - Defendant admitting in written statement that value of suit property was higher

Reiterated, as per Or. 6 R. 17 CPC, amendment application should normally be granted unless by virtue of amendment nature of suit is changed or some prejudice is caused to defendant - In present case, nature of suit C would not be changed by virtue of granting amendment application because suit was for specific performance and initially property had been valued at Rs 13,50,000 but market value of the property was actually Rs 1,20,00,000 - Defendant could not have objected to amendment application whereby plaintiff wanted to incorporate correct value of suit property in plaint by way of an amendment and application should not have been rejected by trial court only in apprehension that suit may be transferred to High Court and High Court should not have confirmed it - Setting aside impugned judgment delivered by High Court and order of trial court, apex Court directed the trial Court to permit appellant -Plaintiff to amend plaint as prayed for - Specific Relief Act, 1963, S. 10.

Amendment to plaint to correct valuation of suit property, which could result in transfer of suit due to change in pecuniary jurisdiction - Not a ground to deny amendment. **Mount Mary Enterprises v. Jivratna Medi Treat (P) Ltd., (2015) 4 SCC 182**

A. Order 7 Rule 3, Order 41, Rule 24, Sections 47 and 107 C.P.C.

B. Evidence Act, Section 3

If immovable property in suit for permanent prohibitory injunction is described by boundaries and municipal numbers, it is sufficient and it cannot be said that the land/property is not identifiable. The position might have been different if it would have been a case of mandatory injunction requiring restoration of possession of land to the plaintiff or demolition of the construction raised by the defendants.

The first appellate court wrongly framed the additional issue as to whether property in dispute was identifiable or not particularly when there was no such plea in the written statement. There was no need on the part of the first appellate court to remit the matter to the trial court as it is not a healthy practice to remand a case to the trial court and appellate court is empowered to take additional evidence or to

decide the case finally when evidence on record is sufficient after resettling the issue if necessary. *AIR 2002 SC 771* relied upon.

As plaintiff was paying house tax for several years, hence, evidence in respect thereto (receipts) was sufficient to prove that the plaintiff was in possession of the property in dispute. Contrary report of Advocate Commissioner stating that defendants were found in possession could not be accepted as it was contrary to evidence on record. **Zareef Ahmad v. Mohd. Farooq, AIR 2015 SC 1236**

Order 9 Rule 13 and Order 37, Rule 4

Suit for recovery of money on account of dishonour of cheque was decreed ex-parte under Order 37 C.P.C. Defendant filed restoration application under Order 37, Rule 4 C.P.C. The Supreme Court held that as debatable question was involved, hence, ex-parte decree deserved to be set aside in the interest of justice with the condition that the decreetal amount should be deposited by the defendant. **Mahesh Kumar Joshi v. Madan Singh Nagi, AIR 2015 SC 974**

Order 40, Rule 1 - Functions of Receiver:-

If the receiver is appointed during pendency of suit or appeal, ordinarily his function comes to an end with the final decision of the suit or the appeal as the case may be. However, even after final decision, under certain circumstances, the Court may take further assistance of the same receiver e.g. at the execution stage; or a new receiver or commissioner may be appointed for affecting delivery of possession. However, the receiver after final decision is not permitted or authorized to continue to perform the same duties and do the same things which he was doing prior to termination of proceedings i.e. suit or appeal. **M/S Sherali Khan Mohad Mankai v. State of Maharashtra, AIR 2015 SC 1394**

Order 41, Rule 31 - How First Appeal to be decided and Order 20, Rule 18 - Judgment and Decree in Partition Suit

Paras 23 to 25 are quoted below:

"*23. In our considered opinion, the High Court did not deal with any of the submissions urged by the appellants and/or respondents nor it took note of the grounds taken by the appellants in grounds of appeal nor took note of*

cross objections filed by plaintiffs under Order XLI Rule 22 of the Code and nor made any attempt to appreciate the evidence adduced by the parties in the light of the settled legal principles and decided case laws applicable to the issues arising in the case with a view to find out as to whether the judgment of the trial Court can be sustained or not and if so, how, and if not, why?

*24. We may consider it apposite to state being a well settled principle of law that in a suit filed by a co-sharerer, coparcener, co-owner or joint owner, as the case may be, for partition and separate possession of his/her share qua others, it is necessary for the Court to examine, in the first instance, the nature and character of the properties in suit such as who was the original owner of the suit properties, how and by which source he/she acquired such properties, whether it was his/her self-acquired property or ancestral property, or joint property or coparcenery property in his/her hand and, if so, who are/were the coparceners or joint owners with him/her as the case may be. Secondly, how the devolution of his/her interest in the property took place consequent upon his/her death on surviving members of the family and in what proportion, whether he/she died intestate or left behind any testamentary succession in favour of any family member or outsider to inherit his/her share in properties and if so, its effect. Thirdly whether the properties in suit are capable of being partitioned effectively and if so, in what manner? Lastly, whether all properties are included in the suit and all co-sharerers, coparceners, co- owners or joint-owners, as the case may be, are made parties to the suit? These issues, being material for proper disposal of the partition suit, have to be answered by the Court on the basis of family tree, inter se relations of family members, evidence adduced and the principles of law applicable to the case. (**see "Hindu Law" by Mulla 17th Edition, Chapter XVI Partition and Reunion - Mitakshara Law pages 493-547**).*

25. Being the first appellate Court, it was, therefore, the duty of the High Court to decide the first appeal keeping in view the scope and powers conferred on it under Section 96 read with Order XLI Rule 31 of the Code mentioned above. It was unfortunately not done, thereby, causing prejudice to the appellants whose valuable right to prosecute the first appeal on facts

and law was adversely affected which, in turn, deprived them of a hearing in the appeal in accordance with law."

Various authorities have been considered in the judgment on the point in question (what judgment of First Appeal should contain). Two more recent authorities of the Supreme Court have also discussed this aspect viz AIR 2013 SC 2239 and *AIR 2014 SC 2867*. **Shasidhar v. Ashwini Uma Mathad, AIR 2015 SC 1139**

Constitution of India

Article 19(1)(a) and (2) of Constitution- Information Technology Act 2000, Section 66A

The Preamble of the Constitution of India inter alia speaks of liberty of thought, expression, belief, faith and worship. It also says that India is a sovereign democratic republic. It cannot be over emphasized that when it comes to democracy, liberty of thought and expression is a cardinal value that is of paramount significance under our constitutional scheme. The importance of freedom of speech and expression both from the point of view of the liberty of the individual and from the point of view of our democratic form of government has been recognized by the Supreme Court in its various judgments. Freedom of speech and expression of opinion is of paramount importance under a democratic constitution which envisages changes in the composition of legislatures and governments and must be preserved. It lies at the foundation of all democratic organizations. Public criticism is essential to the working of its institutions. This right requires the free flow of opinions and ideas essential to sustain the collective life of the citizenry.

There are three concepts which are fundamental in understanding the reach of this most basic of human rights. The first is discussion, the second is advocacy, and the third is incitement. Mere discussion or even advocacy of a particular cause howsoever unpopular is at the heart of Article 19(1)(a). It is only when such discussion or advocacy reaches the level of incitement that Article 19(2) kicks in.[3] It is at this stage that a law may be made curtailing the speech or expression that leads inexorably to or tends to cause public disorder or tends to cause or tends to affect the sovereignty & integrity of India, the security of the State, friendly relations with foreign States, etc. Why it is important to have these three concepts in mind is because most of the arguments of both petitioners and

respondents tended to veer around the expression "public order".

It is significant to notice first the differences between the US First Amendment and Article 19(1)(a) read with Article 19(2). The first important difference is the absoluteness of the U.S. first Amendment - Congress shall make no law which abridges the freedom of speech. Second, whereas the U.S. First Amendment speaks of freedom of speech and of the press, without any reference to "expression", Article 19(1)(a) speaks of freedom of speech and expression without any reference to "the press". Third, under the US Constitution, speech may be abridged, whereas under our Constitution, reasonable restrictions may be imposed. Fourth, under our Constitution such restrictions have to be in the interest of eight designated subject matters - that is any law seeking to impose a restriction on the freedom of speech can only pass muster if it is proximately related to any of the eight subject matters set out in Article 19(2).

Held:

Section 66-A of the IT Act, 2000 casts the net very wide- all information that is disseminated over the internet is included within its reach. The definition of information in Section 2(1)(v) is an inclusive one. Further, the definition does not refer to what the content of information can be. In fact, it refers only to the medium through which such information is disseminated. Thus the public's right to know is directly affected by Section 66-A of the IT Act, 2000. Information of all kinds is roped in such information may be obscene or seditious. That such information may cause annoyance or inconvenience to some is how the offence is made out. It is clear that the right of the people to know the marketplace of ideas which the internet provides to persons of all kinds is what attracts Section 66-A of the IT Act, 2000. That the information sent has only to be annoying, inconvenient, grossly offensive, etc., to attract Section 66-A also shows that no distinction is made between mere discussion or advocacy of a particular point of view which may be annoying or inconvenient or grossly offensive to some on the one hand, and, incitement by which such words lead to an imminent causal connection with public disorder, security of State, etc., i.e. any of the eight subject-matters enumerated in Article 19(2) of the Constitution on the other. Section 66-A of the IT Act, 2000 in creating an offence against persons who use the internet and annoy or cause inconvenience to others very clearly affects the freedom of speech and expression of the citizenry of India at large in that such speech or expression is directly curbed by the creation of the offence contained in Section 66-A of the IT Act, 2000.

In the light of aforesaid observations Hon'ble Apex Court summarized its

conclusion as follows:-

1. Section 66-A of the Information Technology Act, 2000 is struck down in tis entirety being violative of Article 19(1) (a) and not saved under Article 19(2).
2. Section 69-A and the Information Technology (Procedure and Safeguards for Blocking for Access of Information by Public) Rules, 2009 are Constitutionally valid.
3. Section 79 is valid subject to Section 79(3)(b) being read down to mean that an intermediary upon receiving actual knowledge from a court order or on being notified by the appropriate government or its agency that unlawful acts relatable to Article 19(2) are going to be committed then fails to expeditiously remove or disable access to such material. Similarly, the Information Technology "Intermediary Guidelines" Rules, 2011 are valid subject to Rule 3 sub-rule (4) being read down in the same manner as indicated in the judgment.
4. Section 118(d) of the Kerala Police Act is struck down being violative of Article 19(1)(a) and not saved by Article 19(2). **Shreya Singhal v. Union of India, (2015) 5 SCC 1: AIR 2015 SC 1523**

A. Articles 32, 50, 226, 227, 246 –

B. National Tax Tribunal Act 2005

Transfer of appellate jurisdiction of the High Court under Income Tax Act to National Tax Tribunal does not violate any provision of the Constitution and it does not restrict power of judicial review of the High Court. Under the Act, power of the High Court to exercise judicial superintendence over the benches of the National Tax Tribunal has been specifically preserved. There is no violation of basic structure of the Constitution. **Madras Bar Association v. Union of India, AIR 2015 SC 1571: 2015 (5) SCC 1** (5 Judges Constitution Bench) About 70 cases considered. Judgment runs into about 200 pages of AIR.

Article 50 and 245

Legislature has got no power to enact the law which directly upturns a judicial decision. However, legislature is competent to retrospectively change the law in order to change the basis of a judgment.

1995 amendment of Kerala Cashew Factories Acquisition Act is *ultra vires* as it sought to nullify earlier Supreme Court judgment reported in *Indian Nut Products v.*

Union of India, 1994 (4) SCC 269. **S.T. Sadiq v. State of Kerala, AIR 2015 SC 1306**

Article 141 - Precedent

Decision by Supreme Court by passing a reasoned order, is law of the land Ratio deci dendi of such decision is binding on all Courts in the Country.

When Supreme Court declares that the decision is not confined to the parties to the case, but applies to all, other courts in the country will have no choice. **S.J.Coke Industries Pvt. Ltd. Etc. v. Central Coal Fields Ltd. Etc., 2015(3) Supreme 369.**

A. Article 341 and Constitution (Scheduled Caste order) 1950

B. Hindu Law

C. Service Law

Conversion/Reconversion - Eclipse of original Hindu caste on conversion to another religion and revival thereof on reconversion to Hindu religion - Principle applicable also where reconversion takes place several generations after conversion by ancestors - Conditions for applicability of the principle, laid down.

Conditions for applicability of the principle, held, are:

(i) there must be absolutely clear-cut proof that he belongs to the caste that has been recognized by the Constitution (Scheduled Castes) Order, 1950;

(ii) there has been reconversion to the original religion to which the parents and earlier generations had belonged; and

(iii) there has to be evidence establishing the acceptance by the community - Each aspect is very significant, and if one is not substantiated, the recognition would not be possible - Therefore, if a person born to Christian parents, who, belonging to a Scheduled Caste had converted themselves to Christianity, the said person on reconversion to his religion and on acceptance by his community with a further rider that he would practice the customs and traditions of the caste, would be treated as a member of the said Scheduled Caste and if the said caste is one of the castes falling within the Constitution (Scheduled Castes) Order, 1950, then he will be treated as a Scheduled Caste person. **K.P. Manu v. Chairman, Scrutiny Committee for verification of community certificate,**

(2015) 4 SCC 1 : AIR 2015 SC 1402

A. Articles 345 and 351

B. U.P. Official Language Act 1951 as amended in 1989

Earlier U.P. had adopted Hindi as official language. After adopting a particular language as official language the State does not lose power to adopt any other language in use in the State, as second official language. Accordingly, Section 3 which was inserted through amendment in 1989 in the U.P. Official Language Act of 1951 adopting Urdu as second official language of the State was not ultra vires in the Constitution. **U.P. Hindi Sahitya Sammelan v. State of U.P., AIR 2015 SC 1154** *(5 judges Constitution Bench)*

Criminal Procedure Code

24 and 301 Cr. P. C.

Transfer of a case by the Hon'ble Supreme court - under Section 406 of the Code - the transferee State - steps into the shoes of the transferor State - effectively becomes the prosecuting State - It can and does appoint a Public Prosecutor to prosecute the case - a Public Prosecutor who is answerable to the government of the transferee State only - the Public Prosecutor appointed by one State is certainly not answerable to the government of another State.

The only reasonable interpretation that can be given to the scheme laid out in Sections 24, 25, 25-A and 301(1) of the Code is that a Public Prosecutor appointed for the High Court and who is put in charge of a particular case in the High Court, can appear and plead in that case only in the High Court without any written authority whether that case is at the stage of inquiry or trial or appeal. Similarly, a Public Prosecutor appointed for a district and who is put in charge of a particular case in that district, can appear and plead in that case only in the district without any written authority whether that case is at the stage of inquiry or trial or appeal. So also, an Assistant Public Prosecutor who is put in charge of a particular case in the court of a Magistrate, can appear and plead in that case only in the court of a Magistrate without any written authority whether that case is at the stage of inquiry or trial or appeal. Equally, a Special Public Prosecutor who is put in

charge of a particular case can appear and plead in that case only in the court in which it is pending without any written authority whether that case is at the stage of inquiry or trial or appeal. In other words, Section 301(1) of the Code enforces the 'jurisdictional' or 'operational' limit and enables the Public Prosecutor and Assistant Public Prosecutor to appear and plead without written authority only within that 'jurisdictional' or 'operational' limit, provided the Public Prosecutor or the Assistant Public Prosecutor is in charge of that case.

The converse is not true, and a Prosecutor (Public Prosecutor, Assistant Public Prosecutor or Special Public Prosecutor) who is put in charge of a particular case cannot appear and plead in that case without any written authority outside his or her 'jurisdiction' whether it is the High Court or the district or the court of a Magistrate. In other words, Section 301(1) of the Code maintains a case specific character and read along with Sections 24, 25 and 25-A of the Code maintains a court or district specific character as well. **K. Anbazhagan Versus State of Karnataka and Ors. 2015(3) Supreme 705**

31 Cr.P.C.

Full discretion - order sentences - for two or more offences - to run concurrently – if court does not order the sentence to be concurrent - one sentence may run after the other

As pointed out earlier, Section 31 Cr.P.C. deals with quantum of punishment which may be legally passed when there is - (a) one trial and (b) the accused is convicted of two or more offences. Ambit of Section 31 is wide, covering not only single transaction constituting two or more offences but also offences arising out of two or more transactions. (Para 19)

Section 31 Cr.P.C. leaves full discretion with the Court to order sentences for two or more offences at one trial to run concurrently, having regard to the nature of offences and attendant aggravating or mitigating circumstances. Normal rule is to order the sentence to be consecutive and exception is to make the sentences concurrent. Of course, if the Court does not order the sentence to be concurrent, one sentence may run after the other. **O.M. Cherian @ Thankachan v. State Of Kerala & Ors. (2015) 2 SCC (Cri) 123**

: (2015) 2 SCC 501

125 Cr. P. C.

Reasons - for the order for maintenance - effective from either date of the order or the date of the application

Section 125 of the Cr.P.C., therefore, impliedly requires the Court to consider making the order for maintenance effective from either of the two dates, having regard to the relevant facts. For good reason, evident from its order, the Court may choose either date. It is neither appropriate nor desirable that a Court simply states that maintenance should be paid from either the date of the order or the date of the application in matters of maintenance. Thus, as per Section 354 (6) of the Cr.P.C., the Court should record reasons in support of the order passed by it, in both eventualities. The purpose of the provision is to prevent vagrancy and destitution in society and the Court must apply its mind to the options having regard to the facts of the particular case. **Jaiminiben Hirenbhai Vyas & Anr. v. Hirenbhai Rameshchandra Vyas & Anr (2015) 2 SCC (Cri) 92 : (2015) 2 SCC 385**

Section 125 Cr.P.C.- Applicability

A muslim woman who has been divorced is also entitled to maintenance under Section 125 Cr.P.C. till the date of remarriage.

Followed-

(1) Shamim Bano v. Asraf Khan, (2014) 12 SCC 636.
(2) Deniel Latif v. Union of India, (2001) 7 SCC 740.
(3) Khatoon Nisa v. State of U.P., (2014) 12 SCC 646.

Cr.P.C. 1973 - Section - Amount of Maintenance - As long as wife is entitled to grant of maintenance within the parameters of Section 125 Cr.P.C., it has to be adequate so that she can live with dignity, as she would have lived in her matrimonial home. She cannot be compelled to become a destitute or a beggar. There can be no shadow of doubt that an order under Section 125 Cr.P.C. can be passed if a person despite having sufficient means neglects or refuses to maintain the wife.

Sometimes a plea is advanced by the husband that he does not have

sufficient means to pay for the does not have job or his business is not doing well. These are only bald excuses and in fact they have no acceptability in law. If the husband is healthy, able bodied and is in a position to support himself, he is under the legal obligation to support his wife, for wife's right to receive maintenance under Section 125 Cr.P.C. unless dis-qualified, in an absolute right.

While determining the quantum of maintenance, in Jasbir Kaur Sehgal v. District Judge, Dehradun and others (1997) 7 SCC 7 is has been observed that-

> "The court has to consider the status of the parties, their respective needs, the capacity of the husband to pay having regard to his reasonable expenses for his own maintenance and of those, he is obliged under the law and statutory but involuntary payments or deductions. The amount of maintenance - fixed for the wife should be such as she can live in reasonable comfort considering her status and mode of life, she was used to when she lived with her husband, and also that she does not feel handicapped in the prosecution of her case. At the same time the amount so fixed cannot be excessive or extortionate."

In this case Family Court had directed that a sum of Rs. 2500/- should be paid as monthly maintenance allowance from the date of submission of application till the date of judgment and thereafter Rs. 4000/- per month from the date of judgment till the date of remarriage.

The High Court reduced the maintenance allowance to Rs. 2000/- from 01-04-2012 (i.e. the date of retirement of the husband) till remarriage of the appellant.

Hon'ble the Apex Court in the light of law laid down in the above mentioned case, and considering the amount of pension i.e. Rs. 11535/- and other retiral dues to the tune of 16,01,455/-, set aside the order of the High Court and restored the order of the Family Court. Accordingly appeal was allowed. **Shamim Farooqui v. Shahid Khan, 2015(3) Supreme 129**

Section 145 Cr.P.C.- Effect of proceedings under Section 145 Cr.P.C. on Civil/Legal Proceedings

Rana Shiv Gopal Singh and Rani Amarjeet Kaur had filed petition under Section 13 of the Haryana Urban (Control of Rent and Eviction) Act 1963, (Act 11 of 1973_ for ejectment of Krishan Lal from premises in question. i.e. House No. 8603-5 New No. 542 Block No.6 Ambala City, alleging them as landlords and Shri Krishan Lal as tenant of the house in dispute at the rate of 70/- p.m. as rent. It was also alleged in the petition that the tenant Krishan Lal committed default in payment of rent for 25 months.

During pendency of the petition Shiv Gopal Singh and Rani Amarjeet Kaur died appellants were substituted on their legal heirs. The defendant Krishan Lal also died and respondents as his legal representatives were substituted.

Written statement was filed in which relationship of Landlord and tenant between the parties was denied. It was also alleged in the written statement that the respondents was the tenant of Deity Shivji, and such the appellants have no right title a interest in the property. It was further pleaded in the written statement that in the proceedings under Section 145 of the Code of Criminal Procedure Code 1973, Tahsildar Ambala was appointed as receiver.

Rent Controller after recording evidence and hearing the parties, accepted the case of the appellants and allowed the petition for ejectment of the respondents.

Aggrieved by the above order the respondents filed Rent Appeal No. 55 of 1996 before the Appellate Authority. The Appellate Authority relying upon certain observations and findings recorded during proceeding drawn under Section 145 Criminal Procedure Code observed that Rama Shiva Gopal Singh was an employee of management committee of the temple of Murti Shivji. After his removal from the post of manager he had no right to collect rent from the respondents. It was further observed by the Appellate Authority that Tahasildar Ambala was appointed as Receiver of the property under Section 145 Cr.P.C. and after the withdrawal of attachment the premises were handed over to Lala Fakirchand the president of the Committee of Temple. For the above reasons the Appellate Authority allowed the appeal and set aside the order of the Rent Controller.

The appellants challenged the order of the Appellate Authority on

revision before the High Court, on the ground that the appellate authority had wrongly relied upon the observations and findings recorded in the proceedings drawn under Section 145 Cr.P.C., but the High Court did not accept the above contentions of the appellant and dismissed the revision. Being aggrieved the appellant preferred the appeal in Hon'ble the Apex Court.

Hon'ble The Apex Court relying upon the law laid down in Shanti Kumar Panda v.

Shakuntala Devi (2004)1 SCC 438 observed that-

"A decision given under Section 145 Cr.P.C. has relevance on evidence to show one or more of the following facts-

(1) That there was a dispute relating to a particular property.
(2) That dispute was between the parties.
(3) That such dispute led to the passing of a preliminary order under Section 145(1) Cr.P.C. or an order of attachment under Section 146(1) Cr.P.C.
(4) That the Magistrate found particular party or parties in possession or fictional possession of the disputed property.

Except for the limited purposes enumerated above, the reasoning recorded by the Magistrates or other finding recorded by him will have no relevance and will not be admissible before the competent court.

Therefore the appeal was allowed the order of the High Court was setaside and the matter was remitted to the High Court for fresh adjudication. **Surinder Pal Kaur and another v. Satpal and other, 2015(3) Supreme 103.**

Section 154, 155, 156, 157 - FIR in Cognizable Case - Whether the Police Officer is bound to register the case or has discretion

Held-

(1) General Rule - is to register the case. Where the FIR discloses a cause of action and must be strictly followed.

(2) Exceptional Cases - In which preliminary inquiry is permissible - In cases where FIR does not disclose a cognizable offence a preliminary enquiry may be permissible.

Also in - Matrimonial Cases

- Family disputes.
- Commercial Offences
- Medical Negligence Cases
- Corruption Cases.

The purpose of preliminary enquiry is not to test the veracity but simply to see that, whether cognizable offence is made out or not.

The preliminary enquiry should be completed within 7 days. **Lalita Kumari v. Govt. of U.P., 2014 (1) SCC (Cri) 524 (Five Judges Bench).**

Section 156(3) Cr.P.C.

The provision is being misused frequently. So to control it. Hon'ble The Apex Court observed that-

"The application of 156(3) Cr.P.C. should be filed only after availing recourse to Section 154(1) and 154(3). Moreover application u/s 156(3) Cr.P.C. must be supported by an affidavit giving details of availing provisions of Section 154(1) and 154(3) Cr.P.C.

The Magistrate should also verify the veracity of the applications with the affidavit." (Para 27) **M/s Priyanka Srivastava v. U.P. State, 2015(3) Supreme 152.**

156(3) Cr.P.C.

The power under Section 156(3) warrants application of judicial mind. A court of law is involved. It is not the police taking steps at the stage of Section 154

of the code. A litigant at his own whim cannot invoke the authority of the Magistrate. A principled and really grieved citizen with clean hands must have free access to invoke the said power. It protects the citizens but when pervert litigations takes this route to harass their fellows citizens, efforts are to be made to scuttle and curb the same.

Section 156(3) Cr.P.C. applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of said Act or under Article 226 of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores. We have already indicated that there has to be prior applications under Section 154(1) and 154(3) while filing a petition under Section 156(3). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. The warrant for giving a direction that an the application under Section 156(3) be supported by an affidavit so that the person making the application should be conscious and also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in accordance with law. This will deter him to casually invoke the authority of the Magistrate under Section 156(3). That apart, we have already stated that the veracity of the same can also be verified by the learned Magistrate, regard being had to the nature of allegations of the case. We are compelled to say so as a number of cases pertaining to fiscal sphere, matrimonial dispute/family disputes, commercial offences, medical negligence cases, corruption cases and the cases where there is abnormal delay/laches in initiating criminal prosecution, as are illustrated in Lalita Kumari are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR.

28. The present lis can be perceived from another angle. We are slightly surprised that the financial institution has been compelled to settle the dispute and we are also disposed to think that it has so happened because the complaint cases were filed. Such a situation should not happen. **Mrs. Priyanka Srivastava and Another v. State of U.P. and Others, 2015(3)Supreme 129 ; AIR 2015 SC 1758**

167 Cr. P. C. - Police report - not as per the legal requirement under section 173 (2) & (5) of cr.P.c. - will entitled the accused for default bail – held NO

If some mistake is committed in not producing the relevant documents at the time of submitting the report, it is always open to the investigating officer to produce the same with the

permission of the court. The further investigation is not precluded in Criminal Procedure Code, thus there is no question of not permitting the prosecution to produce additional documents which were gathered prior to or subsequent to the investigation and the word "shall" used in 173 (5) Cr.P.C. cannot be interpreted as mandatory, but as directory. Therefore, it is contended that the High Court is justified in refusing to grant Default Bail in favour of the appellant.

Therefore, filing of police report containing the particulars as mentioned under Section 173 (2) amounted to completion of filing of the report before the learned ACJM, cognizance is taken and registered the same. The contention of the appellant that the police report filed in this case is not as per the legal requirement under Section 173 (2) & (5) of Cr.P.C. which entitled him for default bail is rightly rejected by the High Court and does not call for any interference by this Court. **Narendra Kumar Amin v. Cbi & Ors. (2015)2 Scc(Cri) 259 : (2015) 3 SCC 417**

190 Cr. P. C.

Once the Magistrate of competent jurisdiction, on proper application of mind, decides to accept the closure report submitted by the police under Section 173(2) Cr.PC, whether the High Court is justified in setting aside the same in exercise of its revisional jurisdiction merely because another view

may be possible?

Held that the cognizance is a process where the court takes judicial notice of an offence so as to initiate proceedings in respect of the alleged violation of law. The offence is investigated by the police. No doubt, the court is not bound by the report submitted by the police under Section 173(2) of Cr.PC. If the report is that no case is made out, the Magistrate is still free, nay, bound, if a case according to him is made out, to reject the report and take cognizance. It is also open to him to order further investigation under Section 173(8) of Cr.PC. **Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke and others (2015) 2 SCC(Cri) 199(FB) ; (2015) 3 SCC 123 (FB)**

Section 200, 202 and 204 CrPC - Allegation against company only - Company was not made a party - whether Managing Director of the Company could be summoned or not?

Appellant is the Managing Director of M/s Sanghi Brothers Indore Ltd., Indore, which is registered company, duly registered under the Companies Act 1957 and is engaged in the business of automobile sale. The respondent/complainant purchased a truck from the above company. Just after the purchase of the Truck the respondent came to know that the above truck before purchase had met with accident as a result of which the engine of the truck was replaced by another engine. Coming to know of this, the respondent filed a complaint alleging that M/s Sanghi Brothers (Indore) Ltd. Indore being represented by the Managing Director Sharad Kumar Sanghi had suppressed the information and deliberately cheated the respondent.

The Learned Magistrate on the basis of Section 200 and 202 Cr.P.C. took cognizance against the appellant. The Session Judge and the High Court confined the Learned Magistrate's order. Therefore appellant filed Criminal Appeal before the Hon'ble Supreme Court.

In para 9 the Hon'ble Apex Court observed that -

"When a complainant intends to rope in a Managing Director or officer of a company, it is essential to make requisite allegations to constitute the vicarious liability. In Maksud Saiyad v. State of Gujarat, (2008)5 SCC 668 it has been held thus-

"Where a jurisdiction is exercised on a complaint petition filed in terms of Section 156(3) or Section 200 of the Code of Criminal Procedure the Magistrate is required to apply his mind. The Penal Code does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the Company, when the accused is the Company. The Learned Magistrate failed to pose unto himself the correct question viz. as to whether the complaint petition even if given face value and taken to be correct in its entirety, would lead to the conclusion that the respondents herein were personally liable for any offence. The Bank is a body Corporate. Vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the Statute, Statutes indisputably must contain provision fixing such vicarious liabilities. Even for the said purpose, it is obligatory on the part of the complainant to make requisite allegations, which would attract the provisions constituting vicarious liability."

Relying on the above law Hon'ble the Apex Court found that -

(1) The complainant had made allegations against the company.
(2) The company was not made a party.

(3) The allegations which find place against the Managing Director, in his personal capacity seem to be absolutely vague. There was no specific allegation against the Managing Director.

Therefore cognizance against the appellant/Managing Director could not have been taken. So, order taking cognizance against the Managing Director set aside. Criminal proceedings were also quashed. According Appeal was allowed. **Sharad Kumar Sanghi v. Sangita Rane, 2015(3) Supreme 77.**

202 Cr. P. C.

Magistrate - to call for a report under Section 202 instead of directing investigation 156(3) - controlled by - interest of justice from case to case – if direction under Section 202 - no arrest an accused by police.

The Hon'ble Supreme Court framed following questions for

consideration:

(i) Whether discretion of the Magistrate to call for a report under Section 202 instead of directing investigation 156(3) is controlled by any defined parameters?

(ii) Whether in the course of investigation in pursuance of a direction under Section 202, the Police Officer is entitled to arrest an accused?

(iii) Whether in the present case, the Magistrate erred in seeking report under Section 202 instead of directing investigation under Section 156(3)?"

The Hon'ble Supreme Court answer the first question by holding that the direction under Section 156(3) is to be issued, only after application of mind by the Magistrate. When the Magistrate does not take cognizance and does not find it necessary to postpone instance of process and finds a case made out to proceed forthwith, direction under the said provision is issued. In other words, where on account of credibility of information available, or weighing the interest of justice it is considered appropriate to straightaway direct investigation, such a direction is issued. Cases where Magistrate takes cognizance and postpones issuance of process are cases where the Magistrate has yet to determine "existence of sufficient ground to proceed". Subject to these broad guidelines available from the scheme of the Code, exercise of discretion by the Magistrate is guided by interest of justice from case to case.

The Hon'ble Supreme Court answer the second question by holding that under Section 202 are cases where material available is not clear to proceed further. The Magistrate is in seisin of the matter having taken the cognizance. He has to decide whether there is ground to proceed further. If at such premature stage power of arrest is exercised by police, it will be contradiction in terms.

The Hon'ble Supreme Court answer the third question by holding that the Magistrate and the High Court rightly held that in the present case report under Section 202 was the right course instead of direction under Section 156(3). The question is answered accordingly. **Ramdev Food Products Private Limited v. State of Gujarat AIR 2015 SC 1742**

204 Cr. P. C.

Issuing process – should not be an instrument - in the hands of private complainant - to harass the persons needlessly - order summoning the accused - must reflect application of mind - allegation of the complaint - supported by a statement of the complainant on oath - the necessary ingredients of the offence must disclose.

Indisputably, judicial process should not be an instrument of oppression or needless harassment. The court should be circumspect and judicious in exercising discretion and should take all the relevant facts and circumstances into consideration before issuing process lest it would be an instrument in the hands of private complainant as vendetta to harass the persons needlessly.

It is equally well settled that summoning of an accused in a criminal case is a serious matter and the order taking cognizance by the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. Section 482 of the Code of Criminal Procedure empowers the High Court to exercise its inherent powers to prevent abuse of the process of court and to quash the proceeding instituted on the complaint but such power could be exercised only in cases where the complaint does not disclose any offence or is vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance is taken by the Magistrate it is open to the High Court to quash the same in exercise of power under Section 482.

So far as the complaint alleging the offence under Section 499 IPC is concerned, if on consideration of the allegation the complaint is supported by a statement of the complainant on oath and the necessary ingredients of the offence are disclosed, the High Court should not normally interfere with the order taking cognizance. **P.S. Meherhomji v. K.T. Vijay Kumar and others, (2015) 1 SCC (Cri) 789, (2015) 1 SCC 788**

Sec. 228 Cr.P.C. – Charge - Effect of Non-framing of a charge under Section 149 IPC

Non-framing of a charge under Section 149 IPC, on the face of the charges framed against the appellants would not vitiate their conviction;

more so when the accused have failed to show any prejudice in this regard. In a case where there is mere omission to mention Section 149 in Charges which at the highest may be considered as an irregularity and the Accused have failed to show any prejudice, their conviction and sentence is not at all affected. Tenor of cross-examination of witness by the defence also rules out any prejudice to them.

On a perusal of the evidence on record, the facts and circumstances clearly bring out that there was an unlawful assembly. Each of the accused person was very well aware that they are tried for being a part of the assembly which was armed with weapons and hence, it was unlawful. On a close scrutiny of the evidence on record, it is difficult to hold that any prejudice has been caused to the accused appellants. **Vutukuru Lakshmaiah v. State of Andhra Pradesh 2015(4)Supreme 368**

300 Cr.P. C. - SECOND COMPLAINT

The respondent had been discharged in furtherance of the complaint made by the appellant, without any trial having been conducted against him (the respondent), was not disputed. The explanation under Section 300 of the Criminal Procedure Code clearly mandates that the dismissal of a complaint, or the discharge of an accused, would not be construed as an acquittal, for the purposes of this Section. Thus Section 300 of the Criminal Procedure Code, will be an embargo to obstruct the right of the appellant to file a second complaint against the respondent, is not justified.We are of the considered view, that proceedings in the second complaint would not be barred, because no trial had been conducted against the respondent, in furtherance of the first complaint. **Ravinder Kaur v. Anil Kumar 2015(4)Supreme 208**

309 Cr. P. C.

Strict Compliance - cross-examination after a long span of time - not all appreciable - imperative - the cross-examination - be completed on the same day - If continues till late hours - the trial can be adjourned to the next day.

Adjournments are sought on the drop of a hat by the counsel, even

though the witness is present in court, contrary to all principles of holding a trial. That apart, after the examination-in-chief of a witness is over, adjournment is sought for cross-examination and the disquieting feature is that the trial courts grant time. The law requires special reasons to be recorded for grant of time but the same is not taken note of.

In fact, it is not all appreciable to call a witness for cross-examination after a long span of time. It is imperative if the examination-in-chief is over, the cross-examination should be completed on the same day. If the examination of a witness continues till late hours the trial can be adjourned to the next day for cross-examination. It is inconceivable in law that the cross-examination should be deferred for such a long time. It is anathema to the concept of proper and fair trial.

The duty of the court is to see that not only the interest of the accused as per law is protected but also the societal and collective interest is safe-guarded. It is distressing to note that despite series of judgments of this Court, the habit of granting adjournment, really an ailment, continues. How long shall we say, "Awake! Arise!". There is a constant discomfort. Therefore, we think it appropriate that the copies of the judgment be sent to the learned Chief Justices of all the High Courts for circulating the same among the learned trial Judges with a command to follow the principles relating to trial in a requisite manner and not to defer the cross- examination of a witness at their pleasure or at the leisure of the defence counsel, for it eventually makes the trial an apology for trial and compels the whole society to suffer chicanery. Let it be remembered that law cannot allowed to be lonely; a destitute. **Vinod Kumar v. State of Punjab (2015) 2 SCC(Cri) 226 : (2015) 3 SCC 220**

313 Cr. P. C.

Accused giving an evasive or unsatisfactory answer - not justify the Court to return a finding of guilt on this score - burden is cast on the prosecution to prove its case beyond reasonable doubt - Once this burden is met - the Statements under Section 313 assume significance

Refusal to answer any question put to the accused by the Court in relation to any evidence that may have been presented against him by the

prosecution or the accused giving an evasive or unsatisfactory answer, would not justify the Court to return a finding of guilt on this score. Even if it is assumed that his statements do not inspire acceptance, it must not be lost sight of that the burden is cast on the prosecution to prove its case beyond reasonable doubt. Once this burden is met, the Statements under Section 313 assume significance to the extent that the accused may cast some incredulity on the prosecution version. It is not the other way around; in our legal system the accused is not required to establish his innocence. We say this because we are unable to subscribe to the conclusion of the High Court that the substance of his examination under Section 313 was indicative of his guilt. If no explanation is forthcoming, or is unsatisfactory in quality, the effect will be that the conclusion that may reasonably be arrived at would not be dislodged, and would, therefore, subject to the quality of the defence evidence, seal his guilt. Article 20(3) of the Constitution declares that no person accused of any offence shall be compelled to be a witness against himself. In the case in hand, the High Court was not correct in drawing an adverse inference against the Accused because of what he has stated or what he has failed to state in his examination under Section 313 CrPC. **Nagaraj v. State Rep. By Inspector Of Police, Salem Town, Tamil Nadu 2015(2)Supreme 598**

S. 313- Object and scope of. Refusal to answer question of evasive or unsatisfactory answer by accused. Effect of-

In murder trial base on circumstantial evidence Madras High Court affirmed the conviction and sentence awarded by the trial court to the accused appellant. The death body of the deceased was recovered after two days of the murder from a room of a hotel in which accused and deceased stayed for short time on 25th July, 2000. The accused surrendered before the Judicial magistrate on 29.11.2001 eighteen months later. It is not in dispute that in this long period the Police had not taken any steps for his interrogation or his arrest. The Charge sheet was filed on 28.11.2002. The motive attributed for the murder was his previous enmity with the deceased because of the non-payment of pending dues but in the opinion of apex court there was no evidentiary foundation for arriving at this conclusion. The accused pleaded not guilty.

When the accused was questioned under Section 313 Cr.P.C., he emphatically denied his complicity in the offence, and said that he had no connection with the deceased and had never visited Sampath Kumar Lodge. According to his Section 313 statement and his written statement, he was in his home in Bargur, and the police stated visiting his home and troubling him; he engaged an advocate and surrendered before the Court; he was taken into custody by PW 11 and was "coerced" on 11-12-2011 and on 12-12-2011, was made to sign a paper; he has denied that he voluntarily confessed to the crime or that he accompanied the police to any place.

Held-

Section 313 Cr.P.C. is of seminal importance in criminal law jurisdiction and is imperative to enable an accused to explain away any incriminating circumstances proved by the prosecution. It is intended to benefit the accused, its corollary being to benefit the court in reaching its final conclusion; its intention is not to nail the accused, but to comply with the most salutary and fundamental principle of natural justice i.e. audi alteram partem. **Parsuram Pandey v. State of Bihar, (2004) 13 SCC 189: 2005 SCC (Cri) 113; Asraf Ali v. State of Assam, (2008) 16 SCC 328: (2010) 4 SCC (Cri) 278, relied on**

Unless the order passed by the Magistrate is perverse or the view taken by the court is wholly unreasonable or there is non- consideration of any relevant material or there is palpable misreading of records, the revisional court is not justified in setting aside the order, merely because another view is possible. The revisional court is not meant to act as an appellate court. The whole purpose of the revisional jurisdiction is to preserve the power in the court to do justice in accordance with the principles of criminal jurisprudence. Revisional power of the court under Sections 397 to 401 of Cr.PC is not to be equated with that of an appeal. Unless the finding of the court, whose decision is sought to be revised, is shown to be perverse or untenable in law or is grossly erroneous or glaringly unreasonable or where the decision is based on no material or where the material facts are wholly ignored or where the judicial discretion is exercised arbitrarily or

capriciously, the courts may not interfere with decision in exercise of their revisional jurisdiction. **Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke and others (2015) 2 SCC(Cri) 19 ; (2015) 3 SCC 123**

Section 354 Cr.P.C.- Section 302 and 304 Part II I.P.C.- Sentencing - Duty of Court -

Accused/respondents were convicted under Section *302/304* IPC. In appeal the High Court converted the conviction from 302 IPC to Section 304 Part II and thereby altered the renitence to imprisonment for period already undergone which was only 11 months and further directed to pay a sum of Rs. *350001*- each to the complainant. Both the State and complainant have challenged this alteration of sentence.

Hon'ble the Apex Court upheld the alteration of conviction from Section 302 to Section 304 Part II, but as regards quantum of sentence in para 11 observed that-

> "Sentencing is an important task in the matters of crime. One of the prime objectives of the criminal law is imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done. With reference to sentencing by courts, this Court in the decision in State of U.P. v. Shri Kishan (2005) 10 SCC 420 made these weighty observations:
>
> > "5. Undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could not long endure under such serious threats. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed, etc…..
> >
> > 7. The object should be to protect the society and to deter the criminal in achieving the avowed object of law by imposing appropriate sentence. It is expected that the courts would operate the sentencing system so as to impose such sentence

which reflects the conscience of the society and the sentencing process has to be stem where it should be.

8 ……..Any liberal attitude by imposing meager sentences or taking too sympathetic view merely on account of lapse of time in respect of such offences will be result wise counterproductive in the long run and against societal interest which needs to be cared for and strengthened by string of deterrence inbuilt in the sentencing system.

9. The court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and victim belong. The punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should "respond to the society's cry for justice against the criminal".

In the light of above observations and looking in to the gravity of the case, Hon'ble the Apex Court held that punishment must be proportionate to the crime. The sentence of 11 months awarded by the High Court to the respondents for the said conviction is too meager, and not adequate and it would be Travesty of Justice. Therefore the each of the accused/respondents No. 1 to 3 was sentenced to 5 years rigorous imprisonment for the offence under Section 304 Part 2. Accordingly both the appeals were partly allowed. **Tukaram Bnyanoshwar Patil v. State of Maharashtra, 2015(3) Supreme 229.**

357-A & 357 Cr.P.C.-Compensation vis-a-vis Interim Compensation

We are of the view that it is the duty of the Courts, **on taking cognizance** of a criminal offence, to ascertain whether there is tangible material to show commission of crime, whether the victim is identifiable and whether the victim of crime needs immediate financial relief. On being satisfied on an application or on its own motion, the Court ought to direct grant

of **interim compensation**, subject to final compensation being determined later. Such duty continues at every stage of a criminal case where compensation ought to be given and has not been given, irrespective of the application by the victim. At the stage of final hearing it is obligatory on the part of the Court to advert to the provision and record a finding whether a case for grant of compensation has been made out and, if so, who is entitled to compensation and how much. Award of such compensation can be interim. Gravity of offence and need of victim are some of the guiding factors to be kept in mind, apart from such other factors as may be found relevant in the facts and circumstances of an individual case. We are also of the view that there is need to consider upward revision in the scale for compensation and pending such consideration to adopt the scale notified by the State of Kerala in its scheme, unless the scale awarded by any other State or Union Territory is higher. The States of Andhra Pradesh, Madhya Pradesh, Meghalaya and Telangana are directed to notify their schemes within one month from receipt of a copy of this order. We also direct that a copy of this judgment be forwarded to National Judicial Academy so that all judicial officers in the country can be imparted requisite training to make the provision operative and meaningful.

In the present case, the impugned judgment shows that the de facto complainant, PW-2 Raman Anand, filed Criminal Revision No.1477 of 2004 for compensation to the family members of deceased Devender Chopra and his son Abhishek Chopra. The same has been dismissed by the High Court without any reason. In fact even without such petition, the High Court ought to have awarded compensation. There is no reason as to why the victim family should not be awarded compensation under Section 357-A by the State. Thus, we are of the view that the State of Haryana is liable to pay compensation to the family of the deceased. We determine the interim compensation payable for the two deaths to be rupees ten lacs, without prejudice to any other rights or remedies of the victim family in any other proceedings. **Suresh & Anr. v. State Of Haryana (2015) 2 SCC(Cri) 45 ; (2015) 2 SCC 227**

Ss. 397, 401 Cr.P.C.- Revision- A person accused of crime in the complaint can claim right of hearing in a revision.

The learned Additional Sessions Judge after adumbrating the facts and taking note of the submissions of the revisionist, set aside the impugned order and remanded the matter to the trial Court with the direction that he shall hear the complaint again and pass a cognizance order according to law on the basis of merits according to the directions given in the said order. Be it noted, the learned Additional Sessions Judge heard the counsel for the respondent No.3 and the learned counsel for the State but no notice was issued to the accused persons therein. Ordinarily, we would not have adverted to the same because that lis is the subject matter in the appeal, but it has become imperative to do only to highlight how these kind of litigations are being dealt with and also to show the respondents had the unwarranted enthusiasm to move the courts. The order passed against the said accused persons at that time was an adverse order inasmuch as the matter was remitted. It was incumbent to hear the respondents though they had not become accused persons. A three-Judge Bench in Manharibhai *Muljibhai Kakadia and Anr. v. Shaileshbhai Mohanbhai Patel and others [(2012) 10 SCC 517]* has opined that in a case arising out of a complaint petition, when travels to the superior Court and an adverse order is passed, an opportunity of hearing has to be given. The relevant passages are reproduced hereunder: **Mrs. Priyanka Srivastava and Another v. State of U.P. and Others 2015(3) Supreme 152**

Criminal Trial

Alibi

Plea of alibi - need be considered - only when the burden discharged by the prosecution satisfactorily - that the accused was present at the scene and has participated in the crime - The burden - not be lessened by the mere fact that the accused has adopted the defence of alibi – after burden discharged by the prosecution - the accused to prove - with absolute certainty – to exclude the possibility of his presence at the place of occurrence

The Latin word alibi means "elsewhere" and that word is used for convenience when an accused takes recourse to a defence line that when the occurrence took place he was so far away from the place of occurrence that it is extremely improbable that he would have participated in the

crime. It is a basic law that in a criminal case, in which the accused is alleged to have inflicted physical injury to another person, the burden is on the prosecution to prove that the accused was present at the scene and has participated in the crime. The burden would not be lessened by the mere fact that the accused has adopted the defence of alibi. The plea of the accused in such cases need be considered only when the burden has been discharged by the prosecution satisfactorily. But once the prosecution succeeds in discharging the burden it is incumbent on the accused, who adopts the plea of alibi, to prove it with absolute certainty so as to exclude the possibility of his presence at the place of occurrence. When the presence of the accused at the scene of occurrence has been established satisfactorily by the prosecution through reliable evidence, normally the court would be slow to believe any counter-evidence to the effect that he was elsewhere when the occurrence happened. But if the evidence adduced by the accused is of such a quality and of such a standard that the court may entertain some reasonable doubt regarding his presence at the scene when the occurrence took place, the accused would, no doubt, be entitled to the benefit of that reasonable doubt. For that purpose, it would be a sound proposition to be laid down that, in such circumstances, the burden on the accused is rather heavy. It follows, therefore, that strict proof is required for establishing the plea of alibi. **Vijay Pal v. State (GNCT) of Delhi 2015 (2) Supreme 581**

Conduct of accused, complainant, witnesses, etc.- Abscondence. What is. No attempt to arrest accused or issuance of notice to accused to participate in investigation for long period (18 months) after incident concerned. Voluntary surrender due to harassment by police. These circumstances cannot be held against accused.

No explanation has been given for the fact that the accused was not arrested after the investigation commenced, despite the fact that seemingly the prosecution perceived that the finger of suspicion pointed at him and him alone. Notices requiring him to participate in the investigation are conspicuous by their absence, and that too for a long duration of eighteen months. In fact he was only taken into custody after he voluntarily surrendered. The High Court has held that he was absconding, but this is not borne out from the

records as admittedly there was no warrant for his arrest on the record. (Para 10)

No suspicious or ulterior slant can be attributed to the accused for surrendering before the Judicial Magistrate after one-and-a-half years, particularly given that there were no outstanding warrants for his arrest or even for participating in the investigation. The statement of the accused that he did so because he was being harassed by the police to turn himself in seems very credible. (Para 11) **Nagaraj v. Inspector of Police, Criminal Appeal No. 426 of 2003, decided on 5.10.2005 (Mad), Reversed**) **Nagaraj vs. State, (2015) 4 SCC 739**

Section 376(1) IPC - Test Identification Parade - Its Evidentiary Value

The appellant aged 10-13 years was guarding her crops, a per person aged about 22-23 years wearing a shirt with red stripes and black trouser came, he chased the girl/appellant and then caught and raped her. The girl/appellant shouted for help which attracted the attention of 3 persons PW-2, PW-3 and PW 4. PW 4 was the brother of the victim girl, who chased the accused but was not able to catch him.

The investigating officer did not arrange test identification parade. PW 2, PW 4 and PW6 had failed to identify the accused in the Court. However the prosecutrix identified the accused/appellant in the Court.

The Trial Court observed that in the absence of any prior identification parade such identification in court for the first time was not good enough, therefore acquitted the accused of the charges leveled against him.

Against this judgment the appellant/prosecutrix preferred revision in High Court, which was dismissed. The appellant challenged this order and judgment in Supreme Court, stating that the testimony of the Appellant was cogent and supported by other evidence on record. The FIR was lodged without delay and the fact that she was subjected to rape was well established. The Appellant in her FIR had clearly stated that she would be able to identify the accused and had given sufficient indications regarding his identity. Therefore identification of the accused first time in court by the prosecutrix was not flawed an any count and ought to be accepted.

Relying on Ashok Debbaramma @Achak Debbarrna v. State of Tripura, (2014)4 SCC 747 it was also submitted that identification for the first time in Court is good enough, and can be relied upon if the witness is otherwise trust worthy and reliable.

> "She also had a reason to remember their faces as they had committed a heinous offence and put her to shame. She had, therefore, abundant opportunity to notice their features In fact on account of her traumatic and tragic experience, the faces of the appellants must have got imprinted in her memory, and there was no chance of her making a mistake about their identity."

The Apex Court in para 10 elaborating the scope and evidentiary value of the Identification Parade observed that-

> "It has consistently been held by this Court that what is substantive evidence is the identification of an accused in court by a witness and that the prior identification in a test identification parade is used only to corroborate the identification in court. Holding of test identification parade is not the rule of law but rule of prudence. Normally identification of the accused in a test identification parade lends assurance so that the subsequent identification in court during trial could be safely relied upon. However, even in the absence of such test identification parade, the identification in court can in given circumstances be relied upon, if the witness is otherwise trustworthy and reliable. The law on the point is well-settled and succinctly laid down in Ashok Debbarma @Achak Debbarma v. State of Tripura, (2014)4 SCC 747."

The Apex Court further held that the evidence of the prosecutrix was reliable and trust worthy. The High Court was not justified in dismissing the revision. Therefore appeal was allowed and accused was convicted for having committed the offence under Section 376 (l) IPC. **Satwantin Bai v. Sunil Kumar and other, 2015(3) Supreme 449.**

Death Sentence - Rarest of the rare cases - Imprisonment for life the rule and capital sentence an exception

The complainant Lalta Prasad lodged an FIR stating that 10 months prior to the incident Smt. Imarati Devi wife of accused Ram Swaroop had contested the election for the post of Gram Pradhan and lost the election. Ram Swaroop thereafter had threatened the villagers to bear the brunt for not getting his wife elected to the post. To take sever go the accused Ram Swaroop along with other accused person all armed with different types of weapons. Reached the crusher of the complainant where Hemraj, Moti Ram, Kundan Shiv Charan Lal and Devi Ram were sitting and were celebrating the festival of Hole. Ram Swaroop then exhorted the other accused to kill the complainant party. Out of fear the complainant with his family and friends ran he Iter shelter to save their lives. The accused party chased then assaulted them indiscriminately and opened fire. When some of the members of the complainant party entered into a Kothari to save their lives some accused poured kerosene on the khaprail of the Kothari and set it ablaze. When Moti Ram, Hem Raj, Chunni Lal and Mahendra Pal tried to come out of the Kothari they were shot dead.

Thus 5 persons had been brutally and gruesomely murdered and burnt by the accused and 7 persons had been grievously injured by sharp edged weapons and lathis.

After trial the Trial Court held 37 accused guilty for the offences under Sections 147, 148,436/149, 302/149, 307/149 and Section 506 IPC, and section 7 Criminal Law Amendment Act, Out of these 37 accused 12 accused were awarded death penalty.

In appeal the High Court affirmed the conviction of the accused, but modified the sentence of death to the imprisonment of life, opining that the offence committed by them does not fall under the category of rarest of rare cases.

Against the Judgment of High Court cross-appeal was preferred. U.P. State challenged the Judgment of the High Court stating that crime falls in the category of "rarest of the rare case" inviting death penalty to the offenders. But the High Court acted in complete disregard to the law settled by the Apex Court, and shown undue lenience in the matter of sentence, which will give rise and foster a feeling of private revenge among the people leading to destabilization of the society.

Hon'ble the Apex Court observed that sentence of imprisonment for life is now the rule and capital sentence is an exception. It is obligatory on the courts to heard special reasons, if ultimately death sentence is to be awarded. The Supreme Court in several cases reiterated the guidelines laid down in Bachan Singh and Machi Singh's cases that fall under the rarest of the rare cases.

In these 3 Cases-

1. Neel Kumar v. State of Haryana, (2012)5 SCC 766.
2. Mochi Singh v. State of Punjab, (1983) 3 SCC 470 and
3. Bachan Singh v. State of Punjab, (1980)2 SCC 684.

The Supreme Court held that the extreme penalty of death need not be inflicted except in gravest cases of extreme culpability. Before opting for the death penalty the circumstances of the offender also require to be taken into consideration along with the circumstances of the crime for the reason that life imprisonment is the rule and death sentence is an exception. The penalty of death sentence may be warranted only in a case where the court comes to the conclusion that imposition of life imprisonment is totally inadequate having regard to the relevant circumstances of the crime. The balance sheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances have to be accorded full weightage and a just balance has to be struck between the aggravating and mitigating circumstances before the option is exercised.

This Court in Barish Mohandas Rajput v. State of Maharashtra, (2011)12 SCC 56, held that 'the rarest of the rare case' comes when a convict would be a menace and threat to the harmonious and peaceful coexistence of the society. The crime may be heinous or brutal but may not be in the category of 'rarest of rare case'. There must be no reason to believe that the accused cannot be reformed or rehabilitated and that he is likely to continue criminal acts of violence as would constitute a continuing threat to the society. The accused may be a menace to the society and would continue to be so threatening its peaceful and harmonious co-existence. The manner in which the crime is committed must be such 'that it may result in intense and extreme

indignation of the community and shock the collective conscience of the society.

In R. Rajagopal v. State of Tamilnadu, AIR 1995 SC 264, this Court considered what is the rarest of rare cases and when death sentence can be imposed and observed that the choice as to which of the punishment provided for murder is the proper one in a given case will depend upon the particular facts and circumstances of that case and the Courts have to exercise their discretion judicially on well recognized principles after balancing all the mitigating and aggravating circumstances of the case. The Court should also see whether there is something unknown about the crime which renders the sentence of imprisonment of life inadequate and calls for imposition of death sentence.

In Santosh Kumar Singh v. State, (2010)9 SCC 747, it was observed by this Court that undoubtedly, the sentencing part is a difficult one and often exercises and mind of the Court but where the option is between a life sentence and a death sentence, the options are indeed extremely limited and if the Court itself feels some difficulty in awarding one or the other, it is only appropriate that the lesser sentence should be awarded. This is the underlying philosophy behind "the rarest of the rare" principle.

In the light of law laid down in the above mentioned cases Hon'ble the Apex Court held that although the accused indulged themselves in acts of most gruesome nature. At the same it is to be born in mind that the accused were on a rampage and running berserk with the only sense triggered by the thrust of revenge. The brutality of murder must be seen along with all mitigating factors in order to come to conclusion whether case falls within the ambit of rarest of the rare cases. Though the incriminating circumstances proved by the prosecution unmistakably and unerringly dead to the guilt of the appellant/accused. Yet their case does not fall under the category of rarest of the rare cases. There is a ray of hope for their reformation and rehabilitation. So judgment of' the High Court - convicting the death penalty into life imprisonment upheld. All appeals dismissed. **State of U.P. v. Om Prakash, 2015(3) Supreme 406.**

Medical Jurisprudence/Evidence. Burn injuries/Death by burning. Homicidal

burning or accidental death by kerosene stove. Determination of. Medical evidence in present case clearly establishing homicide. Testimony of the daughter, PW 3, a young girl of 10 yrs, that kerosene oil accidentally spilled on body of her mother, thus found absolutely unbelievable.

Filtering the unnecessary details the case of the prosecution is that the deceased, Savitri, had entered into wedlock with the appellant herein prior to almost eleven years of the date of occurrence i.e. 2.11.1997. The parental home of the deceased was situated at a distance of half a kilometer. On the fateful day i.e. 2.11.1997 about 11:00 p.m., Seema, PW- 3, daughter of the deceased, aged about ten years, came running to the house of her grandfather Shivcharan, PW-8, and informed him as well as Satish, brother of the deceased, PW-1, that her father was threatening to burn her mother. The information compelled PWs 1 and 8 to rush to the house of the deceased and, as the factual matrix would show, PW-1, being young in age, reached the house of his sister earlier than his father and found his sister was burning and she told him that it was the accused-appellant who had put her ablaze by pouring kerosene. The brother poured water on the deceased in order to extinguish the fire and thereafter took her to Deen Dayal Upadhyay Hospital where she could not be admitted due to lack of facility and thereafter they brought her to Safdarjung Hospital where she was admitted. Despite availing treatment, she breathed her last on 3.11.1997 about noon. It is necessary to mention here that after the deceased was taken by her father and brother to the hospital, two neighbours, namely, Shanker Lal and Surender, PW-2 and PW-4 respectively went to the Police Station at Mangol Puri and gave the information about the incident by DD-73 dated 2.11.1997 on the basis of which, the S.I. Vijender Singh, PW-21, went to the place of the occurrence where he met PW- 3, the daughter of the deceased, and came to learn that her parents had quarreled and her mother had suffered burn injuries and was taken to the hospital.

On the basis of the ocular and the documentary evidence, the learned trial Judge came to hold that the prosecution had established the charge levelled against the accused to the hilt and accordingly convicted him under Section 302, I.P.C and imposed the sentence as has been stated hereinbefore.

On an appeal being preferred, the High Court reappreciating the

evidence and placing reliance on the oral dying declaration and the testimony of the brother and further accepting the post mortem report found that the learned trial Judge had really not faulted in recording the conviction. Being of this view, it dismissed the appeal.

There is no dispute that the value of medical evidence is only corroborative. It proves that the injuries could have been caused in the manner as alleged and nothing more. The use which the defence can make of the medical evidence is to prove that the injuries could not possibly have been caused in the manner alleged and thereby discredit the eye-witnesses. Unless, however the medical evidence in its turn goes so far that it completely rules out all possibilities whatsoever of injuries taking place in the manner alleged by eyewitnesses, the testimony of the eye-witnesses cannot be thrown out on the ground of alleged inconsistency between it and the medical evidence. It is also true that the post-mortem report by itself is not a substantive piece of evidence, but the evidence of the doctor conducting the post-mortem can by no means be ascribed to be insignificant. The significance of the evidence of the doctor lies vis--vis the injuries appearing on the body of the deceased person and likely use of the weapon and it would then be the prosecutor's duty and obligation to have the corroborative evidence available on record from the other prosecution witnesses. It is also an accepted principle that sufficient weightage should be given to the evidence of the doctor who has conducted the post- mortem, as compared to the statements found in the textbooks, but giving weightage does not ipso facto mean that each and every statement made by a medical witness should be accepted on its face value even when it is self-contradictory. It is also a settled principle that the opinion given by a medical witness need not be the last word on the subject. Such an opinion shall be tested by the Court. If the opinion is bereft of logic or objectivity, the court is not obliged to go by that opinion. That apart, it would be erroneous to accord undue primacy to the hypothetical answers of medical witnesses to exclude the eyewitnesses' account which are to be tested independently and not treated as the 'variable' keeping the medical evidence as the 'constant'. Where the eyewitnesses' account is found credible and trustworthy, a medical opinion pointing to the alternative possibilities cannot be accepted as conclusive.

However, in the present case it is the medical evidence that must

prevail. In the cross-examination, PW 5 (the doctor who had conducted the post-mortem on the dead body of the deceased) has categorically denied the suggestion that the injuries received by the deceased could have been sustained because of kerosene oil from the stove fell on her body due to the paining of the stove and also by fall of a tin of kerosene oil on the floor. He has deposed without any equivocation that the burn injuries sustained by the deceased were not possible due to accidental burns. The High Court has taken not of the FSL report, from which it is evident that the analysis by gas liquid chromatography showed, kerosene oil residues were found on the scalp hair of the deceased. It is apt to note that the presence of kerosene of the scalp hair of the deceased and presence of dust particles in the larynx of the deceased which could not have happened by accident. The testimony of the daughter, PW 3, a young girl of ten years, that the kerosene oil accidentally spilled on the body of her mother is thus absolutely unbelievable.

It is contended by the appellant that when the deceased sustained 100% burn injuries, she could not have made any statement to her brother. In this regards, it is profitable to refer to the decision in **Mafabhai Nagarbhai Raval, (1992) 4 SCC 69,** wherein it has been held that a person suffering 99% burn injuries could be deemed capable enough for the purpose of making a dying declaration. **Vijay Pal v. State (Government of NCT of Delhi), (2015) 4 SCC 749**

i. Circumstantial Evidence – Section 498-A, 304-B I.P.C. and section 3 and 4 of Dowry Prohibition Act – The deceased dying un-natural death due to burn injuries within 5 months of her marriage in the house of her in-laws. Doctor who conducted post mortem opined that the deceased was given some toxic substance before her death due to which she died, and later on she was burnt. Because no external reason of death was found, the viscera was sent to the State Laboratory for chemical examination, and it was found that toxic material was present in the viscera.

On circumstantial evidence this Court has laid down the following principles in Sharad Birdhichand Sardar v. State of Maharashtra, (1984) 4 SCC 116;

1. The circumstances from which the conclusion of guilt is to be drawn must

or should be and not merely "may be" fully established.

2. The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say they should not be explainable on any other hypothesis except that the accused is guilty.
3. The circumstances should be conclusive nature and tendency.
4. They should exclude every possible hypothesis except the one to be proved and,
5. There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act have been done by the accused.

Whenever there is a break in the chain of circumstances, the accused is entitled to the benefit of doubt; State of Maharashtra v. Annappa Bandu Kavatage (1979)4 SCC 715.

In the light of above law laid down by the Hon'ble Supreme Court held that there is no reason laid for the crucial evidence would forth by the prosecution. The deceased had died in the house of the accused/appellant they failed to give the reasonable explanation of the death of the deceased. Demand for Dowry was proved and the deceased was treated crucially for non-fulfillment of dowry. This crucial treatment was continued till soon before death.

So the conviction of accused/appellant upheld. Appeal dismissed. **Bhim Singh v. State of Uttrakhand, 2015(2) Supreme 144.**

ii. Circumstantial Evidence - Generally- Appreciation of evidence.

When the conviction is based on circumstantial evidence solely, then there should not be any snap in the chain of circumstances. If there is a snap in the chain, the accused is entitled to benefit of doubt. If some of the circumstances in the chain can be explained by any other reasonable hypothesis, then also the accused is entitled to the benefit of doubt. But in assessing the evidence, imaginary possibilities have no place. The court considers ordinary human probabilities.

The circumstantial evidence leads to the guilt of the accused persons, as the prosecution has proved that the accused had the opportunity to administer

the poison and the doctors in the medical examination have also reported that the deceased was a healthy woman who, along with her family, was trying to reconcile matters with the accused persons. The fact that the death occurred in the house of the accused persons, leads to their guilt. They have not discharged the onus of disproving the presumptions under Sections 113-A and 113-B. Thus, the question of suicide is ruled out. The Court in this case is obliged to take the presumption raised under Section 113-B of the Evidence Act as the death of the deceased was concurrently found to be unnatural viz., the post-mortem report reveals that there were 90% burn injuries on the body of the deceased and viscera report disclosed that it contained Organo Chloro Insecticide, and Ethyl Alcohol poisons, and there was demand for dowry and also cruelty on the part of the husband. **Bhim Singh v. State of Uttarakhand, (2015) 4 SCC 281**

Medical Evidence- The testimony of the eye-witnesses - cannot be thrown - on the ground of alleged inconsistency - between it and the medical evidence - post-mortem report by itself is not a substantive piece of evidence - prosecutor's duty and obligation - to have the corroborative evidence available on record - from the other prosecution witnesses.

When the medical testimony vis-a vis the ocular testimony is weighed, there is no dispute that the value of medical evidence is only corroborative. It proves that the injuries could have been caused in the manner as alleged and nothing more. The use which the defence can make of the medical evidence is to prove that the injuries could not possibly have been caused in the manner alleged and thereby discredit the eye-witnesses. Unless, however the medical evidence in its turn goes so far that it completely rules out all possibilities whatsoever of injuries taking place in the manner alleged by eyewitnesses, the testimony of the eye-witnesses cannot be thrown out on the ground of alleged inconsistency between it and the medical evidence. It is also true that the post-mortem report by itself is not a substantive piece of evidence, but the evidence of the doctor conducting the post-mortem can by no means be ascribed to be insignificant. The significance of the evidence of the doctor lies vis--vis the injuries appearing on the body of the deceased person and likely use of the weapon and it would then be the prosecutor's duty and obligation to have the corroborative

evidence available on record from the other prosecution witnesses. It is also an accepted principle that sufficient weightage should be given to the evidence of the doctor who has conducted the post-mortem, as compared to the statements found in the textbooks, but giving weightage does not ipso facto mean that each and every statement made by a medical witness should be accepted on its face value even when it is self-contradictory. It is also a settled principle that the opinion given by a medical witness need not be the last word on the subject. Such an opinion shall be tested by the Court. If the opinion is bereft of logic or objectivity, the court is not obliged to go by that opinion. That apart, it would be erroneous to accord undue primacy to the hypothetical answers of medical witnesses to exclude the eyewitnesses' account which are to be tested independently and not treated as the 'variable' keeping the medical evidence as the 'constant'. Where the eyewitnesses' account is found credible and trustworthy, a medical opinion pointing to the alternative possibilities cannot be accepted as conclusive.

In this case in the cross-examination the doctor has categorically denied the suggestion that the injuries received by the deceased could have been sustained because of kerosene oil from the stove fell on her body due to the pinning of the stove and also by fall of a tin of kerosene oil on the floor. He has deposed without any equivocation that the burn injuries sustained by the deceased were not possible due to accidental burns. The High Court has taken note of the FSL Report, Ext. PW 20/B, from which it is evident that the analysis by gas liquid chromatography showed, kerosene oil residues were found on the scalp hair of the deceased. It is apt to note that the presence of kerosene on the scalp hair of the deceased and presence of dust particles in the larynx of the deceased clearly evince that kerosene oil was poured on the skull of the deceased which could not have happened by accident. The testimony of the daughter, Seema, PW-3, a young girl of ten years that the kerosene oil accidentally spilled on the body of her mother is thus absolutely unbelievable. **Vijay Pal v. State (GNCT) of Delhi 2015 (2) Supreme 581**

Sentencing- Sentencing is an important task in the matters of crime. One of the prime objectives of the criminal law is imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done.

The disturbing feature is the sentence awarded by the High Court to the respondents 2 to 4 for the conviction under Section 304 Part-II IPC. As mentioned in the impugned judgment the respondents 2 to 4 / accused nos.1 to 3 were arrested on 29.10.1997 and they were ordered to be released on bail on 28.9.1998 and they have undergone only eleven months imprisonment. The High Court while altering the conviction to Section 304 Part-II IPC, altered the sentence to imprisonment for period already undergone and directed to pay a sum of Rs.35000/- each to the complainant. Both the State and complainant have challenged this alteration of sentence. **Tukaram Dnyaneshwar Patil v. State of Maharashtra & Ors. 2015(3)Supreme 229**

Undue sympathy - impose inadequate sentence - do more harm to the justice system - solemn duty of the court - strike a proper balance - awarding the sentence - awarding lesser sentence - encourages any criminal - as a result - the society suffers.

Undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law. It is the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed. The sentencing courts are expected to consider all relevant facts and circumstances bearing on the question of sentence and proceed to impose a sentence commensurate with the gravity of the offence. The court must not only keep in view the rights of the victim of the crime but also the society at large while considering the imposition of appropriate punishment. Meagre sentence imposed solely on account of lapse of time without considering the degree of the offence will be counter-productive in the long run and against the interest of the society. (Para 17)

One should keep in mind the social interest and conscience of the society while considering the determinative factor of sentence with gravity of crime. The punishment should not be so lenient that it shocks the conscience of the society. It is, therefore, solemn duty of the court to strike a proper balance while awarding the sentence as awarding lesser sentence encourages any criminal and, as a result of the same, the society suffers. **State of Punjab v. Bawa Singh (2015) 2 SCC(Cri) 325 ; (2015) 3 SCC 441**

For death sentence - two fundamental objectives - a) deterrence; and (b) reformation - "special reasons" as expressly contemplated under Section 354(3) CrPC – must present - factors of seriousness of the crime, the criminal history of the appellant and also his propensity to remorselessly commit similar dastardly crimes in the future - must be considered.

The Court must ascertain the mitigating and aggravating circumstances pertaining to the crime as also the criminal. Hence the Court will evaluate, whether the interplay of the circumstances gives rise to the "special reasons" as expressly contemplated under Section 354(3) CrPC, which creates an onus upon the court in cases of death sentence, to explain why the extreme penalty is attracted in that particular case.

The Court must remain mindful of the two fundamental objectives of penology which apply even in such grotesque cases a) deterrence; and (b) reformation. Other factors such as seriousness of the crime, the criminal history of the appellant and also his propensity to remorselessly commit similar dastardly crimes in the future, must be considered. In the present case, having assessed the aforesaid mitigating factors including the appellant's conduct after the commission of the crime, we observe that this case does not fail into the category of rarest of the rare. Consequently, the conviction and other sentences except the death sentence are hereby upheld. The appellant thus stands convicted for the remainder of his life for the offence of murder. **B. Kumar Alias Jayakumar Alias Left. Kr. Alias S. Kumar v. Inspector of Police Through CB CID, (2015) 2 SCC (Cri) 78, (2015) 2 SCC 346.**

304 A and 304 II - SENTENCING

In the instant case the factum of rash and negligent driving has been established. This court has been constantly noticing the increase in number of road accidents and has also noticed how the vehicle drivers have been totally rash and negligent. It seems to us driving in a drunken state, in a rash and negligent manner or driving with youthful adventurous enthusiasm as if there are no traffic rules or no discipline of law has come to the centre stage.

The Hon'ble Supreme Court expressed that the protagonists, as we perceive, have lost all respect for law. A man with the means has, in possibility, graduated himself to harbour the idea that he can escape from the

substantive sentence by payment of compensation. Neither the law nor the court that implements the law should ever get oblivious of the fact that in such accidents precious lives are lost or the victims who survive are crippled for life which, in a way, worse then death. Such developing of notions is a dangerous phenomenon in an orderly society. Young age cannot be a plea to be accepted in all circumstances. Life to the poor or the impecunious is as worth living for as it is to the rich and the luxuriously temperamental. Needless to say, the principle of sentencing recognizes the corrective measures but there are occasions when the deterrence is an imperative necessity depending upon the facts of the case. In our opinion, it is a fit case where we are constrained to say that the High Court has been swayed away by the passion of mercy in applying the principle that payment of compensation is a factor for reduction of sentence to 24 days. It is absolutely in the realm of misplaced sympathy. It is, in a way mockery of justice. Because justice is "the crowning glory", "the sovereign mistress" and "queen of virtue" as Cicero had said. Such a crime blights not only the lives of the victims but of many others around them. It ultimately shatters the faith of the public in judicial system. In our view, the sentence of one year as imposed by the trial Magistrate which has been affirmed by the appellate court should be reduced to six months.

The Hon'ble Supreme Court was compelled to observe that India has a disreputable record of road accidents. There is a non-challant attitude among the drivers. They feel that they are the "Emperors of all they survey". Drunkenness contributes to careless driving where the other people become their prey. The poor feel that their lives are not safe, the pedestrians think of uncertainty and the civilized persons drive in constant fear but still apprehensive about the obnoxious attitude of the people who project themselves as "larger than life". In such obtaining circumstances, the Hon'ble Supreme Court observed that the lawmakers should scrutinize, re-look and re-visit the sentencing policy in Section 304A, IPC. **State of Punjab v. Saurabh Bakshi 2015(2) Supreme 641**

Evidence Act

Hostile Witness

Hostile Witness - examination-in-chief - supporting prosecution - corroborated from the other Evidence on record - conviction can be

recorded.

It is settled principle of law that benefit of reasonable doubt is required to be given to the accused only if the reasonable doubt emerges out from the evidence on record. Merely for the reason that the witnesses have turned hostile in their cross-examination, the testimony in examination-in- chief cannot be outright discarded provided the same (statement in examination-in-chief supporting prosecution) is corroborated from the other evidence on record. In other words, if the court finds from the two different statements made by the same witness, only one of the two is believable, and what has been stated in the cross-examination is false, even if the witnesses have turned hostile, the conviction can be recorded believing the testimony given by such witnesses in the examination-in- chief. However, such evidence is required to be examined with great caution. **Selvaraj @ Chinnapaiyan v. State represented by Inspector of Police (2015) 2 SCC(Cri) 198 ; (2015) 2 SCC 662**

Section 32 Evidence Act - Dying Declaration

When two deaths have taken place in the same transaction - circumstances of the transaction resulting in one death - closely interconnected with the other death - dying declaration of one has relevance for death of other person.

According to the prosecution, the deceased was subjected to cruelty and on the fateful day, the appellant returned home in drunken condition and started abusing the deceased and her mother Prabha Bai who had come on a visit to her daughter's house. Thereafter, the appellant poured kerosene on the deceased and set her on fire. Prabhabai and Vimalbai, PW1, tried to extinguish the fire and received burn injuries in the process. They were taken to Medical College and Hospital, Nagpur. The deceased made a dying declaration ('DD') (Exhibit 45) before PSI Sunil Eknadi Wanjari. She succumbed to her injuries at 6.25 A.M. on 29th March, 1999. Prabhabai also made a DD **(Exhibit 43)** before the PSI Bhila Narayan Bachao (PW5), on the basis of which FIR was lodged at Police Station Imambada. Rajiv Babarao Raut (PW3), Special Judicial Magistrate (SJM) also recorded DD of Prabhabai **(Exhibit 41)** at 9.30 A.M. on 29th March, 1999. The said Magistrate also recorded the statement of PW1 Vimalbai **(Exhibit 29)**. Prabhabai died on 1st April, 1999

at 2.2.0 A.M. with 77% burn injuries. The dead bodies were subjected to post mortem.

In the present case, the Hon'ble Supreme Court was concerned with the question whether statement of Prabhabai is relevant for determining cause of death of Savita. In other words, Question is what happens when two deaths have taken place in the same transaction and circumstances of thetransaction resulting in one death is closely interconnected with the other death.

The Hon'ble Supreme Court discussed "Relevant", "facts in issue" and section 6 of the Evidence Act and concluded that such statement may not by itself be admissible to determine the cause of death of anyone other than the person making the statement. However, when the circumstances of the transaction which resulted in death of the person making the statement as well as death of any other person are part of the same transaction, the same will be relevant also about the cause of death of such other person.

Thus, when a dying declaration relating to circumstances of the transaction which resulted in death of a person making the declaration are integral part of circumstances resulting in death of any other person, such dying declaration has relevance for death of such other person also. **Tejram Patil v. State of Maharashtra 2015 (2) Supreme743**

Factors to be observed – while relying on dying declaration – coded again

It is well settled that a truthful and reliable dying declaration may form the sole basis of conviction even though it is not corroborated. However, the reliability of declaration should be subjected to close scrutiny and the courts must be satisfied that the declaration is truthful. The Hon'ble Supreme Court again coded the factors to be observed when the case is based on dying declaration as follows :

(1) that it cannot be laid down as an absolute rule of law that a dying declaration cannot form the sole basis of convictiorn unless it is corroborated;

(2) that each case must be determined on its own facts keeping in view the circumstances in which the dying declaration was made;

(3) that it cannot be laid down as a general proposition that a dying declaration

is a weaker kind of evidence than other pieces of evidence;

(4) that a dying declaration stands on the same footing as another piece of evidence and has to be judged in the light of surrounding circumstances and with reference to the principles governing the weighing of evidence;

(5) that a dying declaration which has been recorded by a competent Magistrate in the proper manner, that is to say, in the form of questions and answers, and, as far as practicable, in the words of the maker of the declaration, stands on a much higher footing than a dying declaration which depends upon oral testimony which may suffer from all the infirmities of human memory and human character, and

(6) 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 facts 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. **Prem Kumar Gulati v. State of Haryana and another 2015 (3) Supreme 538**

Section 90 of the Evidence Act, 30 years old document

A registered gift deed was filed in a suit 5 months before it became 30 years old. It was held that no presumption under Section 90, Evidence Act regarding correctness of the signature of the donor, its execution and attestation could be raised. Reference was made to Section 68 and 69 of Evidence Act requiring proof of a document required by law to be attested. (e.g. gift deed) by at least one of the attesting witness, if alive. In the case in question no attesting witness was examined. Accordingly, it was held that the gift deed could not be used as evidence. **Om Prakash v. Shanti Devi, AIR 2015 SC 976 (Section 3, Evidence Act** See under Civil Procedure Code serial no. VII,B)

Section 113-B Evidence Act - Presumptions-

Presumption of innocence of accused/suspect.

Article 20 of our Constitution while not affirming the presumption of innocence does not prohibit it, thereby, leaving it to Parliament to ignore it whenever found by it to be necessary or expedient. Even though there may not be any Constitutional protection to the concept of presumption of innocence, this is so deeply ingrained in all Common Law legal systems so as to render it ineradicable even in India, such that the departure or deviation from this presumption demands statutory sanction. The presumption of innocence has also been recognised in certain circumstances to constitute a basic human right. However, the tenet of presumed innocence will always give way to explicit legislation to the contrary. Parliament has been tasked with the responsibility of locating competing, it not conflicting, societal interests. It is quite apparent that troubled by the exponential increase in the incidents of bride burning. Parliament thought it prudent, expedient and imperative to shift the burden of proof in contradistinction to the initial onus of proof on to the husband and his relatives in the cases where it has been shown that a dowry death has occurred. The inroad into or dilution of the presumption of innocence of an accused has, even dehors statutory sanction, been recoginised by the courts on those cases where death occurs in a home where only the other spouse is present; as also where an individual is last seen with the deceased. The deeming provision in Section 304-B IPC is, therefore, neither a novelty in nor another to our criminal law jurisprudence.

"Soon before her death"

The words "soon before her death" indicated that there must be a live link between the cruelty emanating from a dowry demand and the death of a young married woman, as is sought to be indicated by the words "soon before her death", to bring Section 304-B into operation; the live link will obviously be broken if the said cruelty does not persist in proximity to the untimely and abnormal death. It cannot be confined in terms of time. The demand for dowry should not be stale or an aberration of the past, but should be the continuing cause for the death under Section 304 –B or the suicide under Section 306 IPC.

Presumption against accused u/s 113-B of Evidence Act read with 304-B IPC

Section 113B of the Evidence Act and Section 304B of the IPC were introduced into their respective statutes simultaneously and, therefore, it must ordinarily be assumed that Parliament intentionally used the word 'deemed' in Section 304B to distinguish this provision from the others. In the realm of civil and fiscal law, it is not difficult to import the ordinary meaning of the word 'deem' to denote a set of circumstances which call to be construed contrary to what they actually are. In criminal legislation, however, it is unpalatable to adopt this approach by rote as the court is required to ascertain the purpose behind the statutory fiction brought about by the use of the word "deemed" so as to give full effect to the legislation and carry it to its logical conclusion. There are rebuttable as well as irrefutable presumptions, the latter oftentimes assuming an artificiality as actuality by means of a deeming provision. It is abhorrent to criminal jurisprudence to adjudicate a person guilty of an offence even though he had neither intention to commit it nor active participation in its commission. **Sher Singh v. State of Haryana, (2015) 3 SCC 724**

132 Evidence Act.

No prosecution - against the maker of a statement - while deposing as a "witness" before a Court - on the basis of the "answer" given - within the sweep of Section 132 of the Evidence.

The factual background in which application under Section 319 of the Code of Criminal Procedure came to be filed by the appellant herein is as follows:

Some three months after the death of Vijayan the 2nd respondent herein L. Venkatesh (who was examined as PW64 and for the sake of convenience hereinafter referred to as "PW64") was examined by the Police on 11.09.2008 and his statement under Section 161 Cr.P.C. was recorded. Subsequently, on 26.09.2008, his statement was recorded under Section 164 Cr.P.C. by the learned Metropolitan Magistrate, George Town, Chennai. Finally, the second respondent was examined as PW64 in the trial of the abovementioned case. The substance of the statements is that sometime in November 2007, one Karuna, the second accused had offered to pay PW64 an amount of Rs.5 lakhs if PW64 killed Vijayan. PW64 accepted the proposal. Karuna made an initial payment of Rs.50,000/- to PW64 on his accepting the proposal. Thereafter, PW64

contacted the third accused and disclosed the proposal whereupon the third accused agreed to join PW64. The third accused was paid an amount of Rs.10,000/- by PW64. However, subsequently, PW64 developed cold feet and started maintaining a distance from the second accused Karuna. But according to PW64, the second accused and the third accused were in contact with each other. After coming to know about the murder of Vijayan through newspapers, PW64 contacted the third accused and enquired about the matter upon which the third accused informed PW64 that the third accused along with three other named persons had murdered Vijayan and collected an amount of Rs. 4 lakhs from the second accused. The third accused further threatened PW64 that he would be "finished" if he revealed the information to anybody.

The question arises before the Hon,ble Supreme Court as whether the PW64 could be tried together with the other accused standing under trial. This question was answered as he could be tried alongwith the other accused by virtue of section 319 Cr. P. C. But under the facts of the case the other problem arises to the extent that whether the other requirements of Section 319 are satisfied warranting the summoning of PW64. This problem addressed by the Hon, Supreme Court as follows:

Section 132 existed on the statute book from 1872 i.e. for 78 years prior to the advent of the guarantee under Article 20 of the Constitution of India. The policy under Section 132 appears to be to secure the evidence from whatever sources it is available for doing justice in a case brought before the Court. In the process of securing such evidence, if a witness who is under obligation to state the truth because of the Oath taken by him makes any statement which will criminate or tend to expose such a witness to a "penalty or forfeiture of any kind etc.", the proviso grants immunity to such a witness by declaring that "no such answer given by the witness shall subject him to any arrest or prosecution or be proved against him in any criminal proceeding". We are in complete agreement with the view of Justice Ayyar on the interpretation of Section 132 of the Evidence Act. (Para 43)

The proviso to Section 132 of the Evidence Act is a facet of the rule against self incrimination and the same is statutory immunity against self incrimination which deserves the most liberal construction. Therefore, no prosecution can be launched against the maker of a statement falling within

the sweep of Section 132 of the Evidence Act on the basis of the "answer" given by a person while deposing as a "witness" before a Court.

Further it is expressed that the prosecution has a liberty to examine any person as a witness in a criminal prosecution notwithstanding that there is some material available to the prosecuting agency to indicate that such a person is also involved in the commission of the crime for which the other accused are being tried requires a deeper examination. **R. Dineshkumar @ Deena State Rep. By Inspector of Police & Others 2015(2) Supreme 403 ; AIR 2015 1816 SC**

Indian Penal Code

149 I.P.C.

Effect of Non-framing of a charge under Section 149 IPC

Non-framing of a charge under Section 149 IPC, on the face of the charges framed against the appellants would not vitiate their conviction; more so when the accused have failed to show any prejudice in this regard. In a case where there is mere omission to mention Section 149 in Charges which at the highest may be considered as an irregularity and the Accused have failed to show any prejudice, their conviction and sentence is not at all affected. Tenor of cross-examination of witness by the defence also rules out any prejudice to them.

On a perusal of the evidence on record, the facts and circumstances clearly bring out that there was an unlawful assembly. Each of the accused person was very well aware that they are tried for being a part of the assembly which was armed with weapons and hence, it was unlawful. On a close scrutiny of the evidence on record, it is difficult to hold that any prejudice has been caused to the accused appellants. **Vutukuru Lakshmaiah v. State of Andhra Pradesh 2015(4) Supreme 368**

Section 201

The complainant Puran Chand deceased Smt. Reeta Kumari was married to Deep Ram about 5 years back. On 10-09-2006 Shri Puran Chand 10 aged a complaint in the local police station that his daughter Smt Reeta Kumari

was missing. Later on the police received a message from Gram Pradhan that one-dead body of a woman was lying in the area. On receiving this information the police reached the spot, on verification it was disclosed that the dead body was of out.

The Reeta Kumari investigation resulted in apprehending of Deep Ram, Pradeep Kumar and Neeraj Kumar for commission of offence of murder of Reeta Kumari Deep Ram was the husband of the deceased Smt. Reeta Kumari, while Pradeep Kumar was the brother of Deep Ram; Neeraj Kumar was the servant of Deep Ram.

After trial Deep Ram and Neeraj Kumar were held guilty and convicted for an offence punishable under Section 302 read with Section 34 IPC.

Accused/appellant was convicted for an offence punishable under Section 201 IPC and sentenced to undergo 5 years R.1 with a fine of Rs. 10,000/- with default clause.

On 29-10-2013 The High Court dismissed their appeals and confirmed their conviction and sentence.

The appellant being aggrieved against the judgment and order of the High Court preferred criminal appeal in the Hon'ble Supreme Court stating that alongwith appellant was real brother of the main accused, but he was living separately and in other locality.

Hon'ble the Apex Court observed that-

(1) The appellant was the real brother of (main accused) Deep Ram.

(2) That the appellant and the main accused had the cordial relations.

(3) That an the basis of disclosure statement made by the appellant, rope used in the commission of offence was recovered.

(4) That the appellant was spotted alongwith main accused in forest by PW 5.

So in the light of above facts the conviction of the appellant under Section 301 IPC was confined. **Pradeep Kumar v. State of Himachal**

Pradesh, 2015(3) Supreme 66.

304-B IPC

As is already noted above, Section 113 B of the Evidence Act and Section 304B of the IPC were introduced into their respective statutes simultaneously and, therefore, it must ordinarily be assumed that Parliament intentionally used the word 'deemed' in Section 304B to distinguish this provision from the others. In actuality, however, it is well nigh impossible to give a sensible and legally acceptable meaning to these provisions, unless the word 'shown' is used as synonymous to 'prove' and the word 'presume' as freely interchangeable with the word 'deemed'. In the realm of civil and fiscal law, it is not difficult to import the ordinary meaning of the word 'deem' to denote a set of circumstances which call to be construed contrary to what they actually are. In criminal legislation, however, it is unpalatable to adopt this approach by rote. We have the high authority of the Constitution Bench of this Court both in *State of Travancore-Cochin v. Shanmugha Vilas Cashewnut Factory AIR 1953 SC 333 and State of Tamil Nadu v. Arooran Sugars Limited (1997) 1 SCC 326*, requiring the Court to ascertain the purpose behind the statutory fiction brought about by the use of the word 'deemed' so as to give full effect to the legislation and carry it to its logical conclusion. We may add that it is generally posited that there are rebuttable as well as irrebuttable presumptions, the latter oftentimes assuming an artificiality as actuality by means of a deeming provision. It is abhorrent to criminal jurisprudence to adjudicate a person guilty of an offence even though he had neither intention to commit it nor active participation in its commission. It is after deep cogitation that we consider it imperative to construe the word 'shown' in Section 304B of the IPC as to, in fact, connote 'prove'. In other words, it is for the prosecution to prove that a 'dowry death' has occurred, namely, (i) that the death of a woman has been caused in abnormal circumstances by her having been burned or having been bodily injured, (ii) within seven years of a marriage, (iii) and that she was subjected to cruelty or harassment by her husband or any relative of her husband, (iv) in connection with any demand for dowry and (v) that the cruelty or harassment meted out to her continued to have a causal connection or a live link with the demand of dowry. We are aware that the word 'soon' finds place in Section 304B; but we would prefer to

interpret its use not in terms of days or months or years, but as necessarily indicating that the demand for dowry should not be stale or an aberration of the past, but should be the continuing cause for the death under Section 304B or the suicide under Section 306 of the IPC. Once the presence of these concomitants are established or shown or proved by the prosecution, even by preponderance of possibility, the initial presumption of innocence is replaced by an assumption of guilt of the accused, thereupon transferring the heavy burden of proof upon him and requiring him to produce evidence dislodging his guilt,beyond reasonable doubt. It seems to us that what Parliament intended by using the word 'deemed' was that only preponderance of evidence would be insufficient to discharge the husband or his family members of their guilt. This interpretation provides the accused a chance of proving their innocence. This is also the postulation of Section 101 of the Evidence Act. The purpose of Section 113B of the Evidence Act and Section 304B of the IPC, in our opinion, is to counter what is commonly encountered - the lack or the absence of evidence in the case of suicide or death of a woman within seven years of marriage. If the word "shown" has to be given its ordinary meaning then it would only require the prosecution to merely present its evidence in Court, not necessarily through oral deposition, and thereupon make the accused lead detailed evidence to be followed by that of the prosecution. This procedure is unknown to Common Law systems, and beyond the contemplation of the Cr.P.C. (Para 14)

Keeping in perspective that Parliament has employed the amorphous pronoun/noun "it" (which we think should be construed as an allusion to the prosecution), followed by the word "shown" in Section 304B, the proper manner of interpreting the Section is that "shown" has to be read up to mean "prove" and the word "deemed" has to be read down to mean "presumed". Neither life nor liberty can be emasculated without providing the individual an opportunity to disclose extenuating or exonerating circumstances. It was for this reason that this Court struck down the mandatory death sentence in Section 303 IPC in its stellar decision in *Mithu vs. State of Punjab, AIR 1983 SC 473.* Therefore, the burden of proof weighs on the husband to prove his innocence by dislodging his deemed culpability, and that this has to be preceded only by the prosecution

proving the presence of three factors, viz. (i) the death of a woman in abnormal circumstances (ii) within seven years of her marriage, and (iii) and that the death had a live link with cruelty connected with any demand of dowry. The other facet is that the husband has indeed a heavy burden cast on his shoulders in that his deemed culpability would have to be displaced and overturned beyond reasonable doubt. This emerges clearly as the manner in which Parliament sought to combat the scourge and evil of rampant bride burning or dowry deaths, to which manner we unreservedly subscribe. In order to avoid prolixity we shall record that our understanding of the law finds support in an extremely extensive and erudite judgment of this Court in *P.N. Krishna Lal v. Government of Kerala, 1995 Supp (2) SCC 187,* in which decisions spanning the globe have been mentioned and discussed. It is also important to highlight that Section 304B does not require the accused to give evidence against himself but casts the onerous burden to dislodge his deemed guilt beyond reasonable doubt. In our opinion, it would not be appropriate to lessen the husband's onus to that of preponderance of probability as that would annihilate the deemed guilt expressed in Section 304B, and such a curial interpretation would defeat and neutralise the intentions and purposes of Parliament. A scenario which readily comes to mind is where dowry demands have indubitably been made by the accused husband, where in an agitated state of mind, the wife had decided to leave her matrimonial home, and where while travelling by bus to her parents' home she sustained fatal burn injuries in an accident/collision which that bus encountered. Surely, if the husband proved that he played no role whatsoever in the accident, he could not be deemed to have caused his wife's death. It needs to be immediately clarified that if the wife had taken her life by jumping in front of a bus or before a train, the husband would have no defence. Examples can be legion, and hence we shall abjure from going any further. All that needs to be said is that if the husband proves facts which portray, beyond reasonable doubt, that he could not have caused the death of his wife by burns or bodily injury or not involved in any manner in her death in abnormal circumstances, he would not be culpable under Section 304B.(Para 17) **Sher Singh @ Partapa v. State Of Haryana (2015) 2 SCC (Cri) 422 ; (2015) 3 SCC 724 ;**

"Given that the statute with which we are dealing must be given a fair,

pragmatic, and common sense interpretation so as to fulfill the object sought to be achieved by Parliament, we feel that the judgment in Appasaheb's case followed by the judgment of Vipin Jaiswal do not state the law correctly. We, therefore, declare that any money or property or valuable security demanded by any of the persons mentioned in Section 2 of the Dowry Prohibition Act, at or before or at any time after the marriage which is reasonably connected to the death of a married woman, would necessarily be in connection with or in relation to the marriage unless, the facts of a given case clearly and unequivocally point otherwise. Coming now to the other important ingredient of Section 304B - what exactly is meant by 'soon before her death'?" (para20)

***[Appasaheb** v. State of Maharashtra, (2007) 9 SCC 721, this Court construed the definition of dowry strictly, as it forms part of Section 304B which is part of a penal statute. The court held that a demand for money for defraying the expenses of manure made to a young wife who in turn made the same demand to her father would be outside the definition of dowry. This Court said:*

"A demand for money on account of some financial stringency or for meeting some urgent domestic expenses or for purchasing manure cannot be termed as a demand for dowry as the said word is normally understood. The evidence adduced by the prosecution does not, therefore, show that any demand for "dowry" as defined in Section 2 of the Dowry Prohibition Act was made by the appellants as what was allegedly asked for was some money for meeting domestic expenses and for purchasing manure."

*This judgment was distinguished in at least four other judgments (see: Bachni Devi v. State of Haryana (2011) 4 SCC 427 at pages 432 to 434; Kulwant Singh & Ors. v. State of Punjab, (2013) 4 SCC 177 at page 185; Surinder Singh v. State of Haryana (2014) 4 SCC 129 at pages 139 to 141 and Raminder Singh v. State of Punjab (2014) 12 SCC 582 at page 586. The judgment was, however, followed in **Vipin Jaiswal** v. State of Andhra Pradesh, (2013) 3 SCC 684 at pages 687-688.]*

We hasten to add that this is not a correct reflection of the law. "Soon before" is not synonymous with "immediately before". (Para 25)

[In Dinesh v. State of Haryana, 2014 (5) SCALE 641 in which the

law was stated thus:

"The expression "soon before" is a relative term as held by this Court, which is required to be considered under the specific circumstances of each case and no straight jacket formula can be laid down by fixing any time of allotment. It can be said that the term "soon before" is synonyms with the term "immediately before". The determination of the period which can come within term "soon before" is left to be determined by courtsdepending upon the facts and circumstances of each case."] **Rajinder Singh v. State of Punjab AIR 2015 SC 1359**

Section 304-B, and Section 2 of Dowry Prohibition Act 1961 - Demand for Dowry - Dowry Death

To attract section304-B, the death should be dowry death, i.e. in connection with demand of dowry of as defined in Section 2, which can be - broken into six distinct parts on follows-

(1) Dowry must first consist of any property or valuable security - the word "any" is a word of width and would, therefore, include within it property and valuable security of any kind whatsoever.

(2) Such property or security can be given or even agreed to be given. The actual giving of such property or security is, therefore, not necessary.

(3) Such property or security can be given or agreed to be given either directly or indirectly.

(4) Such giving or agreeing to give can again be not only by one party to a marriage to the other but also by the parents of either party or by any other person to either party to the marriage or to any other person. It will be noticed that this clause again widens the reach of the Act insofar as those guilty of committing the offence of giving or receiving dowry is concerned.

(5) Such giving or agreeing to give can be at any time. It can be at, before, or at any time after the marriage. Thus, it can be many years after a

marriage is solemnised.

(6) Such giving or receiving must be in connection with the marriage of the parties. Obviously, the expression "in connection with" would in the context of the social evil sought to be tackled by the Dowry Prohibition Act mean "in relation with" or "relating to".

Thus dowry means any money or property or valuable security demanded by any of the persons mentioned in section 2 of the Dowry Prohibition Act 1961 at or before or at any time after marriage.

Such demand if reasonably connected to the death of a married woman would necessarily be in connection with or in relation to marriage unless the facts of a given case clearly and unequivocally point otherwise.

Appasaheb v. State of Maharashtra, (2007)9 see 721, "wherein it was held that asking the wife to bring money for meeting domestic expenses on account of financial stringency and for purchasing manure cannot be held as demand for dowry" - was held not propounding the law correctly. **Rajindra Singh v. State of Punjab, 2015 (3) Supreme 40.**

Section 304B - Meaning of Soon before her Death

The deceased Smt. Satwinder Kaur was married to the appellant in the year 1990. On 31- 08-1993, within 4 years of marriage, Smt. Satwinder Kaur consumed a pesticide on a result of which she died. On the same day an FIR was lodged against her husband, his elder brother and elder brother's wife, alleging that demands for money started to be made just after one year of the marriage. A she buffalo was given by the father to the daughter, but in vain. The deceased was continued to be ill treated. She went to her father and demanded money again. Her father with his brother and Sarpanch of the village, went to her matrimonial home with a request that the deceased be not ill treated, on account of demand of dowry. The father of the deceased further assured the accused that their money demand would be fulfilled, but they have to wait till the crops of his fields on harvested. Fifteen days before her death the deceased again visited her parents house on being maltreated by her in laws. After 15 days the deceased consumed aluminum phosphide which resulted in her death.

In these circumstances in order to explain the meaning of "soon before her death" the Apex Court relied on the case of Surinder Singh v. State of Haryana, (2014)4 SCC 129.

> "17. Thus, the words "soon before" appear in Section 113-B of the Evidence Act, 1872 and also in Section 304-B IPC. For the presumptions contemplated under these sections to spring into action, it is necessary to show that the cruelty or harassment was caused soon before the death. The interpretation of the words "soon before" is, therefore, important. The question is how "soon before"? This would obviously depend on the facts and circumstances of each case. The cruelty or harassment differs from case to case. It relates to the mindset of people which varies from person to person. Cruelty can be mental or it can be physical. Mental cruelty is also of different shades. It can be verbal or emotional like insulting or ridiculing or humiliating a woman. It can be giving threats of injury to her or her near and dear ones. It can be depriving her of economic resources or essential amenities of life. It can be putting restraints on her movements. It can be not allowing her to talk to the outside world. The list is illustrative and not exhaustive. Physical cruelty could be actual beating or causing pain and harm to the person of a woman. Every such instance of cruelty and related harassment has a different impact on the mind of a woman. Some instances may be so grave as to have a lasting impact on a woman. Some instances which degrade her dignity may remain etched in her memory for a long time. Therefore, "soon before" is a relative term. In matters of emotions we cannot have fixed formulae. The time-lag may differ from case to case. This must be kept in mind while examining each case of dowry death.
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> 18. In this connection we may refer to the judgment of this Court in Kans Raj v. State of Punjab [(2000) 5 SCC 207: 2000 SCC (Cri) 935] where this Court considered the term "soon before". The relevant observations are as under: (SCC pp. 222-23, para 15)
>
> "15 .... 'Soon before' is a relative term which is required to be considered under specific circumstances of each case and no straitjacket formula can be laid down by fixing any time-limit. This expression is

pregnant with the idea of proximity test. The term 'soon before' is not synonymous with the term 'immediately before' and is opposite of the expression 'soon after' as used and understood in Section 114, Illustration (a) of the Evidence Act. These words would imply that the interval should not be too long between the time of making the statement and the death. It contemplates the reasonable time which, as earlier noticed, has to be understood and determined under the peculiar circumstances of each case. In relation to dowry deaths, the circumstances showing the existence of cruelty or harassment to the deceased are not restricted to a particular instance but normally refer to a course of conduct. Such conduct may be spread over a period of time. If the cruelty or harassment or demand for dowry is shown to have persisted, it shall be deemed to be 'soon before death' if any other intervening circumstance showing the non-existence of such treatment is not brought on record, before such alleged treatment and the date of death. It does not, however, mean that such time can be stretched to any period. Proximate and live link between the effect of cruelty based on dowry demand and the consequential death is required to be proved by the prosecution. The demand of dowry, cruelty or harassment based upon such demand and the date of death should not be too remote in time which, under the circumstances, be treated as having become stale enough."

Thus, there must be a nexus between the demand of dowry, cruelty or harassment, based upon such demand and the date of death. The test of proximity will have to be applied. But, it is not a rigid test. It depends on the facts and circumstances of each case and calls for a pragmatic and sensitive approach of the court within the confines of law."

Relying on the observations made by the Apex Court in the above mentioned cases the court in para 23 explained the words "soon before death" as follows-

"The expression "soon before" is a relative term as held by this Court, which is required to be considered under the specific circumstances of each case and no straight jacket formula can be laid down by fixing any time of allotment. It can be said that the term "soon before" is

synonyms with the term "immediately before". The determination of the period which can come within term "soon before" is left to be determined by courts depending upon the facts and circumstances of each case."

So in the light of the law laid down and the facts and circumstances of the case, the demand of dowry and cruelty thereon were held continuing till death or soon before death, so conviction upheld. Appeal Dismissed. **Rajinder Singh v. State of Punjab, 2015(3) Supreme 40.**

420, IPC

It is true that a given set of facts may make out a civil wrong as also a criminal offence and only because a civil remedy may be available to the complainant that itself cannot be a ground to quash a criminal proceeding. The real test is whether the allegations in the complaint disclose the criminal offence of cheating or not. In the present case there is nothing to show that at the very inception there was any intention on behalf of the accused persons to cheat which is a condition precedent for an offence under Section 420 IPC. In our view the complaint does not disclose any criminal offence at all. Criminal proceedings should not be encouraged when it is found to be malafide or otherwise an abuse of the process of the court. Superior courts while exercising this power should also strive to serve the ends of justice. In our opinion, in view of these facts allowing the police investigation to continue would amount to an abuse of the process of court and the High Court committed an error in refusing to exercise the power under Section 482 Criminal Procedure Code to quash the proceedings. (Para 9) **Vesa Holdings P. Ltd. & Anr. v. State of Kerala & Ors. 2015(3)Supreme 247**

Section 420 and Criminal Procedure Code 1973 - Section 156(3)

The respondent No.3 filed a complaint against the company, its directors and promoter.

The Learned Magistrate forwarded it to the police for investigation under Section 156(3) of the Code of Criminal Procedure. The Police registered the case for the alleged offences under sections 417, 418, 420, 120-B and 34 IPC.

It was alleged in the complaint that the loan transaction of the Company was settled with the efforts of the complainant/respondent No. 3 herein but the Company Directors and did not pay him the consultancy fee as promised and they conspired together the deceive the complainant and committed the offence as alleged.

On 06-08-2008 a letter was written on behalf of company to the respondent No. 3 accepting the consultancy fee Rs. 75 lacs payable to the respondent NO.3, and annexing with it a cheque for Rs. 30 Lacs, drawn on HDFC Bank Ltd. Which as agreed was to be presented to the Bank only after obtaining acceptance letter from IIBI on or before 30th October, 2008 or otherwise cheque was to be returned to the company. The Complainant/Respondent No. 3 endorsed this letter as follows-

"I accord my consent to this assignment."

The Company and its Directors filed petition under Section 482 Cr.P.C. in the High

Court.

The High Court dismissed the petitions by holding that truths of the allegations have to be ascertained by the investigating agency.

The Learned Counsel for the appellant company contended that the contract under letter dated 06-08-2008 was time bound and there was no element of fraud or dishonest intention in it and nothing fructified on the date of the complaint. The allegation in the complaint does not disclose the commission of the offence of cheating, and only discloses the civil dispute at best.

Hon'ble The Apex Court observed that-

(i) IIBI did not issue any acceptance letter on or before 30-10-2008, with regard to the settlement of disputes of the appellant company.

(ii) The complainant/respondent No.3 did not present the cheque dated 06-08-2008 issued by the appellant company for in

cashing a sum of Rs. 30 Lacs.

(iii) Due to the efforts of the company IIBI finally agreed and issued letter of acceptance dated 05 -01- 2009.

(iv) On 06-03-2010 the complainant/respondent No.3 sent a letter to the appellant company demanding the balance amount of Rs. 70 Lacs towards the consultancy fee. No allegation of cheating or fraud was made against the company or its office bearers.

Held : That for constituting an offence of cheating, the complainant is required to show fraudulent or dishonest intention of the accused at the time of making promise or representation. Merely failure to keep one's promise does not amount to cheating.

As the complaint does not show criminal intent of the accused. So Criminal proceedings held mala fide and abuse of process of court. Therefore all the appeals were allowed and order of the High Court set-aside. Accordingly the complaint and the proceedings of the police station against the appellants quashed. **Vesa Holdings Pvt. Ltd. v. State of Kerala, 2015(3) Supreme 247.**

493 IPC

To satisfy the ingredients of section 493 IPC, the man concerned should have deceived the woman, to believe the existence of matrimonial ties with her. And based on the aforesaid belief, the man should have cohabited with her. The question to be determined on the basis of the factual position, as has been noticed hereinabove, is whether in the facts and circumstances of this case, it is possible to accept such deceit, at the hands of the respondent, even if it is accepted for the sake of arguments, that cohabitation continued The Hon'ble Supreme Court between the parties between 08.01.1994 till 23.06.1994, i.e., from the date when the respondent was granted an ex-parte decree of divorce (by the Additional District Judge, Chandigarh), till the date when the respondent married Sunita Rani. We are of the considered view, that with the setting aside of the ex-parte decree of divorce dated 08.01.1994 (on 19.02.1996), it cannot be accepted, that there was any break in the matrimonial relationship between the parties. Even the complaint filed by

the appellant under Section 376 of the Indian Penal Code was not entertained (and the respondent was discharged), because it came to be concluded, that the matrimonial ties between the appellant and the respondent were restored, with the setting aside of the ex-parte decree of divorce, as if the matrimonial relationship had never ceased. In sum and substance therefore, consequent upon the passing of the order dated 19.02.1996 (whereby the Additional District Judge, Chandigarh, set aside the ex-parte decree dated 08.01.1994), the matrimonial ties between the appellant and the respondent, will be deemed to have subsisted during the entire period under reference (08.01.1994 to 23.06.1994). In fact, the accusation of the appellant, on the aforesaid premise, in the first complaint filed by the appellant against the respondent (under Section 376 of the Indian Penal Code) was not entertained, and the respondent was discharged, just because of the above inference. For exactly the same reason, we are satisfied that the charge against the respondent is not made out, under Section 493 of the Indian Penal, because the respondent could not have deceived the appellant of the existence of a "lawful marriage", when a lawful marriage indeed existed between the parties, during the period under reference. **Ravinder Kaur v. Anil Kumar, 2015 (4) Supreme 208**

Section 498A and 304B - These provision are not mutually inclusive - Acquittal under one does not entitle the accused to be acquitted under the other

> The Hon'ble Apex Court relying on the law laid down in Balwant Singh and others v. State of Himachal Pradesh, (2008) 15 SCC 497, observed that "Section 304 B and Section 498A of the Code are not mutually inclusive. If an accused is acquitted under one Section, it does not mean that the accused cannot be convicted under another Section. According to Section 113B of the Indian Evidence Act presumption arises when a woman has committed suicide within a period of 7 years from the date of marriage." **Amrut Lal Lila Dharbhai Kotak & others v. State of Gujarat, 2015(3) Supreme 116.**

Industrial Disputes Act

Section 11 - Proportionate Punishment

A workman was retrenched by the management on the ground that he had obtained appointment by providing false transfer certificate. Labour Court exercising powers under Section 11A of Industrial Disputes Act which empowers it to modify the punishment, set aside the punishment of dismissal and directed reinstatement without back wages. The Labour Court, for reducing the punishment, relied upon 3 circumstances, one was that undue delay was caused in completing the enquiry, the second was the age of the appellant and the third was that similarly situated workmen had been reinstated with lesser punishment. The High Court set aside the award of the Labour Court and held the punishment of dismissal to be appropriate. The Supreme Court set aside the judgment of the High Court and held that the High Court should not interfered in the discretion exercised by the Labour Court. **K.V.S. Ram v. Bengal Metropolitan Transport Corporation, AIR 2015 SC 998**

Information Technology Act

Section 66A , 19A and 79

Costitutionality of Section 66A, 69A And 79 Of The Information Technology Act, 2000

Section 66A of the Information Technology Act, 2000 is struck down in its entirety being violative of Article 19(1)(a) and not saved under Article 19(2).

Section 69A and the Information Technology (Procedure & Safeguards for Blocking for Access of Information by Public) Rules 2009 are constitutionally valid.

Section 79 is valid subject to Section 79(3)(b) being read down to mean that an intermediary upon receiving actual knowledge from a court order or on being notified by the appropriate government or its agency that unlawful acts relatable to Article 19(2) are going to be committed then fails to expeditiously remove or disable access to such material. Similarly, the Information Technology "Intermediary Guidelines" Rules, 2011 are valid

subject to Rule 3 sub-rule (4) being read down in the same manner as indicated in the judgment.

Section 118(d) of the Kerala Police Act is struck down being violative of Article 19(1)(a) and not saved by Article 19(2). **Shreya Singhal v. Union Of India 2015(2) Supreme 513 (See under Constitution, Article 19 also)**

Land Acquisition Act

Lapse of proceedings under old Land Acquisition Act, Section 24 of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013

Award under repealed Land Acquisition Act of 1894 was given 5 years prior to the commencement of new Act of 2013, Compensation had not been paid to the land losers and actual physical possession had also not been taken by the authorities as while preparing *punchnama* due procedure of law had not been followed. There was no independent witness and landholder present at the time of preparation of *punchnama.* Accordingly, the proceedings were held to have lapsed. *AIR 2014 SC 982, AIR 2014 SC 2242, 2014 (6) SCC 583* and *AIR 2014 (6) SCC 586* relied upon. **Velaxan Kumar v. Union of India, AIR 2015 SC 1462**

Section 23 of old Land Acquisition Act, 1894- Market Value - Determination

A large chunk of undeveloped agriculture land was acquired in 1977 for residential purpose. When the acquired land is a large chunk of undeveloped land having potential and was acquired for residential purpose then while determining the fair market value of the lands on the date of acquisition, the appropriate deductions are also required to be made.

In order to determine the fair deduction and market value Hon'ble the Apex Court took note of the law laid down in the following cases-

1. Brig Sahib Singh Kalha & others v. Amritsar Improvement Trust & others (1982)1 SCC 419 - In this case it was held that where a large area of undeveloped land is acquired provision has to be made for providing minimum amenities

of town life. Accordingly it was held that -

(i) 20% of the total land acquired should be deducted as land required for making or raising infrastructure such as roads etc. over it.

(ii) About 20% to 33% of the total land acquired should be a may be taken into consideration as the cost of raising infrastructures like roads, electricity, water supply system, underground drainage system etc.

Commutatively viewed, it was held that deductions would range between 40% to 53%.

2. Chairman Lal Hargovind Das v. Special Land Acquisition Officer Poona & Anr. (1988)3 SCC 751

Keeping the aforesaid principles in mind Hon'ble the Apex Court observed that land in dispute was acquired in 1977 and it was for a large chunk of undeveloped agriculture land. The law was acquired for residential purposes. The appellants had not filed any sale deed in evidence in support of their case, to prove the fair market value of the acquired land. Appellants case depends only an oral evidence of some witnesses, who proved the potentiality of the lands by showing its location proximity to the main road which was passing in the area; and who named some industries and hospitals operating in the nearby locality of the acquired law etc. The appellants accordingly held entitled to get the compensation at the rate of 63/- per square yard. **Bhupal Singh and others v. State of Haryana, 2015(3) Supreme 385.**

Limitation Act

Plea of limitation - is a plea of law concerning jurisdiction of the Court

While interpreting and explaining the object and scope of Section 9A of C.P.C. inserted by Maharashtra Amendment 1977 - it was held that - plea of limitation or plea of res-judicata is a plea of law which concerns the jurisdiction of the court, which tries the proceedings. A finding on these pleas in favour of a party raising then would oust the jurisdiction of the Court.

Followed-

(1) *Pandurang Dhondi Chogule v. Maruti Hari Jadhav, 1966 SC 153* (Five Judges Bench)

(2) *ITW Singode India Ltd. V. CCE (2004) 3 SCC 48* (3 Judges Bench)

(3) *National Thermal Power Corporation Ltd. V. Seimons Atkeingese IIschaft, 2007(4) SCC 451*.

(4) *Kamlesh Babu v. Lajpat Rai Sharma (2008) 12 SCC 577*.

Decision rendered by the Division Bench in the case of *Kamalakar Eknath Salunkhe v. Babu Rao Vishnu Javalkar & others, Civil Appeal No. 1085 of 2015* held- Contrary to law and thus per-incursion. **Forshore Co-operative Housing Society Limited v. Praveen D. Desai (Dead) through L.Rs. and others, 2015(3) Supreme 330.**

No limitation prescribed, still proceedings to be initiated within reasonable time. (See under Argicultural Land Matters).

Motor Vehicles Act

Section 166 - Compensation - Self Employed Person - Addition of future earnings

In Santosh Devi v. National Insurance Company Ltd. & others (2012) 6 SCC 421 the law laid down in Sarla Verma's case was explained and it was held that the benefit of future prospects should be extended to those persons who were self employed or getting fixed wages.

Further in Rajesh & others v. Rajbir Singh and others, (2013) 9 SCC 94, reiterating the principle laid down in Santosh Devi's case, it was held that in case of self employed persons or persons with fixed wages, the actual income of the deceased must be enhanced for purpose of computation viz.-

(i) By 50% where the age was below 40 years.

(ii) By 30 % where the age was between 40 to 50 years. And

(iii) By 15% where the age was between 50 to 60 years.

Considering the question of making addition to the income of the deceased towards the future prospects in cases of salaried persons vis-a-vis in cases where the deceased was self employed or on a fixed wage/salary, in Reshma Kumari & others v. Madan Mohan and others (2013) 9 SCC 65 it was held-

> "The standardization of addition to income for future prospects shall help in achieving certainty in arriving at appropriate compensation. We approve the method that an additional of 50% of actual salary be made to the actual salary income of the deceased towards future prospects, where the deceased had a permanent job and was below 40 years, and the additions should be only 30% if the age of the deceased was 40 to 50 years, and no addition should be made where the age of the deceased is more than 50 years. Where the annual income is in the taxable range the actual salary shall mean actual salary less tax.
>
> In the cases where the deceased was self employed or was on a fixed salary without provision for annual increments, the actual income at the time of death without any addition to income for future prospects will be appropriate. A departure from the above principle can only be justified in extraordinary circumstances and very exceptional cases."

So keeping in view the divergent opinion in above cases regarding future prospects in case of self employed or fixed wages to be added to the compensation towards the dependency, the matter was referred to the Hon'ble the Chief Justice of India for appropriate orders towards the constitution of a suitable larger Bench. **Shahshi Kal & others v. Ganga Lakshamamma and others, 2015(3) Supreme 179.**

Section 166 and 168 - Income Tax Returns - Determination of Income

The deceased was engaged in transport business of supplying news papers from the Head office to other destinations. The deceased was an income tax assesses. To prove the income of the deceased the claimants had filed income tax returns for 2005-2006 and 2006-2007 in which gross total income was shown as follows-

(1) For the Financial Year 2005-2006 – 1,08,713/-

(2) For the Financial Year 2006-2007 - 2,02,911/-

The High Court determined the annual income of the deceased by taking the average of both financial years which come as 155812/- (1,08,713 + 2,02,911 = 3,11,624/2 = 1,55,812)

Held - This approach of taking average to determine income - was not proper. Income as per the latest return after deducting income tax and professional tax as also income from house property and personal expenses should be considered. **Shashikala and others v. Ganga Lakshamamma & other, 2015** (3) **Supreme 179.**

Section 166 & 168 - Compensation - Self Employed Person - Addition of future earnings

In *Santosh Devi v. National Insurance Company Ltd. & others (2012) 6 SCC 421* the law laid down in *Sarla Verma's* case was explained and it was held that the benefit of future prospects should be extended to those persons who were self employed or getting fixed wages.

Further in *Rajesh & others v. Rajbir Singh and others, (2013) 9 SCC 94*, reiterating the principle laid down in *Santosh Devi's* case, it was held that in case of self employed persons or persons with fixed wages, the actual income of the deceased must be enhanced for purpose of computation viz.-

(i) By 50% where the age was below 40 years.

(ii) By 30 % where the age was between 40 to 50 years. And

(iii) By 15% where the age was between 50 to 60 years.

Considering the question of making addition to the income of the deceased towards the future prospects in cases of salaried persons vis-a-vis in cases where the deceased was self employed or on a fixed wage/salary, in *Reshma Kumari & others v. Madan Mohan and others (2013) 9 SCC 65* it was held-

"The standardization of addition to income for future prospects shall help in achieving certainty in arriving at appropriate compensation. We

approve the method that an additional of 50% of actual salary be made to the actual salary income of the deceased towards future prospects, where the deceased had a permanent job and was below 40 years, and the additions should be only 30% if the age of the deceased was 40 to 50 years, and no addition should be made where the age of the deceased is more than 50 years. Where the annual income is in the taxable range the actual salary shall mean actual salary less tax.

In the cases where the deceased was self employed or was on a fixed salary without provision for annual increments, the actual income at the time of death without any addition to income for future prospects will be appropriate. A departure from the above principle can only be justified in extraordinary circumstances and very exceptional cases."

So keeping in view the divergent opinion in above cases regarding future prospects in case of self employed or fixed wages to be added to the compensation towards the dependency, the matter was referred to the Hon'ble the Chief Justice of India for appropriate orders towards the constitution of a suitable larger Bench.

The deceased was engaged in transport business of supplying news papers from the Head office to other destinations. The deceased was an income tax assesses. To prove the income of the deceased the claimants had filed income tax returns for 2005-2006 and 2006-2007 in which gross total income was shown as follows-

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Held - This approach of taking average to determine income - was not proper. Income as per the latest return after deducting income tax and professional tax as also income from house property and personal expenses should be considered. **Shashikala and others v. Ganga Lakshamamma & other, 2015**

(3) Supreme 179.

S. 166, 168 & 171- Death of housewife/mother earning livelihood by handicrafts. Determination of compensation. Criterion for. Value of services rendered by wife/mother of family. Held, it is hard to monetize domestic work done by a house-mother whose service is available 24 housrs and her duties are never fixed. Courts have recognized contribution made by wife to housework to invaluable and that cannot be computed in terms of money and such services rendered by homemaker have to be necessarily kept in view while calculating loss of dependency. Constitution of India. Arts. 15 and 14. Gender equality. Homemakers.

Held:

Admittedly, the claimants adduced only oral testimony of the mother-in-law and father-in-law as witnesses to substantiate their claim that the deceased was self-employed and made an earning doing tailoring, embroidery and knitting.

They further deposed that their daughters were also doing the same work as the deceased Jayvantiben Jitendra Trivedi was then doing and that their daughters were earning Rs.3000 per month and had the deceased been alive, she would have also earned Rs.3000 per month. Though in their cross-examination, Smt. Godavariben Khimshankar Trivedi and Khimshankar Raguram Trivedi deposed that they did not keep voucher and account books, reasoning of the tribunal that the embroidery and tailoring work is doing well in the district of Kachchh and that the deceased would have earned not less than Rs1500 per month is well merited. The respondents have not adduced any evidence to prove that the deceased was not doing any embroidery or tailoring work or the like. While so, in the light of the factual findings recorded by the tribunal, High Court was not justified in reducing the income of the deceased to Rs.1350 per month from Rs.1500.

Considering the nature of the work and the evidence of claimants' witnesses-father-in-law and mother-in-law of the deceased, had the deceased been alive she would have earned not less than Rs.3000 per month. Even assuming deceased was not self-employed doing embroidery and tailoring work, the fact remains that she was a housewife and a home maker. It is hard to

monetize the domestic work done by a house-mother. The services of the mother/wife is available 24 hours and her duties are never fixed. Courts have recognized the contribution made by the wife to the house is invaluable and that it cannot be computed in terms of money. A house-wife/home-maker does not work by the clock and she is in constant attendance of the family throughout and such services rendered by the home maker has to be necessarily kept in view while calculating the loss of dependency. Thus even otherwise, taking deceased as the home maker, it is reasonable to fix her income at Rs.3000 per month. *Arun Kumar Agarwal vs. Ntional Insurance Co. Ltd. (2010) 9 SCC 218 : (1010) 3 SCC (Civ) 664 : (2010) 3 SCC (Cri) 1313*, followed.

Interest Rate at which payable. Tribunal granting interest 15% p.a. reduced by High Court to 12%. Held, rate of interest awarded by both for a is on the higher side. Hence, following Amresh Kumari, (2015) 4 SCC 433 and Mohinder Kaur, (2015) 4 SCC 434 interest reduced to 9% from date of filing SLP till date of realization. **Jitendra Khimshankar Trivedi v. Kashm Daud Kumbhar, (2015) 4 SCC 237**

Municipal Corporation / Municipalities

A. Bus shelters, to be provided and maintained by Chennai City Municipal corporation (CCMC) and not by Metropolitan Transport Corporation Ltd. (MTCL)

B. Interpretation of Statute/Equity/Administrative Law

In Chennai, Metropolitan Transport Corporation Ltd. (MTCL) allotted places adjacent to the roads to different advertising agencies for construction of bus shelters where buses run by the Government/ MTCL were to stop for picking up passengers. The advertisers were permitted to use the places for advertisement on payment of huge amount to MTCL. The Commissioner had also issued order permitting MTCL to do the same. The question before the Supreme Court was as to whether bus shelters could be provided and maintained by Chennai City Municipal Corporation (CCMC) or MTCL. The Supreme Court decided in favour of CCMC, Section 2(6), 2(7), 203, 204, 223-A, 285, 285-A of CCMC Act have been quoted in paras 13 to 23. In these paragraphs reference has also been made to Section 214, 214-A, 222, 285-B

and 285-C. Sections 204, 285(1) and 285-A are quoted below:-

> **"*Section 204. Maintenance and repair of streets* –** *The corporation shall cause the public streets to be maintained and repaired and make all improvements thereto which are necessary or expedient for the public safety or convenience.*
>
> ***Section 285. Provisions of landing places, cart-stands, etc. –*** *(1) The Commissioner may construct or provide public landing places, halting places, cart-stand, cattle-shed and cow – house and may charge and levy such fees for the use of the same as the standing committee may fix.*
>
> ***Section 285-A – Prohibition of use of public place or sides of public street as cart-stand etc.-*** *Where the commissioner has provided a public landing place, hlating place, cart – stand, cattle-shed, or cow-house, he may prohibit the use for the same purpose by any person within such distance thereof as may be determined by the standing committee of any public place or the sides of any public street."*

Interpreting Section 285(1) and Proviso to Section 285-A the Supreme Court held that the word 'stand' used in Section 285 could include bus shelter as it is preceded by the words 'public landing places, halting places. For this interpretation reliance was placed upon Section 203 which provides that public streets and their appurtenances should vest in the Municipal Corporation. It was further held that the word 'stand' used in the proviso to Section 285-A could mean only a place where motor vehicles belonging to the transport department of the State Government are parked but could not include a shelter where public may wait for the bus. Supreme Court further held that the order issued by the Commissioner was ultra vires and could not be treated to be a notification under Section 203(2) according to which the State Government may by notification withdraw any such street etc. from the control of the corporation.

In paras 27 to 30 it was held that the words must be interpreted in their ordinary grammatical sense and question of reasonableness or otherwise becomes material only when the statute is not clear. It was further held that words used in a statute must be understood to be in their popular sense. It was further held that no provision or word in a statute may be construed in isolation.

Regarding equity it was held that in the face of statutory provision, recourse to equitable principles however fair they may appear to be at first sight cannot be had. It was further held that MTCL and the advertisers behaved in a very unjust manner hence even though they had spent a lot of money still there was no equity in their plea. Conduct of MTCL was severely criticized in the opening paragraph of the judgment i.e. para 2 which is quoted below:-

> ***"2.*** *The present batch of appeals characterizes series of collusive concessions, maladroit misrepresentations, designed negotiations and infusion of fraud on financial morality; and further epitomises how statutory Corporations can cultivate the proclivity to give indecent burial to their interests, which is fundamentally collective interest that the Corporations are duty bound to protect; preserve and assert for. That apart, this bunch also exposes, as we have painfully penned, how the State, the protector of the interest of the citizens, has constantly maintained sphinx-like silence and also for some unfathomable reason, dexterously ignored the financial misdeeds as a colossal mute spectator. It seems all have either eloquently or silently competed with each other to write the epitaph of law. But, a pregnant one, there is a watch-dog, the petitioner in Writ Petition(C) No. 22312009, despite being wedded to individual interest, thought it apposite to uncurtain the machinations adopted by the respondent Nos. 3 to 8 and the Metropolitan Transport Corporation (Chennai) Ltd. (MTCL) which had filed SLP(C) No. 1690812006 against K. S. Kumar Raja & another and later on chose not to press the same. The painfully unusual thing, has been allowed to happen."* (See also para 54)

The Contract had been given by MTCL to different advertisers without inviting tenders etc. This was also deprecated by the Supreme Court and it was held that it should have been done in transparent and fair manner. (paras 52 and 53) **M/s Nova Ads. v. Metropolitan Transport Corporation, AIR 2015 SC 1468**

Persons with disabilities (equal opportunities etc.) Act

Sections 47, 33 and 73

Assistant Commandant in C.R.P.F. was injured while on duty. According to medical report his disability was hundred per cent. Reversing the judgment of the Allahabad High Court, the Supreme Court held that order relieving him from duty was not illegal. It was further held "it is obvious that if at the appointment stage persons with disabilities need not have vacancies in posts reserved for them, equally, after suffering a disability during service, a person may for the self same reason not be able to perform what is required of him in the defence of the nation thereby justifying his discharge from service." **Union of India v. Dilip Kumar Singh, AIR 2015 SC 1420**

Protection of Women From Domestic Violence Act

Jurisdiction Of Sessions Court Under Section 29 Of The Act To Pass Interim Orders

29. Questioning the correctness of the Magistrate's order in granting the maintenance of Rs.2.5 lakhs per month the respondent carried the matter in appeal under Section 29 to the Sessions Court and sought stay of the execution of the order of the Magistrate during the pendency of the appeal. Whether the Sessions Court in exercise of its jurisdiction under Section 29 of the Act has any power to pass interim orders staying the execution of the order appealed before it is a matter to be examined in an appropriate case. We only note that there is no express grant of power conferred on the Sessions Court while such power is expressly conferred on the Magistrate under Section 23. Apart from that, the power to grant interim orders is not always inherent in every Court. Such powers are either expressly conferred or implied in certain circumstances. This Court in Super Cassettes Industres Limited v. Music Broadcast Private Limited, (2012) 5 SCC 488, examined this question in detail. At any rate, we do not propose to decide whether the Sessions Court has the power to grant interim order such as the one sought by the respondent herein during the pendency of his appeal, for that issue has not been argued before us.

30. We presume (we emphasize that we only presume for the purpose of this appeal) that the Sessions Court does have such power. If such a power exists

then it can certainly be exercised by the Sessions Court on such terms and conditions which in the opinion of the Sessions Court are justified in the facts and circumstances of a given case. In the alternative, if the Sessions Court does not have the powerto grant interim orders during the pendency of the appeal, the Sessions Court ought not to have stayed the execution of the maintenance order passed by the Magistrate. Since the respondent did ot comply with such conditional order, the Sessions Court thought it fit to dismiss the appeal. Challenging the correctness of the said dismissal, the respondent carried the matter before the High Court invoking Section 482 of the Code of Criminal Procedure, 1973 and Article 227 of the Constitution. **Shalu Ojha v. Prashant Ojha 2015(3) Supreme 569**

Public Money Recovery

Recovery of Debts Due to Banks and Financial Institution Act - Section 9 Civil Court jurisdiction barred after 16.7.1999 when DRT came into existence

Suit for recovery of about Rs. 70 lakh along with interest instituted by the Bank was decreed by consent by the Bombay High Court on 9.12.1996. In execution by order dated 3.12.1999 the High Court directed the Court Receiver to sell the mortgaged property of the defendant and permitted the plaintiff bank to participate in the auction. The auction was held on 06.05.2000 in which plaintiff bank purchased the mortgaged property for Rs. 2 crore. Sale Certificate was issued on 18.4.2002. After 7 years, the judgment debtor filed an application before recovery officer under the aforesaid Act (D.R.T. Act in short) for setting aside the sale along with delay condonation application. The applications were dismissed by DRT. Appeal was also dismissed by DRAT. However High Court in writ petition set aside the orders as well as the sale. The Supreme Court agreeing with the High Court held that after notification dated 16.07.1999 issued by the Central Government, D.R.T. came into existence and in view of Section 31 of D.R.T. Act suits and all proceedings including execution proceedings automatically stood transferred to D.R.T. Reliance was placed upon *AIR 2000 SC 2671.* Accordingly, it was held that direction of the High Court dated 3.12.1999 directing the receiver to sell the mortgaged property was completely without jurisdiction and the consequent sale was also

void ab initio. It was further held that a *void ab initio* sale, order or action could be questioned anywhere and ignored even in collateral proceedings. Reliance was placed upon *AIR 1954 SC 340.* Ultimately it was held that recovery officer under D.R.T., D.R.T. and DRAT could very well ignore the sale. It was further held that in view of Section 24 of D.R.T. Act, Limitation Act including Section 5 thereof was applicable on proceedings under D.R.T. Act.**Indian Bank v. Manilal Govindji Khona, AIR 2015 SC 1240**

Auction Sale of 60 *bigha* agricultural land and purchase by State for Rs. 1/- for recovery of Rs. 732/- as arrears of land revenue in Assam

(See under Agricultural Lands Matters at Serial No. 1.)

Rent Laws

Non-payment of Rent, deposit on first date:

Under section 12 (3)(b) of Bombay Rent Control Act 1947 it is provided that in a suit on the ground of default decree for eviction shall not be passed if on the first day of hearing of the suit or on or before such other date as the Court may fix, the tenant pays or tenders in court the standard rent and permitted increases then due and thereafter continues to pay or tender in court regularly such rent and permitted increases till the suit is finally decided and also pays costs of the suit as directed by the court. In the instant case the tenant deposited the rent which was short. The High Court held that as the tenant was ready and willing to pay the rent, hence, merely because he paid Rs. 270/- less out of the rent payable Rs. 7070/- on the date of first hearing (when issues were framed) he would not be liable to eviction. The Supreme Court did not agree with the High Court and held that such type of interpretation would amount to legislation and in this regard referred to *AIR 1978 SC 955* holding that there was no discretion available to the Court to be exercised in favour of the tenant if condition was not fully complied with. Reference was made to *AIR 2002 SC 1237* also wherein same thing of held. It was further held that such prayer could not be made before appellate Court for the first time.

Annotation

The relevant provision of Bombay Rent Control Act is analogous to

section 20(4) of U.P. Rent Control Act and Order 15 Rule 5 C.P.C. as added by U.P. Legislature. **Yusufbhai Noormohammed Jodhpurwala v. Mohamed sabir Ibrahim Byavarwala, AIR 2015 SC 1131**

Service Law

Deputation and its curtailment-

If an employee after going through the entire elaborate selection proceedings is selected to a post and appointed on deputation basis for 5 years or until further orders whichever is earlier, it will mean that it is a fixed term (5 years) posting. He cannot be curtailed before 5 years in arbitrary and capricious manner merely on the strength of the words until further orders used in the appointment letter.

After serving on deputation when an employee is repatriated to parent department, he would not be entitled to the higher pay scale which he was drawing while he was holding the post on deputation. **Union of India v. S.N. Maity, AIR 2015 SC 1008**

Disciplinary Proceedings, continuation after retirement:

Under Rule 10 of West Bengal Services (Death – cum – Retirement Benefit) Rules 1971, disciplinary proceedings may be continued after retirement in all types of cases. It is not confined only to cases of delinquent that had alleged caused pecuniary loss to the Government. **State of West Bengal v. Pronab Chakraborty, AIR 2015 SC 1278**

A. Articles 16 and 309 of Constitution, promotion to the Post of Chief Engineer

B. Plea of Malafide Pleading and Parties

Promotion / Appointment was to be made to the post of Chief Engineer under U.P. Avas Avam Vikas Parishad (Appointment and Conditions of Service of Chief Engineer) Regulations, 1990.

Under order of Supreme Court process for giving officiating promotion had been initiated but not the process for regular appointment. Eligibility criteria of

selection was changed and some relaxation was made there with the result that larger number of subordinate officers became eligible for consideration. It was challenged on the ground that after initiation of selection process, eligibility criteria could not be changed. The High Court accepted the contention but Supreme Court reversed the same on the ground that before amendment process for regular selection / promotion had not commenced.

Plea of malafidies could not be entertained as no factual malafide was alleged against any person in authority and no such person had been impleaded by name. Further the allegations of malafide were fake and balled. The allegation was that the criteria was changed to benefit only one candidate. It was found that relaxation was beneficial for three officers who all the senior to the petitioner who challenged the selection process before the Allahabad High Court. It was further held enlargement of zone of consideration would serve public cause as it would help in selecting most meritorious persons from a large ground of eligible persons. **Rajender Kumar Agarwal v. State of U.P., AIR 2015 SC 1322.**

Transfer of Property Act

Sections 8, 105 and 108, company lessee of industrial plot allotted by U.P. S.I.D.C., change in memorandum and article of association, winding up / sale and amalgamation by High Court or sale of almost entire share to another company, amounts to transfer of lease and transfer levy is required to be paid.

In this judgment cases of 4 companies each of which had been allotted a huge plot by UPSIDC, were considered and placing reliance upon clause 3(P) of lease deeds it was held that each company without consent of the lesser – UPSIDC violated the clause which amounted to transfer of allotted plot, hence, each company was liable to pay transfer levy charges. Clauses 6.01 (E) and (F) of guidelines issued by the corporation for transfer /reconstruction in respect of the plots were also considered. Clause 6.01(F) defines the transfer as disposal of controlling interest in the venture by the existing allottee.

The first allottee company was Monsanto Manufacturers Pvt. Ltd. It changed directors and shareholders without prior permission of the Corporation. The effect of change was that in fact the company was purchased by the new directors from the previous ones.

The second company was U.P. Towiga Fiberglass Limited. After suffering a loss of about Rs. 42 crores, the company sold almost its entire shares including shares of its promoters and shares lying with finance institutions to a foreign company known as Rotar India Ltd. resulting in replacement of the promoters of the allottee company by new promoters/ directors.

The third company was M/s Tyres & Tubes Co. Pvt. Ltd. The company suffered heavy losses. Winding up proceedings were initiated before Allahabad High Court under Company's Act and official liquidator sold the property of the allottee company to M/s Enrich Pvt. Ltd. The corporation (UPSIDC) was not party to winding up proceedings nor any notice was issued to it by the official liquidator.

The last company was M/s Super Agro Tech Ltd. The company did not set up the unit. The company got itself amalgamated with M/s Super tannery

(India) Ltd. in proceedings under Companies Act before Allahabad High Court and the amalgamation was sanctioned by the High Court on 9.5.1995. In the said amalgamation proceedings also UPSIDC was not a party.

In the three cases the High Court had allowed writ petitions directed against notices and in one case suit had been filed which had been decreed restraining the corporation from charging any transfer levy charges from the company. The judgment was approved by the first appellate court as well as High Court in Second Appeal. The Supreme Court set aside all the four judgments of the High Court. **UPSIDC v. Monsanto Manufacturers Pvt. Ltd., AIR 2015 SC 1445**

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PART – 2

(HIGH COURTS)

Administrative Law

Principles of Natural Justice – Underlying principle – To cheek arbitrary exercise power – cannot be put into strait jacket formula.

It is trite that the rules of 'natural justice' are not embodied rules and they cannot be put into a strait-jacket formula. The underlying principles of natural justice is to check arbitrary exercise of power and, therefore, the principle implies a duty to act fairly. It is not possible to lay down a rigid rule as to when the principles of natural justice would apply as the requirements of natural justice must depend on the facts and circumstances of thecase, the natue of the enquiry, the subject-matter to be dealt with. The Supreme Court in State of Punjab v. Jagir Singh, 2005(25) AIC 324 (SC) = 2004(103) FLR 416, and Karnataka SRTC v. S.G. Kotturappa, 2005(105) FLR 274 (SC), has held that the principles of natural justice are required to be complied with having regard to the fact situation obtaining therein and cannot be applied in a vacuum without reference to the relevant facts and circumstance of the case. **Dr. Virendra Singh v. Banaras Hindu University and others, 2015(109) ALR 614.**

Advocates Act

S. 57 – Disaffiliation of Bar Association –Power of – Exercised by chairperson of State Bar Council Provided such power must be delegated with authority power he cannot do this

The principal issue which has emerged before the Court is whether the officiating Chairperson of the State Bar Council, or for that matter the Chairperson, has the power under the affiliation Rules to cancel and affiliation which has been granted to a Bar Association.

At this stage it would suffice to note that there is no specific provision in the Rules of 2005 enabling the Chairperson to exercise the power of disaffiliation. On the contrary, the provisions contained in Clause 10 of the Rules of 2005 would indicate that the power to cancel an affiliation is for breach, inter alia, of

the conditions of the Bar council required to be fulfilled by the Bar Association in the matter of renewal; or where there is a breach in complying with the directions of the Bar Council or where it is found that the information which has been furnished to the bar Council has been found to be a misrepresentation or untrue. Before the Chairperson can assume the powers to disaffiliate a Bar Association, there has to be a specific delegation under the Rules, which is absent in the present case. Consequently, the officiating Chairperson of the State Bar Council had no jurisdiction or authority to pass the impugned order dated 12 August 2014. The said order is liable to be set aside. We order accordingly.

During the course of hearing, it has been pointed out by the learned Senior Counsel appearing on behalf of the petitioners that insofar as the affiliating power is concerned, the consistent course of practice over the last thirty years is that affiliations have been routinely granted by the Chairperson of the State Bar Council and this power has never been construed as a breach by the Bar Council itself. An apprehension has been expressed that in the event that this Court were to hold that the power to disaffiliate a Bar Association is not vested in the Chairperson acting individually, a similar view in regard to the power to grant affiliation would apply which may unsettle the affiliations already grated and cause a great deal of uncertainly. On this aspect of the matter, court may clarify that the limited issue before the Court which is being addressed in these proceedings is that the Chairperson of the State Bar Council has no jurisdiction to exercise the power to disaffiliate a Bar Association action individually and the exercise of the power of disaffiliation must necessarily be made by the Bar Counsel as a collective body, particularly in the absence of any delegation of power of a provision for delegation in the Rules. **Agra Advocates Association and another v. State of U.P. and others 2015 (3) ALJ 590**

Civil Procedure Code

S. 9 – Jurisdiction Determination of – Claim for damages- Negligence be resolved only on basis of material produced in course of trial- Cannot be examined under writ jurisdiction, petitioner has appropriate remedy to file suit U/s 9 of C.P.C.

Whether, as a matter of fact, the operating surgeon had exercised due and

reasonable care while performing the surgery or conversely whether, as the claimant suggests, there was negligence on the part of the surgeon in performing the surgery, cannot be determined in writ proceedings under Acticle 226 of the Constitution. These are matters of evidence which, in fact, can be resolved only on the basis of material which is produced in the course of the trial of a suit. Santra (AIR 200 SC 1888) (supra), in fact, was a case which originated in a suit before the trail Court as was the subsequent decision of the Supreme Court in Shiv Ram (AIR 2005 SC 3280) (supra). The remedy under Article 226 of the Constitution can, in appropriate cases, be availed of for remedying a violation of the fundamental rights, such as the right to life and personal liberty under Article 21 of the Constitution. Where, however, a claim of the nature, such as the present, intrinsically depends upon proof of an act of medical negligence, such a claim cannot be determined in exercise of writ jurisdiction under Article 226 of the Constitution. A suit for the recovery of the amount of a claim of that nature would be dealt with under the provisions of Section 9 of the Code of Civil Procedure, 1908.

Consequently, court decline to entertain the petition only on the ground that disputed questions of fact, which would arise in these proceedings, would have to be adjudicated upon by the trial Court in regular civil suit. **Kismat & Anr. v. State of U.P. Thru. Prin. Secy. Health & welfare & Ors. 2015 (3) ALJ 572**

S.11 – Applicability of – Equally applicable in respect of decision rendered at successive stages of the suit.

It is well establish that the principle of res judicata enshrined under section 11, C.P.C. is equally applicable in respect of the decisions rendered at successive stages of the suit. Thus, even interlocutory orders passed at different stages of a suit have the binding effect provided the decision is rendered on merits. **Smt. Asha Agarwal and others v. M/s. Arvind and Co. Kaimganj, Farrukhabad and others, 2015(127) RD 226.**

S.24 – Applicability of – Applies to suits, Appeals and ors proceedings – grants for transfer, Enumerated.

Section 24 is a general provision empowering the High Court or the District Court to transfer a case on the motion of any other party or on its own

motion and applies to suits, appeals and other proceedings, including the execution proceedings.

Following have been held to be sufficient grounds for transfer: (I) convenience of parties and situation of property, (ii) bias of judge hearing the case, (iii) two suits involving common question, (iv) avoidance of delay and unnecessary expenses and (v) presenting abuse of process of the Court.

The transfer provision are such that they are intended to facilitate a party seeking transfer only when it staisfies the Courts that if the case is allowed to be adjudicated in the same Court, the party would invariably suffer irreparable injury and the transfer of a case from one Court to another indirectly castsdoubt on the competence and integrity of the judge from whom the case is sought to be transferred. Mere presumptions or possibile apprehensions are not sufficient therefore: only good and sufficient grounds,clearly set out in the order, may justify the transfer and a transfer should not readily be granted for any fancied notion of a litigant. It should be granted to ensure that the applicant gets fair and impartial justice.

Thus, the power vested in the High Court under section 24, C.P.C. is comprehensive and discretionary. The discretion to be exercised, as we all know, is a judicial discretion based on sound reasonings. While considering the question of transfer, the very bias which has to be law laid down for transfer of the same is to be considered and in the present case, the reason that opposite party No. 2 is a practicing lawyer cannot be a ground for transfer when there is no concurrent reason that the said person in any manner may influence the proceedings of the matter and if on the said ground, the case is transferred then it is practically himself to get influence against the practitioner lawyer in a particular district as transfer should not readily be granted for any fancied notion of a litigant. It should be granted to ensure that the applicant gets fair and impartial justice.

Mere presumptions or possible apprehensions are not sufficient therefore; only good and sufficient grounds, clearly set out in the order, may justify the transfer and a transfer should not readily be granted for any fancied notion of a litigant. It should be granted to ensure that the applicant gets fair and impartial justice. **Raja Ram and others v. Ashok Kumar and others,**

2015(127) RD 65.

S. 92 and O. 1, R. 10 – Public Charity – Lower Court allowed to transpose certain individual as plaintiff's though said individual had neither sought nor having granted leave of court to institute said suit – Revision against it – Legality – In considered view impugned order not sustained, hence set aside

In this case, learned counsel for the revisionists has submitted that the order under revision in this case dated 03.12.1999 passed by IVth Additional District Judge, Kheri is completely unlawful as the same has been passed in clear breach of provision of Section 92 of the code of Civil Procedure inasmuch as the learned Court below has permitted to transpose certain individuals as plaintiffs though the same individuals has neither sought nor were granted leave of the court to institute the suit.

The submission on behalf of revisionist-applicants thus is that the learned Court below has exceeded its jurisdiction while allowing the application under Order 1 Rule 10 C.P.C. and ordering in transposition of the defendants No. 1 and 3 to 8 as plaintiffs.

What escaped the attention of the learned Court below is the provision of Section 92 of the Code of civil Procedure which provides that a suit or proceedings under Section 92 of the Code of civil Procedure can be filed or initiated either by the Advocate General or by two or more persons having interest in the trust after obtaining leave of the Court.

From a perusal of the aforequoted provision of Section 92 of the Code of Civil Procedure, it is abundantly clear that leave or permission of the Court is not required for institution suit by the Advocate-General. However, in case two or more persons intend to institute such proceedings who have ample interest in the trust, then they can institute the suit only once they are granted leave or permission of the Court. The reliance placed by learned Court below on the Judgement of the Punjab and Haryana High Court, reported in AIR 1986 Punjab and Haryana 402 is absolutely misplaced. The case decided by Punjab and Haryana High Court did not relate to a suit instituted under Section 92 of the Code of Civil Procedure. Hence the said judgment does not have any application in the instant case.

As in absence of leave of the court, no person can be permitted to institute any suit under Section 92 of the Code of Civil Procedure. Admittedly, in the instant case, the leave or permission to institute the suit under Section 92 of the Code of Civil Procedure was accorded by the District Judge on 19.12.1990 only to two persons, namely, Surendra Kumar Dikshit and Suresh Chandra Misra. The said sanction was never either applied for by or accorded to the defendants no. 1 and 3 to 8. In absence of any such leave or permission of the Court, the learned Court below could not have passed the order allowing transposition of the defendants no. 1 and 3 to 8 as plaintiffs. What is relevant is that two or more persons may institute the suit only if they have obtained the leave of the Court. The phrase occurring in Section 92 is:-

"Having obtained the leave of the Court"

The said phrase would clearly indicate that for institution of the suit under
Section 92 of the Code of Civil Procedure, leave or permission of the Court should be obtained prior to institution of the same.

In view of above discussion made and reasons given above, the petition deserves to be allowed**. Bhagwan Laxmi Narain Virajman v. Surendra Kumar dixit, 2015 (2) ARC 8**

S.100 – Substantial question of Law – requirement of – must be debatable, not previanely settled by law of the Land or a finding precedent and answer there of would have material bearing as to the rights of the parties before court.

It would not be out of reference to observe that the scope of exercise of the jurisdiction by the High Court in second appeal under section 100 C.P.C. is limited only to determination of the substantial question of law. To be a substantial question of law must be debatable, not previously settled by law of the land or a binding precedent and answer to the same will have a material bearing as to the rights of the parties before the Court. This very aspect of substantial question of law has been elaborated by Hon'ble Apex Court in the case of Govindaraja v. Mariamman, 2005(59) ALR 133 (SC)= 2005(98) RD 731 (SC). **Bablu @ Bhagwati Prasad v. Smt. Betibai and others, 2015(109)**

ALR 768.

S. 100 – Second Appeal – Suit for partition of disputed property – Trial court decreed suit– Appeal dismissed by the first appellate court and also affirmed finding of trial court – challenged under – legality of concurrent findings of court below justified; thus upheld

In this matter Learned counsel for the appellant submitted that both the courts below have not examined and scrutinized the evidence properly and the view taken by the courts below is not correct.

As regards submission made by learned counsel for the appellant that evidence has not been examined and scrutinized properly, learned counsel for the appellant could not point out as to which part of the evidence has been misread and the relevant evidence has been omitted or inadmissible has been taken into account.

It appears that learned counsel for the appellant wants this Court to assume nomenclature of the first appellate court. This Court cannot re-appreciate evidence and fact in regard to Issue No.1 which has been concluded by concurrent finding of the courts below, which finding is based on relevant and admissible evidence. It would not be out of reference to observe that the scope of exercise of the jurisdiction by the High Court in second appeal under Section 100 C.P.C. is limited only to determination of the substantial question of law. To be a substantial question of law must be debatable, not previously settled by law of the land or a binding precedent and answer to the same will have a material bearing as to the rights of the parties before the Court. This very aspect of substantial question of law has been elaborated by Hon'ble Apex Court in the case of **Govindaraja v. Mariamman, AIR 2005 SC 1008: 2005 (3) ARC 1.**

S. 114 – Review – filing of by new counsel – maintainability of

The judgment was passed after hearing the then learned counsel for the petitioner-applicant Sri Pankaj Mithal. The review application has been filed through Sri Shiv Sagar Singh who had neither filed the writ petition nor had argued nor there is any reflection either from the review application or

from the record of the case that he was present at the time of arguments. The question of propriety of filing a review petition and arguments by a new counsel who did not appear in the earlier proceedings, has been considered by the Hon'ble Apex Court in the case of Tamil Nadu Electricity Board v. N. Raj Reddiar AIR 1997 SC 1005, wherein it was observed as under.

> "The record of the appeal indicates that Sri Sudarsh Menon was the advocate on record when the appeal was heard and decided on merits. The review petition has been filed by Sri Prabir Choudhary who was neither an arguing counsel when the appeal was heard nor he was present at the time of argument. It is unknown on what basis he has written the grounds in the review petition, as if, it is a rehearing of an appeal against our order. He did not confine to the scope of review it would not be in the interest or profession to permit such practice."

Same is the position in this case, Sri Shiv Sagar Singh under whose signature review application has been filed, had neither argued the writ petition on behalf of the petitioner-applicant nor there is any indication that he was present at the time of hearing.

In present case there is no new or important fact which was not within the

knowledge of petitioner- applicant at the time of hearing of original writ petition. The relevant portion of above mentioned provision is "some mistake or error apparent on the face of the record". In present case this Court had considered rights of plaintiff-petitioner and thereafter decided the writ petition through impugned order by which relief "d" of writ petition for payment of compensation of land in question was granted to applicant-petitioner. There appears no discovery of new and important matter or evidence, and also there appears no mistake or error apparent on the face of the record in impugned order. In light of above mentioned we are of the opinion that there appears no error on the face of record in impugned order, that may require exercise of review jurisdiction. The point mentioned by learned counsel for petitioner-applicant were considered and then judgment in question was passed. In any case the judgment and order dated 03-03-2011

was passed on merits, and deliberately without any inadvertence or error. There is no error apparent on face of record. Review of such order/judgment is not maintainable. So present review application is liable to be dismissed. **Ishwar Dayal v. State of U.P., 2015 (2) ARC 226**

S. 114 – Review – Permissibility of – failure on the part of counsel of a litigant to either plead or to argue a ground cannot constitute good ground for review

Review is being sought on the ground that the counsel, who had appeared and argued the writ petition, while advancing the argument failed to draw the attention of the court on certain points and therefore, the judgment is erroneous. Failure on the part of the counsel of a litigant to either plead or to argue a ground cannot constitute good ground for review. Review has to be strictly confined within four corners of Order 47 Rule 1 of the Code of Civil Procedure and is not permissible on new ground which has not been raised or argued. As a matter of fact, in the garb of review, the petitioner-applicant wants de novo rehearing which is impermissible. Thus on merit also, the review application has no force. For the aforesaid reasons, the review application stands dismissed. **Ishwar Dayal v.State of U.P., 2015 (2) ARC 226**

Order 1, Rule 10(2) – Addition of party – Scope – Application to add a party moved on ground of share in property in dispute – Important aspect which should be looked into by civil court while deciding applications under order 1, Rule 10(2) C.P.C. to avoid multiplicity of litigation and also conflicting decisions being passed in different suits.

Revisionist/ plaintiff filed a suit for mandatory injunction against the respondent Nos. 2/ Sanjay Nigam and 3/ Smt. Suuneeta Nigam registered as Civil Suit No. 182 of 2013. In the said matter, an application has been moved on behalf of Smt. Kajal Nigam, sister of defendant Sanjay Nigam on the ground that she has got share in the property in dispute, as such, impleaded as a party in the litigation, allowed by order dated 22.1.2014 passed by Civil Judge (S.D.), Sitapur.

Aggrieved by the said order, the present revision has been filed under sec.151 (sec.115) C.P.C.

In order to decide the controversy, it will be approptiate to go through the scope and object of Order 1, Rule 10(2), C.P.C. which covers two types of cases: (a) of a party who ought to have been joined but not joined and is a necessary party, and (b) of a party without whose presence the question involved in the case cannot be completely decided.

The simple test in such controversy would be as to whether the presence of such a party is appropriate in view of the subject-matter in adjudication. If the answer be in the affirmative, joinder can be permitted. By reason of direct interest in the subject-matter or even by reason of eventual reliefs sought, such a test would be answered. Power being there, it is all matter of appreciation of the controversy in issue and its possible ramifications.

Order 1, Rule 10(2), C.P.C. gives a very wide discretion to the Court to deal with any such situation which may result in prejudicing the interest of affected party if not impleaded in the suit and where the impleadment of the said party is necessary and vital for the decision of the suit. It is true that the discretion has to be exercised judicially but at the same time the concerned Civil or Appellate Court where the suit on appeal is pending has also to take into consideration that the party which is necessary to be impleaded will be put to a greater difficulty if not impleaded by the plaintiff who may have ulterior motives of not impleading such party and if the decision is given which may affect the interest of the said party greater prejudice would be caused to the said party as a result of not impleading while no prejudicice or loss would be caused to the plaintiff because he will have full opportunity to defend his rights and interest as against aggrieved party who has been impleaded as a party to the suit. The important aspect which should be looked into by the Civil Courts while deciding the applications under Order 1, Rule 10(2), C.P.C. is to avoid multiplicity of litigation and also conflicting decisions being passed in different suits which will be safeguarded as a result of allowing necessary party to be impleaded in the suit. (See Baijnath v. Ganga Devi, AIR 1998 Raj. 125).

Thus, under Order 1, Rule 10(2), C.P.C., the power to add a party to a proceeding cannot depend solely on the question whether he has interest in the suit property. But the question to be considered whether the right of the said person may be affected if he is not added as a party. Such right, however, will include necessarily an enforceable legal right. **Gopal Gupta v. Kajal Nigam**

and others, 2015(109) ALR 526.

Order 1 and Rule 10(2) – Scope of – Give a very wide discretion to the court to deal with any situation which may result in prejudicing the interest of affected party if not impleaded in the said and where the impleadment of the said party is necessary and vital fordecision.

Order 1, Rule 10(2), C.P.C. gives a very wide discretion to the Court to deal with any such situation which may result in prejudicing the interest of affected party if not impleaded in the suit and where the impleadment of the said party is necessary and vital for the decision of the suit. It is true that the discretion has to be exercised judicially but at the same time the concerned civil or Appellate Court where the suit on appeal is pending has also to take into consideration that the party which is necessary to be impleaded will be put to a greater difficulty if not impleaded by the plaintiff who may have ulterior motives of not impleading such party and if the decision is given which may affect the interest of the said party greater prejudice would be caused to the said party as a result of not impleading while no prejudice or loss would be caused to the plaintiff because he will have fulll opportunity to defend his rights and interest as against aggrieved party who has been impleaded as a party to the suit.

The important aspect which should be looked into by the Civil Courts while deciding the applications under Order 1, Rule 10(2), C.P.Code is to avoid multiplicity of litigation and also conflicting decisions being passed in different suits which will be safeguarded as a result of allowing necessary party to be impleaded in the suit. **Ram Pyare Verma v. IIIrd Addl. District Judge, Faizabad and others, 2015(110) ALR 383.**

Order II and Rule 2 – Scope of – Successive suits for the same case are not maintainable.

Successive suits for the same case are not maintainable. In that event the present suit would not be prima facie maintainable in view of Order II, Rule 2, C.P.C.

Thus, in overall facts and circumstances of the case, the present suit of the plaintiffs-appellants is prima facie barred by Order II, Rule 2, C.P.C. and it is not maintainable in view of section 27 of the Act. **Smt. Asha Agarwal and**

others v. M/s. Arvind and Co. Kaimganj, Farrukhabad and others, 2015(127) RD 226.

O.6, R. 17 – Amendment in plaint – Petitioner/plaintiff application rejected by

Trial Court affirmed in revision – Writ petition – legality of

The petitioners, herein, have filed a suit for permanent injunction against the respondents. In the aforesaid suit, after exchange of pleadings, issues were framed and date was fixed for evidence. At this stage, the petitioners, herein, have filed an application under Order 6, Rule 17 of C.P.C. for amending the plaint on 30.5.2013. The amendment was sought to the effect that during the pendency of the suit, after encroaching the land of the petitioner, boundary wall has been raised by the defendants/respondents, therefore the boundary wall raised on the petitioners' land by the defendants/respondent be demolished on their own cost.

To the aforesaid application, an objection was filed by the otherwise stating therein that the boundary, which is said to have been raised during the pendency of the suit, has already been raised even prior to the filing of the suit and the averment to this effect has been made in paragraph two of the written statement. It has also been stated that the existence of boundary wall has also come in the report of the Advocate Commissioner. Further it has been filed after commencement of trial, therefore the same s not maintainable.

The Civil Judge (Senior Division) looking into the facts of the case believing on the version of the respondents came to the conclusion that the amendment, which is being sought, was in existence even prior to filing of the suit as per averments made in para 2 of the written statement. The existence of the boundary wall has also come in the report of the Advocate Commissioner but the petitioners have not filed amendment application immediately after filing of the suit. Further there was lack of due diligence in filing the application as required in Proviso to Order 6, Rule 17 of C.P.C. and therefore, he rejected the amendment application. The Revisional court has taken the same view and dismissed the revision filed by the petitioners. **Ahmad Nabi v. Ram Deen, 2015 (2) ARC 105**

Order VII and Rule 11 and 13 – Specific Relief Act, Sec. 34 – Suit seeking

decree for declaration that plaintiffs are the sole and exclusive owners of the premises in question and decree for permanent injunction – Application by dependants to reject the plaint as suit is barred by provisions of Sec. 34 of the Specific Relief Act – Consideration for.

An appeal against the order of the Civil Judge (Senior Division), Kanpur Nagar, dated 2nd August, 2014 by which the Suit No. 107/14, filed by the appellants, under Order VII, Rule 11 of the Code of Civil Procedure (in short 'C.P.C.'), has been rejected on the ground that the suit for declaration with seeking the relief of possession is not maintainable.

The appellants filed the Suit No. 107 of 2014, seeking following reliefs:

"(A) A decree for Declaration that the plaintiffs are the sole and exclusive owners of the premises No. 117/193, I-block, Navin Nagar, Kanpur Nagar, fully detailed and bounded below.

(B) A decree for Permanent injuction restraining, the defendants, their agents servants and assigns from causing any interference in the free ingress and agress by the plaintiffs and from forcefully dispossessing the plaintiffs from the suit accommodation viz. Ground floor protion, excluding one room on the front side of premises No. 117/193, I-block, Navin Nagar, Kakadeo, Kanpur, both fully detained at the foot of the plaint, and from taking its illegal possession till disposal of the suit.

(C) Cost of the suit be passed in favour of the plaintiffs and against the defendants.

(D) Any other relief which this learned Court deems fit and proper in the circumstances of the case may also be passed in favour of the plaintiffs against the defendant."

The Trial Court has rejected the suit on the ground that in the suit, relief of declaration, declaring the plaintiffs as Kanpur Nagar, has been sought, though the defendants are in possession of one of the room on the ground floor and one of the room on the first floor, but no relief has been sought seeking possession of the said room on the ground floor and the other room on the first floor. Therefore, the suit is barred by section 34 of the Specific Relief Act.

10 We do not find any error in the impugned order. The relief sought in the

plaint has been referred here in above. The admitted fact is that the appellants were not in possession of one of the shop on the ground floor and the other on the first floor of the house in dispute, while the decree of declaration was being sought to declare the appellants as the sole and exclusive owners of the house No.117/193/I, block, Navin Nagar, Kanpur Nagar, without seeking the relief of possession of those portions of the house which were not in the possession of the appellants.

In a recent case in Venkata Raja and others v. Vidyane Doureradjaperumal (D) through Lrs and others, 2013(98) ALR 673(SC), the Apex Court held as follows:

> "17. A mere declaratory decree remains non-executable in most cases generally. However, there is no prohibition upon a party from seeking an amendment in the plaint to include the unsought relief, provided that it is saved by limitation. However, it is obligatory on the part of the defendants to raise the issue at the earlies. (vide: Prakash Chand Khurana etc. v. Harman Singh and others, AIR 1973 SC 2065, and State of M.P. v. Mangilal Sharma, AIR 1998 SCC 743).
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> In Muni Lal v. Oriental Fire and General Insurance Co. Ltd. And another, 1996(27) ALR 91(SC), this Court dealt with declaratory decree, and observed that "mere declration without consequential relief does not provide the needed relief in the suit; it would be for the plaintiff to seek both reliefs. The omission thereof mandates the Court to refuse the grant of declaratory relief.

In view of the law laid down by the Apex Court, we are of the view that the Trial Court has not committed any error in rejecting the suit as barred by section 34 of the Specific Relief Act. **Smt. Rekha Mishra and another v. Shiv Prasad Srivastava and others, 2015(110) ALR 33.**

Order VIII, R.6-A – Jurisdiction for considering the scope of counter claim – Open to exercised within the parameter of order VIII, Rule 6-A Discussed.

The jurisdiction of considering the scope of counter claim is open to be exercised within the parameters of Order VIII, Rule 6-A, therefore, the Court below while construing the cause of action could not ignore the material date

i.e. 18.11.2013, which is an integral part of cause of action and this event has taken place after filing of the written statement. In other words a part of cause of action has taken place beyond the period of limitation envisaged in Order VIII, Rule 6-A. Once the cause of action wholly or in part accrues after the defendant has delivered his defence or before the time limited for delivering defence has expired, a counter claim cannot be allowed to be set up. Giving up the plea of mention of date i.e. 18.11.2013 as proposed by learned Counsel for the respondents, at this stage cannot rectify the wrongful exercise of jurisdiction by the Court below, which runs against the statute, and it is open to the respondent-defendant to avail remedy as may be open to him under law. As far as the question of cause of action is concerned, the whole cause of action inclusive of the event of 18.11.2013 is bound to relate to a point of time prior to the date of filing written statement, which admittedly is not the situation in the present case, therefore, the impugned orders are clearly beyond the scope of Order VIII, Rule 6-A. **Rajkaran v. Ramraj and others, 2015(127) RD 61.**

O. IX, R. 13 – Suit for recovery of possession and demolition, decree ex parte – application to set aside decree rejected – Appeal dismissed – Writ petition – legality – In view of facts, impugned orders not sustained, hence set aside

A suit for recovery of possession and demotion was filed in the year 1979, which was registered as Regular Suit No. 356/1979. After institution of the suit, it was transferred to the court of First Additional Munsif, Lucknow. The petitioner moved an application under Order 6 Rule V of the CPC for furnishing him better particulars. The case was fixed for filing of written statement on 18.11.1980. However, particulars to the petitioner could be furnished only on 06.12.1980. The matter was thereafter listed on 11.02.1981, on which date, a general date in all the cases was fixed on account of strike call given by the ministerial staff of the court. The case thereafter was ordered to be proceeded ex parte on 10.03.1981. The suit was transferred on 02.05.1981 to the court of Vth Additional Munsif, Lucknow and it was decreed ex parte on 02.02.1982. An application was moved to set aside the ex parte decree dated 02.02.1982. On 26.05.1990 the application moved under Order 9 Rule XIII of the CPC was rejected on 19.05.1993 by the learned trial court.

Against the order dated 19.05.1993, the petitioner-defendant filed an appeal, which too, was dismissed on 25.04.1995.

These are the two orders dated 19.05.1993 and 25.04.1995 passed by the learned trial court and the appellate court respectively, which are under challenge in this petition.

The submission of learned counsel for the petitioner is that the reasons indicated by the learned trial court for rejecting the application moved by the petitioner under Order 9 Rule XIII of the CPC are not tenable as the grounds given by the petitioner in his application have not been appreciated in their correct perspective, inasmuch as, the knowledge of the general date which was fixed on 11.02.1981 on account of the striking ministerial staff, could not be gathered by the petitioner and further no information about the regular suit being transferred to Vth Additional Munsif was given to the petitioner and these facts have not been appreciated by the courts below correctly.

In view of aforesaid discussions, the writ petition is allowed and the impugned orders dated 19.05.1993 and 25.04.1995 passed respectively be the learned trial court and the appellate court below are set aside. Regular No. 256 of 1979 is restored to its original number on a payment of cost of Rs. 5000/- to be deposited before the trial court within a period of ten days from today. **Noor Mohammad v. VIIth Additional District Judge, Lucknow, 2015 (2) ARC 14**

(i) Possession – Plea of adverse possession – Presumption of

In the matter of plea of adverse possession, mutually inconsistent or mutually destructive pleas must not be taken in the plaint. Whenever the plea of adverse possession is raised, it pre supposes that owner is someone else and the person taking the plea of adverse possession is not the actual owner but has perfected his title by prescription since the real owner failed to initiate any proceeding for restoring the possession within the prescribed period under the statute. **Shambhoo v. Depurty Director of Consolidation, Faizabad, 2015 (2) ARC 30**

(ii) "Adverse oissessuib" – Object and Scope of

In order to defeat title of a plaintiff on the ground of adverse possession it is obligatory on the part of the respondent to specifically plead and prove as to since when their possession came adverse. If it was permissive or obtained pursuant to some sort of arrangement, the plea of adverse possession would fail. In Md. Mohammad Ali v. Jagdish Kalita & ors, (2004) 1 SCC 271 with reference to a case dealing with such an issue amongst co-sharers it was observed that "Long and continuous possession by itself, it is trite, would not constitute adverse possession. Even non-participation in the rent and profits of the land to a co-sharer does not amount to ouster so as to give title by prescription.

An occupation of reality is inconsistent with the right of the true owner., Where a person possesses property in a manner in which he is not entitle to possess it, and without anything to show that he possesses it otherwise than an owner, i.e., with the intention of excluding all persons from it, including the rightful owner, he is in adverse possession of it. Where possession could be referred to a lawful title it shall not be considered to be adverse. The reason is 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 or other's title make his possession adverse so as to give himself the benefit of the statute of limitation. 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.

Adverse possession is of two kinds. (A) Adverse from the beginning or (B) that become so subsequently. If a mere trespasser takes possession of A's property, and retains it against him, his possession is adverse ab initio. But if A grants a lease of land to B, or B obtains possession of the land as A's bailiff, or guardian, or trustee, his possession can only become adverse by some change in his position. Adverse possession not only entitles the adverse possessor, like every other possessor, to be protected in his possession against all who cannot show a better title, but also, if the adverse possessor remains in possession for a certain period of time produces the effect either of barring the right of the true owner, and thus converting the possessor into the owner, or of depriving the true owner of his right of action to recover his property although the true owner is ignorant of the adverse possessor being in occupation. **Shambhoo v.**

Depurty Director of Consolidation, Faizabad, 2015 (2) ARC 30

Order XIV and Section 115 – Refusing to frame an additional issue – Revision against – Maintainability of – Non framing of additional issue which is necessary result in failure to exercise jurisdiction by the court concerned and as such is revisionable.

In view of the provisions contained in Order XIV, C.P.C. settlement of issues in a suit is an important aspect. The controversy involved in the suit revolves around the issues only. The issues tells the parties the points which are in controversy and are proposed to be decided. In case, any point is left out for any reason, the Court can always frame an issue on it and decide the same to settle all controversies between the litigating parties.

Thus, the framing of issues and additional issues is an essential step for deciding the suit and all controversies between the parties. An order refusing to frame an issue virtually have the effect of denying to decide the essential rights and obligations of the parties and as such would be a case decided. It terminates a particular stage of the suit.

Rule 5 of Order XIV, C.P.C. empowers the Court to amend and strike out the issues which have been settled in a suit. The said power includes the power to frame additional issues also. This power is exercisable for determination of all matters in controversy between the parties. Therefore, it is obligatory upon the Court of first instance to frame issues as are necessary for determining the real controversy between the parties which may arise on the basis of the pleadings and in case the Court refuses to settle an issue which is necessary, it certainly fails to exercise the jurisdiction vested in it under law. Thus, non framing of additional issue which is necessary results in failure to exercise jurisdiction by the Court concerned and as such is revisable. **B.L.M.S. Hotel and Resort Pvt. Ltd. And another v. Tej Bhan Chnghani and another, 2015(127) RD 277.**

Order XXI, Rule 16 – Limitation Act – Execution of decree – Limitation for execution of decree – Limitation for executing decree for recovery of possession is 12 years.

The decree was passed on 19.12.1953. The execution was applied on 18.4.1969. The limitation for executing the decree being 12 years as provided

under Article 136 of the Schedule to the Limitation Act expired in 1965. Accordingly, the execution No. 13 of 1969 is patently barred by limitation.

In the present case respondent No. 1 Thakur Prasad or the Trust has not applied for the execution of the decree in a representative capacity under section 146, C.P.C. rather the execution was under Order XXI, Rule 16 which permits execution by the assignee or transferee only.

Even the said execution in a representative capacity under section 146, C.P.C. had to be within time prescribed. Therefore, if it is treated to be as such it was also barred by time as has been held in Kedar Ram (supra).

Thus, when ex facie the execution was barred by limitation and that the decree could not have been executed against the petitioners, it becomes the duty of the Court to strike down the orders in the ends of justice. **Sankatha Prasad and others v. Thakur Prasad Pandey Trust and others, 2015(110) ALR 400.**

Order XXI, Rule 29 – Scope of – Power to stay the proceedings under, is in aid of doing Justice to the parties to be exercised only in exceptional cases.

In the facts of the present case, the suit had already decreed, and the appeal was dismissed. The decree of specific performance had been passed, in teeth of which transfer in favour of the petitioner's father was made. Subsequently, the second appeal was also rejected, and therefore, the decree of specific performance as against petitioner's vendor has attained finality. It is settled that any alienation of the property covered by decree of specific performance would not be to the prejudice of the decree holder, and such alienation would be subservient to the rights of the parties to the suit. Since in the present case, the petitioner's vendor was already a party to the decree for specific performance, therefore, any transfer of the suit property in favour of the petitioner would remain subservient to the rights secured against the petitioner's vendor. The decree of specific performance has become final, and has been put to execution. At this stage, the stay of execution has been claimed on the ground that a suit for injunction is pending in the same Court. It would be appropriate to observe that mere pendency of suit in the Court, where execution is pending, cannot be a ground to claim stay of proceedings of

execution as a matter of right. The decree passed in the suit for specific performance has become final against the petitioner's vendor, and therefore, its execution cannot be resisted by the petitioner, merely on the ground that a suit for injunction has been filed by him in view of the settled law that the right acquired by the petitioner's father remains subservient to the rights, which have accrued in favour of the decree holder. This Court further finds that injunction suit instituted by the petitioner is merely to protect his possession, but the rights of the decree holder to obtain the fruits of the decree of specific performance has not been challenged. In the absence of there being any challenge to the entitlement of the decree holder to execute the decree, it would not be open for the plaintiff to claim stay of execution merely on the ground of pendency of suit in the same Court.

The power conferred upon the Court to stay the proceedings under Order XXI, Rule 29, C.P.C. is in aid of doing justice to the parties, and has to be exercised only in exceptional cases. This Court finds that consideration of equity clearly weigh against the petitioner in the facts and circumstances of the present case. Law is otherwise settled that the execution of a decree is not liable to be stayed, except for justifiable and good ground. In the facts of the present case, the petitioner has no right to resist the decree of specific performance. In such circumstances, if the Courts below have rejected the application under Order XXI, Rule 29, C.P.C., this Court finds that no perversity or illegality' could be attributed to such orders so as to require any interference in the matter.

However, it cannot be pressed that in every matter, where the ingredients of the provision are attracted, the Court concerned is obliged to stay the execution proceedings, inasmuch as the exercise of such power would depend upon the facts and circumustances of each case, and as the considerations of enquity and justice are against the petitioner, therefore, refusal by Courts below to exercise jurisdiction under Order XXI, Rule 29, C.P.C. cannot be said to be illegal or preverse. **Anuj Kumar v. Shanti Devi and others, 2015(110) ALR 357.**

Order XXI, Rule 29 – Scope of – Discussed

The application 243 Ga for stay of executing proceedings purports to invoke the provision of Order XXI Rule 29 C.P.C. which reads as under-

> "29.Stay of execution pending suit between decree-holder and judgment debtor- Where a suit is pending in any Court against the holder of a decree of such Court(or of decree which is being executed by such Court) on the part of the person against whom the decree was passed, the Court may, on such terms as to security or otherwise,as it thinks fit, stay execution of the decree until the pending suit has been decided.
>
> Provided that if the decree is one for payment of money, the Court shall, if it grants stay without requiring security, record its reasons for so doing."

Mere glance at the aforesaid provision shows that the prayer for stay of execution proceedings could be made by a judgement debtor pending suit between the decree holder and the judgement debtor. Petitioner being a stranger to the decree could not have maintained the prayer for stay of the executing proceedings under Order XXI Rule 29 and hence 243 Ga was wrongly filed. **Mst. Hashmi v. Ali Ahmad, 2015 (127) RD 357 (All.)**

O. XXI; Rules 97, 99, 103 and 151 – Rent laws execution proceeding – petitioner filed an application she be permitted resist the decree and an order be passed for delivering the possession of property to her – rejection of – legality of

The petitioner in the present petition alleges that she is landlord of the property in question, and has filed an application, under Order 21 Rules 97, 99 & 103 read with Section 151 CPC, with the prayer that she be permitted to resist the decree, and an order be passed for delivering the possession of the property to the applicant. From the perusal of prayer of the application itself, it is apparent that the petitioner is not in possession, and that she is seeking possession over the property in question.

Order 21 Rule 97 CPC confers right of resistance or obstruction to possession, at the instance of a third party, where possession is to be granted to the decree holder. This right, therefore, is available to someone, who is in possession, and resists the delivery of possession to the decree holder. Admittedly the petitioner applicant is not in possession, and therefore, the

provisions of Order 21 Rule 97 CPC would not be attracted. So far as Order 21 Rule 99 CPC is concerned, such a provision is available, if any person other than the judgment debtor is dispossessed from immovable property by the holder of a decree for possession of such property pursuant to decree, then such person can make an application to the court concerned complaining of such dispossession. Admittedly as the petitioner is not in possession, the question of her dispossession, pursuant to the decree, does not arise, and therefore, no grievance in respect of dispossession, pursuant to a decree would be available to the petitioner, either.

Since the case of the petitioner is not covered either under the scope of exercise of Jurisdiction under Order 21 Rule 97 nor under Order 21 Rule 99, therefore, the grievance, which is being raised by the petitioner by filing the present petition, is not worthy of any consideration. Admittedly, a decree passed by the competent court is being put to execution, which has not been stayed, and the claim of the petitioner is not covered by virtue of provisions under Order 21 Rules 97 and 99 CPC, and therefore, the petitioner has no grievance, which may give any occasion for this Court to interfere in the matter under Article 227 of the Constitution of India. **Pooja Garg (Smt.) v. Satya Prakash Goyal, 2015 (2) ARC 255**

Or. XXVI, Rule 9 – Issue of Commissioner for ascertaining market value of suit property – consideration of

Rule 9 of Order 26 of the CPC makes it abundantly clear that an order of issuing Commission for the purposes of ascertaining the market value can be passed only and only in case it is deemed to be requisite or proper by the learned court concerned. The opening words in Rule 9 are "in any suit in which the court deems a local investigation to be requisite or proper". Thus, for exercise of powers/jurisdiction for issuing Commission for the purposes of elucidating any matter in dispute, or for ascertaining the market-value of any property, or the amount of any mesne profits or damages or annual net profits, the sine qua non is the satisfaction of the Court that it is requisite or proper to issue the Commission for the said purpose.

The provisions of Order 26 Rule 9 of the CPC have been enacted with a purpose and the purpose is to enable the court to get a local investigation conducted by issuing a Commission for elucidating any matter in dispute or determining the market value of property in suit and other related matters, provided the court forms an opinion that it is requisite or proper to do so to achieve the said purpose. The Court can exercise this power even suo motu, however, these provisions cannot be put in service at the instance of a party to fill up any lacuna in his evidence, neither the object of Order 26 Rule 9 of the CPC is to facilitate a party to gather evidence in a case where the party itself can get the evidence. These provisions can be invoked at the discretion of the court; of course such discretion is to be exercised judiciously.

Thus, I am of the considered opinion that merely on the asking of a party to the suit or proceedings, the Commission under Order 26 Rule 9 of the CPC cannot be issued. As observed above, for the purposes of issuing the Commission, the facts of the case should be such that the Court should be satisfied first that it is proper and requisite to do so.

For the discussions made and reasons given above, since sine qua non for issuing a Commission to ascertain the market value in terms of the provisions of Order 26 Rule 9 of the CPC has not been found to be fulfilled by the learned trial court. Court does not find any illegality in the impugned order. The writ petition, the result, is thus hereby dismissed. **Dinesh Chandra Gaur v. Abhay Sood, 2015 (2) ARC 243**

Or. XXXIX, R. 1 – Temporary injunction application – In suit for permanent injunction – Shops demolished in violation of interim order – Fraud played with regard to valuation of construction played – D.M. directed to determination of valuation of shop

The petitioners were in possession of meat shops, which belonged to Nagar Palika Parishad, Pratapgarh. A policy decision had been taken by the Nagar Palika Parishad to construct new shops after demolishing the old shops. Feeling aggrieved by the said decision of the Nagar Palika Parishad, the petitioners filed a suit of permanent injunction (Suit No.786/95) before the

Civil Judge (S.D.), Pratapgarh, alongwith application for temporary injunction under Order XXXIX Rule 1 C.PC. The said application was rejected by the Civil Judge vide order dated 24.4.1996, against which the petitioner filed appeal (bearing NO.31 of 1996) before the District Judge, Pratapgarh, wherein stay order was granted in favour of the petitioners, staying the demolition of the shops. In disobedience of the said interim injunction order granted by the District Judge in the appeal, the shops in question `were demolished by the opposite party nos.3 and 4 and new shops were constructed.

Learned counsel for the petitioners submits that the petitioners entered into an agreement with the Nagar Palika Parishad for allotment of newly constructed shops. According to the petitioners, they were told and understood to pay quarterly installments of RS.1 ,55,000/-, but fraudulently, taking advantage of their illiteracy, in the agreement RS.2,55,000/- was written. On coming to know about the said fraud, they moved an application for revaluation of the construction, upon which the valuation was got assessed by the technical agency under P.W.D., which valued the cost of the shop at Rs.1 ,37,000/-. This valuation has also been verified by the revenue inspector.

Under the circumstances, we dispose of the writ petition with the direction to the District Magistrate Pratapgarh to refer the matter for re-determination of valuation of the shops in question at the time when the shops had been rented including arrears of value, to the competent authorities, i.e. Valuation Officer of the District as well as Valuation Officer of the Nagar Nigam and after receiving their reports, will determine the valuation of the said shops, applying his mind, to which the petitioners submit that they are ready to pay. In case the petitioners deposit the rent, determined by the District Magistrate, within a period of one month, they will not be dispossessed from the shops in question. **Liyakat Ali v. State of U.P., (2015 (2) ARC 249**

O. 39, R. 1- Temporary injunction- Refusal to grant –Validity- Refusal to grant temporary injunction would be proper because Revenue records on which plaintiffs claim as bhumidhar himself are meant for collection of

revenue and these are not evidence of title

The appellant has heavily relied on the khatauni to show that he is Bhoomidhar, therefore, enjoys proprietary rights. The learned Civil Judge has dealt with this argument and opined that revenue records are meant for collection of revenue. They are not evidence of title in themselves. His opinion gets fortified from the view expressed by the Hon'ble Apex Court in Naval Shankar Ishwarlal Dave and another v. State of Gujarat and others, AIR 1994 SC 1496.

Thereafter the learned Civil Judge has dealt with the question of possession of the appellant and observed that he has failed to show that how he came into the possession of the property in dispute, if at all, by a lawful manner. Failure to do so makes his assertion in this regard meaningless.

So far as weighing of balance of convenience is concerned, the learned civil Judge has observed that balance of convenience does not lie in favour of the appellant. The appellant by way of interim order wishes the Court to restrain the respondents not only to restrain them from allegedly making interference in the use, occupation and possession of the property in dispute, but also to restrain them from stopping the appellant from making his construction, thereby changing the nature of the suit property. The object of interim injunction is always to preserve the suit property in its present form. The Court would not become a party to get the property in dispute converted into the property of a different nature i.e. from open land to a constructed residential house, therefore, balance of convenience is not in favour of the appellant. **Sayed Shahabuddin v. Rajeev and others 2015 (3) ALJ 667**

O. XLI, R. 27 – Application under – Petititoner moved before Revisional court but did not pressed said application, thus, treated as not pressed - This point could not be raised before Superior Court

It is not disputed that the application under Order XLI rule 27 CPC was moved before the revisional court, which has not been decided by the revisional court. It appears that the petitioner had not pressed its application and had chosen to argue the revision on merits without pressing the application under Order XLI Rule 27 CPC. If any parties to the proceedings do not press the pending application, it has to be treated as not pressed and this point cannot be raised before the superior court.

It is the duty of the counsel concerned to press the pending application if any and the liability cannot be shifted to the court because the counsel who has moved any application, has to press the pending application, if he wishes that such application should be decided before final arguments. If without pressing such pending application, the final arguments are done, then it shall be deemed that such counsel do not want to press the said application. Moreover, if the said application has not been pressed before starting final arguments, then such plea cannot be raised before this court that the court was negligent in not deciding the said application. The counsel concerned cannot shift his negligence upon the court and cannot be permitted to take benefit of that before superior court. **Smt. Baqreedan @ Bhopalan Respondent :- Additional District Judge Lko., 2015 (2) ARC 59**

Order 41, Rule 31 Civil Procedure Code, 1908 - Substantial Compliance of the above rule explained.

In H. Siddiqui v. A. Ramalingam, 2011 (4) SCC 240, the Court after referring Order 41 Rule 31 C.P.C., in para 18 of the judgment said:

"The said provisions provide guidelines for the appellate court as to how the court has to proceed and decide the case. The provisions should be read in such a way as to require that the various particulars mentioned therein should be taken into consideration. Thus, it must be evident from the judgment of the appellate court that the court has properly appreciated the facts/evidence, applied its mind and decided the case considering the material on record. It would amount to substantial compliance of the said provisions if the appellate court's judgment is based on the independent assessment of the relevant evidence on all important aspect of the matter and the findings of the appellate court are well founded and quite convincing. It is mandatory for the appellate court to independently assess the evidence of the parties and consider the relevant points which arise for adjudication and the bearing of the evidence on those points. Being the final court of fact, the first appellate court must not record mere general expression of concurrence with the trial court judgment rather it must give reasons for its decision on each point independently to that of the trial court. Thus, the entire evidence must be considered and discussed in detail. Such exercise should be done after formulating the points for consideration in terms of the said provisions and the court must proceed in

adherence to the requirements of the said statutory provisions."

In the present case, since Lower Appellate Court, in my view, has not considered the matter in accordance with law correctly and there is no compliance of Order 41, Rule 31 C.P.C, the question formulated above is answered in favour of the appellant. **Durga Tiwari vs. Savitri Devi, 2015 (33) LCD 902**

Order XLIII, Rule 1-A – Right of Appeal – It is open to appellant to contest the decree on ground that compromise should or should not have been recorded.

Sub-rule (2) of Rule I-A provides that that in an appeal against decree passed a suit after recording a compromise or refuse to record a compromise, it shall be open to the appellant to contest the decre n the ground that the compromise should, or should not, have been recorded.

Learned Counsel Shri Adnan Ahmad appearing on behalf of the appellant submitted that in view of the newly added sub-rule (2) of Rule I-A, it is clear that now an appeal against a compromise decree could be filed assailing the compromise decree. In support of his argument, he has relied upon a decision of Hon'ble the Supreme Court in 1993 (1) SCC 581. In this pronouncement, the Hon'ble Supreme Court has held that after deletion of Rule 1 (m) of Order XLIII an appeal could not be filed against an order recording compromise. After the deletion of the aforesaid rule, a party challenging the compromise can file a petition under proviso to Rule 3 of Order XLIII or an appeal under section 96(1) of the Code, in which he can now question the validity of compromise in view of Rule I-A of Order XLIII of the Code. Similar views has been expressed by Hon'ble the Supreme Court in the case in 2005 (6) SCC 300.

In view of the law laid down by Hon'ble the Supreme Court, the submission on behalf of the appellant is that the learned first Appellate Court should has committed manifest error in law in dismissing the appeal on the ground that it was not maintainable.

Shri Akhter Abbas, learned Counsel appearing on behalf of the respondent has submitted that section 96 as well as Order XLIII of the Code of Civil Procedure clearly prohibit filing of appeal against the decree passed on

the basis of the compromise with the consent of the parties. However, he has not disputed the provision of Order XLIII, Rule I-A, which has been added by way of amendment in the year 1977. He has not been able to place any law contrary to law declared by Hon'ble the Supreme Court in the cases referred to above.

Having heard learned Counsel for the parties and having gone through the relevant provisions of the Code of Civil Procedure and the law laid down by Hon'ble the Supreme Court, Court's view that the dismissal of the appeal by the learned first Appellate Court on the ground of non-maintainability, is erroneous and is liable to be set aside. **Israr Husdain v. Mohammad Lateef and others, 2015(110) ALR 275.**

Order XLVII, Rule 1 – Review – When can be allowed – Enumerated.

The review lies only on the grounds mentioned in Order XLVII, Rule 1 read with section 141, C.P.C. The party must satisfy the Court that the matter or evidence discovered by it at a subsequent stage could not be discovered or produced at the initial stage though it had acted with due diligence. A party filing a review application on the ground of any other "sufficient reason" must satisfy that the said reason is analogous to the conditions mentioned in the said provision of C.P.C.

Thus, in view of the abovesaid facts, review can be allowed only on (1) discovery of new and important matter of evidence which, after exercise of due diligence, was not within the knowledge of the person seeking review, or could not be produced by him at the time when the order was made, or (2) when some mistake or error on the face of record is found, or (3) on any analogous ground. But review is not permissible on the ground that the decision was erroneous on merits as the same would be the province of an Appellate Court. **Sursari Tarang Misra v. U.P. Sainik School Society, Sarojini Nagar, Lucknow and others, 2015(110) ALR 412.**

Criminal Procedure Code

Section 165- Criminal Procedure Code, 1973 - Section 482-Indian Penal Code, 1860-Sections 364-A, 302 and 201- Quashing of order directing police for

sending accused persons for taking their voice sample-Petitioner mother of the deceased allegedly kidnapped and killed by respondent No.2 alongwith seven others for ransom-Calls demanding money made at mobile of the petitioners from different mobile and basic telephones got taped by Superintendent of Police after obtaining approval of Inspector General of Police concerned- Trial Court initially ordered on 8.10.2014 and 31.10.2014 directing the prosecuting agency to get voice sample of accused to be tested with audio C.D. from authorized laboratory. No such testing facility available in the State of U.P.-Trial Court dropped the idea of testing and started to proceed with the trial-Once Trial Court formed opinion for getting the voice sample of accused and to get the same compared with the recorded audio C.D.-Committed error in passing the impugned order rejecting recording of the voice sample of accused merely because there is no testing facility available in the State of U.P.-Trial Court empowered under section 165 of Evidence Act for getting voice sample of accused recorded and tested with recorded audio CD.

Section 173 (8) of Cr.P.C. - Transfer of investigation to CBCID - FIR lodged by petitioner in a case under section 302, IPC alleging that her husband has been shot dead by unknown miscreants-Investigation completed by civil police and after completing the investigation, charge-sheet has been submitted in the Court of CJM. Thereafter, on an application moved by wife of one of the accused, order of further investigation, transferring it to CBCID has been passed - Order transferring the investigation to CBC has not disclosed any reason and it has been passed in a routine manner without applying the judicial mind. Application moved by wife of accused also did not show any proper reason to transfer investigation to CBCID. Order transferring the investigation has been passed in an arbitrary manner. Same was illegal and liable to be set aside. **Smt. Janaki Devi v. State of U.P., 2015 (89) ACC 764 (HC)**

Sections 202 and 482 of Cr.P.C. - Sections 302, 328, 392, 201, 119, 167, 364, 197, 504, 506 and 120-B of I.P.C. - Examination of witnesses-Discretion of Magistrate-Applicant is complainant and complaint relates to offence triable

by Court of Sessions-Several names given in list of witnesses by complainant-Later on decided by complainant not to examine all of them-As statute of Code of Criminal Procedure required examination of all witnesses given in list in cases exclusively triable by Sessions Court. Therefore, Court below insisted on examination of all witnesses and passed impugned order. In fact for purpose of having satisfaction whether accused should be summoned or not, Magistrate enquires matter under section 202 Cr. P.C. This enquiry is for purpose of looking into sufficiency of evidence for purpose of summoning accused to face trial-This enquiry cannot be limited to certain class of witnesses only - If Magistrate himself desires to examine some witnesses on its own then complainant cannot stop to examine them - It is very much open for Magistrate to proceed to decide on point of summoning of accused on basis of material already produced on behalf of complainant and witnesses whom complainant has already examined-No illegality in adopting such a method-Petition disposed off. **Kashi Nath Rai v. State of U.P., 2015 (89) ACC 467 (Alld.)**

Ss. 205 and 317 Cr.P.C.– Exemption from personal appearance in complaint case – In complaint case, nine years have passed but applicant is not appearing – and is not on bail he failed to appear and surrender. Application for exemption from personal appearance permanently was held to be rightly rejected by Magistrate.

From the impugned order passed by the learned Magistrate, it appears that earlier also similar application for exemption of his personal appearance was moved on 23.3.2012 under section 205 Cr.P.C. before the Court below and the same was rejected by the Magistrate on 15.06.2012 against which the applicant preferred a petition before this Court but his prayer was not accepted by this Court too. The learned Magistrate was of the view that the applicant is a foreign national and the offence against him is serious nature hence in order to secure his presence before this court it is necessary that he should obtain bail in the case. The conduct of the applicant reflects that he is absconding from the clutches of law for the last 9 years and has no intention to surrender before the law of the land and has flouted the orders of the Court of law even the orders of the Apex Court which has repeatedly granted him indulgence in staying his

warrant of arrest but then too he has not appeared not surrender not obtained bail from the competent Court of the country, hence the learned Magistrate has rightly rejected his application under section 205 read with 317 Cr.P.C. **Lee Kun Hee v. State of U.P., 2015 (89) 6 (Alld.)**

Sections 311 and 482 Cr.P.C. – Recall of witnesses – Accused has a right to be represented by a lawyer at commencement of trial and during the course of trial. Right to cross-examination prosecution witness is a very valuable right of accused and should not be mechanically or casually be forfeited. Unless there are compelling reasons justifying same, trial Court was under obligation to appoint an amicus curiae to respondent accused unless accused consciously refuses to be represented and takes upon himself mantle of cross-examination and chooses to defend himself personally – Held, rejecting application for recall of prosecution witnesses suffers from legal infirmity – Impugned order set aside – Matter remitted back to pass fresh order on application of applicant for recall of witnesses. **Bhagwan Das v. State of U.P., 2015 (89) ACC 872 (HC)**

Section 340, 195(3) Cr.P.C.- Constitution of India, Article 226- Proceedings under Section 340 Criminal Procedure Code, in writ Jurisdiction, permissibility of.

The Writ Court under no circumstances can be said to be the 'Court" under the provisions of **Section 195 read with section 340 Crl.P.C.**

Proceedings under Section 195 is to be proceeded under Section 340 Cr.P.C. therefore, at the time of making application both the sections will be conjointly read. Sub-Section 3 of Section 195 Cr.P.C. speaks about the meaning of the 'Court', which means a Civil, Revenue or Criminal Court, and includes a Tribunal constituted by or under a Central, Provincial or State Act if declared by that Act to be a 'Court' for the purposes of this Section. The applicant has made out a case under Sections 193, 196, 199, 200, 463, 471 and 475 IPC, but no FIR has been lodged nor any complaint case was filed nor the applicant proceeded before the Criminal Court to obtain an order. Law is well settled by now that the term 'Court' indicates that there must be power to record evidence and to come to a judicial determination on the evidence so recorded. The words

used in the provision are important. The Writ Court is not the Court of evidence. Thus, the Writ Court under no circumstances can be said to be the 'Court' under the provisions of Section 195 read with Section 340 Cr.P.C.

In totality, the applications are dismissed, however, without imposing any cost. **Ashish Sharma v. State of U.P., 2015 (33) LCD 1066**

Section 389 Cr.P.C. – Second bail application during pendency of appeal in Case of double murder. Multiple grievous injuries inflicted on both deceased. Enormity of injuries, site where they were inflicted and their severity does not admit of any other inference than one drawn by Trial Court. Appellants used their respective blunt weapons wielded in a deadly manner. Post mortem of both deceased lends clinching corroboration to their participation in crime as same reveals multiple lacerated wounds and contusion all over body. Case of co-accused who have been granted bail entirely on a different footing as injuries received by deceased persons not attributable to weapon used by him. Detention of 8 years cannot constitute a sufficient ground as sole basis of releasing appellants on bail. Therefore bail prayer of appellants refused. **Shiv Sagar v. State of U.P., 2015 (89) ACC24 (Alld.)**

Section 407, Cr.P.C. – Transfer of case – Trial is pending in Rampur just about 50-60 km. away from Bareilly – Lucknow is more than 300 km. from Rampur. This Court could not understand as to why no attempt has been made by State to seek transfer of trial, if it was really necessary, to competent Court at Bareilly and also to transfer accused persons detained at Lucknow to Bareilly – Which could be done by Police Administration on administrative side itself – Moreover, all accused could have been kept by police, either in same jail or any other nearby Jail, near district Rampur, if for security or other reasons, it was not expedient to detain all of them in one jail. State Government is interested only to have trial transferred to Lucknow and its approach in this regard does not appear to be bona fide. Lack of transparency and bona fide on part of State is also shadowed from some more facts evident from record. State is inclined to get five persons transferred from Bareilly jail to Lucknow Jail – But no reason could be assigned as to why lesser number of accused detained at Lucknow would not be convenient to be transferred to Bareilly – No substance in shallow

apprehensions expressed by State in name of safety and security – Application dismissed. **State of U.P. though I.G. Jail, Lucknow v. Sharif @ Suhail @ Shajid @ Ali @ Anware @ S. Baranwal, 2015(89) ACC 378 (Alld.)**

Section 407, Cr.P.C. - Transfer of criminal case-Advocate not attending Court due to resolution of general strike it - self not a ground for transfer of case - Fact that Counsel of complainant is President of Bar Association of Civil Court, wholly irrelevant to justify a transfer of a case to another judgeship - Mere apprehension not enough unless it is supported with some material-Ground taken by applicant is vague and wholly unsubstantiated. No ground justifying transfer made out - Petition dismissed with cost.

Mere suspicion by the party that he will not get justice would not justify
transfer. There must be a reasonable apprehension to that effect. A judicial order made by a Judge legitimately cannot be made foundation for a transfer of case. Mere presumption of possible apprehension should not and ought not be the basis of transfer of any case from one case to another. It is only in very special circumstances, when such grounds are taken, the Court must find reasons exist to transfer a case, not otherwise.

The justice delivery system knows no caste, religion, creed, colour etc. It is a system following principle of black and white, i.e., truth and false. Whatever is unfair, that is identified and given its due treatment and whatever is good is retained. Whoever suffers injustice is attempted to be given justice and that is called dispensation of justice. The prevailing system of dispensation of justice in country, presently, has different tiers. At the ground level, the Courts are commonly known as "Subordinate Judiciary" and they form basis of administration of justice. Sometimes it is said that subordinate judiciary forms very backbone of administration of justice. Though there are various other kinds of adjudicatory forums, like, Nyaya Panchayats, Village Courts and then various kinds of Tribunals etc. but firstly they are not considered to be the regular Courts for adjudication of disputes, and, secondly the kind and degree of faith, people have, in regular established Courts, is yet to be developed

in other forums. In common parlance, the regular Courts, known for appropriate adjudication of disputes basically constitute the District Court, the High Courts and the Apex Court. **Sanjeev Gupta v. State of U.P., 2015 (89) ACC 586 (HC)**

Sections 407, 326, 408 and 311 of Cr.P.C. - Indian Penal Code, 186D-Sections 409, 420, 467, 468, 471, 120-B, 204 and 201 & I.P.C. - Prevention of Corruption Act, 1988- Sections 7, 13(I)(d) read with section 13(2). Case listed for writing judgments by the then Presiding Officer Lalloo Singh-He was transferred from that Court and took charge in the same Sessions Division of Lucknow as Additional Sessions Judge (Special Judge Gangsters Act)-Akhilesh Dubey after transfer took charge of the Court of Anti-Corruption (UPSEB)-Application for transfer of case to the Court presided over by Lalloo Singh under section 408 Cr.P.C. dismissed as soon as the Presiding Judge is transferred from a particular Court, he ceases to exercise his jurisdiction in all pending cases before him on the date of his transfer. Accused have no right to get the case decided by the Judge who partly or wholly recorded evidence in the case-Judgment rendered by the Court in Punjab Singh's case and judgment rendered by the Apex Court in Pyare Lal's case of no help to the applicants-Petition dismissed.

From a comparative reading of sub-section (1) of section 350 as it stood prior to its amendment in 1955 and as it stands since then with the change in its numeral and inclusion of the word "Judge" therein we find that the discretion earlier given to the Presiding Officer of the Court to act on the evidence recorded by his predecessor or partly recorded by him still remains. But so far as the other option is concerned, while earlier he could re-summon the witnesses and recommence the inquiry or trial-which necessarily meant a de novo trial. But he can now only re-summon a witness who has already been examined for further examination and discharge him after such further examination, cross-examination and re-examination, if any. It is evident therefore that now the Magistrate or Judge can exercise his judicial discretion only for further examination of a witness already examined and not for fresh examination of witnesses for a fresh trial. Obviously, keeping in view the

inevitable frequent changes in the office of the Magistrate and Judge and in order to provide a speedy trial the legislature has taken away the well-established right of the accused to claim a de novo trial and that of the Court to so direct by express words of the amending statute of 1955. **Anil Kumar Agarwal v. State of U.P. & ors, 2015 (89) ACC 723 (HC)**

Section 439 Cr.P.C. – Ss. 376, 511 and 354 IPC – Application for bail rejected as daughter was subjected to sexual harassment by her own father. Sanctity of relationship between father and daughter recognized throughout ages in all races and in all parts of the world without exception. When debased promiscuity of an outlaw violates such pious relationship, social ramifications which follow are outrageous. Alleged sexual crime committed by father against his daughter is apparently a scandalous blasphemy, not to speak of culpability of offence or degree and enormity of crime. Trial of applicant is still to take place. Looking to gravity of charges, nature of crime and material evidence available on record and also in view of overall facts and circumstances of case. No ground to release applicant on bail – Bail rejected.

There are certain relationships which are so sacrosanct that nothing except faith and affection and complete trust signifies them. The sanctity of the relationship between father and daughter has been recognized throughout ages in all races and in all parts of the world without exception. When the debased promiscuity of an out law violates such pious relationship, the social ramifications which follow are outrageous. Such amorous delinquents become a threat to the society because they violate and disrupt the time honoured social fabric of relationship which exists between men and men, and men and women. The alleged sexual crime committed by the father against her daughter is apparently a scandalous blasphemy, not to speak of the culpability of the offence or the degree and enormity of the crime which the applicant has been charged for. Innumerable girls suffer in silence when they are subjected to sexual offences for the fear of the infamy which the disclosure of such offence begets on them. It is infinitely more difficult to come out in the open against the offender when he is none else then her own father. Fear of being ostracized, the awe of being nicknamed and the apprehension of being exposed to the countless social jeers impel the victims of such outrages to cringe and shrivel,

and tamely submit to their misfortune and learn to get reconciled. It is indeed upsetting to note that in this case even the other of the victim girl could not mobilize enough courage to put any successful resistance or protest against the aforesaid sexual inroads which were being made by her husband on her own daughter. To the contrary the girl has even complained that even her mother was seen at times taking the side of the culprit.

The trial of the applicant is still to take place and this Court, therefore, abstains to enter into a threadbare discussion of the details of the evidence or material collected on behalf of the prosecution, lest it might cause prejudice to either side. But suffice it to say that looking to the gravity of the charge and the nature of material evidence available on record and also in view of the overall facts and circumstances of the case, there is absolutely no ground to release the applicant on bail. **Ram Prakash Sunar v. State of U.P., 2015 (89) ACC 11 (Alld.)**

Sections 468 and 473 - Limitation - Bar to take cognizance - Extention of period-Held, not a universal mandate that no cognizance can be taken of offence punishable with fine only or for imprisonment up to one year and extending from one year to three years after expiry of period of limitation-Period of limitation may be extended vi- when delay occasioned is appropriately explained.

In view of above, it is obvious that it is not a universal mandate that no cognizance can be taken of offences punishable with fine only or for imprisonment upto one year and extending from one year to three years as described under section 468 Cr.P.C. after expiry of period of limitation. The period of limitation may be extended in two circumstances as laid down under section 473 Cr.P.C ; first one is to take place when delay occasioned is appropriately explained and the second one is barred in interest of justice i.e. when it is necessary so to do in the interest of justice.

Certainly, the learned Magistrate while proceeding further with the case summoning order has perhaps not indicated specifically about any finding on limitation in taking cognizance of the offence and issuing summons against the applicant. The point of limitation as raised before this Court at this stage

can be suitably dealt with by the Court below, if so urged. Therefore, it would not be in the fitness of this that this Court should usurp the right of the Magistrate, under Section 473 Cr.P.C. and decide the point of limitation as to whether the cognizance of the offence can be taken and the applicants can be proceeded with or not; as it is the jurisdiction of the Magistrate alone at this point of time**. Amar Singh v. State of U.P., 2015 (89) ACC 749 (HC)**

Section 482 Cr.P.C. – Section 138– Negotiable Instruments Act, 1881 – Section 420 – Indian Penal Code, 1860. Summoning order sought to be quashed by the accused-applicant on ground that there is no mention in the complaint regarding date and manner of service of notice on the accused. Cheque bounced twice for insufficiency of funds. Sending notice through registered post itself capable of presumption of service. Mentioning of manner of service no requirement of law – Service in due course has to be presumed – No good ground to interfere with the summoning order or the proceedings under challenge – Application dismissed.

This Court cannot loose sight of the fact that it is one of the prime aims of the Negotiable Instruments Act to generate an ambience of trust and implied faith on the Indian Banking system, which is one of the very significant arms of the Indian economy. Unscrupulous people who have the intent to dupe the innocent person often use the modus operandi of issuing cheques, even though they never desire the same to be honoured. Sometimes at the time of issuing cheques there may be fund in the Bank but at the time the cheque is presented at the Bank the amount is withdrawn prior to the same by the drawer. Sometimes there is a clandestine contrivance adopted by the mala fide drawer, who on the one hand issues the cheque and on the other hand gives instructions to the Bank to stop payment of the same and not to honour the cheque.

In the present case twice the cheque got dishonoured because of insufficiency of funds while on the third time when the same was presented, the cheque got dishonoured under somewhat extra ordinary circumstances, as, though momentarily, the amount was sent to the

account but soon thereafter was withdrawn, as per instructions given by the accused to the Bank. As is so obvious, the complainant was every time getting the dirty end of the stick. The legislature has aimed to discourage such kinds of exploitation of innocent persons, through the instrumentally of the ill use of Banking Institutions.

It has been further argued as to how the service was effected and the details of the service have not been furnished in the complaint. Both the above quoted sections of the Evidence Act as well as the General Clauses Act squarely takes care of such technical arguments, whenever, they are raised.

The combined reading of the above noted provisions of the Evidence Act as well as the General Clauses Act makes it clear that the twin provisions are well sufficient to answer the submissions advanced on behalf of the applicant. Though in the present matter also the language of complaint does not disclose whether the service was effected or not and if the notice was served then when, how and in what manner was it effected, but in view of the Court, the omissions of the details about the manner of service would not strike either at the maintainability of the complainant or the consequent proceedings hereupon. Sending notice through registered post by itself would be capable to raise the resumption of service and mentioning the other details of manner of service does not seem to be the requirement of law.

Elaborately dealing with the situation where the notice could not be served on the addressee for one or the other reason, such as his non availability at the time of delivery, or premises remaining locked on account of his having gone elsewhere etc; it was observed that if in each such case, the law is understood to mean that there has been no service of notice, it could completely defeat the very purpose of the Act. It would then be very easy for an unscrupulous and dishonest drawer of a cheque to make himself scarce or sometime after issuing the cheque so that the requisite statutory notice can ever be served upon him and consequently he can never be prosecuted. It was further observed that once the payee

of the cheque issues notice to the drawer of the cheque, the cause of action to file a complaint arises on the expiry of the period prescribed for payment by the drawer of the cheque. If he does not file a complaint within one month of the date on which the cause of action arises under Clause (c) of the proviso to section 138 of the Act, his complaint gets barred by time. Thus, a person who can dodge the postman for about a month or two, or a person who can get a fake endorsement made regarding his non-availability, can successfully avoid his prosecution because the payee is bound to issue notice to him within a period of 30 days from the date of receipt of information from the bank regarding the return of the cheque as unpaid. He is, therefore, bound to issue the notice, which may be returned with an endorsement that the addressee is not available on the given address. This Court held: We cannot also lose sight of the fact that the drawer may by dubious means manage to get an incorrect endorsement made on the envelope that the premises has been found locked or that the addressee was not available at the time when postman went for delivery of the letter. It may be that the address is correct and even the addressee is available but a wrong endorsement is manipulated by the addressee. In such a case, if the facts are proved, it may amount to refusal of the notice. If the complainant is able to prove that the drawer of the cheque knew about the notice and deliberately evaded service and got a false endorsement made only to defeat the process of law, the Court shall presume service of notice. This, however, is a matter of evidence and proof. Thus even in a case where the notice is returned with the endorsement that the premises has always been found locked or the addressee was not available at the time of postal delivery, it will be open to the complainant to prove at the trial by evidence that the endorsement is not correct and that the addressee, namely the drawer of the cheque, with knowledge of the notice had deliberately avoided to receive notice. Therefore, it would be premature at the stage of issuance of process, to move the High Court for quashing of the proceeding under section 482 of the Code of Criminal Procedure. **Apurva (Proprietor) A.D. Builder v. State of U.P., 2015**

(89) ACC 47 (Alld.)

Section 482, Cr.P.C. - Claim of father that his daughter was minor as per High School certificate and at the time of incident she was 17 years six months and 5 days. But as per her statement re- corded under section 164, Cr.P.C. she stated her age 21 years. She further stated that she voluntarily went with applicant and on her own sweet will married with accused-She wanted to go with her husband-But finding her minor, Lower Court found it proper for sending her to Nari Niketan till she attained majority. The question of applicant being minor is irrelevant as a minor cannot be kept in protective home against her will. Thus, it is a clear cut case of illegal confinement of minor against her wishes violating fundamental rights. Impugned order set aside-Direction issued to Superintendent of Nari Niketan to release victim to go according to her own wish. **Gajraj Sing v. State of U.P., 2015 (89) ACC 532 (Alld.)**

Section 482 - Indian Penal Code, 1860 - Sections 147, 148, 149, 302 and 307/34- Over whelming evidence against the petitioner found by C.B.C.I.D.- Charge- sheet submitted against the accused persons-Petitioner canvassing his right of fair trial and investigation- Himself getting investigation transferred time and again and lingering on the case in such process-Claiming investigation to be tainted, unfair and defective without realizing that points raised by him are points of defence already investigated by the C.B.C.I.D. Petitioner approached the Court time and again adopting dilatory tactics of filing petitions. Plea that he has been falsely implicated on account of political enmity and that he was present at Lucknow when the incident occurred. Petitioner can exercise his right to defend himself and prove his case before the Trial Court by leading cogent evidence-Investigation twice transferred at his instance-Again transferred for further investigation after filing of the charge-sheet. Prayer of petitioner for transfer of further investigation to any other independent investigating agency not justified. Investigation, further investigation and de novo or reinvestigation can only be ordered by the High Court in rarest of rare cases. Submission that charge-sheet filed against the petitioner on basis of tainted and unfair investigation is liable to be quashednalso without any basis - Prayer for transfer of further investigation and to quash the charge-sheet

rejected. Accused persons directed to surrender before the Court concerned. **Udai Bhan Kanwariya v. State of U.P., 2015 (89) ACC 805 (HC)**

Constitution of India

Art. 141 – Precedent – earlier judgment of co-ordinate Bench binds subsequent Bench of High Court –If subsequent Division Bench waiting to take different view than that taken by earlier division Bench, than proper course is to refer matter to larger bench

An earlier judgment of a co-ordinate Bench binds a subsequent Bench of the High Court. If a subsequent Bench, considering the same issue, is of the view that the earlier decision is erroneous or has failed to consider the correct legal position, the correct course of action is to make an order referring the case to a larger bench consequently, if a single Judge is inclined to disagree with the view of another single judge, a reference is made to a Divisions Bench and if a Division Bench is unable to subscribe to the view of an earlier Division Bench on the subject, a reference has to be made to the Full Bench. This is not merely a matter of procedure but of judicial propriety which is founded on sound considerations of public policy. Adjudication of cases in the High Court must have an element of certainly. Consistency in judicial decision making is a hallmark of a system based on the rule of law. Errors in judicial decision making can be resolved by adopting recourse to well settled judicial procedures within the Court which consist of making reference to the larger bench. **Smt. Urmila Devi v. State of U.P. & Others 2015 (3) ALJ 765**

Articles 226 and 227 – Petitioner seeking direction to Trial Court to expedite hearing of the civil suit – Not appropriate for a Writ Court to entertain writ petition with such respect, any direction may be issued by the High Court with greatest care and caution.

The only relief which is sought in this proceeding is in the following terms:

> "(i) a writ, order or direction in the nature of mandamus directing the respondent No. 6 to expedite the hearing of the Suit No.271 of 2005, Ali Shad and others v. Ali Isteba and others,
>
> (ii) a writ, order or direction in the nature of mandamus

commanding the respondent No. 6 to decide the suit within the stipulated period granted by this Hon'ble Court."

Court are not inclined to issue a direction for the expeditious hearing of a Civil Suit which is pending before the Civil Judge (Junior Division), District, Azamgarh. It would be most inappropriate to Court to entertain a writ petition under Article 226 and/or under Article 227 of the Constitution simply for the purpose of expediting the hearing of a suit. Such orders, if granted, place a class of litigants, who move the Court in a separate and preferential category whereas other cases which may be of similar or greater antiquity and urgency are left to be decided in the normal channel. Hence, any such direction may be issued with the greatest care and circumpection by the High Court otherwise the Civil Courts will be overburdened only with requests for expeditious disposal of suits, which have been expedited by the High Court. Most of the litigants cannot afford the expense of moving the High Court and would not, therefore, be in position to have the benefit of such an order.

Ultimately, it must be left to the judicious exercise of discretion of the concerned Court to determine whether a ground for urgency has been made out. Court emphasize that there may be other cases such as involving senior citizens, those who are differently abled or people suffering from a particular disability socio-economic or otherwise which may prime cause of urgent disposal. It is for the learned Trial Judge in each case to apply his or her mind and decide whether the hearing of the suit to be expedited. **Ali Shad Usmani and others v. Ali Isteba and others, 2015(109) ALR 513.**

Art. 226- Writ of Mandamus- Sought for framing of Rules–Writ jurisdiction cannot be exercised for undertaking legislative or quasi legislative activity.

Relief which has been sought is in the nature of a mandamus for framing rules under Section 15 of the Adhiniyam, 1963. The power to frame rules is of a legislative nature and following the well settled principle of law, the writ jurisdiction under Article 226 of the Constitution cannot extend to a mandamus for undertaking a legislative or quasi legislative activity including in the nature of subordinate legislation. **Rudal Singh v. State of U.P. & others 2015 (3) ALJ 401**

Art. 226 – Writ Petition Challenging age of retirement of members of District forum is not maintainable U/ A. 226

The Petitioner was appointed as a member of the Consumer Disputes Redressal Forum. His term came to an end after he attained age of 60 Years. Petitioner filed writ petition seeking mandamus for determining the maximum age for a member of the District Forum to hold office until the age of 70 Years. Petitioner pleaded that as qualifications for all members of the District Forum, the State Commission and the National Commission are same the retirement age should be same too i.e. 70 years. Age of retirement is a matter of legislative policy and High Court cannot interfere with same. Consumer Protection Act contemplates that District Forum is to be presided over by a District Judge or a person so qualified whereas State Commission required the President to be a person who is or has been a Judge of the High Court and Judge of Supreme Court of President of National Commission. President of State Commission and National Commission is appointed in consultation with Chief Justice of High Court and Supreme Court respectively. Nature of duties and pecuniary jurisdiction of District Forum, State Commission and National Commission vary from each other. Parliament in its legislative policy is entitled to make a distinction between the age of superannuation and terms of office for members of Tribunal within a hierarchy of Tribunals. These being matters in the realm of policy for the legislative body, High Court cannot interfere with same. **Ganesh Prasad v. Union of India and Ors**. **2015 (3) ALJ 587**

Criminal Trial

Appellant convicted and sentenced for offence of murder of his wife. Deceased died due to strangulation, the dead body of deceased was lying inside house of accused in a room. This fact also supported with inquest report. Nothing found by I.O. on spot to show that accused opened door breaking latch – Finding of ligature mark all around neck clearly indicates that some other person tightened neck by using rope like article or material. Extra-judicial confession supported by other circumstances and also corroborated by medical evidence. Since dead body of deceased was found in house of deceased and deceased was wife of accused, who was present in house. Medical evidence clearly establishes murder of deceased. Therefore, all circumstances laid by prosecution for raising

presumption arise and this presumption is not rebutted by accused by adducing any evidence. Trial Court rightly held accused guilty of murder of his wife. No infirmity, perversity or illegality in findings of Trial Court. Conviction and sentence therefore upheld and appeal dismissed.

The question whether a trial is vitiated or not depends upon the degree of the error and the accused must show that non-compliance of section 313 Cr.P.C. has materially prejudiced him or is likely to cause prejudice to him. Merely because of defective questioning under section 313 Cr.P.C., it cannot be inferred that any prejudice had been caused to the accused, even assuming that some incriminating circumstances in the prosecution case had been left out. When prejudice to the accused is alleged, it has to be shown that accused has suffered some disability or detriment in relation to the safeguard given to him under Section 313 Cr.P.C. Such prejudice should also demonstrate that it has occasioned failure of justice to the accused. The burden is upon the accused to prove that prejudice has been caused to him or in the facts and circumstances of the case, such prejudice may be implicit and the Court may draw an inference of such prejudice. Facts of each case have to be examined to determine whether actually any prejudice has been caused to the appellant due to omission of some incriminating circumstances being put to the accused.

When such objection as to omission to put the question under Section 313 Cr.P.C. is raised by the accused in the Appellate Court and prejudice is also shown to have been cased to the accused, then what are the courses available to the Appellate Court? The Appellate Court may examine the convict or call upon the Counsel for the accused to show what explanation the accused has as regards the circumstances established against him but not put to him under section 313 Cr.P.C. and the said answer can be taken into consideration. **Mahtab v. State, 2015 (89) ACC 82 (Alld.)**

Appeal against Acquittal – Respondent accused acquitted of charges punishable under sections 363, 366 and 376 IPC – Legality – Appreciation of evidence – No eye-witness of accused enticing or taking away prosecutrix – Delay of more than 3 days in lodging report. No report has been lodged even about missing or "*Gumshudagi*" of prosecutrix. Prosecutrix has not only admitted her signatures on application moved by accused for obtaining marriage certificate but she, in her statement recorded under section 164

Cr.P.C. stated that she is major and has performed marriage with accused out of her free will clear improvements and exaggerations in statement of prosecutrix. Doctor did not find any mark of rape during her medical examination. Two different age certificates disclosing two different dates of birth of prosecutrix. She was found to be above 18 years – Trial Court rightly acquitted accused – Appeal dismissed. **Shiv Kumar Khare v. State of U.P., 2015 (89) ACC 387 (Alld.)**

Ocular evidence - Presence of the witness at the time of occurrence established and supported by medical evidence-His testimony cannot be disbelieved unless the accused is able to establish that due to this fact his right of defence is prejudiced.

Related Witness - Presence of such witness found to be probable and natural-His evidence cannot be discarded on ground of relationship.

It is pertinent to mention here that where there is eye-witness account the motive looses its importance. Motive may be the reason to commit the offence but at the same time motive may also be a reason to falsely implicate the accused. Motive for committing the offence although is of futile nature but as per prosecution this was the reason due to the present offence was committed by the accused. It may be mentioned here that some time offences are committed on the basis of futile motive. Therefore, motive assigned by the prosecution merely on the basis that it was futile in nature, the prosecution case cannot be disbelieved when one day before for that reason an altercation had taken place between the accused and deceased. The reason for falsification taken by the accused is not supported by any evidence. Merely the plea, until and unless same is supported by any believable evidence, cannot take place the piece of evidence. **Uma Shanker v. Stateof U.P., 2015 (89) ACC 421 (Alld.)**

Essential Commodities Act

S.3 U.P. Scheduled Commodities Distribution, order, clause 28(3) and (5) Suspension/cancellation of fair Price shop – Agent has remedy of appeal

The present reference to the Full Bench has been occasioned by an

order of the Division Bench dated 3 November 2014. Before we set out the issues which have been referred for adjudication by the Full Bench, a brief reference to the background in which the reference arose would be in order.

Where a person whose authorization to conduct a fair price shop is aggrieved either by the suspension or cancellation of that authorization, such a person is entitled to pursue the remedy of a statutory appeal. In such an appeal, a provision for seeking an interim stay has been made in sub-clause (5) of Clause 28 of the Control Order. If the order of suspension or cancellation is not stayed, it necessarily continues to remain in force and effect pending the disposal of the appeal. If no application for stay is made at all, the same consequence would follow. Equally, if an application for stay has been made and refused, the order of suspension or cancellation, as the case may be, would continue to remain in force. The mere filing or pendency of an appeal or, for that matter, even the pendency of an application for stay in the appeal does not operate to stay the order of suspension or cancellation. An order of suspension or cancellation would continue to remain in effect unless and until it is either stayed at the interim stage under Clause 28(5) or upon the order being set aside at the final disposal of the appeal. In view of this clear position in law, it is not open to a person whose authorization is suspended or cancelled to seek an order from the writ court under Article 226 of the Constitution restraining the State from making alternate arrangements despite the fact that no stay operates during the pendency of the appeal. If a stay has been refused, undoubtedly, the agent whose authorization has been suspended or cancelled, may take recourse to his lawful remedies but unless and until the operation and effect of the suspension or cancellation has been stayed or set aside, the plain consequence in law is that it would continue to remain in full force and effect.

We, accordingly, hold that the authorization granted to a person to conduct a fair price shop only constitutes such a person as an agent of the State Government under Clause 4(2) of the Control Order. If the authorization is suspended or cancelled, a remedy of an appeal is provided in Clause 28(3). During the pendency of an appeal, a provision has been made in Clause 28(5), for seeking a direction that the order under appeal shall not take effect until the appeal is disposed off. If the order of suspension or cancellation has not been stayed pending the disposal of the appeal, the cancellation or suspension, as the

case may be, shall continue to remain in effect. The mere filing or pendency of an appeal or an application for stay does not result in a deemed or automatic stay of the order of suspension or cancellation. There is no such deeming provision. In such a situation, the State is at liberty to make necessary administrative arrangements to ensure the proper distribution of scheduled commodities based on the public interest in the proper functioning of the Public Distribution Scheme and on an assessment of local needs and requirements that would sub-serve the interest of the beneficiaries. We, therefore, hold that the interim mandamus in Vinod Mishra and the judgment in Jagannath Upadhyay's case (supra) which took a contrary view do not reflect the correct position in law and would consequently stand overruled. The Principal Secretary, Food and Civil Supplies, shall now on the basis of the present judgment, issue a circular to all the Divisional Commissioners and concerned officials of the State so that necessary steps in compliance are taken. **Smt. Urmila Devi v. State of U.P., 2015(127) RD 505**

Evidence Act

Ss. 17 and 23 – Scope of – Pleading, compromise and the evidence recorded in abated suit containing admission are admissible in evidence and can be relied upon.

Pleading, compromise and the evidence recorded in the abated suit, containing admissions, are admissible in evidence and can be relied upon as held in Ram Prasad's case (supra). The consolidation authorities have not committed any illegality in relying upon the compromise, filed in revenue suit, which contained the admission of the petitioners and the petitioners could not give any explanation in respect of their admission or contradictory evidence could be adduced by them. Admission, being best evidence against the person, who admitted a fact, can be relied upon. **Khattoo and others v. Dy. Director of Consolidation, Varanasi and others, 2015(127) RD 311.**

S.63 –Evidence Act, Sec 68 – Validity of will – Requirement of valid will – Discussed

In Bharpur Singh Vs. Shamsher Singh, AIR 2009 SC 1766 and three Hon'ble Judges Bench of Supreme Court in Yumnam Ongbi Tampha Ibema Devi v. Yumnam Joykumar Singh, (2009) 4 SCC 780, after reviewing earlier

judgments held that as per provisions of Section 63 of the Succession Act, for the due execution of a will:

(1) the testator should sign or affix his mark to the will;

(2) the signature or the mark of the testator should be so placed that it should
appear that it was intended thereby to give effect to the writing as a will;

(3) the will should be attested by two or more witnesses, and

(4) 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.

The attestation of the will in the manner stated above is not an empty formality. It means signing a document for the purpose of testifying of the signatures of the executant. The attesting witness should put his signature on the will animo attestandi. It is not necessary that more than one witness be present at the same time and no particular form of attestation is necessary. Since a will is required by law to be attested, its execution has to be proved in the manner laid down in the section and the Evidence Act which requires that at least one attesting witness has to be examined for the purpose of proving the execution.

Therefore, having regard to the provisions of Section 68 of the Evidence Act and Section 63 of the Succession Act, a will to be valid should be attested by two or more witnesses in the manner provided therein and the propounder thereof should examine one attesting witness to prove the will. The attesting witness should speak not only about the testator's signature or affixing his mark to the will but also that each of the witnesses had signed the will in the presence of the testator.

In the present case, Dhanpat, attesting witness of the will has proved due execution of the will, according to the aforementioned principles. The arguments of the counsel for the petitioners that Dhanpat has stated that Munesar had signed the will although it bears thumb impressions, is not correct. He has stated that after preparation of the will, Munesar signed it; he had affixed his thumb impressions. This is continuous sentence and part of it cannot be read separately. **Baldev v. Dy. Director of Consolidation and**

others, 2015(127) RD 584

S. 73 – Scope of – Court is competent to compare the signatures, after comparing signatures court recorded a finding and such finding cannot be said to be pervers.

Under section 73 of the Evidence Act, the Court is competent to compare the signatures and after comparing the signatures, the Court has recorded a finding which cannot be said to be perverse. Although the petitioner has denied that no notice was served upon him and the order was ex parte, but the burden was upon him to prove that the application and vakalatnama filed in Reference Case No. 1278 was not of him. In the absence of any evidence, the finding of fact recorded by the DDC in this respect cannot be set aside by this Court. **Mohd. Ghayas v. Dy. Director of Consolidation, Ghaziabad and others, 2015(127) RD 316.**

Ss. 110, 35 Entries – Revenue entries – Status of – Revenue entries are not an evidence – to show title to tenure holder but shows possession of the property concerned by the person.

It is no doubt true that the revenue entries are not an evidence to show title of tenure holder but shows possession of property concerned by the person, whose name is recorded in the revenue entries. That too a presumption only. This presumption is rebuttable.

In Narain Prasad Agarwal v. State of Madhya Pradesh, 2007(8) SCALE 250, the Court said:

"Record of right is not a document of title. Entries made therein in terms of section 35 of the Indian Evidence Act although are admissible as a relevant piece of evidence and although the same may also carry a presumption of correctness, but it is beyond any doubt that such a presumption is rebuttable."

In Gurunath Manohar Pavaskar and others v. Nagesh Siddappa Navalgund and others, 2008(104) RD 243(SC) = 2008(70) ALR 176, the Court said:

"A revenue record is a not a document of title. It merely raises a presumption in regard to the possession. Presumption of possession and/ or

continuity thereof both forward and backward can also be raised under section 110 of the Indian Evidence Act."

The entries in revenue record may refer to the possession of the person on the land in dispute and prima facie it may raise a presumption of title but such presumption is rebuttable.

In Nair Service Society Ltd. v. K.C. Alexander and others, AIR 1968 SC 1165, construing section 110 of Evidence Act, the Court said:

"Possession may prima facie raise a presumption of title no one can deny but this presumption can hardly arise when the facts are known. When the facts disclose no title in either party, possession alone decides."

In Chief Conservator of Forests v. Collector and others, AIR 2003 SC 1805, the Court said:

"Presumption, which is rebuttable is attracted when the possession is prima facie lawful and when the contesting party has no title."

Recently, referring to above authorities, the Court in State of A.P. and others v. M/s. Star Bone Mill and Fertifizer Co., 2013(120) RD 643 (SC), the Court said:

"13. The principle enshrined in section 110 of the Evidence Act, is based on public policy with the object of preventing persons from committing breach of peace by taking law into their own hands, however good their title over the land in question may be. It is for this purpose, that the provisions of section 6 of the Specific Relief Act, 1963, section 145 of Code of Criminal Procedure, 1973, and sections 154 and 158 of Indian Penal Code, 1860, were enacted. All the aforesaid provisions have the same object. The said presumption is read under section 114 of the Evidence Act, and applies only in a case where there is either no proof, or very little proof of ownership on either side. The maxim "possession follows title" is applicable in cases where proof of actual possession cannot reasonably be expected, for instance, in the case of waste lands, or where nothing is known about possesion one-way or another. Presumption of title as a result of possession, can arise only where facts disclose that no title vests in any party. Possession of the plaintiff is not prima facie wrongful, and title of the plaintiff is not proved. It certainly does not mean

that because a man has title over some land, he is necessarily in possession of it. It in fact means, that if at any time a man with title was in possession of the said property, the law allows the presumption that such possesion was in continuation of the title vested in him. A person must establish that he has continued possession of the suit property, while the other side claiming title must make out a caseof trespass/ encroachment etc. Where the apparent title is with the plaintiffs, it is incumbent upon the defendant, that in order to displace this claim of apparent title and to establish beneficial title in himself, he must establish by way of satisfactory evidence, circumstances that favour his version. Even, a revenue record is not a document of title. It merely raises a presumption in regard to possession. Presumption of possesion and/or continuity thereof, both forward and backward, can also be raised under section 110 of the Evidence Act." **Kamla v. Smt. Gulabi Devi and another, 2015(127) RD 110.**

S. 120 – Husband and wife – competent witnesses qua each other – Scope of

Section 120 of the Evidence Act, 1872 provides for the deposition of the husband and wife as witness. It reads as under-

> 120. Parties to civil suit, and their wives or husbands. Husband or wife of person under criminal trial.- " In all civil proceedings the parties to the suit, and the husband or wife of any party to the suit, shall be competent witnesses. In criminal proceedings against any person, the husband or wife of such person, respectively, shall be a competent witness."

The above provision provides that the husband or the wife is competent witnesses qua each other. In other words in all civil proceedings a husband can depose for a wife and the wife for the husband.

The son of the landlady is not a person covered under the aforesaid provision and as such is not a competent to depose on her behalf. **Sunehri Lal v. Smt. Premwati, 2015 (127) RD 398 (All.)**

Section 165 & Article 20(3) of the Constitution of India - Trial Judge well within its jurisdiction to call upon the accused persons to give their voice

sample in the Court to discover or to obtain proper proof of relevant facts-For determination of their involvement in the crime and also to arrive at a just decision of the case. Taking of voice sample of accused by police during investigation is not hit by Article 20 (3) of the Constitution.

Section 65-B of Indian Evidence Act, 1872- Admissibility of electronic records- Voice sample is physical non-testimonial evidence and can not be held to be conceptually different from physical non-testimonial evidence like DNA, semen, sputum, hair, blood, finger nails etc. **Smt. Leena Katiyar v. State of U.P., 2015 (89) ACC 556 (HC)**

Hindu Adoptions and Maintenance Act

S.2(1) Hindu – Any child legitimate or illegitimate – one of whose parents is a Hindu – Buddhist, Jain or Sikh by religion – who is brought up as a member of the community to which such parents belong shall be Hindu.

The Constitution of India while enunciating the guarantee of freedom of conscience and religion in Article 25 specifically provides that any reference to Hindus shall be construed as including a reference to Sikh, Jain and Buddhist.

In tune with the aforementioned constitutional provision, the Hindu Adoptions and Maintenance Act has extended the application of the said Act. Its application extends to all persons who can be "regarded as Hindus" and the Act does not restrict its application only to a person who is a "Hindu by religion".

Explanation (b) to Section 2 (1) of the Hindu Adoptions Act provides that any child legitimate or illegitimate, one of whose parents is a Hindu, Buddhist, Jain or Sikh by religion and who is brought up as a member of the tribe, community, group or family to which such parent belongs, shall be Hindu. Explanation (bb) to Section 2 (1) also provides that a child, whether legitimate or illegitimate, who has been abandoned both by his father and mother or whose parentage is not known and who is brought up as a Hindu shall also be a Hindu. **Sohan Lal v. Additional District and Sessions Judge, Lucknow, 2015 (127) RD 381 (All. H.C. (L.B.))**

S. 16 – Presumption under – when can be raised – Explained.

In order to raise presumption regarding adoption on the basis of adoption deed, the deed must have been signed by the person giving and the person taking the child in adoption both. Admittedly, deed dated 12.8.1964 was not signed by natural father and mother of the petitioner. As such presumption regarding ceremonies of adoption in its basis cannot be raised. In order to be valid adoption, the child must have been adopted according to the rites and custom of Hindu law. So far as admissibility of the document being 20 years old under section 90 of Evidence Act, 1872, it has nothing to do with ceremonies of the adoption which has to be proved either by direct evidence or presumption has to be raised according to the provisions of section 16 above. **Harihar v. Deputy Director of Consolidation, Mau and another, 2015(127) RD 144**

Hindu Marriage Act

S. 13 (1) (ia)- Divorce –Cruelty by wife what amount to- Several criminal cases filed by wife against husband –Said action by wife amounts to cruelty by wife, hence grant of divorce to husband, proper

In this case, the husband has brought on the record by way of additional evidence several documents relating to various criminal proceedings instated by the appellant- wife against him. On the no objection of the learned counsel for the appellant –wife, the application for filing the additional evidence was allowed, therefore, those documentary evidences indicating various criminal proceedings pending against the husband are part of the record and those are unrebutted documentary evidences.

I find that the submission of the learned Counsel for the appellant that the Court below has allowed the divorce petition on the ground of irretrievable break down of marriage, is not correct. The Court below has found that filing of large number of criminal cases by the wife against the husband amounts to cruelty. But in a recent decision in the case of Malathi Ravi, M.D. v. B.V. Ravi, M.D., (2014) 7 SCC 640 : (AIR 20014 SC 1281), though the Supreme Court has referred to the decision of Naveen Kohli (AIR 2006 SC 1675), yet has affirmed the judgment of the High Court granting the divorce on the ground of cruelty. In the instant case also, the Court below has found that filing of criminal cases by the wife against the husband amounts to cruelty. **Smt.**

Manish Srivastava v. Rohit Sirivastava 2015 (3) ALJ 617

S. 25 –Permanent alimony to wife and daughter – Consideration of

The last submission made by the learned counsel for the appellant-wife that no permanent alimony has been granted by the Court below. The respondent-husband has filed an affidavit, wherein he has agreed to give an alimony of Rs. 30 lacs. The relevant part of the affidavit reads as under.

> "2. That by means of the supplementary affidavit the deponent undertakes to pay a sum of Rs. 30 lacs as permanent alimony for the appellant Smt. Manisha Srivastava and the daughter Km. Ratna as a condition for decree if the Hon'ble Court chooses to exercise such discretion for confirming the decree of divorce"

Having regard to the fact that the couple has a girl child of six years of age, who is living with the appellant-wife, and regard being had to her social status, in my view, the ends of justice would be met if following directions 1 are issued:

(I) The husband –respondent shall deposit a sum of Rs. 35 lacs (Rupees thirty-five lacs) in favour of the girl child within a period of six months before the Principal Judge, Family Court, Jalaun at Orai.

(II) The amount so deposited shall be kept in a fixed deposit in a nationalized bank in the joint name of the appellant-wife and the minor daughter.

(III) The appellant-wife can draw quarterly interest and spend it on the education of her daughter.

(IV) After the minor girl attains the age of majority, the joint account shall continue and they would be at liberty to draw the amount for the education or any urgent need of the girl. **Smt. Manish Srivastava v. Rohit Srivastava 2015 (3) ALJ 617**

Indian Penal Code

Sections 147, 148, 364, 325/149 and 323/149, IPC – Scope of - Section 31 Cr.P.C. explained – court has power and discretion to issue a direction for concurrent running of the sentences when accused is convicted at one trial for two or more offences.

Legality of Quantum of sentence – Scuffle over payment of hire charges of tractor – Beating by lathi – Fracture of patella bone in left knee – No abnormity deducted in skull X-Ray – Accused by force compelled husband of complainant to go with from his house in tractor-trolley to house of one of accused – Story put forward by prosecution regarding abduction of victim by accused persons in order to kill him or to put him danger of being murdered nor reliable. Accused appellant deserve benefit of doubt for commission of offence punishable under Section 364 IPC. Striking a balance between nature of crime and that appellants have already suffered pangs and agony of protracted trial and appeal for last about 30 years. No history of their previous involvement in any other criminal cases – Each had been in jail for few days in connection with this case. Maximum custodial sentence awarded to accused appellants is two years – Sentence modified – Appeal partly allowed. **Munna v. State of U.P., 2015 (89) ACC 205 (Alld.)**

Sections 198-A, 323 and 506, I.P.C. & Section ¾, Dowry Prohibition Act, 1961, Section 482 of Criminal Procedure Code, 1973 – Cognizance order and consequential proceedings – A relative who is not related by blood, marriage or adoption with husband of a woman cannot be included in tern 'relatives of husband of woman'. Petitioner is an advocate by profession – Representing case of husband of opposite part No. 3 in a matrimonial suit for divorce – petitioner living separately with family members of husband and husband of opposite party No. 3. Petitioner is not directly related to family members of husband – He is son of sister of father-in-law of opposite party No. 3- General allegation leveled against petitioner without referring any specific incident and its date, time and place – Demand of dowry, leaving O.P. No. 2 to her parental home and talks on phone all attributed to husband or family member of husband and not to petitioner – No allegation against petitioner that he demanded dowry of himself or how he will be benefitted with such dowry or even caused physical cruelty upon her. In view of contradictory version

regarding role of petitioner as alleged in FIR and in statement under section 161 Cr.P.C. no prima facie case is made out against accused. Proceedings against petitioner quashed –Petition allowed. **Rajiv v. State of Maharashtra, 2015 (89) ACC 231 (Alld.)**

Ss. 302, 307 and 34 –Appeal against conviction. Prompt FIR and Medical examination done very promptly soon after occurrence. No chance of fabrication of injuries. Whole case proved beyond doubt. Evidence on record is sufficient to hold accused-appellant guilty of offence punishable under sections 302/34 and 307/34 IPC. Trial Court has rightly convicted the accused appellant – Appeal is therefore dismissed. **Tula Ram v. State of U.P., 2015 (89) ACC 35 (Alld.)**

Ss. 302, 147, 148 and 149 – Accused persons armed with gun and country made pistols counted assault on informant's family – Respondent No. 4 fired shot on informant's father with intention to kill him – Respondent No. 2 and 3 fired at brother of the informant – Informant's mother hit on her head when she tried to save her husband – Informant PW 1 fully supported prosecution case as depicted in FIR – Remained firm during his cross-examination – PW 2 injured brother of the informant – Fully supported prosecution case – PW 3 an independent witness – He categorically stated role played by each accused – All the prosecution witnesses cogent and consistent. All rustic villagers bound to be confused during cross-examination. Minor contradiction not to cause dent in their credibility. Prosecution witnesses near relatives and their evidence discarded by the Trial Court on ground of their being relatives not justified. Discrepancies, inconsistencies, infirmities, deficiencies of minor nature not enough to discard the persecution case. Motive not required to be proved when there is direct evidence of eye-witnesses. Complete harmony between ocular testimony and medical evidence and the finding of acquittal recorded by the Trail Court based on flimsy grounds cannot be sustained. Prosecution proved its case by clinching and convincing evidence. Appeal allowed and accused convicted under sections 302/34 IPC. **State of U.P. v. Shane Haider and others, 2015 (89) ACC 115 (Alld.)**

Section 302 – IPC and Sec. 25 of Arms Act, 1959 – Murder – conviction and sentence – Justification of – Dying declaration – Factual witnesses i.e. PWs 4, 5 and 6 turned hostile – None of them supported prosecution case - PW 4 and

PW 5 admitted place of occurrence in their cross-examination – PW 6 has also admitted his signatures on recovery memos of blood stained knife, Kurta and Pyjama worn by appellant – Their statements indicate almost towards same time of occurrence as alleged by prosecution – Time told by prosecution finds full support with injury report, post-mortem report and statement of other witnesses – Appellant admitted his marriage with deceased – While stating under section 313 Cr.P.C. has not spoken a single word as to who could killed deceased inside four walls of house shared by all four brothers. Appellant duty bound to explain circumstances under which deceased died and adverse inference may be drawn against appellant. Independent witnesses fully supported prosecution case and deceased was taken to police station without any delay. So there was no occasion for any tutoring or prompting – No reason to disbelieve her statement – Trial Court rightly convicted appellant treating FIR lodged by her as her dying declaration – Conviction upheld – Appeal dismissed. **Vakil v. State of U.P., 2015 (89) ACC 129 (Alld.)**

Section 302, IPC - Conviction-Sustainability- Accused came out of his house with a Gupti, abused the deceased and assaulted him with the Gupti - Deceased died on the spot-Accused and his Gupti taken in custody by the police-Plain and blood stained earth collected from the place of occurrence-Blood stained shirt of deceased also seized- Opinion of doctor that injury on person of deceased could be caused by Gupti - FIR lodged on the date and time shown therein-All incriminating material put to accused in his section 313 Cr.P.C. examination-Gupti not sent to FSL for forensic examination not enough to discard reliable evidence of the eye-witnesses-Accused himself admitted to have been apprehended by father of deceased with the help of villagers - Plea of alibi not believable - Presence of two eye-witnesses at the places shown in the site plan probable and natural - Non-examination of two other witnesses present at the time of occurrence not adverse to prosecution case-Number of witnesses not important than nature and quality of the evidence-Enmity between the deceased and the accused specifically mentioned in the FIR-Altercation one day prior to the incident between the accused and the deceased-Motive assigned for commission of offence sufficient - Medical evidence fully supports prosecution case-contradiction in

regard to place from where witnesses saw the occurrence and also on point of time taken in committing the crime only minor discrepancies not affecting the prosecution case-No illegality or perversity in the evidence of the prosecution-Appeal dismissed.

Legal maxim-"Falsus in uno falsus in omnibus"- Not applicable in India-If some part of testimony of witness is not true-Other part which is believable and supports prosecution case can be taken into consideration while appreciating the evidence.

Sections 302 and 302/34, **I.P.C.** – Appellants tried to enter into guava grove of complainant, on being forbidden, entered into altercation with son of the complainant and fired at him who died on the spot. PWs 1 and 2 eyewitnesses of the occurrence and both supported FIR version of the occurrence. FIR promptly lodged - Time of death of deceased as alleged in the FIR in consonance with the post - mortem report - Presence of eye-witnesses in the grove of complainant at the time of occurrence reliable - Evidence of PW-2 cannot be discarded merely on ground of enmity with the accused or relationship with the deceased-Place of occurrence not challenged by the defence-Statement of I.O. and site plan drawn by him also supports the prosecution case - Blood stained earth recovered from the place of occurrence and sent for chemical examination to the F.S.L.- No prima facie evidence to presume the appellant 'V' as juvenile at the time of commission of the crime – Interference with the impugned judgment of conviction and order of sentence declined – Both appeals dismissed. **Veer Pal v. State, 2015 (89) ACC 444 (Alld.)**

Section 302 of the IPC - Finding of Trial Court on point of guilt of the appellant cannot be said to be illegal, perverse or improper taking into account the extra-judicial confession of the appellant before witnesses without fear or pressure-Extra-judicial confessional statement instantaneous does not suffer from material discrepancies. Trial Court rightly took this evidence as *res gestae* and held the appellant guilty of offence of murder. Motive assigned was that deceased has kept wife of appellant as his wife for the last 6-7 months-Motive proved beyond reasonable doubt-Medical evidence fully

supports prosecution case-Prosecution witnesses PW I, PW 2 and PW 7 probable and natural witnesses. Place of occurrence proved-Merely because prosecution witnesses are close relatives no ground to make them interested witnesses. Circumstances proved beyond reasonable doubt by the prosecution and guilt of appellant established on basis of the extra-judicial confession and the circumstantial evidence-Impugned judgment of conviction and order of sentence affirmed-Appeal dismissed.

Hostile Witness - Whole statement of a hostile witness cannot be thrown out-Part of statement which supports the prosecution case may be taken into consideration.

Motive - Deceased kept wife of the accused as his wife as his first wife could not deliver a child. Accused tried to take his wife with him but was not allowed by the deceased. Trial Court rightly concluded that motive stood established by the prosecution. **Attar Singh v. State of U.P., 2015 (89) ACC 731 (HC)**

Sections 307 and 307/34, IPC – conviction – Prosecution evidence reveals that fire arm shot was fired at by the appellant 'C' at the instigation of 'M' – Injured received only one injury –Evidently evidence of injured cannot be taken to be dying declaration – Such evidence admissible under Section 157 of the Evidence Act and not under Section 32 thereof – Can be used for purpose of corroboration – Injured changed prosecution story enunciated initially and his statement that he was not fit at the time of recording of his earlier statement in conflict with the certificate given by Doctor. Major discrepancy staring from record – No, specific role attributed to other appellants in his statement recorded by the Trial Court. No satisfactory and credible evidence for implication of surviving appellant. Mere presence on the spot would not prompt use of section 34 IPC to convict the appellants. Impugned order of conviction set aside. Appeal of surviving appellants allowed. **Chhotey Lal v. State, 2015 (89) ACC 752 (HC)**

Sections 376, 323, 504 and 506, I.P.C. & Section 372 – Criminal Procedure Code, 1973 – Appeal against acquittal. Prosecution in order to prove its case produced 5 witnesses in all. Out of which only prosecutrix and her son were of fact and rest were formal in nature. Statement of PW 1appears wholly

unbelievable when he says that despite the fact that her mother was kept confined in a room by accused. Neither he nor his father made any attempt to rescue her and they continued to perform their usual duties in a routine manner. PW 1 has admitted the fact that his mother had gone to hospital all alone which also puts a question mark on trustworthiness of prosecution story. An injured woman kept confined in a room without proper food or medical help reached to hospital all alone and got herself admitted that too directly in ICU. No documentary evidence in support of fact that prosecutrix was even admitted in ICU or even in general ward of hospital. Medical examination report does not support story of rape as no external or internal injury has been found on her body. Statement of both witnesses suffer from material contradictions, several infirmities, embellishment, omissions and improvements making their testimony wholly unreliable – Findings recorded by Trial Court are correct – It cannot be said that Trial Court has not properly appreciated evidence or there is any perversity in findings of Trial Court – Appeal dismissed. **Smt. Sushila v. State of U.P., 2015 (89) ACC 389 (Alld.)**

Section 376 – Conviction - Sustainability - No FIR lodged - Case registered on basis of the statement of the victim given in connection with suspected murder of. her father - Prosecutrix sole witness of offence of rape - In her examination under section 164, Cr.P.C stated her age 16 years - Appellant used to visit her and have sexual intercourse with her-Incident took place in winters of with 1990 - Mother arid grandmother of the victim not examined to establish her age - On what material age of victim was recorded in School records not disclosed-Age of victim cannot be fixed on basis of school certificate- Prosecutrix was suspected accused of murder of her father-Admittedly had sexual relation with the appellant- Medical evidence excluded possibility of forced sexual intercourse-Role of investigating agency not fair-Investigation conducted with oblique motive-Prosecutrix herself admitted in section 161, Cr.P.C examination that she administered poison to her father in wine-Circumstances taken together create doubt in prosecution version, Guilt of appellant not established beyond reasonable doubt. Appellant acquitted of the charges-Appeal allowed.

Section 376 of Indian Penal Code, 1860 – Determination of the age of

victim of rape. Material on basis whereof her age was recorded in School Register not disclosed. Public document has to be tested applying same standard in civil as well as criminal proceeding. Medical opinion showing age of prosecutrix between 16 and 17 years- Radiologist also of the same view-Expert evidence does not rule out possibility of girl being above 16 years-satisfactory evidence that victim was less than 16 years old. **Roop Kishore v. State of U.P. 2015 (89) ACC 779 (HC)**

Section 376(2)(g) - Conviction - Incident took place on 5.5.2007- F.I.R. lodged on 16.5.2007-Assertion that parents were out of station and soon after their return the matter was reported to police-Parents were not present in the village proved-Delay in lodging FIR no ground to discard prosecution case-No evidence to show that the victim was a consenting party-No such suggestion given to her during cross-examination-P.W. 3 grandmother of the victim-Her evidence that on hearing voice of the victim she ran towards field and found appellants running therefrom - Specific statement of victim that neither appellants used to visit her house nor there was enmity with them-No injury found on body of the prosecutrix-No inference to be drawn that it was consensual sexual intercourse- Victim medically examined after 11 days of occurrence-Absence of any injury on her person natural-Plea of false implication rejected-No father would lodge FIR involving his daughter falsely in sexual intercourse with other-Defence plea that accused was falsely implicated for demanding his money given as loan to P.W.l not proved-No such suggestion given to P.W.l during his cross-examination- Spermatozoa not found in pathological test - No ground to disbelieve prosecution case-Mere penetration sufficient to constitute the offence of rape- Contradiction in prosecution case minor and of no value-Conviction and sentence affirmed-Appeal allowed.

Delayed FIR - By itself not fatal for prosecution case of delay is sufficiently

explained, then the Court has to accept it if it is found satisfactory-Delay adversely affects credibility of prosecution case if it has not been explained.

Gang Rape - No injury found on person of the victim-Cannot be

inferred that it was consensual sexual act-Medical examination of victim after 11 days of the incident-Absence of injury on person of prosecutrix cannot be taken to be adverse to prosecution case.

Rape - Defence plea that victim was a girl of easy virtue as she was found habitual to intercourse-No ground to throwaway the prosecution case-Even a woman of easy virtue entitled to privacy-Not open to everyone to violate her person against her wish.

Appreciation of evidence - Witness a rustic villager- Short on vocabulary on account of being illiterate-Reproduction of incident cannot be expected in exact words as from one who is educated person. **Pradeep Rawat v. State of U.P., 2015 (89) ACC 856 (HC)**

Ss. 498-A and 306 IPC – Conviction – Direction to run the sentence imposed consecutively. Taking into account the totality of the facts and circumstances, the sentence imposed on the accused for the offences punishable are ordered to run concurrently.

The words "unless the Court directs that such punishments shall run concurrently" occurring in sub-section (1) of section 31, make it clear that section 31 Cr.P.C. vests a discretion in the Court to direct that the punishment shall run concurrently, when the accused is convicted at one trial for two or more offences. It is manifest from section 31 Cr.P.C. that the Court has the power and discretion to issue a direction for concurrent running of the sentences when the accused is convicted at one trial for two or more offences. Section 31 Cr.P.C. authorizes the passing of concurrent sentences in cases of substantive sentences of imprisonment. Any sentence of imprisonment in default of fine has to be in excess of, and not concurrent with, any other sentence of imprisonment to which the convict may have been sentenced.

Discretion to order running of sentences concurrently or consecutively is judicial discretion of the Court which is to be exercised as per established law of sentencing. The Court before exercising its discretion under section 31 Cr.PC. is required to consider the totality of

the facts and circumstances of those offences against the accused while deciding whether sentences are to run consecutively or concurrently.

Section 31 (1) Cr.P.C enjoins a further direction by the Court to specify the order in which one particular sentence shall commence after the expiration of the other. Difficulties arise when the Courts impose sentence of imprisonment for life and also sentences of imprisonment for fixed term. In such cases, if the Court does not direct that the sentences shall run concurrently, then the sentences will run consecutively by operation of section 31 (1) Cr.P.C There is no question of the convict first undergoing the sentence of imprisonment for life and thereafter undergoing the rest of the sentences of imprisonment for fixed term and any such direction would be unworkable. Since sentence of imprisonment for life means jail till the end of normal life of the convict, the sentence of imprisonment of fixed term has to necessarily run concurrently with life imprisonment. In such case, it will be in order if the Sessions Judges exercise their discretion in issuing direction for concurrent running of sentences. Likewise if two life sentences are imposed on the convict, necessarily, Court has to direct those sentences to run concurrently.

Under section 31 Cr.P.C. it is left to the full discretion of the Court to order the sentences to run concurrently in case of conviction for two or more offences. It is difficult to lay down any straitjacket approach in the matter of exercise of such discretion by the Courts. By and large, Trial Courts and appellate courts have invoked and exercised their discretion to issue directions for concurrent running of sentences, favouring the benefit to be given to the accused. Whether a direction for concurrent running of sentences ought to be issued in a given case would depend upon the nature of the offence or offences committed and the facts and circumstances of the case. The discretion has to be exercised along the judicial lines and not mechanically. **O.M. Cherian v. State of Kerala, 2015 (89) ACC62 (Alld.)**

Indian Succession Act

Sec. 24 and Or. XX, Rule 18 – Transfer of suit filed under O. XX, R. 18 for

preparation of final partition decree – Grounds as alleged for transfer considered – Mere presumption or possibility of apprehensions not sufficient for transfer of case

Section 24 is a general provision empowering the High Court or the District Court to transfer a case on the motion of any other party or on its own motion and applies to suits, appeals and other proceedings, including the execution proceedings.

Following have been held to be sufficient grounds for transfer :(i) convenience of parties and situation of property, (ii) bias of judge hearing the case, (iii) two suits involving common question, (iv) avoidance of delay and unnecessary expenses and (v) preventing abuse of process of the Court.

The transfer provision are such that they are intended to facilitate a party seeking transfer only when it satisfies the Courts that if the case is allowed to be adjudicated in the same Court, the party would invariably suffer irreparable injury and the transfer of a case from one Court to another indirectly casts doubt on the competence and integrity of the Judge from whom the case is sought to be transferred. Mere presumptions or possible apprehensions are not sufficient therefore; only good and sufficient grounds, clearly set out in the order, may justify the transfer and a transfer should not readily be granted for any fancied notion of a litigant. It should be granted to ensure that the applicant gets fair and impartial justice.

The power vested in the High Court under Section 24 CPC is comprehensive and discretionary. The discretion to be exercised, as we all know, is a judicial discretion based on sound reasonings. While considering the question of transfer, the very bias which has to be law laid down for transfer of the same is to be considered and in the present case, the reason that opposite party no.2 is a practicing lawyer cannot be a ground for transfer when there is no concurrent reason that the said person in any manner may influence the proceedings of the matter and if on the said ground, the case is

transferred then it is practically himself to get influence against the practitioner lawyer in a particular district as transfer should not readily be granted for any fancied notion of a litigant. It should be granted to ensure that the applicant gets fair and impartial justice.

In the instant matter, only plea raised for transfer of the case from the Court

that the Presiding Officer is influenced by the opposite party nos.1 and 2 and from the averments as made in the transfer petition, the position which emerges out is that only bald allegation has been made in the petition and no any other cogent evidence has been given for the said purpose. So, on the said ground, the transfer application/petition cannot be allowed because the transfer of a case from one Court to another indirectly casts doubt on the competence and integrity of the Judge from whom the case is sought to be transferred. Mere presumptions or possible apprehensions are not sufficient therefore; only good and sufficient grounds, clearly set out in the order, may justify the transfer and a transfer should not readily be granted for any fancied notion of a litigant. It should be granted to ensure that the applicant gets fair and impartial justice. **Raja Ram v. Ashok Kumar, 2015 (2) ARC 4**

Ss. 57(c) and 213(2) – Probate of Will – Requirement of – Person may not be required to obtain probate of will U/s. 213 of Act but he may require a probate of will for other purposes.

Court has observed herein above that a beneficiary under a Will may not be required to obtain a probate of Will under the provision of section 213 of the Act but in case he wants to get a probate of Will to be used before the other

authorities, there is no bar for him to apply for grant of probate. Court may clarify his view by giving an example. If a person has bank deposits and other movable property kept in locker of the bank or anywhere else, executes a Will providing that after his death the movable property will devolve upon a particular person and after the death when such person approaches the bank claiming possession of such movable property and demands money on the basis of such Will, the bank authorities always demand either a succession certificate or a probate of a Will in order to ascertain the genuineness and authenticity of the Will. Similarly if a person executes a Will about the post retiral benefits then in that case also, the concerned department demands either succession certificate or in case of a Will, a probate to pay him post retiral dues. In all lsuch cases although the beneficiary of the willmay not be required to obtain a probate for Will in view of the section 213 of the Act, but for the payment of such amount and possession of movable property, he has to approach the competent authority for grant of succession certificate or probate of a Will, as the case may be.

The learned Court below has failed to consider this important aspect of the matter and has dismissed the application, merely, on the ground that according to the law laid down by the Division Bench of this Court the probate of a will is not required but the learned Court below has failed to consider that a person may not be required to obtain probate of will under section 213 of the Act but he may require a probate of Will for other purposes. Thus the learned Court below has not considered the law in the right perspective and as such the impugned order suffers from illegality and infirmity which is liable to be set aside. **Smt. Satnam Kaur v. Satyendra Pal Singh and others, 2015(109) ALR 573.**

Industrial Dispute Act

S. 25-G – Retrenchment – Principle of "Last come first go" not strictly adhered – effect of – clear breach of Sec. 25-G.

Supreme Court is the opinion that the High Court has rightly held in the impugned judgment and order that in the instant case, the appellant-Company had not adduced any such evidence or reasons of justification for retaining the junior workmen to the rehenched workmen. The reason assigned by the appellant-Company is considered by the Industrial Court and held that there was a clear breach of section 25-G of I.D. Act read with Rule 81 of Bombay Rules in not following the principle of 'last come, first go'. The legal principle laid down in this aspect in the case of Workmen of Jorehaut Tea Co. (supra) does not apply to the fact situation of the case on hand, as the appellant-Company has not published the seniority list at all on its notice board, which is the concurrent finding of fact of the High Court. The same cannot be termed erroneous as it is based on legal evidence on record. It is for the appellant-Company to establish as to whether there is a deviation of the above principle or not by producing justifiable and valid reasons but it has failed to do so by producing cogent evidence on record. Therefore, reliance placed upon the aforesaid judgments of this Court by the learned senior Counsel for the appellant-Company are misplaced as they are not applicable to the fact situation on hand as the facts of those cases are distinguishable from the facts of this case on hand.

Further, the contention urged by the learned senior Counsel on beha lf of the Company that the allegation of contravention of section 25-G of the I.D. Act is not sufficient to hold that the 'last come first go' principle is not followed by the Company unless the necessary material particulars in this regard are pleaded and proved by the workman. This contention in our view is wholly untenable in law and cannot be accepted by this Court. The respondent-Union had llaid factual foundation in this regard and proved the same by adducing evidence on record. **Mackinon Mackenzie & Company Ltd. v. Mackinnon Employees' Union, 2015(145) FLR 184.**

Indian Stamp Act

S. 47 A – Term "reason to believe – Scope of – Meaning – Explained

The expression "reason to believe" is not synonymous with subjective satisfaction of the officer. The belief must be held in good faith, it cannot be merely pretence. It is open to the court to examine the question whether the reasons for the belief have a rational connection or a relevant bearing to the formation of the belief and are not irrelevant or extraneous to the purpose of the section. Dr. Pratap Singh V. Director of Enforcement Foreign Exchange Regulation Act AIR 1985 SC 989

The term "reason to believe" occurring in sub section (3) of Section 47-A spells out that the Registering Officer, must have some material-direct, circumstantial or even intrinsic evidence on the basis of which he may come to a reasonable belief that the market value of the property has not been truly set forth in the instrument. **Smt. Kiran Lata v. State of U.P. through its Secretary, Finance and Revenue, Lucknow, 2015(127) RD 427.**

Section 47A(3) UP Stamp (Valuation of Property) Rules, 1997- Rule 4(1) (c)

Having due regard to the facts of the present case, it is not being disputed by the petitioner that the property which is a part of Khasra No.16021/1 is being used for commercial purposes namely shop, godown and other commercial activities. The area of land purchased by the petitioner is barely 0.072 hectare which is approximately 720 square metre situated within municipal area on a plot where the predominant use is non-agricultural. The

petitioner has not referred to any exemplar to show that agricultural activity is predominant in the vicinity where the property in question is located. The entire property Khasra no.1621/1 is being used for non agricultural purpose, having shop, godown and other commercial property.

Merely because the property is recorded as agricultural property and there being no declaration under section 143 of the U.P .Zamindari Abolition & Land Reforms Act 1950 cannot be said that the property does not have commercial potential on the date of execution of the deed. Further, under section 142 of the U.P. Zamindari Abolition & Land Reforms Act, the owner can use the agricultural property for any purpose including for non agricultural purpose and once a owner chooses to use the property for non agricultural purpose, he cannot turn around to take a plea that since the property is entered in the revenue records as an agricultural property, the nature and use of the property is agricultural. The nature and use of the property is the actual use on the spot coupled with the predominant activity in the locality where the property is situated. If the property of similar nature is being sold and bought at commercial rate, for the purposes of stamp duty, the property would be valued at commercial rate. The entry in revenue record that the property is agricultural or residential would have no bearing in determination of the value.

For the reasons and law stated herein above, the writ petition fails and is, accordingly, dismissed. **Wasi-ur-Rehman v. Commissioner, Moradabad Division, 2015(2) AWC 1744**

Land Acquisition Act

S.3(f) - "Public Purpuse – Definition of – Construction of a road, would fall under planned development for a public purpose.

The expression 'public purpose' has been defined under section 3(f) of the Act which is quoted as under:

[3(f) the expression "Public Purpose: includes-

(i) the provision of village-sites, or the extension, planned development or improvement of existing village-sites;

(ii) the provision of land for town or rural planning;

(iii) the provision of land for planned development of land from public funds in pursuance of any scheme or policy of Government and subsequent disposal thereof in whole or in part by lease, assignment or outright sale with the object of securing further development as planned;

(iv) the provision of land for a corporation owned or controlled by the State;

(v) the provision of land for residential purposes to the poor or landless or to persons residing in areas affected by natural calamities, or to persons displaced or affected by reason of the implementation of any scheme undertaken by Government, any local' authority or a corporation owned or controlled by the State;

(vi) the provision of land for carrying out any educational, housing health or slum clearance scheme sponsored by Government or by any authority established by Government for carrying out any such scheme, or, with the prior approval of the appropriate Government, by a local authority, or a society registered under the Societies Registration Act, 1860, or under any corresponding law for the time being in force in a State, or a co-operative society within the meaning of any law relating to co-operative societies for the time being in force in any State;

(vii) the provision of land for any other scheme of development sponsored by Government, or, with the prior approval of the appropriate Government, by a local authority;

(viii) the provision of any premises or building for locating a public office,

but does not include acquisition of land for Companies;]

11 Hon'ble Apex Court in the case of Dev Saran and others v. State of U.P., (2011)4 SCC 769, has observed as under:

> “16. The concept of "public purpose" cannot remain static for all time to come. The concept, even though sought to be defined under section 3(f) of the Act, is not capable of any precise definition. The said definition, having suffered several amendments, has assumed the character of an inclusive one.

It must be accepted that in construing "public purpose", a broad and overall view has to be taken and the focus must be on ensuring maximum benefit to the largest number of people. Any attempt by the State to acquire land by promoting a public purpose to benefit a particular group of people or to serve any particular interest at the cost of the interest of a large section of people, especially of the common people, defeats the very concept of public purpose. Even though the concept of public purpose was introduced by pre constitutional legislation, its application must be consistent with the constitutional ethos and especially the chapter under fundamental rights and also the directive principles."

In view of the definition of the "public purpose" contained in the Act and interpretation given to it by the Hon'ble Apex Court, the construction of a road would fall under the planned development for a public purpose and there can be no dispute about the same. **Krishna Bahadur Singh and others v. Kanpur Development Authority, Kanpur Nagar and others, 2015(110) ALR 415.**

Ss. 4 and 6 – Writ petitions filed with prayer to quash the notifications issued U/s. 4 and 6 of Act – Petitioner failed to give good reason for in ordinate delay of 12 years and also received compensation – There is no reason to entertain these petitions for quashing notification.

The petitioner purchased the land in question vide sale-deed dated 15.12.1986 annexed as Annexure – (S.A.-1) to the supplementary affidavit-1 dated 11.12.2011 filed by the petitioner. The land has been acquired taking recourse of the provisions under sections 4/17 of the Act vide notification dated 30.12.1998. The declaration under section 6 of the Act was issued on 31.3.1999 in Official Gazette. The total area of the land acquired under notifications in village Junedpur, Tehsil Sikandrabad District Bulandshahar was 9.721 hectare. The award was declared by the Special Land Acquisition Officer on 30.6.2003. The petitioner received compensation under the award dated 30.6.2003 and photocpy of the receipt of payment made to the petitioner in the year 2003 has been annexed as Annexure-3 to the petition.Only ground on which petitioner is challenging the acquisition uner the Act is that the land in question remains unutilized by the respondents and it has been stated that it is ready to repay the amount of compensation paid by the respondent under the award after adding

interest on compensation. A further averment has been made that the petitioner has approached the State Government for the release of the land and representation dated 3.1.2011 addressed to the State Government has been filed by the alongwith the writ petitions.

The petitioner sought to challenge notification issued under sections 4 and 6 of the Act but has failed to make out any good ground for the same. The inordinate delay on the part of the petitioner in challenging the notification has not been explained at all in the entire petitions.

In view of the facts and circumstances of the case, court is of the view that writ petitions cannot be entertained at this belated stage. The petitioner has received compensation and the land having been vested with the State Government as early in the year 2003, there is no reason to entertain these petitions praying for quashing of the Notifications issued in the year 1998 and 1999 under sections 4 and 6 of the Act; respectively. The writ petitions are highly belated and suffer from severe laches on the part of the petitioner. **M/s. Ram Prastha Ispat Udyog Pvt. Ltd. v. State of U.P. and others, 2015(109) ALR 566.**

Ss. 4, 6- Publication –Effective date –Determination of

In the present case, according to the petitioners, there was no publication by beat of drums in the locality and the last date of publication under Section 4 was 25-10-2013 when it was published in two local Hindi daily newspaper. However, the affidavit filed by the respondents clearly asserts that publication by beat of drums in the village took place on 07-11-2013. The State respondents along with their counter affidavit have filed documents certifying that Munadi was done. The documents contains the signature of Gram Pradhan and as also that of the 'Munadi Karta' and also of two witnesses. The document certifies that notices were served on the interested persons and were pasted on the Panchayat Bhawan. Tehsil Officer and the Collectorate and also a 'Public Munadi' was done. The document is counter signed by Additional District Magistrate (Land Acquisition). The allegations of 'public notice/Munadi' are contained in paragraph 10 of the affidavit of the State. In the rejoinder affidavit, there is no specific denial of the allegations. Denial of the same in the rejoinder affidavit is vague and evasive and what has been stated is that the contents are

not admitted and the correct facts have already been stated in the foregoing paragraph of this affidavit.

In view of the allegations made in the pleading of the parties, court are of the considered opinion that public notice was given and 'Munadi' by beat of drums was effected in the locality on 07-11-2013 which is to be taken as the last date of publication of notification under Section 4 of the Act. Undisputedly, the publication of declaration under Section 6 in the Official Gazette is dated 30-10-2014 **Chandra Veer Singh & Others v. Secretary, Industrial Development & others 2015 (3) ALJ 627**

Ss. 4, 6(1), 18 – Land Requisition – Compensation – Determination of.

The relevant factors for determination of the amount of compensation are the nature and quality of land, whether irrigated or unirrigated, facilities for irrigation, presence of fruit bearing trees, location of the land, closensess to any road or higway, evenness of the land, existence of any building or structure and a host of other factors bearing on the valuation of the land. The learned Court below while determining the rate of compensation of the acquired land in his impugned order has considered all these relevant factors and also took into consideration the evidence adduced by the parties. **Ghaziabad Development Authority v. Kashi Ram and others, 2015(127) RD 239.**

Sec. 23- Market value of property – Determination of – Market value determined on the average price set forth in the exemplars and on the minimum rate fixed by the collector for the area.

Pursuant thereof, the Additional Collector (Finance and Revenue), Allahabad, determined the market value of the concerned property, both on the average price set forth in the exemplars and on the minimum rate fixed by the Collector for the area. The price of land per sq. mt. in the sale deeds of 2009 were ranging between Rs. 490.03/- sq.m. to Rs. 2500/- sq.m. The Collector assessed value of the concerned property at Rs. 4,28,87,337/- on the average price as set out in the exemplars, whereas, the market value of the concerned property, calculated on the minimum value (circle rate), was almost half the value determined on the average price set forth in the exemplars i.e. at Rs. 2,33,95,000/-. The Collector determined the market value at Rs. 2,33,95,000/-.

The minimum value of the property in the concerned area was

determined by the Collector, under the U.P. Stamp (Valuation of Property) Rules, 19979 in 2009, 2010 and 2012 but the petitioners had not objected before the Collector. The property in the concerned area were being valued per sq. mt. by the Collector. The exemplars also indicate that the property were being sold and purchased on sq.m. in the area where the property in question is located.

The exemplars referred to by the petitioners was taken into consideration, it has not been disputed by learned counsel for the petitioners that the minimum market value fixed by the Collector, under the 1997 Rules, was not prevalent in the area, rather the exemplars clearly demonstrate that the property were being sold at an average price ranging between Rs. 500 to Rs. 1500 per sq.m., whereas, the property has been valued on the minimum value (circle rate) fixed by the Collector, which rate is almost half the value as compared to the value determined on the average price set forth in the exemplars. The Collector has recorded a finding of fact, on both the occasions, on the directions of the Court, in this view of the matter; this Court is not inclined to interfere with the impugned orders. **Smt. Kiran Lata v. State of U.P. through its Secretary, Finance and Revenue, Lucknow, 2015(127) RD 427.**

Limitation Act

Delay condonation – Liberal approach is to be adopted while considering an application for condonation of delay.

It is true that a liberal approach is to be adopted while considering an application for condonation of delay but in the instant case, the conduct of respondent is unlike an innocent litigant. Therefore, it is incumbent upon the Trial Court to have a re-look at the material defence of the petitioner which is based on the documentary evidence. **Lachhi Ram v. Sant Ram Mawai and others, 2015(110) ALR 371**

Limitation – Delay in approaching the court – Long period of dellay without explanation is a relevant factor which go against him.

There is no presumption that delay in approaching the Court is always deliberate. No person gains from deliberate delaying a matter by not resorting

to take appropriate legal remedy within time but then the words "sufficient cause" show that delay, if any, occurred, should not be deliberate, negligent and due to casual approach of concerned litigant, but, it should be bona fide, and, for the reasons beyond his control, and, in any case should not lack bona fide. If the explanation does not smack of lack of bona fide, the Court should show due consideration to the suiter, but, when there is apparent casual approach on the part of suiter, the approach of Court is also bound to change. Lapse on the part of litigant in approaching Court within time is understandable but a total inaction for long period of delay without any explanation whatsoever and that too in absence of showing any sincere attempt on the part of suiter, would add to his negligence, and would be relevant factor going against him. **State of U.P. and others v. Shiv Raj Sharma, 2015(127) RD 71.**

Article 136 – Execution of Decree – Limitation for – Decree became enforceable after second appeal dismissed as abated.

The only contention is that though second appeal was dismissed as abated on 7.3.2008, but, for the purpose of limitation, it would commence from the date of Lower Court's decree and not from the date when the second appeal was dismissed.

On the contrary, it is contended on behalf of respondent that limitation will start for execution after the decree has attained finality i.e., when the appelal is dismissed.

The short question up for consideration in the ase in hand is whether limitation for execution of a decree will commence from the date of decree or when judgment and decree of Trial Court attained finlity after decision of appeal, first or second, under section 96 or 100, C.P.C., as the case may be.

Here it is not in dispute that original suit No. 277 of 1979 instituted for specific performance of contract for sale of a piece of land was decreed by Trial Court vide judgment and decree dated 6.9.1984. An appeal under section 96, C.P.C. was filed, which was registered as Civil Appeal No. 269 of 1984 but the same was dismissed by Appellate Court vide judgment and decree dated 11.12.1985. A second appeal under section 100 C.P.C. thereafter was filed i.e., Second Appeal No. 1205 of 1986, which was pending before this Court. It is true that therein no stay order passed by this Court staying decree of Courts

below but the fact remains that appeal remained pending before this Court and abated on 7.3.2008 due to death of sole appellant on 1.6.2007, respondents No. 2 and 3 on 1.6.2003 and 30.9.2005 but no substitution was made or requested thereagainst. It is in these circumstances, I am clearly of the view that decree became enforceable after the second appeal filed in this Court, was dismissed, may be as abated. Execution having been initiated within limitation thereafter, I find no reason to interfere with the order passed by Court below. I hold that execution initiated in the case in hand is within limitation. **Niyamatullah and others v. Badre Alam and others, 2015(109) ALR 810.**

Motor Vehicles Act

S.173 -Appeal against award – Grant of – Future Prospects – Consideration of

FAFO filed by the appellant Insurance company is directed against the judgment and award dated 15.1.2015 passed by Motor Vehicles Accident Claims Tribunal/ Additional District and Sessions Judge, Court No. 19, Allahabad, in M.A.C. No.770 of 2006 awarding a sum of Rs.9,23,140/- alongwith simple interest at the rate of 7% per annum from the date of filing of the claim petition till the date of actual payment.

In the present case, the deceased was aged 38 years and was in a permanent job working as a Constable in Police force. There can be no manner of doubt that by the passage of time, till he attained the age of superannuation, his salary would have increased. In view of the law laid down by the Hon'ble Apex Court in the case of Sarla Varma (supra), the Tribunal cannot be said to be unjustified by adding 50% of his wages towards future prospects and, thus, the first argument advanced by the learned counsel for the appellant have no force and is liable to be rejected. **Oriental Insurance Co. Ltd. v. Smt. Sita Devi and others, 2015(110) ALR 97.**

S.173 – Appeal against compensation – Right of recovery – Effect of – Where a right of recovery granted to ensurance Co. to recover amount awarded from owner of vehicle, appeal at its instance not maintainable.

It is not denied that the Tribunal has given right of recovery to the appellant Insurance Co. from the owner of the offending vehicle and a perusal

of the above judgment shows that where a right of recovery had been granted to the Insurance Co. to recover the amount awarded from the owner of the vehicle the appeal at the instance is not maintainable. Learned Counsel for the appellant could not cite any decision to the contrary. Accordingly the appeal filed by the Insurance Company is dismissed. However, the appellant would be entitled to recover the amount from the owner as held in the impugned award. **National Insurance Company Ltd. v. Smt. Rukhsana Tabassum and others, 2015(109) ALR 644.**

Public Premises (Eviction of unauthorised occupants) Act

Sec. 5-A – Scope of – This Sec. Provides for speedy machinery and procedure for dealing with unauthorized constructions.

Sub-section (1) of section 5-A contains a prohibition on any person erecting or placing or raising any building or any movable or immovable structure of fixture; displaying or spreading any goods or bringing or keeping any cattle or other animal on, or against, or in front of, any public premises except in accordance with the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises.

There is no basis in the interpretation which has been placed by the learned Single Judge to the effect that Section 5-A(1) creates an embargo upon raising certain constructions in future, i.e., after the date on which section 5-A does not speak of an already existing structure is to beg the issue because the provision does not except structures which were existing as on 22 December, 1980 from the operation of the provision. Above all, it must be recognized that section 5-A was intended to provide a speedy machinery or procedure for dealing with unauthorized constructions which were erected contrary to the authority, whether by way of grant or any other mode of transfer, under which the person has been allowed to occupy the premises. The emphasis is on whether the structure has been erected in accordance with the authority or beyond the terms of the authority under which a person has been allowed to occupy the premises.

For these reasons, we hold that the learned Single Judge was in error in coming to the conclusion that the provisions of section 5-A of the Act of

1971 would apply only to a construction which has been raised after 22nd December, 1980 and that it does not apply to an existing structure. Section 5-A provides a speedy machinery and procedure for dealing with unauthorized constructions which has been made in a manner which is not in accordance with the authority under which a person was allowed to occupy the premises. There is nothing in the provision by which a construction which was made prior to 22nd December, 1980 shall stand excluded. **Union of India through Defence Estate Officer and another v. Arun Saluza, 2015(109) ALR 789.**

Right to Information Act

S. 2 (h) – 'Public Authority' – Definition –whether Council for India school certificate examinations (Board) is Public Authority- Held, "No"

A public authority has been defined in the Act to mean any authority or body or institution of self-Government, established or constituted, (1) by or under the constitution; (ii) by any other law made by Parliament; (iii) by any other law made by State Legislature; (iv) by notification issued or order made by appropriate Government, and includes a body owned, controlled or substantially financed and also a non-Government organization, substantially financed, directly or indirectly by the funds provided by the appropriate Government.

This Court, thus, is required to determine as to whether the Board is covered under the definition of 'public authority', aforesaid. From the materials brought on record before this Court, it is apparent that the respondent Board does not fall in any of the first three contingencies, inasmuch as it has not been established or constituted by or under the constitution, by any other law made by parliament, or by any other law made by State Legislature. There is further no notification or order of the appropriate Government, brought on record before this Court, bringing the Board under the Right to Information Act. The respondent Board has categorically stated that it receives no financial support, directly or indirectly, by Central or the State Government, and therefore, it is not financed by the appropriate Government, which fact has not been effectively denied. It is undisputed that the respondent Board is a society registered under the provisions of the Registration Act, 1860 and its bye-laws provide that it functions as an independent, autonomous, juristic person.

The society functions independently in accordance with its bye-laws. The nature of the Board, which is a society, therefore, does not change on account of the aforesaid constitution, and such association would not bring the Board within the definition of Clause 2(h), if it otherwise is not covered. **A. Pavitra v. Union of India and others 2015 (3) ALJ 697**

S.A.R.F.A.E.S.I. Act

Sale certificate – Once issued to auction purchaser, auction purchaser becames absolute owner of property.

When the respondent No. 3 failed to clear the dues of the bank, the bank had proceeded into the matter and sold the property for consideration of Rs. 6.55 lacs in favour of the petitioner (auction purchaser) and issued sale certificate on 27.4. 2010. An application under section 17(1) of the SARFAESI Act was preferred by respondent No. 3 for setting aside the sale notice dated 13.1.2010 together with sale confirmation letter dated 24.4.2010 and also for order of redemption of security. The respondent No. 3 had approached to the Tribunal under section 17(1) of the SARFAESI Act on 16.11.2010, the period of limitation as provided under section 17(1) of the SARFAESI Act is only 45 days, from the date on which measures under section 13(4) of the SARFAESI Act had been taken. In the instant case, possession was taken over by the creditor on 15.9.2009, sale notice was made on 13.1.2010 and the sale certificate had been issued in favour of the petitioner on 24.4.2010. This is also admitted case that the respondent No. 3 had approached to this Court and the Division Bench of this Court vide an order dated 17.2.2010 specifically directed the respondent No. 3 to deposit the entire outstanding amount of the bank within three weeks from 17.2.2010. Once direction was given by the Division Bench of this Court and the respondent No. 3 had not availed the sdaid benefit and for the first time, in the DRAT he had volunteered a draft of Rs. 6 lacs on 24.9.2011 after more than 17 months from the direction issued by the Division Bench. Once the respondent No. 3 himself had approached to the High Court and given undertaking to clear the dues and if the same had not been deposited within stipulated time, then it was incumbent upon the respondent No. 3 to move an application for extension of time or modification of the said

order, but no endeavour was made in this regard and just to prolong the litigation, he had filed an application before the DRAT on 16.1.2010, which was admittedly barred by limitation. In the present matter, once the sale certificate was issued to the auction purchaser (petitioner) after accepting his bid and confirming the sale as per provisions of the SARFAEST Act, the auction purchaser become the absolute owner of the property and as such the right in relation to the property vests with the auction purchaser. **Smt. Shadhna Shukla v. Debts Recovery Appellate Tribunl, Allahabad and others, 2015(109) ALR 492.**

Ss. 13(1-A), 13(2), 12(3-A), 13(4) and 14 – Possession of property in question taking by the respondent Bank – Whether possession of property in question can be taken by Bank without deciding the objection of petitioner – Borrower u/s 13(30-A)? Held "No".

The petitioner is a borrower and had taken certain cash credit facility from the respondent-bank. Since the petitioner could not repay the loan, proceedings under The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred as the 'Act') was initiated by the respondent-bank. A notice dated 11.05.2013 under Section-13(2) of the Act was issued to the petitioner in pursuance of which the petitioner filed his objection dated 05.07.2013. Without deciding the objection, it transpires that the respondent-bank filed an application under Section-14 of the Act before the District Magistrate which was allowed by an order dated 28.11.2014 permitting the respondent-bank to take physical possession of the property in question. The petitioner, being aggrieved by the action of the respondent and the order of the Additional District Magistrate (Finance & Revenue) has filed the present writ petition contending that no measures for taking possession of the property could be taken unless objection of the petitioner was decided by the respondent-bank under Section-13(3-A) of the Act which, in the instant case, has not been done.

The scheme of the Act and the procedure provided under Section-13 of the Act for the enforcement of the security interest requires that where the borrower is under a liability to a secured creditor and makes a default in repayment of the secured debt, in which case, the secured creditor is required to issue a notice in writing to the borrower to discharge in full his liabilities to the

secured creditor within a stipulated period. On receipt of the said notice, the borrower is entitled to raise objections which, in our opinion, is required to be decided by the bank under Section-13(1-A) of the Act. This provision, in our opinion is mandatory and it is obligatory to the bank to decide the objections. Once such objection is decided and the liability is not discharged then it becomes open to the respondent-bank to proceed under Section-13(4) by taking possession or taking over the management of the business of the borrower. Section-14 is an additional procedure for taking possession which the Supreme Court has held in Standard Chartered Bank's case.

In the instant case, we find that the objection of the petitioner has not been decided by the respondent-bank, since no order has been brought before the Court, nor any such order has been communicated to the borrower, namely, the petitioner. In the absence of deciding any objection, we are of the opinion that the respondent could not file an application under Section-14 and take an order for possession from the Collector without deciding the objection under Section-13(3-A). Consequently, the order of the Additional District Magistrate dated 28.11.2014 is wholly illegal and is quashed. The writ petition is allowed. **A.N.K. RESTOBARS Pvt. Ltd. (Bekananer Wala), Meerut v. State of U.P., 2015(127) RD 582**

Ss. 13(2); 13(4), 14 Constitution of India, Art. 226 – Possession of the properties purchased in auction not handedover to the petitioner – Inaction on the part of state Authorities – Writ petition against the – same – Maintainability of – Not maintainable, because of remedy regarding inaction on part of authority U/s. 14 of above Act Available before. D.R.T.

In Kanaiyalal Lalchand Sachdev (supra), it has been held by the Supreme Court that an action under section 14 of the SARFAESI Act constitutes an action taken after the stage of section 13(4), and therefore, the same would fall within the ambit of section 17(1) of such Act. Thus, the SARFAESI Act itself contemplates an efficacious remedy for the borrower or any person effected by an action under section 13(4) of the Act, by providing for an appeal before the DRT (Debts Recovery Tribunal).

If we go through section 14 of the SARFAESI Act, we will find that the application is required to be made by the secured creditor, whereas in the

present cases, the applications under section 14 have been made by the purchasers with a copy to secured creditor. Therefore, the applications as made to the concerned District Magistrates are technically defective. The intention of the legislature is that genunity of the sale is to be confirmed by the secured creditor to the Chief Metropolitan Magistrate or the District Magistrate, who were not present at the time of sale. However, it is duty incumbent upon the secured creditor to make such application if, according to them, the sale is complete and the sale certificate/s is/are issued. On the other hand, if no such action is taken by the secured creditor, a purchaser cannot wait indefinitely for having physical possession in respect of the assets of the properties in spite of making payment/s of its price. It may delay their right of carrying on business as protected under Article 19(1)(g) of the Constitution of India. Therefore, an authority cannot behave like silent spectator.

> "17. Right to appeal – (1) Any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor or his authorised officer under this Chapter, may make an application alongwith such fee, as may be prescribed to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measures had been taken:
>
> Provided that different fees may be prescribed for making the application by the borrower and the person other than the borrower."

From the plain reading of such section read with the ratio of Kanaiyalal Lalchand Sachdev (supra), we find that, "any person (including borrower)", if aggrieved by any of the "measures" even at the stage of section 14 of the SARFAESI Act, can prefer an appeal before the DRT under such Act. The words "any person" and the word "measures" are qualifying the purchasers to raise this issue before the DRT by an appeal under section 17 of the SARFAESI Act. Dictionarically, measures "means, when someone takes measures to do something they carry out particular actions in order to achieve a particular result, which cannot be restricted only with regard to order or direction under section 14 being consequence of section 13(4) but also includes all types of actions or inactions on the part of the Chief Metropolitan Magistrate or the District Magistrate. Therefore, remedy regarding inaction on the part of

the authority under section 14 as alleged by the petitioner, is available before the DRT and not before the writ Court. Hence, both the writ petitions are dismissed, however, without imposing any cost. **Rajendra Ispat Pvt. Ltd. v. State of U.P. and others, 2015(109) ALR 755.**

Service Laws

Art. 16 of the Constitution–Compassionate appointment –Application for Time limit for invoking power of dispensation or relaxation of time limit of 5 year –Scope of

The second proviso to Rules 5 Requires an applicant, who invokes the power of dispensation or relaxation under the first proviso of the time limit of five years, to make out a case of undue hardship by elucidating, in writing, with necessary documentary evidence and proof, the reasons and justification for the delay. The Government may, in an appropriate case when it is satisfied on the basis of the material that a case of undue hardship is made out, exercise the power which is conferred upon it under the first proviso to Rule 5 of Rules but this power has to be exercised where a demonstrated case of undue hardship is made out to the satisfaction of the State Government **Shiv Kumar Dubey v. State of U.P. and Ors. 2015 (3) ALJ 420**

Compassionate Appointment – Writ Court directed the employed daughter to pay 1/3rd of her salary toward maintenance of mother and unmarried sister – Legality of.

In the present case, as the mother and unmarried sisters of the appellant were the dependents of the deceased at the time of his death, they cannot be deprived of their rights to get maintenance from the salary of the appellant, who has got compassionate appointment on the condition to maintain other dependents of the deceased, failing which the service of the appellant may be terminated under sub-rule (4) of the 1974 Rules. Being appointed as a Class IV employee in the Electricity Department and a Government Servant the appellant must have got the benefit of the VI Pay Commission etc. and she must be earning at least Rs.15000/- per month.

Under these circumstances, if the writ Court vide impugned order has directed the appointing authority of the appellant to pay Rs.5000/- per month to

her mother so as to enable her to maintain herself and her unmarried daughters, it cannot be said to be excessive amount disproportionate to the salary of the appellant. Moreover, keeping in view the fact that the mother (who has six daughters) is also saddled with the liability of marriage of her unmarried daughters, for which she requires more expenses and which is not possible in the meagre amount of the family pension she is receiving, it cannot be held that on account of receiving family pension she is not entitled to receive maintenance amount from the appellant. **Sita Devi @ Savita @ Sita Upadhyay v. State of U.P. through Principal Secretary U.P. Govt., Lucknow General Manager U.P. Power Corporation Ltd. Lucknow and others, 2015(110) ALR 132**

Employment. Re-employment- Discontinuance of – As Professor in Institute. On allegation of Sexual misconduct with girl student. Underlying principle of natural justice is to check arbitrary exercise of power implying duty of act fairly. Rules of natural justice cannot remain same under all conditions.

It is trite that the rules of 'natural justice' are not embodied rules and they cannot be put into a strait-jacket formula. The underlying principles of natural justice is to check arbitrary exercise of power and, therefore, the principle implies a duty to act fairly. It is not possible to lay down a rigid rule as to when the principles of natural justice would apply as the requirements of natural justice must depend on the facts and circumstances of the case, the nature of the enquiry, the subject-matter to be dealt with. The Supreme Court in State of Punjab vs. Jagir Singh, (2014) 8 SCC 129 and Karnataka S.R.T.C. vs. S.G. Kotturappa, (2005) 3 SCC 409 : 2005 (2) AWC 1064 (SC), has held that the principles of natural justice are required to be complied with having regard to the fact situation obtaining therein and cannot be applied in a vacuum without reference to the relevant facts and circumstance of the case.

What has been emphasised by the Supreme Court in the aforesaid decisions is that rules of 'natural justice' cannot remain the same under all conditions and that girls, in cases of sexual harassment, may not give evidence if a regular enquiry is held. Under such circumstance, the Committee of teachers that is constituted can record statements and no opportunity of cross-examination is required to be given nor a copy of the enquiry report is required

to be supplied. The dispensation of a regular enquiry, therefore, under such circumstance does not result in violation of the principles of natural justice.

The contention of the petitioner that the Institute did not have the authority to discontinue the re-employment of the petitioner and the University alone could have dispensed with his services cannot also be accepted. As noticed above, the erstwhile Institute of Technology of the University became the Indian Institute of Technology (Banaras Hindu University) with effect from 29 June 2012 under the provisions of the Institutes of Technology (Amendment) Act, 2012. It was the Institute that granted him re-employment by letter dated 10/11 December 2013 for a further period of one year with effect from 30 July 2013. The Institute alone and not the University, therefore, could have dispensed with his services, which it did.

Thus, for all the reasons stated above, the order passed by the Chairperson of the Board of Directors of the Institute to discontinue the re-employment of the petitioner as a Professor in the Department of Civil Engineering of the Institute does not suffer from any illegality so as to call for interference of the Court under Article 226 of the Constitution. **Dr. Virendra Singh v. B.H.U. Varanasi, 2015(2) AWC 1828**

Suspension – Nature of – Essentially transitory or temporary in nature and must be of short duration.

Suspension, specially preceding the formulation of charges, is essentially transitory or temporary in nature, and must perforce be of short duration. If it is for an indeterminate period or if its renewal is not based on sound reasoning contemporaneously available on the record, this would render it punitive in nature. Departmental/ disciplinary proceedings invariably commence with delay, are plagued with procrastination prior and post the drawing up of the Memorandum of Charges, and eventually culminate after even longer delay. **Ajay Kumar Chaudhary v. Union of India and another, 2015(145) FLR 74.**

Education. Eligibility for promotion. To be considered on the date of occurrence of vacancy and not on the date when management decided to fill in the same.

In this case a substantive vacancy of Lecturer (English) was lying in the College since 1983-84, inasmuch as, new post of Lecturer (English) along with three others were created vide order dated 27.8.1983 passed by Director of Education (Secondary). It is also not in dispute that it was requisitioned to the Board and recruitment process before Board is pending since 1988. The appointment of Sri Dhrub Chandra Pathak as Lecturer (English) was purely ad hoc, therefore, after he left the job, it resulted in giving an opportunity to the Management to fill in existing substantive vacancy of Lecturer (English) on ad hoc basis till the candidate recommended by Board is available.

Appellant obviously was not eligible on the date of occurrence of substantive vacancy of Lecturer (English) i.e. on the date of its creation. In Ram Saran Singh Vs. Committee of Management (2002) 3 UPLBEC 2121; Sunil Kumar Misra Vs. Regional Selection Committee & others (2004) 2 UPLBEC 1520; Subhash Prasad Vs. Regional Selection Committee, Gorakhpur & others 2004 ALJ 3711; Brahm Dutt Tripathi Vs. State of U.P. & others (2005) 2 UPLBEC 1713; Gupteswar Tiwari Vs. Joint Director of Education, Azamgarh & others (2005) 4 AWC 3893 and Jabar Singh Vs. Joind Director of Education 2007 (3) UPLBEC 2760, this Court has held that eligibility for promotion has to be considered on the date of occurrence of vacancy and not on the date when the Management decided to fill in the same. Neither in 1983-84 nor in 1988, appellant was eligible and entitled for promotion to the post of Lecturer (English). No substantive vacancy of Lecturer (English) has occurred thereafter. Hence, question of considering appellant eligible for promotion on the post of Lecturer (English), which is substantively lying vacant from the date of its inception i.e. the date of creation of post on 27.8.1983 does not arise. The action of Management by taking this substantive vacancy of 2003 and considering question of eligibility at that time or thereafter is clearly erroneous, illegal and in the teeth of the law laid down by this Court regarding eligibility. Therefore, appellant even otherwise could not have been appointed by promotion on the said vacancy. **Chandra Prakash Singh v. State of U.P. through Secretary (Madhyamik) Dep. Of Education, U.P., Lucknow and other, 2015 (110) ALR 631**

Promotion – Post of Chief Engineer of U.P. Ava's Evam Vikas Parishad – Direction by High Court for regular promotion – After judgment of Apex

Court in U.P. Power Corporation Ltd. v. Rajesh Kumar and Ors, there was no impediment in proceeding with the regular selection for filling up the vacant post of Chief Engineer.

With regard to the first question, court his no hesitation in holding that after the judgment of this Court dated April, 27, 2012 in the case of U.P. Power Corporation Ltd. v. Rajesh Kumar and other (supra) there was no impediment in the way of the Parishad in proceeding with regular selection for filling up the vacant post of Chief Engineer in a regular manner. This Court had directed for making officiating arrangement by selecting a suitable Superintending Engineer to hold additional charge of the post of Chief Engineer only on account of order of status quo qua the process of regular promotion, in pending civil appeals that were finally disposed off on April 27, 2012. Thereafter, the Parishad would have only wasted time and resources in making officiating arrangement after going through elaborate procedure of selection. There can be no doubt that the Parishad committed an act of impropriety in not bringing the subsequent vacation of status quo order on account of disposal of pending civil appeals on 27.4.2012 and in not seeking formal permission of the Court to fill up the post of Chief Engineer on regular basis. However, now when the full facts are before this Court, it would not be proper to direct the Parishad to fill up the vacancy only on officiating basis. **Rajendra Kumar Agarwal v. State of U.P. and others, 2015(145) FLR 55.**

Societies Registration Act

S.5-A – Nature of – Transfer of property of society – Post law permission – Grating of Compliance of provisions of Sec. 5-A of Act is mandatory.

In this case the properties of the Society had been sold by the respondents No. 3 ans 4 exclusively without seeking any permission from the principal Court of original jurisdiction as required under section 5-A of the Act, 1860 and the provisions of the Act being mandatory the sale of the said properties was null and void. It is submitted that these are the properties which have been mentioned as sold in 1995 itself, in the impugned order dated 29.6.2007 and in any case the burden would be upon the respondents to show that prior to disposal of the properties mentioned in the order dated 29.6.2007 the application under section 5-A of the Act, 1860 had been filed and

permission of thie principal Civil Court of original jurisdiction taken. The order dated 29.6.2007 indicates that the sale-deeds were executed as far back as in 1995 whereas the Deputy Registrar has granted liberty to the parties to apply to the Court under section 5-A of the Act, 1860 for obtaining permission for the sale of the said properties only through the order dated 29.6.2007. Section 5-A does not contemplate grant of a post sale certificate/permission by the Court.

Section 5-A of the Societies Registration Act, 1860 reads as follows:

> "5-A. Restriction on transfer of property. - (1) Notwithstanding anything contained in any Law, contract or other instrument to the contrary, it shall not be lawful for the governing body of a society registered under this Act or any of the members to transfer, without the previous approval of the Court, any immovable property belonging to such society."

On a careful reading of the provisions of section 5-A it will be seen that compliance of the provisions thereof are mandatory and the language of the section is in the nature of a restraint on the governing body of the Society or any of its members to transfer any immovable property belonging to such Society without the previous approval of the Court.

Sub-section (2) of section 5-A in fact emphatically declares that every transfer made in contravention of sub-section (1) of section 5-A shall be void, therefore, in such circumstances considering the clear and unambiguous language of section 5-A of the Act, 1860 it must necessarily be held that the provisions of section 5-A of the Act, 1860 are mandatory. **Tulasi Ram Patodia v. State of U.P. and others, 2015(109) ALR 783.**

Transfer of property Act

S.52 – Attractibility of.

It is settled that any transfer of Property during the pendency of the proceedings, would be subservient to the rights of the parties to such suit, as is eventually determined. **Anuj Kumar v. Shanti Devi and others, 2015(110) ALR 357.**

Fishery lease – cancellation of – sustainability of – Petitioner is not entitled to claim any relief and the gram sabha is entitled to recover the balance

lease rent from the petitioner.

It clearly emerges that although the petitioners had been granted a lease for a period of 10 years, they have deposited only 1/4th of the bid amount. No further deposit has in fact, been made by them. It is further clear that the petitioners have operated the lease, at least till the date the order impugned was passed, namely, 11.12.2014. Thus even if the contention of the learned counsel for the petitioners is accepted that the lease was to be effective form the date the bid was accepted, namely, 19.07.2006 yet, after expiry of a period of almost 8 years, they have failed to deposit the balance lease rent. They have, therefore, already operated the lease for a period of much longer than the period for which the lease rent has been paid by them.

Under the circumstances, there is no equity in favour of the petitioners. The petitioners, therefore, are not entitled to claim any relief and the Gram Sabha is entitled to recover the balance lease rent from the petitioners.

Since admittedly the auction was held in the year 2001 and the lease was to be granted for a period of 10 years which period has expired long back, this writ petition is being dismissed with the observation that the respondent authorities should auction the fishery rights expeditiously, and in accordance with the Government Orders as also the decisions of this Court, in this regard. This exercise may be done as expeditiously as possible. It is further provided that proceedings for recovery of the balance lease rent from the petitioners are initiated forthwith. **Brajesh v. State of U.P., 2015(127) RD 588**

Mortgage and Sale – Distinction between.

A mortgage, therefore, is a transfer of an interest in specific immoveable property as security for the repayment of a debt but such interest itself is immoveable property. The distinction between a "mortgage" and a "sale" is apparent from the fact that in section 58 in order to create "mortgage" their should be a transfer of interest in specific immoveable property while under section 54 in order to constitute "sale" it should be transfer of ownership. **Smt. Farhat Anas v. Debt Recovery Appellate Tribunal and others, 2015(110) ALR 64.**

U.P. Agricultural Credit Act

S.11-A – Interpretation of – Arrest and detention should be automatic.

If dictum of Allahabad High Court is read with section 11-A of the Act 1973, only interpretation would be that before issuing order of arrest and detention, learned Collector must issue show-cause notice to the defaulter as to why he should not be committed to the civil imprisonment as provided under Rule 37 of Order XXI C.P.C. Having received such notice, defaulter may take all possible defences viz. Challenging the outstanding amount, taking plea of waiver of loan, limitation etc. etc.

If Collector finds that amount shown in the Recovery Certificate is due and recoverable and it is brought to the notice of the Collector that property is mortgaged with the Bank, learned Collector, first of all, should proceed to recover the amount due by selling the mortgaged property.

In my considered opinion, arrest and detention should not be automatic. Recourse to arrest and detention for recovery of amount due should be adopted when there is reasonable apprehension that meanwhile defaulter may abscond or dispose of his assets with object to make recovery difficult or impossible. Satisfaction to cause arrest and detention should be recorded in writing justifying the arrest and detention. **Niyaz Ahmad @ Nizam v. Tehsildar Kashipur and others, 2015(127) RD 44.**

S.12- Scope of –Bank is authorized to auction and sell the mortgaged property.

Under Section 12-A of U.P. Agricultural Credit Act, 1973, the bank itself is authorized to auction and sale the mortgage property. **Kapil Deo v. D.D.C., Deoria, 2015(127) RD 430 (All.).**

U.P. Consolidation of Holdings Act

S.21 – Spot Inspection at time of disposal of chak – object and appeal – Object behind, explained.

So far as spot inspection is concerned, the procedure for disposal of chak objection has been provided under Section 21 of the Act. Section 21 (3) of the Act, provides that the Consolidation Officer shall, before deciding the objections and the Settlement Officer Consolidation, may before deciding an appeal, make local inspection of the plots in dispute after notice to the parties

concerned and the Consolidation Committee. Object of spot inspection has not been mentioned under this Section. By necessary implication, the object of spot inspection at the time of disposal of chak objection and appeal may be that Consolidation Officer and Settlement Officer Consolidation may ensure that principles contained under Section 19 (1) (e), (f) and (g) of the Act have been followed, in preparation of Provisional Consolidation Scheme. The dispute based on location, level, quality of the plots, proximity of the plots from source of irrigation and other improvement can more appropriately decided after local inspection. By using word "shall" in Section 21 (3) of the Act, it has been made mandatory for the Consolidation Officer, to make spot inspection who is original authority in the process of disposal of chak dispute but in the same Section by using word "may" it was directory and left at the discretion of Settlement Officer Consolidation to make spot inspection. The discretion has to be exercise in the circumstances and the nature of controversy raised in appeal. By virtue of Section 44-A of the Act, the power can be exercised by Deputy Director of Consolidation also at his discretion in the circumstances and the nature of controversy raised before him. Thus spot inspection is not mandatory for Settlement Officer Consolidation and Deputy Director of Consolidation. Simply for the reason that Consolidation Officer, who in every cases of chak objection is required to make spot inspection, it cannot be said that Settlement Officer Consolidation and Deputy Director of Consolidation are also required to make spot inspection before reversing his order. **Siya Devi v. D.D.C. Kaushambi, 2015(127) RD 341**

S.48 – Scope of – Collector is also the Dy. Director of consolidation is authorised to correct any wrong entry continued in the consolidation record in exercise of powers U/s. 48 of above Act.

In the consolidation proceedings, the Collector is also the District Deputy Director of Consolidation under the U.P. Consolidation of Holdings Act and is authorised to correct any wrong entry continued in the consolidation record in that capacity in the exercise of power under section 48 of the U.P. Consolidation of Holdings Act. **Amrawati v. Dy. Director of consolidation, Sonbhadraand others, 2015(127) RD 53.**

S.48 – Scope of – once record of the court below has been summoned then irrespective of the fact that delay in filing the revision was not liable to be

condoned, Revision court can decide the revision on merit by exercising his suo motu powers.

The first point raised by the counsel for the petitioners that without condoning the delay the revision was allowed by Deputy Director of Consolidation, is concerned, the Deputy Director of Consolidation has proceeded that revision was within time . In any case Full Bench of this Court in Rama Kant Singh v. Deputy Director of Consolidation, AIR 1975 Alld. 126 (FB) has held that once the record has been summoned by the Deputy Director of Consolidation then irrespective of the fact that delay was not liable to be condoned, he can decide the revision on merit by exercising his suo moto powers under Section 48 of UP Consolidation of Holdings Act. Thus the main ground turns on the question as to whether the record was summoned by the Deputy Director of Consolidation or not. As the counsel for the respondents conceded this point as such this Court also accept the version of the petitioners that lower court's record was not summoned. In such circumstances, the Deputy Director of Consolidation was not justified in exercising his jurisdiction under Section 48 of UP Consolidation of Holdings Act as for exercising the jurisdiction under Section 48 of UP Consolidation of Holdings Act it was necessary to examine the records. **Smt. Sharda Devi v. Dy Director of Consolidation, Jaunpur, 2015(127) RD 337**

S. 48 person not the necessary party – Non-impleadment of proforma party does not affect the jurisdiction of Dy. Director consolidation in allowing the revision u/s. 48.

So far as the argument that Smt. Atari was not impleaded as opposite party in the revision is concerned, the restoration application was filed by petitioners-1 to 3 alone, which was allowed by the Consolidation Officer by order dated 22.5.2014. The order dated 22.5.2014 was challenged in the revision as such the applicants of the restoration application along ever impleaded as opposite parties in the revision. In such circumstances Smt. Atari was not the necessary party. Non-impleadment of proforma party does not affect the jurisdiction of the Deputy Director of Consolidation in allowing the revision. On this ground the order is not liable to be set aside. **Ajaipal Sharma and others v. Dy. Director of Consolidation, G.B. Nagar and others, 2015(127) RD 51.**

S.48- Scope of – Revisional Court has very wide power under Sec. 48 while deciding the revision.

This writ petition has been filed against the order of Deputy Director of Consolidation dated 23.12.1999, allowing the revision of Jokhu (now represented by respondents-2 to 4), setting aside the orders of Consolidation Officer dated 01.05.1989 and Settlement Officer Consolidation dated 22.02.1993 and directing to record the names of respondents-2 to 4, over plots 1043 (area 0.70 acre) (on the basis of sale deed dated 23.03.1974), 1047 (area 0.60 acre) (on the basis of sale deed dated 27.09.1974), 1043 (area 0.70 acre), 1047 (area 1.16 acre), 1078-Ka (area 0.44 acre), 1078-Kha (area 0.42 acre) and 1229 (area 1.15 acre) (on the basis of auction sale dated 14.01.1976/08.12.1980) of village Bhaisaha, pargana Shahjahanpur, district Deoria, in title proceedings under U.P. Consolidation of Holdings Act, 1953

The counsel for the petitioner submitted that Sukhai denied mortgage of the land in dispute in favour of U.P. Co-operative Land Development Bank, Deoria and taking loan. He also denied execution of sale deeds dated 23.03.1974, 27.09.1974 and auction sale dated 14.01.1976/08.12.1980. Burden of proof was upon Jokhu to prove due execution of mortgage, sale deeds and auction sale. Jokhu did not examine marginal witnesses of mortgage, sale deeds and auction sale to prove due execution of these documents as required under the law. Admittedly the village was placed under consolidation operation by notification dated 01.06.1974. As such for selling the land in dispute, prior permission of Settlement Officer Consolidation was required under Section 5 (1) (c) (ii) of the Act. No permission was obtained as such sale deed was void under Section 45-A of the Act. Consolidation Officer and Settlement Officer Consolidation held that in absence of requisite permission, the sale deeds were void. The original objection was filed on the basis of auction dated 14.01.1976, in respect of plot 1047 (area 3.56 acre). The amendment application filed by Jokhu for amending objection and substituting plots 1043 (area 0.70 acre), 1047 (area 1.16 acre), 1078-Ka (area 0.44 acre), 1078-Kha (area 0.42 acre) and 1229 (area 1.15 acre) in place of plot 1047 (area 3.56 acre), was rejected by Consolidation Officer, by order dated 20.10.1982. This order was not challenged by Jokhu. Issues were framed in respect of plot 1047 (area 3.56 acre) and orders of Consolidation Officer and Settlement Officer Consolidation

were passed in respect of that plot. However, Deputy Director of Consolidation has allowed the revision in respect of plots for which amendment application had already been rejected. Order of Deputy Director of Consolidation is illegal and liable to be set aside.

Deputy Director of Consolidation has very wide powers under Section 48 of the Act, while deciding the revision as such he has not committed any error in allowing the revision in respect of plots for which amendment application was rejected, on the basis of evidence on record. . **Kapil Deo v. D.D.C., Deoria, 2015(127) RD 430 (All.).**

S.48(1) – Scope of – Before passing the order under the provisions opportunity of heareing is must.

From the perusal of the contents of para 5 of the writ petition, it transpires that the impugned order has been passed without affording an opportunity of hearing to the petitioner. This fact has not been controverted by filing counter-affidavit; meaning thereby, narration of fact is correct and the impugned order has been passed ignoring the provisions contained under sub-section (1) of section 48 of the U.P. Consolidation of Holdings Act, 1953, which requires that before passing the order under the aforesaid section, opportunity of hearing is must. Further, it suffers from breach of principles of natural justice, which has resulted in serious prejudice to the petitioner. Such type of order cannot be sustained in the eye of law in view of the law laid down by Apex Court.

Furthermore, the order impugned has been passed in terms of compromise of which the petitioner was not party, meaning thereby, it is an outcome of the collusive exercise, which amounts to fraud. It is well settled that fraud vitiates even the very solemn proceeding.

In my considered opinion, the learned Deputy Director of Consolidation has failed to exercise the power vested in him and made the decision making process defective contrary to the statutory provisions. In the result,the writ petition succeeds and is allowed. The impugned orderdated 25.4.1992 passed by the Deputy Director of Consolidation, Jalaun is hereby quashed. **Daulat v. D.D.C. and others, 2015(127) RD 304.**

S.49 – Injunction suit based upon sale deed – Against appellant –

Defendant, a recorded tenure holder on basis of another sale deed – Maintainability of – Civil courts have no jurisdiction in such case and such suit should have been filed before Revenue Court.

Once defendant was a recorded tenure holder, his rights and status as recorded tenure holders could not have been affected by Civil Court in an injunction suit in which is became necessary to consider correctness of revenue entries. In such a case, a suit should have been filed before Revenue Court. The Civil Court in such case would have no jurisdiction. The aforesaid judgment of Apex Court in Azhar Hasan and others v. District Judge (supra) has made it very clear and this is evident from following:-

"The instant suit was filed by the plaintiff-appellants claiming that the revenue records were wrong and that on the abandonment of tenancy of tenants, possession ought not to have been recorded in favour of those persons and, as a corollary, the sale deed executed in favour of the last mentioned persons was illegal and based on fraud. The Courts below have taken the view that who should have been recorded in possession of the land in dispute, was matter for the Revenue authorities to determine, and thus the civil court had no jurisdiction in the matter. The plaint accordingly was ordered to be returned to the plaintiffsw to be filed before an appropriate Revenue Court. The appeal of the plaintiff in the first Appellate Court was dismissed. Instead of filing a second appeal, they moved the High Court by way of a writ petition which, too, was dismissed.

On reading the plaint and on understanding the controversy, we get to the view that whether those persons who succeeded the recorded tenants, were rightly recorded as tenants or not, was a question determinable by the Revenue authorities. Besides that, the sale deed which has been questioned on the basis of fraud, was not executed by the plaintiffs but by others, and they were not parties thereto so as to allege the incidence of fraud. In these circumstances, we are of the view that the plaint was rightly returned to the plaintiff."

In the present case also, the sale-deed executed by Ram Badan in 1985 could not have been ignored by declarating illegal since neither Ram Badan was a party nor Vijay Shankar, Jai Prakash and Ram Dei were party in the suit though the documents were executed by them. Accordingly, I answer all the

three question in favour of defendant-appellant and against plaintiffs. **Kamla v. Smt. Gulabi Devi and another, 2015(127) RD 110.**

U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986

Sections 15(2), 16(2), (3)(a) and 17 (3) (b) - Attachment of property and release a truck - District Magistrate under obligation to have referred the matter with his report to the Court having jurisdiction as per section 16(1) for release of such property.

Section 18 of U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986 - Power of confiscation positively imperious. There is a constitutional mandate under Article 300-A that no person should be deprived of property save by authority of law - Provision for appeal against an order of confiscation necessary - Section 18 does not give restrictive meaning to the right of appeal against judgment or order under the Ac t-This includes right of an appeal against an order refusing to release attachment under section 17 of the Act would be maintainable under section 18 thereof.

U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986 - Sections 15 and 16 – Reference - District Magistrate refused to release truck of the petitioner. It was held that the District Magistrate was under obligation to refer the matter with his report to the Court having jurisdiction as per section 16 (1) for release of the truck - District Magistrate directed to proceed to refer the matter to the Court concerned. **Jangali Pasi v. State of U.P., 2015 (89) ACC 911 (HC)**

U.P. Kshethra Panchayats and Zila Panchayats Act

S.15 – Motion of no confidence against Pramukh – Exercise of discretion by the District Magistrate or competent authority – Scope of – Collector not vested with power of a Civil Court for summoning and enforcing attendance of the witnesses and for making detailed factual enquiry.

In this matter court has come to the conclusion that there a notice is delivered to the Collector under sub-section(2) of section 15, the Collector has

the discretion to determine whether the notice fulfills the essential requirements of a valid notice under sub-section (2). however, consistent with the stipulation of time enunciated in sub-section (3) of section 15 of convening a meeting no later than thirty days from the date of delivery of the notice and of issuing at least a fifteen days' notice to all the elected members of the Kshettra Panchayat, it is not open to the Collector to launch a detailed evidentiary enquiry into the validity of the signatures which are appended to the notice. Where a finding in regard to the validity of the signatures can only be arrived at in an enquiry on the basis of evidence adduced in the course of an evidentiary hearing at a full-fledged trial, such an enquiry would be outside the purview of section 15. The Collector does not exercise the powers of a Court upon receipt of a notice and when he transmits the notice for consideration at a meeting of the elected members of the Kshettra Panchayat. Hence, it would not be open to the Collector to resolve or enter findings of fact on seriously disputed questions such as forgery, fraud and coercion. However, consistent with the law which has been laid down by the Full Bench in Mathura Prasad Tewari's case, it is open to the Collector, having due regard to the nature and ambit of his jurisdiction under sub-section (3) to determine as to whether the requirements of a valid notice under sub-section (2) of section 15 have been fulfilled. The proceedings before the Collector under Sub-section (2) of section 15 of the Act of 1961 is more in the nature of a summary proceeding. The Collector for the purpose of section 15, does not have the trappings of a Court exercising jurisdiction on the basis of evidence adduced at a trial of a judicial proceeding. Whether in a given case, the Collector has transgressed the limits of his own jurisdiction is a matter which can be addressed in a challenge uner Article 226 of the Constitution. We clarify that we have not provided an exhaustive enumeration or list of circumstances in which the Collector can determine the validity of the notice furnished under sub-section (2) in each case and it is for the Collector in the first instance and for the Court in the exercise of its power of judicial review, if it s moved, to determine as to whether the limits on the power of the Collector have been duly observed. **Smt. Sheela Devi v. State of U.P. and others, 2015(127) RD 206.**

U.P. Land Revenue Act

S. 28 - Map correction - Even the final maps prepared duing consolidation

operation can be corrected u/s. 28 of above Act.

So far as correction of map is concerned, section 28 of U.P. Land Revenue Act, 1901 provides for correction of map. In view of section 27(2) of U.P. Consolidation of Holdings Act, 1953, even the final maps prepared during consolidation operation can also be corrected under section 28 of U.P. Land Revenue Act, 1901. **Yagya Narain Jaiswal and another v. State of U.P. and others, 2015(127) RD 200.**

U.P. Pension cases (Submission, Disposal and Avoidance of Delay) Rules

Rule 4(3)- Retrial dues- deduction of amount from.

The deduction of an amount from the retrial dues of an employee cannot be ordered unless on enquiry pecuniary loss is found to have been caused to the employer on account of misconduct of employee.

The deduction of the sums from the retiral dues of the petitioner be it Rs.13157.90/- or Rs.574.70/- in any view of the matter could not have been ordered without affording any opportunity of hearing to the petitioner. More fundamentally, the deduction itself could not have been ordered unless it was found as a fact that the pecuniary loss had been caused to the Corporation on account of the misconduct, negligence or fraud by the petitioner.

In light of the above position which emerges from the facts of this case, this Court holds that the deduction of a sum of Rs.13,157.90/- was clearly illegal and unauthorised in the eyes of law.

Accordingly, and in view of the above, the writ petition is allowed. The impugned orders dated 15/12/2005, 08/2/2006 and 15/2/2006 passed by the respondent nos. 4 and 6 are quashed. The respondents are directed to credit the amount of Rs. 13157.90/- to the pensionary account of the petitioner. On the aforesaid sum from the date it was deducted till it is credited back to the account of the Petitioner, the respondents shall also pay interest at the rate of 10%. The respondents shall also for the period 01/2/2006 up to 11/2/2008, (the period of delay in disbursal of retiral dues) pay the petitioner interest at the rate of 10 percent per annum on the sums disbursed. The above directions of this Court be complied with within 1 month of the Petitioner furnishing a certified

copy of this order before the Respondents. **Ram Swaroop Sharma v. State of U.P., 2015 (2) AWC 1885**

U.P. Recruitment of Dependants of Govt. Servants Dying in Harness Rules

Proviso to Rule 5(ii) read with Rule 8 – Compassionate appointment – Relaxation from age and time limit for making application – Formulation of principles governing compassionate appointment under Rules explained.

Compassionate appointment to dependents of employees of the State who die in harness has been the subject-matter of a considerable body of law. A Division Bench has referred the correctness of two decisions rendered by this Court on the interpretation of the provisions of the Uttar Pradesh Recruitment of Dependents of Government Servants Dying in harness Rules, 1974 for consideration by the Full Bench. The principles which emerge from the judgments of the Supreme Court provide a binding framework with which the issue of interpretation which arises in this proceeding would have to be resolved. The question of law for decision of the Full Bench is:

> (1) Whether the judgments in Subhash Yadav v. State of U.P., (2011)1 UPLBEC 494 and Vivek Yadav v. State of U.P. and others, 2010(7) ADJ 1, on the interpretation of the provisions of Rule 5(iii) and the proviso thereto read with Rule 8 of the Uttar Pradesh Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974, lay down the correct position of law?

Hon'ble Court has proceed to formulate the principles which must govern compassionate appointment in pursuance of Dying in Harness Rules:

> (i) A provision for compassionate appointment is an exception to the principles that there must be an equality of opportunity in matters of public employment. The exception to be constitutionally valid has to be carefully structured and implemented in order to confine compassionate appointment to only those situations which subserve the basic object and purpose which is sought to be achieved;
>
> (ii) There is no general or vested right to compassionate

appointment, Compassionate appointment can be claimed only where a scheme or rules provide for such appointment. Where such a provision is made in an administrative scheme or statutory rules, compassionate appointment must fall strictly within the scheme or, as the case may be, the rules;

(iii) The object and purpose of providing compassionate appointment is to enable the dependent members of the family of a deceased employee to tide over the immediate financial crisis caused by the death of the bread-earner;

(iv) In determining as to whether the family is in financial crisis, all relevant aspects must be borne in mind including the income of the family; its liabilities, the terminal benefits received by the family; the age, dependency and marital status of its members, together with the income from any other sources of employment;

(v) Where a long lapse of time has occurred since the date of death of the deceased employee, the sense of immediacy for seeking compassionate appointment would cease to exist and this would be a relevant circumstance which must weigh with the authorities in determining as to whether a csse for the grant of compassionate appointment has been made out.

(vi) Rule 5 mandates that ordinarily, an application for compassionate appointment must be made within five years of the date of death of the deceased employee. The power conferred by the first proviso is a discretion to relax the period in a case of undue hardship and for dealing with the case in a just and equitable manner;

(vii) The burden lies on the applicant, where there is a delay in making an application within the period of five years to establish a case on the basis of reasons and a justification supported by documentary and other evidence. It is for the State Government after considering all the facts to take an appropriate decision. The power to relax is in the nature of an exception and is conditioned by the existence of objective considerations to the satisfaction of the Government;

(viii) Provisions for the grant of conpassionate appointment do not

constitute a reservation of a post in favour of a member of the family of the deceased employee. Hence, there is no general right which can be asserted to the effect that a member of the family who was a minor at the time of death would be entitled to claim compassionate appointment upon attaining majority. Where the rules provide for period of time within which an application has to be made, the operation of the rule is not suspended during the minority of a member of the family.

As regards the judgment of the Division Bench in Vivek Yadav (supra), the first part of the judgment of the Division Bench in Vivek Yadav's case holds in paragraph 4 that since Rule 5 contemplates an application by a competent person, in a case where the applicant is minor, it will not be possible for a minor to make an application during the period of his minority. Therefore, considering the object of the Rules, it was held that the proviso to Rule 5 must normally be exercised in such cases. This observation, with respect, requiring that the proviso to Rule 5 must normally be exercised for the purpose of dealing with a case in a just and equitable manner would not be reflective of the correct position in law. The subsequent decision in Subhash Yadav (supra), only holds that the Government cannot dismiss an application which has been moved after five years blindfolded but has to apply its mind rationally to all the facts and circumstances of the case. In this regard, court clarify that the second proviso to Rule 5 requires and applicant, who invokes the power of dispensation or relaxation under the first proviso of the time limit of five years, to make out a case of undue hardship by elucidating, in writing, with necessary documentary evidence and proof, the reasons and justification for the delay. The Government may, in an appropriate case, when it is satisfied on the basis of the material that a case of undue hardship is made out, exercise the power which is conferred upon it under the first proviso to Rule 5 of the Rules but this power has to be exercised where a demonstrated case of undue hardship is made out to the satisfaction of the State Government. Court answer the reference accordingly in the aforesaid terms. **Shiv Kumar Dubey v. State of U.P. and others, 2015(109) ALR 542.**

U.P. Stamp (Valuation of Property) Rules

Rule 9 – Service of notice – validity of

When the legislature used the word 'notice' it must be presumed to have borne in mind that it means not only a formal intimation but also an informal one. Similarly it must be deemed to have in mind the fact that service of a notice would include constructive or informal notice. The service of notice under Rule 9 is "deemed to be duly served" upon the person if the notice is addressed and served as required under sub-rule (2)(i)(ii)(iii) of Rule 9.

In the facts of the case, the petitioner has not disputed before the Collector that he had no notice of the date of inspection, but had merely stated that the notice had not been served upon him as required under Rule 9. The plea of the petitioner becomes unsustainable once the petitioner contended of having notice of the date, though not in the form as required under Rule 9(d), further, the petitioner upon the notice/information presented himself on the date fixed at the site. Participation or non-participation of the petitioner in the inspection of the property in question is entirely a different issue. The petitioner cannot turn around to submit that the property was not inspected in his presence, when as per his own case the petitioner was present on the spot but chose to avoid the inspection of the property.

In these circumstances, the contention of the petitioner that Rules 7 and 9 (d) of the 1997 Rules were not followed becomes untenable, rather, the conduct of the petitioner, reflects, that the petitioner was trying to buy time, in order to maneuver the area under residential/commercial use. **Jalaluddin v. C.C.RA.A., U.P. at Allahabad, 2015(127) RD 610**

U.P. Urban Building (Regulation of Letting; Rent and Eviction) Act

S.21(1)(a) and 22 – Release Application – Maintainability – Release application by purchases after expiry of three years, even without serving notice is maintainable.

In case Mohd. Safiq @ Mohd. Arif and others v. Addl. District Judge, Jaunpur, 2013(100) ALR 756, in which it has been held that the release application filed after the expiry of three years from the date of purchase without serving six months notice to the tenant, was maintainable. The question of serving mandatory notice was considered by this Hon'ble Court in an other case Shiv Charan v. Smt. Kapoori Devi, 2010(81) ALR 842= 2010(2)

ARC543, in which it was held that six months notice is required to be given to the tenant only if the release application is filed before the expiry of three years from the date of purchase. If the release application is filed after the expiry of three years from the date of purchase, no notice is required to be served upon the tenant. The Hon'ble Apex Court has also considered this matter in the case of Anwar Hasan Khan v. Mohd. Safi and others, 2001(45)ALR 568= 2000(1) ARC143, in which the Hon'ble Court has held that six months notice is mandatory only when the release application is filed before the expiry of three years period from the date of purchase, but where the application is filed after the aforesaid period, no notice is required to be given.

The same views has been expressed by this Hon'ble Court in a recent decision Mahesh Chandra v. P.C. Agarwal, 2012(91)ALR 819. In this case it has been observed that if the release application is filed after the expiry of three years from the date of purchse even without serving notice to the tenant and the tenant does not take this plea in the written statement, it would be presumed that the tenant had waived the condition of serving the notice. Thus, in view of the law laid down by this Hon'ble Court as well as by the Hon'ble Apex Court, learned Appellate Court was perfectly justified in holding that since the release application was filed after a gap of three years from the date of purchase and by the earlier release application the tenant-petitioner got the information of purchase by the opposite parties-landlords, the release application was maintainable. The arguments advanced on behalf of the tenant-petitioner contrary to this finding are devoid of merit.

Having heard the learned Counsel for the parties and having considered the impugned judgment as well as material on record, I find that the learned Appellate Court was perfectly justified in reversing the findings arrived at by the prescribed authority and allowing the release application of the opposite-parties-landlords. **Mohd. Ali v. District Judge, Pratapgarh and others, 2015(110) ALR 27.**

S. 30 – Scope of – Tenant can deposit the rent in court only till the time the landlord expresses his willingness to rent.

The landlord in the present case demanded the arrears of rent by issuing a notice in year 1972 and on the Money Order being refused by the landlord in

the year 1971, the tenant deposited the rent in Court. As per the own showing of the tenant, he made an application for deposit of rent in the Court on 13.4.1972 and the rent with effect from 1.4.1971 to 31.3.1972 was deposited by him. After this deposit the tenant issued notice on 1.5.1972 which was duly served upon him and was also duly replied on 29.5.1972. Thus after receiving the notice of demand by landlord, the tenant ought to have tendered the rent to the landlord instead of depositing the same in the Court. The language on section 30 of U.P. Act No. 13 of 1972 which is being reproduced hereunder clearly indicates that the tenant can deposit the rent in Court only till the time, the landlord expresses his willingness to accept the rent. **Shishu Kumar v. Ganesh Narain and others, 2015(110) ALR 183.**

U.P.Z.A. and L.R. Act

S.10(1) and (2) – tenant of Sir – Protection – Entitlement of – A minor is entitled for the protection fo his right if he is recorded on relevant date in Khatauni.

Section 10 of U.P. Act No. 1 of 1951 deals with the tenant of seer and protection has been given under section 10(2) of the Act to following persons:-

(i) A woman;

(ii) A minor;

(iii) A lunatic;

(iv) An idiot;

(v) A person incapable of cultivation by reason of blindness or physical infirmity; or

(vi) A person in military, naval or air force of Indian Union.

Both at the commencement of tenancy and on the date of vesting.

In such circumstances, at least it is proved that respondent-2 was minor and protection under section 10(2) is fully applicable to him. Although Deputy Director of Consolidation has mentioned that protection under section 157 was available but in this case, protection under section 10(2) was available. In such circumstances section 20(1) will not apply in the matter and Deputy Director of Consolidation has rightly held that only asami right has been acquired by

the petitioners under section 21(h) of the Act. On the objection filed by respondent-2 claiming the land in dispute, the petitioners are liable to be ejected according to the provisions of section 202 of U.P. Act No. 1 of 1951.

So for as claim on the basis of long continuous possession is concerned, in view of section 133(a) read with section 202 of U.P. Act No. 1 of 1951 of the right of the petitioners will remain as asami year to year through out and on the objection filed by respondent-2 they are liable for ejectment. Therefore, no better right can be conferred only on the basis of long continuous possesion. **Naimuddin and others v. A.D.M., (City)/ D.D.C., Gorakhpur and others, 2015(127) RD 183.**

S.133(a) and 2022 Asami – Right and ejectant – clasified.

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U.P. Zila Panchayats (Settlement of Disputes Relating to Membership) Rules

Rule 4 – Nature of Mandatory, no direction is permissible – Rules do not provide that defect in presentation of the election petition can be cured subsequently.

14. In the case of Devendra Yadav v. District Election Officer/District Magistrate, Mau, 2011(9) ADJ 219, this Court considered the provision of Rule 35(2) and Rule 49 of the U.P. Kshettra Panchayat and Zila Panchayat (Election of Pramukhs and Up- Pramukhs and Settlement of Disputes) Rules,1994 and held in paragraph nos. 31, 44 and 45 as under -

> "31.The Rules provide as stated earlier for the presentation of the election petition in person challenging the election. The challenge to the election which is an outcome of a democratic process is a serious matter affecting the democratic rights of the people. It is for this reason, it has

time and again been emphasised that the provisions prescribing the procedure for questioning the result of the democratic process must be strictly construed. The object of providing that the election petition must be presented in person is to ensure that the person presenting it is the same person and that he is very much in existence and further that the petition so presented by him is neither frivolous nor vexatious.

44. In view of the above and the object behind the mandatory provision of Rule 35 (2) of the Rules to check that the election petition is not presented by an impostor but a genuine person who is alive and that it is not frivolous or vexatious, I am of the opinion that irrespective of the fact that the Rules are silent as to the consequence of not presenting the election petition in the manner prescribed, the court has power to dismiss it as not maintainable without compelling the parties to to through the cumbersome process of trial. In such a situation, the court below has not erred in applying the ratio of G.V. Sreerama Reddy (Supra) and in the dismissing the election petition as not maintainable on the ground it was not presented by the appellant in person or by his counsel in his presence.

45. To conclude the election petition filed on behalf of the appellant was not validly presented as contemplated by Rule 35 (2) of the Rules and was liable to be dismissed on that ground without undergoing the complete process of trial."

Rule 4 of the rule is mandatory in nature and no deviation of the same is permissible. The rules do not provide that defect in presentation of the election petition can be cured subsequently. **Smt. Sangeeta Gupta v. Khalid Khan, 2015 (127) RD 457 (All.)**

Words and Phrases

Term "jurisdiction – used in variety of senses – Draws colour from the context – Essentially jurisdiction is an authority to decide a given cases are way or the other.

The term 'jurisdiction' is a term of art; it is an expression used in a

variety of senses and draws colour from its context. Therefore, to confine the term 'jurisdiction' to its conventional and narrow meaning would be contrary to the well settled interpretation of the term. The expression 'jurisdiction', as stated in Halsbury's Laws of England, Volume 10, paragraph 314, is as follows:

> "314. Meaning of 'jurisdiction'.-By 'jurisdiction' is meant the authority which a Court has to decide matters that are litigated before it or to take cognizance of matters 'presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter or commission under which the Court is constituted, and may be extended or restricted by similar means.

If no restriction or liinit is imposed the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the claims and matters of which the particular Court has cognisance, or as to the area over which he jurisdiction extends, or it may partake of both these characteristics."

It is well settled that essentially the jurisdiction is an authority to decide a given case one way or the other. Further, even though no party has raised objection with regard to jurisdiction of the Court, the Court has power to determine its own jurisdiction. In other words, in a case where the Court has no jurisdiction; it cannot confer upon it by consent or waiver of the parites. **Foreshore Co-operative Housing Society Limited v. Parveen D. Desai (Dead) Thr. L.Rs. And others, 2015(110) ALR 249.**

"Rent" - Forms consideration for the transfer of rights to enquiry the property.

The word 'rent' has not been defined under the Rent Act. Therefore, it has to be taken in its ordinary sense and as defined under section 105 of the Transfer of Property Act, 1882. Section 105 of the Transfer of Property Act, 1882 while defining lease states that the money, share of crops, service of any other thing of value rendered periodically or on specified occasions to the transferor by the transferee in consideration for transfer to enjoy the property is the 'rent'. Thus, the rent forms consideration for the transfer of rights to enjoy the property. Therefore, to determine rent one must examine what constitutes

the consideration for right to enjoy the property of the landlord. **Smt. Savitri Devi Didwania (Dead) Through L.Rs.v. M/s. Allied Pharmaceutical and others, 2015(127) RD 67.**

Legal Quiz

Q. 1 Whether an ex-parte temporary injunction which has already discontinued for want of extension, can be extended?

Ans. No, an interlocutory order which has already discontinued, cannot be extended. See-

Ashok Kumar v. State of Haryana AIR 2007 SC 1411.

Q.2 What is the extent of powers of civil court u/s 152 CPC ? whether a new relief, not already granted in the decree, can be added or granted by court u/s 152 CPC?

Ans. A new relief cannot be granted by court u/s 152 CPC. For reply to the entire query please see-

(i) **State of Punjab v. Darshan Singh (2004) 1 SCC 328**
(ii) **Bijay Kr. Sarogi v. State of Jharkhand (2005) 3 SCJ 796**

Q.3 Whether W.S. can be taken on record beyond the period of 90 days as provided u/o 8 r. 1 CPC ? what are supreme court rulings on the subject?

Ans. Regarding above query go through the following cases-

(i) **Kailash v. Nanku (2005) 4 SCC 480**
(ii) **Salem Advocate Bar Association v. Union of India (2005) 6 SCC 344**
(iii) **Zolba v. Keshav, 2008 Supreme 787 (SC)**
(iv) **R.N. Zaidi v. Subhash Chandra, (2007) 6 SCC 420**

Q.4 What are the options of a magistrate in a complaint case when the complainant does not turn up after summoning of the accused?

Ans. Regarding above query go through the following cases-

(i) S. 249, 256 Cr.PC

(ii) Bala Sahab K. Thakeray v. Venkat alias Babru (2006 (65) ACC 1016 (SC)

(iii) (Smt.) Saroj Gupta v. State of U.P. 2006 (54) ACC 431 (All)

Q.5 Whether awarding of sentence of imprisonment and/or fine is Must before granting benefit of probation to a convict?

Ans. No, order of Sentence and benefit of "Probation" cannot run together. Fine and sentence in lieu of fine can also be awarded for extending benefit of probation. See-

(i) State of U.P. v. Dev Dutt Sharma 1984 ALJ 1229 (All-D.B)

(ii) Shiv Singh v. State of U.P. 1989 ALJ 515 (All)

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