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

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FROM THE CHAIRMAN'S DESK

By : **Justice S.U. Khan**[1]

On 24.03.2015, Supreme Court delivered a judgment in *Writ Petition (Criminal) No.* 167 *of 2012, Shreya Singhal v. Union of India,* connected with several other writ petitions, (reported in 2015(2) Supreme 513) declaring Section 66A of Information Technology Act 2000 as *ultra vires* and struck that down being violative of fundamental right of 'freedom of speech and expression'. Under the said section added in 2009 three years imprisonment was prescribed for three things main of which was (a) sending by means of a computer resource or a communication device any information that is grossly offensive or has menacing character. The Supreme Court also held that the provision was too ambiguous, prone to misuse and was in fact being misused. It was very strange that the same thing if said in a speech, on television or in print media could not be a crime but under section 66-A it could be.

On 07.04.2015 the Supreme Court sought the Government's stand on deleting defamation from the category of punishable crimes under Indian Penal Code on the ground of being violative of fundamental right of freedom of speech and expression as reported in the News Papers of the next day.

On 16th March, 2015, Supreme Court struck down inclusion of Jat caste in the list of OBCs (Other Backward Classes). (Ram Singh & ors v. Union of India, 2015 (2) Supreme 321) The letter 'C' in OBC stands for

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class and not caste, even though caste is the most important determinative factor for backwardness social, educational and economic. Since *Indira Sawhey's* case of 1992 (AIR 1993 SC 477) upholding the reservation till the case in hand Supreme Court is constantly urging that creamy layer of the castes included in the list of OBC must be identified and excluded from the reservation benefit. It is pure common sense and simple logic that in case reservations work then some communities after reaping benefit thereof must come out of their backwardness. If the quota system, does not work then there is no need to continue with it and if it works then gradually more and more communities must be brought out of it. Since 1990 when reservation for OBC was provided by accepting the recommendations of the Mandal Commission, not a single caste has been taken out of the list of OBCs.

Jats are protesting against the judgment of the Supreme Court. Gujars who are included in OBC violently protested in 2007 for their inclusion In Scheduled Tribes. If something is desirable, coveted and aggressively demanded then it cannot be termed as backwardness.

The judgment of the Supreme Court has reopened the debate on the genesis of reservation, its purpose and working. The opportunity must be seized to reconsider the principle of not counting a selected candidate of a reserved caste / class in the quota fixed therefor, if he obtained more marks than the last general category selected candidate. Counting such selectee in the reserved quota will recognize the position that reservation worked and uplifted the caste concerned warranting proportionate reduction in the reserved quota. (After all, the ultimate goal of reservation is to uplift the reserved group.) The other course would be to directly delete that caste from OBC or S.C. sufficient members of which qualify along with the general candidates and reduce the quota proportionately. But

the last course requires lot of courage.

In Tamil Nadu, a unique phenomenon is taking place. The Madras High Court Bar Association is on strike for a long period against the names of the advocates for being appointed as the Judges of the High Court, sent by the collegium, on the ground that the list does not contain sufficient representation of OBC, Most Backward Classes, Schedule Castes and Schedule Tribes while according to an article by a retired Judge of Madras High Court published in the Hindu on 16.3.2015, number of OBC, Scheduled Castes and Scheduled Tribes Judges in the High Court is already more than eighty percent. Going on strike against the names of the advocates put forth for appointment as High Court Judges on the ground that it does not balance the caste equation, is unheard of in other states.

Historical wrongs are to be recognized and corrected. Those who ignore or forget history are condemned to repeat it. However, no society can afford to remain shrouded in history at the cost of present and future.

On 16.02.2015, in Muzaffar Nagar District and sessions Court a juvenile shot dead an accused in a court room where evidence in the case in which deceased was accused was going on and thereafter the juvenile surrendered. The juvenile had murdered another person a couple of years before. In another incident reported in Time of India dated 26.3.2015 (Lucknow Edition) a 21 year old man in Gurgaon shot dead one of his friends. The killer had in 2007 also when he was 14 years of age shot dead one of his class mates and was awarded sentence of one year in correction home. These incidents once again bring in focus the debate as to whether juvenile criminals must or must not be given the normal punishment. If a

person is old enough to commit cold blooded heinous crime then why he shall not be treated to be old enough to undergo the punishment prescribed for such crime. Supreme Court also on 06.04.2015 (as reported in the Newspapers of 07.04.2015) requested the Parliament to have a rethink on the matter. However, on 07.04.2015, in the Union Cabinet's meeting the Prime Minister said that since the matter was sensitive, it should be taken up only when a group of senior ministers, after thorough study, submitted its report. However, as reported in the News Papers of 23.4.2015 Union Cabinet on 22.4.2015 recommended changes in Juvenile Justice act for trying Juveniles of 16-18 years accused of heinous crimes as adults.

On 5.3.2015, a mob of several thousand people attacked central jail in Dimapur Nagaland, took out an under trial prisoner who was accused of rape, paraded him naked, tortured and killed him. Various angles to the alleged incident are being put forward, one of which is undue delay in conclusion of the trial and loss of patience of the public due to that. However, as pointed out in the editorial of the Hindu dated 9.3.2015 the incident in question was not a case of delayed justice as the alleged incident was only a few days old and the accused had been arrested within 24 hours of lodging of FIR. In the said editorial it has also been said that such lawlessness does not mean that potential rapists and other criminals would be deterred but on the contrary the incident may unleash the lawlessness to such an extent that it may result in increase of crimes, including those against women.

A documentary by the name of India's Daughter, prepared by Leslee Udwin, on the gang rape case which shook the entire country in December, 2012, was banned by the Government. However, in this advanced

age of internet such bans are meaningless. Ban on any film or documentary only creates curiosity and draws people more and more towards it for watching. Accordingly, the moment, ban was imposed people rushed to different forms of internet like YouTube etc. to watch the documentary. Several people have raised their voices against the documentary on the ground that it may amount to contempt of court as appeal against the conviction is pending and the mind of the judge hearing the appeal may be influenced. According to most of the critics the most objectionable thing in the documentary is the statement of the convict and his counsel showing no remorse for the crime. This tendency is neither typical of rapists nor of Indian criminals. Most of the criminals, throughout the world, do not show much remorse on their crimes except perhaps on the eve of hanging. Most of the criminals, in their minds, have got some justification or, at least, some explanation for their crimes. As far as advocates are concerned consciously or unconsciously they identify themselves with the cause of their clients.

On 21.03.2015, a judge of Delhi Sessions Court acquitted all the 19 *V.P.* P.A.C. personnel who had been accused of picking up 42 Muslims during curfew from Hashimpura, a town in District Meerut, in the year 1987, killing them in cold blood and throwing their bodies in the river. Arrest took place in 2000. The case was transferred to a Delhi Court in 2002. Charge sheet was filed in 2006. According to the editorial of the Hindu dated 24.3.2015 "this travesty of justice to the victims of massacre is not surprising considering the shoddiness in the much delayed probe into it ..... various police records, details related to the arms and ammunitions used against the victims, logs, were all reported to have been missing after all these years since the incident. With such a botched up investigation by the police and a series of apathetic governments in UP

regardless of political affiliations doing little to secure a case for the victims, the present outcome must surely be a blot on the Indian judicial process."

Almost all the ordinances which had been promulgated before the current Budget Session of the Parliament have been made into Acts except Land Acquisition Ordinance. A fresh amended ordinance in this regard has been promulgated on 03.04.2015 (The Right to Fair Compensation and Transparency in Land acquisition Rehabilitation and Resettlement (Amendment) ordinance 2015; No. 4 of 2015) However, it has been challenged in the Supreme Court on the ground that Parliament being in session notwithstanding the artificial break, in the form of proroguing of Rajya Sabha, ordinance could not be promulgated.

On 23.03.2015, some lawyers in Allahabad High Court shouted slogans asking the courts to retire as they were on strike and also entered various court rooms creating similar scenes and some Courtrooms were locked from outside. Accordingly, a Full Bench of 7 senior most Judges of the High Court headed by the Chief Justice was formed to look into the matter. The case was registered as *PIL No.* 15895 *of 2015 In Re v. Zila Adhivakta Sangh Allahabad.* The Bench took serious note of the matter and asked for the comments from Bar Associations of Allahabad High Court as well as its Lucknow Bench and all District Courts, Principal Secretary (Homes), Chief Secretary and Director General of Police have also been issued notice. District Judges have been directed to submit weekly reports about any untoward incident. The Bench is to assembly every fortnight to monitor the situation. The 14 directions issued by the said order are quoted below:-

(i) In order to prevent the entry of unauthorized

persons to court premises in the garb of advocates, a roll of advocates in the District Courts should immediately be prepared. Advocates must be given Biometric cards;

(ii) A similar roll of Clerks of Advocates should be also prepared and they should also be given Biometric cards. Advocate Clerks shall wear a black coat in the court campus without which they shall not be allowed to enter the premises;

(iii) For the purpose of entry of litigants, on the letters / identification of Advocates on Roll, appearing in concerned case, entry passes may be issued;

(iv) With regard to Government Officials, entry passes should be issued on similar letters/ identification by Government Counsel practicing in the District Courts;

(v) For Government Officials/ employees who regularly come to the Court, monthly passes may be issued, on the recommendation of the District Magistrate / Senior Superintendent of Police or the District Government Counsel, Civil or Criminal, as the case may be;

(vi) The employees of Courts should also be issued Biometric cards;

(vii) The entry in Court campuses should be regulated for the litigants, Advocates and others from one or two gates, under close scrutiny by security officials posted there, who shall be responsible for checking of identification cards or entry passes and frisking of suspicious persons;

(viii) The District Judge should be empowered to take appropriate action against any person who unauthorizedly enters the premises. He should also be authorized specifically to check and prevent entry of any person causing nuisance or disturbance in the courts or campus;

(ix) In some district Judgeships, for facilitating regular functioning of Advocates, canteens/ cafeterias, photostat machine shops etc. have been allowed to operate. Their employees should also be issued similar entry passes by District Judges;

(x) No person, except security personnel deputed for
safety of Court premises/Judicial Officers, should be allowed to carry any weapon or other dangerous instrument, which may cause serious harm to anyone present in the Court campus. This should strictly be prohibited;

(On 07.04.2015, the next date fixed, the Principal Secretary (Homes) informed the Bench that instructions had been issued to the effect that no one except security personnel would be allowed to carry firearms within any Court premises in D.P.).

(xi) Provisions of imposing fine, if anyone violates regulatory measures, are also required to be made. District Judges should be authorized to control entry of anyone in the court campus and to check and restrict entry of any unwarranted persons or antisocial elements who are likely to create nuisance in the Court campus, for such period with certain other conditions as he may deem fit and proper;

(xii) In many of the District Courts, boundary walls are broken or are of inadequate height. Barbed wire fencing is not installed and in many places boundary walls are damaged, permitting unauthorized entry. These boundary walls should immediately be directed to be repaired/ constructed and barbed wire should also be placed wherever it is absent;

(xiii) In the campus as also in the corridors of District

Courts, appropriate numbers of CCTV cameras be installed, under close monitoring by expert police officials; and

(xiv) Scanners and metal detectors should also be installed.

It is reported that even though the President and Secretary of Allahabad High Court Bar Association had refused to call meeting for giving a fresh call of strike, still some advocates most of whom had come from Allahabad District Court, (as is evident from the name of respondent in the PIL) decided that there must be fresh strike in the High Court in support of the lawyers of Allahabad District Court who were on strike due to killing of one of their colleagues by a police man in the Court premises.

Unless a strong stand coupled with tact is taken the menace of strike will go on increasing.

The Supreme Court, on 11.03.2015, delivered judgment in *Union of India v. Shri Kant Sharma and others, 2015 (2) Supreme 423*,holding that no writ petition in the High Court is maintainable against orders/ judgments of Armed Forces Tribunal (AFT) and the only remedy of aggrieved person is to prefer appeal before Supreme Court under Sections 30 and 31 of Armed Forces

Tribunal Act, 2007. Allahabad and Andhra Pradesh High Courts had also taken similar views. However, Delhi High Court had taken contrary view which was overruled by the Supreme Court.

On 07.04.2015, three judge bench of Supreme Court referred the matter challenging validity of National Judicial Appointments Commission Act (NJAC Act) and the relevant Constitutional amendment to Constitution Bench (of five or more Judges). However, it refused to restrain the Government to act in furtherance of the Act. The Constitution (99th Amendment) Act and NJAC Act were thereafter notified by the Government on 13.4.2015. It is reported in Indian Express dated 15.4.2015 that due to enforcement of both the Acts Government puts posting/ appointment of 125 High Court Judges on hold. These may include about 30 names cleared and forwarded by Allahabad High Court Collegium in the end of February, 2015 for appointment as High Court Judges. Subsequently also the Government clarified that Collegium system had come to an end after enforcement of NJAC Act.

Chief Justice of India constituted/ reconstituted a five Judges Bench which is to start hearing the arguments from 27.04.2015. In an unprecedented move 15 day time limit has been fixed for conclusion of arguments of all the counsel as reported in Newspaper on 23.04.2015. On 23.04.2015, the Attorney General assured the Bench that until decision no fresh appointment would be made.

On 27.04.2015, Chief Justice of India declined to participate in the meeting of the Committee (consisting of Prime Minister, Chief Justice of India and leaders of largest opposition party in Lock Sabha) to select two eminent persons to be members of the six member N.J.A.C. and indicated that in his opinion until decision of the Supreme Court on the validity of the NJAC Act

and 99th Constitution Amendment it would not be appropriate to select the two eminent person members. According to some informed quarters it is avoidable standoff between Judiciary and Legislature. Times of India, in its editorial dated 29.04.2015 (Lucknow Edition) has captioned it as avoidable faceoff. Above the editorial under 'A thought of today' James Madison the premier American Constitutional expert has been quoted, "The meaning of the Constitution may as well be ascertained by the Legislature as by the Judicial authority." On 28.04.2015, the Attorney General requested the 5 Judges Bench hearing the matter to refer the case to a Bench of 11 Judges as correctness of the 1993 judgment in the second Judges case by 9 Judges Bench may require reconsideration.

In order to mitigate the hardship of the complainants filing cases under section 138 Negotiable Instrument Act (dishonor of cheque) caused due to judgment of the Supreme Court reported in *Dashrath R. Rathod, AIR 2014 SC 3519* the Union Cabinet on 22.04.2015 cleared amendment in the Act as reported in the Newspapers dated 23.04.2015. The Supreme Court had held that complaint could be filed only at the place where the branch of the bank on which the cheque was drawn was situate. Through the proposed amendment the case may be instituted at the place where the person in whose favour cheque was drawn is based.

Recently, National Green Tribunal (NGT) prohibited plying of more than 10 years old diesel vehicles and more than 15 years old petrol vehicles in Delhi and adjoining areas collectively known as National Capital Region (NCR). Supreme Court refused to stay the operation of the order. The Government may approach NGT to soften the rigour of its order as in the opinion of the Government it will have immense adverse effect upon development, inconvenience to general public and financial loss to the pliers of the old vehicles and their families.

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NOTE:

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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26. Mahadev and Ors. v. Dy. Director of Consolidation/A.C., Land Revenue and Ors. 2015 126 RD 484
27. Md. Afzal Hussain v. Coal India Limited and others, 2015(1) ESC 66(Cal.)
28. Mohd. Saeed v. Munna Khan (D) through his L.R. and others, 2015(1) AWC 568 (LB)
29. Mr. M.T. James v. Mr. P.M. Baburajan, Managing Director, 2015 (1) CPR 492
30. Munna Khan v. Devi Prasad Bajpai, 2015(1) AWC 299(All.)
31. New India Assurance Co. Ltd., Through its Divisional Manager & Anr. v. Nanak Singla & Ors., 2015(1) CPR 421(NC)
32. Oshiar Prasad and others v. Employers in Relation to Management of Sudamdih Coal Washery of M/s. BCCL, Dhanbad, 2015(144) FLR 830 (Jhar)
33. P. Eshanna v. State of Karnataka, 2015 (1) SLR 295 (Kar.)
34. Paresh B. Chauhan v. Union of India, 2015 (2) SLR 355 (Guj.)
35. Prakash Chand Srivastav v. State of U.P., 2015 (2) SLR 306 (All.)
36. Pravendra Pratap Singh v. State of U.P. and others, 2014(6) AWC 6512 (All.)
37. Raj Kumar alias Bhillar v. State of U.P., 2015(88) ACC 854(H.C.)
38. Raj Bahadur Ors. v. Civil Judge (J.D.) Musafirkhana Sultanpur and Ors., 2014(11)ADJ219, 2015(1) ALJ 554., 2015 (108) ALR 345, 2015 126 RD780
39. Ram Kishore v. Additional Session Judge 2015 (108) ALR 150, 2015 126 RD626
40. Shashikala Devi v. Central Bank of India and others, 2015(144) FLR 820 (Del.)
41. Shyam Lal v. U.O.I., 2015 (1) SLR 693 (Raj.)
42. Sikta Mahoogarh Sadhan Sahkari Samiti Ltd. v. Prescribed Authority (Payment of wages Act) and others, 2015(144) FLR 23 (All.)
43. Smt. Maino Mejhian v. Eastern Coalfields Ltd., 2015 (144) FLR 284 (Cal. H.C.)
44. Smt. Mithilesh Kumari v. U.P. State Road Transport Corporation, Moradabad and another, 2015(144) FLR 21 (All.)

45. Smt. Urmila Chandrakant Gaikwad v. Chairman and Managing Director, Bank of Baroda and others, 2015(144) FLR 860 (Guj.)
46. Smt. Usha Rai v. State Bank of India and another, 2014(6) AWC 6424 (All.)
47. State of Haryana and others v. Vinod Oil and General Mills and another, 2014(6) AWC 6466 (Punjab & Haryana)
48. State of Orissa and others v. Balabhadra Jal, 2015 (144) FLR 962 (Ori)
49. State of U.P. v. I. Hussain, 2015 (1) SLR 220 (All.)
50. Sudarshan Rajpoot v. U.P. State Road Transport Corporation, 2015(144) FLR 7(All.)
51. Suraj Kumar (Suraj Chaprasi as alleged in F.I.R.) v. Senior Superintendent of Police, Lucknow and others, 2015(88) ACC 89 (H.C.)
52. Union Bank of India v. Ram Mohan, 2015 (144) FLR 371 (Ker. HC)
53. Veer Singh v. Presiding Officer, Labour Court Dehradun and others, 2015(1) ESC 64 (Uttal)

PART – 1 (SUPREME COURT)

ADVOCATE ACT

S.24 r/w rule 1(1) Bar Council of India Rules and Sec. 22, University Grants Commission Act – Enrollment as Advocate – Rules of Bar Council of India have to be satisfied for enrollment.

Admittedly, the appellant does not possess any degree in BHMS or equivalent qualification in as much as the LCEH qualification which the appellant possesses is less than a 5 years' course without any compulsory internship. It is a qualification of Licenciate of the Court Examiners in Homoeopathy.

The relevant provisions of University Grants Commission Act, 1956 which was enacted for the coordination and determination of standards in universities. Section 22 of the said Act provides that the right of conferring or granting a degree shall be exercised only by University established or incorporated by or under a Central Act, a Provincial Act or a State Act or an institution deemed to be a University. The term degree has been defined under this Section which is quoted herein-below:-

> "22. Right to confer degree – (1) The right of conferring or granting degrees shall be exercised only by a University established or incorporated by or under a Central Act, a Provincial Act or a State Act or an Institution deemed to be University under Section 3 or an institution specially empowered by an Act of Parliament to confer or grant degrees."

Sub-section 3 of Section 22 defines the word 'degree' which means any such degree which is specified by the University Grants Commission in the official gazette with the approval of the Central Government. Learned counsel appearing for the appellant has not produced before us any such notification to show that the qualification of LCEH is a degree or equivalent to a degree duly notified by the Commission with the previous approval of the Central Government.

We, therefore, after giving our anxious consideration in the matter, are of the definite pinion that the Bar Council of the India is not bound to grant a license as claimed by the appellant. Pursuing law and practicing law are two different things. One can pursue law but for the purpose of obtaining license to practice, he or she must fulfill all the requirements and conditions prescribed by the Bar Council of India. We do not find any reason to differ with the view

taken by the High Court. **Archana Girish Sabnis v. Bar Council of India and others, 2015(1) Supreme 553 : 2013(13) SCALE 273 : AIR 2015 SC 913.**

ALL INDIA SERVICES (CONDUCT) RULES

Rules 3, 7, 8, 13 and 17 – Inquiry – Fresh inquiry – Contention that enquiry was conducted in violation of the Rules – Violation of rules will not have application to a case where delinquent employee does not dispute factual correctness of allegation contained in the articles of charge – Hence impugned order set aside

The question is whether the disciplinary authority could have resorted to such a practice of abandoning the Enquiry already undertaken and resort to appointment of a fresh Enquiring Authority (multi- member). The issue is not really whether the Enquiring Authority should be a single member or a multi member body, but whether a second inquiry such as the one under challenge is permissible. A Constitution Bench of this Court in K.R. Deb v. The Collector of Central Excise, Shillong, (1971) 2 SCC 102, examined the question in the context of Rule 15(1) of the Central Civil Services (Classification, Control and Appeal) Rules, 1957. It was a case where an enquiry was ordered against a sub-Inspector, Central Excise (the appellant before this Court). The inquiry officer held that the charge was not proved. Thereafter the disciplinary authority appointed another inquiry officer "to conduct a supplementary open inquiry". Such supplementary inquiry was conducted and a report that there was "no conclusive proof" to "establish the charge" was made. Not satisfied, the disciplinary authority thought it fit that "another inquiry officer should be appointed to inquire afresh into the charge".

It can be seen from the above that the normal rule is that there can be only one Enquiry. This Court has also recognized the possibility of a further Enquiry in certain circumstances enumerated therein. The decision however makes it clear that the fact that the Report submitted by the Enquiring Authority is not acceptable to the disciplinary authority, is not a ground for completely setting aside the enquiry report and ordering a second Enquiry.

The scheme of Rule 8 of the DISCIPLINE Rules and Rule 15 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 are similar. Therefore, the principle laid down in Deb's case, in our opinion, would squarely apply to the case on hand.

Therefore, it becomes necessary for us to examine the legality of the IMPUGNED order in the light of the law laid down in Deb's case i.e. whether a further enquiry is really warranted on the facts of the case. We shall proceed

for the purpose of this case that such further enquiry need not be by the same officer who initially constituted an enquiring authority and could be by a multi-member board.

It stipulates as to what should be the content of the report. From a reading of the above Rule, it is clear that the rule will have virtually no application to a case where the delinquent employee does not dispute the factual correctness of the allegations contained in the articles of charge. Therefore, it follows that this reason also is wholly untenable. 3rd Reason: Coming to the 3rd reason given in the IMPUGNED Order that the content of the Writ Petition (C) No. 37 of 2010 is critical of the Government of India, and therefore, violative of Rule 3(1), 7, 8(1) and 17 of the CONDUCT Rules, we are of the opinion that this ground is equally untenable. **Vijay Shankar Pandey v. Union of India, 2015 (1) SLR 661 (SC) : AIR 2015 SC 326 : 2014(10)SCC 509.**

ARBITRATION AND CONCILIATION ACT

Ss. 7, 11(6) – Arbitration Clause. **License agreement between allottee of land and India Trade Promotion Organization (ITPO)**

Clause in agreement of Chairman, ITPO or his nominee whose decision shall be binding on parties. It is not arbitration clause. Appointment of arbitrator by nominee of Chief Justice held, rightly set aside in the impugned judgment by the Division Bench of Delhi High Court.

In view of the aforesaid decisions and the law laid down by this Court in catena of cases referred to supra which are reiterated in the case of P. Dasaratharama Reddy (supra) we are of the view that the clause 28 in the agreement which is referred to in the case on hand is not an arbitration clause. Therefore, the appointment of an Arbitrator by the nominee of the Chief Justice has been rightly set aside in the impugned judgment by the Division Bench of the Delhi High Court. The law laid down by this Court in the above referred judgments, after interpretation of relevant arbitration clauses in the agreement in those cases, are aptly applicable to the fact situation on hand and we answer the questions of law framed by this Court against the appellant and in favour of the ITPO and Union of India.

The other proceedings involved in this case, if any, pending under the provisions of the P.P. Act before the Estate Officer, the same shall be continued by him.

Accordingly, the civil appeals are dismissed as there is no merit for consideration to interfere with the impugned judgment and order. No costs. **International Amusement Ltd. vs. India Trade Promotion Organisation, AIR 2015 SC 749.**

S.8 – Ousting jurisdiction of court – Approach of the court – court has to see whether its jurisdiction is ousted, and not whether it has jurisdiction – Court has no option but to refer the parties to arbitration if application complying with requirements.

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 statute, 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. **M/s. Sundaram Finance Limited and another v. T.Thankam, 2015(2) Supreme 66 : 2015 (2) JT 433 : AIR 2015 SC 1303.**

S. 31(7), (a), (b)- Interest - Award of - Under Cl.(b) of S. 31 (7)

Sub-section (7)(a) contemplates that an Award, inclusive of interest for the pre-award period on the entire amount directed to be paid or part thereof, may be passed. The "sum" awarded may be principal amount and such interest as the Arbitral Tribunal deems fit. If no interest is awarded, the "sum" comprises only the principal. The significant words occurring in clause (a) of sub-section (7) of Section 31 of the Act are "the sum for which the award is made." On a plain reading, this expression refers to the total amount or sum for the payment for which the Award is made. Parliament has not added a qualification like "principal" to the word "sum," and therefore, the word "sum" here simply means "a particular amount of money." In S. 31 (7), this particular amount of money may include interest from the date of cause of action to the date of the award.

Thus, sub-section (7) of Section 31 of the Act provides, firstly, vide

clause (a) that the Arbitral

Tribunal may include interest while making an award for payment of money in the sum for which the Award is made and further, vide clause (b) that the sum so directed to be made by the Award shall carry interest at a certain rate for the post award period. Thus, it is clear that the interest, the sum directed to be paid by the Arbitral Award under Cl. (b) of sub-section (7) of S. 31 of the Act is inclusive of interest pendent lite.

While enacting Section 34, CPC, Parliament conferred power on a court to order interest "on the principal sum adjudged" and not on merely the "sum" as provided in the Arbitration Act. The departure from the language of Section 34 CPC in Section 31 (7) of the Act, 1996 is significant and shows the intention of Parliament. **Hyder Consulting (UK) Ltd. vs. Governor, State of Orissa, AIR 2015 SC 856**

Ss. 34, 16 - Setting aside of award

Objection that arbitral Tribunal had no jurisdiction- Cannot be raised at time of setting aside of award objection after filing defence statement is prohibited by S. 16. Raising of such- Ground that dispute is not arbitrable which is one ground to set aside award. It not objection on jurisdiction.

Held:

S.16 clearly prohibits party from arising a plea that the tribunal does not have jurisdiction after the party has submitted its statement of defence. The intention is very clear. So is the mischief that it seeks to prevent. This provision disables a party from petitioning Tribunal to challenge its jurisdiction belatedly, having submitted to the jurisdiction for the Tribunal, filed the statement of defence, led evidence, made arguments and ultimately challenged the award under S. 34. The mandate of Section 34 clearly prohibits a party from challenging jurisdiction of Tribunal. A party is bound, by virtue of sub-section (2) of S. 16, to raise any objection it may have to the jurisdiction of the Tribunal before or at the time of submission of its statement of defence, and at any time thereafter it is expressly prohibited, Suddenly, It cannot raise the question after it has submitted to the jurisdiction of the Tribunal and invited an unfavorable award. It would be quite undesirable to allow arbitrations to proceed in the same manner as civil suits with all the well-known drawbacks of delay and endless objections even after the passing of a decree. The plea that all objections to jurisdiction cannot be raised under S.16 is not tenable. The phrases "the subject-matter of the dispute is not capable of settlement by arbitration." Use in S. 34 (2) (b) does not necessarily refer to an objection to jurisdiction' as the term is well known. In fact, it refers to a situation where

the dispute referred for arbitration, by reason of its subject-matter is not capable of settlement by arbitration at all.

Section 16(2) of the Arbitration Act, 1996 reads as follows:

> "Section 16(2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence; however, a party shall not be precluded from raising such a plea merely because that he has appointed, or participated in the appointment of, an arbitrator."

See " 34(2)

An arbitral award may be set aside by the Court only if –

(a) .....

(b) the Court finds that –

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India. It is not possible to accept this submission. In the first place, there is nothing to warrant the inference that all objections to the jurisdiction of the Tribunal cannot be raised under Section 16 and that the Tribunal does not have power to rule on its own jurisdiction. Secondly, Parliament has employed a different phraseology in Clause (b) of Section 34. That phraseology is "the subject matter of the dispute is not capable of settlement by arbitration." This phrase does not necessarily refer to an objection to 'jurisdiction' as the term is well known. In fact, it refers to a situation where the dispute referred for arbitration, by reason of its subject matter is not capable of settlement by arbitration at all. Examples of such cases have been referred to by the Supreme Court in the case of Booz Allen and Hamilton Inc. Vs. SBI Home Finance Limited and Ors. This Court observed as follows:-

" 36. The well-recognised examples of non- arbitrable disputes are: (i) disputes relating to rights and liabilities which give rise to or arise out of criminal offences; (ii) matrimonial disputes relating to divorce, judicial separation, restitution of conjugal rights, child custody; (iii) guardianship matters; (iv) insolvency and winding-up matters; (v) testamentary matters (grants of probate, letters of administration and succession certificate); and (vi) eviction or tenancy matters governed by special statutes where the tenant enjoys statutory protection against eviction and only the specified courts are conferred jurisdiction to grant eviction or decide the disputes."

The scheme of the Act is thus clear. All objections to jurisdiction of whatever nature must be taken at the stage of the submission of the statement of defence, and must be dealt with under Section 16 of the Arbitration Act, 1996. However, if one of the parties seeks to contend that the subject matter of the dispute is such as cannot be dealt with by arbitration, it may be dealt under Section 34 by the Court.

Ground that award is in conflict with public policy in India- Where the question arises out of a conflict between an action under a State Law and an action under a Central Law, the term public policy of India must necessarily be understood as being referable to the policy of the Union. **M/s MSP Infrastructure Ltd. vs. M.P. Road Devi. Corp. Ltd., AIR 2015 SC 710**

CIVIL PROCEDURE CODE

O.1, R.10(2) r/w Sec. 49, Indian Trusts Acts – Impleadment of parties – Ambit and Scope - A beneficiary of a trust is entitled to be impleaded in a suit involving alienation of Trust property.

K. Jagathees and R.Subbaram Babu @ Subbaram, Respondent Nos. 2 nd 3 respectively (original defendants in the suit) acting as trustees of "Subaiah Paniker Family Welfare Trust" entered into the agreement dated 9th December, 2003 to sell the suit property in favour of the plaintiff in O.S.No.3 of 2007 filed in the Court of District Judge, Kanyakumari. The price of the property was settled at Rs.22,000/- per cent. A sum of Rs. 1 lakh was received as advance. The plaintiff was ready and willing to perform his part of the contract but the defendants failed to execute the sald deed even in extended time.

During pendency of the suit, the appellant filed I.A.No.584 of 2008 in O.S.No.3 of 2007 for being impleaded as defendant pleading that he will suffer prejudice being beneficiary of the Trust if the sale is effected at a throw away price. According to him, the value of the property was more than Rs.50,000/- per cent while the proposed sale was for Rs.22,000/- per cent.

The trial Court accepted the application it held that the plaintiff was not a stranger to the subject matter of dispute and was entitled to be impleaded as a party.

The respondent-plaintiff preferred a revision petition before the High Court. The High Court upheld the plea of the plaintiff and dismissed the I.A.No.584 of 2008 filed by the appellant in the suit filed by the respondent-plaintiff.

After due consideration of the rival submissions, we are of the view that the HighCourt erred in interfering with the order of the trial Court impleading

the appellant as a party defendant. Admittedly, the appellant is a beneficiary of the Trust and under the provisions of the Trusts Act, the Trustee has to act reasonably in exercise of his right of alienation under the terms of the trust deed. Appellant cannot thus be treated as a stranger. No doubt, it may be permissible for the appellant to file a separate suit, as suggested by Respondent No.1, but the beneficiary could certainly be held to be a proper party. There is no valid reason to decline his prayer to be impleaded as a party to avoid multiplicity of proceedings. Order 1 Rule 10(2), C.P.C. enables, the Court to add a necessary or proper party so as to "effectually and completely adjudicate upon and settle all the questions involved in the suit."

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 with the order of the trial Court. **Baluram v. P. Chellathangam & Ors., 2015(2) Supreme 103: AIR 2015 SC 1264.**

O.XII, R.6 – Nature of provision – Provision of Order XII, Rule 6, C.P.C. is not mandatory, it is discretionary.

The plaintiff- respondent filed a suit against the defendant/ appellant who is her son, for recovery of possession and damages alleging that she had purchased the suit property out of her own fund and she is the absolute owner, but part of the property was under the illegal occupation of the appellant-defendant, who opposed the suit contending that the suit property was a Hindu Undivided Family property having been purchased in the name of the respondent using the funds of his grandfather, father and himself and not purchased by the respondent as she was a housewife having no income. Appellant-defendant further pleaded that though there was a dispute regarding his ownership and possession, the same was settled between all the family members vide compromise deed dated 22.10.1997.

The respondent filed an application under Order XII Rule 6 of the Code of Civil Procedure for passing a decree in her favour on the ground that a suit for partition, which had earlier been filed by the appellant on the same ground ie. That the suit property was a HUF property, had been dismissed by the District Court vide judgment dated 8/9/2003 and affirmed by the High Court vide judgment dated 12.9.2011 and the respondent contended that the same emounted to an unequivocal admission by the appellant that the respondent was entitled to possession.

The trial court dismissed the application.

The High Court allowed the appeal and decree the suit with costs.

So far as the second question with regard to the entitlement of the plaintiff/ respondent to claim a decree for recovery of a sum of Rs.5,55,000/- and future damages @ Rs.15,000/- per month is concerned, admittedly this question has not been decided either in the earlier suit or in this suit. In that view of the matter, decreeing the entire suit on the basis of ownership of the plaintiff/ respondent already decided in the earlier suit, the decree for recovery of damages ought not to have been passed by the High Court. **Raveesh Chand Jain v. Raj Rani Jain, 2015(2) Supreme 107 : 2015(2)JT 198 : 2015(2) SCALE 302.**

C.P.C. Order 23, Rule 3 and 3A- if a party disputes lawfulness of compromise, such plea can be decided only by the Court which passed the decree on the basis of compromise and not by a separate suit.

A first appeal was decided by the High Court on the basis of an alleged compromise in 1995. In 2005, one of the parties to the appeal filed original suit before the Additional City Civil Judge, Bangalore stating that he had not entered into compromise. On the objection of the defendant in the suit taken under Order 7 Rule 11(d)CPC the suit was dismissed as not maintainable and as barred by Rule 3A of Order 23 CPC. Thereafter, application for setting aside the compromise, in the appeal, was filed. High Court dismissed the application on the ground that the aggrieved party should have filed appeal against the dismissal of the suit as not maintainable. The Supreme Court reversed the order of the High Court holding that in view of Order 23 Rule 3 proviso added in 1977 and Rule 3A of the same order also added in 1977, suit was not maintainable and only the Court which passed the decree on the basis of compromise could decide as to whether compromise was valid, lawful and in fact entered into or not. Reliance was placed on *Pushpa Devi Bhagat v. Rajinder Singh and others, AIR 2006 SC 2628: 2006 (5) SCC566 and Banwari Lal v. Smt. Chando Devi, AIR 1993 SC 1139 : 1993(1) SCC581*

Earlier part of para 11 is quoted below:

> "*The upshot of the above discussion is that the High Court fell in a palpable error in directing the plaintiff to take recourse to the remedy by way of separate suit. The High Court in the process remained oblivious of the provisions of Order XXIII, Rules 3 and 3A of the CPC as also orders passed by the City Civil Court rejecting the plaint in which the Trial Court had not only placed reliance upon Order XXIII, Rule 3A but*

*also the decision of the Court in Pushpa Devi's case (supra) holding that a separate suit was not maintainable and that the only remedy available to the aggrieved party was to approach the Court which had passed the compromise decree." [**R. Rajanna V. S.R. Venkataswamy, AIR 2015 SC 706]***

CONSTITUTION OF INDIA

Article 14 – Forbids class legislation – Does not forbid reasonable classification.

While Article 14 forbids class legislation, it does not forbid reasonable classification of persons, objects, and transactions by the legislature for the purpose of achieving specific ends. But classification must not be "arbitrary, artificial or evasive". It must always rest upon some real and substantial distinction bearing a just and reasonable relation to the object sought to be achieved by the legislation.

Classification to be reasonable must fulfil the following two conditions:-

> Firstly, the classification must be founded on the intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group. Secondly, the differentia must have a rational relation to the object sought to be achieved by the Act. The differentia which is the basis of the classification and the object of the Act are two distinct things. What is necessary is that there must be nexus between the basis of classification and the object of the Act. It is only when there is no reasonable basis for a classification that legislation making such classification may be declared discriminatory. **S. Seshachalam & Ors. Etc. v. Chairman, Bar Council of Tamil Nadu & Ors., 2015(1) Supreme 403 : AIR 2015 SC 816.**

Articles 15(4) and 16(4) – "Backward class" and "Socially and educationally backward class" is not synonymous – Inclusion of politically organized classes such as Jats in the list of backward classes cannot be upheld.

Past decisions of this Court in M.R. Balaji v. State of Mysore, 1963 Suppl.(1) SCR 439, and Janaki Prasad v. State of Jammu & Kashmir, (1973)1 SCC 420 had conflated the two expressions used in Articles 15(4) and 16(4) and read them synonymously. It is in Indra Sawhney's case (supra) that this Court held that the terms "backward class" and "socially and educationally backward classes" are not equivalent and further that in Article 16(4) the

backwardness contemplated is mainly social. The above interpretation of backwardness in Indra Sawhney (supra) would be binding on numerically smaller Benches. Court may, therefore, understand a social class as an identifiable section of society which may be internally homogenous (based on caste or occupation) or heterogeneous (based on disability or gender e.g. transgender). Backwardness is a manifestation caused by the presence of several independent circumstances which may be social, cultural, economic, educational or even political. Owing to historical conditions particularly in Hindu society, recognition of backwardness has been associated with caste. Though caste may be a prominent and distinguishing factor for easy determination of backwardness of a social group, this Court has been routinely discouraging the identification of a group as backward solely on the basis of caste. Article 16(4) as also Article 15(4) lays the foundation for affirmative action by the State to reach out the most deserving. Social groups who would be most deserving must necessarily be a matter of continuous evolution. New practices, methods and yardsticks have to be continuously evolved moving away from caste centric definition of backwardness. This alone can enable recognition of newly emerging groups in society which would require palliative action. The recognition of the third gender as a socially and educationally backward class of citizens entitled to affirmative action of the State under the Constitution in National Legal Services Authority v. Union of India, (2014)5 SCC 438, is too significant a development to be ignored. In fact it is a path finder, if not a path-breaker. It is an important reminder to the State of the high degree of vigilance it must exercise to discover emerging forms of backwardness. The State, therefore, cannot blind itself to the existence of other forms and instances of backwardness. An affirmative action policy that keeps in mind only historical injustice would certainly result in under-protection of the most deserving backward class of citizens, which is constitutionally mandated. It is the identification of these new emerging groups that must engage the attention of the State and the constitutional power and duty must be concentrated to discover such groups rather than to enable groups of citizens to recover "lost ground" in claiming preference and benefits on the basis of historical prejudice.

The perception of a self-proclaimed socially backward class of citizens or even the perception of the "advanced classes" as to the social status of the "less fortunates" cannot continue to be a constitutionally permissible yardstick for determination of backwardness, both in the context of Articles 15(4) and 16(4) of the Constitution. Neither can any longer backweardness be a matter of determination on the basis of mathematical formulate evolved by taking into account social, economic and educational indicators. Determination of

backwardness must also cease to be relative; possible wrong inclusions cannot be the basis for further inclusions but the gates would be opened only to permit entry of the most distressed. Any other inclusion would be a serious abdication of the constitutional duty of the State. Judged by the aforesaid standards we must hold that inclusion of the politically organized classes (such s Jats) in the list of backward classes mainly, if not solely, on the basis that on same parameters other groups who have fared better have been so included cannot be affirmed. **Ram Singh & Ors v. Union of India, 2015(2) Supreme 321.**

Article 21 – Fake encounters – Need to curb the menance – Article 21 confers sacred and cherished right under Constitution which cannot be violated, except according to procedure established by Law.

Article 21 of the Constitution of India guarantees "right to live with human dignity". Any violation of human rights is viewed seriously by this Court as right to life is the most precious right guaranteed by Article 21 of the Constitution. The guarantee by Article 21 is available to every person and even the State has no authority to violate that right.

In some of the countries when a police firearms officer is involved in a shooting, there are strict guidelines and procedures in place to ensure that what has happened is thoroughly investigated. In lndia, unfortunately, such structured guidelines and procedures are not in place where police is involved in shooting and death of the subject occurs in such shooting. We are of the opinion that it is the constitutional duty of this Court to put in place certain guidelines adherence to which would help in bringing to justice the perpetrators of the crime who take law in their own hands. **People's Union for Civil Liberties & Anr. v. State of Maharashtra & Ors., 2014(8) Supreme 682 : 2014 (10) SCC 635 : 2014 AIR (SCW) 9440.**

Art. 32 – Petitioner's death sentence confirmed throughout upto Supreme Court – Mercy petition also rejected – writ petition filed for commutation of death sentence – Maintainability of – Petition maintainable**.**

The court of Special Judge, CBI, Ranchi had awarded death sentence to the petitioner. The High Court dismissed the appeal and confirmed the death sentence. Supreme Court concurred with the view taken by the courts below and dismissed the appeals on 16.03.2010. The death sentence imposed upon the petitioner thus stood confirmed on 16.03.2010.

The petitioner, who was in jail all throughout, preferred Mercy Petitions addressed to the President of India as well as to the Governor of Jharkhand on 10.04.2010.

The Mercy Petition was rejected by the President of India.

In these circumstances this petition has been preferred for commutation of death sentence.

Writ petition under Article 32 for commutation of death sentence after rejection of mercy petition after inordinate delay is maintainable.

Period of 3 years 10 months in disposing mercy petition constitutes inordinate delay.

A prisoner can be kept in solitary confinement only under sentence of death, i.e., after rejection of mercy petition. Keeping the prisoner in solitary confinement from the date of pronouncement by trial court is not proper.

Inordinate delay in disposing mercy petition coupled with long solitary confinement entitles the prisoner to communication of death sentence. **Ajai Kumar Pal v. Union of India and Another, 2015(2) Supreme 208 : AIR 2015 SC 715.**

Art. 136 – Criminal Appeal – Interference with – Normally Supreme Court does not interfere with concurrent findings of courts below unless perverse.

By and large, this Court will not interfere with the concurrent findings recorded by the courts below. But where the evidence has not been properly appreciated, material aspects have been ignored and the findings are perverse under Article 136 of the Constitution, this Court would certainly interfere with the findings of the courts below though concurrent. **Tomaso Bruno & Anr. v. State of U.P., 2015(2) Supreme 278.**

Article 226- Jurisdiction – Re-appreciation of evidence - Sufficiency or adequacy of evidence is not a ground to set aside findings.

In this matter, the observation that there is no clinching evidence in support of the charges is another way of saying that the evidence is insufficient or inadequate, which is not permissible. It bears repetition that sufficiency of adequacy of evidence is not the ground on which the findings of facts may be set aside by the High Court under Article 226. The justification offered by the Division Bench that the learned Single Judge had to undertake the exercise of analyzing the findings of the enquiry officer because the appellants had deprived the respondent of his livelihood is wholly untenable. A transgression

of jurisdiction cannot be justified on the ground of consequences, as has been done. **G. M. (Operations), SBI and another v. R. Periyasamy, 2015 (144) FLR 1003 (SC).**

Art. 226 – PIL against allotment of Land to educational institution for inadequate consideration without following prescribed procedure – Maintainability of – Held "Maintainable".

As stated in the writ petition, the petitioner is a resident of State of Punjab and is also an Income Tax Payee. It has neither been shown nor proved by the appellants that he is a (i) meddlesome interloper (ii) that he is acting under mala fide intention or (iii) that he has been set up by someone for setting his personal scores with Chandigarh Administration or the allottee. Dealing with the question of locus standi of the writ petitioner, we would like to refer to certain decisions of this Court to hold that the writ petition filed by the first respondent is a public interest litigation to protect public interest.

It is clear to us that the respondent No. 1 –the writ petitioner has filed a bona fide writ petition and he has the necessary locus. There is an apparent favour shown by the Union Territory of Chandigarh in favour of the appellant. Institute which is a profit making company and it has not shown to this Court that the allotment of land in its favour is in accordance with law. Hence, we are of the view that there is a strong reason to hold that the writ petition is maintainable in public interest. We completely agree with the views taken by the High Court, wherein it has rightly held that the writ petition is a Public Interest Litigation and not a Private Interest Litigation. The writ petition in question is the first petition filed by the first respondent and his first endeavor to knock the doors of the constitutional Court to protect the public interest by issuing a writ of certiorary. **Institute of Law and others v. Neeraj Sharma and others, 2015(1) ESC 1(SC).**

Arts. 226 and 227 – Exercise of power under – Dismissal from service – challenged before the High Court – High Court cannot venture into re-appreciation of evidence – What the High Court can be do and what it cannot do elaborated

Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge no. I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution of

India, shall not venture into re-appreciation of the evidence. The High Court can only see whether:

(a) the enquiry is held by a competent authority;

(b) the enquiry is held according to the procedure prescribed in that behalf;

(c) there is violation of the principles of natural justice in conducting the proceedings;

(d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;

(e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;

(f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;

(g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;

(h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

(i) the finding of fact is based on no evidence.

Under Article 226/227 of the Constitution of India, the High Court shall not:

(i) re-appreciate the evidence;

(ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

(iii) go into the adequacy of the evidence;

(iv) go into the reliability of the evidence;

interfere, if there be some legal evidence on which findings can be based.

Correct the error of fact however grave it may appear to be go into the proportionality of punishment unless it shocks its correct the

conscience. (**Union of India v. P. Gunasekaran, 2015 (144) FLR 219 (SC))**

Article 341 – Scheduled Caste/ Scheduled Tribe Order – No alteration to Presidential Order / notification issued under Article 341 can be made by executive.

Paras 15 & 16 are quoted below:-

"15. It is important to bear in mind that it is by virtue of the notification of President under Article 341(1) that the Scheduled Castes come into being. The members of the Scheduled Castes are drawn from castes, races or tribes, they attain a new status by virtue of Presidential Order. Clause (2) of Article 341 empowers Parliament alone by law to include or exclude from the list of Scheduled Castes specified in a notification issued under Clause (1) by the President. By no executive power, the amendment, modification, alteration or variance in the Presidential Order is permissible. It is not open to the executive to do anything directly or indirectly which may lead to any change in the Presidential Order. Once Presidential Order has been issued under Article 341(1) or Article 342(1), any amendment in the Presidential Order can only be made by the Parliament by law as provided in Article 341(2) or Article 342(2), as the case may be, and in no other manner. The interpretation of "resident" in the Presidential Order as "of origin" amounts to altering the Presidential Order.

16. Thus, we find that the impugned Government Orders - G.O.M. 11/2005 and G.O.M. 12/2005 - not being in conformity and consonance with the Presidential Order, 1964 cannot be sustained in law and have to be set aside. We order accordingly." ***[Puducherry S.C. People Welfare Association v. Chief Secretary to Govt. Union Territory of Pondicherry, AIR 2015 SC 880]***

Judges Inquiry Act of 1986 – Complaint against judge of High Court or Supreme Court- In-house procedure- Recommendations of 5 member Committee (3 Supreme Court Judges and 2 High Court Chief Justices) constituted pursuant to the directions issued in C. Ravichandran Iyer's case (1995 AIR SCW 3768) quoted in para 22.

Indira Jaising v. R.G. Supreme Court 2003 (5) SCC 494 quoted in para 25. Seven steps enunciated in para 37 which along with para 46 is quoted below:-

"37. By forwarding the complaint received by the Chief Justice of India against respondent no.3 - Justice 'A', to the Chief Justice of the High Court, the "in-house procedure" was sought to be put in motion. The extract of the "in-house procedure" (applicable to sitting Judges of High Court), reproduced in paragraph 22 above reveals, that the same is expressed in the simplest possible words. For recording our conclusions, we have endeavoured to explain the same through "seven steps" contemplated therein. The description of the "in-house procedure", relating to sitting High Court Judges, is being narrated hereunder, stepwise :

> *Step one: (i) A complaint may be received, against a sitting Judge of a High Court, by the Chief Justice of that High Court;*
>
> *(ii) A complaint may also be received, against a sitting Judge of a High Court, by the Chief Justice of India;*
>
> *(iii) A complaint may even be received against a sitting Judge of a High Court, by the President of India. Such a complaint is then forwarded to the Chief Justice of India;*

In case of (i) above, the Chief Justice of the High Court shall examine the contents of the complaint, at his own, and if the same are found to be frivolous, he shall file the same.

In case of (ii) and (iii) above, the Chief Justice of India shall similarly examine the contents of the complaint, by himself, and if the same are found to be frivolous, he shall file the same.

Step two: (i) The Chief Justice of the High Court, after having examined a complaint, may entertain a feeling, that the complaint contains serious allegations, involving misconduct or impropriety, which require a further probe;

(ii) The Chief Justice of India, on examining the contents of a complaint, may likewise entertain a feeling, that the complaint contains serious allegations, involving misconduct or impropriety, which require a further probe;

In case of (i) above, the Chief Justice of the High Court, shall seek a response from the concerned Judge, and nothing more.

In case of (ii) above, the Chief Justice of India, shall forward the complaint to the Chief Justice of the High Court. The Chief Justice of the High Court, shall then seek a response from the concerned Judge, and nothing more.

Step three: The Chief Justice of the High Court, shall consider the veracity of the allegations contained in the complaint, by taking into consideration the response of the concerned Judge. The above consideration will lead the Chief Justice of the High Court, to either of the below mentioned inferences :

(i) The Chief Justice of the High Court, may arrive at the inference, that the allegations are frivolous. In the instant eventuality, the Chief Justice of the High Court shall forward his opinion to the Chief Justice of India.

(ii) Or alternatively, the Chief Justice of the High Court, may arrive at the opinion, that the complaint requires a deeper probe. In the instant eventuality, the Chief Justice of the High Court, shall forward the complaint, along with the response of the Judge concerned, as also his own consideration, to the Chief Justice of India.

Step four: The Chief Justice of India shall then examine, the allegations contained in the complaint, the response of the concerned Judge, along with the consideration of the Chief Justice of the High Court. If on such examination, the Chief Justice of India, concurs with the opinion of the Chief Justice of the High Court (that a deeper probe is required, into the allegations contained in the complaint), the Chief Justice of India, shall constitute a "three-member Committee", comprising of two Chief Justices of High Courts (other than the High Court, to which the Judge belongs), and one High Court Judge, to hold an inquiry, into the allegations contained in the complaint.

Step five: The "three-member Committee" constituted by the Chief Justice of India, shall conduct an inquiry, by devising its own procedure, consistent with the rules of natural justice. On the culmination of the inquiry, conducted by the "three-member Committee", it shall record its conclusions. The report of the "three-member Committee", will be furnished, to the Chief Justice of India. The report could lead to one of the following conclusions :

That, there is no substance in the allegations levelled against the concerned Judge; or that there is sufficient substance in the allegations levelled against the concerned Judge. In such eventuality, the "three-member Committee", must further opine, whether the misconduct levelled against the concerned Judge is so serious, that it requires initiation of proceedings for removal of the concerned Judge; or that, the allegations contained in the complaint are not serious enough to

require initiation of proceedings for the removal of the concerned Judge.

In case of (i) above, the Chief Justice of India, shall file the complaint. In case of (ii) above, the report of the "three-member Committee", shall also be furnished (by the Committee) to the concerned Judge.

Step six: If the "three-member Committee" constituted by the Chief Justice of India, arrives at the conclusion, that the misconduct is not serious enough, for initiation of proceedings for the removal of the concerned Judge, the Chief Justice of India shall advise the concerned Judge, and may also direct, that the report of the "three-member Committee" be placed on record. If the "three-member Committee" has concluded, that there is substance in the allegations, for initiation of proceedings, for the removal of the concerned Judge, the Chief Justice of India shall proceed as under:-

(i) The concerned judge will be advised, by the Chief Justice of India, to resign or to seek voluntary retirement.

(ii) In case the concerned Judge does not accept the advice of the Chief Justice of India, the Chief Justice of India, would require the Chief Justice of the concerned High Court, not to allocate any judicial work, to the concerned Judge.

Step seven: In the eventuality of the concerned Judge, not abiding by the advice of the Chief Justice of India, the Chief Justice of India, as indicated in step six above, the Chief Justice of India, shall intimate the President of India, and the Prime Minister of India, of the findings of the "three-member Committee", warranting initiation of proceedings, for removal of the concerned judge.

46. In the facts and circumstances of the present case, our conclusions are as under :

(i) With reference to the "in-house procedure" pertaining to a judge of a High Court, the limited authority of the Chief Justice of the concerned High Court, is to determine whether or not a deeper probe is required. The said determination is a part of stage-one (comprising of the first three steps) of the "in-house procedure" (elucidated in paragraph 37, hereinabove). The Chief Justice of the High Court, in the present case, travelled beyond the determinative authority vested in him, under stage-one of the "in-house procedure".

(ii) The Chief Justice of the High Court, by constituting a "two-Judge

Committee", commenced an in-depth probe, into the allegations levelled by the petitioner. The procedure adopted by the Chief Justice of the High Court, forms a part of the second stage (contemplated under steps four to seven -elucidated in paragraph 37, hereinabove). The second stage of the "in-house procedure" is to be carried out, under the authority of the Chief Justice of India. The Chief Justice of the High Court by constituting a "two-Judge Committee" clearly traversed beyond his jurisdictional authority, under the "in-house procedure".

(iii) In order to ensure, that the investigative process is fair and just, it is imperative to divest the concerned judge (against whom allegations have been levelled), of his administrative and supervisory authority and control over witnesses, to be produced either on behalf of the complainant, or on behalf of the concerned judge himself. The Chief Justice of the High Court is accordingly directed to divest respondent no.3 - Justice 'A', of the administrative and supervisory control vested in him, to the extent expressed above.

(iv) The Chief Justice of the High Court, having assumed a firm position, in respect of certain facts contained in the complaint filed by the petitioner, ought not to be associated with the "in-house procedure" in the present case. In the above view of the matter, the Chief Justice of India may reinitiate the investigative process, under the "in-house procedure", by vesting the authority required to be discharged by the Chief Justice of the concerned High Court, to a Chief Justice of some other High Court, or alternatively, the Chief Justice of India may himself assume the said role." ***[Additional District & Sessions Judge 'X' v. Registrar General, High court of Madhya Pradesh, AIR 2015 SC 645]***

CONTRACT ACT

Government contract – Delay in completion of words – Effect of – In Govt. contract, even if time is not made of essence, delay is not inconsequential.

There is no dispute that the appellant failed to execute the work of construction of sewerage pumping station within the stipulated or extended time. The said pumping station certainly was of public utility to maintain and preserve clean environment, absence of which could result in environmental degradation by stagnation of water in low lying areas. Delay also resulted in loss of interest on blocked capital as rightly observed in para 7 of the impugned judgment of the High Court. In these circumstances, loss could be assumed, even without proof and burden was on the appellant who committed breach to

show that no loss was caused by delay or that the amount stipulated as damages for breach of contract was in the nature of penalty. Even if technically the time was not of essence, it could not be presumed that delay was of no consequence.

Thus, even if there is no specific evidence of loss suffered by the respondent-plaintiff, the observations in the order of the Division bench that the project being a public utility project, the delay itself can be taken to have resulted in loss in the form of environmental degradation and loss of interest on the capital are not without any basis. **M/s. Construction & Design Services v. Delhi Development Authority, 2015(1) Supreme 546 : AIR 2015 SC 128.**

CRIMINAL PROCEDURE CODE

Ss. 125 to 128- Maintenance-Generally-Proceedings under-Nature and scope of – S.125 is piece of social legislation which provides for a summary and speedy relief by way of maintenance to a wife who is unable to maintain herself and her children.

The marriage between the petitioner (husband) and the respondent (wife) took place on 24-5-1987. Alleging that the petitioner was not maintaining his wife, the respondent filed an application under Section 125 CrPC for grant of maintenance before JMFC. While the matter was pending, and application was preferred by the parties under Order 23 Rule 3 CrPC on 3-9-1994 stating that the parties had arrived at a compromise, by which the respondent wife had agreed to receive an amount of Rs 8000 towards permanent alimony and that she would not make any claim for maintenance in future or enhancement of maintenance. For this, a consent letter, executed by the wife dated 30-3-1990, in Kanada, was place before the Court in favour of her husband with free will and consent without coercion and misrepresentation.

The respondent wife subsequently filed before the Family Court, an application under Section 18 of the Hindu Adoptions and Maintenance Act, 1956 claiming maintenance @ Rs 2000 per month. The Family Court held by its order dated 15-9-2009 that the compromise entered into between the parties in a proceeding under Section 125 CrPC would not be a be a in entertaining the suit and decreed the suit. The aggrieved petitioner's appeal was dismissed by the High Court by its judgment dated 28-3-2011.

Section 125 CrPC is a piece of social legislation which provides for a summary and speedy relief by way of maintenance to a wife who is unable to maintain herself and her children. Section 125 is not intended to provide for a full and final determination of the staus and personal rights of the parties, which is in the nature of a civil proceeding, though are governed by the provisions of CrPC and the order made under Section 125 CrPC is tentative

and is subject to final determination of the rights in a civil court. **(Nagendrappa Natikar v. Neelamma, (2015)1 SCC (Cri) 407).**

S.154 – F.I.R. – Nature – It should be certain essential feature of prosecution case, It cannot be expected to be an encyclopedia of whole prosecution case.

It is well established in law that FIR should contain the essential features of the prosecution case but it cannot be expected to be an encyclopedia of whole prosecution case. It may be quite natural for a friend of the deceased such as PW not to remember the exact figure which was disclosed by the deceased sometime back as the amount demanded by the mother-in-law. Learned counsel for the State also placed reliance upon the judgment of this Court in the case of Satish Chandra and Anr. v. State of Madhya Pradesh, 2014(6) SCC 723, in support of the proposition that if sufficient and good material is available on record then mother-in-law of the victim in a case under Section 304B IPC may lawfully be convicted for such an offence even in the absence of conviction of the husband. **Kanchanben Purshottambhai Bhanderi v. State of Gujarat, 2015(1) Supreme 572.**

S.154 – object of – Only to set Criminal Law in motion - Mentioning names of all witnesses in F.I.R. not required.

There is no requirement of law for mentioning the names of all the witnesses in the FIR, the object of which is only to set the criminal law in motion [Nirpal Singh & Ors. v. State of Haryana, (1977)2 SCC 131: Bhagwan Singh & Ors. v. State of Madhya Pradesh, (2002)4 SCC 85; Raj Kishore Jha v. State of Bihar & Ors., (2003)11 SCC 519]. In this context it is relevant to point out that the statements of all witnesses were recorded by the Investigation Officer in the night of the occurrence day itself. Non mention of the names of PW3 Atmaram and PW4 Chaman Lal in the FIR does not affect the prosecution case as rightly held by the courts below. **Kunwarpal @ Surajpal & Ors. v. State of Uttarakhand And anr., 2015(2) Supreme 93.**

S. 154 - F.I.R. –All minute details and all items relating to demand by way of dowry – May not come to the mind of grieving mother of the deceased while lodging F.I.R. – F.I.R. to contain essential features of the prosecution case and cannot be expected to be an encyclopedia of whole prosecution case.

It is well established in law that FIR should contain the essential features of the prosecution case but it cannot be expected to be an encyclopedia

of whole prosecution case. **Kanchanben Purshottambhai Bhanderi v. State of Gujrat, 2015(88) ACC 276 (S.C.).**

S.190(1)(b) – Taking cognizance – Purpose of – To commence proceedings by issuing process U/s. 204 to accused.

The whole purpose of taking cognizance of an offence under Section 190(1)(b) Cr.PC is to commence proceedings under Chapter XVI of the CrPC by issuing process under Section 204 CrPC to the accused involved in the case. No doubt, it is not innocence but involvement that is material at this stage. Once the legal requirements to constitute the alleged offence qua one of the accused are taking, there is no point in taking cognizance and proceeding further as against him. **Sanjaysingh Ramrao Chavan v. Dattafray Gulabrao Phalke and others., 2015(1) Supreme 195.**

S.190 – Consideration at the stage of taking cognizance – Magistrate has only see if a prima facie has been made out.

FIR registered on basis of photocopy of undated petition not bearing original signature.

According to the complaint petition, the appellant informed the concerned court that the FIR No.73/2002 was neither filed by her nor signed by her and this FIR facilitated her husband and his relations who were accused to obtain anticipatory bail not only in FIR No.73/2002 but also in the case genuinely filed by the appellant against accused nos. 1 to 8 under Section 498A and 406. IPC in Women's Cell, Kirti Nagar, Delhi registered as Complaint No.372/2004 on 15.06.2004. The appellant was also surprised to receive in July 2003 a notice of Divorce Petition filed by respondent no.1 in a Delhi court on 19.5.2003.

Ultimately, even after a CID investigation in favour of appellant's case, when no action was taken against the culprits and no copy of the CID report was made available to the appellant, she filed a Writ Petition seeking the record of investigation report of CID and registration of a criminal case against the accused as well as investigation by CBI. In terms of directions of the High Court, the appellant was provided with copy of the CID investigation report and was also permitted to inspect the entire connected record.

Thereafter she filed the instant criminal complaint before the Court of Judicial Magistrate, First Class, Raipur on 07.12.2010.

The Judicial Magistrate issued summons against accused nos. 1 to 9.

The High Court, dismissed both the criminal revision petitions preferred

by the appellant against grant of relief to accused nos. 6 to 9 and allowed criminal miscellaneous petition of accused nos. 1 to 5 by setting aside the summoning order of the Magistrate and directing the appellant to appear before the Court of Judicial Magistrate for adducing further evidence, if any, to support her allegation in the complaint petition. The High Court thus remitted back the matter with various observations requiring the appellant to produce alleged documents which could prove forgery and also to send the same to expert for examination of the document and signature of the complainant/appellant.

In the present case, on going through the order of the learned Magistrate, court is satisfied that the same suffers from no illegality. The specific case of the appellant that FIR was registered on an undated photocopy of a petition attributed to the appellant but not bearing her original signature could not have been rejected by the learned Magistrate at the present stage especially in view of the report of investigation by the CID which was also called for and there being no dispute that the FIR No.73/2002 was registered only on the basis of a photocopy on which the signature is not in original and hence in our considered view the Hon'ble High Court grossly erred in exercise of its jurisdiction by directing the appellant/complainant to lead further evidence and produce the original documents to show forgery. If the FIR is admittedly on the basis of only a photocopy of a document allegedly brought into existence by the accused persons, the High Court erred in directing the appellant to produce the original and get the signatures compared. **Sonu Gupta v. Deepak Gupta & Ors., 2015(2) Supreme 193.**

S.204 – Summoning a person not named in charge-sheet – validity of.

We make it clear that there is no denying the legal position that even when a person is not named in the charge sheet as an accused person, the trial court has adequate powers to summon such a non-named person as well, if the trial court finds that the charge sheet and the documents/ material placed along with the charge sheet disclose sufficient prima facie material to proceed against such person as well. **Sunil Bharti Mittal v. Central Bureau of Investigation, 2015(1) Supreme 422 : AIR 2015 SC 923.**

S. 313 – Object and scope of

In this matter appeal was filed against order of High Court dismissing appeal of Accused and confirming conviction of Appellant for offences of murder and imitation of firearm, on the question that whether non-compliance of mandatory provisions of Section 313 of CrPC had vitiated

trial and conviction of Accused.

Held that the importance of a statement Under Section 313 Code of Criminal Procedure, insofar as the accused is concerned, can hardly be minimised. The statutory provision is based on the rules of natural justice for an accused, who must be made aware of the circumstances being put against him so that he can give a proper explanation to meet that case. If an objection as to Section 313 Code of Criminal Procedure statement is taken at the earliest stage, the Court can make good the defect and record additional statement of the accused as that would be in the interest of all. When objections as to defective Section 313 Code of Criminal Procedure statement is raised in the appellate court, then difficulty arises for the prosecution as well as the accused. When the trial court is required to act in accordance with the mandatory provisions of Section 313 Code of Criminal Procedure, failure on the part of the trial court to comply with the mandate of the law, in our view, cannot automatically enure to the benefit of the accused. Any omission on the part of the Court to question the accused on any incriminating circumstance would not ipso facto vitiate the trial, unless some material prejudice is shown to have been caused to the accused. Forensic Science Laboratory Report was relied upon both by Trial court as well as by High Court. Objection as to defective Section 313 of Code, 1973 statement had not been raised in Trial court or in High Court. Omission to put question under Section 313 of Code, 1973, and prejudice caused to Accused was raised before present Court for first time. Accused was prejudiced on account of omission to put question as to opinion of Ballistic Expert which was relied upon by Trial Court as well as by High Court. It was further held that the Trial court should have been more careful in framing questions and in ensuring that all material evidence and incriminating circumstances were put to Accused. Matter was remitted back to Trial Court for proceeding with matter afresh from stage of recording statement of Accused under Section 313 of Code, 1973. Appeal disposed of. **Nar Singh v. State of Haryana, AIR 2015 SC 310, 2015 CriLJ 576, 2014(12) SCALE 622, (2015)1 SCC 496,**

S. 345 (3) - Sentence-Death sentence-Approach and considerations-Each case should be independently considered by property considering the

aggravating and mitigating circumstances.

The board principles tailored by the Supreme Court in its various judgments provide guidelines to ensure that the discretion vested in the court is not unbridled. The Supreme Court has evolved the doctrine of "the rarest of the rare case" and put it to test via medium of charting out the aggravating and mitigating circumstances in a case and then balancing the two in the facts and circumstances of the case. As a norm, the most significant aspect of sentencing policy is independent consideration of each case by the court and extricating a sentence which is the most appropriate and proportional to the culpability of the accused. It may not be apposite for the court to decide the quantum of sentence with reference to one of the classes under any one of the heads while completely ignoring classes under the other head. That is to say. What is required is not just the balancing of these circumstances by placing them in separate compartments, but their cumulative effect which the court is required to keep in its mind so as to better administer the criminal justice system and provide an effective and meaningful reasoning by the court as contemplated under Section 354(3) CrPC while sentencing**. (Mofil Khan and another v. State of Jharkhand, (2015) 1 Supreme Court cases (Cri) 556).**

Section 389 – Opportunity – To Public Prosecutor – Service of copy of appeal and application for bail on Public Prosecutor by appellant – Would not satisfy the requirement of first proviso to section 389 Cr.P.C. – Admittedly no such opportunity was granted to the State as contemplated under first proviso of section 389 Cr.P.C. – Therefore the impugned orders to the extent of release of private respondents on bail are set aside.

All the private respondents have been convicted by the Court of Additional Sessions Judge, Azamgarh under sections 147, 148 and 149 read with section 302, 120-B of the Indian Penal Code (45 of 1860) (hereinafter referred to as 'IPC') and section 7 of Criminal Law (Amendment) Act, 2013 and they have been awarded sentence of imprisonment for life with fine. Altogether seven accused have been convicted: however bail is granted only to four.

The main contention of the appellant is that the procedure contemplated under section 389 proviso has not been complied with while releasing them on bail and, hence, the order passed by the High Court is liable to be set aside.

Service of a copy of the appeal and application for bail on the Public Prosecutor by the appellant will not satisfy the requirement of first proviso to section 389 Cr.P.C. The Appellate Court may even without hearing the Public Prosecutor, decline to grant bail. However, in case the Appellate Court is

inclined to consider the release of the convict on bail, the Public Prosecutor shall be granted an opportunity to show cause in writing as to why the appellant be not released on bail. Such a stringent provision is introduced only to ensure that the Court is apprised of all the relevant factors so that the Court may consider whether it is an appropriate case for release having regard to the manner in which the crime is committed, gravity of the offence, age, criminal antecedents of the convict, impact on public confidence in the justice delivery system, etc. Despite such an opportunity being granted to the Public Prosecutor, in case no cause is shown in writing, the Appellate Court shall record that the State has not filed any objection in writing. This procedure is intended to ensure transparency, to ensure that there is no allegation of collusion and to ensure that the Court is properly assisted by the State with true and correct facts with regard to the relevant considerations for grant of bail in respect of serious offences, at the post conviction stage.

To sum up the legal position.

(a) The Appellate Court, if inclined to consider the release of a convict sentenced to punishment for death or imprisonment for life or for a period of ten years or more, shall first give an opportunity to the Public Prosecutor to show cause in writing against such release.

(b) On such opportunity being given, the State is required to file its objections, if any, in writing.

(c) In case the Public Prosecutor does not file the objections n writing, the Appellate Court shall, in its order, specify that no objection had been filed despite the opportunity granted by the Court.

(d) The Court shall judiciously consider all the relevant factors whether specified in the objections or not, like gravity of offence, nature of the crime, age, criminal antecedents of the convict, impact on public confidence in Court, etc. before passing an order for release.

Admittedly, no such opportunity was granted to the State as contemplated under the first proviso of section 389 Cr.P.C. in these appeals. Therefore, the impugned orders to the extent of release of the private respondents on bail are set aside. The High Court shall consider the matters afresh. **Atul Tripathi v. State of U.P. and another, 2015(88) ACC 525(S.C).**

S.378 – Grounds for interference with order of acquittal – order of acquittal can be interfered if based on no evidence, or view taken by the court is wholly unreasonable, or is not a plausible views or there is palpable misreading of evidence.

The judgment in Basappa v. State of Karnataka, (2014)5 SCC 154 wherein a detailed survey has been conducted with regard to the scope of interference of the appellate court in an appeal against the judgment of acquittal. After referring to following decisions in K. Prakashan v. P.K. Surenderan, (2008)1 SCC 258 T. Subramanian v. State of Tamil Nadu, (2006)1 SCC 401 Bhim Singh v. State of Haryana (2002)10 SCC 461 Kallu alias Masih and others v. State of Madhya Pradesh, (2006)10 SCC 313 Ramesh Babulal Doshi v. State of Gujarat, (1996)9 SCC 225 Ganpat v. State of Haryana and others, (2010)12 SCC 59 State of Punjab v. Karnail Singh, (2003)11 SCC 271 Chandrappa and others v. State of Karnataka, (2007)4 SCC 415 which have dealt with the issue, this Court held that unless the judgment of acquittal is based on no material or is perverse or the view taken by the court is wholly unreasonable or is not a plausible view or there is non-consideration of any evidence or there is palpable misreading of evidence, the appellate court will not be justified in interfering with the order of acquittal. While endorsing and reaffirming those principles, we are of the considered view that on the facts of the present case, there has been a palpable misreading of evidence by the trial court. As we have already discussed herein above, the conclusions drawn by the trial court is apparently against the weight of evidence and thus perverse, and it is so perverse that no reasonable man could reach conclusion. **Vijay Pal Singh and others v. State of Uttarakhand, 2015(1) Supreme 521 : AIR 2015 SC 684.**

Ss. 397 to 401 – Revisional powers of High Court Exercise of – While exercising revisional power an order cannot be interfered merely because another view possible, It can interfere if impugned order is perverse or untenable in law or grossly erroneous or judicial discretion is exercised arbitrarily or capriciously.

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 to401 of CrPC 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. **Sanjaysingh Ramrao Chavan v. Dattafray Gulabrao Phalke and others., 2015(1) Supreme 195.**

S.433 – Commutation of Sentence – Power of Court – Limitation – Court cannot direct appropriate Govt. to exercise its sovereign powers.

When the appropriate Government commutes the sentence, it does so in exercise of its sovereign powers. The court cannot direct the appropriate Government to exercise its sovereign powers. The Court can merely give a direction to the appropriate Government to consider the case for commutation of sentence and nothing more. This legal position is no more res integra. **State of Rajasthan v. Mohammad Muslim Tagala, 2014(8) Supreme 702.**

S.439 – Grant of bail – Factors to be considered – Seriousness of allegations are determinative of grant of refusal of bail but delay in commencement and completion of trial is also an important factor. Accused cannot be kept in custody for indefinite period.

It is well settled that at pre-conviction stage, there is presumption of innocence. The object of keeping a person in custody is to ensure his availability to face the trial and to receive the sentence that may be passed. The detention is not supposed to be punitive or preventive. Seriousness of the allegation or the availability of material in support thereof are not the only considerations for declining bail. Delay in commencement and conclusion of trial is a factor to be taken into account and the accused cannot be kept in custody for indefinite period if trial is not likely to be concluded within reasonable time. **Dr. Vinod Bhandari v. State of M.P., 2015(1) Supreme 513.**

CRIMINAL TRIAL

In this matter the trial Court found Accused/Respondent guilty of offences of murder and house-trespass. The High Court set aside such conviction. Against the Judgment of High Court, appeal was filed. The issue decided by the Apex court was that whether High Court rightly interfered with conviction imposed by Trial Court.

It was held, cumulative consideration of evidence amply established crime in which Accused were involved, resulted in killing of Deceased. The High Court concluded that offence was not made out on ground that there was delay in lodging of First Information Report and conduct of witnesses did not inspire confidence. It was observed by Hon'ble Court that High Court ought to have examined evidence and expressed reasons as to why detailed consideration of

evidence did not inspire confidence in order to interfere with conclusion of Trial Court. High Court had miserably failed to carry out such exercise and without assigning reasons, had chosen to interfere with conviction imposed by Trial Court. Eye witnesses were all convincing and were corroborative in every minute aspect of occurrence. Materials on record established case of Prosecution. Appeal allowed. **State of Rajasthan v. Chandgi Ram 2014CRILJ4571, 2014(4) CRIMES 42 (SC) , 2014 (10) SCALE 352, 2014 (9) SCJ 692, (2015)1 SCC(CRI) 442**

Motive – Proof of – where the case is based on circumstantial evidence, proof of motive will be an important corroborative piece of evidence.

Where the case is based on circumstantial evidence, proof of motive will be an important corroborative piece of evidence. If motive is indicated and proved, it strengthens the probability of the commission of the offence. In the case at hand, evidence adduced by the prosecution suggesting motive is only by way of improvement at the stage of trial which, in our view, does not inspire confidence of the court. **Tomaso Bruno & Anr. v. State of U.P., 2015(2) Supreme 278.**

Electronic evidence – Grounds for admissibity – Source and authenticity are two key factors for electronic evidence; if the Source is not admissible as evidence question of authenticity of its translation does not arises.

It is to be noted that in the first complaint filed by the second respondent the de facto complainant, there is no allegation for any demand for bribe by the appellant. The allegation of demand is specifically against accused no.2 only. That allegation against the appellant is raised only subsequently. Be that as it may, the only basis for supporting the allegation is the conversation that is said to be recorded by the voice recorder. The Directorate of Forensic Science Laboratories, State of Maharashtra vide Annexure-B report has stated that the conversation is not in audible condition and, hence, the same is not considered for spectrographic analysis. Learned Counsel for the respondents submit that the conversation has been translated and the same has been verified by the panch witnesses. Admittedly, the panch witnesses have not heard the conversation, since they were not present in the room. As the voice recorder is itself not subjected to analysis, there is no point in placing reliance on the translated version. Without source, there is no authenticity for the translation. Source and authenticity are the two key factors for an electronic evidence, as held by this Court in Anvar P.V. v. P.K.Basheer and others, 2014(10) SCALE 660. **Sanjaysinh Ramrao Chavan v. Dattafray Gulabrao Phalke and others., 2015(1) Supreme 195.**

Suicide note – Cannot be taken to be encyclopaedia of the entire situation in which the deceased was placed – Mere mention that nobody may be held responsible states that all doors are closed for her – Not enough to exonerate the appellant.

When a young married girl finds herself in helpless situation and decides to end her life, in absence of any other circumstance, it is natural to infer that she was unhappy in her matrimonial home. A suicide note cannot be treated as conclusive of there being no one responsible for the situation when evidence on record categorically points to harassment for dowry. One cannot lose sight of the fact that unfortunately the menace dowry deaths still exists in our society and has been subject of expert studies. The Law Commission, in the 91st Report dated 10th August, 1983, recommended reform of the law to deal with the situation which led to incorporation of sections 304-B in I.P.C., making 'dowry death' an offence and section 113-B in the Evidence Act which provides for raising a presumption as to dowry death in case of an unnatural death within seven years of marriage when it is shown that a woman was subjected to harassment for dowry soon before her death. These aspects have been considered by this Court in Hira Lal and others v. State (Govt. of N.C.T.) Delhi, (2003)8 SCC 80= 2003(9) AIC 117(SC) and other judgments. **Naresh Kumar v. State of Haryana and others, 2015(88) ACC 677(S.C).**

Injuries of accused persons – Not explain by prosecution – Effect of – no-explanation of injuries to accused persons by prosecution is not fatal if defence does not disclose or suggest the geneses of those injuries.

The criticism that some of the accused had sustained injuries for which the prosecution has not offered any explanation has rightly been rejected by the trial court because there is no counter version or even a suggestion disclosing that any of the accused had received injuries in the same occurrence and at the same place. None of the persons allegedly injured on the side of the defence have lodged any case disclosing where and under what circumstances they sustained the injuries. In the facts of the case, in absence of any counter version and any plea of self-defence, it would be hazardous to presume at the instance of the defence that the accused persons sustained the injuries in course of same occurrence and at the same place. Only if these two ingredients were established, the defence would have been entitled to seek an explanation from the prosecution in respect of some injuries on three of the accused persons. Their injuries were neither fatal nor they caused any threat to life and that also reduces the burden upon the prosecution to explain injuries on the accused. In view of above discussion, we are of the view that judgments in the case of Siri Kishan (supra) and Lakshmi Singh (supra) do not help the appellants. In

paragraph 12 of the judgment in the case of Lakshmi Singh (supra) the court had found that in the circumstances of that case there could be no doubt that the accused must have received grievous injuries in course of the assault. In the case at hand, the facts are different and hence the prosecution version cannot be disbelieved on account of some injuries allegedly sustained by some of the accused. **Inder Singh & Ors. v. State of Rajasthan, 2015(1) Supreme 369.**

Whether Examination of all eye-witnesses are necessary –Evidence of two eye-witnesses consistent, cogent and reliable –Not necessary for the prosecution to examine any more eye-witnesses or all the eye-witnesses.

The law does not say that the prosecution must examine all the eye-witnesses cited by the prosecution. When the evidence of two eye-witnesses, P.Ws. 1 and 3 was found worthy of acceptance to prove the case then it was not necessary for the prosecution to examine any more eye-witnesses. It is for the prosecution to decide as to how many and who should be examined as their witnesses for proving their case. **Nand Kumar v. State of Chhattisgarh, 2015(88) ACC 309 (S.C.).**

Investigation – Defective or illegal investigation – Effect of

In the instant matter, Trial Court had convicted accused for offences of cruelty, dowry death, demand of dowry. High Court set aside conviction of 1st and 2nd Respondent/Accused. Accordingly appeal was filed.

It was held, when Accused took false plea about facts exclusively known to him, such circumstance was vital additional circumstance against Accused.- Investigating agency was expected to be fair and efficient, any lapse on its part could not per se be ground to throw out Prosecution case when there was overwhelming evidence to prove offence. Sufficient evidence to prove demand of dowry had been rejected on account of minor discrepancies about place at which negotiations took place or persons in whose presence demand was made. Such minor contradictions were not enough to discredit version of demand of dowry. Mere lapse of investigating agency could not be enough to throw out overwhelming evidence clearly establishing Prosecution's case. Case against Accused stood fully established. Appeal allowed. **State of Karnataka v. Suvarnamma 2014 (4) CRIMES 418(SC), 2014(4) RCR (Criminal) 772, (2015)1 SCC 323, (2015) 1 SCC (Cri.) 663**

EVIDENCE ACT

S.32 – Two medical endorsements and one statement – There is no discrepancy in three statements – Conviction can be based on properly

recorded dying declaration.

Learned counsel for the appellant attacking the acceptability of the dying declaration has urged that when there are more than one dying declaration, and inconsistency is perceptible, the Court should be extremely careful before placing reliance on it. To bolster the daid submission he has drawn inspiration from the decisions in Lella Srinivasa Rao v. State of A.P., (2004)9 SCC 713, Amol Singh v. state of Madhya Pradesh, (2008)5 SCC 469, Sharda v. State of Rajasthan, (2010)2 SCC 85, and State of Rajasthan v. Sharavan Ram & Anr., (2013)12 SCC 255.

At this juncture, we may also fruitfully refer to a two-Judge Bench decision in Kundula Bala Subrahmanyam and another v. State of Andhra Pradesh, (1993)2 SCC 684, where the Court observed that:-

> "A dying declaration made by person on the vergy of his death has a special sanctity as at that solemn moment, a person is most unlikely to make any untrue statement. The shadow of impending death is by itself the guarantee of the truth of the statement made by the deceased regarding the causes or circumstances leading to his death. A dying declaration therefore enjoys almost a sacrosanct status, as a piece of evidence, coming as it does from the mouth of the deceased victim. Once the statement of the dying person and the evidence of the witnesses testifying to the same passes the test of careful scrutiny of the courts, it becomes a very important and a reliable piece of evidence and if the court is satisfied that the dying declaration is true and free from any embellishment such a dying declaration, by itself, can be sufficient for recording conviction even without looking for any corroboration. If there are more than one dying declarations then the court has also to scrutinize all the dying declarations to find out if each one of these passes the test of being trustworthy. The Court must further find out whether the different dying declarations are consistent with each other in material particulars before accepting and relying upon the same."

In this matter, there is no circumstance from which it can remotely be inferred that she was tutored or her statement was embellished by any kind of influence. On the contrary, her testimony has been consistent and, therefore, the reliance placed on the same by the learned trial Judge as well as by the High Court is absolutely impeccable and, therefore, we do not find flaw in the judgment of conviction and order of sentence.

Consequently, the appeal, being devoid of merit, stands dismissed. **Shaileshbhai @ Pappu Balubhai Chunara & Anr. v. State of Gujrat,**

2015(2) Supreme 82

S. 32 – Dying declaration

In this matter appeal was filed against order by which accused/Appellants convicted for offence of murder and voluntarily causing grievous hurt with common intention under Sections 34,114,302 and 332 of Code. This issue before the court was whether impugned order of conviction on basis of dying declaration was sustainable.

It was held that Appellants were convicted by placing reliance on dying declaration of deceased. Deceased had, said that accused persons were totally hostile to her and in order to extinguish her life spark had poured kerosene on her. Hospital records tendered in evidence was that patient was conscious and well oriented and was in position to follow instructions. The doctor had examined patient and clearly stated that she was in fit and conscious condition to give dying declaration. Executive Magistrate had taken precautions by removing all relatives of injured from room and approached doctor to verify about fitness of patient, and after being satisfied that she was fit enough to give dying declaration, recorded same in a questionnaire form. Deceased during recording of statement had categorically stated that she had quarrel on date of occurrence with Appellants and, therefore, one of accused poured kerosene on her. Nothing had been brought on evidence to discredit testimony of Executive Magistrate who had recorded dying declaration in questionnaire form. No circumstance from which it could remotely be inferred that she was tutored or her statement was embellished by any kind of influence. Deceased testimony had been consistent and, therefore, reliance placed on same for conviction of Appellants was absolutely impeccable. Order of conviction was maintainable and required no interference - Appeal dismissed. **Shaileshbhai v. State of Gujarat 2014(3) ACR 3428, 2015 CriLJ 604, 2014(10) SCALE 301, (2015)1 SCC (Cri) 285.**

S.45 – Expert opinion – Evidentiory value – Opinion of expert witness on technical aspects has relevance but opinion has to be based upon specialized knowledge and data.

The opinion of expert witness on technical aspects has relevance but the opinion has to be based upon specialized knowledge and the data on which it is based has to be found acceptable by the Court. In Madan Gopal Kakkad versus Naval Dubey, (1992)3 SCC 204, it was observed as under:

> "34. A medical witness called in as an expert to assist the Court is not a witness of fact and the evidence given by the medical officer is really of an advisory character given on the basis of the symptoms found on

examination. The expert witness is expected to put before the Court all materials inclusive of the date which induced him to come to the conclusion and enlighten the Court on the technical aspect of the case by explaining the terms of science so that the Court although, not an expert may form its own judgment on those materials after giving due regard to the expert's opinion because once the expert's opinion is accepted, it is not the opinion of the medical officer but of the Court. "

35. Nariman, J. in Queen v. Ahmed Ally, (1998)3 SCC 309, while expressing his view on medical evidence has observed as follows:

"The evidence of medical man or other skilled witnesses, however, eminent, as to what he thinks may or may not have taken place under particular combination of circumstances, however, confidently, he may speak, is ordinarily a matter of mere opinion." **Sultan Singh v. State of Haryana, 2014(8) Supreme 746.**

Ss. 106 and 65B – Burden of proof to establish alibi lies on accused, however in exceptional case like the instant on the burden shift to prosecution to establish the opposite.

Three Italian nationals namely Tomaso Bruno (Accused No.1), Elisa Betta Bon Compagni (Accused No.2) and Francesco Montis (Deceased) came as tourists to India from London and arrived at Varanasi on 31.1.2010 and they checked in at Hotel Buddha, Ram Katora, Varanasi.

For two days the accused and deceased went around the city. On 3.2.2010, the deceased complained of a mild headache on account of which, they went out late and returned early and thereafter, stayed in the room for the entire evening. On 4.2.2010 at about 8-00 a.m. A-2 informed Ram Singh (PW-1), the Manager of hotel Buddha, Varanasi, that the condition of the deceased was not fine, after which the accused, PW-1 and others took the deceased to S.S.P.G.Hospital, Varanasi for treatment, where the doctors declared the ailing tourist as 'brought dead'.

Dr. R.K.Singh (PW-10) conducted autopsy and issued Ex. Ka-10, opining that the cause of death was asphyxia due to strangulation.

Trial court convicted the accused persons under Section 302 read with Section 34 IPC and sentenced them to undergo life imprisonment, imposed a fine of Rs.25,000/- each with a default clause.

To invoke Section 106 of the Evidence Act, the main point to be established by the prosecution is that the accused persons were present in the hotel room at the relevant time. PW-1 Ram Singh. Hotel Manager stated that

CCTV cameras are installed in the boundaries, near the reception, in the kitchen, in the restaurant and all three floors. Since CCTV cameras were installed in the prominent places, CCTV footage would have been best evidence to prove whether the accused remained inside the room and whether or not they have gone out. CCTV footage is a strong piece of evidence which would have indicated whether the accused remained inside the hotel and whether they were responsible for the commission of a crime. It would have also shown whether or not the accused had gone out of the hotel. CCTV footage being a crucial piece of evidence, it is for the prosecution to have produced the best evidence which is missing. Omission to produce CCTV footage, in court's view, which is the best evidence, raises serious doubts about the prosecution case.

Production of scientific and electronic evidence in court as contemplated under Section 65B of the Evidence Act is of great help to the investigating agency and also to the prosecution. The relevance of electronic evidence is also evident in the light of Mohd. Ajmal Mohammad Amir Kasab v. State of Maharashtra, (2012)9 SCC 1, wherein production of transcripts of internet transactions helped the prosecution case a great deal in providing the guilt of the accused. Similarly, in the case of State (NCT of Delhi) v. Navjot Sandhu @ Afsan Guru, (2005)11 SCC 600, the links between the slain terrorists and the masterminds of the attack were established only through phone call transcripts obtained from the mobile service providers. **Tomaso Bruno & Anr. v. State of U.P., 2015(2) Supreme 278.**

S. 106 - Burden of Proof – It is always on the prosecution to establish its case beyond reasonable doubt – Lapse on part of investigating agency –No ground to throw out the prosecution case where there is overwhelming evidence to prove the offence.

It is also well settled that though the investigating agency is expected to be fair and efficient, any lapse on its part cannot per se be a ground to throw out the prosecution case when there is overwhelming evidence to prove the offence. **State of Karnataka v. Suvarnamma and another, 2015(88) ACC 317 (S.C.).**

S. 112 – Birth during subsistence of marriage as proof of legitimacy – Presumption as to u/s 112 of above Act.

In this matter appeal was filed against order passed by High Court directing, holding of DNA test, of husband and male child born to Appellant-wife. The question for consideration before the court was Whether impugned

order of approving holding of DNA test of wife in respect of infidelity was justified.

Held that Husband had made clear and categorical assertions in petition filed by him under Section 13 of Hindu Marriage Act, alleging infidelity and gone to extent of naming person, who was father of male child born to Appellant/wife. It was in process of substantiating his allegation of infidelity, that husband had made application for conducting DNA test, which would establish whether or not, he had fathered male child born to Appellant/wife. It was also observed that it would be impossible for Respondent/husband to establish and confirm assertions made in pleadings in respect of Appellant-wife's infidelity. DNA testing was most legitimate and scientifically perfect means, which husband could use, to establish his assertion of infidelity. Appeal disposed of. **Dipanwita Roy v. Ronobroto Roy 2014(12) SCALE 126, (2015)1 SCC 365, 2014 (9) SCJ 461, 2014 (4), (2015) 1 SCC (CRI.) 683**

S.113-B – Dowry death – Presumption – object – Presumption U/s. 113-B of Indian Evidence Act has been enacted to check menace of dowry deaths and in appreciating evidence, social back ground of legislation cannot be ignored.

In this matter court has also noted that the presumption under Section 113B of the Indian Evidence Act has been enacted to check the menace of the dowry deaths and in appreciating the evidence, the social background of the legislation cannot be ignored. **Sultan Singh v. State of Haryana, 2014(8) Supreme 746.**

FOREIGN LAW

Foreign Law - settled principle of private International Law that Foreign Law is always a question of fact required to be pleaded and proved.

Paras 41 and 42 are quoted below: -

"41. It is the pleaded case of the appellant that its legal obligation as transporter ends on its delivering the goods entrusted to it at Benapole Customs station. Unloading of imported goods at any customs station in this country is also regulated by the provisions of the Customs Act, 1962. We are sure that it must be equally regulated by the law of Bangladesh. What exactly the law of Bangladesh is in this regard and how the factum of delivery of goods allegedly carried and delivered by the appellant at Benapole is to be proved are two distinct and different matters. It is a settled principle of private

international law that foreign law is always a question of fact which is required to be pleaded and proved by the party whose rights or obligations flow from such foreign law. There is no pleading or proof in this regard in the instant case.

42. The appellant did not plead as to what is the procedure prescribed under the law of Bangladesh for the unloading of the imported goods at its Customs Stations? Nor does the appellant give the details of the dates of the actual delivery of each of the 4 consignments at Bengapole."

Cross References:

Evidence Act, Section 45 (opinions of persons specially skilled in foreign law are relevant when the Court has to form an opinion upon a point of the foreign law), Section 57 (Court shall take judicial notice of all laws enforced in the territory of India and all public Acts passed by Parliament of the United Kingdom and all local and personal Acts directed by Parliament of the United Kingdom to be judicially noticed), Section 74 (documents forming the acts or record of the acts of the sovereign authority, of official bodies and tribunals and of public officers – Legislative, Judicial and Executive of a foreign country are public documents) and Section 78 (4) (the Acts of Executive or the proceedings of the Legislature of a foreign country may be proved by journals published by their authority or commonly received in that country as such or by a copy certified under the seal of the country or sovereign.)***[M/s Transport Corporation of India Ltd. v. M/s. Ganesh Polytex Ltd., AIR 2015 SC 826]***

HINDU ADOPTION AND MAINTENANCE ACT, 1956

S. 18(2) Suit for maintenance – Maintainability of.

It has been held that a Suit under Section 18 of Act 1956 for maintenance is perfectly maintainable irrespective of compromise reached between the parties under Order 23 Rule 3 C.P.C. and accepted by court.

Section 125 of Cr.P.C. is a piece of Social legislation which provides for a summary and speedy relief by way of maintenance. Order made under Section 125 Cr.P.C. is tentative and is subject to final determination of rights of parties in a civil suit. **Nagendrappa Natikar v. Neelamma AIR 2013 SC 1541, (2015)1 SCC (Cri) 407.**

HUMAN RIGHT COMMISSION ACT

Human Rights Commission – disputed question of title and possession of property cannot be dealt with by it- urban land ceiling matter.

Paras 42 and 43 are quoted below:-

"*42. The Human Rights Commission, in our view, would not be competent forum for the examination of the above-mentioned issues. Both the first respondent Society as well as the encroachers, in our view, wrongly invoked the jurisdiction of the Human Rights Commission instead of pursuing the appropriate remedies available to them in law, and the Human Rights Commission was too willing to exercise authority without any jurisdiction. We are also of the opinion that the High Court resorted to more of a mediation activity than the determination of the legal issues involved in the case.*

43. In our opinion, the Human Rights Commission does not have any jurisdiction to deal with the disputed questions of title and possession of the property." ***[G. Manikyamma v. Raudri Co-operative Housing Society Ltd., AIR 2015 SC 720]***

INDIAN PENAL CODE

S.149 – Common object – Inference of – common object of unlawful assembly can be gathered from facts and conduct of accused persons.

It is settled law, as held in the case of Roy Fernandes v. State of Goa & Ors., (2012)3 SCC 221, that to determine the existence of common object, the court is required to see the circumstances in which the incident had taken place, the conduct of members of unlawful assembly as well as the weapon of offence they carried or used on the spot. It is also established law, as held in the case of Ramchandran & Ors. v. State of Kerala, (2011)9 SCC 257, that common object may form on spur of the moment. Prior concert by way of meeting of members of unlawful assembly is not necessary.

In that view of settled law, the facts of the present case as alleged in the FIR and as proved in the court leave no manner of doubt that the group of persons who chased deceased no.1- Inder Singh and caused his death and thereafter chased, sunounded and caused death of three more persons besides causing grievous injuries to the informat-Amar Singh was an assembly of five or more persons rightfully deserving to be designated as an unlawful assembly because by its action it showed that its common object was to commit offence. The subsequent acts clearly show that the unlawful assembly carried out its common object of committing serious offence of murder of four persons and

grievous injuries to the informant.

This Court, therefore, finds that the courts below committed no error in applying Section 149 of the IPC and convicting the members of the unlawful assembly for offences under Sections 302 and 307 of the IPC (with the aid of Section 149 IPC). **Inder Singh & Ors. v. State of Rajasthan, 2015(1) Supreme 369.**

Death sentence, commutation of - if there is inordinate delay in disposal of mercy petition and the convict is kept in solitary confinement for a long period, death sentence deserves to be commuted into life imprisonment.

AIR 1983 SC 361 and *AIR 1983 SC 465* referred along with other cases.

Paras 9 and 10 are quoted below:-

"9. In the light of the law laid down by this Court, the facts of the present case need to be considered. The death sentence awarded by the trial court on 09.04.2007 attained finality on 16.03.2010 with the dismissal of appeals by this Court. No further proceedings in the form of review petition etc. were taken on behalf of the petitioner. His Mercy Petition preferred on 10.04.2010 i.e. within a month of the decision of this Court was forwarded the same day with all relevant documents so as to enable the concerned functionaries to exercise requisite jurisdiction. Though no time limit can be fixed within which the Mercy Petition ought to be disposed of, in our considered view the period of 3 years and 10 months to deal with such Mercy Petition in the present case comes within the expression "inordinate delay". The delay is not to the account of the petitioner or as a result of any proceedings initiated by him or on his behalf but is certainly to the account of the functionaries and authorities concerned.

10. Furthermore, as submitted in the petition, the petitioner has all the while been in solitary confinement i.e. since the day he was awarded death sentence. While dealing with Section 30(2) of the Prisons Act, 1894, which postulates segregation of a person 'under sentence of death' Krishna Iyer J. in ***Sunil Batra v. Delhi Administration, (1978)4 SCC 494*** *observed:*

> *"The crucial holding under Section 30(2) is that a person is not `under sentence of death', even if the sessions court has sentenced him to death subject to confirmation by the High Court. He is not `under sentence of death' even if the High Court imposes, by confirmation or fresh appellate infliction, death penalty, so long as an appeal to the Supreme Court is likely to be or has been moved or is pending. Even if this Court*

has awarded capital sentence, Section 30 does not cover him so long as his petition for mercy to the Governor and/or to the President permitted by the Constitution, Code and Prison Rules, has not been disposed. Of course, once rejected by the Governor and the President, and on further application there is no stay of execution by the authorities, he is `under sentence of death', even if he goes on making further mercy petitions. During that interregnum he attracts the custodial segregation specified in Section 30(2), subject to the ameliorative meaning assigned to the provision. To be `under sentence of death' means `to be under a finally executable death sentence".

Speaking for the majority in the concurring Judgment D.A. Desai J. stated thus:

> *"The expression "prisoner under sentence of death" in the context of Sub- section (2) of Section 30 can only mean the prisoner whose sentence of death has become final, conclusive and indefeasible which cannot be annulled or voided by any judicial or constitutional procedure. In other words, it must be a sentence which the authority charged with the duty to execute and carry out must proceed to carry out without intervention from any outside authority ....."*

In the light of the enunciation of law by this Court, the petitioner could never have been "segregated" till his Mercy Petition was disposed of. It is only after such disposal that he could be said to be under a finally executable death sentence. The law laid down by this Court was not adhered to at all while confining the petitioner in solitary confinement right since the order of death sentence by the first court. In our view, this is complete transgression of the right under Article 21 of the Constitution causing incalculable harm to the petitioner." ***[Ajay Kumar Pal v. Union of India, AIR 2015 SC 715*** **(3judges)]**

Sections 300 and 304 part 1 – sudden fight between two male groups over a cattle shed, the shed burned by one group. A female inside that died- even though appellants armed with weapons but they did not use the same for killing the lady- accused liable to be convicted under Section 304 (Part I) and not Section 302.

Paras 18 and 19 are quoted below:-

"18. Applying the aforesaid principle of law to the facts of the case in hand and keeping the same in consideration when we examine the evidence of the prosecution, we find that this is a case where the appellants should have

been convicted for the offence punishable under Section 304 Part-I instead of Section 302 IPC.

19. It is for the reason that firstly, neither there was any motive and nor any intention on the part of any of the appellants to eliminate Savitribai. Secondly, there was no enmity of any kind with Savitribai in person with any of the appellants. Thirdly, the appellants had gone there to take possession of the cattle shed and not with an intention to kill any member of the family of Madhavrao Renge. Fourthly, if at all, if there was some kind of animosity or jealousy then it was towards A-1 whose panel had won the election. Savitribai had nothing to do with election because she never contested the election. Fifthly, despite the appellants armed with weapons, none of them inflicted any injury or gave blow to Savitribai but single blow was inflicted only on Madhavrao, who fortunately survived. Sixthly, Savitribai died due to sustaining of burn injuries, which she suffered because the appellants ablazed the cattle shed by pouring kerosene on it. In other words, if the appellants had not ablazed the cattle shed then the incident of death of Savitribai would not have occurred. Eighthly, it was a fight on a spur of moment between the two male groups on the issue of taking possession of cattle shed with no intention to kill any one and lastly, in the absence of any overt act attributed to any of the appellants towards Savitribai for inflicting any injury to her, the appellants could not have been convicted for an offence of committing murder of Savitribai so as to attract the rigour of Section 302 IPC and instead they should have been convicted for an offence of culpable homicide not amounting to murder under Section 304 Part I IPC." ***[Balu Onkar Pund v. State of Maharashtra, ARE 2015 SC 949.]***

Section 300 – murder - circumstantial evidence – accused stayed with the deceased and deceased left the house with them- dead body of the deceased recovered soon after his departure along with accused - deceased was last seen with the accused and certain articles which belonged to the deceased were also recovered from the custody of the accused- conviction of accused under Section 302 read with Section 34 I.P.C. proper and justified.

Paras 14 and 15 are quoted below:-

"14. The fact that the deceased was 'last seen' with Raghuvendra and

his dead body was found soon thereafter coupled with the fact that certain articles belonging to the deceased were recovered from the custody of Raghuvendra and his uncle at their instance leaves no room for doubt that the three of them were travelling together. Among the articles recovered from Raghuvendra and his uncle was a purse belonging to the deceased and some other personal effects including clothing. These were identified as belongings of the deceased and were perhaps carried by him while travelling to Bilaspur.

15. There is no manner of doubt, on these facts, that the death of Bhagwan Singh was caused by Raghuvendra and his uncle. No other inference is possible or even suggested." ***[Raghuvendra v. State of M.P. AIR 2015 SC 704]***

Ss. 302/34 – Common intention to murder – Inference of

In this matter High Court had set aside acquittal of Accused and convicted them for offence of murder. The appeal was filed in this matter on grounds that Whether impugned order rightly convicted Appellants for offence in question by determining common intention.

It was held that, First Information Report disclosed not only identity of Appellants and 3rd Accused but also role played by them. The Entire case of prosecution insofar as conviction of 3rd Accused was concerned rested on very same testimony coming from witnesses which case was accepted right upto Court. When all Accused separately armed with weapons storm into house of Victim, merely because only 3rd Accused used weapon and gave fatal blow, would not absolve accused. The Circumstance showed that Appellants shared same intention. Common intention to bring about definite result was evident from circumstances on record. No infirmity was found in impugned order - Appeal dismissed. **Naim v. State of Uttarakhand 2014(3)ACR3350, 2015(1)RCR(Criminal)289, (2015)1SCC397, (2015) 1 SCC (Cri)695**

Ss. 302 and 304-B- If death of married women in unnatural circumstances within seven years then section 304-B would be attracted – However death being homicidal, courts were required to find out the person causing the murder.

It is rather strange that the High Court having entered a finding as extracted by us at paragraph-8 that it is a case of murder committed by the appellants herein, declined to award appropriate punishment under Section

302 IPC. It is a case where the appellants had faced trial under Section 302 of IPC and, therefore, the High Court could have, awarded an appropriate punishment. The probable reasons why the High Court declined to do so, we shall discuss later.

Since, the victim in the case is a married woman and the death being within seven years of marriage, apparently, the court has gone one on one tangent, to treat the same as a dowry death. No doubt, the death is in unnatural circumstances but if there are definite indications of the death being homicide, the first approach of the prosecution and the court should be to find out as to who caused that murder. Section 304B of IPC is not a substitute for Section 302 of IPC. The genesis of Section 304B of IPC introduced w.e.f. 19.11.1986 as per Act 43 of 1986 relates back to the 91st report of the Law Commission of India. It is significant to note that the subject was taken up by the Law Commission suo motu.

However, it is generally seen that in cases where a married woman dies within seven years of marriage, otherwise than under normal circumstances, no inquiry is usually conducted to see whether there is evidence, direct or circumstantial, as to whether the offence falls under Section 302 of IPC. Sometimes, Section 302 of IPC is put as an alternate change. In cases where there is evidence, direct or circumstantial, to show that the offence falls under Section 302 of IPC, the trial court should frame the charge under Section 302 of IPC even if the police has not expressed any opinion in that regard in the report under Section 173(2) of the Cr.P.C. Section 304B of IPC can be put as an alternate charge if the trial court so feels. In the course of trial, if the court finds that there is no evidence, direct or circumstantial, and proof beyond reasonable doubt is not available to establish that the same is not homicide, in such situation, if the ingredients under Section 304B of IPC are available, the trial court should proceed under the said provision. **Vijay Pal Singh and others v. State of Uttarakhand, 2015(1) Supreme 521 : AIR 2015 SC 684.**

S.304 Part 1 – Shuffle in sudden fight – No premeditation – case falling under Exception 4 of Section 300 punishable U/s. 304, Part A.

As elaborated earlier, complainant party went to the field and Sabbir Shah was armed with gun. In the sudden fight, there was a scuffle. During the course of scuffle, the appellants inflicted injuries on the deceased Sabbir Shah. The accused tried to grapple the gun from Sabbir Shah. There was no premeditation and that the incident was the result of sudden fight. In the scuffle, other accused inflicted injuries on Rakhu Shah and PW-8 Rakhia. **Ahmed Shah & Anr. v. State of Rajasthan, 2015(2) Supreme 200**

Section 304-B – Evidence Act, 1872 – Section 113-B- Dowry death – Evidence adduced by the prosecution and conditions mentioned in section 113-B of Evidence Act fulfilled – Court has taken a presumption – Burden shifts on the accused to rebut the presumption.

From the language of section 113-B of the Indian Evidence Act it is clear that once death of a woman is caused by any burn or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage, and if it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband in connection with demand of dowry, such husband or relative shall be deemed to have caused her death and the Court shall presume it. In other words, in the cases of dowry death, as defined in section 304-B, I.P.C., after evidence adduced by the prosecution and conditions mentioned in section 113-B, Indian Evidence Act, are fulfilled, Court has to take a presumption, and burden shifts on the accused to rebut the presumption. **Harish Kumar v. State of Haryana, 2015(88) ACC 640(S.C.).**

Section 307 - Attempt to murder – Prosecution has to establish – Intension to commit murder and act done by the accused.

For the purpose of conviction under section 307, I.P.C., prosecution has to establish (i) the intention to commit murder and (ii) the act done by the accused. The burden is on the prosecution that accused had attempted to commit the murder of the prosecution witnesses. Whether the accused person intended to commit murder of another person would depend upon the facts and circumstances of each case. To justify a conviction under section 307, I.P.C., it is not essential that fatal injury capable of causing death should have been caused. Although the nature of injury actually caused may be of assistance in coming to a finding as to the intention of the accused, such intention may also be adduced from other circumstances. The intention of the accused is to be gathered from the circumstances like the nature of the weapon used, words used by the accused at the time of the incident, motive of the accused, parts of the body where the injury was caused and the nature of injury and severity of the blows given etc. **Jage Ram and others v. State of Haryana and another, 2015(88) ACC 934(S.C.).**

INTERPRETATION OF STATUTE

Retrospectivity – Unless provided to the contrary, statute affects the rights prospectively, Retrospectivity may be express or inferred.

In absence of any express or necessarily implied provision in the statute,

normally statute affects the rights prospectively.

A statutory provision is held to be retrospective either when it is so declared by express terms, or the intention to make retrospective clearly follows from the relevant words and the context in which they occur. **M. Surender Reddy v. Govt. of Andhra Pradesh and ors., 2015(1) Supreme 15.**

Doctrine of perspective overruling – Observed as a rule of judicial craftmanship laced with pragmention.

The 'Doctrine of Prospective Overruling' was, observed by this Court as a rule of judicial craftsmanship laced with pragmatism and judicial statemanship as a useful tool to bring about smooth transition of the operation of law without unduly affecting the rights of the people who acted upon the law that operated prior to the date of the judgment overruling the previous law. **K. Madhava Reddy and others v. Government of A.P. and others, 2015(1) ESC 74(SC)**

When language of the provision is in plain wordings not creating any court cannot depart from literal rule of interpretation or conflict ambiguity.

The plain wordings used by the Legislature under the provisions of Section 24(2) are made very clear and do not create any ambiguity or conflict. In such a situation, the court is not required to depart from the literal rule of interpretation, as held by this Court in the case of C.I.T., Mysore v. The Indo Mercantile Bank Ltd., AIR 1959 SC 713 as under:-

> "10. Lord Macmillan in Madras & Southern Maharatta Railway Co. v. Bezwada Municipality laid down the sphere of a proviso as follows:
>
> The proper function of a proviso is to except and deal with a case which would otherwise fall within the general language of the main enactment, and its effect is confined to that case. Where, as in the present case, the language of the main enactment is clear and unambiguous, a proviso can have no repercussion on the interpretation of the main enactment, so as to exclude from it by implication what clearly falls within its express terms.
>
> The territory of a proviso therefore is to carve out an exception to the main enactment and exclude something which otherwise would have been within the section. It has to operate in the same field and if the language of the main enactment is clear it cannot be used for the purpose of interpreting the main enactment or to exclude by implication what the enactment clearly says unless the words of the proviso are such that that is it necessary effect." **Rajiv Chowdhrie Huf v. Union of**

India & Ors., 2015(1) Supreme 151.

JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) RULES, 2007

Rule 12(3)(b) – Appellant raising plea of juvenility – not having any documentary evidence – In absence of any documentary evidence about age of accused, court has to go by report of Medical Board.

An application filed by the appellant in this Court seeking to raise a plea that the appellant was a juvenile on the date of the commission of offence hence entitled to the benefit of Juvenile Justice (Care and Protection of Children) Act, 2000. Since the appellant did not have any documentary evidence like a school or other certificate referred to under the Act mentioned above, this Court had directed the Principal, Government Medical College, Jodhpur, to constitute a Board of Doctors for medical examination including radiological examination of the appellant to determine the age of the appellant as in April, 1998 when the offence in question was committed. The Superintendant of the Central Jail was directed to ensure production of the appellant for the purpose of determination of his age before the Medical Board for carrying out the tests and examination. In compliance with the said direction, the Principal constituted a Medical Board for determining the age of the appellant and submitted a report dated 4th February, 2014.

The appellant is reported to be a deaf and dumb. He was never admitted to any school. There is, therefore, no officially maintained record regarding his date of birth. Determination of his age on the date of the commission of the offence is, therefore, possible only by reference to the medical opinion obtained from the duly constituted Medical Board in terms of Rule 12(3)(b) of the Juvenile Justice (Care and Protection of Children) Rule, 2007.

The medical opinion given by the duly constituted Board comprising Professors of Anatomy, Radiodiagnosis and Forensic Medicine has determined his age to be "about" years on the date of the examination. The Board has not been able to give the exact age of the appellant on medical examination no matter advances made in that field. That being so in terms of Rule 12(3)(b) the appellant may even be entitled to benefit of fixing his age on the lower side within a margin of one year in case the Court considers it necessary to do so in the facts and circumstances of the case. The need for any such statutory concession may not however arise because even if the estimated age as determined by the Medical Board is taken as the correct/true age of the appellant he was just about 17 years and 2 months old on the date of the occurrence and thus a juvenile within the meaning of the expression as used in

the Act aforementioned. **Darga Ram @ Gunga v. State of Rajasthan., 2015(1) Supreme 161.**

Rule 98 – Date of Juvenility – Determination of – The age of the accused on date of crime decided his juvenility.

Having regard to the said legal position, the very same consequences set out in the said decision should apply to the case of the Appellant in Criminal Appeal No. 1410 of 2011 who has already suffered more than the maximum period of detention as provided under the Juvenile Justice Act. The said appellant was enlarged on bail by this Court's order dated 18.07.2011. Therefore, while confirming his conviction as per the judgment impugned in this appeal, we hold that he is entitled for the benefit of the provisions of the Juvenile Justice Act and the sentence already undergone by him shall be sufficient for the above conviction. Therefore, he shall not be detained any more in this case unless his detention is warranted in any other case. Criminal appeal No. 1410 stand disposed of on the above terms. **Hakkim v. State Represented by deputy Superintendent of Police, 2015(1) Supreme 58.**

MOTOR VEHICLES ACT

Ss. 2(30), 166, 168, 173, 146(1) – "Owner" of Motor Vehicle – Who is-Person in whose possession and control motor vehicle is, as a matter of right-Registered owner when not liable for accidents.

Underlying legislative intention of wider definition of "owner" adopted under S. 2(30) of the 1988 Act is to include in the definition of "owner" a person in possession of a vehicle either under an agreement of lease or agreement of lease of agreement of hypothecation or under a hire- purchese agreement to the effect that a person in control and possession of the vehicle should be construed as the "owner" and not the registered owner alone-The legislative intention is that the registered owner of the vehicle should not be held liable if the vehicle was not in his possession and control- Hence vehicle being on requisition and in possession and control of Government as the time of accident, held, Government is liable to compensate claimants. **(Purnaya Kala Devi v. State of Assam and another, (2015) 1Supreme Court Cases (Cri) 304).**

S.168 – claimant not challenging award passed by Tribunal – Still, Courts obliged to award just and reasonable compensation even by increasing the compensation.

The tribunal has awarded Rs.2,24,000/- as against the same, claimants have not filed any appeal. As against the award passed by the tribunal when the

claimants have not filed any appeal, the question arises whether the income of the deceased could be increased and compensation could be enhanced. In terms of Section 168 of the Motor Vehicles Act, the courts/tribunals are to pass awards determining the amount of compensation as to be fair and reasonable and accepted by the legal standards. The power of the courts in awarding reasonable compensation was emphasized by this Court in Nagappa v. Gurudayal Singh & Ors, (2003)2 SCC 274, Oriental Insurance Company Ltd. v. Mohd. Nasir & Anr. (2009)6 SCC 280, and Ningamma & Anr. v. United India Insurance Company Ltd., (2009)13 SCC 710. As against the award passed by the tribunal even though the claimants have not filed any appeal, as it is obligatory on the part of courts/tribunals to award just and reasonable compensation, it is appropriate to increase the compensation **Jitendra khimshankar Trivedi & Ors. v. Kasam Daud Kumbhar & Ors, 2015(1) Supreme 566.**

NEGOTIABLE INSTRUMENT ACT

'Stop payment' attracts section 138.

Para 10 quoted below:-

"10. The High Court, in our opinion, fell into a grave error when it proceeded to quash the complaint. Even "stop payment" instructions issued to the bank are held to make a person liable for offence punishable under Section 138 of the NI Act in case cheque is dishonoured on that count. In ***Modi Cements v. Kuchil Kumar Nandi, 1998(2) R.C.R.(Criminal) 77 : (1998) 3 SCC 249*** *this Court made it clear that even if a cheque is dishonoured because of "stop payment" instructions given to the bank, Section 138 of the NI Act would get attracted. This Court further observed that once the cheque is issued by the drawer a presumption under Section 139 must follow and merely because the drawer issues a notice to the drawee or to the bank for stoppage of the payment it will not preclude an action under Section 138 of the NI Act by the drawee or the holder of the cheques in due course."* ***[Pulsive Technologies P.Ltd. v. State of Gujarat, AIR 2015 SC 910]***

Section 138 - Complaint by Power of Attorney holder, valid.

It is to be decided whether cheques issued for accrued, crystallized liability or as security.

Para 19 and earlier part of para 24 quoted below:-

"19. Thus, it is clear that the complaint under Section 138 of the NI Act

can be filed through the power of attorney holder. In this case, Sudhir Gulvady is the power of attorney holder of the appellant and he has filed the complaint on her behalf. The learned Magistrate recorded the statement of the power of attorney holder under Section 200 of the Code on 5/3/2004 and issued summons. We have perused the said statement. It is signed by the power of attorney holder and by learned Magistrate. A.C. Narayanan states that power of attorney holder must have knowledge about the relevant transactions. There can be no dispute about the fact that in this case, the power of attorney holder being the husband of the appellant has witnessed all transactions and he possesses due knowledge about them. He is associated with all transactions at all crucial stages. The appellant has placed this fact in the forefront in her complaint. The relevant paragraph of the complaint reads as under:

> *"3. The complainant is represented by her Power of Attorney Holder Mr. Sudhir Gulvady, her husband as the complainant is unable to come to the Court due to her not keeping good health and the whole transaction is also within the knowledge of her Power of Attorney holder who is her husband".*

24. On the basis of the averments made in the complaint and on the basis of the above letter, it is contended by learned counsel for the respondents that the above cheques were issued as a security; that there was no crystallized liability or outstanding dues and that there was no legally recoverable debt and, therefore, the complaint was not tenable. On the other hand, it is strenuously contended by the counsel for the appellant that it is abundantly clear from the above letter that the cheques were issued for a crystallized liability or a legally recoverable debt. Since the High Court has not dealt with this submission at all, we deem it appropriate to remand the matter to the High Court for that purpose. Hence, while holding in favour of the appellant that the complaint can be filed by a power of attorney holder and on that ground complaint cannot be held not maintainable and that the power of attorney was very much on record, we remand the matter to the High Court with a request that the High Court should hear both sides and decide whether the cheques in question were issued as a security or for the purpose of repayment of legally recoverable debt." ***[Vinita S. Rao v. M/s. Essen Corporate services Ptv. Ltd., AIR 2015 SC 882].***

Sections 138 & 141 vicarious liability of Director of Company

Accused, a house wife, appointed as non-executive director who resigned before issuance of cheques, which were dishonoured. She was not

responsible for the conduct of the company. Complaint ought to have been quashed under Section 482 Cr.P.C. by the High Court.

Letter of guarantee gives rise to civil liability.

Paras 19, 20, 27 and 29 are quoted below:-

"19. A Director of a Company is liable to be convicted for an offence committed by the Company if he/she was in charge of and was responsible to the Company for the conduct of its business or if it is proved that the offence was committed with the consent or connivance of, or was attributable to any negligence on the part of the Director concerned ***State of Karnataka v. Pratap Chand & Ors., (1981)2 SCC 335].***

20. In other words, the law laid down by this Court is that for making a Director of a Company liable for the offences committed by the Company under Section 141 of the N.I. Act, there must be specific averments against the Director showing as to how and in what manner the Director was responsible for the conduct of the business of the Company.

27. Unfortunately, the High Court did not deal the issue in a proper perspective and committed error in dismissing the writ petitions by holding that in the Complaints filed by the Respondent No. 2, specific averments were made against the appellant. But on the contrary, taking the complaint as a whole, it can be inferred that in the entire complaint, no specific role is attributed to the appellant in the commission of offence. It is settled law that to attract a case under Section 141 of the N.I. Act a specific role must have been played by a Director of the Company for fastening vicarious liability. But in this case, the appellant was neither a Director of the accused Company nor in charge of or involved in the day to day affairs of the Company at the time of commission of the alleged offence. There is not even a whisper or shred of evidence on record to show that there is any act committed by the appellant from which a reasonable inference can be drawn that the appellant could be vicariously held liable for the offence with which she is charged.

29. So far as the Letter of Guarantee is concerned, it gives way for a civil liability which the respondent No. 2-complainant can always pursue the remedy before the appropriate Court. So, the contention that the cheques in question were issued by virtue of such Letter of Guarantee and hence the appellant is

liable under Section 138 read with Section 141 of the N.I. Act, cannot also be accepted in these proceedings." ***[Pooja Ravinder Devidasani v. State of Maharashtra, AIR 2015 SC 675]***

Ss. 138, 141 and 142 – Complaint filed by power of attorney holder but no mention of, or a reference to Power of Attorney in body of complaint – No particulars of power of attorney filed – Order taking cognizance not mentioning anything about power of attorney – Order not sustainable.

In this case Magistrate had taken cognizance of the complaint without prima facie establishing the fact as to whether the Power of Attorney existed in first place and whether it was in order. It is not in dispute that the complaint against the appellant was not preferred by the payee or the holder in due course and the statement on oath of the person who filed the complaint has also not stated that he filed the complaint has also not stated that he filed the complaint having been instructed by the payee or holder in due course of the cheque. Since the complaint was not filed abiding with the provisions of the Act, it was not open to the Magistrate to take cognizance.

From the bare perusal of the said complaint, it can be seen that except mentioning in the cause title there is no mention of or a reference to the Power of Attorney in the body of the said complaint nor was it exhibited as part of the said complaint. Further, in the list of evidence there is just a mere mention of the words at serial no.6 viz. "Power of Attorney", however there is no date or any other particulars of the Power of Attorney mentioned in the complaint. Even in the verification statement made by the respondent no.2, there is not even a whisper that she is filing the complaint as the Power of Attorney holder of the complainant. Even the order of issue of process dated 20th February, 1998 does not mention that the Magistrate had perused any Power of Attorney for issuing process.

The appellant has stated that his advocate conducted search and inspection of the papers and proceedings of the criminal complaint and found that no Power of Attorney was found to be a part of that record. This has not been disputed by the respondents. In that view of the matter and in light of decision of the larger Bench, as referred above, we hold that the Magistrate wrongly took cognizance in the matter and the Court below erred in putting the onus on the appellant rather than the complainant. The aforesaid fact has also been overlooked by the High Court while passing the impugned judgment dated 12th August, 2005.

In the result, the impugned judgment dated 12th August, 2005 passed by the High Court of Judicature at Bombay and the order dated 29th November,

2000 passed by the Additional Chief Metropolitan Magistrate, 9th Court, Bandra, Mumbai are set aside and the proceedings in question against the appellant are quashed. **A.C. Narayanan v. State of Maharashtra & Ors., 2015(1) Supreme 359 : AIR 2015 SC 1198.**

PREVENTION OF CORRUPTION ACT

Ss. 7 and 13(2) – Demand of brible and acceptance thereof not established – Conviction U/s. 13(2) would not be sustainable.

In the present case, as has been rightly held by the High Court, there is no demand for the illegal gratification on the part of the appellant under Section 7 of the Act. Therefore, in our view, the question of acceptance of illegal gratification from the complainant under the provision of Section 13(1)(d) of the Act also does not arise. The learned Special Judge has come to the erroneous conclusion that the appellant had received the money and therefore he had recorded the finding that there was demand and acceptance of the bribe money on the part of the appellant and convicted and sentenced the appellant. However, the High Court on re-appreciation of evidence on record has held that the demand alleged to have been made by the appellant from the complainant PW2, was not proved and that part of the conviction and sentence was rightly set aside in the impugned judgment. However, the High Court has erroneously affirmed the conviction for the alleged offence under Section 13(1)(d) read with Section 13(2) of the Act, although as per law, demand by the appellant under Section 7 of the Act, should have been proved to sustain the charge under Section 13(1)(d) of the Act.

Thus, on a careful perusal of the entire evidence on record along with the statement of the prosecution witnesses, we have to hold that the prosecution has failed to satisfy us beyond all reasonable doubt that the charge leveled against the appellant is proved.

The decision of this Court referred to supra upon which the learned counsel for the appellant has rightly placed reliance upon and the ratio laid down in the above case, aptly applies to the fact situation on hand and therefore, we have to grant the relief to the appellant by allowing this appeal. **C.Sukumaran v. State of Kerala, 2015(1) Supreme 417.**

S.19 – Sanction for prosecution – Police filing final form requesting closure of case – Magistrate taking informed decision not to issue process – High Court directed to D.G.P. to recommend for sanction – High Court exceeded his jurisdiction, no court can issue a positive direction to an authority to give sanction for prosecution.

Once the prosecution is of the view that no case is made out so as to prosecute an accused, unless the court finds otherwise, there is no point in making a request for sanction for prosecution. If the prosecution is simply vexatious, sanction for prosecution is not to be granted. That is one of the main considerations to be borne in mind by the competent authority while considering whether the sanction is to be granted or not. In Mansukhlal Vithaldas Chauhan v. State of Gujarat, (1997)7 SCC 622, this Court has in unmistakable terms made it clear that no court can issue a positive direction to an authority to give sanction for prosecution. Th quote:

> "32. By issuing a direction to the Secretary to grant sanction, the High Court closed all other alternatives to the Secretary and compelled him to proceed only in one direction and to act only in one way, namely, to sanction the prosecution of the appellant. The Secretary was not allowed to consider whether it would be feasible to prosecute the appellant; whether the complaint of Harshadrai of illegal gratification which was sought to be supported by "trap" was false and whether the prosecution would be vexatious particularly as it was in the knowledge of the Government that the firm had been blacklisted once and there was demand for some amount to be paid to the Government by the firm in connection with this contract. The discretion not to sanction the prosecution was thus taken away by the High Court."

The High Court exceeded in its jurisdiction in substituting its views and that too without any legal basis. The impugned order is hence set aside. **Sanjaysinh Ramrao Chavan v. Dattafray Gulabrao Phalke and others., 2015(1) Supreme 195.**

PROBATION OF OFFENDER ACT

M.P. Prisoners Release on Probation Act of 1954 – If Probation Board refuses to recommend for release of a convict on probation which opinion is accepted by the State Government, High Court while rejecting the opinion and the acceptance cannot direct release of the person concerned. High Court could only remand the matter in such situation.

Para 11 quoted below:

"11. It is thus clear that even if approach adopted by the Board and the State is not germane, normally procedure to be followed by the High Court in exercise of power of judicial review is to remand the matter to the competent authority in the light of such observations as may be found to be appropriate,

instead of the High Court itself directing release, as has been done in the present case. There is no reason in the present case to deviate from this established procedure, in exercise of power in judicial matter in cases of this nature." ***[State of M.P. v. Kuman Singh, AIR 2015 SC 908]***

PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT

Ss. 12, 2(a), (f) & (s), 3,18 to 23 and 26 "Aggrieved person" –Who is-Divorced wife, held, included. Divorced women can seek relief against ex-husband under DAV Act.

The following questions arose for consideration by the Supreme Court in the present appeal:

(i) Whether divorce of the appellant and the first respondent had taken place on 9-5-2008? And

(ii) Whether a divorced women can seek reliefs against her ex-husband under Sections 18 to 23 of the Domestic Violence Act, 2005?

In the instant case, the appellant wife had filed an application under Section 12 seeking relief under Sections 18 to 23 of the DVA Act. The monetary relief as stipulated under Section 20 of the DVA Act is different from maintenance, which can be in addition to an order of maintenance under Section 125 CrPC or any other law. Such monetary relief can be granted to meet the expenses incurred and losses suffered by the aggrieved person and child of the aggrieved person as result of the domestic violence, which is not dependent on the question whether the aggrieved person, on the date of filing of the application under Section 12 of the DVA Act is in a domestic relationship with the respondent. In view of Section 23 of the DVA Act it is well within the jurisdiction of the Magistrate to grant the interim ex parte relief as he deems just and proper, if the Magistrate is satisfied that the application prima facie discloses that the respondent is committing, or has committed an act of domestic violence. Further, it is not necessary that relief available under Section 18,19,20,21 and 22 of the DVA Act can only be sought for in a proceeding under the Domestic Violence Act. Any relief available under the aforesaid provisions may also be sought for in any legal proceeding even before a civil court and Family Court, apart from the criminal court, affecting the aggrieved person whether such proceeding was initiated before or after the commencement of the DVA Act. This is apparent from Section 26 of the DVA Act. Even before the criminal court where case under Section 498-A IPC is pending, if the allegation is found genuine, it is always open to the appellant to ask for reliefs under Sections 18 to 22 of the DVA Act and interim relief under

Section 23 of the DVA Act. In the present case, the alleged domestic violence took place during 2006-2007 and in the writ petition filed by the first respondent the High Court refused to quash the FIR against him observing that prima pacie case under Section 498-A IPC was made out against him.

Even if it is accepted that the appellant has obtained ex parte khula (divorce) under the Muslim Personal Law from the Mufti on 9-5-2008, the petition under Section 12 of the domestic Violence Act is maintainable. The erstwhile wife can claim one or other relief as prescribed under Sections 18,19,20,21, 22 and interim under Section 23 on the Domestic Violence Act, 2005, as domestic violence has taken place when the wife lived together in shared household with her husband through a relationship in the nature of marriage. An act of domestic violence once committed, subsequent decree of divorce will not absolve the liability of the respondent from the offence committed or to deny the benefit to which the aggrieved person is entitled under the DVA Act including monetary relief under Section 20, child custody under Section 21, compensation under Section 22 and interim or ex parte order under Section 23 of the DVA Act. Both the Sessions Judge and the High Court failed to notice the provisions of the DVA Act viz. Sections 2(a), 2(f), 2(s), 3, 18 to 23 and 26 and the fact that in any case the FIR under Section 498-A and 406 IPC was lodged much prior to the alleged divorce between the parties and erred in holding that the petition under Section 12 of the DVA Act was not maintainable**. (Juveria Abdul Majid Patni v. Atif Iqbal Manssori and another, (2015) 1 Supreme Court Cases (Cri) 241).**

RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT ACT, 2013

S.24(2) – Award made 5 years prior to commencement of Act – Neither possession taken nor can pension paid Effect of – Acquisition proceedings lapsed.

On examining the facts and circumstances of the case on hand, it is an undisputed fact that the award was made 5 years prior to the date of commencement of the Resettlement Act, 2013 i.e. on 06.08.2007 vide Award No.1/2007-2008 and either physical possession of the land should have been taken or compensation has been paid to the appellant in respect of his acquired land. Therefore, the acquisition proceedings of the land of the appellant are lapsed in view of Section 24(2) of the Act of 2013, which provision has been rightly interpreted by this Court by a three Judge Bench decision in the case of Pune Municipal Corporation and other cases referred to supra, the relevant

paras of the aforesaid case are extracted hereunder:-

> "20…..it is clear that the award pertaining to the subject land has been made by the Special Land Acquisition Officer more than five years prior to the commencement of the 2013 Act. It is also admitted position that compensation so awarded has neither been paid to the landowners/persons interested nor deposited in the court. The deposit of compensation amount in the Government treasury is of no avail and cannot be held to be equivalent to compensation paid to the landowners/persons interested. We have, therefore, no hesitation in holding that the subject land acquisition proceedings shall be deemed to have lapsed under Section 24(2) of the 2013 Act.
>
> The argument on behalf of the Corporation that the subject land acquisition proceedings have been concluded in all respect under the 1894 Act and that they are not affected at all in view of Section 114(2) of the 2013 Act, has no merit at all, and is noted to be rejected. Section 114(1) of the 2013 Act repeals the 1894 Act. Sub-section (2) of Section 114, however, makes Section 6 of the General Clauses Act, 1897 applicable with regard to the effect of repeal but this is subject to the provisions in the 2013 Act. Under Section 24(2) land acquisition proceedings initiated under the 1894 Act, by legal fiction, are deemed to have lapsed where award has been made five years or more prior to the commencement of the 2013 Act and possession of the land is not taken or compensation has not been paid. The legal fiction under Section 24(2) comes into operation as soon as conditions stated therein are satisfied. The applicability of Section 6 of the General Clauses Act being subject to Section 24(2), there is no merit in the contention of the Corporation."

In view of the aforesaid findings and reasons recorded by us, the acquisition proceedings in respect of the appellant's land have lapsed. The prayer made in this Interlocutory Application is allowed in the above terms and consequently, the civil appeal is also allowed by quashing the acquisition proceeding notification in so far as the land of the appellant is concerned. **Rajiv Chowdhrie Huf v. Union of India & Ors., 2015(1) Supreme 151.**

SERVICE LAW

Equal pay for equal work – Applicability – Principles of equal pay for equal work is not attracted in the case of employees retired under VRS vis-a-vis serving employees.

The issue involved in all these cases is with regard to retiral benefits to be given to a special class of retired employees of five nationalized general insurance companies.

The insurance companies, "the Employers", were in financial difficulties and so they framed a scheme named "General Insurance Employees Special Voluntary Retirement Scheme, 2004", so as to enable its employees to retire prematurely on certain conditions with some special benefits.

The employees opting for voluntary retirement under the Scheme were to get benefit of ex gratia amount as well as benefit of additional pension which would result from the addition of the notional five years' service.

Several employees took benefit under the Scheme and retired in pursuance of the aforestated Scheme in 2004.

After retirement of the aforestated employees, the Employers revised pay scales of their employees under Notification dated 21st December, 2002, provided the employees were in service on or after 1st August, 2002.

The issue involved in all these cases is whether after acceptance of voluntary retirement under the Scheme, such retired employees would be entitled to get benefit of the revision of pay, which was retrospectively given from 1st August, 2002.

The employees who retired under the Scheme form a separate class of employees who were given many benefits, which are not given to employees retiring in normal course. If they all form a separate class, by no stretch of imagination it can be said that all those who retired under the Scheme and those who retired in normal course, are similarly situated. Thus, in our opinion, there is no violation of Article 14 of the Constitution of India in the instant case.

Similarly, there is no violation of the principle of equal pay for equal work. True, that those who retired under the Scheme did the same work which was being done by those who retired in normal course, but one cannot forget the fact that those who retired under the Scheme got substantially higher retirement benefits. In the circumstances, we do not accept the said submission also. **Manojbhai N. Shah & Ors. v. Union of India & Ors., 2015(1) Supreme 1.**

Departmental and Criminal proceedings – Acquittal of an employee by a criminal court would not automatically and conclusively impact Departmental proceedings.

In R.P.Kapur v. Union of India, AIR 1964 SC 787 the question before the Constitution Bench was that the Petitioner therein had been suspended owing to the pendency of criminal proceedings against him which was challenged on the anvil of Article 314 of the Constitution. Thus, this decision is not of much relevance for the resolution of the legal nodus before us, save for the observations that "if criminal charge results in conviction, disciplinary proceedings are bound to follow against the public servant is convicted, even in case of acquittal proceedings may follow where the acquittal is other than honourable." However, on this aspect of the law we need go no further than the recent decision in Deputy General of Police v. S. Samuthiram, (2013)1 SCC 598, since it contains a comprehensive discourse on all the prominent precedents. This Court has concluded, and we respectfully think correctly, that acquittal of an employee by a Criminal Court would not automatically and conclusively impact Departmental proceedings. Firstly, this is because of the disparate degrees of proof in the two, viz. beyond reasonable doubt in criminal prosecution contrasted by preponderant proof in civil or departmental enquiries. Secondly, criminal prosecution is not within the control of the concerned department and acquittal could be the consequence of shoddy investigation or slovenly assimilation of evidence, or lackadaisical if not collusive conduct of the Trial etc. Thirdly, an acquittal in a criminal prosecution may preclude a contrary conclusion in a departmental enquiry if the former is a positive decision in contradistinction to a passive verdict which may be predicated on technical infirmities. In other words, the Criminal Court must conclude that the accused is innocent and not merely conclude that he has not been proved to be guilty beyond reasonable doubt. **Union of India & Anr. v. Purushottam, 2015(1) Supreme 97 : AIR 2015 SC 961 : (2015)3 SCC 779.**

Punishment – Proportionality – Appellant dismissed from service on being found guilty of temporary embezzlement and forgery – No leniency can be shown in matter of punishment in proved case of misconduct.

As far as argument relating to quantum of punishment, as modified by the High Court, which results in consequential forfeiture of pensionary benefits in view of Rule 23, quoted above, is concerned, we do not find the punishment to be harsh or disproportionate to the guilt, in view of the nature of the charge of which the appellant is found guilty in the present case. Time and again, this Court has consistently held that in such matters no sympathy should be shown by the Courts. **Diwan Singh v. Life Insurance Corporation of India and others, 2015(2) Supreme 70.**

14 and 16 – Voluntary retirement – Reinstatement – Reinstatement after

voluntary retirement – Consideration of

The appellant at the relevant time was working as Superintendent in the office of Commissioner of Sericulture at Hyderabad. According to the appellant, sometime in the year 2003, his wife fell sick with onset of menopause stage and mental imbalance and became unable to move. On the allegation against the appellant that he neglected in discharging his duties, a disciplinary proceedings was initiated on 18.1.2004 and a charge memo was issued. On 3.2.2004, appellant submitted a representation requesting the respondent authorities to permit him to retire from service w.e.f. 1.5.2004. On the basis of said representation, the appellant was permitted to retire from service w.e.f. 1.5.2004 and an order to that effect was issued by the Commissioner, Sericulture dated 4.3.2004.

In Balram Gupta's case, the appellant while working as an accountant sought voluntary retirement from the service by letter dated 24th December, 1980. Acting on the basis of the said letter, by an order dated 20th January, 1981, the appellant was allowed to retire voluntarily from service prospectively with effect from the afternoon of March 31, 1981. In the meantime, however, on the alleged persistent and personal request from the staff members the appellant had changed his mind and consequently by letter dated January, 31, 1981 withdrawn his notice of voluntary retirement and requested the authorities to treat the letter of voluntary retirement as cancelled. The said request of the appellant was not allowed and he was relied by an order dated 31st March, 1981. The appellant challenged the said order before the High Court stating that the said order was illegal and invalid. The Delhi High Court dismissed the appellant's writ petition on the ground that the rules enabled the Government servant to withdraw his application for voluntary retirement only with the approval of the Government. The High Court found no reason to interfere with the order. From these facts, this Court, after considering the earlier decisions, held that the notice of voluntary retirement by the employee can be withdrawn at any time before retirement becomes effective notwithstanding an Rule providing for obtaining of specific approval of the concerned authority as a condition precedent to the withdrawal notice.

In J.N. Srivastava's case, this Court followed and relied upon the decision rendered in Balram Gupta's case and put the same view that even if the voluntary retirement notice is moved by an employee and gets accepted by the authority within the time fixed, before the retirement is reached the employee has locus poenitentiae to withdraw the proposal for voluntary retirement. It is further held that once the request for cancellation of voluntary retirement was rejected by the authority concerned and the retirement came into effect, the

employee had no choice but to give up the retirement came into effect,m the employee had no choice but to give up the charge of the post to avoid unnecessary complications.

In these factual backgrounds of the instant case, court of the considered opinion that the principles laid down in Balram Gupta's case and S.N. Srivastava's case are not applicable and are distinguishable. The High Court in the impugned order has rightly came to the conclusion that the appellant preferred appeal before the State Government against the impugned order of cut in pension as a retired employee and he himself stated that he has submitted the pension proposals for fixation of pension. Besides the above, court is further of the opinion that having regard to the fact that the appellant did not assail the order rejecting his application for revocation of pension at any time rather he proceeded and assailed only th order of 25% cut in pension. Hence, the appellant cannot be allowed to preceded further, that too after expiry of two years seeking reinstatement in service taking the benefit of the order passed by the State Government. **(P. Krishnamurthy v. Commissioner of Sericulture, 2015 (1) SLR 510 (SC))**

Coal Mines Regulations, Regulations 14(1) and 15 (1) – change of date of birth – Estoppel – Applicability of

The respondent had joined at Chinakuri Mine No. 111 on 9.1.1970 as Mining Sirdar and for being selected on the said post he had appeared in Gas Testing Examination held on 15.5.1969. He had also appeared in Sirdarship examination held on 2.7.1969 and Overmanship certificate examination on 3.7.1973. At every stage, he had mentioned his date of birth as 2.4.1946. On the basis of the declaration made by the respondent his date of birth was clearly reflected in Form 'B' Register and service book and he had signed both the documents. Be it noted, the appointment of the respondent as Mining Sirdar was in a private colliery. After enactment of Coal Mines (Nationalization) Act, 1973 all private collieries were taken over by the Central Government and handed over to the Coal India Ltd. and its subsidiaries. It is not disputed that the respondent was absorbed in the Eastern Coalfields Ltd., a subsidiary of Coal India Ltd. It may be noted here that as disputes with regard to date of birth of employees had arisen, the "Implementation Instruction No. 76" was issued in the year 1987 laying down the procedure for determination/verification of age of employees. On 15.5.1987 the respondent filed an objection stating that there has been an erroneous entry as regards his date of birth because his correct date of birth is 2.4.1948 and not 2.4.1946 as recorded in the service register and Form 'B' Register. After filing the said objection the respondent chose to maintain silence and, eventually, approached the High Court in Writ Petition

No. 6156 (W) of 2001 stating, inter alia, that his date of birth is 2.4.1948 as per the Matriculation Certificate. The High Court vide order dated 30.7.2003 directed the respondent therein to take a decision on the objections filed by the workman regarding his date of birth in his service excerpts after offering a reasonable opportunity of being heard to him and further keeping in view the provisions contained in "Implementation Instruction No. 76".

In pursuance of the order passed by the High Court the General Manager, Sodepur Area, conducted an enquiry give due regard to the principles of natural justice and the guidelines enumerated in "Implementation Instruction No. 76" and rejected his claim vide order dated 26.2.2004. **(Eastern Coalfields Ltd. v. Bajrangi Rabidas, 2015 (1) SLR 254 (SC)**

Art. 16 and 226 – Limitation Act, Articles 58 and 113 – Limitation – Suit for declaration – seniority – seniority list published on 11.11.72 which had been finalized in September, 1975 – Respondent did not file any suit but continued to make representation – suit filed on 19.9.1979 – Suit was hopelessly time barred by law of limitation

It had been submitted that the draft seniority list of Librarians had been published on 11.11.1972 which had been finalized on 24.09.1975 and the said fact was known to the respondent. The respondent was made aware of the fact that he was appointed with effect from 22.11. 1967 and in that event the period of limitation would start from 11.11.1972 when the draft seniority list was published or at the most with effect from 24.09.1975 when the draft seniority list was finally published. Instead of approaching the court, the respondent kept on making several representations which had been rejected. His representation had been rejected on 19.07.1976. Even after rejection of his representation on 19.07.1976 he had made another representation on 16.02.1978 to the Director of Education, Tripura which had also been rejected on 03.06.1978. Thereafter, he made another representation to the Director of Education, which had also been rejected on 15.01.1979.

Looking at the above facts, it had been submitted by the learned counsel appearing for the appellants that the title suit ought to have been dismissed on the ground of limitation, however, not only the suit had been decreed but the courts below had also confirmed the judgment delivered by the trial court. He had further submitted that the appeal deserved to be allowed with costs.

On the other hand, the learned counsel appearing for the respondent-employee had tried to support the judgments delivered by the High Court and the trial court. He had submitted that the period of limitation would start with effect from the date on which his representation was finally rejected by his

employer and as the suit had been filed on 19.09.1979, the suit was filed within the period of limitation.

The respondent did not make any representation or grievance when he was given a fresh appointment. He knew it well that his service had been terminated and he was obliged by the appellant authorities by giving him a fresh appointment. Had he been aggrieved by a fresh appointment after termination of his service, he should have taken legal action at that time but he accepted the fresh appointment and raised the grievance about his seniority and other things after more than a decade.

Even after the draft seniority list was published on 11.11.1972, which had been finalized in September, 1975, he did not file any suit but continued to make representations which had been rejected throughout.

It is a settled legal position that the period of limitation would commence from the date on which the cause of action takes place. Had there been any statute giving right of appeal to the respondent and if the respondent had filed such a statutory appeal, the period of limitation would have commenced from the date when the statutory appeal was decided. In the instant case, there was no provision with regard to any statutory appeal. The respondent kept on making representations one after another and all the representations had been rejected. Submission of the respondent to the effect that the period of limitation would commence from the date on which his last representation was rejected cannot be accepted. If accepted, it would be nothing but travesty of the law of limitation. One can go on making representations for 25 years and in that event one cannot say that the period of limitation would commence when the last representation was decided. On this legal issue, we feel that the courts below committed an error by considering the date of rejection of the last representation as the date on which the cause of action had arisen. This could not have been done.

Court, therefore, quash and set aside the order of the High Court confirming the orders passed by the trial court as well as the first appellate court. As a result thereof, the suit stands dismissed. The appeal is allowed with no orders as to costs. **(State of Tripura v. Arabinda Chakraborty, 2015(1) SLR 12 (SC)**

TORT

Compensation- Boys suffering 100% permanent disability due to electrocution due to negligence of statutory authorities exemplary compensation must be awarded to child victim who suffer 100%

permanent disability due to negligence of statutory authority

In courts considered view, the compensation awarded at Rs. 60 lakhs in the judgment of the learned Single Judge of the High Court, out of which 30 lakhs were to be deposited jointly in the name of the appellant represented by his parents as natural guardian and the Chief Engineer or his nominee representing the respondent-Nigam in a nationalised Bank in a fixed deposit till he attains the age of majority, is just and proper but we have to set aside that portion of the judgment of the learned Single Judge directing that if he survives, he is permitted to withdraw the amount, otherwise the deposit amount shall be reverted back to the respondents as the same is not legal and valid for the reason that once compensation amount is awarded by the court, it should go to the claimant/appellant.

Therefore, the victims/claimants are legally entitled for compensation to be awarded in their favour as per the principles/guiding factors laid down by this Court in catena of cases, particularly, in Kunal Saha's case referred to supra. Therefore, the compensation awarded by the Motor Vehicle Tribunals/Consumer Forums/State Consumer Disputes Redressal Commissions/ National Consumer Disputes Redressal Commission or the High Courts would absolutely belong to such victims/claimants. If the claimants die, then the Succession Act of their respective religion would apply to succeed to such estate by the legal heirs of victims/ claimants or legal representatives as per the testamentary document if they choose to execute the will indicating their desire as to whom such estate shall go after their death. For the aforesaid reasons, court hold that portion of the direction the of the learned Single Judge contained in sub-para (v), to the effect of Rs. 30 lakhs compensation to be awarded in favour of the appellant, if he is not alive at the time he attains majority, the same shall revert back to the respondent-Nigam after paying Rs.5 lakhs to the parents of the appellant, is wholly unsustainable and is liable to be set aside. Accordingly, court set aside the same and modify the same as indicated in the operative portion of the order.

The remaining compensation amount of Rs. 30 lakhs to be deposited in a fixed deposit account in the name of the petitioner (minor) under joint guardianship of the parents of Raman and the Engineer-in-Chief or his nominee representing the respondent-Nigam, in the Nationalised Bank as corpus fund,

out of which an interest of Rs.20,000/- p.m. towards the expenses as indicated in sub-para (vi) of the order passed by the learned Single Judge, cannot be said to be on the higher side, but in our view, the said amount of compensation awarded is less and not reasonable and having regard to the nature of 100% permanent disability suffered by the appellant, it should have been much higher as the appellant requires permanent assistance of an attendant, treatment charges as he is suffering from agony and loss of marital life, which cannot be compensated by the amount of compensation awarded by the learned Singh Judge of the High Court.

Hence, having regard to the facts and circumstances of the case, it would be just and proper for this Court to restore the judgment of the learned Single Judge on this count and court hold that the directions contained in the said judgment are justifiable to the extent indicated above. The Division Bench while exercising its appellate jurisdiction should not have accepted the alleged requisite instructions received by the counsel on behalf of the appellant and treated as ad idem and modified the amount as provided under sub-para (vi) of the order of the learned Single Judge and substituted the para 4 in its judgment as indicated in the aforesaid portion of the judgment which is wholly unreasonable and therefore, it is unsustainable in law as it would affect the right of the appellant for getting his legal entitlement of just and reasonable compensation for the negligence on the part of the respondents. **(Raman v. Uttar Haryana Bigli Vitran Nigam 2015 (1) CPR 4 (SC))**

Salary – Recovery of – Any Salary or pension if paid wrongly, would be recoverable, whether payment is or is not due to misrepresentation of fraud.

The issue in this matter pertains to the recovery of excess money from the pensionary benefit of the respondent-white washer, on account of a wrong fixation of pay by the Petitioner No.4- The Executive Engineer. The respondent approached the High Court by filing a writ petition. The question of law for consideration before the High Court was: whether the Government is entitled to recover from an employee any payment made in excess of what the employee is otherwise entitled to, in the absence of any fraud or misrepresentation on the part of the employee. The High Court relies on a Full Bench decision, and directed not to recover the excess amount from the respondent.

To answer the reference, the decisions need to be considered.

In Shyam Babu Verma's case (Supra), this Court while observing that the petitioners-therein were not entitled to the higher pay-scales, had come to the conclusion that since the amount has already been paid to the petitioner, for no fault of theirs, the said amount shall not be recovered by the respondent-Union of India.

In Sahib Ram Verma's case (Supra), this Court once again held that although the appellant therein did not possess the required educational qualification, yet the Principal granting him the relaxation, had paid his salary on the revised pay-scale. This Court further observed that this was not on account of mis-representation made by the appellant but by a mistake committed by the Principal. In a fact situation of that nature, the Court was pleased to observe that the amount already paid to the appellant need not be recovered.

In our considered view, the observations made by the Court not to recover the excess amount paid to the appellant therein were in exercise of its extra-ordinary powers under Article 142 of the Constitution of India which vest the power in this Court to pass equitable orders in the ends of justice.

In Chandi Prasad Uniyal's case (Supra), a specific issue was raised and canvassed. The issue was whether the appellant-therein can retain the amount received on the basis of irregular/ wrong pay fixation in the absence of any misrepresentation or fraud on his part. The Court after taking into consideration the various decisions of this Court had come to the conclusion that even if by mistake of the employer the amount is paid to the employee and on a later date if the employer after proper determination of the same discovers that the excess payment is made by mistake or negligence, the excess payment so made could be recovered. **State of Punjab and others v. Rafiq Masih (White Washer), 2015(1) ESC 33(SC).**

Editorial Note – *The reference was answered and decided by apex court in State of Punjab and others v. Rafeeq Masih (whitewasher) AIR 2015 SC 696 at para 12 which is reproduced below:*

"12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarize the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class-III and Class-IV

service (or Group `C' and Group `D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

TRADE UNION ACT

S.10 – Cancellation of certificate of Registration of Trade union issued by the Registrar either by mistake or due to incorrect assessment or non-application of mind – validity of – cannot be nullified by him U/s. 10 of above said Act.

In the present case on hand although it was necessary for the Trade Union to comply with and provide all the necessary details under the above said provisions that were relevant at the time of registration, the Registrar either by mistake or due to incorrect assessment or non-application of mind may have issued a Certificate of Registration to the Trade Union. This official act by the Registrar of Trade Union cannot be nullified by him under section 10 of the Act, but can only be rectified by the appellate authority or writ Court as rightly opined by the High Court in the impugned judgment. **R.G.D'Souza v. Poona Employees Union and another, 2015(144) FLR 1 (SC).**

U.P. GOVERNMENT SERVANT CONDUCT RULES

R.29(1) – Contracting second marriage during subsistence of first marriage – what constitutes – It constitutes misconduct, attracting removal from service.

The appellant was employed as Irrigation Supervisor, Tubewell Division, Irrigation Department, Government of Uttar Pradesh and posted at IVth Sub Division, Hasanpur. He was served with a charge sheet alleging that during existence of first marriage with Sabina Begum, he married Anjum

Begum and thereby violated Rule 29 of the Conduct Rules and further alleging that he had given misleading information to the authorities that he had given divorce to Sabina Begum.

It is on record that before the charge sheet, on a complaint by the sister of the first wife of the appellant, the National Human Rights Commission had issued notice to the appellant dated 27th October, 2006 and conducted an inquiry through the Superintendent of Police, District Moradabad who submitted a report to the effect that the appellant had in fact performed a second marriage without the first marriage having been dissolved.

It is on that basis that the department appears to have initiated action. In disciplinary proceedings, an inquiry officer was appointed who gave a report that the charge was fully proved. The appellant was furnished a copy of inquiry report and given an opportunity to respond to the same. His reply being not satisfactory, the disciplinary authority imposed the punishment of removal.

The High Court dismissed the writ petition.

The appellant has also raised the question of validity of the impugned Conduct Rules as being violative of Article 25 of the Constitution.

There is adequate material on record in support of the charge against the appellant that he performed second marriage during the currency of the first marriage. Admittedly, there is no intimation in any form on record that the appellant had divorced his first wife. In service record she continued to be mentioned as the wife of the appellant. Moreover, she has given a statement in inquiry proceedings that she continued to be wife of the appellant. The appellant also admitted in inquiry conducted on directions of the Human Rights Commission that his first marriage had continued. In these circumstances, the finding of violation of Conduct Rules cannot be held to be perverse or unreasonable so as to call for interference by this Court. In these circumstances, the High Court was justified in holding that the penalty of removal cannot be held to be shockingly disproportionate to the charge on established judicial parameters. **Khursheed Ahmad Khan v. State of U.P. & Ors, 2015(2) Supreme 87 : AIR 2015 SC 1429.**

R.29(1) – Validity of – Rule 29 of U.P. Government Servant Conduct Rules is not ultravires Art. 25 of the constitution.

The appellant was employed as Irrigation Supervisor, Tubewell Division, Irrigation Department, Government of Uttar Pradesh and posted at IVth Sub Division, Hasanpur. He was served with a charge sheet alleging that during existence of first marriage with Sabina Begum, he married Anjum

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U.P.HIGHER JUDICIAL SERVICE RULES

Rule 7 – Selection and Appointment committee resolving to follow rule of reservation as prescribed U/s. 3(1) of Reservation Act, 1994 – Resolution of Full Court of High Court – High Court validly adopting. Sec. 3(1).

The challenge in the writ petitions was to the appointment made by the High Court to the post of Direct Recruit District Judges in the unfilled reserve

vacancies, to the extent of 34 in number by way of promotion from the 'in service candidates' by applying Rule 8(2) of the Uttar Pradesh Higher Judicial Service Rules, 1975 (hereinafter referred to as "the Rules"). The Division Bench of the High Court dismissed the writ petitions. Aggrieved, the appellants have come forward with these appeals.

While dealing with the second submission made on behalf of the appellants, we have held that the rule of reservation and the extent of reservation has been specifically spelt out in Section 3(1) of the Reservation Act, 1994. We have also held that apart from such prescription contained in Section 3(1) of the Reservation Act, 1994, no other Government order or any other prescribed notification was placed before us in order to hold that while applying Rule 7, the High Court was expected to consider any such order or notification issued by the Government. Therefore, while invoking Rule 7 of the High Court Rules, if at all the High Court wanted to adopt the rule of reservation, came can only relate to what has been prescribed under the Reservation Act of 1994, in particular Section 3(1) of the said Act. The said conclusion of ours is inescapable in the context of the provisions relating to rule of reservation in the State of Uttar Pradesh.

45 The only other aspect to the considered is what was the rule relating to reservation which was adopted by the High Court. In that context, when we read the resolution of the Selection and Appointment Committee dated 24.3.2009, after referring to the vacancies that existed which were to be filled up in the year 2009, the Selection Committee expressly resolved as under:

> "……. The vacancies shall be filled up applying reservation as per the Uttar Pradesh Public Services (Reservation for Scheduled Casts, Scheduled Tribes and Other Backward Classes) Act, 1994 as amended up to date….."

In the light of the said resolution passed by the Selection and Appointment Committee constituted by the High Court, there can be no two opinions that by the said resolution the rule of reservation as prescribed under Section 3(1) of the Act was decided to be followed by the High Court. Consequently, if the proceedings of the Full Court pursuant to the direction of the learned Chief Justice dated 31.03.2009, approved the resolution of the Selection and Appointment Committee, as per the Rules of the Courts, it must be held that a reading of the resolution of the Selection Committee and the resolution of the Full Court together would constitute a valid adoption as contemplated under Rule 7 of the High Court.

47 We have elaborately set out the nature of the resolution passed by the

Full Court by way of circulation. Out of 71 Judges, 50 Judges the High Court expressed their support to the resolution of the Selection and Appointment Committee dated 24.3.2009 and such an expression made by majority of the Judges was ultimately approved by the learned Chief Justice by affixing his signature on 10.04.2009. In the light of the said proceedings, we hold that the High Court adopted the rule of reservation as per the Reservation Act, 1994 which was well within the prescription contained in Rule 7 of the High Court Rules. The said course adopted by High Court is also in consonance with various principles laid down in the Constitution Bench decision of this Court reported in State of Bihar v. Bal Mukund Sah (supra). **Nawal Kishore Mishra & Ors Etc. v. High Court of Judicature at Allahabad Through its Registrar General & Ors. Etc., 2015(1) Supreme 31 : AIR 2015 SC 1332.**

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

S.12(3) – Deemed Vacancy – Question for Consideration – S.12(3) of U.P. Rent Act, providing for 'deemed vacancy' also covers the situation where the tenant has acquired atternative – accommodation before the applicability of the Rules U.P. Rent Act, 1972.

The question for consideration is whether Section 12(3) of the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (for short "the Act") providing 'deemed vacancy' is applicable to a situation where the tenant or a member of his family builds, acquires or otherwise gets a vacant building in the area concerned after commencement of the tenancy but prior to application of the Act to the tenancy in question.

The City Magistrate, Kanpur, in his capacity as Rent Controller, vide order dated 5th September, 2002, declared the premises in question to be vacant under Section 12(3) of the Act on account of purchase of residential house by the wife of the tenant in the year 1987.The tenant filed Civil Miscellaneous Writ Petition No.47201 of 2002against the order of the Rent Controller declaring the premises in question to be vacant and also the subsequent order dated 30th September, 2002 releasing the accommodation in favour of the landlord under Section 16of the Act. The High Court accepted the petition holding that no vacancy can be declared if the tenant or his family member purchased the house before the Act became applicable. Reliance was placed on a Five-Judge Full Bench of the High Court in Mangi Lal v. Additional District Judge and others, (1980) Allahabad Rent Cases 55. It is against the said order that the present appeal has been preferred.

Thus, in court view, mere use of present tense in Section 12(3) is not

intended to limit the applicability of the provision to acquisition of accommodation by the tenant after the Rent Act becomes applicable. In the context, the provision also covers the situation where the tenant has acquired alternative accommodation before the applicability of the Rent Act. This view is further supported by the language of the proviso. The proviso clearly shows that the provision in question is not intended to be limited to a situation where alternative accommodation is acquired after the Act commences or becomes operative. The provision also covers a situation where the alternative accommodation is acquired prior to that. The scope of proviso is narrower than the main provision.

Court, thus, hold that the view taken by the High Court that acquisition of alternative accommodation by the tenant, prior to enforcement of the Act, is not covered by Section 12(3) of the Act is not correct in law. The Full Bench judgment, to the extent it supports the said view, also does not lay down correct law and will stand overruled.

Accordingly, court allow this appeal, set aside the impugned order passed by the High Court and restore the order passed by the Rent Controller. **Sidharth Viyas and another v. Ravi Nath Misra and others, 2015(1) AWC 67(SC) : AIR 2015 SC 439.**

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PART – 2 (HIGH COURT)

ADMINISTRATIVE TRIBUNAL ACT

S. 14 – Regularisation of services – Entitlement – No even a single piece of paper in support of his claim – Mere affidavits or self-serving statements made by claimant workman will not suffice in matter of discharge of burden placed by law – Mere non-production of muster rolls per se not ground to draw adverse inference against management – Relationship between employee and employer not found proved, Hence employee not entitled to regularisation

The case of the petitioner is that, 'the petitioner was recruited after calling name from Employment Exchange and after following due procedure of selection'. The petitioner is not able to produce even a piece of paper in support of his aforesaid claim. That being so, in this regard, the Tribunal has rightly referred to and relied upon a decision of the Hon'ble Apex Court in the matter of 'R.M. Yallati v. Assistant Executive Engineer, 2006 SCC (L&S) 1'. The Tribunal has relied Paragraph-17 of the judgment, which reads as under:-

> 17..... Analysing the above decisions of this Court, it is clear that the provisions of the Evidence Act in terms do not apply to the proceedings under Section 10 of the Industrial Disputes Act. However, applying general principles and on reading the afore-stated judgments, we find that this Court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. ' This burden is discharged upon the workman adducing cogent evidence, both oral and documentary'. In cases of termination of services of daily-waged earners, there will be no letter of appointment or termination. There will also be no receipt of proof of payment. Thus, in most cases, ' the workman (the claimant) can only call upon the employer to produce before the court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register, etc.' Drawing of adverse inference ultimately would depend thereafter on the facts of each case. The above decisions however make it clear that 'mere affidavits or self-serving statements made by the claimant workman will not suffice in

the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year'. The above judgments further lay down that mere non-production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the Tribunal to draw an adverse inference against the management. Lastly, the above judgments lay down the basic principle, namely, that the High Court under Article 226 of the Constitution will not interfere with the concurrent findings of the fact recorded by the Labour Court unless they are perverse. This exercise will depend upon the facts of each case. [Emphasis supplied]

The present case, except bald assertion and production of certain pages, which are also wrongly described, the petitioner-workman has not produced any other evidence. In O.A., there was no question, he entering into witness box, but at the same time, fact remains that he did not call upon the employer to produce any of afore-mentioned documents like nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register, etc.

In view of aforesaid discussion, there is no substance. Hence, the same is dismissed. [**Paresh B. Chauhan v. Union of India, 2015 (2) SLR 355 (Guj.)]**

CODE OF CIVIL PROCEDURE

Section 148(3) - Held that Sub-section (3) of Section 148-A, C.P.C. thus makes it mandatory for the Court to serve a notice on the caveator. Right to lodge caveat under Section 148-A of the C.P.C. has been conferred on a person who apprehends or expects any impending legal action against him. The provisions for giving a notice or for providing a copy of the application and document to the caveator are in conformity with the principle of natural justice. Any violation thereof renders any judicial process adopted by any authority, specially by a judicial authority, nugatory. Payment of Gratuity Act. **[Raj Bahadur Ors. v. Civil Judge (J.D.) Musafirkhana Sultanpur and Ors., 2014(11)ADJ219, 2015(1) ALJ 554., 2015 (108) ALR 345, 2015 126 RD780]**

Order 21 - Execution application-For execution of decree-Dismissed in default-And not decided and adjudicated on merit – Second execution application – Maintainability of Second execution application moved by decree holder is maintainable where the first application is not decided and adjudicated on merit.

In the instant case it is not in dispute between the parties that first execution application moved by the decree holder has been dismissed in default. Thus, it is clear that the same has not been decided and adjudicated on merit. Thereafter he has moved second application for execution registered as Execution Case No. 5 of 2009, Munna Khan v. Smt. Rashke Muneer, so as per the facts and law as stated hereinabove, the second execution application moved by decree holder is maintainable and no interference is needed in the present case.

In the result, the writ petition lacks merit and is dismissed. [**Mohd. Saeed v. Munna Khan (D.) through his L.R. and others, 2015 (1) AWC 568(LB)].**

Second execution application – Maintainability of – second execution application moved by decree holder is maintainable where the first application is not decided and adjusted on merit.

In the instant case it is not in dispute between the parties that first execution application moved by the decree holder has been dismissed in default. Thus, it is clear that the same has not been decided and adjudicated on merit. Thereafter he has moved second application for execution registered as Execution Case No. 5 of 2009. Munna Khan v. Smt. Rashke Muneer, so as per the facts and law as stated hereinabove, the second execution application moved by decree holder maintainable and no interference is needed in the present case and the judgments which are cited by Sri Brijesh Kumar Saxena, learned counsel for the petitioner are not applicable in thefacts and circumstances of the case, hence, the petitioner cannot derive any benefit.

No other points has been argued or pressed by learned counsel for the petitioner.

In the result, the writ petition lacks merit and is dismissed. [**Mohd. Saeed v. Munna Khan (D) through his L.R. and others, 2015(1) AWC 568 (LB)]**

CONSTITUTION OF INDIA

Articles 14, 226, 311 – Termination of services – absence without leave – No leave application has submitted due to compelling circumstances – Neither any notice is served on employee nor he was communicated in writing with regard to termination of services- validity of – Decision taken by State Government would be unsustainable and hit by Art. 14 of Constitution of India

In the present case, though the claimant-respondent was working since

more than 9 years, the State did not take care to discharge its Constitutional and statutory obligation by serving a notice or even terminating the services with due communication to the claimant-respondent in writing. Such action on the part of the State to dispense with the services orally is autocratic and against the Constitutional mandate where State is expected to discharge duty fairly and justly in terms of Article 14 of the Constitutional of India to protect the right to livelihood guaranteed by Article 21 of the Constitution of India.

In the present cast, the defence set up by the State, prima facie, seems to co-related to certain adverse entries or certain misconduct on the part of the claimant-respondent. In case, the defence set up by the petitioner-State is accepted then the action of the State Government in not permitting the claimant to resume duty or depriving him to continue in service without passing any written order, seems to be punitive in nature and shall not be sustainable being hit by Article 311 of the Constitution of India.

In another case in Tirth Raj Misra v. State of U.P. and others (2008) 3 UPLI 2500, of which one of us was a Member, the question cropped up before this Court was as to whether the State has got right to dispense with services of its employee orally. It has been held that oral instructions or order depriving the employees form service shall amount to arbitrary exercise of power and against the Constitutional mandate being hit by Article 143 r/w Article 21 of the Constitution of India.

Court is also of the view that in democratic polity, it is not just and fair on the part of the State Government to discharge its obligation by oral instructions. The basic principle of rule of law is that citizens must know where they stand in their usual course of lie vide Smt. Indira Gandhi v. Raj Narain, AIR 1975 SC 2260.

Unless an order is passed in writing, the employee shall not be aware that what are the reasons and what are the grounds on the basis of which his services have been dispensed with. The decision taken by the State Government to dispense with the services of its employee orally, in any way, shall not be sustainable being hit by Article 14 of the Constitution of India. It is always expected in democratic polity that the State shall discharge its obligation justly, fairly ad not in arbitrary highhanded manner. **[State of U.P. v. I. Hussain, 2015 (1) SLR 220 (All.)]**

Articles 14 and 311 – Overstayal of leave – Punishment – Dismissal from service – discrimination – not permissible

The petitioner was appointed as Constable in the respondent- C.R.P.F., on 27.02.1992 and on a casual leave sanctioned for 10 days, for the period

08.07.1996 to 18.07.1996 when he was away to Delhi, he was arrested in a case relating to possession of opium by him on 15.07.1996 and along-with one more co-accused, Constable of the same respondent- C.R.P.F., namely, Mr. Tana Ram Soda, of E/52 Battalion, of CRPF, the petitioner and the other person were arrested and tried for the said offence of possession of contraband article by the competent court and while the said co-accused, namely, Tana Ram Soda, appears to have been acquitted or discharged by the competent court on 28.11.1996 at the initial stage of the trial itself, the present petitioner was so acquitted later on upon completion of the trial on 09.07.1999 after about a period of three years. After 09.07.1999, he reported for duty on 16.08.1999 and he was allowed to resume his duties but an enquiry was held against him on the charge of over-stay than the sanctioned leave for a period of 37 days from the date 10.07.1999 (next day after his acquittal on 09.07.1999) to 15.08.1999 since he reported for duty on 16.08.1999. The Enquiry Officer, found him guilty of such over stay and the Disciplinary Authority passed the impugned order (Annex.1) dated 12.11.1999, imposing the punishment of dismissal from the service.

The punishment by way of dismissal from service in the facts and circumstances narrated above upon the petitioner, appears to be highly disproportionate, more so, when another person of the same rank, working with the petitioner and incidentally, involved in the same alleged offence against both of them under the N.D.P.S. Act, the other person, namely, Tana Ram Soda, got the punishment at the hands of the Disciplinary Authority for over stay of 37 days, by way of 10 days confinement in the Battalion Lines, whereas the petitioner after full trial and acquittal by the competent court on 09.07.1999, and tried for the same alleged misconduct of over stay of 37 days (incidentally the period of over stay by both is also same) he is awarded the punishment by the Disciplinary Authority by way of dismissal from the service. Merely because, subsequently the order is passed by a successor in the office, altogether ignoring the previous order passed by the earlier incumbent in the office of the Commandant of the same Battalion, on almost identical facts and circumstances, such penalty poles apart in nature, shocks the conscience of this Court.

Therefore, it is obvious that all the three authorities below in their original, appellate and the revisional jurisdiction, really failed to appreciate the facts in their correct perspective and trigger happy as if they were, dismissed the petitioner from the services itself. It is thus shockingly dis-proportionate punishment, which compels this Court to invoke its jurisdiction under Article 226 of the Constitution of India and quash the impugned orders as being

without any reason whatsoever.

The writ petition is, accordingly, allowed and quashing the impugned orders 12.11.1999 (Annex-1) passed by the Disciplinary Authority, and the order dated 08.03.2000 (Annex-2) and the order dated 01.02.2001 (Annex-3) passed by the appellate and the revisional authorities respectively, the respondents are directed to reinstate the petitioner back in service forthwith with 50% back wages for the period for which he was kept out of job under the impugned orders and such payment of back wages should paid to the petitioner within a period of three months from today. **[Shyam Lal v. U.O.I., 2015 (1) SLR 693 (Raj.)]**

Art. 16 – Natural Justice – appointment – respondent no. 4 held more meritorious than appellant to selected candidates – Authorities ignored educational qualification – Reasonable opportunity of hearing not given – Gross violation of principles of natural justice.

In the writ petition filed by fourth respondent herein, she had sought for quashing the order dated 26th February, 2010 passed by the second respondent - Deputy Director, Women and Child Welfare Department, vide Annexure K to the writ petition, appointing the appellant to the post of Anganavadi Worker at Baraguru Centre-iii. The learned Single Judge after hearing both sides, allowed the writ petition and quashed the order passed by the second respondent inasmuch as, the fourth respondent is more meritorious than the appellant i.e. the selected candidate and held that the authorities are not justified in ignoring the educational qualification of the fourth respondent while appointing the appellant herein and directed the respondents 2 and 3 to appoint the fourth respondent in the place of the appellant as early as possible, not late than one month from the date of receipt of a copy of the said order. Being aggrieved by the said order passed by the learned Single Judge, the fourth respondent in the writ petition has presented this appeal, seeking appropriate reliefs as stated supra.

After careful consideration of the submission of the learned counsel appearing for all the parties and after perusal of the order passed by the learned single Judge and other relevant material available on file, it emerges that pursuant to the Notification issued by the third respondent herein for appointment to the post of Anganwadi Workers for Baraguru Centre-iii, both the appellant as well as the fourth respondent have filed their respective

applications, seeking appointment as Anganwadi Worker for Baraguru Centre-iii. Both of them have stated their requisite qualification and have contended that they are entitled for being selected and appointed as Anganwadi Worker on the basis of their marks after adding bonus marks in respect of their higher qualification and also Caste, as applicable. Without considering the merit of the fourth respondent, the appellant was appointed as Anganwadi Worker to Baraguru Centre-iii and immediately after coming to know of the same from the Notice Board, the fourth respondent has filed her detailed objections before the second respondent. The second respondent, in turn, without considering the same in proper perspective and without affording reasonable opportunity of hearing to the fourth respondent, has proceeded to select and appoint the appellant herein, in gross violation of the principles of natural justice. This aspect of the matter has not been looked into or considered by the learned Single Judge, while passing the impugned order.

Therefore, without expressing any opinion on the merits or demerits of the case, it would suffice for this Court, if an appropriate direction is issued to second respondent, to pass appropriate orders, after affording reasonable opportunity of hearing to both the appellant and fourth respondent, to meet the ends of justice. **[H. Lakshmamma v. State of Karnataka, 2015 (2) SLR 359 (Kar.)]**

Art. 226 – Writ jurisdiction – Suppression of material facts necessary for deciding lis in court – Amount to abuse of process of court, writ court entitled to refuse to entertain petition.

If a petitioner suppresses material facts or does not reveal all the facts before the Court that are necessary for deciding the lis, it would amount to an abuse of the process of the Court. It is the obligation of the litigant to honestly disclose the true and correct facts to the Court and failure to come clean would amount to suppression and concealment of material facts.

Thus, it is clear that when a party approaches the High Court and seeks to invoke its jurisdiction under Article 226 of the Constitution of India, it must place on record all the relevant facts without any reservation. In exercising its discretionary powers and extraordinary jurisdiction under Article 226 of the Constitution of India, the High Court not only acts as a Court of law, but also as a Court of equity. Therefore, in case there is a deliberate concealment or suppression of material facts on behalf of the petitioner or it transpires that the

facts have been so twisted and placed before the Court, so as to amount to concealment, the writ Court is entitled to refuse to entertain the petition and dismiss it without entering into the merits of the matter. [**Baljit Singh Dahiya v. B.S.E.S. Rajdhani Power Ltd. and another, 2015(1) ESC 157(Del)].**

Art. 300-A – C.P.C., Sec. 60 – Pension Act, Sec. 11 – Kerala Service Rules, Part III, R. 24 – Pension – Attachment in execution of realization of money – validity of – amount of pension received by a retiree on account of his past services shall not be attached in execution of any decree or order of any court

Is pension attachable in execution of a decree for realisation of money? Does it enjoy the exemption like stipends and gratuities allowed to petitioners? These questions arise for consideration in this Civil Revision Petition.

Court hasten to add that commuted value of pension also enjoys the same exemption from attachment (see Union of India v. Wing Commander R.R. Hingorani, 1987 (1) SC 551 : [1987(1) SLR 479 (SC)]. The pension does not lose its character even if converted into fixed deposits and is exempt from attachment (see : Radhey Shyam Gupta v. Punjab National Bank, 2009 (1) SCC 376). Thus it is doubtless that the amount of his past services shall not be attached in execution of any decree or order of any court. A statutory protection from attachment inheres by virtue of Section 11 of the Act and Rule 124 of Part III of the Rules even though the provisions of the CPC are silent. The contrary view taken in Goldwin Chitties and Hire Purchase (P) Ltd.'s case (CRP No. 584/2007) is declared per incuriam. Only the provisions of the CPC are seen followed in the said decision and there has been no inadvertence at all to the provisions contained in the Act as well as the Rules.

The order of attachment passed by the execution court is hereby set aside and E.A. No. 226/2012 in E.P. No. 77/2012 filed by the bank for attachment of the pension is dismissed. **[K.R. Leela Bhai v. Indian Overseas Bank, 2015 (1) SLR 31 (Ker.)]**

Articles 300A and 226 – Retiral benefits – Delayed payment – Interest – Entitlement of – Direction to pay interest on delayed payment of retiral benefits upheld

It inheres in every scheme for determination and authorization of the payment of retiral benefits that the necessary exercise is undertaken much in advance before the due date of retirement of the employee concerned so that the payment of retiral benefits is authorized at the earliest. The provisions like those contained in Rule 89 of the Rules of 1996 have been inserted to safeguard the rights of the retiring employees and when it is clear that the delay in

payment is not on account of failure on the part of the employee to comply with the requirements of the rules, the interest at the given rate is payable. In all case of delayed payment of retiral benefits, when the delay is on account of administrative lapses or inactions, the concerned administrative department is not only to issue sanction for payment of interest but also to fix the responsibility for the delay and to recover the loss due to the payment of interest from the persons responsible.

It is clear from the facts of the present case that there had not been any fault whatsoever on the part of the employee concerned. As to how the requisite funds were to be obtained/transferred was essentially a matter between the University and the Government. Any delay in obtaining or providing the funds could only be referred to some administrative inaction/lapse, but with no fault on the part of the employee concerned. In the given facts and circumstances and on the admitted position that there had been excessive delay in payment of retiral dues to the employee for none of his fault, the order passed by the learned Single Judge remains just and proper; and does not call for any interference. **[Jai Narain Vyas Universitiy v. Hameer Singh Sodha, 2015 (1) SLR 517 (Raj.)]**

Arts. 309 and 311 – Absence from duty – Unauthorized absence – In absence of sanction of leave, absence his rightly held as unauthorized – medical certificates also not covering entire period of absence – order of tribunal would not be interfered

The subject matter before the Tribunal in Application No.356/2000 was office memorandum dated 25.8.1999 treating the absence of the applicant - petitioner from 21.01.1998 to 12.02.1998 as unauthorized absence under Rule 106-A of the Karnataka Civil Services Rules, 1958 and making it as leave without allowance. In application No.1176/2000, the writ petitioner had questioned two other similar office memorandums both dated 22.10.1999 issued relating to the absence of the applicant from duty for the period from 25.5.1998 to 26.8.1998 for the period of 94 days and another also in respect of the absence of the applicant from duty for the period from 22.10.19998 to 4.11.1998.

The application which had been filed originally had come to be dismissed by the Tribunal as per order dated 29.06.2004. However, that order having been challenged before this court by filing a writ petition and this court noticing the order having been passed by the single Member of the Tribunal, remanded the matter to the Tribunal for consideration by the Bench and it is on

such remand, the impugned order has come to be passed.

Court found that the Tribunal in its detailed order has examined all facts and found that the explanation now offered was an after thought by the applicant and that different reasons had been given at different points of time. Even assuming that the applicant had applied for leave, it had not been sanctioned and therefore in the absence of sanction of leave, absence was unauthorized absence only.

Court found that the fact remains that applicant had not been granted leave for the period in question and petitioner has also retired in the year 2005. Except for the fact that the petitioner did not earn salary for the unauthorized absence, no other consequences followed. Court find in a matter of this nature, on some technicality, it is not for this court to interfere at this point of time to upset the order of the Tribunal which has gone into the entire details and found there is no need to interfere and granting the relief should be confined to the period of petitioner's training at Nainital. Court find there is no need to interfere with the order of the Tribunal. **[P. Eshanna v. State of Karnataka, 2015 (1) SLR 295 (Kar.)]**

CONSUMER PROTECTION ACT

S.2(1)(d) – Definition of Consumer – Scope

The first and foremost question which arises for our consideration is as to whether the petitioner is covered by the definition of a consumer and his complaint is maintainable before the Consumer Fora. It is not in dispute that the petitioner is in service under the Punjab University, Chandigarh. It is also not denied that the plot in question is a SCO plot and is being used for commercial purposes by construction of a shop and other utilities thereon. This being the admitted position, it cannot be denied that the purchase of the plot in question was for commercial purpose. The plea of earning his livelihood through proposed construction on this plot was neither taken by the petitioner nor can it be allowed in the face of his being in service already. Obviously, the property was purchased for commercial purpose with a view to earn additional income. Section 2(1)(d) of the Consumer Protection lays down that a consumer means any person who-

> "(i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods

other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or

(ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who 'hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such series are availed of with the approval of the first mentioned person but does not include a person who avails of such services for any commercial purposes;

Explanation.- For the purposes of this clause, "commercial purpose" does not include use by a person of goods bought and used by him and services availed by him exclusively for the purposes of earning his livelihood by means of self-employment."

The case of the petitioner is hit by the provisions of Section (1)(d)(i) which provides that any person who buys any goods for a consideration for resale or for any commercial purpose will not be covered by the definition of a consumer. Even if the petitioner treats the respondents as service providers whose services he had availed of by getting the plot in question allotted to him, still he cannot be called a consumer because apparently the services would have been hired or availed of for a commercial purpose. Since the petitioner is already in service, the exceptional situation provided under the explanation appended to the section will not provide any comfort to him and as such he cannot be covered in the definition of a consumer as envisaged under the Consumer Protection Act. [**Harish Kumar Kochar v. Gillco Developers Pvt. Ltd., Kharar, Through its Managing Director & Ors., 2015(1) CPR 504 (NC)].**

Ss. 2(1)(d), 15, 17, 19, 21 – Machinery – Manufacturing defect – Supply of defective generator set to Hotel – Commercial users cannot maintain consumer complaint

This revision petition has been filed by the petitioner under section 21 (b) of the Consumer Protection Act, 1986 against the common judgment dated 29.12.2011 passed by the Kerala State Consumer Disputes Redressal Commission, Thiruvananthapuram in appeal Nos. 366 of 2010, 387 of 2010 and 222 of 2011. Petitioner was OP No.1 before the District Forum from whom the complainant, respondent No.1 herein, had purchased 180 KVA diesel generator set for getting steady and uninterrupted electric supply for complainants hotel. Respondent No.2 was OP No.2 and is the maintenance agent for the generator set in question and respondent No.3 was OP No.3 and is the manufacturer of the generator set.

Court have carefully considered the rival contentions and perused the record. The first and the foremost legal issue which has arisen for our consideration in this case is as to whether the complaint in this case filed by respondent No.1 is maintainable keeping in view the provisions of section 2 (1) (d) as amended by 2002 amendment to the Act which came into force on 15.3.2003. The amended section which came into force on 15.3.2003 reads thus:-

> (d) "consumer" means any person who
>
> (i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or
>
> (ii) [hires or avails of] any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who 'hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person [but does not include a person who avails of such services for any commercial purposes];

[Explanation. For the purposes of this clause, commercial purpose does not include use by a person of goods bought and used by him and services availed by him exclusively for the purposes of earning his livelihood by means of self-employment;]

So far as the present case is concerned, admittedly the complainant/respondent No.1 who is the Managing Director of a 3-Star Hotel at Thiruvallapurchased the 180 KVA diesel generator set in question and used the same by installing it in his hotel for providing steady and uninterrupted electric supply within the hotel premises. This being the admitted position, it does not require any further clarification or proof to establish that the genset was purchased and used in the course of hotel business and without any doubt the same was done with a view to earn profits. In this view of the matter, we have no manner of doubt in our mind that the genset was purchased for commercial purposes. This being the position, respondent No.1 cannot be covered by the definition of a consumer as provided in section 2 (1) (d) (i) which provides that the definition of a consumer does not include a person who obtains such goods for resale or for any commercial purpose. In view of this specific provision, even if the goods in question are not meant to be resold or the power generated by the same is not for resale,as long as the purchase and use of the goods in question is for any commercial purpose the user cannot be covered by definition of consumer under the Act. Similar is the position in respect of hiring or availing of the service for a commercial purpose. There is no plea taken by the complainant regarding the use of the genset bought by him for his hotel and the services availed by him in that regard that same were done exclusively for the purposes of earning his livelihood by means of self-employment. In the circumstances, the complaint of the complainant is hit by the provisions of section 2 (1) (d) both in respect of the purchase of the genset and its maintenance during the warranty period.

It is thus clear from the above that the findings of the fora below are perverse and illegal in regard to holding that the complainant/respondent is a consumer and his complaint was maintainable before them. They obviously committed grave error both in regard to their appreciation of the facts of the case and interpreting the law on the subject and as such their orders cannot be sustained in the eye of law and are liable to be set aside. Court accordingly allow the revision petition, set aside the orders of the District Forum and the

State Commission and dismiss the complaint as not maintainable before the consumer fora in view of the provisions of section 2 (1) (d) of the Consumer Protection Act, 1986. There shall be no order as to costs. **[Mr. M.T. James v. Mr. P.M. Baburajan, Managing Director, 2015 (1) CPR 492]**

Ss. 15,17,19 and 21 – Civil Procedure Code, Order 6 Rule 17 – Revision – Amendment of complaint petition – State commission is not empowered to review its earlier order.

Complainant/respondent filed complaint before State Commission and Learned State Commission vide order dated 3.4.2013 allowed the application under Order VI Rule 17 CPC filed by the complainant for amendment in the complaint. Complainant filed amendment complaint as allowed by Learned State Commission. Opposite Party – Petitioner moved application under Section 151 CPC and submitted that amendments carried out in the complaint are against the direction of State Commission, hence, order dated 3.4.2013 may be reviewed. Learned State Commission vide impugned order dismissed the application against which this revision petition has been filed.

Perusal of record reveals that in application under Order VI Rule 17, complainant specifically pleaded what was to be amended in the complaint and Learned State Commission allowed that application by order dated 3.4.2013. Learned Counsel for Petitioner admitted that amended complaint has been filed only incorporating amendments allowed by Learned State Commission but she is assailing order on the ground that allowed amendments have changed the nature of complaint. Perusal of revision petition reveals that she has not challenged order dated 3.4.2013 and in such circumstances, that order cannot be considered in this revision petition.

Petitioner moved application for review of order dated 3.4.2013 before the State Commission. Learned Sate Commission is not empowered to review its earlier order and in such circumstances, order passed by Learned State Commission declining review of earlier order is in accordance with law and I do not find any illegality, irregularity or jurisdictional error in the impugned order and revision petition is liable to be dismissed at admission stage. [**Ajay Enterprises Pvt. Ltd. & Ors. v. Shobha Arora & Anr., 2015(1) CPR 341(NC)].**

Ss. 15,17,19 – Medical Negligence – O.P. Nos. 1 and 2 neither resides nor have branch office within territorial jurisdiction of State Commission but O.P. 3 is within territorial jurisdiction of state commission – Territorial Jurisdiction – Determination of.

Apparently, O.P. Nos. 1 & 2 neither resides nor have branch office within territorial jurisdiction of State Commission but O.P. No.3 – Chandulal Chandrakar Memorial Hospital is within territorial jurisdiction of State Commission. Complainant specifically alleged in Para 29 of the complaint that O.P. No.3 is also responsible because O.P. No.3 referred Complainant No. 1 to O.P. No. 1 & 2 and in the prayer clause of the complaint he has claimed compensation of Rs. 25 lakhs jointly and severally against all the opposite parties including opposite party no. 3 though main negligence has been imputed against O.P. Nos. 1 & 2. As complainant has claimed compensation against all the opposite parties including O.P. No.3 whose hospital is within territorial jurisdiction of State Commission, learned State Commission has jurisdiction to entertain complaint against all the opposite parties irrespective of the fact that O.P. Nos. 1 & 2 neither resides nor have branch office within territorial jurisdiction of State Commission.

Question of territorial jurisdiction must be decided keeping in view location of all OPs. [**Dr. Anil G. Bhatia v. Sh. Sanjay Kedia & Ors., 2015(1) CPR 573(NC)].**

Ss. 15, 17, 19 and 21 –Banking-Car Loan- Deficiency in service- Complainant himself called off loan proposal by specifically writing to opposite party/ Bank- Bank cannot be held liable for deficiency in service whereas complainant himself has withdrawn his loan application

It is clear that the complainant himself called off the loan proposal by specifically writing to the opposite party Bank that he was not interested in availing the loan and his application may be treated as cancelled and the documents by returned to him. As the complainant himself has withdrawn his loan application, court find no fault with the orders of the For as below holding that there was no deficiency of service on the part of the Bank in declining to sanction and release of the car loan to the complainant. Petitioner has failed to point out any jurisdictional error or material irregularity in the impugned order, which may call for interference in exercise of the revisional jurisdiction. **[Girish K Vora v. Hngking & Shanghai Banking Corporation Ltd & Ors. 2015(1) CPR 241 (NC)]**

Ss. 15,17,19, 21 – Insurances – Mediclaim policy – Exclusion clause – Significance of – claim which is covered under exclusion clause cannot be settled by Insurance Co.

The facts of the case as per respondent nos. 1 and2/ complainants are that the respondents had obtained a hospitalization and domiciliary hospitalization policy/ medical claim policy bearing no. 353900/ 48/ 70050324.

The said policy was valid from 29.12.2004 to 28.12.2005. The said policy was in the name of Shri Nanak Singla and respondents were shown as insured persons. The said policy was renewed on various times, i.e., the respondents had taken the aforesaid hospitalization and domiciliary hospitalization policy medical claim policy no. 353900/48/05/20/70050358 and the said policy was renewed vide policy no. 353900/ 34/07/20/00000034 and policy no. 353900/ 34/08/11/00000034 which was valid from 09.09.2008 to 08.09.2009 and then had taken another policy no. 353900/ 34/09/11/00000452 which was valid from 09.09.2009 to 08.09.2010. All the aforesaid policies were in the name of Shri Nanak Singla – respondent no.1.

We have given our thoughtful consideration to the case. We note that the first policy was with effect from 29.12.2004. No doubt the respondent nos. 1 and 2 had taken the Hospitalization and Domiciliary Hospitalization Benefit Policy for themselves since 29.12.2004 but we observe that they were not vigilant and prompt in renewing the policies. There have been gaps of 13 days, 3 months and 5 months, hence, the petitioners as per their terms and conditions have treated these policies as new policies and not as a renewal. Learned counsel for the respondent nos. 1 and 2 cold not show any provision which allows grace period for renewing this policy which covers such gaps. The claim has been repudiated on the ground that "since, there is a gap of five months in the renewal of the policy from September 2008, hence, the policy is concerned in the second year according to the terms and conditions of the policy. Since Hysterectomy comes under two year exclusion hence, the claim is not payable." We have then perused the terms and conditions of the said policy. Clause 4.3 reads as under:

> "Waiting period for specified diseases/ailments/ conditions:
>
> From the time of inception of the cover, the policy will not cover the following diseases/ ailments/ conditions for the duration shown below. This exclusion will be deleted after the duration shown, provided the policy has been continuously renewed with our company without any break."

In the tabular chart indicates the diseases which are not covered for the first two years as item no.12, which reads as under:

> "Hysterectomy for menorrhagia/Fibromyoma, Myomectomy and Prolapse of uterus."

Here, it may note that clause 4.3. states that this exclusion will be deleted "after the duration shown provided the policy has been continuously renewed without company without any break." There is no dispute that the

policy was not continuously renewed as mentioned in paragraph above, hence, the For a below have committed a grave error in concluding that "the plea of the opposite parties that the policy in question was not run for two years and comes under the exclusion clause is not acceptable for the reasons that the complainants have purchased the policy on 29.12.2004 and continued the policy till 2010 and therefore, the complainants are entitled for insurance benefits under the policy." [**New India Assurance Co. Ltd., Through its Divisional Manager & Anr. v. Nanak Singla & Ors., 2015(1) CPR 421(NC)]**

Ss. 15, 17, 19, 21 – Automobile – manufacture defect – Dealer cannot be held liable for manufacturing defects in car

Certain defects cropped up in the can it is body and speedometer were found defective during the first service. The defect in the speedometer was rectified. After sometime, more defects were detected in the car, viz., the colour of the body faded and there was very high consumption of mobile oil. The complainant lodged a complaint with the appellants vide letter dated 19.10.1996. Again the complaint was lodged on 10.05.1997. The first service was done at 6000 kms. and it transpired that the engine had consumed one litre of oil only on a run of 2000 kms. On 10.05.1997, the same manufacturing defect was detected. The car was examined by a Mechanic on 10.05.1997, but it did not ring the bell. On 03.06.1997, the authorized agent of OP1-Hindustan Motors Ltd., checked the vehicle but the vehicle consumed one litre of mobile oil on a running on 400 kms. only.

The Ops requested the complainant to change the mobile and to observe consumption thereof on a run of 500 kms. The OPs suggested change of rings which was eloquent of inherent manufacturing defects in the engine of the car. On 16.06.1997, the complainant made a request ot the OPs for replacement of the defective engine with a new and defect free engine for on run of 6000 kms. only. All the four rings of the car were changed and, therefore, the resale value of the car was considerably lowered down. Such change of rings generally expected after over two years. Despite the said change, the car did not give good service. Ultimately a complaint was filed with the District Forum, on 01.07,1997. The complainant had to spend Rs. 400/- per day for hiring a taxi. There was correspondence between the parties but it did not produce the desired result. **[Ess Pee Automotives Ltd. Through its Director v. S.P.N. Singh, 2015 (1) CPR 321]**

Ss. 15,17,19 – Medical Services – Medical Negligence – Negligence cannot be attributed to Doctor so long as he performs his duties with reasonable

skill and competence.

In Kusum Sharma & Ors v. Batra Hospital and Medical Research Center & Ors., 2010(1) CPR 167 (SC): (2010)3 SCC 480, in which it was observed that negligence, cannot be attributed to a Doctor so long as he performs his duties with reasonable skill and competence. It was further observed that merely because the doctor chose one course of action in preference to other one available, he would not be liable if the course of action chosen by him was acceptable to the medical profession. In the case in hand as per AIIMS report, treatment given by the petitioner to the complainant was as per standard practice and treatment given after IVP study was also as per standard procedure. No negligence can be attributed on the part of the petitioner in performing his duties with reasonable skill and competence.

In the light of aforesaid discussion it becomes clear that no negligence can be attributed on the part of petitioner in giving treatment to Ramkali and learned District Forum committed error in allowing complaint and learned State Commission further committed error in allowing complaint and learned State Commission further committed error in dismissing appeal and revision petition is to be allowed. [**Dr. A. K. Handa (Consultant Surgeon and Urologist & Anr. v. Ram Kali (Since Deceased), Through LRs & Ors., 2015(1) CPR 411(NC)].**

Ss. 15, 17, 19 – Settlement – Once complaint agreed to give up subsisting legal claim in complainant after receiving amount awarded by State Commission, revision petition filed by petitioner become infructuous

Complainant filed No. 215 of 2004 against opposite parties and Learned District Forum vide order dated 10.5.2006 allowed complaint and directed all the three opposite parties to pay Rs. 2,26,803/p alongwith 6% p.a. interest and further awarded Rs. 5,000/- for mental agony and Rs. 500/- as cost of litigation. In Complaint No. 216 of 2004, Learned District Forum allowed complaint against all the three opposite parties and directed Opposite Parties to pay Rs. 2,45,543/- alongwith 6% p.a. interest and further allowed Rs. 5,000/- for mental agony and for Rs. 500/- as cost of litigation. All the opposite parties preferred appeals before Learned State Commission against both the orders of District Forum and Learned State Commission while accepting appeal of opposite party No. 3 dismissed the complaint against opposite party No. 3 and orders of District Forum were modified regarding opposite party No. 1 & 2 and in Complaint No. 215 of 2004, opposite party No. 1 & 2 were directed to pay Rs. 1,25,000/- instead of Rs. 2,45,543/- and in complaint No. 216 of 2004, opposite party No. 1 & 2 were directed to pay a sum of Rs. 1,05,000/- instead of Rs.

2,26,803/- against which these revision petitions have been filed by the petitioner/ complainant.

Perusal of aforesaid application reveals that opposite party agreed to pay amount upheld by State Commission in five equal installments and as per para 2 of the application, proceedings would terminate on receiving whole amount. Again in para 3, it has specifically been mentioned that after receipt of whole amount, Applicant or their legal heirs/ representatives would have no subsisting legal claims/ interests. This para clearly indicates that parties agreed to get the matter completely settled after receiving amount awarded by State Commission, meaning thereby, complainant agreed not to have any subsisting claim in the complaint after receiving amount awarded by State Commission. Once, complainant agreed to give up subsisting legal claim in the complaint after receiving amount awarded by State Commission, revision petitions filed by the petitioner become infructuous. I do not agree with the submission of Learned Counsel for petitioner that only claims arising from order of the State Commission were to be terminated by this mutual consent settlement because had it been the intention, para 3 in the application would not have been inserted because termination of executing proceedings before executing court had already been mentioned in para 2 of the application.

In the light of aforesaid discussion, I agree that on account of settlement between the parties, revision petitions have become infructuous and are liable to be dismissed as infructuous. **[Madan Lal Sahu v. Shrishrimal Planatation Ltd., 2015 (1) CPR 339].**

Ss. 15, 17, 19, 21 – Insurance – Theft of vehicle – Delay in intimation of theft to insurance Co. - Effect of – It can vitiate the claims

Through this revision petition, the petitioner Insurance Company has challenged the order passed by the District Forum and the Rajasthan State Consumer Disputes Redressal Commission (hereinafter referred to as State Commission) vide which the insurance claim filed by the complainant relating to the theft of a vehicle was allowed on non-standard basis, although there was delay of 3 months in giving intimation about the said theft to the Insurance Company in violation of the policy conditions. The District Forum Dausa (Rajasthan) vide their order dated 26.12.2013 in CC No. 15/2013 allowed the claim on non-standard basis. On appeal before the State Commission, Appeal No. 318/2014, by the petitioner, the said order was upheld. Hence, the present revision petition.

Admittedly, the tractor in question was stolen on 06.12.2011 and intimation about the theft was given to the local police on 08.12.2011, i.e., two

days after the incident. Regarding intimation to the Insurance Company, the complainant says that such intimation was given on the second day of the theft but the Insurance Company have categorically stated that the intimation was given after a gap of 98 days, i.e., on 12.03.2012. The complainant has not been able to establish anywhere that he gave intimation to the Insurance Company on the second day of the theft. Further, it has been mentioned in para 4 of the complaint that the complainant had provided all the documents, certified copy of registration certificate and insurance policy to Sh. A.K. Gujral, investigator of the company, but the date on which these documents were given has not been stated in the complaint.

From the facts and circumstances on record, therefore, it has not been established anywhere that intimation about the theft of the tractor was given to the Insurance Company on the second day of the incident.

Further, this Commission observed as follows in the case *New India Assurance Company Ltd. v. Trilochan Jane (supra):-*

> "In the case of theft where no bodily injury has been caused to the insured, it is incumbent upon the respondent to inform the police about the theft immediately, say within 24 hours, otherwise, valuable time would be lost in tracing the vehicle. Similarly, the insurer should also be informed within a day or two so that the insurer can verify as to whether any theft had taken place and also to take immediate steps to get the vehicle traced. The insurer can coordinate and cooperate with the police to trace the car. Delay in reporting to the insurer about the theft of the car for 9 days, would be a violation of condition of the policy as it deprives the insurer of a valuable right to investigate as to the commission of the theft and to trace/help in tracing the vehicle."

In the above case, a delay of 2 days in lodging the FIR and delay of 9 days in reporting the matter to the Insurance Company was found fatal and the Insurance Claim for the stolen truck was not allowed. In the said order, the National Commission extensively dwelt upon the word immediately as stated in the conditions of the insurance policy by referring to the meaning of this word given in Oxford Advanced Learners Dictionary, Strouds Judicial Dictionary, Fifth Edition, Blacks Law Dictionary, Sixth Edition and Mitras Legal and Commercial Dictionary, Fifth Edition and came to the conclusion that the word immediately has to be construed, within a reasonable time having due regard to

the nature and circumstances of the case.

In so far as the contention of the complainant/respondent that a contract of insurance is a contract of indemnity and the Insurance Company is bound to honour the claim, once the policy has been issued after charging the premium, it is stated that the said contract has been made subject to certain conditions. In case, there is violation of such conditions, such violation has to be taken into account, while deciding the issue of indemnity.

Based on the discussion above, this revision petition succeeds and it is held that the complainant is not entitled for any compensation even on non-standard basis. The orders passed by the District Forum and State Commission are, therefore, set aside and the consumer complaint in question stands dismissed. There shall be no order as to costs. [**M/s HDFC Ergo General Insurance Co. Ltd. v. Shri Bhagchand Saini, 2015 (1) CPR 383(N.C.)].**

CONTRACT LABOUR (REGULATION AND ABOLITION) RULES, 1971

Rule 25(2)(v)(a) – Equal pay for equal work – Claimed by the workmen employed by the contractor to that of the employees of the P.E. – Permissibility of – They cannot be treated as same or similar.

On 1.3.1994 respondent No. 2 made a complaint before Assistant Labour Commissioner that concerned contractor had committed breach of licence conditions. On this complaint, the matter was referred to the CLC. The CLC vide his order dated 17.4.1996 passed under Rule 25(2) (v)(a) of the Rules gave finding that employees of contractors were not discharging the same or similar nature of work, and therefore, there was no violation of Clause (v) of the licence. This order of CLC was carried before this Court in a writ petition being SCA No. 5063 of 1996, wherein order dated 17.4.1996 passed by the CLC was set aside and the matter was remanded back to the concerned CLC for re-examination. There was specific direction in the order passed by this Court that the statutory authority must consider the matter in light of the provisions of Articles 14, 15, 16, 21, 38, 39 and 46 of the Constitution of India. It will be relevant to mention here that despite this direction and mandate of requirement of Article 14 etc., the CLC passed order dated 29..5.1998 by holding that Articles 14 etc. of the Constitution were not required to be looked into in this case. This order of CLC was questioned before this Court by the principal employer/Indian Oil Corporation Ltd. in writ petition being SCA No. 9036 of 1998. Apart from this writ petition by the Principal Employer (hereinafter

"PE"), various contractors also preferred special civil applications, viz. Gambhir Catering Services SCA No. 9023 of 1998, Garden Design Centre SCA No. 9020 of 1998, Vidya Constructions SCA No. 9032 of 1998 and Hetal Gardening Services SCA No. 3346 of 2001, seeking appropriate writ, order or direction for setting aside impugned order dated 29.5.1998 passed by the CLC in inquiry under Rule 25(2)(v)(c) of the Rules. At the outset, it is required to be noted that the petitioner of SCA NO. 9036 of 1998 is the Principal Employer and rest of the petitioners are contractors who were granted labour contracts in various departments of Indian Oil Corporation Ltd. and Gujarat Refineries, Vadodara.

The main controversy in this case revolves around Rule 25(2)(v)(a) of the Rules, which is reproduced hereunder:-

> "Rule 25(2)(v)(a): In cases where the workmen employed by the contractor perform the same or similar kind of work as the workmen directly employed by the principal employer of the establishment, the wage rates, holidays, hours of work and other conditions of service of the workmen of the contractor shall be the same as applicable to the workman directly employed by the principal employer of the establishment on the same or similar kind of work."

This rule further provides that in case of any dispute with regard to type of work, the Labour Commissioner, i.e. CLC, shall decide the same and his decision shall be final.

Thus, it would be seen that the above-mentioned rule incorporates the principle of 'equal pay for equal work'. It has mandated that employees engaged by the principal employer through contractor who performs the same or similar kind of work must be paid the same wages and faculties as are being paid to the employees employed directly by the principal employer of the establishment. Thus, nature of work, duties and responsibilities attached thereto are the relevant factors while comparing and evaluating as to whether the workmen employed through the contractor perform the same or similar kind of work as workmen directly employed by the principal employer. The degree of skill and various dimensions of a given job have to be gone into to reach a conclusion that the nature of duties of the staff in two categories are on par or otherwise. It may be possible that difference may be of degree but still that has to be taken into consideration while evaluating two sets of workers. It is also required to be taken into consideration that nature of work cannot be judged by mere volume of work, as reliability and responsibility of worker cannot be totally ignored. In this case, except recording that the contract labourers

engaged through the contractor after doing similar work, the CLC in his order has not gone deep into the evidence and material placed before him. The only consideration by the Labour Commissioner in the impugned order is evidence of few workers from the contractor's side. Out of 190 regular workmen of the contractor, they have examined only 9 workers. Out of these nine, six are the persons who are permanent and two are on contract basis. It will be relevant to mention here that these six persons have not made any grievance. Similarly, in case of horticultural garden, out of 71 contract labourers, only one was examined and in case of housekeeping/maintenance, out of 57 also, only one was examined. Therefore, based on examination of two contract labourers from canteen, one from horticultural garden and one from housekeeping/maintenance, it cannot be said that the job performed by the workers engaged by contractors and that of the principal employer are same or similar.

The Court is of the considered opinion that work being done by two sets of workers, i.e. employed by the contractor and those employed directly by the principal employer cannot be said to be same or similar.

Resultantly, the present appeal is allowed and the orders passed by both the authorities are quashed and set aside by holding that there is qualitative difference between the responsibilities of the two sets of workmen, as regular employees possess higher qualification than that of the workmen employed by the contractor and therefore they cannot be treated as same or similar. [**Indian Oil Corporation v. Chief Labour Commissioner (Central), New Delhi and others, 2015 (144) FLR 1098 (Gujarat High Court)].**

CRIME AGAINST WOMEN

Sexual Harassment at work place – A serious misbehavior if found to be true to dealt with severely.

There is no doubt that sexual harassment at the workplace is a serious misbehavior and if found to be true, dealt with severely. At the same time, the procedure adopted in arriving at the finding – considering the likely adverse finding of a charged official in a given case – has to be fair, and the materials also should be considered in a fair, reasonable and dispassionate manner. [**Avinash Mishra v. Union of India, 2015(144) FLR 777].**

CRIMINAL PROCEDURE CODE, 1973

Section 125 – Maintenance awarded to minor child – minor child not impleaded as party – Order is well in conformity in law and does not suffer

from material illegality.

Argument advanced by learned Counsel for revisionist is that master Aryan, the minor son of revisionist was not made party in the original petition under section 125 Cr.P.C. before, the Trial Court could not have awarded the maintenance of Rs. 15,000/- to his minor son. I am afraid this argument is also misconceived for the simple reason that the provision under section 125 Cr.P.C. is a beneficial provision made precisely to provide instant relief to the estranged wife and the children of feuding couple. While it is true that the respondent No. 2 should have arrayed the minor son as party or the Family Court should have insisted on arraying the minor children as party in the instant petition. But Family Court is not denuded of its power to provide adequate relief to minor child merely because his/ her parents have forgotten him/her if material on record shows requirement of such action. [**Chetan Anand Parashar alias Rahul Sharma v. State of U.P. and another, 2015(88) ACC 777 (All.H.C.)].**

Section 133

Appeal filed for challenging order whereby, Magistrate was directed to consider Opposite party's application for removing unlawful obstruction in public way. The question for determination before the court was whether Magistrate was rightly directed to consider application for removing unlawful obstruction in public way.

Held, Section 133 of CrPC provides power of District Magistrate to remove any unlawful obstruction from any public place. It is undisputed that both parties were allotte plot. The Opposite party had constructed building after allotment of plot but, Petitioners started construction after many years. Rule 115 Q of Rules provides that if land had been allotted for building house then house should be constructed within three years from date of allotment and If allottee fails to do so, then his rights shall be extinguished. It is also evident that constructions were being made after specified period as provided under Rule 115 Q of Rules. No one had right to obstruct public way by raising unauthorized construction. If disputed land had been used for long time as public way, then it could not prevent competent authorities to declare it as public way. Magistrate was rightly directed to consider application for removing unauthorized construction on public way. Petition dismissed. [**Ram Kishore v. Additional Session Judge 2015 (108) ALR 150, 2015 126 RD626]**

F.I.R. - Delay in lodging F.I.R. - If delay explained properly – not fatal for prosecution.

So far as the delay in lodging the F.I.R. is concerned, the prosecution witness belongs to the rural area. The parents of prosecutrix were not residing with her. Her uncle and her aunt went to lodge the report of the incident but admittedly the same has not been lodged in compelling circumstances. P.W.-1 went to Faizabad along with prosecutrix and he gave application to Dy. S.P. City and only after intervention of Dy. S.P. (City), the police came into action and prosecutrix was medically examined through Mahilla Police Station, Faizabad and on the next day on 22.5.2002 the report was lodged in the concerned police station. In the aforesaid circumstances, I am of the view that prosecution has explained the delay in lodging the first information report. [**Raj Kumar alias Bhillar v. State of U.P., 2015(88) ACC 854(H.C.)].**

When an interim order has been passed in regarding the arrest of the accused is stayed till filing of charge-sheet in court- I.O. may make endorsement in column no. 3 of charge-sheet in that regard – It is obligation on I.O. to intimate the accused in regarding filing of charge-sheet and their presence in the court on that day.

The difficulty arises when an interim order has been passed to the effect that arrest of the accused is stayed till the submission of charge-sheet in Court, then in that situation, the investigating agency may make endorsement in column No. 3 of Charge-sheet that Court has stayed the arrest of the accused till submission of charge-sheet. Simultaneously the Investigating Officer is under obligation to intimate the accused that investigation is ended by filing of the charge-sheet in the Court and shall also intimate the date to the accused persons, on which date to the accused persons, filed in Court.

In the aforesaid situation, the charge-sheet alongwith notices issued to the accused may be filed in Court. In case the accused is not present on the date in concerned Court when the charge-sheet is filed, the Court may proceed to procure the attendance of the accused person in Court by coercive methods provided under the law. **Suraj Kumar (Suraj Chaprasi as alleged in F.I.R.) v. Senior Superintendent of Police, Lucknow and others, 2015(88) ACC 89 (H.C.)].**

Sections 397(1) and 156(3) – Magistrate rejected the prayer for register & investigate the case U/s. 156(3) Cr.P.C. – Affects the valuable right of the complainant and is a matter of the moment – Access to remedy of revision under section 397(1) not barred – Such an order not an interlocutory order.

In the proceedings in which the present reference to the Full Bench has been occasioned, an application was moved before the Chief Judicial Magistrate, Ambedkar Nagar against the petitioners by opposite party No. 2 under section 156(3). The Magistrate, after considering the contents of the complaint, came to the conclusion that there was no ground for directing the police to register and investigate the case, upon which the application under section 156(3) was rejected. Aggrieved, opposite party No. 2 preferred a revision before the Sessions Judge which was allowed and while setting aside the order of the Chief Judicial Magistrate, the latter was directed to decide the application under section 156(3) afresh. Aggrieved by that order of the Sessions Judge, this Court was moved by the petitioners. The submission of the petitioners was that - (i) the Sessions Judge decided the revision without furnishing to them an opportunity of hearing though, according to them, they were necessary parties before the Revisional Court since their "valuable rights" were going to be affected by the order that was sought before and was eventually passed by the Revisional Court; (ii) in view of the decision of the Full Bench in Father Thomas, the remedy of a criminal revision was barred under section 397(2) since an order passed by a Magistrate on an application under section 156(3) is an interlocutory order.

Where an order is passed by the Magistrate declining to order an investigation under section 156(3), such an order affects the valuable rights of the complainant and is a matter of moment. Access to the remedy of a revision under section 397(1) is not barred since such an order is not an interlocutory order under sub-section (2). Nor can access to the statutory remedy of a revision under section 397 (1) be defeated on the ground that the complainant may avail of the procedure prescribed in Chapter XV of the Code. [**Jagannath Verma and others v. State of U.P. and another, 2015(88) ACC 1. (H.C.-L.B.-F.B.)].**

Section 397(2) – "Interlocutory order" – Merely regulates procedure and does not affect rights and liabilities.

An interlocutory order merely regulates the procedure and does not affect rights or liabilities. Bearing in mind these principles, the Supreme Court noted that in that case, the appellants had been released by the Judicial Magistrate upon the submission of a final report by the police and a revision to the Additional Sessions Judge had failed. The appellants were held to have acquired a valuable right of not being put on trial unless a proper order was made against them. When a complaint was thereafter filed which again was dismissed by the Judicial Magistrate, the Sessions Judge remanded the proceedings. In pursuance of the remand, when the Judicial Magistrate

summoned the appellants, the question of the appellants being put to trial arose for the first time. This was held to be a valuable right which the appellants possessed and which was being denied to them by the order of the Judicial Magistrate. The order of the Judicial Magistrate was, in the circumstances, a matter of moment in the view of the Supreme Court and a valuable right was regarded as having been taken away by the Magistrate in passing an order prima facie, in a mechanical fashion without application of mind. Hence, the revision was held to be maintainable. [**Jagannath Verma and others v. State of U.P. and another, 2015(88) ACC 1. (All. H.C.-L.B.-F.B.)].**

Sections 451 and 482 – Disposal of property pending trial – When remedy is available for filing revision in subordinate Court - Then High Court does not find any ground to invoke in its Inherent jurisdiction.

The present application under section 482 Cr.P.C. has been filed by the applicant with the prayer to quash the order dated 14-9-2005 passed by the Additional Chief Judicial Magistrate, Northern Railway, Ghaziabad in Case No. 2275 of 2004 (State v. Anis and others) under sections 379/411 I.P.C., Police Station G.R.P., District – Ghaziabad whereby the Court below has allowed the release application of the informant/complainant and release the currency note recovered in the matter in favour of the informant/complainant.

From a perusal of the entire record, it is clear that the said currency note, which has been released in favour of the informant/ complainant, was in the custody of the Court below. Therefore, the provisions enumerated under section 451 Cr.P.C. are clearly applicable to the present matter and the order passed on the release application under section 451 Cr.P.C. is revisable one. The Apex Court in the case of Sunderbhai Ambalal Desai v. State of Gujarat, 2003(46) ACC 223(SC), has held that the property in the custody of the Court should be released at the earliest.

Since the applicant has approached this Court directly without availing statutory remedy of filing revision, this Court does not find any ground to invoke its inherent jurisdiction and to analyse /adjudicate the matter on merits. It is open to the applicant to file revision before the concerned District and Sessions Judge against the impugned order and may raise all questions, raised by him in this Court, which shall be dealt with/ considered by the Revisional Court. [**Anis v. State of U.P. and another, 2015(88) ACC 29 (H.C.)].**

EVIDENCE ACT

Rules of Evidence – Applicability of – Rules of evidence not applicable to proceedings before the labour court.

The Labour Court has in the case at hand, placed reliance upon a Xerox copy of a certificate allegedly issued by an officer of the appellant-Corporation stating that the respondant was in the employment of the appellant-Corporation as a Conductor between 3rd October, 1987 and 31st March, 1989. While it is true that the Xerox copy may not be evidence by itself specially when the respondent had stated that the original was with him, but had chosen not to produce the same yet the fact remains that the document was allowed to be marked at the trial and signature of the officer issuing the certificate by another officer who was examined by the appellant. Strict rules of evidence, it is fairly well-settled, are not applicable to the proceedings before the Labour Court. That being so the admission of the Xerox copy of the certificate, without any objection from the appellant-Corporation, cannot be faulted at this belated stage. When seen in the light of the assertion of the respondent, the certificate in question clearly supported the respondent's case that he was in the employment of the appellant-Corporation for the period mentioned above and had completed 240 days of continuous service. That being so, non-payment of retrenchment compensation was sufficient to render the termination illegal. Inasmuch as the Labour Cort declared that to be so it committed no mistake nor was there any room for the High Court to interfere with the said finding especially when the findings could not be described as perverse or without any evidence. [**Bhavnagar Municipal Corporation etc. v. Jadeja Govubha Chhanubha and another, 2015(144) FLR 177].**

INDUSTRIAL DISPUTE ACT

S.17-B – Writ petition dismissed learned single judge – without indicating any reason – except for a bold statement that petition is wholly misconceived – Effect of – Petition is liable to be dismissed.

We may emphasize the necessity of the learned Single Judge, while entertaining a petition, to disclose reasons why the Court considers it necessary to allow the petition or, as in the present, to dismiss it. Reasons, however brief, are necessary to indicate that there has been due and proper application of mind by the Court to the merits of the grievance. The length of the reasoning of the Court, in any given case, must necessarily depend upon the facts and circumstances of the case. [**Smt. Mithilesh Kumari v. U.P. State Road Transport Corporation, Moradabad and another, 2015(144) FLR 21 (All.)]**

INDUSTRIAL TRIBUNAL ACT

S.10 – Reference – Appropriate Government empowered to make reference – Tribunal required to confine its inquiry to the question and has

no jurisdiction to travel beyond the question or/and terms of the reference.

The same issue came up for consideration before three Judge Bench in a case Pottery Mazdoor Panchayat v. Perfect Pottery Co. Ltd. and another, (1979)3 SCC 762= 1979 (38) FLR 38(SC), Justice Y.V.Chandrachud – the learned Chief Justice speaking for the Court laid down the following proposition of law:

> "10. Two questions were argued before the High Court: Firstly, whether the tribunals had jurisdiction to question the propriety or justification of the closure and secondly, whether they had jurisdiction to go into the question of retrenchment compensation. The High Court has held on the first question that the jurisdiction of the Tribunal in industrial disputes is limited to the points specifically referred for its adjudication and to matters incidental thereto and that the Tribunal cannot go beyond the terms of the reference made to it. On the second question the High Court has accepted the respondent's contention that the question of retrenchment compensation has to be decided under section 33-C(2) of the Central Act.
>
> 11. Having heard a closely thought out argument made by Mr. Gupta on behalf of the appellant, we are of the opinion that the High Court is right in its view on the first question. The very terms of the reference show that the point of dispute between the parties was not the fact of the closure of its business by the respondent but the propriety and justification of the respondent's decision to close down the business. That is why the reference were expressed to say whether the proposed closure of the business was proper and justified. In other words, by the reference, the Tribunals were not called upon by the Government to adjudicate upon the question as to whether there was in fact a closure of business or whether under the pretence of closing the business the workers were locked out by the management. The reference being limited to the narrow question as to whether the closure was proper and justified, the Tribunals by the very terms of the reference, had no jurisdiction to go behind the fact of closure and inquiry into the question whether the business was in fact closed down by the management."

It is thus clear that the appropriate Government is empowered to make a reference under section 10 of the Act only when "Industrial dispute exists" or

"is apprehended between the parties". Similarly, it is also clear that the Tribunal while answering the reference has to confine its inquiry to the question(s) referred and has no jurisdiction to travel beyond the question(s) or/and the terms of the reference while answering the reference. A fortiori, no inquiry can be made on those questions, which are not specifically referred to the Tribunal while answering the reference. [**Oshiar Prasad and others v. Employers in Relation to Management of Sudamdih Coal Washery of M/s. BCCL, Dhanbad, 2015(144) FLR 830 (Jhar)].**

INTERPRETATION OF STATUTES

Interpretation of Statutes – Object of – While interpreting a statute court ought to keep the legislative intent in mind and eschew an interpretation which hands to restrict, narrow down or defeat its beneficial provisions.

It is also well settled by several decisions of this Court that while interpreting a statute the Court ought to keep the legislative intent in mind and eschew an interpretation which tends to restrict, narrow down or defeat its beneficial provisions. [**Shashikala Devi v. Central Bank of India and others, 2015(144) FLR 820 (Del.)]**

LAND ACQUISITION ACT

S.4 – Land in present case released from acquisition initiated earlier – Subsequently another notification issued for acquisition of land in question – State Govt. had permitted without any conditions the change of land use for developing the area as an industry – Validity – Reacquisition of land released in earlier acquisition proceeding is no bar even if change of land use is permitted earlier.

Permission for change of land use and developing the area as an industry. In our view, has no relevance while considering the validity of acquisition. If we are to hold that once permission is granted for change of land use for developing the area as an industry and thereafter State cannot acquire it, then a situation may arise that for all time to come, the particular area cannot be acquire which may not be in the larger public interest. We are also unable to agree with the view taken by the High Court that the action of the respondents/ State in approving setting up of a factory and then acquiring the same is unreasonable. It is not as if the lands where factories are set up are immune from any acquisition. The only effect of permission for such change in land use and approval for construction and developing the area as an industry can be recognized as valid only to the extent as to confer right upon the land owners to recover the appropriate compensation.

While determining the question whether a requisition order is or is not for a public purpose, the facts and circumstances in each case are to be closely examined in order to determine whether a public purpose has been established. The requirement of land for residential and commercial purposes and for development of the Sector involves in it an element of general interest of the community and whatever furthers the general interest must be regarded as a 'public purpose' as opposed to the particular interest of individuals.

As regards contention of the learned counsel for the respondents that the land once released cannot be subsequently reacquired. In our view, there is no bar to the subsequent acquisition of the land nor is there a bar for issuance of successive notification for acquisition of the land. It would not be right to contend that because the land was already released. It cannot be acquired by subsequent notification. If it is to be held that land already released cannot be reacquired, an anomalous situation may arise that the land cannot be acquired for all time to come even if it is genuinely required. It is not in dispute that the earlier notification is issued by the State for the development of the land for residential and commercial purposes which is same purpose for subsequent acquisition as well. When the State felt that the land sought to be acquired cannot be adjusted in the development of the Plan, there is no bar for issuance of notification for acquisition of the land. [**State of Haryana and others v. Vinod Oil and General Mills and another, 2014(6) AWC 6466 (Punjab & Haryana)].**

PAYMENT OF GRATUITY ACT

Sec. 4(6) — Pending disciplinary proceedings – Bank would be liable to pay gratuity amounts due only after completion of proceedings initiated against him

As the statutory regulation only postpones the date of superannuation of the respondent-employee, this is not a case where the Regulations have the effect of overriding the provisions of the 1972 Act as, even under the said Act, the right of the respondent-employee to receive gratuity accrues only on his superannuation. That apart, even if it were t be construed that the postponement of his superannuation was against the scheme of the 1972 Act, the statutory character of the Regulation in question would serve to insulate it from a charge of being violative of the rights conferred to the respondent-employee under Article 301-A of the Constitution of India.

In view of the aforesaid discussion, court's view that Exts. P7 and P10 orders, that direct the petitioner-bank to pay gratuity and interest to the respondent-employee, when the disciplinary proceedings initiated against him

have not been completed, cannot be legally sustained. **[Union Bank of India v. Ram Mohan, 2015 (144) FLR 371 (Ker. HC)]**

PAYMENT OF WAGES ACT

S.15 – Jurisdiction – Prescribed authority under Payment of Wages Act has no jurisdiction to entertain an application U/s. 15 for claim of an employee of co-operative society.

In both these matters, common question involved is, whether Prescirbed Authority, under Payment of Wages Act, 1936 (hereinafter referred to as "Act, 1936") has jurisdiction to entertain claim of an employee of a Co-operative Society or whether remedy to such an employee lie only under section 70 of U.P. Co-operative Societies, Act, 1965 (hereinafter referred to as "Act,1965") and not under any labour law. In other words, whether Act, 1936 and mode of adjudication of dispute provide therein are available for redressal of grievance to the employees of a Co-operative Society.

Issue in question stands covered by judgment of Apex Court in Ghaziabad Zila Sahkari Bank and therefore, since no Labour Laws would be applicable in respect to service dispute of an employee and cooperative society inter se, Prescribed Authority, under Act, 1936, had no jurisdiction to entertain an application under section 15 and therefore, impugned orders are patently illegal and without jurisdiction. [**Sikta Mahoogarh Sadhan Sahkari Samiti Ltd. v. Prescribed Authority (Payment of wages Act) and others, 2015(144) FLR 23 (All.)].**

SERVICE LAWS

Compassionate appointment- purpose of.

The appellant has filed this intra court appeal challenging the validity and correctness of the impugned judgment and order dated 23.9.2014 passed by the writ court in Civil Misc. Writ Petition No.17357 of 2004, Smt. Usha Rai v. State Bank of India and others, whereby the aforesaid writ petition was dismissed.

Husband of the appellant was employed in the respondents-bank. He died in harness on 16.6.2001. The widow moved an application for appointment on compassionate ground under the Dying in Harness Rules before the authority concerned of the Bank, which was turned down by the authority after taking into account the financial position of the appellant. Aggrieved, she filed Civil Misc. Writ Petition No.17357 of 2004, Smt. Usha Rai v. State Bank of India and others, which was dismissed vide judgment and

order dated 23.9.2014, hence the instant special appeal.

From perusal of the aforesaid finding of the writ court and the record it appears that the husband of the appellant was an employee of the bank, who died in harness on 16.6.2001. She moved an application for compassionate appointment on class IV post under the Dying in Harness Rules, which was rejected by the Bank. Thereafter, she preferred Civil Misc. Writ Petition No.17357 of 2004, Smt. Usha Rai v. State Bank of India and others, which was dismissed vide judgment and order dated 23.9.2014. The writ court has held that the appellant has not pursued the petition for the last ten years and the family has survived all these years. The purpose of giving compassionate appointment at the time of death of the bread earner is to enable the family to tide over the sudden crises.

The Apex Court has also held that the purpose of granting such appointment is to provide succor to the family at the time of need and not to create a new mode of back door entry. Appointment by way of compassionate appointment is an exception carved out of the general rule for appointment on the basis of open invitation of application and merit. The exception was to be resorted to in cases of penury where the dependents of an employee are left without any means of livelihood and that unless some source of livelihood was provided a family would not be able to make both ends meet.

It is well-settled by a catena of decisions of the Apex Court that a compassionate appointment cannot be claimed as a matter of course irrespective of the financial status of the family of the deceased at the time of his death. Where a family has been provided with sufficient funds and a running income it cannot be said that the family is suffering any such hardship to give compassionate appointment to one of the members of the family.

The ruling cited by the learned counsel for the appellant are not applicable to the facts and circumstances of the present case and are clearly distinguishable. [**Smt. Usha Rai v. State Bank of India and another, 2014(6) AWC 6424 (All.)].**

Compassionate appointment – Ground for consideration – Claim for compassionate appointment has to be considered in context of financial hardship of the dependent of deceased employee.

This Court is of the considered opinion that the contention of the learned counsel is fanciful, frivolous and irrational to the purpose for which the Rules of 1974 have been framed. Claim of the petitioner is required to be considered in context of the financial hardship being faced by the petitioner.

Biological mother of the petitioner has been gainfully employed all her life and was drawing substantial salary, as noted above. In such circumstances. It cannot even be imagined that the petitioner is facing immediate financial crisis because of death of the bread earner namely Ram Veer Singh.

It thus, becomes apparent that financial requirements of the petitioner are being taken care of by his biological mother Munni Devi Surely, there has not been any financial crisis which would entitle the petitioner to employment on compassionate grounds. [**Pravendra Pratap Singh v. State of U.P. and others, 2014(6) AWC 6512 (All.)]**

Valuntary Retirement – VRS Scheme – Acceptability of – An application of voluntary Retirement Under VRS not deemed to be allowed.

Petitioner had thereafter made an application for seeking monetary benefits as per the new scheme by the Respondent Bank for the dependents of deceased employees. The said scheme dated 2nd February 2006 prescribed certain conditions for being eligible to avail of its benefits. The applicant was not held eligible and the said decision was communicated to her in the year 2003. It appears that the petitioner had entered into a correspondence with the Respondent Bank from 2001 onwards till 2008, we find that this petition filed on the 11th of May 2012 suffers from delay. We do not find convincing reasons having been put forth by the petitioner so as to condone the said delay.

It is clear that an application for VRS is not deemed to be allowed unless the competent authority conveys its acceptance in writing to the concerned employee. Any request of an employee seeking voluntary retirement, through an application made for the said purpose, is to be either accepted or rejected. The decision in this regard has to be communicated to the concerned applicant. In the light of the case law cited above, an acceptance of VRS application is neither automatic nor is it a deeming fiction unless provided in the Rules or the Voluntary Retirement Scheme. The deeming fiction necessarily is a creation of law or a statute. Unless so provided by the Rules or in the Voluntary Retirement Scheme, an applicant cannot claim deemed acceptance. [**Smt. Urmila Chandrakant Gaikwad v. Chairman and Managing Director, Bank of Baroda and others, 2015(144) FLR 860 (Guj.)]**

S. 6-E(1) and (2) – Termination – During pendency of proceedings – workman he may be discharged or dismissed on ground of misconduct

As per sub-section (1) of section 6-E of the Act, employer may discharge or punish the workman for any misconduct connected with the dispute with the express permission in writing of the authority. However, under sub-section (2) of section 60-E of the Act, workman may be discharged or

dismissed on the ground of misconduct not connected with the dispute on payment of wages for one month. However, an application has to be made by the employer to the authority month. However, an application has to be made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.

In the present, case, not application was ever moved before the Labour Court for approval as required by the proviso of sub-section (2) of Section 6-E of the Act.

In view of the above, court do not find any reason to take contrary view of the view taken by the Labour Court.

Consequently writ petition fails and is hereby dismissed. [**Kanhaiya Lal Polytechnic, Roorkee v. P.O., L.C. Haridwar, 2015 (144) FLR 217 (Utt. H.C.)]**

Back wages – Grant of – There can be no precise formula nor any "cast iron rule" for grant of back wages, it depends on circumstances.

There can be no precise formula nor any "cast iron rule" for grant of back wages. In the instant case, the proceedings were initiated by a Charge-sheet dated 30th December, 1991 and the order of dismissal dated 3rd October, 1994 was set aside by this Court, with direction upon the respondents to proceed from the stage of the enquiry report, by this Court's judgment dated 11th February, 2004 and the proceedings thereafter were dept pending for a long period of 8 years. In the backdrop of such gross delay and the order of dismissal having been set aside not on any technical ground and in the absence of any allegation to the effect that the petitioner was gainfully employed during the period in question, in my opinion, a balance would be maintained and the interest of justice would be subserved through issuance of a direction upon the respondents to disburse 50% of the back wages to the petitioner. Accordingly, the respondents are directed to disburse the said amount through 4 equal monthly instalments, first of which should be paid within a period of 6 weeks from the date of communication of this order. [**Md. Afzal Hussain v. Coal India Limited and others, 2015(1) ESC 66(Cal.)].**

Rules 1, 3 and 4 – Probationer – Termination of services on ground of registration of criminal case was concealed – Since petitioner was on probationer hence reason were not required to be mentioned in the impugned order of termination

The petitioner was appointed as Constable (General Duty) and subsequently his services were terminated vide order passed in the month of

February 2011 (Annexure P.3). As per provisions of sub rule 4 of Rule 3 of the Central Civil Services (Temporary Service) Rule,1965. The impugned order of termination has been challenged by the petitioner on the ground that the same has been passed in violation of principles of natural justice as no show cause notice was issued to him. It is also the argument of learned counsel for the petitioner that the impugned order has not been passed by the competent authority. Neither any reason has been mentioned in the notice nor in the termination order regarding terminating the services of the petitioner.

At the time of filling up verification roll on 21.2.2009, the material facts of registration of criminal case against the petitioner was concealed. It was clearly mentioned in para No.1 that furnishing of false information or suppression of any factual information in the verification roll would be a disqualification and a candidate could be declared unfit for employment. It was also mentioned in the case, the false information furnished by the candidate or any suppression of factual information in the verification roll came to the notice of the authorities concerned, the services of the candidate could be terminated. As per provisions of Sub Rule 1 of Rule 5 of CCS (Temporary) Service Rules 1965, the services of the petitioner were terminated. During the period of probation, this fact came to the notice of the authorities concerned that the material fact of registration of FIR was not mentioned in the verification roll. The argument of learned counsel for the petitioner that no reason whatsoever was mentioned in the order of termination has no substance as the petitioner was on probation for a period of two years and during that period only, this fact came to the notice of the authorities and after giving one month's notice, his services were terminated. In case of termination during probation period, the reasons are not required to be mentioned as not only the conduct of the petitioner reflects that the petitioner has concealed the material fact and being in a disciplined force, he was required to mention the fact of registration of criminal case. Moreover, furnishing of false information or suppression of any material facts in the verification roll is not only a case of disqualification but the petitioner was unfit for employment. Even while filing this petition before this Court, nothing has been mentioned regarding registration of criminal case. Simply a ground has been mentioned that his services have been terminated by an authority who is subordinate to the appointing authority and termination was contrary to mandate of Article 311(1) of the Constitution of India. By relying upon the contentions raised by learned counsel for the petitioner, his writ petition was allowed on 18.9.2012. Thereafter, review petition was filed by the respondents and earlier order dated 18.9.2012 was recalled. The conduct of the petitioner was not only unfair at the time of filling up verification roll but even before this Court also. **[Devesh Puran v. Union of India, 2015 (1) SLR 701**

(Pb. & Hry)]

Service Law - Disciplinary proceedings - Not liable to be quashed on the ground that proceeding had been initiated at belated stage.

A disciplinary proceeding is not liable to be quashed on the ground that the proceeding had been initiated at a belated stage or could not be concluded in a reasonable period, unless the delay creates prejudice to the delinquent employee. While passing the order, the learned Tribunal has not kept the aforesaid principles in view. **[State of Orissa and others v. Balabhadra Jal, 2015 (144) FLR 962 (Ori)].**

Misconduct-punishment of compulsory retirement for forged entry made in ledger sheet on back date-Legality of – Punishment not found to be harsh or disproportionate to the guilt.

In the present case, Hon'ble Supreme Court observed that had the act on the part of the appellant been bonafide, he would not have made forged entry of Rs. 533/- in the carbon copy of ledger sheet on 13.8.1990 between entry Nos. 12 and 13. As such, the finding of the enquiry officer holding the appellant guilty, in court's opinion, cannot be said to be against the evidence on record.

Court did not find the punishment to be harsh or disproportionate to the guilt, in view of the nature of the charge of which the appellant is found guilty in the present case. Time and again, this Court has consistently held that in such matters no sympathy should be shown by the Courts. [**Diwan Singh v. Life Insurance Corporation and others, 2015 (144) FLR 1009 (All.)]**

Writ petition - PIL – Service matters – Whether PIL in service matter is justified – Held, in service matter PIL is not maintainabile

Appointments of Sri Alok Ranjan (IAS) (respondent-3) on the posts of Chief Secretary, Government of Uttar Pradesh and/or Agricultural Production Commissioner of U.P. and Industrial Development Commissioner of U.P. are being challenged on the ground that during his tenure as Managing Director of National Agricultural Co-operative Marketing Federation of India (hereinafter referred to as the NAFED) an FIR no. RCBE/2006-E-0007 dated 15.12.2008, under Section 409, 411, 420, 467, 468, 471 and 120-B of IPC was registered against him and various other persons in respect of criminal conspiracy to cheat the NAFED and misappropriate the funds of the NAFED. The FIR was investigated by CBI, Economic Offences Wing, New Delhi, wherein charge sheet dated 15.12.2008 was submitted against respondent-3 also, in the Court of Chief Metropolitan Magistrate Esplanade, Mumbai and criminal case against him is pending. Another FIR no. RCEOU-1-2007-E-0002 dated 25.05.2010,

under Section 409, 411, 420, 467, 468, 471 and 120-B of IPC was also registered against him again in respect of criminal conspiracy to cheat the NAFED and misappropriate the funds of the NAFED. The FIR was investigated by CBI, Economic Offences Wing, New Delhi, wherein charge sheet dated 29.05.2010 was submitted against respondent-3 also in the Court of Chief Metropolitan Magistrate, Delhi. Respondent-3 is facing criminal trail in the aforesaid cases. Chief Secretary of State Government heads many committees established under various Acts and discharges important role in decision making process in administrative, financial, economic, industrial, infrastructure and other policy matters of the State. Appointment of a person, who is facing criminal trial in economic offences will not be in the interest of State.

Chief Standing Counsel, on the basis of written instructions, informed that Sri Alok Ranjan, was selected and appointed in Indian Administrative Services (for short IAS) on 12.07.1978. In the Gradation List of IAS Officers of Uttar Pradesh Cadre, as published on 01.01.2014, he is at Serial no. 8. Officers from Serial no. 1 to 3 have retired, Officers at Serial Nos. 4, 5 and 7 are now posted in Central Cadre and Sri Javed Usmani, earlier Chief Secretary, Government of Uttar Pradesh has also now opted for Central Cadre. Thus at present Sri Alok Ranjan is senior most. After completion of 30 years continuous service, he was promoted in the Pay Scale of Chief Secretary in July, 2012. He was also elected as President of IAS Officers Association of Uttar Pradesh Cadre. Thus he has a good hold upon administrative wing of Uttar Pradesh and he is a most suitable candidate. As such on the recommendation of Cabinet of Ministers, Uttar Pradesh Government, Hon'ble Governor appointed him as Chief Secretary.

Learned Advocate General raised following preliminary objections regarding maintainability of the writ petitions;-

> (i) The petitioner has not disclosed the facts as required under Chapter XXII Rule 1 (3-A) of High Court Rules and the petition is liable to be dismissed on this ground alone as held by this Court in Sabhajeet Singh v. State of U.P., 2012 (3) ADJ 391 and Public Interest Litigation (PIL) No. 25243 of 2014 Gaurav Upadhyay v. State of U.P. (decided on 05.05.2014).
>
> (ii) Appointment as Chief Secretary is an incidence of service and Public Interest Litigation is not maintainable in service matters as held by Supreme Court in Haibansh Lal v. Sahodar Prasad Mahto, (2010) 9 SCC 655.

Court take up the second preliminary objection first i.e as to whether Public Interest Litigation is maintainable in service matters?

Since in respect of the second preliminary objection raised with respect to maintainability of this Public Interest Litigation, court is of the view that in service matters, the Public Interest Litigation is not maintainable and the dispute relates to incidence of service, therefore, there is hardly any reason or occasion to give opportunity to the petitioner to remove defect.

In view of the aforesaid facts and discussions, court is of the considered view that this writ petition in the nature of a Public Interest Litigation, challenging appointment of respondent no. 3 as Chief Secretary of State of U.P. and his functioning as Agricultural Production Commissioner and Industrial Development Commissioner is not maintainable. **[Prakash Chand Srivastav v. State of U.P., 2015 (2) SLR 306 (All.)]**

Pension – what its implies – It neither a bounty a matter of grace, it is payment for past services rendered by the employee.

In the case at hand, Mauzi Ram the deceased employee had rendered nearly 34 years of service in the respondent bank. He was, therefore, qualified to receive pension in terms of the Regulations applicable to him. It is also evident from a reading of Regulation 29 that the deceased employee was entitled to seek voluntary retirement in terms of Regulation 29 for he had completed more than twenty years of service by the 8th October, 2007. As on 8th October, 2007 the deceased employee was entitled either to resign from service or to seek premature retirement in terms of Regulation 29 (supra). The question in that backdrop is whether letter dated 8th October, 2007 was letter of resignation simplictor or could as well be treated to be a letter seeking voluntary retirement. The High Court, as seen earlier, has taken the view that the letter was one of resignation that resulted in the forfeiture of past service under Regulation 22 of the Regulations. The High Court appears to have been impressed by the use of the word "resignation" in the employee's letter dated 8th October, 2007. The use of the expression "resignation", however, is not, in our opinion, conclusive. That is, in our opinion, so even when this Court has always maintained a clear distinction between "resignation" and "voluntary retirement". Whether or not a given communication is a letter of resignation simplictor or can as well be treated to be a request for voluntary retirement will always depend upon the facts and circumstances of each case and the provisions of the Rules applicable. The distinction between the expressions "resignation" and "voluntary retirement" was elaborately discussed by this Court in UCO Bank and others v. Sanwar Mal, 2004(101) FLR 437 (SC),

where this Court was examining the provisions of UCO Bank (Employees') Pension Regulation, 1995 applicable to a bank employee who had resignated from service after giving an advance notice to the appointing authority. So as in Reserve Bank of India and another v. Cecil Demmis Solomon and another, 2004(100) FLR 441 (SC), this Court was considering the provisions of the Reserve Bank of India Pension Regulations, 1990 while it made a distinction between what is resignation on the one hand and voluntary retirement on the other. At the same time a long line of decisions have recognized that pension neither a bounty nor a matter of grace but is a payment for past services rendered by the employee. Court has further held that, in case of premature retirement, Petitioner is entitled to seek retrial benefits dues. [**Shashikala Devi v. Central Bank of India and others, 2015(144) FLR 820(All.)]**

Workman – Daily wager – Termination order – Challenge of – Petitioner is not entitled to get any relief if he filed to established that he has continuously worked for more than 240 days.

Pititioner/workman was engaged as daily wager on the post of Beldar on 1.3.1986, however, his services were terminated on 31.8.1990 without issuing any show-cause notice, without any valid reason and without following the procedure as provided under Section 6-N of the U.P. Industrial Disputes Act. The reference which was made to the Labour Court was:

> "As to whether termination of the services of the workman on 31.8.1990 were legal? If yes, what reliefs should be granted in favour of the workman."

Before the Labour Court, Department submitted that workman has not worked continuously for 240 days in a calendar year; workman was engaged as daily wager to work as Beldar whenever department felt requirement of the temporary beldars.

Hon'ble Apex Court in the case of Surendranagar District Panchayat (Supra) in paragraphs 17 and 18 has held as under:

> "17. More recently, in Rajasthan State Ganganagar S. Mills Ltd. v. State of Rajasthan and another, (2004)8 SCC 161, Municipal Corporation, Faridabad v. Siri Niwas, (2004)8 SCC 195 and M.P. Electricity Board v. Hariram, (2004) 8 SCC 246, this Court has reiterated the principal that the burden of proof lies on the workman to show that he had worked continuously for 240 days in the preceding one year prior to his alleged retrenchment and it is for the workman to Adduce an evidence apart from examining himself to prove the factum

of his being in employment of the employer."

In view of the dictum of the Apex Court, the burden of proof is always of the workman to prove by cogent evidence that he had worked continuously for 240 days in a calendar year. When workman did not discharge his burden and failed to prove above fact, workman is not entitled for any relief.

Plain reading of Section 6-Q of the Act go to demonstrate that whenever any workman is retrenched and employer proposes to take into his employment any person, then employer shall give an opportunity/ preference to the retrenched workman.

In view of the above, award passed by the learned Labour Court is upheld. However, it goes without saying that whenever department proposes to engage daily wager, a preference shall be given to the petitioner workman in terms of Section 6-Q of the Act. [**Veer Singh v. Presiding Officer, Labour Court Dehradun and others, 2015(1) ESC 64 (Uttal)]**

SPECIFIC RELIEF ACT

Ss. 20 and 16(c) – Suit for specific of performance contract – Decree for performance – Exercise of discretion by court – Sec. 20 specifically provides that court's jurisdiction to grant decree of specific performance is discretionary but not arbitrary.

Indisputably, remedy for specific performance is an equitable remedy. The court while granting relief for specific performance exercise discretionary jurisdiction. Section 20 of the Specific Relief Act specifically provides that the court's jurisdiction to grant decree of specific performance is discretionary but not arbitrary. Discretion must be exercised in accordance with the sound and reasonable judicial principles.

Where the plaintiff brings a suit for specific performance of contract for sale, the law insists a condition precedent to the grant of decree for specific performance that the plaintiff must show his continued readiness and willingness to perform his part of the contract in accordance with its terms from the date of contract to the date of hearing. Normally, when the trial court exercises its discretion in one way or other after appreciation of entire evidence and materials on record, the appellate court should not interfere unless it is established that the discretion has been exercised perversely, arbitrarily or against judicial principles. The appellate court should also not exercise its discretion against the grant of specific performance on extraneous considerations or sympathetic considerations. It is true, as contemplated under Section 20 of the Specific Relief Act, that a party is not entitled to get a decree

for specific performance merely because it is lawful to do so. Nevertheless once an agreement to sell is legal and validly proved and further requirements for getting such a decree is established then the court has to exercise its discretion in favour of granting relief for specific performance. [**K. Prakash v. B.R.Sampath Kumar, 2014(6) AWC 6193(All.)]**

S. 10 – Reference – Power of Industrial Tribunal to adjudicated he references – power of industrial tribunal should not be usurped by High Court in exercise of power under Article 226 of constitution

The settlement of dispute between the parties thereto should be respected, as it brings more lasting peace that the award to be passed. Once the settlement is arrived with free will of the parties, it can only be impugned if an industrial dispute is raised before the Industrial Tribunal or the Court. It is thus held – once the reference is made under Section 10 of the Act to be adjudicated by the Industrial Tribunal, it is the Industrial Tribunal who should adjudicate the same and the power of the Industrial Tribunal should not be usurped or taken away by the High Court in exercise of power under Article 226 of the Constitution of India. [**Smt. Maino Mejhian v. Eastern Coalfields Ltd., 2015 (144) FLR 284 (Cal. H.C.)]**

U.P. CONSOLIDATION OF HOLDINGS ACT, 1953

In this matter, writ petition has been filed against the orders of Settlement Officer Consolidation, dated 3.4.2010 and Deputy Director of Consolidation dated 29.9.2014, passed in the proceeding under section 9-B of. The dispute is in respect of plot 477 (area 0-4-6 bigha) of village Kusmuhikhurd, tahsil Saidpur, district Ghazipur, which was the original holding of the petitioners. During partial land in dispute was recorded as 'parati' land and was recorded as such in CH Form-2-A. At the time of preparation of Statement of Principles' valuation of this plot was determined at the rate of 10 paisa and an area of 0-0-10 bigha was reserved for burning "holika". The village was notified under section 9 of the Act, in the year 1988. The petitioners did not file any objection either against the determination of valuation of plot 477 or reserving an area of 0-0-10 bigha of this plot for burning "holika". Thereafter Provisional Consolidation Scheme was framed in which remaining area of 0-3-16 bigha of plot 477 was allotted in the chak of respondents-4 and 5. The village was notified under section 20 of the Act in the year 1989 but the petitioners did not file any objection under section 20 of the Act against the allotment of plot 477 in the

chak of respondents-4 and 5 and chaks were confirmed. The petitioners filed a time barred objection on 4.2.2009 for deleting the valuation of plot 477 and keeping this plot as chak out along with delay condonation application. In the objection, the petitioners have stated that the land in dispute was adjacent to abadi and was used as 'sahan' land throughout. It is only when delivery of possession over the confirmed chak took place in the year 2008, then they came to know that valuation was determined of the land in dispute and it was allotted to other respondents. Respondents filed their objection and contested the application under section 5 of the Limitation Act, 1963 as well as the objection. It was argued that the village was notified under section 9 of the Act, in the year 1988. The petitioners did not file any objection either against the determination of valuation of plot 477 or reserving an area of 0-0-10 bigha of this plot for burning "holika". The claim of the petitioner has become barred under section 11-A of the Act.

It was Held that Under section 9(2) of the Act, 21 days limitation has been provided for filing objection after receipt of notice in CH Form-5 or of the publication of the village under section 9(1) of the Act. The petitioners have no where denied service of CH Form-5 upon them. Only reason has been given for condonation of delay that delivery of possession in the village over confirmed chak was done in the year 2008 and then the petitioners came to know that valuation of plot 477 was determined and its some area was allotted to respondents. Delivery of possession over confirmed chaks is not relevant for filing of the objection under section 9(2) of the Act. Thus for condonation of inordinate delay of about 22 years no reason was given. Settlement Officer Consolidation has rightly found that Consolidation Officer had not recorded any reason for condonation of delay. For condonation of inordinate delay, merit of the case was made sole consideration, which is illegal. In view of the aforesaid discussions, there is no merit in the writ petition. The writ petition is dismissed. **[Mahadev and Ors. v. Dy. Director of Consolidation/A.C., Land Revenue and Ors. 2015 126 RD 484]**

The writ petition has been filed against the order of Consolidation Officer dated 4.1.2013 by which the objection of the petitioner has been rejected and the land in dispute was directed to be recorded as talab land and the order of Deputy Director of Consolidation dated 13.8.2014 by which the revision filed by Gaon Sabha was allowed and the order of Settlement Officer Consolidation dated 30.5.2013 allowing the appear and remanding the case for fresh decision, has been set aside.

The dispute related to plot No. 369, area 1.80 acre of village Kakather, Tehsil Hasanpur, district Amroha. The petitioner is claiming that the land in dispute was allotted to him by the Land Management Committee through patta dated 15.2.1989 conferring sirdari right upon him. Since the date of allotment he has been in possession over the land in dispute. The Consolidation Officer after hearing the parties found that the land in dispute was talab land and Sub Divisional Officer had changed the category of the land and allotted it to the petitioner.

Accordingly, the patta granted to the petitioner was void. On this finding the objection of the petitioner was dismissed. The petitioner filed an appeal from the aforesaid order. The appeal was heard by the Settlement Officer, Consolidation, who by order dated 30.5.2013 allowed the appeal of the petitioner and remanded the matter to the Consolidation Officer for fresh decision holding that the Consolidation Officer has not framed proper issues. The order of the Settlement Officer, Consolidation was challenged by Gaon Sabha before the Deputy Director of Consolidation in revision. The revision was allowed by the Deputy Director of the Consolidation by order dated 13.8.2014. Accordingly the writ petition was filed.

Held, the Sub Divisional Officer was not competent to change its nature. Accordingly, the order of the Sub Divisional Officer changing its category is illegal. The finding recorded by the Deputy Director of Consolidation in this respect does not suffer from any illegality. The impugned orders do not suffer from any illegality. The writ petition has no merit and it is dismissed. **[Ghanshyam v.State of U.P. and Ors. 2015 126 RD456]**

U.P. GOVT. SERVANTS (DISCIPLINE AND APPEAL) RULES

R.7 – Termination – No charge-sheet issued to petitioner as required under rules for initiating disciplinary proceedings for imposing major penalty – Enquiry had not commenced before superannuation of petitioner – No rule painted out as to whether disciplinary proceedings could be initiated after retirement – on the date of superannuation of petitioner no enquiry was pending or contemplated – Held, Impugned order of termination would liable to be quashed and petitioner entitled to post retiral benefits.

In this matter, the petitioner has been working since 1971 and had passed his high school exam in 1990, thereafter he appeared for the written examination for promotion to the next higher post (T.G.-II). On the basis of some complaint that the petitioner's high school certificates are forged, an enquiry was initiated at the best it could be said that it was a fact finding enquiry and on the basis of a fact finding enquiry petitioner was terminated

without following the procedure as prescribed under Rule 7 of the Rules.

The facts are not in dispute between the parties. It is admitted that no charge-sheet was issued to the petitioner as required under Rule 7 for initiating disciplinary proceedings for imposing major penalty. The enquiry had not commenced before the petitioner superannuated. The learned counsel for the respondents failed to point out any rule as to whether disciplinary proceedings could be initiated against the petitioner after retirement. Even otherwise, after retirement the petitioner cannot be imposed the penalty of termination as the employer/ employee relationship no longer exists. There is no allegation of causing loss to the corporation that is to be recovered, hence no enquiry can be initiated against the petitioner after retirement. The impugned order of termination was passed on 14.5.2012 merely on a show cause notice and two months thereafter, i.e., on 31.7.2012 the petitioner retired on attaining the age of superannuation thus on the date of superannuation there was no enquiry pending or contemplated, and admittedly the procedure as contemplated under Rule 7 of the Rules of 1999 was not followed and straightway the petitioner's services was terminated.

For the facts and circumstances stated hereinabove, the impugned order dated 14.5.2012 is quashed. The petitioner shall be entitled to post retirement benefits. [**Aziz Ullah v. Dakshinanchal Vidyut Vitaran Nigam Limited, Agra and others, 2015(1) AWC 151(All.)]**

U.P.INDUSTRIAL DISPUTES ACT

S.6-N – Retrenchment – Conditions precedent not satisfied U/s 6-N – Effect of – Non-compliance of mandatory provision rendered the retrenchment of the workman void ab initio in Law.

The conditions precedent to the retrenchment of workmen under section 6-N of the U.P.I.D. Act states as follows:

> "6-N. Conditions precedent to retrenchment of workman.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-
>
> The workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice wages for the period of the notice:
>
> Provided that no such notice shall to necessary if the retrenchment is under an agreement which specifies a date for the termination of

service; the workman has been paid, at the time of retrenchment, compensdation which shall be equivalent to fifteen days' average pay for every completed year of service or any part thereof in excess of six months; and Notice in the prescribed manner is served on the State Government."

Thus, non-compliance with the mandatory provisions under section 6-N of the U.P.I.D. Act rendered the retrenchment of the workman void ab initio in law. This position of law is well settled by this Court in the case of Delhi Cloth & General Mills Ltd. v. Shambhu Nath Mukherjee and others, 1977(35) FLR 353 (SC), which states as under:-

"On the face of it, the order striking off the workman from the rolls on August 24, 1965, is clearly erroneous. No order, even under section 27(c) of the standing Orders, could have (1)(1957) SCR 335, been passed on that date. The clause in the Standing Orders reads as follows:-

"If any workman absents for more than eight consecutive days his services shall be terminated and shall be treated having left the service without notice." [**Sudarshan Rajpoot v. U.P. State Road Transport Corporation, 2015(144) FLR 7(All.)]**

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

Ss. 21(1) and 21(1A) – Release application on bonafide need – Allowed, because Respondent- Landlord, not possessed any alternate accommodation.

The respondent claims himself to be the owner and the landlord of house Nos. 745/1 and 745/2 which has been given new No.831 situate in Chamanganj. Sipri Bazar, Jhansi. He filed release application in respect of above house for his bona fide need. The release application has been allowed by the courts below by the impugned judgments and orders dated 19.3.2007 and 4.1.2010.

These two orders have been impugned in the present petition by the petitioner tenant.

Thus, the courts below have not committed any error in accepting the relationship of landlord and tenant between the parties holding the respondent to be the owner and landlord on the basis of the decree of the civil court.

In the present case, though the petitioner was in service and was due to retire on 31.10.09 whereupon he had to vacate the official accommodation, he

has not applied for release of the accommodation under Section 21(1A) of the act rather the release application filed by him is simply under Section 21 of the Act on the ground of bona fide need. Therefore, the time period provided under Section 21(1A) of the Act is not attracted in the present case.

The courts below have returned a finding that the said two houses are not available to the respondent in a vacant state. They are in occupation of the tenants Liyakat and Hamid against whom Original Suit No.58 of 2005 and 56 of 2005 are pending. There is nothing on record to establish that the said two houses have been vacated by the tenants and that the respondent has acquired vacant possession of those houses.

In view of above, respondent is not possessed of any alternate accommodation.

The aforesaid application clearly states that house Nos. 743 and 747 have ceased to exist and that it is only a vacant piece of land. Availability of a vacant piece of land is not sufficient to satisfy the residential need of the respondent.

The petitioner or the court cannot compel the respondent-landlord to construct a new house for his residential purposes when a house already in existence belongs to the respondent.

In this view of the matter even if the space of house Nos. 743 and 747 is available to the respondent. It would not satisfy his need.

In the above facts and circumstances, court is of the view that the courts below have not committed any error of law in allowing the release application of the respondent-landlord. [**Munna Khan v. Devi Prasad Bajpai, 2015(1) AWC 299(All.)]**

WORDS AND PHRASES

"Khasra" – Meaning of – Khasra is register recording the incidents of a teneure.

In the 2nd edition (1997) of "The Law Lexicon" by P. Ramanatha Aiyer (at page 1053) 'Khasra' is described 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."

Jt. Collector Ranga Reddy Distt. & Anr. Etc. v. D. Narsing Rao & Ors. Etc. Etc., 2015(2) Supreme 298 : AIR 2015 SC 1021.

STATUTORY PROVISIONS

The Constitution (Ninety-ninth Amendment) Act, 2014 *

[31 December. 2014]

An Act further to amend the Constitution of India

Be it enacted by Parliament in the Sixty-fifth Year of the Republic of India as follows-

1. Short title and commencement.- (1) This Act may be called the **Constitution (Ninety-ninth Amendment) Act, 2014.**

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Amendment of Article 124.- In Article 124 of the Constitution, in clause (2),-

(a) for the words "after consultation with such of the Judge of the Supreme Court and of the High Courts in the States as the President may deem necessary for the purpose", the words, figures and letter "on the recommendation of the National Judicial Appointments Commission referred to in Article 124-A" shall substituted.

(b) the first proviso shall be omitted.

(c) in the second proviso, for the words, "Provided further that", the words "Provided that" shall be substituted.

3. Insertion of new Articles 124-A, 124-B and 124-C.- After Article 124 of the Constitution, the following articles shall be inserted, namely-

"124-A. National Judicial Appointments Commission.- (1) There shall be a Commission to be known as the National Judicial Appointments Commission consisting of the following, namely-

(a) the Chief Justice of India, Chairperson, ex officio;

(b) two other senior Judges of the Supreme Court next to the Chief Justice of India – Members, ex officio;

(c) the Union Minister in charge of Law and Justice – Member, ex officio;

(d) two eminent persons to be nominated by the committee consisting of the Prime Minister, the Chief Justice of India and the Leader of Opposition in the House of the People or where there is no such Leader of

Opposition, then, the Leader of single largest Opposition Party in the House of the People – Members;

Provided that one of the eminent person shall be nominated from amongst the persons belonging to the Scheduled Castes, the Scheduled Tribes, Other Backward Classes, Minorities or Women:

Provided further that an eminent person shall be nominated for a period of three years and shall not be eligible for re-nomination.

(2) No act or proceedings of the National Judicial Appointments Commission shall be questioned or be invalidated merely on the ground of the existence of any vacancy or defect in the constitution of the Commission.

124-B. Functions of Commission, - It shall be the duty of the National Judicial Appointments Commission to -

(a) recommend persons for appointment as Chief Justice of India, Judges of the Supreme Court, Chief Justices of High Courts and other Judges of High Courts;

(b) recommend transfer of Chief Justices and other Judges of High Courts from one High Court to any other High Court; and

(c) ensure that the person recommended is of ability and integrity.

124-C. Power of Parliament to make law.- Parliament may, by law, regulate the procedure for the appointment of Chief Justice of India and other Judges of the Supreme Court and Chief Justices and other Judges of High Court and empower the Commission to lay down by regulations the procedure for the discharge of its functions, the manner of selection of persons for appointment and such other matters as may be considered necessary by it.".

4. Amendment of Article 127.- In Article 127 of the Constitution, in clause (1), for the words "the Chief Justice of India may, with the previous consent of the President", the words "the National Judicial Appointments Commission on a reference made to it by the Chief Justice of India, may with the previous consent of the President" shall be substituted.

5. Amendment of Article 128.- In Article 128 of the Constitution, for the words "the Chief Justice of India", the words "the National Judicial Appointments Commission" shall be substituted.

6**. Amendment of Article 217.-** In Article 217 of the Constitution, in clause (1), for the portion beginning with the words "after consultation", and ending with the words "the High Court", the words, figures and letter "on the

recommendation of the National Judicial Appointments Commission referred to in Article 124-A" shall be substituted.

7. Amendment of Article 222.- In Article 222 of the Constitution, in clause (1), for the words "after consultation with the Chief Justice of India", the words, figures and letter "on the recommendation of the National Judicial Appointments Commission referred to in Article 124-A" shall be substituted.

8. Amendment of Article 224.- In Article 224 of the Constitution,-

(a) in clause (1), for the words "the President may appoint", the words "the President may, in consultation with the National Judicial Appointment Commission, appoint" shall be substituted;

(b) in clause (2), for the words "the President may appoint", the words "the President may, in consultation with the National Judicial Appointments Commission, appoint" shall be substituted.

9. Amendment of Article 224-A.- In Article 224-A of the Constitution, for the words "the Chief Justice of a High Court for any State may at any time, with the previous consent of the President", the words "the National Judicial Appointments Commission on a reference made to it by the Chief Justice of a High Court for any State, may with the previous consent of the President" shall be substituted.

10. Amendment of Article 231.- In Article 231 of the Constitution, in clause (2), sub-clause (a) shall be omitted.

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* Received the assent of the President on December 31, 2014 and published in the Gazette of India, Extra., Part II, Section 1, dated 31st December,2014, pp.1-3, No.49

The National Judicial Appointments Commission Act, 2014

(No. 40 of 2014)

[31 December, 2014]

An act to regulate the procedure to be followed by the National Judicial Appointments Commission for recommending persons for appointment as the Chief Justice of India and other Judges of the Supreme Court and Chief Justices and other Judges of High Courts and for their transfers and for matters connected therewith or incidental thereto

Be it enacted by Parliament in the Sixty-fifth Year of the Republic of India as follows-

1. Short title and commencement. –(1)) This Act may be called the National Judicial Appointments Commission Act, 2014.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Definition.- In this Act, unless the context otherwise requires,—

(a) "Chairperson" means the Chairperson of the Commission;

(b) "Commission" means the National Judicial Appointments Commission referred to in article 124A of the Constitution;

(c) "High Court" means the High Court in respect of which recommendation for appointment of a Judge is proposed to be made by the Commission;

(d) "Member" means a Member of the Commission and includes its Chairperson;

(e) "prescribed" means prescribed by the rules made under this Act;

(f) "regulations" means the regulations made by the Commission under this Act.

3. Headquarters of Commission.- The Headquarters of the Commission shall be at Delhi.

4. Reference to Commission for filing up of vacancies- (1) The Central Government shall, within a period of thirty days from the date of coming into force of this Act, intimate the vacancies existing in the posts of Judges in the Supreme Court and in a High Court to the Commission for making its recommendations to fill up such vacancies.

(2) The Central Government shall, six months prior to the date of occurrence of any vacancy by reason of completion of the term of a Judge of the Supreme Court or of a High Court, make a reference to the Commission for making its recommendation to fill up such vacancy.

(3) The Central Government shall, within a period of thirty days from the date of occurrence of any vacancy by reason of death or resignation of a Judge of the Supreme Court or of a High Court, make a reference to the Commission for making its recommendations to fill up such vacancy.

5. Procedure for selection of Judge of Supreme Court- (1) The Commission shall recommend for appointment the senior-most Judge of the Supreme Court as the Chief Justice of India if he is considered fit to hold the office:

Provided that a member of the Commission whose name is being considered for recommendation shall not participate in the meeting.

(2) The Commission shall, on the basis of ability, merit and any other criteria of suitability as may be specified by regulations, recommend the name for appointment as a Judge of the Supreme Court from amongst persons who are eligible to be appointed as such under clause (3) of article 124 of the Constitution:

Provided that while making recommendation for appointment of a High Court Judge, apart from seniority, the ability and merit of such Judge shall be considered:

Provided further that the Commission shall not recommend a person for appointment if any two members of the Commission do not agree for such recommendation.

(3) The Commission may, by regulations, specify such other procedure and conditions for selection and appointment of a Judge of the Supreme Court as it may consider necessary.

6. Procedure for selection of Judge of High Court- (1) The Commission shall recommend for appointment a Judge of a High Court to be the Chief Justice of a High Court on the basis of inter se seniority of High Court Judges and ability, merit and any other criteria of suitability as may be specified by regulations.

(2) The Commission shall seek nomination from the Chief Justice of the concerned High Court for the purpose of recommending for appointment a person to be a Judge of that High Court.

(3) The Commission shall also on the basis of ability, merit and any other

criteria of suitabilitiy as may be specified by regulations, nominate name for appointment as a Judge of a High Court from amongst persons who are eligible to be appointed as such under clause (2) of article 217 of the Constitution and forward such names to the Chief Justice of the concerned High Court for its views.

(4) Before making any nomination under sub-section (2) or giving its views under sub-section (3), the Chief Justice of the concerned High Court shall consult two senior-most Judges of that High Court and such other Judges and eminent advocates of that High Court as may be specified by regulations.

(5) After receiving views and nomination under sub-sections (2) and (3), the Commission may recommend for appointment the person who is found suitable on the basis of ability, merit and any other criteria of suitability as may be specified by regulations.

(6) The Commission shall not recommend a person for appointment under this section if any two members of the Commission do not agree for such recommendation.

(7) The Commission shall elicit in writing the views of the Governor and the Chief Minister of the State concerned before making such recommendation in such manner as may be specified by regulations.

(8) The Commission may, by regulations, specify such other procedure and conditions for selection and appointment of a Chief Justice of a High Court and a Judge of a High Court as it may consider necessary.

7.Power of President to require reconsideration.-. The President shall, on the recommendations made by the Commission, appoint the Chief Justice of India or a Judge of the Supreme Court or, as the case may be, the Chief Justice of a High Court or the Judge of a High Court:

Provided that the President may, if considers necessary, require the Commission to reconsider, either generally or otherwise, the recommendation made by it:

Provided further that if the Commission makes unanimous recommendation after reconsideration, the President shall make appointment accordingly.

8. Officers and employees of Commission- . (1) The Central Government may, in consultation with the Commission, appoint such number of officers and other employees for the discharge of functions of the Commission under this Act.

(2) The terms and other conditions of service of officers and other employees of

the Commission appointed under sub-section (1) shall be such as may be prescribed.

(3) The Convenor of the Commission shall be the Secretary to the Government of India in the Department of Justice.

9. Procedure for transfer of Judges- . The Commission shall recommend for transfer of Chief Justices and other Judges of High Courts from one High Court to any other High Court, and for this purpose, specify, by regulations, the procedure for such transfer.

10. Procedure to be followed by Commission in discharge of its function - (1) The Commission shall have the power to specify, by regulations, the procedurefor the discharge of its functions.

(2) The Commission shall meet at such time and place as the Chairperson may direct and observe such rules of procedure in regard to the transaction of business at its meetings (including the quorum at its meeting), as it may specify by regulations.

11. Power to make rules.- (1) The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the fees and allowances payable to the eminent persons nominated under clause (d) of article 124A of the Constitution;

(b) the terms and other conditions of service of officers and other employees of the Commission under sub-section (2) of section 8;

(c) any other matter which is to be, or may be, prescribed, in respect of which provision is to be made by the rules.

12. Power to make regulations- . (1) The Commission may, by notification in the Official Gazette, make regulations consistent with this Act, and the rules made thereunder, to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such

regulations may provide for all or any of the following matters, namely:—

(a) the criteria of suitability with respect to appointment of a Judge of the Supreme Court under sub-section (2) of section 5;

(b) other procedure and conditions for selection and appointment of a

Judge of the Supreme Court under sub-section (3) of section 5;

(c) the criteria of suitability with respect to appointment of a Judge of the High Court under sub-section (3) of section 6;

(d) other Judges and eminent advocates who may be consulted by the Chief Justice under sub-section (4) of section 6;

(e) the manner of eliciting views of the Governor and the Chief Minister under sub-section (7) of section 6;

(f) other procedure and conditions for selection and appointment of a Judge of the High Court under sub-section (8) of section 6;

(g) the procedure for transfer of Chief Justices and other Judges from one High Court to any other High Court under section 9;

(h) the procedure to be followed by the Commission in the discharge of its functions under sub-section (1) of section 10;

(i) the rules of procedure in regard to the transaction of business at the meetings of Commission, including the quorum at its meeting, under sub-section (2) of section 10;

(j) any other matter which is required to be, or may be, specified by regulations or in respect of which provision is to be made by regulations.

13. Rules and regulation to be laid before Parliament- . Every rule and regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

14. Power to remove difficulties- . (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, after consultation with the Commission, by an order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act as appear to it to be

necessary or expedient for removing the difficulty:

Provided that no such order shall be made after the expiry of a period of five years from the date of commencement of this Act.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

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Legal Quiz

Q.1 रिहाई के संबंध में हाई कोर्ट के श्ठंपस व्तकमतश् में यदि काई श्ब्समतपबंस म्ततवतश् हो गई हो तो उसके आधार पर क्या रिहाई रोकी जायेगी या नहीं। इस सम्बन्ध में यदि कोई त्नसपदहध्ब्पतबनसंत व्तकमत हो तो कृपया अवगत कराने का कष्ट करें।

Ans. Hon'ble High Court of Judicature at Allahabad (D.B) in Cri. Appeal No. 1472/2005 decided on 12-9-2012 had cautioned the Trial Court to avoid unnecessary harassment of litigants in criminal matters. This position was reiterated by Hon'ble High Court in Cri. Misc. application No 8724 of 2013 in which general directions were issued to magistrate in this regard.

The Hon'ble High Court of Judicature at Allahabad had also issued on 16-1-2013 Circular Letter in pursuance of the order passed by (D.B.) as mentioned above. In Circular Letter No. 16124/Adm. 'G- II' Dated Allahabad, 2-12-2013 in which the Hon'ble Court expressed its extreme displeasure on the unnecessary harassment of the litigants in criminal matters on account of typing mistake which occurred in the order of the Hon'ble Court if otherwise the case and parties may be located with other given particulars. In this circular letter the judgment of Hon'ble court in Cri. Misc. Case No. 3680/2013 (titled Musibat Ali and others v. State of U.P. and others) was circulated among judicial officers.

Q.2 यदि वक्फ प्रापर्टी रेन्टेड है तो उसका इविक्षिन सूट (Eviction Suit) सिविल कोर्ट मे (Lie) करेगा कि नहीं। यदि नहीं तब

कहॉ (Lie) करेगा?

Ans. The Eviction suit of rented wakf property will lie in Civil Court Please see following cases-

1- Suresh Kumar v. Managing Committee, 2009 Ind. Law All 1770

2- Ramesh Govindram v. Sugra Humayun Mirza Wakf (2010) 8 SCC 726

Q.3 अगर "Restitution of Conjugal Right" कोई डिक्री पास हुयी है लेकिन परिस्थितयां बदल गयी है अर्थात पति ने दूसरा विवाह कर लिया है। इस दषा में पत्नी का क्या अधिकार होगा? तथा Maintenance petition जो प्रथम पत्नी ने न्यायालय में डाली है उस पर क्या प्रभाव होगा?

Ans. 1-There will be no effect on maintenance petition and the husband will be liable to pay maintenance u/s 125 Cr.PC

2- The wife can defender herself in the proceeding for execution of decree on this ground.

3- The second marriage will be void and the husband may be charged for the offence of bigamy u/s494 Cr.PC

Q. 4 Offence committed u/s 363, 366, 504 and 506 I.P.C. after investigation I.O. submitted charge-sheet. But after taking evidence u/s 164 Cr.PC I.O. has obtained order u/s 173 for further Investigation. After investigation I.O. has now submitted final report in the same case. Accused has prayed to the Court for inclusion of charge-sheet in this case. The main Question of P.O. is that what appropriate order should be passed in this case?

Ans. Regarding this matter, it is inform you that a Magistrate is not bound by the conclusions draw by investigating officer during investigation. It is clearly held by Supreme Court, in Dharmatma Singh v. Harminder Singh & Ors. 2011 (74) ACC 266 SC that " where the police report forwarded to the Magistrate under section

173(2) of the Cr.PC states that a person has committed an offence, but after investigation the further report under section 173(8) of the Cr.PC states that the person has not committed the offence, it is for the Magistrate to form an opinion whether the facts, set out in the two reports, make out an offence committed by the person." It is advised that please go though the following case laws and then apply according to the facts and circumstances of the case before you.

1- Gangadhar Janardhan Mahatre v. State of Maharashtra (2004) 7 SCC 768
2- State of Orissa v. Habibullah Khan (2003) 12 SCC 129
3- Tarkeshwar Singh v. State of Bihar 2007 Cr.LJ 1281
4- Minu Kumari v. State of Bihar AIR 2006 SC 1937

Q.5 क्या आदेष-15, नियम -5 सी0पी0सी0 के अधीन प्रतिरक्षा अन्तरिम बहस के स्तर पर भी समाप्त की जा सकती है?

Ans. Order 15 Rule 5 CPC confer a discretion upon the Civil Court that if Order 15 rule 5(1) has not been complied with then after adopting the procedure prescribed in sub rule (2) the court may strike off the defence of the defendant. This can be done at any stage of the proceeding. But the court is not bound to strike off defence and it can refuse to do so far valid reasons. **See Vimal Chand Jain v. Gopal Agarwal , AIR 1981 SC 1657, Smt Leela Devi v. Smt. Shanti Devi, AIR 1986 All., 90**

Q.6. Where a succession Certificate was issued by the Court in favour of the applicant but before the certificate was acted upon the applicant died and his legal heir applied for fresh succession certificate with respect to the same property. Whether fresh court fee would be payable on the total value of debt or security mentioned in the application?

Ans. An application for the Certificate must be accompanied by a deposit of court fee and on the death of the holder of the certificate, if a fresh application is made, the court fee has to be paid over again. (Re Saroja Bashini, 20 CWN 1125) However, payment of court fee is not a condition precedent to be maintainability of the petition and it could be paid at the time of issuance of the certificate also. The petition and it could be paid at the time of issuance of the certificate also. (Ushal &

Ors. V. State of Orissa, AIR 1998 Ori 146)

Therefore, in the present case fresh court fee will be paid for issuing succession certificate on application of the heir of deceased applicant. The court fee paid by previous applicant will not be adjusted against the court fee liable to paid in subsequent application. It is not mandatory that the court fee on certificate should be paid along with the application

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