JUDICIAL TRAINING & RESEARCH INSTITUTE, U.P.,
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Volume: XXXI **Issue No.: 2**

Quarterly Digest

April –June, 2013

CONSTITUTIONAL, CIVIL, CRIMINAL & REVENUE LAWS
(Covering important judgments of Supreme Court and Allahabad High Court)

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Arbitration and Conciliation Act

S. 11(6) – Under what circumstances appointment of arbitrator by Chief Justice or designate can be made

Section 11(6) of the Arbitration and Conciliation Act, 1996 makes provision for making an application to the Chief Justice concerned for appointment of an arbitrator in three circumstances: (a) a party fails to act as required under the agreed procedure, or (b) the parties or the two appointed arbitrators fail to reach an agreement expected of them under that procedure, or (c) a person, including an institution, fails to perform any function entrusted to him or it under that procedure. If one of the three circumstances is satisfied, the Chief Justice may exercise the jurisdiction vested in him under Section 11(6) and appoint the arbitrator. **(Deep Trading Company vs. Indian Oil Corporation; (2013) 4 SCC 35)**

S. 11(6) and (8)—Appointment of person other than person named in arbitration agreement as arbitrator—When permissible

Once arbitrator is not appointed as per agreed procedure within stipulated time, right of party concerned to appoint arbitrator is forfeited. Hence, held, Chief Justice ought to have appointed arbitrator under S. 11(6) since appointment of arbitrator by respondent Corporation during pendency of proceedings under S. 11(6) was of no consequence. Thus, failing to appoint arbitrator within time, respondent Corporation lost its right to appoint arbitrator. Further held, once respondent Corporation forfeited its right to appoint arbitrator, person other than officer of Corporation (named arbitrator) can be appointed to secure appointment of independent and impartial arbitrator. Cl. 29 (arbitration agreement) which prescribed that no person other than Director of respondent Corporation or person nominated by him shall act as arbitrator, lost its significance as respondent Corporation did not agree to appointment of arbitrator proposed by appellant, matter remitted to Chief Justice of High Court for appropriate order on application filed by appellant under S. 11(6). **(Deep Trading Company vs. Indian Oil Corporation; (2013) 4 SCC 35)**

S. 29 - Interest – Powers of Arbitrator to grant interest – Scope

So far as contention regarding awarding of interest at 18% beyond the terms of agreement is concerned, the Board of Arbitrators as well as trial court have discussed the law on the subject and have come to conclusion that such a power exists to grant interest for all the three stages i.e. pre-reference, pendente-lite and future interest. In Bhagwati Oxygen Ltd. vs. Hindustan Copper Ltd., 2005(1) Arbitration Law Reporter 608 [SC: (AIR 2005 SC 2071)] the award of

interest at 18% was upheld on the ground that the same was the rate at which the employer was charging the contractor for recovery of their advance. (**State of U.P. vs. M/s. Coromandal Engineering Co. Ltd.; 2013(3) ALJ 746)**

S. 34 – Application of petitioner for setting aside award cannot be entertained unless 75% of amount awarded is deposited

The provisions of Section 34 of the 1996 Act are to be read along with the provisions of the aforesaid both the Acts which in addition to the procedure prescribed under Section 34 of the 1996 Act provides for deposit of 75% of the amount of the award as a condition precedent for entertaining the application for setting aside the award.

A conjoint reading of the above provisions makes it clear that an appeal or an application for setting aside the award made by the Industry Facilitation Council can only be entertained if the applicant deposits 75% of the amount awarded. This condition of deposit is in addition to the conditions or procedure laid down under Section 34 of the 1996 Act.

Accordingly, the application of the petitioner for setting aside the award cannot be entertained unless 75% of the amount awarded is deposited. The court below is, therefore, not justified in permitting any lesser amount to be deposited. **(U.P. Rajya Karmchari Kalyan Nigam v. District Judge, Kanpur Nagar and Others; 2013 (3) ALJ 52)**

Arms Act

S. 27 – Use of arms for unlawful purpose – Proof

In the present case, it apparent that except the prosecution witnesses, who are the police personals, of the incident as well as of the recovery, there is no other witness. It raises suspicion regarding their testimony as there is no other corroborative piece of evidence to prove the prosecution case against the appellant. As has been stated above that though the incident had taken place in a busy market place from where the appellants was arrested along with the revolver, no person of the police party or public received injury nor any independent witness was produced. In such a situation, it appears that the police in its interest in the success of the case was motivated by overzealousness to an extent of his involving innocent persons; in that event, no credibility can attached to the statement of such witnesses. Thus, the prosecution has failed to prove its case beyond reasonable doubt against the appellant by a cogent evidence and the trial court had convicted and sentenced the appellant on the basis of the prosecution witnesses, who were only the police persons and had accepted the explanation given by the police that they had tried to make available the

independent witnesses from the public but they refused to come forward to support the prosecution story, does not appears to be a plausible explanation.

Thus, in view of the above, the judgment and order passed by the trial court convicting and sentencing the appellant, is not sustainable in the eyes of law, hence the same is hereby set aside. **(Shiv Kant v. State of U.P.; 2013 (3) ALJ 252)**

Army Act

S. 109 - General Court Martial is substitute of criminal trial, so principles applicable to criminal trial would therefore apply

General Court Martial is a substitute of criminal trial. Thus, the principles/law applicable in a criminal trial would apply to it. Army personnel is governed by the Army Act and Army Rules, and not by the provisions of Code of Criminal procedure, However, Cr. P. C. basically deals with procedural matters to ensure compliance of the principles of natural justice etc. Thus, the principles enshrined therein may provide guidelines with respect to the misjoinder of charges and a joint trial for various distinct charges/offences as there are similar provisions in the Army Rules S. 464, Cr. P. C., provides that a finding or sentence would not be invalid merely because there has been a omission or error in framing the charges or misjoinder of charges, unless a "failure of justice" has in fact been occasioned**. (Union of India v. Ex-GNR Ajeet Singh; 2013 CrLJ 2215)**

Benami Transactions (Prohibition) Act

S. 4 - Civil Procedure Code, S. 100 - Question whether owner of property is real owner or benami - Is question of fact- Cannot be raised for first time in second appeal

On behalf of the appellant, the submissions were made to the effect that the suit property in fact belonged to Sumitra Devi though it was in the name of Rao Gajraj Singh. The provisions of Benami Transfer (Prohibition) Act, 1988 had been referred to by the learned counsel appearing for the appellant. The question whether the suit property in fact belongs to an individual i.e. whether he is a beneficial owner or is a benami, is a question of fact. There was no averment made in the plaint with regard to the aforestated allegation. No issue to the said fact had been raised before the trial court. The said issue had been raised for the first time before the appellate court and in Court's opinion, the issue with regard to the fact could not have been raised before the appellate court for the first time and therefore, all submissions made in relation to the provisions of Benami Transfer (Prohibition) Act, 1988 and with regard to real ownership of the suit

property cannot be looked into at this stage. **(Narinder Singh Rao v. AVM Mahinder Singh Rao and Ors.; AIR 2013 SC 1470)**

Civil Procedure Code

S. 9 – Jurisdiction of Civil Court regarding election dispute of Committee of Management of institution is not ousted

A Full Bench of the Court in Committee of Management Pandit Jawahar Lal Nehru Inter College and another v. Deputy Director of Education and Others; (2005) UPLBEC 85 observed as under:-

> "This Court has held in a number of cases, that for the purposes of enable himself to pay the salaries to the teachers on the bills submitted by a Manager, it was necessary for the District Inspector of Schools to recognize him and to decide the dispute relating to his right. Such a decision was, of course, summary in nature and was subject to the decision of a Civil Court. As there were serious doubts about the desirability of the District Inspector of Schools, being conferred such a power, by U.P. Act No. 1 of 1981, a new forum was created. By section 16-A(7) the Deputy Director of Education was conferred the power to decide the dispute. This only brings about the change of forum. The Deputy Director of Education is not an appellate Authority over the District Inspector of Schools in respect of cases earlier decided by the District Inspector of Schools. The power of the Deputy Director of Education is the same as used to be exercised by the District Inspector of Schools."

The decision cited by the learned counsel Committee of Management does not lay down that the civil court has no jurisdiction in such matters. It only says when two rival claims of the Committee of Management are put forth the appropriate course open to the D.I.O.S. is to make a reference to the Regional Level Committee for recognizing the Committee of Management in accordance with Section 16-A(7) of the Act and that the D.I.O.S. cannot enter into the validity of the elections. Therefore, a civil suit for setting aside the expulsion of some members of the general body or for adjudicating the validity of the order of D.I.O.S. in connection with the elections of the Committee of Management of the institution is not barred in law.

The court is of the opinion that the courts below have not erred in deciding issue No. 6 in the suit in affirmative in favour of the plaintiffs respondents and against the petitioners. The provision of Section 16-A(7) of the Act does not oust the jurisdiction of the civil court in connection with elections of

Committee of Management of institutions. **(Ram Prasad Singh and Others v. Ganga Prasad Jan Seva Inter College, Karvi; 2013 (3) ALJ 364)**

S. 9 – Suit for permanent injunction restraining opposite party from marrying any other person except petition would not maintainable U/s. 9 because of impliedly bar by S.9 of CPC

The plaint of the suit which is Annexure-1 to the petition reveals that the petitioner, who is plaintiff in the suit, alleges that his marriage was agreed to be solemnized with respondent No. 2 but now it appears that she is likely to marry someone else and therefore, a decree of permanent injunction be passed restraining her from marrying any other person except the petitioner.

It is against the order of the court in the above suit directing notices to be issued to the other side before considering the matter for grant of interim injunction that the petitioner has invoked the writ jurisdiction of this court.

The Court quite astonished at the relief which has been claimed in the suit. The suit ex facie appears to be against public policy and as such is impliedly barred by Section 9, CPC.

Section 26 of the Indian Contract Act, 1872 provides that an agreement to restrain a marriage of any person is void.

A thing in respect of which no valid agreement can come into existence cannot be ordered to be done by the order of the court and therefore, the suit claiming such a relief would certainly be barred.

Right to marry is an integral part of right to life and liberty and is akin to a fundamental right. A fundamental right of a person cannot be taken away and therefore, also the suit as filed is clearly against the public policy.

The suit appears to have been instituted for harassing the respondent or to put some kind of pressure on her family members. It is not designed in good faith. (**Shrawan Kumar vs. Nirmala Mauji Lal; 2013(3) ALJ 651)**

S. 10—Applicability of

The key words in Section 10 CPC are "the matter in issue is directly and substantially in issue in a previously instituted suit". The test for applicability of Section 10 is whether on a final decision being reached in the previously instituted suit, such decision would operate as res judicata in the subsequent suit. When the matter in controversy is the same, it may be immaterial what further relief is claimed in the subsequent suit. Though in the present case many of the matters in issue are common, including the issue as to whether the plaintiffs are entitled to recovery of possession of the suit premises, but, for the application of

Section 10 CPC the entire subject-matter of the two suits must be the same. Section 10 CPC will not apply where a few of the matters in issue are common and will apply only when the entire subject-matter in controversy is the same. Provision is mandatory and intends to avoid contradictory verdict and prevent multiplicity of ligation. **(Aspi Ji and Anr. v. Khushroo Rustom Dadyburjor; (2013) 4 SCC 333)**

S. 24 – Succession Act, 1925, Ss. 371, 372 – Application for succession certificate – Territorial jurisdiction of court – Determination of

The jurisdiction of the Court for the purposes of grant of succession certificate under the Act is dependent upon the language of Section 371 of the Act which is plain and simple. Section 371 of the Act reads as under:-

> "371. The District Judge within whose jurisdiction the deceased ordinarily resided at the time of his death, or, at that time had no fixed place of residence, the District Judge within whose jurisdiction any part of the property of the deceased may be found, may grant a certificate under this part."

It clearly provides that the District Judge within whose jurisdiction the deceased ordinarily resided at the time of his death is authorised to grant certificate of succession but where the deceased was not having any fixed place of residence at the time of his death then the District Judge within whose jurisdiction the deceased was having an art of his property may grant the certificate.

A plain reading of the aforesaid provision makes it clear that the matter of grant of succession certificate can be dealt with by following two courts:

(i) The District Judge within whose jurisdiction the deceased was ordinarily residing at the time of his death; or

(ii) The District Judge within whose jurisdiction the deceased was having any part of the property.

In connection with Section 371 of the Act itself, His Lordship of the Court in Rameshwari Devi v. Raj Pali Shah and another; AIR 1988 Allahabad 68 held that "a reading of Section 371, however, shows that it is only in those cases in which the deceased at the time of his death had no fixed place of residence that recourse to the second part of the section could be taken". Thus, it was held that where there was no dispute that the deceased was living at a particular place at the time of his death it would mean that he was having a fixed place of residence at that place and, therefore, the second part of Section 371 of the Act would not

be applicable.

A similar view was expressed by the single Judge of the Madras High Court in the matter of Mohanaprakasam, AIR 1975 Madras 30 and it was held that second part relating to jurisdiction on the basis of the situation of the property of the deceased would come into operation only if the deceased had no fixed place of residence.

In view of the aforesaid facts and circumstances and legal position discussed above, as the deceased was in service at Etawah and was residing at that place for the last 10 years before his death, irrespective of the fact that he was having a home or domicile of residence at Fatehpur or even some properties at that place, he would not be a ordinarily residence of Fatehpur but of Etawah and, as such, the application for grant of succession certificate would certainly lie before the District Judge, Etawah and not at Fatehpur. **(Devesh Kumar vs. Smt. Ram Devi and Ors.; 2013(3) ALJ 568)**

S. 24 – Application for transfer of claim petition to Lok Adalat – Maintainability – Since Lok Adalats have not been described as courts subordinate to High Court, so petition for transfer of claim petition to Lok Adalat not maintainable

Section 3 of Bengal, Agra and Assam Civil Courts Act, 1887 classify the different classes of court and mentions that the court of District Judge; Additional Judge, (Civil Judge Senior Division) and the court of Munsif (now Civil Judge, Junior Division) are all civil courts.

Therefore, a composite reading of Section 3 both of the Code of Civil Procedure and Bengal, Agra & Assam Civil Courts Act, 1887 establishes that District Court, Court of Small Causes and Civil Courts which include District Judge, Civil Judge (Senior Division) and Civil Judge (Junior Division) are all courts subordinate to the High Court for the purposes of Section 24, CPC.

Lok Adalats or Permanent Lok Adalats are created under the Legal Services Authorities Act, 1987 (hereinafter referred to as the Act). They have not been described as courts subordinate to the district court or High Court for the purposes of Section 24, CPC though they are within the supervisory jurisdiction of the High Court.

It provides that where a matter pending in a court is appropriate for being dealt with Lok Adalat the court on being satisfied can refer it to Lok Adalat and further that any party to a dispute desirable of settlement through Lok Adalat may make an application in this regard to the court where the dispute is pending.

In view of provisions of Section 20 of the aforesaid Act, if the applicant

are desirous of having the matter or the claim petition referred to the Lok Adalat there are supposed to make an application to the court concerned that is the tribunal in the present case and the tribunal on being satisfied that there are chances of settlement or that the matter is appropriate to be dealt with by the Lok Adalat may make a reference and sent the matter to the Lok Adalat.

In view of facts and circumstances, the prayer of the applicants to transfer the claim petition from the Motor Accident Claims Tribunal under Section 24 CPC cannot be accepted. The applicants may however approach the Tribunal itself under Section 20 of the aforesaid Act. **(Shivcharn Maurya and Anr. v. Adl. District Judge, Azamgarh and Ors.; 2013 (2) ALJ 173)**

S. 35(2) – Imposition of costs for delaying proceedings – Determination of – Costs of Rs. 20,000/- imposed on tenant

In the present matter, the landlord has taken a specific stand that accommodation in dispute was occupied solely by Smt. Hazara Begum and therefore, only she was impleaded. This fact has not been controverted by placing any material on record. In these circumstances, non-impleadment of other joint tenants would make no difference in the matter.

The Court is also satisfied that proceedings prolonged by petitioner-tenant on the grounds, as discussed above, show her intention only to delay her ejectment from shop in question. The dilatory tactics adopted by one of the litigants obviously results in making the litigation, expensive to other side and sometimes test his capacity to carry on litigation. Such kind of practice deserved to be discouraged and deprecated. One of the ways is award of cost. The easy attitude adopted by Courts in not imposing cost and making it easy, frequently, has encouraged scrupulous parties to go on with their activities like dilatory practices, filing of frivolous cases etc. since there is no preventive and prohibitive step taken by the Courts to discourage it. The Apex Court has also taken note of this situation in Salem Advocate Bar Association v. Union of India, AIR 2005 SC 3353 and in para 38 of the judgment the Court observed:

> "38. Judicial notice can be taken of the fact that many unscrupulous parties take advantage of the fact that either the costs are not awarded or nominal costs are awarded on the unsuccessful party. Unfortunately, it has become a practice to direct parties to bear their own costs. In large number of cases, such an order is passed despite Section 35(2) of the Code. Such a practice also encourages filing of frivolous suits. It also leads to taking up of frivolous defences. Further wherever costs are awarded, ordinarily the same are not realistic and are nominal. When Section 35(2) provides for cost to follow the event, it is implicit that the

costs have to be those which are reasonably incurred by a successful party except in those cases where the Court in its discretion may direct otherwise by recording reasons thereof. The costs have to be actual reasonable costs including the cost of the time spent or the successful party, the transportation and lodging, if any, or any other incidental cost besides the payment of the Court fee, lawyer's fee, typing and other cost in relation to the litigation."

In the present case, court found that the above observations are duly applicable. This writ petition, therefore, deserves to be dismissed with appropriate costs. **(Hazara Begum v. Mansoor Ali Haji Ali; 2013 ALJ 422)**

Ss. 96, 100 and Or. 41, R.33—Appeal from original decree—Reversal of findings of trial Court—Principles to be followed and caution required on part of appellate court, reiterated

In Santosh Hazari vs. Purushottam Tiwari, (2001) 3 SCC 179, this Court observed: (SCC p.188, para 15)

> "15……. The appellate court has jurisdiction to reverse or affirm the findings of the trial court. First appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law….. While writing a judgment of reversal the appellate court must remain conscious of two principles. Firstly, the findings of fact based on conflicting evidence arrived at by the trial court must weigh with the appellate court, more so when the findings are based on oral evidence recorded by the same Presiding Judge who authors the judgment. This certainly does not mean that when an appeal lies on facts, the appellate court is not competent to reverse a finding of fact arrived at by the trial Judge. As a matter of law if the appraisal of the evidence by the trial court suffers from a material irregularity or is based on inadmissible evidence or on conjectures and surmises, the appellate court is entitled to interfere with the finding of fact."

There is no prohibition in law for the appellate court to reappreciate the evidence where compelling and substantial reasons exist. The findings can also be reversed in case convincing material has been unnecessarily and unjustifiably stood eliminated from consideration. However, the evidence is to be viewed collectively. The statement of a witness must be read as a whole as reliance on a mere line in a statement of a witness is not permissible. The judgment of a court can be tested on the "touchstone of dispassionate judicial scrutiny based on a complete and comprehensive appreciation of all views of the case, as well as on the quality and credibility of the evidence brought on record". The judgment

must not be clouded by the facts of the case.

In the instant case, the appellate court has erred in considering the irrelevant material, while the most relevant evidence i.e. the adoption ceremony and the adoption deed, have been disregarded on the basis of mere surmises and conjectures. The correctness or authenticity of the adoption deed is not disputed. What is disputed is that the natural parents of the adoptive child who were definitely executing parties of the deed have signed as witnesses along with 7 other witnesses. In such a fact situation, by gathering the intention of the parties and by reading the document as a whole and considering its purport, it can be concluded that the adoption stood the test of law. We think that cause of justice would be served, instead of being thwarted, where there has been substantial compliance with the legal requirements specified in Section 16 of the 1956 Act. When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred and the courts may in the larger interests of administration of justice may excuse or overlook a mere irregularity or a trivial breach of law for doing real and substantial justice to the parties and pass orders which will serve the interest of justice best.

In view of the above, the appeal succeeds and is allowed. The judgments and decrees of the appellate courts are set aside and the judgment and decree of the trial court is restored. **(Laxmibai vs. Bhagwantbuva; (2013) 4 SCC 97)**

Ss. 115, 47—Limitation Act, Sec. 5—Absence of sufficient cause—Liberal approach in case of state as litigant—Not warranted

Curiously enough in the application for condonation of delay in filing the revision, no sufficient cause has been shown which would entitle the respondent State to get a favourable order for condonation of delay. True it is, that courts should always take liberal approach in the matter of condonation of delay, particularly when the appellant is the State but in a case where there are serious laches and negligence on the part of the State in challenging the decree passed in the suit and affirmed in appeal, the State cannot be allowed to wait to file objection under Section 47 CPC till the decree-holder puts the decree in execution. The decree passed in the year 1967 was in respect of declaration of title and permanent injunction restraining the respondent State from interfering with the possession of the suit property of the appellant-plaintiff. It is evident that when the State tried to interfere with possession, the decree-holder had no alternative but to levy the execution case for execution of the decree with regard to interference with possession. The decree-holders' delay in filing the execution case cannot be a ground to condone the delay in filing the revision against the order refusing to entertain objection under Section 47 CPC. Merely because the

respondent is the State, delay in filing the appeal or revision cannot and shall not be mechanically considered and in the absence of "sufficient cause" delay shall not be condoned. **(Amalendu Kumar Bera vs. State of W.B.; (2013) 4 SCC 52)**

S. 115 - Application for Additional written statement – Rejection of - Legality

This revision under Section 115 CPC has been preferred against the order dated 31.7.2012 passed in Original Suit No. 99 of 2006 whereby court below has refused time to the revisionist to file additional written statement in reply to the amended plaint and at the same time has fixed date for evidence of the parties.

The aforesaid order is purely an interlocutory order and as such is not revisable under Section 115 CPC.

Learned counsel for the revisionist submits that it may be treated as petition under Article 227 of the Constitution of India.

He points out that pursuant to the impugned order till date evidence of the parties have not been recorded and that the written statement could not be filed on account of illness of the counsel who had moved illness/adjournment application.

The adjournment application has been enclosed as annexure 6 to the stay application and a certified copy of the same was produced during the course of argument. It reveals that the adjournment for filing additional written statement was sought on the ground of illness of the counsel. The court below has rejected it without assigning any reasons. The illness of the counsel was not doubted or disputed.

In view of the above, Court consider it expedient in the interest of justice to treat this revision as petition under Article 227 of the Constitution of India and under the facts and circumstances of the case, the Court further of the opinion that the revisionist /petitioner is entitle to atleast one more opportunity to file his written statement. (**Raj Shekhar vs. Kanpur Kshetray Gramin Bank; (2013 (2) ARC 464)**

S. 115 – Revision against order allowing amendment application during pendency of appeal would not be maintainable because of such erroneous decision cannot be corrected U/s. 115

It was noted by the four Judges Bench in Hari Shankar and Others v. Rao Girdhari Lal Chowdhury; AIR 1963 SC 698, that the distinction between an appeal and a revision is a real one. A right of appeal carries with it a right of re-hearing on law as well as fact, unless the statute conferring the right of appeal

limits the re-hearing in some way, as has been done in second appeals arising under the Code. The power of hearing revision is generally given to a superior Court so that it may satisfy itself that a particular case has been decided according to law. Reference was made to Section 115 of the Code to hold that the High Court's powers under the said provision are limited to certain particular categories of cases. The right there is confined to jurisdiction and jurisdiction alone.

In view of law as discussed above, the learned Trial Court has exercised its jurisdiction, vested in it by law. Moreover, after allowing of the application of amendment all the disputes between the parties shall be adjudicated upon finally and multiplicity of litigation shall be avoided, which is to be borne in mind while administering law. By the impugned order the learned Trial Court has not finally decided the lis nor any party has been ousted and, as such, even an erroneous decision can not be corrected in exercise of powers conferred upon the Court under Section 115 of CPC. In exercise of such jurisdiction neither the High Court nor Revisional Court is required to be too astute to interfere with exercise of jurisdiction by the learned Trial Court at interlocutory stages. The Court is cautious enough to make a distinction between review, revision and appeal which have their specific arena. While dealing with the revision, the Revisional Court cannot function as an Appellate Court so as to travel beyond the scope of Section 115 of the Code of Civil Procedure. **(Bishun Lal and Anr. v. Additional District and Sessions Judge, Lucknow and Anr.; 2013(3) ALJ 371 (Lko Bench of All HC)**

Ss. 151 and 10 – Scope of inherent powers of court regarding consolidation of suits – Such power has to be exercised only U/s. 151

The court not much impressed by the argument of the learned Senior Counsel appearing for the respondent that the trial court has committed an error in not consolidating the various suits including Civil Suits Nos. 292 of 1993 and 681 of 1992 to be tried together as ordered by the District Court in its order dated 29-8-2006 in Civil Misc. Application No. 16 of 2005. Section 24 CPC only provides for transfer of any suit from one court to another. The court has not passed an order of consolidating all the suits. There is no specific provision in CPC for consolidation of suits. Such a power has to be exercised only under Section 151 CPC. The purpose of consolidation of suits is to save costs, time and effort and to make the conduct of several actions more convenient by treating them as one action. Consolidation of suits is ordered for meeting the ends of justice as it saves the parties from multiplicity of proceedings, delay and expenses and the parties are relieved of the need of adducing the same or similar documentary and oral evidence twice over in the two suits at two different trials.

(**Mahalaxmi Cooperative Housing Society Limited vs. Ashabhai Atmaram Patel (Dead) Through LRs; (2013) 4 SCC 404)**

O.1, R. 10 - Transposition of party's permissibility of

Where the Company Petition is filed with the consent of the other shareholders, the same must be treated as filed in a representative capacity, and therefore, the making of an application for withdrawal by the original petitioner in the Company Petition, would not render the petition under Section 397 of 398 of the Act 1956, non- Existent or non-maintainable. The other persons, i.e., the constructive parties who provide consent to file the petition, are in fact entitled to be transposed as petitioners in the said case. **(Bhagwati Developers Private Ltd. v. Peerless General Finance Investment Company Ltd. Ors.; AIR 2013 SC 1690)**

O.1, R.10 – Impleadment of party – Impleadment of all joint tenant is not necessary

A decree passed against one joint tenant is building upon other joint tenants also which means that proceedings by not impleading all joint tenants would not vitiate for this reason alone. If, however, it is shown that joint tenants were actually occupying the building in dispute for non residential purposes by carrying on business therein, then, of course equitable consideration may intervene and he/she may not be evicted under release order, if not impleaded. Similarly non impleadment of one of the joint tenant shall not make release application, under Act of 1972, non-maintainable or vitiated in law.

The principles which emerge very clearly in the context of co-tenant/joint-tenant are:

(i) A quit notice shall not be invalid if served upon only one of the co-tenant/joint-tenant and eviction proceedings validly can be instituted thereupon.

(ii) Where one or more co-tenants have surrendered their tenancy rights expressly or impliedly, their non-impleadment in eviction proceedings or proceedings initiated by landlord shall not be vitiated.

(iii) Where a co-tenant claims to have acted through another co-tenant for example, he claims of paying rent through another co-tenant who is actually residing in the tenanted accommodation, the impleadment of such co-tenant who is actually residing in accommodation in a proceeding without impleading the former one, would mean due notice to the former one and the decree passed in such proceedings shall be binding on the former co-tenant of though he was not party thereto.

(iv) The eviction proceedings and decree passed in a case where all the co-tenants and joint-tenants would not be impleaded would be valid and binding on all, provided the co,) tenants who have participated in the proceedings, have not colluded with landlord. A co-tenant not impleaded in such proceedings cannot be allowed subsequently to wriggle out the binding force of decree only on the ground that he was not impleaded in the proceedings.

(v) Where all the co-tenants/joint-tenants are enjoying the tenancy rights by residing in the property or otherwise, a landlord may not adopt a selective method of initiating proceedings for eviction by impleading only one or few of them and leaving others. It goes without saying that where such kind of selective impleadment is found coloured with collusive proceeding, misrepresentation, fraud etc., such decree shall not be binding on a co-tenant or joint-tenant, not party to such proceeding.

(vi) The objection of non-impleadment, however, shall not be heard at the instance of a co-tenant who is very well represented in eviction proceedings and himself/herself has full opportunity to contest the matter.

(Hazara Begum v. Mansoor Ali Haji Ali; 2013 (2) ALJ 422)

O.1, R. 10 – Impleadment of necessary party – A person may also be added as a party to suit even though he is not a necessary party and no relief is claimed against him

It is well settled that a person may also be added as a party to the suit, even though he is not a necessary party and no relief is claimed against him, if his presence is necessary for complete and final decision of the questions involved in the suit. In other words, if in the opinion of the court, the presence of a person may be helpful in effectually adjudicating upon all points in dispute, the court has power to direct that he should be added as a party to the suit. Such a person is called the *proper* party as distinguished from *necessary* party.

It is also well also settled that plaintiff is *dominus litis* and normally it is for him to select his adversary from whom he seeks relief and it is not for a court to ask him to join any other person as a party to the suit. But it is equally well settled that the matter has to be adjudicated on merits by the court. It is, therefore, the duty of the court to keep in mind a relevant consideration that as far as possible, multiplicity of proceedings should be avoided. If the court feels that in case a person is not impleaded as a party, all questions raised in the suit cannot be finally, completely and effectually decided and there is likelihood of another

proceeding which can be avoided by impleading such person as a party to the suit, notwithstanding an objection by the plaintiff, he may be joined as a party since his presence before the court is found necessary. **(Mahindera Lifespace Developers Ltd. and Anr. v. Mr. Sunil Jasuja and Ors.; 2013 (2) CPR 690 (NC)**

O. 6, R. 15 – Verification of pleadings and affidavit filed in support of pleadings are quite different – Affidavit is stand alone document - Not part of verification

It seems to Court that a plain and simple reading of Section 83(1)(c) of the Act clearly indicates that the requirement of an 'additional' affidavit is not to be found therein. While the requirement of "also" filing an affidavit in support of pleadings filed under the CPC may be mandatory in terms of Order VI Rule 15(4) of the CPC, the affidavit is not a part of the verification of the pleadings – both are quite different. While the Act does require a verification of the pleadings, the plain language of Section 83(1) (c) of the Act does not require an affidavit in support of the pleadings in an election petition. We are being asked to read a requirement that does not exist in Section 83(1) (c) of the Act. **(G.M. Siddeshwar v. Prasanna Kumar; AIR 2013 SC 1549)**

O.6, R. 17 – Amendment of written statement - Permissibility

Brief facts of the case, as stated in the writ petition are that the respondent No. 2 filed a suit for permanent injunction against the petitioner which was registered as original suit No. 115 of 1995. The case was contested by the petitioners-defendants therein and a written statement was also filed by which a counter claim was set up by the petitioners-defendants against the plaintiff. The trial court framed issues and both the parties led their evidence and ultimately the trial Court decreed the suit on 17.12.1998 against the defendant-petitioners.

Aggrieved by the judgment and decree dated 17.12.1998 the petitioner filed civil appeal No. 15 of 1999 Om Prakash and another v. Sanjeev Kumar. The defendants-petitioners also filed an application on 8.12.1999 under Order VI, Rule 17 CPC before the court below seeking amendment of their written statement. The respondent No. 2 herein filed his objections before the court below on 4.1.2000. The matter was heard by the said Court and thereafter by the impugned order dated 5.1.2000 the said court rejected the petitioners' application under Order VI, Rule 17, CPC seeking amendment of his written statement.

Thus from the very finding recorded by the respondent No. 1 it will be seen that throughout in the original suit the case of the petitioners appellants was that there was no sale deed at all and even if assuming that such a sale deed was

executed the same was not binding upon the appellants-petitioners.

From a perusal of the amendment application and the grounds taken therein which are sought to be added by way of amendment it does not appear that any new case is being set up by the defendants-petitioners inasmuch as it was always his case even in the original written statement that there was no sale deed and even if one had been produced the same was fictitious and forged document and the result of a calculated conspiracy between defendant No. 3 and the plaintiff.

Through the amendment application the petitioners have only sought to raise a further legal plea that under the Hindu Mitakshara law no individual male member of a joint family is empowered to transfer or alienate the claim of any part of the portion of the Hindu joint family property. This being a pure question of law could be raised at any stage of the proceedings and it cannot be said that by raising said plea a new case was being set up by the appellants-petitioners. **(Om Prakash v. VIIIth Addl. District Judge, Shahjahanpur; 2013 (2) ALJ 620)**

O. 9, R. 13 - Rejection of Belated application for condonation of delay for setting aside ex-parte decree - Validity of

In this case Arun K.C. and Sunil K.C. had knowledge of the pending litigation between Sushil K.C. and Tej Properties as far back as on 25.8.1998. The aforesaid factual position leaves no room for any doubt in our mind, that the applicants Arun K.C. and Sunil K.C. (in I.A. nos. 3391 and 4531 of 2008) had full knowledge about the property which is subject matter of consideration herein, as also the pending litigation connected therewith, well before the death of Sushil K.C. on 3.6.2003. There can therefore be no valid justification for them, to have delayed their participation as legal heirs/representatives in both the aforementioned suits immediately after the death of Sushil K.C. (on3.6.2003). Their efforts to participate in the two suits commenced on 11.3.2008 (by filing IA no.3391 of 2008 - in CS (OS) no.2501 of 1997), and on 28.3.2008 (by filing IA no.4531 of 2008 – in CS (OS) no.1348 of 1996). It is therefore apparent, that the explanation tendered by the legal heirs/representatives (Arun K.C. and Sunil K.C.) of the deceased Sushil K.C. in the interlocutory applications (I.A. nos. 3391 and 4531 of 2008) filed by them for condonation of delay, was false to their knowledge. Having so concluded, it is apparent, that the applicants had not approached the High Court for judicial redress with clean hands. Based on our aforesaid determination, we are satisfied, that the learned Single Judge (vide order dated 24.8.2009) and the Division Bench (vide order dated 17.10.2011) were fully justified in not accepting the prayer made by

the legal heirs/representatives of Sushil K.C. for condoning delay in filing the two interlocutory applications (I.A. nos. 3391 and 4531 of 2008). The impugned orders passed by the High Court are, therefore, hereby affirmed. **(Sushil K. Chakravarty (D) Thr. LRs. v. M/s. Tej Properties Pvt. Ltd.; AIR 2013 SC 1732)**

O. 9, R. 13 – Recall of ex parte decree of eviction would not make recall applications as not maintainable

It cannot be said that the mere fact that building has been demolished before restoration of suit by setting aside ex parte decree, the destroyer would succeed over the sufferer even if the former is guilty of some kind of wrong, and the later will have no remedy in law. It is well established principle of law that whenever there is a wrong, there is a remedy. No person can be left remediless. In the circumstances, at the best subsequent events may result in amendment of pleadings in plaint or written statement, as the case may be, and may invite adjudication of Trial Court on certain more issues but that by itself will not make the proceedings untenable or nor maintainable. Therefore, the fact that ex parte decree has been put to execution would not make the recall application as not maintainable. **(Babu Ram & Ors. v. Rahimullah Mahommad & Ors., 2013 (2) ALJ 631)**

O. 9, R. 13 and S. 11 – Res-judicata – Applicability – Application for setting aside exparte decree is not maintainable because appeal against decree had been dismissed by judgment and order thus became final between parties

From a perusal of the order and documents on record as well as the statutory provisions of the Explanation to Order 9, Rule 13 CPC, it is noticed that once the appeal preferred by the respondent Nos. 1 and 4 against the decree dated 11.8.1995 had been dismissed by the judgment and order dated 23.4.1998, the decree dated 11.8.1995 had become final between the parties and, thereafter no application seeking recall or restoration of the said decree was maintainable before the trial court. Matter had already been thrashed out upto the stage of appeal.

In the circumstances, the entire proceedings seeking restoration of the suit proceedings and for setting aside the decree dated 11.8.1995 were absolutely without jurisdiction and were not maintainable. **(Mohd. Rais v. State of U.P. & Ors.; 2013 (3) ALJ 233)**

O. 14 - Framing of issues – Occasion for – Material dispute between parties specifically apparent on face of record necessary to frame issues – Mere denial or evasive denial not sufficient to give rise to an issue – Issues once

framed cannot be decided on same day – Affording of opportunity of hearing to parties is mandatory

Order 8, Rules 3, 4 and 5 of the Code of Civil Procedure have been reproduced above with a view to impress upon the learned Trial Court to frame issues only when there is a material dispute between the parties, which is specifically apparent on the face of the record. Mere denial or evasive denial does not give rise to an issue. In view of this fact, issue once framed cannot be decided, the same day, as affording of opportunity of hearing to the parties, is mandatory. "Hearing" means and includes leading of evidence, which has to be initiated by the parties at whose instance or upon whose pleadings issues have been settled. In this case learned Trial Court has settled the issues on 24-11-2005 and issue No. 2 was decided on the same day, and the suit is not being proceeded in accordance with the procedures, as laid down by the law for the time being in force. Learned Trial Court is adjourning the case on false pretexts. **(Fayadeen Dhobee vs. Civil Judge (S.D.), North CR. No. 25, District and Sessions Court and another; 2013 (119) RD 517)**

O. 17, R. 1 – Adjournment – When can be allowed - To be allowed only in compelling circumstances

After change of various provisions by way of amendment in the CPC, it is desirable that the recording of evidence should be continuous and followed by arguments and decision thereon within a reasonable time. This Court has repeatedly held that courts should constantly endeavour to follow such a time schedule. If the same is not followed, the purpose of amending several provisions in the Code would get defeated. **(M/s. Bagai Construction Thr. Its Proprietor Lalit Bagai v. Ms. Gupta Building Material Store; AIR 2013 SC 1849)**

O. 18, R. 4 - Recording of evidence ought to be continuous followed by arguments and decision

Applications for adjournments, reopening and recalling are interim measures, could be as far as possible avoided and only in compelling and acceptable reasons, those applications are to be considered. **(M/s. Bagai Construction Thr. Its Proprietor Lalit Bagai v. Ms. Gupta Building Material Store; AIR 2013 SC 1849)**

O.18, R.16—Immediate recording of evidence prior to commencement of trial—Grounds—Mere old age/apprehension of death is not a sufficient cause

The appellant-plaintiff adoptive mother was just above 70 years of age

and hale and hearty. She was not suffering from any serious ailment e.g. cancer nor was on her deathbed. Thus, there was no occasion for her to file an application under Order 18 Rule 16 CPC which provides for taking evidence *de bene esse* for recording the statement prior to the commencement of the trial. Mere apprehension of death of a witness cannot be a sufficient cause for immediate examination of a witness. Apprehension of death applies to each and every witness, he or she, young or old, as nobody knows what will happen at the next moment. More so, it is in the discretion of the court to come to a conclusion as to whether there is a sufficient cause or not to examine the witness immediately. Had the adoptive mother moved such an application, the trial court could not have allowed it after considering the aforesaid facts. **(Laxmibai vs. Bhagwantbuva; (2013) 4 SCC 97)**

O. 21, R. 72 (Allahabad Amendments) – Execution – Auction sale – No embargo upon decree holder to participate in auction

The provision of O. XXI, R. 72 is extracted hereunder:-

"72. Decree-holder not to bid for or by property without permission – (1) No holder of a decree in execution of which property is sold shall, without the express permission of the Court, bid for or purchase the property.

(2) Where decree-holder purchases, amount of decree may be taken as payment.- Where a decree-holder purchases with such permission, the purchase money and the amount due on the decree may, subject to the provisions of Section 73, be set off against one another, and the Court executing the decree shall enter up satisfaction of the decree in whole or in part accordingly.

(3) Where a decree-holder purchases, by himself or through another person, without such permission, the Court may, if it thinks fit, on the application of the judgment-debtor of any other person whose interests are affected by the sale, by order set aside the sale, and the costs of such application and order, and any deficiency of process which may happen on the re-sale and all expenses attending it, shall be paid by the decree-holder."

Vide Notification No. 4084/34(a)-3(7), dated 24th July, 1926 sub-rules (1) and (3) were omitted and sub-rule (2) was renumbered as sub-rule (1) insofar as the State of Uttar Pradesh is concerned. The said amendment of 1926 is extracted hereunder:-

Allahabad .- In Order XXI in Rule 72.-

(a) omit sub-rule (1) and (3);

(b) re-number sub-rule (2) as sub-rule (1);
(c) in sub-rule (1) as so renumbered, for the words "with such permission", substitute the words "the property sold".

(Vide Notification No. 4084/35(a)-3(7), dated 24th July, 1926.

In the light of the aforesaid amendment, it is apparently clear that there is no embargo upon a decree-holder to participate in the auction. **(Abdul Rahman v. Haji Abdul Rashid; 2013 (2) ALJ 658)**

O. 22, R. 4(4) - Death of plaintiff-Continuation of proceeding without impleading legal heirs/ representatives - Conscious decision taken by the Single Judge to proceed with the matter ex parte as against the appellant – Clearly permissible under Order XXII, Rule 4(4) – Trial Court can proceed with a suit without impleading the legal representatives of a defendant if Court considers it fit to do so

The Court has given thoughtful consideration to the submissions advanced at the hands of the learned Counsel for the appellant. The real issue which needs to be determined with reference to the contention advanced at the hands of the learned Counsel for the appellant under Order XXll, Rule 4 (4) of the Code of Civil Procedure is whether the learned Single Judge while proceeding with the trial of CS. (0.S.) No. 2501 of 1997 was aware of the death of the plaintiff Sushil KC (the appellant herein). And further, whether the learned Single Judge of the High Court had thereafter, taken a conscious decision to proceed with the suit without insisting on the impleadment of the legal representatives of the deceased - defendant Sushil KC It is possible for us, in the facts of this case, to record an answer to the question posed above. We shall now endeavour to do so. It is not a matter of dispute, that Sushil KC had died on 3.6.2003. It is also not a matter of dispute, that on 29.8.2003 the plaintiff Tej Properties (the respondent herein) had filed an interlocutory application, being 1.A. No. 9676 of 2003 under Order XXII, Rule 4 (4) of the Code of Civil Procedure, for proceeding with CS. (0.S.) No. 2501 of 1997 ex parte, by bringing to the notice of the learned Single Judge, that Sushil KC had died on 3.6.2003. That being the acknowledged position, when the learned Single Judge allowed the proceedings in CS. (0.5.) No. 2501 of 1997 to progress further, it is imperative to infer, that the Court had taken a conscious decision under Order XXll, Rule 4 (4) of the Code of Civil Procedure, to proceed with the matter ex parte as against interests of Sushil KC (the defendant therein), without first requiring Tej Properties (the plaintiff therein) to be impleaded the legal representatives of the deceased-defendant. It is therefore, that evidence was recorded on behalf of the plaintiff therein, i.e., Tej Properties (the respondent herein) on 28.1.2005. In the aforesaid view of the matter, there is certainly no

doubt in our mind, that being mindful of the death of Sushil KC., which came to his knowledge through I.A. No. 7696 of 2006, a conscious decision was taken by the learned Single Judge, to proceed with the matter ex parte as against the interests of Sushil KC. This position adopted by the learned Single Judge in C.S. (O.S.) No. 2501 of 1997 was clearly permissible under Order XXIT, Rule 4 (4) of the Code of Civil Procedure. A Trial Court can proceed with a suit under the aforementioned provision, without impleading the legal representatives of a defendant, who having filed a written statement has failed to appear and contest the suit, if the Court considers it fit to do so. All the ingredients of Order XXII, Rule 4 (4) of the Code of Civil Procedure stood fully satisfied in the facts and circumstances of this case. In this behalf all that needs to be noticed is, that the defendant Sushil KC. having entered appearance in C.S. (O.S.) No. 2501 of 1997, had filed his written statement on 6.3.1998. Thereafter, the defendant Sushil KC. stopped appearing in the said civil suit. Whereafter, he was not even represented through Counsel. The order to proceed against Sushil KC. ex parte was passed' on 1.8.2000. Even thereupon, no efforts were made by Sushil KC. to participate in the proceedings of C.S. (O.S.) No. 2501 of 1997, till his death on 3.6.2003. It is apparent, that the Trial Court was mindful of the factual position noticed above, and consciously allowed the suit to proceed further. When the suit was allowed to proceed further, without insisting on the impleadment of the legal representatives of Sushil KC. it was done on the Court's satisfaction, that it was a fit case to exempt the plaintiff (Tej Properties) from the necessity of impleading the legal representatives of the sole defendant Sushil KC. (the appellant herein). This could only have been done, on the satisfaction that the parameters postulated under Order XXIT, Rule 4 (4) of the Code of Civil Procedure, stood complied. The fact that the aforesaid satisfaction was justified, has already been affirmatively concluded by us, hereinabove. We are therefore of the considered view, that the learned Single Judge committed no error whatsoever in proceeding with the matter in CS. (0.S.) No. 2501 of 1997 ex parte, as against the sole defendant Sushil K.C, without impleading his legal representatives in his place. We therefore, hereby, uphold the determination of the learned Single Judge, with reference to Order XXII, Rule 4 (of the Code of Civil Procedure**. (Sushil K. Chakravarty (D) through L.Rs. vs. M/s. Tej Properties Pvt. Ltd.; 2013 (119) RD 802)**

O. 23, R. 1(15) – Withdrawal of suit - Withdrawal of representative suit not to be allowed

Where the Company petition is filed with the consent of the other shareholders, the same must be treated as filed in a representative capacity, and therefore, the making of an application for withdrawal by the original petitioner

in the Company petition, would not render the petition under Section 397 or 398 of the Act 1956, non-Existent or non-maintainable. The other persons, i.e. the constructive parties who provide consent to file the petition, are in fact entitled to be transposed as petitioners in the said case. **(Bhagwati Developers Pvt. Ltd. v. Peerless General Finance Investment Com. Ltd. Ors.; AIR 2013 SC 1690)**

O. 23, R.3. Pt. I or Pt. II – Determination of applicability

Order 23 Rule 3 CPC speaks of compromise of a suit. Order 23 Rule 3 refers to distinct classes of compromise in suits. The first part refers to lawful agreement or compromise arrived at by the parties out of court, which is under the 1976 Amendment of CPC required to be in writing and signed by the parties. The second part of Order 23 Rule 3 deals with the cases where the defendant satisfies the plaintiff in respect of whole or a part of the suit claim which is different from the first part of Order 23 Rule 3. The expression "agreement" or "compromise" refers to the first part and not the second part of Order 23 Rule 3. The second part gives emphasis to the expression "satisfaction". The word "satisfaction" in Order 23 Rule 3 has been used in contradiction to the word "adjustment" by agreement or compromise by the parties. The requirement of "in writing and signed by the parties" does not apply to the second part of Order 23 Rule 3 where the defendant satisfies the plaintiff in respect of whole or part of the subject-matter of the suit. The proviso to Order 23 Rule 3 as inserted by the Amendment Act, 1976 enjoins the court to decide the question where one party alleges that the matter is adjusted by an agreement or compromise but the other party denies the allegation. The court is, therefore, called upon to decide the lis one way or the other. The proviso to Order 23 Rule 3 expressly and specifically states that the court shall not grant such adjournment for deciding the question unless it thinks fit to grant such adjournment by recording reasons. **(Mahalaxmi Cooperative Housing Society Ltd. vs. Ashabhai Atmaram Patel (Dead) Through LRs.; (2013) 4 SCC 404)**

O. 26, R. 9 – Inspection through Amin – Validity

In the instant case it is categorically proved that the inspection was made without intimation to the defendants respondents or their learned counsel hence it occasioned in grave injustice to them. In fact inspection was done and report was given in collusion with the plaintiff by the Amin.

Even otherwise an extremely just order has been passed by the lower revisional court hence there is absolutely no occasion to interfere with the said order in exercise of writ jurisdiction vide Bhartiya Seva Samaj Trust Tr. Pres v. Yogeshbhai Ambalal Patel; AIR 2012 SC 3285. **(Kailash Nath Gupta v. Uppar Mukhya Adhikari, Bhadohi Industrial Development Authority, Bhadohi and**

others; 2013 (3) ALJ 232)

O. 32, R. 1 – Suit filed by minor, who attained majority during pendency of suit – Effect of – Suit can be treated to have validly been instituted from date attaining majority

Order 32 Rule 1, CPC providing that minor plaintiff may sue through his guardian is for the benefit of the minor. It cannot be used to his detriment. Further, even if plaintiff's year of birth is taken to be 1979 he attained the age of 21 years i.e. majority in 2000. In Kamalammal v. A.M. Shammugham; AIR 1976 Madras 235, it has been held that if during pendency of the suit minor plaintiff attains the age of the majority, the suit can be treated to have validly been instituted from that date. Similar view has been taken by the Court in Raja Ram v. Naveen Chandra; 1995 (2) ARC 354: (1995 AIHC 3510). The Supreme Court in M/s. Puspa Sahkari Avas Samiti Limited v. M/s. Gangotari Sahkari Samiti Limited, JT 2012 (3) 563, and Vithalbhai Pvt. Ltd. v. Union of India; AIR 2005 SC 1891 has held that if the suit or execution application has been filed premature i.e. before the accrual of the cause of action then it will be deemed to be properly filed from the date of accrual of the cause of action. **(Arun Kumar Tayal v. Javed Malik & Anr.; 2013 (3) ALJ 312)**

O. 39, R.1—"Prima facie case"—What is

"A prima facie case does not mean a case proved to the hilt but a case which can be said to be established if the evidence which is led in support of the case were [to be] believed. While determining whether a prima facie case had been made out or not the relevant consideration is whether on the evidence led it was possible to arrive at the conclusion in question and not whether that was the only conclusion which could be arrived at on that evidence." **(Nirmala J. Jhala vs. State of Gurajat; (2013) 4 SCC 301)**

O. 39, 2 (2)(g), (U.P. Amendment) – Petitioner-borrower is not entitled to any injunction against Rank/State authorities from recovering loan because he had not furnished or offered to furnish any security

Petitioner had taken a loan of Rs. 3,70,000/- from the State Bank of India for purchasing a tractor. On account of non-payment of installments a recovery has been issued against him. Therefore, he instituted suit for permanent injunction. In the suit, he filed an application for interim injunction restraining the bank and State authorities from recovering the loan amount.

The injunction application has been rejected by the Court of first instance, besides other things, on one of the grounds that as the recovery certificate has already been issued by the Collector, no injunction can be granted in view of

order XXXIX, Rule 2(2)(g) of CPC as amended by U.P. State Amendment Act, 1976. On merits the Court of first instance held that there is no prima facie case and balance of convenience in favour of the petitioner. This order has been affirmed by the appellate Court.

Thus, in view of addition of the above proviso to Rule 2(2)(g) of Order XXXIX, no injunction can be granted in respect of proceedings for recovery of dues which are recoverable as arrears of land revenue unless adequate security is furnished.

The recovery of loan in the present case is by way of land revenue and the petitioner had not furnished or offered to furnish any security. Therefore, he is not entitled to any injunction. (**Lalta prasad Singh v. State of U.P.; 2013 (2) ALJ 637**)

O. 43, R. 1(r) – Constitution of India, Art. 226 – Alternate remedy – Writ petition against ex parte interim stay order is not maintainable

Full Bench decision of the Court, reported in AIR 1970 Allahabad 376 Zila Parishad Budaun and others v. Brahma Rishi Sharma. The relevant portion of the Full Bench is contained in paras 16 and 18 of the judgment which reads as follows:-

> "The language and the object of Rule 1(r) of Order 43 and the scheme of Rules 1 to 4 of Order 39 show that an appeal also lies against the ex parte order of injunction. As soon as an interim injunction is issued and the party affected thereby is apprised of it, he has two remedies: (1) he can either get the ex parte injunction order discharged or varied or set aside appeal as provided for under Order 43. Rule 1(r), or (2) straightway file an appeal under Order 43, Rule 1(r) against the injunction order passed under Rules 1 and 2 of Order 39, CPC. It is not unusual to provide for alternative remedies. For instance, when an ex parte decree is passed against a person, he has two remedies: either he may go up in appeal against the ex parte decree or he may seek to get the ex parte decree set aside by the same court.
>
> We are unable to accept this submission of the learned counsel for the respondents. As already discussed above, once the Court, after perusing the application and affidavit, comes to the conclusion that the case is a fit one in which temporary injunction should be issued ex parte the Court takes a final decision in the matter for the time being and the expression of this decision in our opinion is a final order for the duration it is passed. Such an order is contemplated by Rules 1 and 2 of Order 39, CPC... We have looked into the authorities referred to above, but they are not

applicable to the facts of this case and they have little bearing on the precise point raised by the learned counsel for the respondents."

Subsequently the above Full Bench decision has been followed by the Court in the case, reported in 1996 (27) ALR 149; Mohd. Rafi Khan (Dr.) v. District Judge, Aligarh. The relevant paragraph is para-5 which reads as follows:-

> "I have considered the contention of the learned counsel for the petitioner and have also carefully perused the aforesaid decisions cited by him. In the case of Zila Parishad; AIR 1970 All 376 the question which was referred for the decision was to the effect whether an ex parte order issuing injunction against the defendant was appealable in the Full Bench was whether a miscellaneous appeal under Order 43, Rule 1(r) lay against an ex parte ad-interim injunction order or only against the final order passed by the trial court after hearing the defendants. It was held that even against an ex parte order issuing temporary injunction it was open to the defendants to file an appeal straightway under Order 43, Rule 1(r), CPC. While considering the argument in the said case the following observations were made in paragraph 16 of the judgment:
>
> > "The language and the object of Rule 1(r) of Order 43 and the scheme of Rules 1 to 4 of Order 39 show that an appeal also lies against the ex parte order of injunction. As soon as an interim injunction is issued and the party affected thereby is apprised of it, he has two remedies: (1) he can either get the ex parte injunction order discharged or varied or set aside under Rule 4 of O. 39 and if unsuccessful avail the right of appeal as provided for under Order 43, Rule 1(r), or (2) straightway file an appeal under Order 43, Rule 1(r) against the injunction order passed under Rules 1 and 2 of Order 39, CPC. It is not unusual to provide for alternative remedies. For instance, when an ex parte decree is passed against a person, he has two remedies: either he may go up in appeal against the ex parte decree or he may seek to get the ex parte decree set aside by the same court."

In view of the law laid down by the Full Bench the writ petition is not maintainable. **(Jawla Engineering Pvt. Ltd. v. M/s. Uflex Limited; 2013 (3) ALJ 19)**

O. 47, R. 1 – Review - Ground for exercise – Error apparent on face of record is necessary for exercising power of reviews

Review petitions are ordinarily restricted to the confines of the principles enunciated in O. 47 of the CPC. The scope of a review petition is very limited

and the submissions advanced were made mainly on questions of fact. As has been repeatedly indicated by this Court, review of a judgment on account of some mistake or error apparent on the face of the record is permissible, but an error apparent on the face of the record has to be decided on the facts of each case as an erroneous decision by itself does not warrant a review of each decision. In order to appreciate the decision rendered on the several review petitions which were taken up together for consideration, it is necessary to give a background in which the judgment and order under review came to be rendered. **(Akhilesh Yadav v. Vishwanath Chaturveri; 2013 (2) ALJ 729)**

Constitution of India

Art. 14 - Legislative expectation – Applicability of

Indisputably, the respondent T.D. Viswanath, alleged to have worked on the post of Lecturer in History in the year 1990 and continued as such for a few years, but before his appointment neither the post was advertised nor any selection process was followed. No appointment letter was issued by the Society appointing him either permanently or temporarily in the said post. It is also not in dispute T.D. Vishwanath did not receive any letter of termination or relieving order from the Society. According to him, the Society orally directed him not to continue in the College.

In considered opinion of the Court, the Tribunal completely misdirected itself in passing such an order of regularisation and reinstatement in a case where the respondent allegedly worked in the College as part-time Lecturer without any appointment letter and without any selection process. Since the Society never issued any letter of appointment a letter of termination was also not served upon the respondent.

As stated above, in the absence of any appointment letter, issued in favour of the respondent as he was temporary/part-time lecturer in the College, there cannot be any legitimate expectation for his continuing in the service.. This was the reason that when in the years 1995 and 1996, two persons were appointed one after the other on the post of Lecturer in History, the respondent did not challenge the said appointments. Even assuming that the respondent was permitted to work in the College as part-time lecturer for some period, the action of the management of the college asking him to stop doing work cannot be held to be punitive. The termination simplicitor is not per se illegal and is not violative of principles of natural justice. **(B.T. Krishnamurthy v. Sri Basaveswara Education Society and Ors.; AIR 2013 SC 1787)**

Arts. 14 and 226 – Permission to candidate who was not validly admitted after affiliation cannot be valid

In the present case, the students were not validly admitted after affiliation, therefore, they cannot be allowed to appear in the examination. The petitioner, therefore, has failed to make out a case for interference. There has been no affiliation from the examining body. In absence of affiliation, the petitioner was not entitled to admit the students and anyhow if any mistake was committed by the Agra University, that will not entitle the petitioner to claim any parity or any illegal parity is supposed to grant indulgence in favour of the petitioner. **(Sardar patel Instt. v. State of U.P.; 2013 (2) SLR 538 (All)**

Arts. 14, 315 to 320 – PIL – Issuance of Quo Warranto – Appointment of the Chairperson in a Public Service Commission does not fall in category of a service matter, so PIL for a writ of quo warranto in respect of an appointment to a constitutional position would not be barred

The respondent No.1 has also alleged in the writ petitions various irregularities and illegalities committed by Mr. Harish Dhanda. He has further stated in the writ petition that his colleague has even sent a representation to the Governor of Punjab and the Chief Minister of Punjab against the proposed appointment of Mr. Harish Dhanda. He has accordingly prayed in the writ petition for a mandamus to the State of Punjab to frame regulations governing the conditions of service and appointment of the Chairman and Members of the Punjab Public Service Commission and for an order restraining the State of Punjab from appointing Mr. Harish Dhanda as Chairman of the Punjab Public Service Commission. On a reading of the entire writ petition filed by the respondent No.1 before the High Court, I have no doubt that the respondent No. l has filed this writ petition for espousing the cause of the general public of the State of Punjab with a view to ensure that a person appointed as the Chairman of the Punjab Public Service Commission is a man of ability and integrity so that recruitment to public services in the State of Punjab are from the best available talents and are fair and is not influenced by politics and extraneous considerations. Considering the averments in the writ petition, Court cannot hold that the writ petition is just a service matter in which only the aggrieved party has the locus to initiate a legal action in the court of law. The writ petition is a matter affecting interest of the general public in the State of Punjab and any member of the public could espouse the cause of the general public so long as his bonafides are not in doubt. Therefore, I do not accept the submission of Mr. P.P. Rao, learned senior counsel appearing for the State of Punjab, that the writ petition

was a service matter and the High Court was not right in entertaining the writ petition as a Public Interest Litigation at the instance of the respondent No. 1. The decisions cited by Mr. Rao were in cases where this Court found that the nature of the matter before the Court was essentially a service matter and this Court accordingly held that in such service matters, the aggrieved part and not any third party can only initiate a legal action. **(State of Punjab v. Salil Sabhlok; 2013 (2) SLR 659 (SC)**

Arts. 14 and 16(4) - Reservation – Reserved category candidate who adjudged more meritorious than open category candidates is entitled to choose the particular service/cadre/post as per his choice/preference and he cannot be compelled to accept appointment to an inferior post leaving more important service/cadre/post in the reserved category for less meritorious candidate of that category

The Constitution Bench noticed the judgment in R.K. Sabharwal v. State of Punjab and distinguished the same by making the following observation:

> "Reference was also made to R.K. Sabharwal v. State of Punjab, this Court had declared that the State shall not count a reserved category candidate selected in the open category against the vacancies in the reserved category. However, by this it could not be inferred that if the candidate himself wishes to avail a vacancy in the reserved category, he shall be prohibited from doing so. After considering the counsel's submissions and deliberations among ourselves, we are of the view that the ratio in that case is not applicable for the purpose of the present case. That case was primarily concerned with the Punjab Service of Engineers in the Irrigation Department of the State of Punjab. The decision was rendered in the context of the posts earmarked for the Scheduled Castes/Scheduled Tribes and Backward Classes on the roster. It was noted that once such posts are filled the reservation is complete. Roster cannot operate any further and it should be stopped. Any post falling vacant in a cadre thereafter, is to be filled from the category reserved or general due to retirement or removal of a person belonging to the respective category. Unlike the examinations conducted by UPSC which includes 21 different services this case pertains to a single service and therefore the same cannot be compared with the examination conducted by UPSC. The examination conducted by UPSC is very prestigious and the topmost services of this nation are included in this examination. In this respect, it is obvious that there is fierce competition amongst the successful candidates as well to secure appointments in the most preferred services. This judgment is strictly confined to the enabling provision of Article

16(4) of the Constitution under which the State Government has the sole power to decide whether there is a requirement for reservations in favour of the backward class in the services under the State Government. However, the present case deals with positions in the various civil services under the Union Government that are filled through the examination process conducted by UPSC. Therefore, the fact-situation in R.K. Sabharwal case is clearly distinguishable. .

In view of the above discussion and the law laid down in State of Bihar v. M. Neethi Chandra, Anurag Patel v. U.P. Public Service Commission, which has been approved by the Constitution Bench in Union of India v. Ramesh Ram, Court held that the official respondents did not commit any illegality by appointing more meritorious candidates of OBC to Assam Civil Service for which they had given preference and the High Court did not commit any error by dismissing the writ petition. .

As a sequel to the above, the questions framed in this appeal are answered in the following terms:

"1) A reserved category candidate who is adjudged more meritorious than open category candidates is entitled to choose the particular service/cadre/post as per his choice/preference and he cannot be compelled to accept appointment to an inferior post leaving the more important service/cadre/post in the reserved category for less meritorious candidate of that category.

2) On his appointment to the service/cadre/post of his choice/preference, the reserved category candidate cannot be treated as appointed against the open category post."

(Alok Kumar Pandit v. State of Assam; 2013(3) SLR 719 (SC)

Arts. 14, 311, 226 – U.P. Govt. Servants (Discipline and Appeal) Rules, Rule 7 – Dismissal from service on ground of dereliction of duty – Violation of principles of natural justice proved – Departmental proceedings vitiated, hence dismissal order liable to be set aside

Indisputably, the petitioner has not been allowed to inspect the records. This fact is evident from Annexure-6 to the writ petition and averment made in this regard in paras 10 and 11 of the writ petition which has not been specifically denied in counter-affidavit. It is common ground that the Inquiry Officer was changed. Earlier, the Settlement Officer (Consolidation) was the Inquiry Officer, however, in his place the S.D.M., Chauri Chaura, Gorakhpur was appointed as Inquiry Officer. There is no material on record to indicate that the petitioner was communicated the decision of the disciplinary authority to change the Enquiry

Officer. It is also not disputed in the counter-affidavit that time, date and place of enquiry was communicated. It has not been stated that date, place and time was communicated to the petitioner. It is also evident from the enquiry report that no witnesses have been examined by the department to prove the charges. From the aforesaid facts, it is evident that submission of Sri Saxena that there was complete violation of justice and enquiry was not fair, merit accepting of his submission. A perusal of the dismissal order also indicates that the disciplinary authority has not applied his mind at all. He has simply stated that he has' perused the record and he is satisfied that his charges are proved. Such types of conclusions are not permissible in the disciplinary proceeding without support of reason. It is true that while agreeing with the finding of the Inquiry Officer, the disciplinary authority is not required to give a elaborate reasons but at least the brief reason in support of the conclusions are necessary to indicate that the disciplinary authority has applied his mind. There is only one line of the conclusion of the disciplinary authority that he was produced the record and he is satisfied that the petitioner is guilty.

Court found that the second submission of Sri Saxena that no date, time and place was intimated to the petitioner and he' was not given the information regarding the change of the Inquiry Officer, is also established from the record. In absence of the proper information regarding the date, place and time of inquiry. No fresh enquiry can be said to be held. This Court in some of the cases, has held that if the employee is not informed with regard to date, place and time then on this ground the enquiry is vitiated. The Division Bench of this Court has followed the judgement of the Supreme Court in the case of Meenglas Tea Estate v. The Workmen, AIR 1963 SC 1719. The Division Bench of this Court in the case of Sub hash Chandra Sharma v. Managing Director and another reported in 2000 (1) UPLBEC 541 has set aside the termination order of employee on the ground of violation of natural justice as in that case also neither the date for inquiry was fixed- nor any inquiry was to be held in which the evidence was led by the department.

Having regard to the facts and evidence on the record, I arrive at irresistible conclusion that the disciplinary inquiry against the petitioner is vitiated for the grounds mentioned herein above. The order of the dismissal dated 14.6.1999 is set aside. **(Purushotam Yadav v. State of U.P.; 2013(3) SLR 728)**

Art. 16 – Appointment made on co-terminus basis – Nature of – Respondents who had taken co-terminus appointment with full understanding then it would not permissible for them to challenge their dis-engagement when the tenure of the Chairman was over

In this case, the principle contention of the appellants is that as seen

from the above narration of facts, tile engagement of the respondents was clearly on a co-terminus basis. There as no assurance to them that they will be continuing in service after the tenure of the Chairman of the Board was over. There are recruitment rules and a procedure by which the employees under the Board are to be engaged. It was submitted on behalf of the appellant that any departure therefrom would mean allowing a back door entry in Government Establishment/Quasi Government employment which would be violative of Articles 14 and 16 of the Constitution of India. As against this submission of the appellant, it was pointed out by the respondents that in their case there has been an approval by the Board and then by the Lt. Governor. That being so, there was no reason to interfere into the orders passed by the Division Bench as well as by the Single Judge in the two matters before us directing implementation.

The learned Single Judge who heard the Writ Petition No.3181 of 2008 and also the Division Bench which heard the writ appeal could not have ignored that the respondents were clearly told that their services were coterminus, and they will have no right to be employed thereafter. Condition No.4 and 6 of the earlier referred terms and condition are very clear in this behalf .The respondents had taken the co-terminus appointment with full understanding. It was not permissible for them to challenge their dis-engagement when the tenure of the Chairman was over. What a Constitution Bench of this Court has observed in paragraph 45 of Secretary, State of Karnataka and Ors. Vs. Umadevi (3) and Ors. reported in 2006 (4) SCC 1 : [2006(3) SLR I (SC)], is quite apt. The said para reads as follows:-

> "45. While directing that appointments, temporary or casual, be regularised or made permanent, the courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain "not at arm's length" since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible"

As stated by this Court in Umadevi (supra), absorption, regularization or permanent continuance of temporary, contractual, casual, daily-wage or adhoc

employees appointed/recruited and continued for long in public employment dehors the constitutional scheme of public employment is impermissible and violative of Article 14 and 16 of the Constitution of India. As recorded in paragraph 53 of the report in SCC, this Court has allowed as a onetime measure, regularization of services of irregularly appointed persons, provided they have worked for ten years or more in duly sanctioned posts. That is also not the case in the present matter**. (Chief Executive Officer v. K. Aroquia Radja; 2013 (3) SLR 274 (SC)**

Art. 16 – Regional Rural Banks (Appointment and Promotion of Officer and other employees) Rules, 1998, Rr. 2(d), 2(c) and 2(f) – Promotion – Circular issued by the Bank debarring such employees who have "D" rating or having been penalised for any misconduct during last 5 yrs. from being considered clearly contrary to statutory rules

There is no doubt that punishment and adverse service record are relevant to determine the minimum merit by the DPC. But to debar a candidate, to be considered for promotion, on the basis of punishment or unsatisfactory record would require the necessary provision in the statutory service Rules. There is no such provision under the 1998 Rules.

In B.V. Sivaiah case, the Court laid down the broad contours defining the term "bare minimum merit" in the following words:

> "Court thus arrive at the conclusion that the criterion of 'seniority-cum-merit' in the matter of promotion postulates that given the minimum necessary merit requisite for efficiency of administration, the senior, even though less meritorious, shall have priority and a comparative assessment of merit is not required to be made. For assessing the minimum necessary merit, the competent authority can lay down the minimum standard that is required and also prescribe the mode of assessment of merit of the employee who is eligible for consideration for promotion. Such assessment can be made by assigning marks on the basis of appraisal of performance on the basis of service record and interview and prescribing the minimum marks which would entitle a person to be promoted on the basis of seniority-cum-merit."

From the above, it becomes clear that the determination of the bare minimum criteria is the function of the DPC and cannot be taken-over by the management at the time of determining the eligibility of a candidate under Rule 2(e).)

Court also do not found any merit in the submission of Mr. Dhruv Mehta that the Circular No.17 of 2009 dated 30th November, 2009 and Circular date,

12th July, 2010 are to ensure that the individual members of the DPC do not recommend for promotion an individual officer despite having been punished in the preceding 5 years. Such curtailment of the power of the DPC would have to be located in the statutory service rules. The 1998 Rules do not contain any such provision. The submission needs merely to be stated, to be rejected. We also do not find any merit in the submission of Mr. Mehta that without the aforesaid guidelines, an officer, even though, he has been punished for gross misconduct would have to be permitted to be promoted as no minimum marks are prescribed for interview or performance appraisal. In our opinion, it is fallacious to presume that under the 1998 Rules, once an officer gets the minimum mark in the written examination, he would be entitled to be promoted on the basis of seniority alone. There is no warrant for such a presumption. The misconduct committed by eligible employee/officer would be a matter for DPC to take into consideration at the time of performance appraisal. The past conduct of an employee can always be taken into consideration in adjudging the suitability of the officer for performing the duties of the higher post.

There is another very good reason for not accepting the submissions made by Mr. Dhruv Mehta. Different rules/regulations of the banks provide specific punishments such as "withholding of promotion, reduction in rank, lowering in ranks/pay scales". However, there is another range of penalty such as censure, reprimand, withholding of increments etc. which are also prescribed under various staff regulations. To debar such an employee from being considered for promotion would tantamount to also inflicting on such employee, the punishment of withholding of promotion. In such circumstances, a punishment of censure/ reprimand would, in fact, read as censure/reprimand +5 years debarment from promotion. Thus the circulars issued by the bank debarring such employees from being considered would be clearly contrary to the statutory rules. **(Ayurved Shastra Seva Mandal v. Union of India; 2013 (3) SLR 428 (SC)**

Arts. 16 and 226 – Retrospective promotion – Arrears of pay and consequential benefits – Grants of

The facts, which are not in dispute are that the petitioner had filed CWP No. 2 48 of 2005 in this Court with a grievance that though the persons junior to him had been promoted as Junior Engineer/Sectional Officer but the case of the petitioner was not considered. The writ petition was disposed of on 18.03.2008 with a direction to the authorities to consider the case of the petitioner for promotion from the date, the persons junior to him were promoted. The authorities considered the case of the petitioner and vide order dated 06.08.2009 communicated vide endorsement dated 07.08.2009, promoted the petitioner as Junior Engineer (Electrical) w.e.f. 16.02.2001, the date on which his juniors were

promoted. Thereafter, the petitioner claimed arrears of his salary for the period from which he was promoted till the passing of the order on the plea that on account of wrong action of the authorities, the petitioner had to suffer. He was always ready and willing to work on the higher post but was not promoted and his juniors were granted that benefit. The claim was partially accepted vide order dated 11.03.2010 communicated vide endorsement dated 16.04.2010 thereby granting the arrears of salary to the petitioner from 18.09.2008. The cut off date applied had no relation with the case in hand. It is sought to be explained by stating that upto 17.09.2008 the order passed by this Court in favour of the petitioner for consideration of his case for promotion, was to be complied with. As there was some delay in compliance thereof, hence, the petitioner has been directed to be paid arrears of salary on the promoted post w.e.f. 18.09.2008, though in fact, he has been granted promotion w.e.f. 16.02.2001. The mere fact that after a direction issued by this Court, the petitioner was granted retrospective promotion from the date, his juniors were promoted, clearly establishes the fact that at the relevant time the petitioner was illegally denied promotion though his juniors were given that benefit. The petitioner cannot be said to be at fault. He was always ready to perform his duties of the promoted post but was deprived of by the authorities for the reasons which could not be sustained, when the petitioner had earlier approached this Court. The claim for arrears of pay for part of the period is sought to be denied by raising a plea of 'no work no pay". However, the same will not be applicable in the facts and circumstances of this case, considering the fact that the petitioner was denied promotion on account of fault of the respondents. The issue was considered by Hon'ble the Supreme Court in Union of India Vs. K.V. Janakiraman, AIR 1991 SC 2010 : [1991(5) SLR 60 (SC)], wherein it was observed as under:-

> "The normal rule of “no work no pay" is not applicable to cases such as the present one where the employee although he is will to work is kept away from work by the authorities for no fault of his. This is not a case where the employee remains away from work for his own reasons, although the work is offered to him. "

For the reasons mentioned above, Court found merit in the present petition. It is established that the petitioner was denied promotion on the date when his juniors were promoted though the petitioner was also having same qualification. After he was granted promotion with retrospective effect in terms of the directions issued by this Court for consideration of his case, he cannot be denied benefit of arrears of salary. The impugned order dated 11.3.2010 communicated vide endorsement dated 16.04.2010 (Annexure P-8) denying the arrears of salary to the petitioner from 16.02.2001 till 17.09.2008, is set aside.

The respondents are directed to pay all consequential benefits to which the petitioner is entitled to on account of his promotion from back date. **(Suresh Kumar v. State of Punjab; 2013 (2) SLR 731 (P&H)**

Art. 16 – Object of compassionate appointment – Delay in raising such a claim is contradictory to the object sought to be achieved

The very object of making provision for appointment on compassionate ground, is to provide successor to a family dependent on a government employee, who has unfortunately died in harness. On such death, the family suddenly finds itself in dire straits, on account of the absence of its sole bread winner. Delay in seeking such a claim, is an ante thesis, for the purpose for which compassionate appointment was conceived. Delay in raising such a claim, is contradictory to the object sought to be achieved. The instant controversy reveals that even though Vijay Bahadur Singh, the father of the applicant (Prabhat Singh) seeking appointment on compassionate ground had died on 2.3.1996, Prabhat Singh sought judicial redress, for the first time, by approaching the CAT Allahabad Bench in 2005. By such time, there was no surviving right for appointment on compassionate ground under the OM dated 5.5.2003. As already noticed above, appointment on compassionate ground under the OM dated 5.5.2003 is permissible within three years of the death of the bread winner in harness. By now, sixteen years have passed by, and as such, there can be no surviving claim for compassionate appointment. **(Chief Commissioner v. Prabhat Singh; 2013(3) SLR 710 (SC)**

Arts. 16 and 136 – Maharashtra Universities Act, 1994, Ss. 3, 5, 8, 14, 51 and 115 – Maharashtra Civil Services Rules – Rr. 52, 54 Leave encashment – Entitlement – Leave encashment paid by colleges cannot be reimbursed by State government; since Teachers of University or affiliated colleges are not Govt. servants

Court is in complete agreement with the view expressed by the coordinate Bench in Khandesh College Education Society, Jalgaon v. Arjun Hari Narkhede (2011) 7 SCC 172, that the provisions contained in the 1981 Rules are not applicable to the university teachers and the teachers of the affiliated colleges because they are not Government servants but this cannot lead to an inference that the affiliated colleges are entitled to reimbursement of the amount paid to the teachers in lieu of earned leave. Though the Statutes framed by the Pune University under the 1974 Act entitle the teachers of the affiliated colleges to get the benefit of leave encashment, there is no provision either in that Act or in the 1994 Act which obligates the State Government to extend the benefit of leave encashment to the university teachers or to the teachers of the affiliated colleges and the mere fact that the Statutes of the particular university provide for grant of

leave encashment to the teachers, does not entitle the concerned university or college to claim reimbursement from the State Government as of right. **(State of Mahasrashtra v. Nowrosjee Wadia College; 2013 (2) SLR 485 (SC)**

Art. 19 (1) (a) – Right to receive information is subjected to availability and possibility of giving information, that too without offending fundamental rights

A citizen has the right to expression and receive information under Article 19(1)(a) of the Constitution. That right is derived from freedom of speech and expression comprised in the Article. The freedom of speech and expression includes the right to receive information. [Refer : The State of U.P. vs. Raj Narain and others, (1975) 4 SCC 428; Secretary, Ministry of Information & Broadcasting, Govt. of India and others vs. Cricket Association of Bengal and others, (1995) 2 SCC 161; P.V. Narasimha Rao vs. State (CBI/SPE), (1998) 4 SCC 626)]. But such right can be limited by reasonable restrictions under the law made for the purpose mentioned in the Article 19(2) of the Constitution.

It is imperative for the State to ensure the availability of the right to the citizens to receive information. But such information can be given to the extent it is available and possible, without affecting the fundamental right of others. **(Indian Soaps & Toiletries Makers Assn. vs. Ozair Husain & Ors.; AIR 2013 SC 1834)**

Art. 20 – Protection against self-incrimination – Consideration of

The authors of the confessional statements (Sadiq Israr Shaikh, Arif Badruddin Shaikh and Ansar Ahmad Badshah) in Special Case no. 4 of 2009, are very much available and their presence can be procured by the accused-respondents to be presented as defence witnesses on their behalf. In the aforesaid view of the matter, it is not possible for us to accept, that the accused-respondents can place reliance on Section 32 of the Evidence Act, in order to lead evidence in respect of the confessional statements (made by Sadiq Israr Shaikh, Arif Badruddin Shaikh and Ansar Ahmad Badshah), by recording evidence to the statements of the witnesses at serial nos. 63 to 66.

The plea advanced at the hands of the learned counsel for the accused-respondents, as has been noticed in the foregoing paragraph, is clearly not available to the accused-respondents in view of the protection afforded to a witness who would find himself in such a peculiar situation under Section 132 of the Evidence Act. Section 132 of the Evidence Act is being extracted hereunder:-

> "132. Witness not excused from answering on ground that answer will criminate - A witness shall not be excused from answering any question

as to any matter relevant to the matter in issue in any suit or in any civil or criminal proceeding, upon the ground that the answer to such question will criminate, or may tend directly or indirectly to criminate, such witness, or that it will expose, or tend directly or indirectly to expose, such witness to a penalty or forfeiture of any kind: Proviso Provided that no such answer, which a witness shall be compelled to give, shall subject him to any arrest or prosecution, or be proved against him in any criminal proceeding, except a prosecution for giving false evidence by such answer."

Without stating anything further, the Court is satisfied to record, that Section 132 of the Evidence Act clearly negates the basis of the submission, adopted by the learned counsel for the accused-respondents, for being permitted to lead secondary evidence to substantiate the confessional statements made by Sadiq Israr Shaikh, Arif Badruddin Shaikh and Ansar Ahmad Badshah. Accordingly, we hereby reiterate the conclusion drawn by us hereinabove, namely, that the confessional statements made by the accused (Sadiq Israr Shaikh, Arif Badruddin Shaikh and Ansar Ahmad Badshah) in Special Case no. 4 of 2009 cannot be proved in evidence, through the statements of the witnesses at serial nos. 63 to 66. Needless to mention, that the authors of the confessional statements (Sadiq Israr Shaikh, Arif Badruddin Shaikh and Ansar Ahmad Badshah) may be produced as defence witnesses by the accused-respondents, for their statements would fall in the realm of relevance under Section 11 of the Evidence Act. And in case Sadiq Israr Shaikh, Arif Badruddin Shaikh and Ansar Ahmad Badshah appear as defence witnesses in Special Case no. 21 of 2006, the protection available to a witness under Section 132 extracted above, would also extend to them, if they are compelled to answer questions posed to them, while appearing as defence witnesses in Special Case no. 21 of 2006. **(State of Maharashtra v. Kamal Ahmed Mohammed Vakil Ansari and Ors.; 2013 CriLJ 2069)**

Arts. 20, 21, 24 and Cr.P.C., Sec. 154 – Second FIR - Recording of second FIR regarding offences committed in same transaction is impermissible

Under the scheme of the provisions of Sections 154, 155, 156, 157, 162, 169, 170 and 173 of the Code, only earliest or the first information in regard to the commission of a cognizable offence satisfies the requirements of Section 154 of the Code. Thus, there can be no second FIR and, consequently, there can be no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or the same occurrence or incident giving rise to one or more cognizable offences. Further, on receipt of information about a cognizable offence or an incident giving rise to a cognizable offence or offences and on

entering FIR in the Station House Diary, the officer-in-charge of the police station has to investigate not merely the cognizable offence reported in the FI.R but also other connected offences found to have been committed in the course of the same transaction or the same occurrence and file one or more reports as provided in S. 173 of Code, Sub-section (8) of Section 173 of the Code empowers the police to make further investigation, obtain further evidence (both oral and documentary) and forward a further report to the Magistrate. A case of fresh investigation based on the second or successive FIRs not being a counter case, filed in connection with the same or connected cognizable offence alleged to have been committed in the course of the same transaction and in respect of which pursuant to the first FIR either investigation is under-way or final report under S. 173(2) has been forwarded to the Magistrate, is liable to be interfered with by the High Court by exercise of power under Section 482 of the Code or under Articles 226/227 of the Constitution. First Information Report is a report which gives first information with regard to any offence. There cannot be second FIR in respect of the same offence/event because whenever any further information is received by the investigating agency, it is always in furtherance of the first FIR.

Thus where in case of false encounters by accused police officials the Court entrusted the investigation to CBI by relying on the stand taken by CBI that all encounters were part of the same conspiracy and that the third encounter killing is part of the same chain of events in which first two encounters were made, the subsequent lodging of fresh FIR as regards the third encounter was impermissible.

Upkar Singh (AIR 2004 se 4320) also carves out a second exception to the rule prohibiting lodging of second FIR for the same offence or different offences committed in the course of the transaction disclosed in the first FIR. The only exception to the law declared in T. T. Anthony (AIR 2001 SC 2637), which is carved out in Upkar Singh (supra) is to the effect that when the second FIR consists of alleged offences which are in the nature of the cross case/cross complaint or a counter complaint, such cross complaint would not be permitted as second FIR. In the case on hand, it is not the case of the CBI that the FIR in Tulsiram Prajapati's case is a cross FIR or a counter complaint to the FIR filed in Sohrabuddin and Kausarbi's case being FIR dated 0l.02.2010. **(Amitbhai Anilchandra Shah v. Central Bureau of Investigation; 2013 CrLJ 2313)**

Art. 20(3) – Taking voice sample of accused for investigation does not offend Art. 20(3)

If an accused person is directed to give his voice sample during the course

of investigation of an offence, there is no violation of his right under Article 20(3) of the Constitution. Voice sample is like finger print impression, signature or specimen handwriting of an accused. Like giving of a finger print impression or writing by the accused for the purposes of investigation, giving of a voice sample for the purpose of investigation cannot be included in the expression "to be a witness". By giving voice sample the accused does not convey information based upon his personal knowledge which can incriminate him. A voice sample by itself is fully innocuous. By comparing it with tape recorded conversation, the investigator may draw his conclusion but, voice sample by itself is not a testimony at al. When an accused is asked to give voice sample, he is not giving any testimony of the nature of a personal testimony. When compared with the recorded conversation with help of mechanical process, it may throw light on the points in controversy. It cannot be said, by any stretch of imagination that by giving voice sample, the accused conveyed any information based upon his personal knowledge and became a witness against himself. The accused by giving the voice sample merely gives 'identification data' to the investigating agency. He is not subjected to any testimonial compulsion. Thus, taking voice sample of an accused by the police during investigation is not hit by Article 20(3) of the Constitution. **(Ritesh Sinha v. State of U.P.; 2013 (2) ALJ 435)**

Art. 20(3) – Administration of oath to accused in his confessional statement is violative of mandatory provisions of Art. 20(3) of Constitution and S. 281 of Cr.P.C.

The learned Magistrate has committed gross illegality in administering oath to each accused before recording their confessional statement. Section 164(5) Cr.P.C. specifically provides that no oath shall be administered to an accused while recording his confession. Administration of oath to the accused in his confessional statement is violative of mandatory provisions of Article 20(3) of the Constitution and Section 281 Cr.P.C. Thus, the Magistrate cannot administer oath to the accused before recording his confessional statement and if he does so, the statement is illegal and should be excluded from consideration. **(Baldeo S/o Bhupat and Anr. v. State of U.P.; 2013 (3) ALJ 266)**

Art. 21 – Delayed Trial – It can become a ground to quash criminal proceedings but depends on impact of offence on society and an confidence of people on judicial system

It is to be kept in mind that on one hand, the right of the accused is to have a speedy trial and on the other, the quashment of the indictment or the acquittal or refusal for sending the matter for re-trial has to be weighed, regard being had to the impact of the crime on the society and the confidence of the

people in the judicial system. There cannot be a mechanical approach. No time limit can be stipulated for disposal of the criminal trial. The delay caused has to be weighted on the factual score, regard being had to the nature of the offence and the concept of social justice and the cry of collective. **(Niranjan Hemchandra Sashittal and Anr. v. State of Maharashtra; AIR 2013 SC 1682)**

Art. 21 - Right to speedy trial - Deprivation of - Good cause for failure to complete the trial within a reasonable time would not volatile of accused

Reasons for the delay is one of the factors which Courts would normally assess in determining as to whether a particular accused has been deprived of his or her right to speedy trial, including the party to whom the delay is attributable. Delay, which occasioned by action or inaction of the prosecution is one of the main factors which will be taken note by the Courts while interjecting a criminal trial. A de- liberate attempt to delay the trial, in order to hamper the accused, is weighed heavily against the prosecution. How- ever, unintentional and unavoidable delays or administrative factors over which prosecution has no control, such as, over-crowded Court dockets, absence of the presiding officers, strike by the lawyers, delay by the superior forum in notifying the designated Judge, (in the present case only), the matter pending before the other forums, eluding High Courts and Supreme Courts and adjournment of the criminal trial at the instance of the accused, may be a good cause for the failure to complete the trial within reasonable time. This is only illustrative and not exhaustive. Such delay or delays cannot be volatile of accuser's right to a speedy trial and needs to be excluded while deciding whether there is unreasonable and unexplained delay. The good cause exception to the speedy trial requirement focuses on only one factor i.e., the reason for the delay and the attending circum- stances bear on the inquiry only to the extent to the sufficiency of the reason itself. (**Ranjan Dwivedi V. C.B.I. through Director General; 2013 (81) ACC 402 (SC)**

Art. 21—Speedy trial is a facet of right to life under Art. 21

It is in the light of the settled legal position no longer possible to question the legitimacy of the right to speedy trial as a part of the right to life under Article 21 of the Constitution. The essence of Article 21 of the Constitution lies not only in ensuring that no citizen is deprived of his life or personal liberty except according to procedure established by law, but also that such procedure ensures both fairness and an expeditious conclusion of the trial. (**Babubhai Bhimabhai Bokhiria vs. State of Gujarat; 2013 Cri.L.J. 1547 (SC)**

Art. 21—Protection of Human Rights Act (10 of 1994) S. 12—Encounter death—Investigation to be done by independent agency

In this case, what disturbs the Court is the fact that the police have refused to follow the guidelines dated 2.12.2005 issued by the National Human Rights Commission. The two crucial guidelines which have been completely ignored by the police are that the investigation into the encounter death must be done by an independent investigation agency and that whenever a complaint is made against the police making out a case of culpable homicide, an FIR must be registered. In the instant case, the police have refused to even register the FIR on the complaint made by the appellant alleging that his son Sunil was killed by the police. Section 154 of the Code mandates that whenever a complaint discloses a cognizable offence, an FIR must be registered. This Court has, in a catena of judgments, laid down that the police must register an FIR if a cognizable offence is disclosed in the complaint. [See: State of Haryana vs. Bhajan Lal, 1992 (Supp) 1 SCC 335). Ignoring the mandate of Section 154 of the Code and the law laid down by this Court, the police have merely conducted inquiries which appear to be an eyewash. It is distressing to note that till date, no FIR has been registered on the complaint made by the appellant. **(Rohtash Kumar vs. State of Haryana; 2013 Cri.L.J. 1518 (SC)**

Art. 21—Police encounter—Magisterial inquiry—Validity

While inquiring whether the encounter is genuine or not, the inquiring authority must first focus its attention on the circumstances that led to the death of a person in an encounter. If it comes to a conclusion that it was the deceased who had attacked the police to prevent them from arresting him or to prevent them from performing their police duty and, therefore, the police had to retaliate, then the antecedents of the deceased could be taken into consideration as additional material at that stage to support the police version that it was a genuine encounter. But the inquiring authority cannot start the inquiry keeping in mind the antecedents of the deceased. **(Rohtash Kumar vs. State of Haryana; 2013 Cri.L.J. 1518 (SC)**

Art. 22 — Delay in issuance of detention order – Effect - Detention order is valid if explanation of delay given by detaining authorities is satisfactory and reasonable

The Court have carefully perused the affidavit of the detaining authority. The detaining authority has stated what steps were taken and how the proposal submitted by the sponsoring authority was processed till the detention order was passed. The sponsoring authority has also filed affidavit explaining steps taken by it till the proposal was submitted. The High Court has rightly held that the said explanation is satisfactory. In this connection, reliance placed by the High Court on the judgment of this Court in Rajendrakumar Natvarlal Shah v. State of

Gujarat 22 is apt. We deem it appropriate to quote the relevant paragraph.

> *"10. Viewed from this perspective, we wish to emphasise and make it clear for the guidance of the different High Courts that a distinction must be drawn between the delay in making of an order of detention under a law relating to preventive detention like the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 and the delay in complying with the procedural safeguards of Article 22(5) of the Constitution. It has been laid down by this Court in a series of decisions that the rule as to unexplained delay in taking action is not inflexible. Quite obviously, in cases of mere delay in making of an order of detention under a law like the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 enacted for the purpose of dealing effectively with persons engaged in smuggling and foreign exchange racketeering who, owing to their large resources and influence have been posing a serious threat to the economy and thereby to the security of the nation, the courts should not merely on account of delay in making of an order of detention assume that such delay, if not satisfactorily explained, must necessarily give rise to an inference that there was no sufficient material for the subjective satisfaction of the detaining authority or that such subjective satisfaction was not genuinely reached. Taking of such a view would not be warranted unless the court finds that the grounds are "stale" or illusory or that there is no real nexus between the grounds and the impugned order of detention. The decisions to the contrary by the Delhi High Court in Anil Kumar Bhasin v. Union of India & Ors., Crl. W.No.410/86 dated 2.2.1987, Bhupinder Singh v. Union of India & Ors., Crl. W. No.375/86 dated 11.12.1986, Surinder Pal Singh v. M.L. Wadhawan & Ors., Crl. W. No.444/86 dated 9.3.1987 and Ramesh Lal v. Delhi Administration, Crl. W. No.43/84 dated 16.4.1984 and other cases taking the same view do not lay down good law and are accordingly overruled."*

In light of the above observations of this Court in our opinion, the order of detention cannot be quashed on the ground that there is delay in issuance of the detention order. (**Abdul Nasar Adam Ismail Vs.The State of Maharashtra; (2013) 2 SCC (Cri) 438)**

Art. 22 - Preventive Detention – Basis of detention – Gravity of offence is irrelevant in preventive detention matter

The counsel submitted that the gravity of offence is irrelevant in preventive detention matters. Preventive detention is a serious inroad on the

liberty of a person. The procedural safeguards are the only protection available to him and, therefore, their strict compliance is necessary.

The learned counsel urged that the gravity of the offence is irrelevant in a preventive detention matter. The Court entirely agree with the submission. **(Abdul Nasar Adam Ismail vs. State of Maharashtra; (2013) 4 SCC 435)**

Art. 32 and 226 PIL – Service matter – PIL is not permissible so far service matters are concerned

The Supreme Court has consistently cautioned the courts against entertaining public interest litigation filed by unscrupulous persons, as such meddlers do not hesitate to abuse the process of court. Whenever any public interest is invoked, the Court must examine the case to ensure that there is in fact, genuine public interest involved. The Court must maintain strict vigilance to ensure that there is no abuse of the process of court and that, ordinarily meddlesome bystanders are not granted a visa. Many societal pollutants create new problems of non-redressed grievances, and the court should make an earnest endeavour to take up those cases, where the subjective purpose of the lis justifies the need for it. Even as regards the filing of public interest litigation, it has been consistently held that such a course of action is not permissible so far as service matters are concerned. **(Ayaaubkhan Noorkhan Pathan vs. State of Maharashtra; (2013) 4 SCC 465)**

Art. 32 and 226 - Writ petition – Writ petition before High Court withdrawn and filed in the Supreme Court – Validity of

The petitioner has instituted a number of proceedings (criminal and of the nature of contempt and writs) before the Punjab and Haryana High Court and in those cases he has also been getting orders in his favour. One such writ petition filed by the writ petitioner before the Punjab and Haryana High Court was CWP No.21234/2011. The petitioner seems to have felt that the other side was delaying the matter and the case was not proceeding efficaciously before the High Court. He, therefore, filed a petition (CM No.8619 of 012) for withdrawal of the writ petition. On July 18, 2012, the High Court allowed the application and permitted the petitioner to withdraw his writ petition before the High Court and to seek any other remedy available in law.

Having, thus, withdrawn his writ petition before the High Court, the petitioner has come to this Court in this petition under Article 32 of the Constitution.

Court takes exception to the manner in which this petition has been filed before the Court. The petitioner is completely wrong in his belief that the

proceeding before the High Court was not effective or that he would not have got full and complete protection from the High Court, if the High Court found the need to give him the protection. The petitioner must realise that the High Courts have wide powers and possess as much authority as this Court to protect and safeguard the constitutional rights of any person within their jurisdiction.

Court found the action of the petitioner in withdrawing the proceedings pending before the High Court simply to file this petition before this Court unacceptable and for this reason alone, Court refused to entertain this writ petition. **(Baba Tek Singh v. Union of India; 2013 (3) SLR 258 (SC)**

Art. 32 – Direction for CBI can be given by writ courts despite absence of state consent

This court had jurisdiction to direct the CBI to make an inquiry into the accumulation of wealth by Shri Mulalyam Singh Yadav and his family members in excess of their known source of income, based on the allegations made in the writ petition, cannot be questioned. By its judgment dated 1st March, 2007; this court merely directed an investigation into the allegations made in the writ petition and to submit a report to the Union Government. The submissions made on behalf of the review petitioners in this regard, must, therefore, be rejected, except in regard to the direction given to the CBI to submit a report of its inquiry to the Union Government. **(Akhilesh Yadav v. Vishwanath Chaturveri; 2013 (2) ALJ 729)**

Arts. 72, 161 - Power vested in President and Governor to grant pardon - Scope and ambit of

Power vested in the President under Article 72 and Governor under Article 161 of the Constitution is manifestation of prerogative of the State. It is neither a matter of grace nor a matter of privilege, but is an important constitutional responsibility to be discharged by highest executive keeping in view the considerations of larger public interest .and welfare of the people-While exercising power under Article 72, President is required to act on the aid and advice of the Council of Ministers- In tendering its advice to President, the Central Government is duty bound to objectively place the case of the convict with a clear indication about the nature and magnitude of the crime committed by him, its impact on the society and all incriminating and extenuating circumstances- The same is true about State Government, which is required to give advice to Governor to enable him to exercise power under Article 161 of Constitution- On receipt of advice of the Government, President or the Governor, as the case may be, has to take a final decision in the Matter- Although, he/she cannot overturn the final verdict of the Court, but in appropriate case, President

or the Governor, can after scanning the record of the case, form his/her independent opinion whether a case is made out for grant of pardon or reprieve- In any case, President or Governor, has to take cognizance of relevant facts and then decide whether a case is made out for exercise of power under Article 72 or 161 of the Constitution. **(Devender Pal Singh Bhullar v. State of N.C.T. of Delhi; 2013 (2) Supreme 642)**

Art. 72—Power of clemency—Fixed term imprisonment also subjected to order passed in exercise of clemency power of Governor/President

Life imprisonment cannot be equivalent to imprisonment for 14 years or 20 years or even 30 years, rather it always means the whole natural life. This Court has always clarified that the punishment of a fixed term of imprisonment so awarded would be subject to any order passed in exercise of clemency powers of the President of India or the Governor of the State, as the case may be. Pardons, reprieves and remissions under Article 72 or Article 161 of the Constitution of India are granted in exercise of prerogative power. As observed in State of Uttar Pradesh vs. Sanjay Kumar, (2012) 8 SCC 537 : (2012 AIR SCW 5157), there is no scope of judicial review of such orders except on very limited grounds such as the non-application of mind while passing the order, non-consideration of relevant material, or if the order suffers from arbitrariness. The power to grant pardons and to commute sentence is coupled with a duty to exercise the same fairly, reasonably and in terms of restrictions imposed in several provisions of the Code. **(Mohinder Singh vs. State of Punjab; 2013 Cri.L.J. 1559 (SC)**

Art. 136 – S.L.P. – Leave sought against judgment of acquittal by prosecutrix in rape case – Liable to be granted

This is an application for grant of permission to file Special Leave Petition under Article 136 of the Constitution of India for assailing the judgment and order dated 4.7.2012 passed in Government Appeal No. 3432 of 2011 by the Division Bench of the High Court of Judicature at Allahabad, whereby the Bench declined to entertain the appeal directed against the judgment of acquittal rendered by the learned Additional Sessions Judge, Kanpur Nagar in S.T. No. 944 of 2007 wherein the accused persons faced trial for the offences punishable under Sections 363, 366, 328, 323, 506, 368 and 376(2)(g) of the Indian Penal Code (for short "the IPC").

On a perusal of the material on record, there cannot be any dispute that the appellant was the complainant and the real aggrieved party. Being aggrieved by the decision of the High Court, she has sought permission to prefer the special leave petition. Regard being had to the essential constitution concept of

jurisdiction under Article 136 of the Constitution of India as has been stated in Arunachalam v. P.S.R. Sadhanantham; AIR 1079 SC 1284 and the pronouncement by the Constitution Bench in P.S.R. Sadhanantham v. Arunachalam; AIR 1980 SC 856 where the assail was to the decision in Arunachalam under Article 32, the Court allow the application and permit the applicant to prosecute the Special Leave Petition. **(Kumari Shaima Jafari v. Irphan alias Gulfam and Ors.; 2013 (3) ALJ 64 (SC)**

Art. 141 - Precedent – Doctrine of Prospective overruling is applied to avoid unnecessary hardship

Anant Gopal Sheorey v. State of Bombay AIR 1958 SC 915 where the legal position was stated in the following words:

"4. The question that arises for decision is whether to a pending prosecution the provisions of the amended Code have become applicable. There is no controversy on the general principles applicable to the case. No person has a vested right in any course of procedure. He has only the right of prosecution or defence in the manner prescribed for the time being by or for the Court in which the case is pending and if by an Act of Parliament the mode of procedure is altered he has no other right than to proceed according to the altered mode".

The upshot of the above discussion is that the view taken by the Full Bench holding the amended provision to be applicable to pending cases is not correct on principle. The decision rendered by the Full Bench would, therefore, stand overruled but only prospectively. We say so because the trial of the cases that were sent back from Sessions Court to the Court of Magistrate First Class under the orders of the Full Bench may also have been concluded or may be at an advanced stage. Any change of forum at this stage in such cases would cause unnecessary and avoidable hardship to the accused in those cases if they were to be committed to the Sessions for trial in the light of the amendment and the view expressed by Court. (**Ramesh Kumar Soni v. State of Madhaya Pradesh; 2013 Cr. LJ 1738)**

Art. 141 – Judgment of Higher court or Bench of larger strength cannot be said to be finding until and unless facts of case of alleged precedent can be applied to facts of case in which it is relied upon

In opinion of the Court, no judgment of the higher court or a Bench of larger strength can be said to be binding until and unless the facts of the case of the alleged precedent can be applied to the facts of the case in which it is relied upon. Needless to say that a decision is only an authority for what it actually decides. It is the ratio decidendi laid down in the said judgment which has the binding force. Even such ratio is to be appreciated and applied in the facts of

each case. **(Pooja Malhotra and Ors. vs. Pankaj Malhotra and Anr.; 2013(3) ALJ 515)**

Art. 141 – Precedent – Binding nature – Mere filing S.L.P. would not deprive judgment of High Court from status of binding nature

It is well settled that mere filing S.L.P. would not deprive a judgment of this Court from the status of a binding precedent and therefore so long as judgment dated 13.8.2012 in Shahwaiz Warsi & ors. is not reversed, this Court has no reason not to follow law laid down therein. **(M/s Kanhaiya Mal Kasturi Lal v. Hari Prasad; 2013 (2) ALJ 542)**

Art. 226 - Writ Jurisdiction - Cannot be invoked to create right - It is invoked to enforce pre-existing right

The primary purpose of the writ is to protect and establish rights, and to impose a corresponding imperative duty existing in law. It is designed to promote justice (ex debito justiceiae) and its grant or refusal is at the discretion of the court. The writ cannot be granted unless it is established that there is an existing legal right of the applicant, or an existing duty of the respondent. Thus, the writ does not lie to crate or establish a legal right but, to enforce one that stood already established. While dealing with a writ petition, the court must exercise discretion, taking into consideration a wide variety of circumstances, inter-alia, the facts of the case, the exigency that warrants such exercise of discretion, the consequences of grant or refusal of the writ, and the nature and extent of injury that is likely to ensue by such grant or refusal.

Hence, discretion must be exercised by the court on grounds of public policy, public interest and public good. The writ is equitable in nature and thus, its issuance is governed by equitable principles. Refusal of relief must be for reasons which would lead to injustice. The prime consideration for issuance of the writ is, whether or not substantial justice will be promoted. Furthermore, while granting such a writ, the court must make every effort to ensure from the averments of the writ petition, whether proper pleadings are being made. Further in order to maintain the writ of mandamus, the first and foremost requirement is that, the petition must not be frivolous and it is filed in good faith. Additionally, the applicant must make a demand which is clear, plain and unambiguous. It must be made to an office having the requisite authority to perform the act demanded. Furthermore, the authority against whom mandamus is issued, should have rejected the demand earlier. Therefore, a demand and its subsequent refusal, either by words, or by conduct are necessary to satisfy the court that the opposite party is determined to ignore the demand of the applicant with respect to the enforcement of his legal right. However, a demand may not be necessary when

the same is manifest from the facts of the case, that is, when it is an empty formality, or when it is obvious that the opposite party would not consider the demand. **(The Rajasthan State Industrial Development and Investment Corporation v. Subhash Sindhi Cooperative Housing Society Jaipur & Ors.; 2013 (2) Supreme 345)**

Art. 226 – Separation of powers - Whether court has power to issue direction to Legislature to pass Law in particular manner Held; "No" It is not within the domain of the court

In A.K. Roy v. Union of India and others; (1982) 1 SCC 271, the Court considered the question whether the Court should issue a mandamus calling upon the Central Government to discharge its duty without any further delay and held:

> "The Parliament having left to the unfettered judgment of the Central Government the question as regards the time for bringing the provisions of the 44th Amendment into force, it is not for the court to compel the government to do that which, according to the mandate of the Parliament, lies in its discretion to do when it considers it opportune to do it. The executive is responsible to the Parliament and if the Parliament considers that the executive has betrayed its trust by not bringing any provision of the Amendment into force, it can censure the executive,….."

The aforesaid decision was noticed and reiterated by the Court in Supreme Court Employees' Welfare Association v. Union of India and another, (1989) 4 SCC 187, and held:

> "51. There can be no doubt that no court can direct a legislature to enact a particular law. Similarly, when an executive authority exercises a legislative power by way of subordinate legislation pursuant to the delegated authority of a legislature, such executive authority cannot be asked to enact a law which he has been empowered to do under the delegated legislative authority."

In Bal Ram Bali and another vs. Union of India, (2007) 6 SCC 805, this Court discussed the separation of powers while dealing with the question of total ban on slaughter of cows, horses, buffaloes and chameleon. This Court held that it is a matter of policy on which decision can be taken by the appropriate Government and the Court cannot issue any direction to Parliament or to the State Legislature to enact a particular kind of law. **(Indian Soaps & Toiletries Makers Assn. vs. Ozair Husain & Ors.; AIR 2013 SC 1834)**

Art. 226 – Reinstatement – Back wages – "No work no pay" – Applicability of –

Principle “no work no pay” is to be applied as punitive measure in those cases where the employee concerned had willingly not performed his duties or had absented himself from work without proper cause

Petitioner is a bus conductor in UPSRTC. On 18.10.1996 bus conducted by him was checked on AlIahabad-Agra Route at Lallupura Railway crossing by the inspectors of the corporation and a report was made against him that 17 passengers were found without ticket in the bus. The checking partly took Rs. 841.50 in cash from the petitioner and made a collective penalty ticket of ten times the amount of the fare and a remark to this effect was also made in the way bill.

Version of the petitioner was that when the bus was standing at the Lallupura Railway crossing, 17 persons came inside the bus who were not inclined to pay the fare. During the process when the petitioner was trying to disembark them, the inspectors reached at the spot and without verifying the position from the petitioner or making an inquiry into the matter from those persons wrote a remark that 17 persons were found without ticket. Thereafter, the petitioner was suspended and charge-sheet was served on him.

The petitioner replied to the charge-sheet denying the charges. He sought an opportunity for cross-examination of the witnesses and for giving oral evidence in support of his case. Ultimately, by order dated 23.5.1998 services of the petitioner were terminated, against which he preferred a departmental appeal which was also dismissed. Challenging these orders, he preferred Claim Petition No. 1592 of 2000, Kailash Kumar Mishra v. State of U.P. and others, before the Tribunal.

The petitioner is aggrieved by part of the order, by which the Tribunal has directed that petitioner would not be paid any pay and allowances from the date of his termination to the date of his reinstatement on the principle of "no work no pay's in view of the fact that he had not done any work during that period though holding him to be entitled for consequential benefits from the date of reinstatement only.

Taking into consideration the facts and circumstances of the case, in our considered view, the principle of "no work and no pay" appears to have wrongly been applied in the instant case. Once the enquiry was found to be vitiated; the charges not be proved; opportunity of cross-examination of the witnesses not afforded to him; and the punishing authority not giving any reason for disagreeing with the findings of the inquiry officer nor any reason having been given by the punishing authority for his own findings, the petitioner alone cannot be made to suffer, Further, the principle" No work no pay" is to be applied as a

punitive measure in those cases where the employee concerned had willingly not performed his duties or had absented himself from work without proper cause. Such is not the position in the present case. Here, the petitioner could not discharge his duties because of the enquiry proceedings and the punishment order which have ultimately been found to be vitiated on the aforesaid grounds. Since faults have been found on the part of the department also, in our view, the ends of justice would meet if 50 % of the salary and allowances is awarded to the petitioner from the date of his termination till his reinstatement. **(Kailash Kumar Mishra v. State Public Services Tribunal; 2013(3) SLR 778)**

Art. 226 - Judicial review - Parameters - Court does not act as appellate Court - Only reviews manner in which decision is reached

Power of judicial review is not akin to adjudication on merit by re-appreciating the evidence as an Appellate Authority. An order can *be* set aside if it is based on extraneous grounds, or when there are no grounds at all for passing it or when the grounds are such that, no one can reasonably arrive at the opinion. The Court does not sit as a Court of Appeal but, it merely reviews the manner in which the decision was made. The Court will not normally exercise its power of judicial review unless it is found that formation of belief by the statutory authority suffers from mala fides, dishonest/corrupt practice. In other words, the authority must act in good faith. Neither the question as to whether there was sufficient evidence before the authority can be raised/examined, nor the question of re-appreciating the evidence to examine the correctness of the order under challenge. If there are sufficient grounds for passing an order, then even if one of them is found to be correct, and on its basis the order impugned can be passed, there is no occasion for that Court to interfere. The jurisdiction is circumscribed and confined to correct errors of law or procedural error, if any, resulting in manifest miscarriage of justice or violation of principles of natural justice. This apart, even when some defect is found in the decision-making process, the Court must exercise its discretionary power with great caution keeping in mind the larger public interest and only when it comes to the conclusion that overwhelming public interest requires interference, the Court should intervene **(Nirmala J. Jhala v. State of Gujarat and another; AIR 2013 SC 1513)**

Art. 226 – Maintainability of whether writ petition regarding election of office bearers of society is maintainable – Held, "No" Because alternate statutory remedy of approaching competent authorities available U/s. 25 of Societies Registration Act is available

Keeping in view the provisions contained under Section 25 of the Societies Registration Act, petitioners have got statutory remedy under sub-

section (1) of Section 25 of the Act to ventilate their grievance. Accordingly, on account of availability of alternative statutory remedy to approach the competent authority under sub-section (1) of Section 25 of the Act, it cannot be said that the petitioners are the remediless.

From the examination of various pronouncements of Hon'ble Apex Court as well as of this Court, it is now settled position of law that once the election process is started which includes the preparation of electoral roll, then ordinarily High Court should not invoke extraordinary jurisdiction of Article 226 of the Constitution of India and the aggrieved party shall have a right to challenge the outcome of the election in pursuance to the provisions contained in the Societies Registration Act or any other law time being enforced. The outcome of the election may also not be impugned under extraordinary jurisdiction of Article 226 of the Constitution of India in case the remedy to file an election petition or any other remedy under the Act or statute is available to an aggrieved person. **(Committee of Management of Shesh Nath Junior High School and Anr. vs. State of U.P. and Ors.; 2013(3) ALJ 539)**

Arts. 226 and 142 – Exercise of power for grant of relief not prayed for is impermissible

Appearing for the appellants, Mr. P.P. Rao, learned Senior Counsel, argued that the High Court had committed an error in quashing the entire selection process even when the petitioners had not made any prayer to that effect. Mr. Rao was at pains to argue that a relief which was not even prayed for by the writ petitioners could not be granted by the Court whatever may have been the compulsion of equity, justice and good conscience.

There is, in our view, no merit in that contention of Mr. Rao. The reasons are not far to seek. It is true that the writ petitioners had not impleaded the selected candidates are party-respondents to the case. But it is wholly incorrect to say that the relief prayed for by the petitioners could not be granted to them simply because there was no prayer for the same.

If the model answer key which was used for evaluating the answer sheets was itself defective the result prepared on the basis of the same could be no different. The Division Bench of the High Court was, therefore, perfectly justified in holding that the result of the examination insofar as the same pertained to 'A' series question paper was vitiated. This was bound to affect the result of the entire examination qua every candidate whether or not he was a party to the proceedings. It also goes without saying that if the result was vitiated by the application of a wrong key, any appointment made on the basis thereof would also be rendered unsustainable. The High Court was, in that view, entitled

to mould the relief prayed for in the writ petition and issue directions considered necessary not only to maintain the purity of the selection process but also to ensure that no candidate earned an undeserved advantage over others by application of an erroneous key. (**Rajesh Kumar vs. State of Bihar with Abhishek Kumar vs. State of Bihar; (2013) 4 SCC 690)**

Arts. 226 and 311 – Enquiry – Punishment – though initially charge-sheet was issued for imposition of major penalty, however, finally after supplying copy of the enquiry report to the delinquents officer and affording them opportunity of hearing, minor punishment imposed – Validity of

Counsel for the petitioner, while placing reliance upon a judgment of Full Bench of this court in Dr. K. G. Tiwari v. State of Haryana, 2002(2) SCT 915 : [2002(4) SLR 329 (Pb. & Hry.)], submitted that once a charge-sheet has been issued to an employee for imposition of a major penalty, after enquiry minor punishment can be inflicted. In the present case, though initially the charge-sheet was issued for imposition of major penalty, however, finally after supplying copy of the enquiry report to the delinquent officers and affording them opportunity of hearing, minor punishment was imposed. The order passed by the revisional authority setting aside the same holding it to be without jurisdiction is erroneous, hence, liable to be set aside.

Vide impugned order passed by Secretary, Cooperation (Appeals), Punjab, the order inflicting minor punishment on respondents No. 2 to 4 was set aside merely holding that once charge sheet had been issued under Rule 6(B) of the Punjab State Cooperative Supply & Marketing Federation Employees (Punishment & Appeal) Rules, 1990, before inflicting minor
punishment as envisaged under Rule 6(A) of the said Rules, notice was required to be issued under that Rule.

In the case in hand, after conclusion of the enquiry and considering the report, though while disagreeing with the findings recorded by the enquiry officer, the disciplinary authority instead of imposing major punishment had merely imposed minor punishment on the charge-sheet employees thereby withholding one increment without cumulative effect and directing recovery of the pecuniary loss suffered, the same cannot be said to be in violation of the provisions of law. **(Punjab State Coop. Supply & Marketing Federation Ltd. v. Secretary, Cooperation (Appeals); 2013 (2) SLR 758 (P&B)**

Art. 234 – Stricture and disparaging remarks against members of subordinate judiciary not to be made unless they are really necessary for judgment or order

The higher Courts every day come across orders of the lower Courts which are not justified either in law or in fact and modify them or set them aside. Our legal system acknowledges the fallibility of the Judges, hence it provides appeals and revisions. Inasmuch as the lower judicial officers mostly work under a charged atmosphere and are constantly under psychological pressure and they do not have the facilities which are available in higher Courts, remarks/observations and strictures are to be avoided particularly if the officer has no occasion to put-forth his reasoning's. Further, if the passage complained of is wholly irrelevant and unjustifiable and its retention on the records will cause serious harm to the persons to whom if refers and its expunction will not affect the reasons for the judgment or order, request for expunging those remarks are to be allowed. Harsh or disparaging remarks are not to be made against judicial officers and authorities whose conduct comes into consideration before Court of law unless it is really for the decision of the case as an integral part thereof. **(Awani Kumar Upadhyay v. Hon'ble High Court of Judicature at Allahabad and Ors.; 2013 (3) ALJ 53 (SC)**

Art. 300-A – Railway Service pension Rules, R. 31 – Revision – casual labour – counting of the period of service of casual labour for pensionary benefits - Consideration of

A prima facie reading of the Rule would evidence that it provides for the manner in which service would be reckoned for purposes of pensionary benefits and highlights that half the service paid from contingencies shall be taken into account for calculating pensionary benefits on absorption in regular employment.

The Rule in question does not refer to a temporary status employment, and this was noted by the Andhra Pradesh High Court. The Andhra Pradesh High Court then proceeded to consider as to what happens when a railway employee acquires a temporary status and then proceeded to consider whether acquiring said status i.e. temporary status would amount to absorption in service as a regular employee.

Though the Andhra Pradesh High Court has not juxtaposed regular employment vis-a-vis permanent employment, but in our opinion the same is implicit in the reasoning of the High Court when we noticed that the High Court thereafter proceeded to consider a Master Circular No.54 of 1994, para 20 thereof reads as under:-

> "20. Counting of the period of service of casual labour for pensionary benefits:- Half of the period of service of a casual labour (either than casual labour employed on Projects) after attainment of temporary status on completion of 120 days continuous service if it is followed by

absorption in service as regular railway employee, counts for pensionary benefits With effect from 1.1. 1981, the benefit has also been extended to Project Casual Labour".

The Andhra Pradesh High Court thereafter proceeded to note para 2005 of Indian Railway Establishment Manual, Volume-Il which reads as under:-

> "Casual labour including Project Casual labour shall be eligible to count only half the period of service rendered by them after attaining temporary status on completion of prescribed days of continuous employment and before regular absorption as qualifying service for the purpose of pensionary benefits. This benefit will be admissible only after their absorption in regular employment. Such casual labour, who have attained temporary status, will also be entitled to carry forward the leave at their credit to new post on absorption in regular service. Daily rated casual labour will not be entitled to these benefits."

and then proceeded to hold that para 20 of the Master Circular No.54 and Para 2005 of the Railway Establishment Manual Volume-II bring out, to give clarity, that with respect to casual labour other than casual labour employed on projects, on attaining temporary status, if followed by absorption as a regular railway employee, half service as casual labour has to be reckoned while calculating length of service meaning thereby the entire service rendered while
on temporary status.

Court agree with the reasoning of the High Court, against which decision Leave to Appeal was dismissed by the Supreme Court and second time when a Division Bench of this Court simply followed the law declared by the Andhra Pradesh High Court, once again Leave to Appeal was refused by the Supreme Court.

The two office orders intended to be relied upon cannot be in derogatory of the Rule and the Statutory Railway Manual. It is trite that an office order cannot cut down a grant under a Rule-or a Statutory Railway Manual. It is trite that beneficial legislation has to be construed, insofar the language permits, in favour of the grantee. A pension is not a bounty. It is earned by dint of hard-work and a Statutory Rule or a Statutory Manual pertaining to pension and particular when it concerns the lowly paid employees, and in the instant case casual workers who attained a temporary status followed by permanent absorption have to be construed liberally. **(Union of India v. Sita Ram; 2013 (3) SLR 297 (Del.)**

Art. 300-A – Retiral benefits – Recovery of excess payment – Recovery of said excess amount after retirement of employee without giving him

opportunity of hearing not permissible

The indisputable facts, in brief, are that the petitioner working as Assistant Engineer, retired from his service on attaining the age of superannuation on 31.03.2008. Thereafter, without assigning any reason and without affording an opportunity of hearing, the impugned order 29.05.2008 (Annexure-P/2) was passed holding that excess payment has been made to the petitioner during the service period and the said amount has to be deducted from the retiral dues of the petitioner.

According to the petitioner, the alleged excess payment has been made to the petitioner while the petitioner was in service, however, the impugned recovery order has been passed only after retirement of the petitioner. Thus, the impugned order is bad in law and the same is not at all sustainable in the eyes of law. Thus, this petition.

In Syed Abdul Qadir & others v. State of Bihar & others, (2009) 3 SCC 475 : [2008(7) SLR 642 (SC)] the Supreme Court observed that excess payment of emoluments/allowances cannot be recovered if the excess amount was not paid on account of any mis-representation or fraud on the part of the employee and if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowances or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous.

It is not the case of the respondents that the excess payment has been made to the petitioner on account of any mis-representation or fraud on the part of the petitioner. The excess payment might have been made by wrong calculation or wrong interpretation of the provisions of law, if any.

The Supreme Court as well as this Court in a catena of decisions, time and again reiterates that no recovery of excess payment for no fault of the employee can be made without following the principles of natural justice. **(Chhote Lal Rathore v. State of Chhattisgarh; 2013(3) SLR 716 (Chhatt.)**

Art. 311 – Punishment of dismissal from service only for absence on one particular day and wrong signing of attendance register – Validity of

Petitioners, who were 5 in number, are stated to be employed as class-IV employee in Maheshwar Inter College, Aligarh, which is a recognised and aided intermediate college. The petitioners are stated to have participated in an illegal strike called by the Madhyamik Shikshak Sangh on 22.8.1988. For the said reason, the petitioners did not attend the college on the said date. For this act the petitioners were served with a charge-sheet on 3l.8 .1988, Annexure-6 to the writ petition. The charge-sheet contains two charges, first that the petitioners were

absent without prior information on 22.8.1988 which amounts to indiscipline and dereliction of duty and second that the petitioners despite being absent, wrongly made their signatures on attendance register. The petitioners submitted their reply pointing out that they had proceeded on strike for non-payment of salary since July 1988 and because of some confusion they had signed the attendance register on the date of strike. The principal of the institution did not accept the explanation submitted by the petitioners and proceeded to pass an order of dismissal from services on 21.9.1988. Not being satisfied, petitioners filed an appeal before the Committee of the Management of the institution on 04 .1l.1988 which was dismissed. Against the appellate order, petitioners approached the District Inspector of Schools, Aligarh as per the regulations applicable. The District Inspector of Schools has also rejected their petition vide order dated 30.5.1989. It is against these orders that the present writ petition has been filed.

Thus writ petition has been pending before this Court since 1989. The petitioners had been granted an interim order on 09.06.1989 and they are continuously working since then. As on date, the petitioners have completed 26 years of service in terms of the interim order passed by this Court. According to the petitioners there has been no complaint with regards to their work and performance. It is the case of the petitioners that the punishment imposed is not justified as the charges were not proved. In the alternative if their case that on the alleged charges, the punishment inflicted upon the petitioners is too harsh. According to the petitioners the punishment is shockingly disproportionate to the charges found proved. Absence on one day or wrong signing of the attendance register did merit dismissal from service.

In the facts of this case, the Court found that there is substance in the contention of the petitioners. The punishment of dismissal from service only for absence on one particular day and wrong signing of the attendance register by class-IV employees appear to be shockingly disproportionate to the charge in the facts of the case. **(Sukhvir Singh v. DIOS, Aligarh; 2013 (3) SLR 328 (All)**

Art. 311 – Compulsory retirement – When can be quashed

Material facts necessary for adjudication of this appeal are that a memorandum under Rule-14 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965 was issued o the respondent on 14.08.1986. The Inquiry Officer was appointed. He submitted the report to the disciplinary authority on 22.03.1995. Thereafter, a show-cause notice was issued to the respondent on 27.11.1995 why the penalty of compulsory retirement be not imposed upon him. He filed reply to the same on 31.01.1996. The disciplinary authority passed the office order dated 12.09.1996, whereby the penalty of

compulsory retirement from service was imposed upon the petitioner. He assailed this order before the learned erstwhile Himachal Pradesh Administrative Tribunal by filing O.A. No. 1557/96. The matter was transferred to this Court and it was assigned WP (T) No. 3818/2008. Learned Single Judge allowed the petition on 17.04.2009.

In the instant case, the Inquiry Officer has not given any findings on four bills as per Charge No. II. He has only returned findings with regard to bills No. 1416 and 1333, dated 31.3.1979. In view of this, it cannot be held that Charge No. II stood proved against the petitioner and thereafter the consequential issuance of show-cause notice, dated 27.11.1995 and order dated 12.9.1996 are null and void.

The scope of judicial interference in the departmental proceedings is very limited, however, if the inquiry report is perverse, the Court can interfere. Hence, the judgment of learned Single Judge being well reasoned warrants no interference. **(Himachal Road Trans. Corpn. v. Prithvi Chand; 2013(3) SLR 774)**

Art. 311 – Police Act, Sec. 7 – U.P. Govt. Servant Conduct Rules, R. 5 – Punishment – Award of censure entry for canvassing and seeking vote for his wife in election – Validity of

The petitioner was working on the post of constable at police station G.R.P, Moradabad, he proceeded on 30 days sanctioned medical leave. A complaint dated 10.7.2000 was made by one Shakhawat Hussain resident of village Dadiyal Ahtmali District Rampur to the Senior Superintendent of Police (Railways) GRP, Moradabad stating therein that in the election of Gram Pradhan in which the wife of the petitioner was also a candidate, he actively participated in the canvassing and threatened the voters by his licensed gun. On the complaint an enquiry was conducted wherein the allegations levelled against petitioner regarding threat by use of gun were found to be baseless. However, the petitioner was found guilty of canvassing and seeking vote for his wife in elections which was unbecoming of a Government Servant under the Government Servants Conduct Rules.

After hearing the learned counsels for the parties and on perusal of record it is apparent that enquiry was got conducted on the complaint made against the petitioner and the allegation that he was canvassing for his wife and praying for votes for his wife was proved.

On the basis of these findings the 'petitioner was served a show-cause notice under Rule 14(2) of the Police Officers of Subordinate Ranks (Appeal & Punishment) Rules, 1991 to which he submitted reply which proves that the

petitioner participated in the enquiry and by issuing a show-cause notice to him he was provided opportunity to clarify his position about the incidence.

The petitioner has failed to support his defence or to prove himself as innocent. By doing canvassing to muster votes in favour of his wife who was contesting the election on the post of Gram Pradhan of the village and acting as her registered agent as well as has been found guilty for violating the provisions of Government Servant Conduct Rules. He was provided adequate opportunities for defending himself, therefore, there has been no violation of the principles of natural justice or fair play. The punishing authority does not appear to have committed any legal or procedural error in passing the punishing order, hence the same is just and legal. **(Mohammad Aiyyub v. State of U.P.; 2013(3) SLR 736 (SC)**

Art. 311 – Dismissal from service – Whether once a matter of dismissal was decided by civil Court is liable to reopen by means of reference before the Industrial Tribunal – Held, "No"

In this case, the suit was filed by the contesting respondent and the Bank had taken up a plea that the Civil Court had no jurisdiction. This issue was decided against the Bank. The first appellate Court and this Court in second appeal have not overruled that part of the decision but they had decided the case on merits treating the Civil Court to have jurisdiction over the subject-matter.

The judgment of Civil Court can neither be challenged in the collateral proceedings nor can be challenged by the contesting respondent, who had himself filed the suit. There was no inherent lack of jurisdiction in the Civil Court. The contesting respondent cannot turn' back and say that the suit was not maintainable he is estopped.

In Court's opinion, the question regarding validity of the dismissal has already been decided in the civil suit and thereafter conceded in writ petition No. 20326 of 1998. There was no justification to refer it again for adjudication before Industrial Tribunal. It is not only waste of time but also amounts to abuse of the process of Court. **(Central Bank of India v. Union of India; 2013(2) SLR 530 (All)**

Art. 311 - Disciplinary proceedings - Standard of proof - Doctrine of proof beyond reasonable doubt - Does not apply

The disciplinary proceedings are not a criminal trial, and in spite of the fact that same are quasi-judicial and quasi-criminal, doctrine of proof beyond reasonable doubt, does not apply in such cases, but the principle of preponderance of probabilities would apply. The court has to see whether there

is evidence on record to reach the conclusion that the delinquent had committed a misconduct. However, the said conclusion should be reached on the basis of test of what a prudent person would have done **(Nirmala J. Jhala v. State of Gujarat and another; AIR 2013 SC 1513)**

Arts. 311, 14 - Disciplinary proceedings - Preliminary inquiry - Evidence recorded therein - Cannot be used in regular Departmental inquiry - As no opportunity of cross-examination is available to delinquent

The purpose behind holding preliminary enquiry is only to take a prima facie view, as to whether there can be some substance in the allegation made against an employee which may warrant a regular enquiry. The evidence recorded in preliminary inquiry cannot be used in regular departmental inquiry as the delinquent is not associated with it, and opportunity to cross-examine the persons examined in such inquiry is not given. Using such evidence would be violative of the principles of natural justice. **(Nirmala J. Jhala v. State of Gujarat and another; AIR 2013 SC 1513)**

Consumer Protection Act

Ss. 2(d), 17, 19 & 21 – Manufacturing defect – *Res ipse locquitur* – Applicability of

So far as the aspect relating to defects in the vehicle, including the manufacturing defects, is concerned, we note that admittedly during the period of warranty the vehicle had to be taken to the workshop on 36 occasions from 27.05.1999 to 26.11.2000 and it remained in the workshop for 69 days till the date of filing of the complaint. Almost every part of the vehicle had some problem or the other. The most serious complaint pertained to be engine. Appellants have stated that even though there was no manufacturing defect in the engine, it was changed as a gesture of goodwill after the warranty period. We are unable to accept this contention. No car manufacturer would change an engine if it could be rectified through repairs and the very fact that the Appellants replaced the entire engine indicates that whatever defects it had were inherent in its manufacturing which could not be removed. This is clearly a case of res ipsa loquitur where evidence in the form of opinion of technical expert is not required to prove the case. **(Tata Engineering & Locomotive Co. Ltd. and Anr. v. Subhash Ahuja; 2013(2) CPR 595 (NC)**

S. 9 – Authorities under Act – District consumer forums and Commissions are also covered within scope of "courts" subordinate to High Court so far as its general power of superintendence over them as provided under Art.

227 of constitution is concerned

Except for the Court of Tribunal constituted by or under any law relating to the Armed Forces all Courts or Tribunals lying within the jurisdiction of a High Court will be covered by the general power of superintendence 'of that High Court.

R. 4-B of Allahabad High Court Rules of 1952 by which an Administrative Judge has been empowered to make a review of judicial work or to make inspection of District Forum lying within the Sessions Division assigned to him has been framed by its framers keeping in mind the High Court's general power of superintendence over all the Courts and tribunals given to it under Art. 227 of the Constitution of India. The aforesaid rule also thus lends support to the view that the Court of District Consumer Forum and Commissions lying within territorial jurisdiction of a High Court are subordinate to the High Court so far as its general power of superintendence over them as provided under Art. 227 of the Constitution of India are concerned.

A High Court has the power of superintendence also over the District Consumer Forum and Commissions lying within its territorial jurisdiction and that being so such District Consumer Forums and Commissions established under the Consumer Protection Act are also covered within ambit and scope of "Court" subordinate to the High Court" in the context of S. 10 of the Contempt of Courts Act, 1971. **(In Re: Anil Kumar Jindal; 2013 (2) ALJ 766)**

S. 14(1)(f) – Complainant is entitled to compensation on the ground of unfair trade practice by Doctor

This is case against unfair trade practice by Ayurvedic doctor prescribing allopathic medicine. National Commission granted compensation of 10 lakhs but directed half the amount to be deposited with Consumer Legal Aid Account of the Commission.

The National Commission has already held that respondent No.1 was guilty of unfair trade practice and adopted unfair method and deceptive practice by making false statement orally as well as in writing. In view of the aforesaid finding, we hold that both Prashant and the appellant suffered physical and mental injury due to the misleading advertisement, unfair trade practice and negligence of the respondents. The appellant and Prashant thus are entitled for an enhanced compensation for the injury suffered by them. Further, we find no reason given by the National Commission for deducting 50% of the compensation amount and to deposit the same with the Consumer Legal Aid Account of the Commission.

The Court accordingly, set aside that part of the order passed by the National Commission and enhance the amount of compensation at Rs.15 lakhs for payment in favour of the appellant with a direction to the respondents to pay the amount to the appellant within three months. **(Bhanwar Kanwar v. R.K. Gupta & Anr.; 2013 (2) CPR 611 (SC)**

Ss. 15, 17, 19, 21 – Condonation of delay of 50 days in filing of revision petition by State – Effect of – Condonation of delay is an exception and should not be used as an anticipated benefit for govt. departments

It is well settled that 'sufficient cause' for condoning the delay in each case is a question of fact.

The apex court in the case of ***In Anshul Aggarwal v. New Okhla Industrial Development Authority, IV (2011) CPJ 63 (SC),*** *it has been held that:*

> *"It is also apposite to observe that while deciding an application filed in such cases for condonation of delay, the Court has to keep in mind that the special period of limitation has been prescribed under the Consumer Protection Act, 1986 for filing appeals and revisions in consumer matters and the object of expeditious adjudication of the consumer disputes will get defeated if this Court was to entertain highly belated petitions filed against the orders of the Consumer Foras".*

Recently, Hon'ble Supreme Court in ***Post Master General and others vs. Living Media India Ltd. and another (2012) 3 Supreme Court Cases 563*** *has held****;***

> ***"****After referring various earlier decisions, taking very lenient view in condoning the delay, particularly, on the part of the Government and Government Undertaking, this Court observed as under****;***
>
> ***"****It needs no restatement at our hands that the object for fixing time-limit for litigation is based on public policy fixing a lifespan for legal remedy for the purpose of general welfare. They are meant to see that the parties do not resort to dilatory tactics but avail their legal remedies promptly. Salmond in his Jurisprudence states that the laws come to the assistance of the vigilant and not of the sleepy.*
>
> *Public interest undoubtedly is a paramount consideration in exercising the courts' discretion wherever conferred upon it by the relevant statutes. Pursuing stale claims and multiplicity of proceedings in no manner subserves public interest. Prompt and timely payment of compensation to the land losers facilitating their rehabilitation /resettlement is equally an integral part of public policy. Public interest demands that the State or*

the beneficiary of acquisition, as the case may be, should not be allowed to indulge in any act to unsettle the settled legal rights accrued in law by resorting to avoidable litigation unless the claimants are guilty of deriving benefit to which they are otherwise not entitled, in any fraudulent manner. One should not forget the basic fact that what is acquired is not the land but the livelihood of the land losers. These public interest parameters ought to be kept in mind by the courts while exercising the discretion dealing with the application filed under Section 5 of the Limitation Act. Dragging the land losers to courts of law years after the termination of legal proceedings would not serve any public interest. Settled rights cannot be lightly interfered with by condoning inordinate delay without there being any proper explanation of such delay on the ground of involvement of public revenue. It serves no public interest."

The Court further observed;

"It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us."

In view of the foregoing, the application for condonation of delay is rejected and the revision petition is dismissed as barred by limitation. **(C.K. Mohanasundaram v. K.U. Gopalakrishnan Nair; 2013(2) CPR 803 (NC)**

Ss. 15, 17, 19 – Mediclaim policy – Settlement of death claim – Accidental death claim cannot be allowed on made-up story

From the material on record, including medical reports, it would be clear that the deceased Purushottamdasji Mohata was suffering from a number of diseases and he died because of multiple reasons on 19.11.2002. We tend to agree with the findings given by the District Forum as well as the State Commission that the incidence of 13.06.2002 is a made-up story. It is highly improbable that the deceased would have suffered injuries in both ears, because the tea tray being carried by the maid servant fell upon him. He was admitted in the hospital a number of times and treated for multiple ailments, but could not survive. It shall be therefore, wrong to say that the cause of death was due to accident that allegedly took place on 13.06.2002. We therefore do not find any

force in the revision petition and the State Commission and District Forum have not committed any illegality, irregularity or jurisdictional error in passing their orders. **(Shashi Kumar Mohata and Anr. v. IFFCO TOKIO General Insurance Co. Ltd.; 2013(2) CPR 557 (NC)**

Ss. 15, 17, 19 – Insurance – Insurance claim can be rejected for violation of important clause of policy

Perusal of record clearly reveals that, as per allegation of the complainant, buffalo died on 24.12.2000 and post mortem was conducted on 25.12.2000. As per Clause 7 of the Insurance Policy, it was obligatory on the part of insured to give immediate intimation of death of buffalo to the office of the Company, which had issued the policy and further, provide the Insurance Company all opportunity of inspecting the carcass until at least the expiration of 24 hours after such notice to the Company. Complainant failed to prove any written intimation to the Insurance Company immediately after the death of buffalo. As per record, intimation dated 29.12.2000 sent by the complainant reached the office of the respondent on 9.1.2001, whereas body of the buffalo must have been disposed of after post mortem on 25.12.2000 and admittedly, there was no opportunity with the Insurance Company to inspect the carcass before its disposal. Thus, there was clear violation of Clause No. 7 of the Insurance Policy and learned State Commission has not committed any error in passing impugned order and setting aside order of District Forum allowing complaint. **(Rajinder Kumar v. United India Insurance Co. Ltd.; 2013(2) CPR 413 (NC)**

Ss. 15, 17, 19 – Review – Except National Commission District Forum and State Commission have no power to review its own orders

Learned State Commission rightly observed that Consumer Protection Act does not empower District Forum or even the State Commission to review its own order, but allowed appeal in the light of the Hon'ble Apex Court judgment reported in AIR 2000 (SC) 1165 – United India Assurance Co. Ltd. Vs. Rajender Singh in which it was held that where an order is obtained by practising fraud, every Court/Tribunal has power to recall such order. Learned Counsel for the petitioner placed reliance on (2011) 9 SCC 541 – Rajeev Hitendra Pathak and Others Vs. Achyut Kashinath Kakekar and Another in which it was held that except National Commission District Forum and State Commission have no power to review its own orders. In the light of aforesaid judgment it becomes clear that learned District Forum had no authority to review its earlier order in any circumstance and learned District Forum has not committed any error in dismissing review petition, but learned State Commission has committed error in allowing appeal and setting aside impugned review order and directing learned

District Forum to decide review petition on merits. Order passed by learned State Commission is liable to be set aside in the light of Apex Court's judgment in Rajeev Hitendra Pathak and Others (Supra). **(Krishna Singh and Anr. v. New India Assurance Co. Ltd.; 2013 (2) CPR 324 (NC)**

Contract Act

S.3 – Concluded contract – In absence of communication of acceptance concluded contract does not came into being, so dictator suit filed by bidder is therefore not maintainable

Unaccepted offer of the plaintiff does not create any right or any obligation on the part of the defendant to execute the lease deed. In fact, this principle is well settled by this Court in the case of Bhagwan Das Goverdhan Das Kedia v. Girdhari Lal & Co.; AIR 1966 SC 543 wherein this Court has held that mere making of an offer does not form part of the cause of action for claiming damages for breach of contract. In the case in hand, the aforesaid principle, without recourse, is applicable in the fact situation for the reason that the plaintiff was the highest bidder and his offer was merely accepted but no communication was sent to him as required under Section 3 of the Contract Act. Therefore, no legal right accrued in favour of the plain-tiff to invoke remedy available under Section 34 of the Specific Relief Act, seeking declaratory relief as prayed in the original suit filed by the plaintiff.

The proposal is said to have been completed when the same is accepted by the competent authority, which has not been done in the instant case. Neither the Housing Commissioner nor the Assistant Housing Commissioner accepted the proposal in writing; therefore, there is no communication of acceptance of the offer of the plaintiff. In this regard, this court in Haridwar Singh v. Begum Sumbrui, AIR 1972 SC 1242, has held that the communication of acceptance of the highest bid is necessary for concluding the contract. In view of the aforesaid factual and legal proposition of law and the highest bid offered to take the property on lease for a period of 90 years with renewal for further 20 years for construction of the cinema hall, the same was neither accepted by the competent authority nor was the same communicated. Therefore, here is no concluded contract in favour of the plaintiff in respect of the plot in question and the plaintiff cannot claim any legal right and question of enforcement of the said right as provided under Section 34 of the Specific Relief Act seeking declaratory relief by the plaintiff the same did not arise in the case in hand. The above important factual and legal aspects have not been examined in proper and constructive manner either by the trial court or by the second appellate court. Therefore, the impugned judgment, order and decree are liable to be set aside.

In view of the fact that no legal right accrued in his favour in the absence of a concluded contract which was said to have existed by mere offering of highest bid in relation to the property in question to obtain the property on lease for a period of 90 years amounting to disposal of the property of the first defendant being an authority under Article 12 of the Constitution, no right was accrued upon the bidder in relation to the property in question. Therefore, the suit itself is not maintainable and the suit filed on the basis of the alleged cause of action did not arise. Hence, the trial court could not have granted any relief by not framing the relevant and proper issue and answering the same. **(U.P. Avas Evam Vikas Parishad and Ors. vs. Om Prakash Sharma; 2013(3) ALJ 762)**

Criminal Procedure Code

S. 30 – Default sentences for non payment of fine cannot be ordered to run concurrently

Imposition of the term of imprisonment in default of payment of fine is not a sentence and it is a penalty which a person incurs on account of non-payment of fine. If such default sentence is imposed, undoubtedly, an offender must undergo unless it is modified or varied in part or whole in the judicial proceedings. Therefore, there is no power for the Court to order the default sentences to run concurrently. When such a default sentence is imposed, a person is required to undergo imprisonment either because he is unable to pay the amount of fine or refuses to pay such amount. Therefore default sentences for non-payment of fine cannot be ordered to run concurrently. **(Donatus Tony Ikwanusi v. Investigating Officer, NCB, South Zonal Unit, Chennai; 2013 Cri.L.J. 1938)**

S. 125 – Hindu Adoptions and Maintenance Act, S. 18 – Maintenance Granted under S. 125 – Is tentative Does not foreclose remedy available under 1956 Act

Section 125, Cr.PC. 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 intend to provide for a full and final determination of the status and personal rights of parties. Order made under Section 125, Cr.PC is tentative and is subject to final determination of the rights in a civil court. Any order passed under S. 125 Cr.PC by compromise or otherwise cannot foreclose the remedy available to a wife under S. 18 (2) of the 1956 Act. Where in proceedings under S. 125, Criminal P.C. the parties entered into compromise whereby the wife agreed to receive consolidated sum towards permanent alimony and give up her claim for maintenance and the proceedings came to be disposed of in terms of compromise, the order passed would not

preclude wife from claiming maintenance under 1956 Act. **(Nagendrappa Natikar v. Nelamma; AIR 2013 SC 1541)**

S. 125 - Maintenance granted u/s 125 is tentative it does not foreclose remedy available under Hindu Adoptions Maintenance Act

Section 125, CrPC 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. Section 125 is not intend to provide for a full and final determination of the status and personal rights of parties. Order made under Section 125, CrPC is tentative and is subject to final determination of the rights in a civil court. Any order passed under S. 125 CrPC by compromise or otherwise cannot foreclose the remedy available to a wife under S. 18 (2) of the 1956 Act. Where in proceedings under S. 125 Criminal P.C. the parties entered into compromise whereby the wife agreed to receive consolidated sum towards permanent alimony and give up her claim for maintenance and the proceedings came to be disposed of in terms of compromise, the order passed would not preclude wife from claiming maintenance under 1956 Act. **(Nagendrappa Natikar v. Nelamma; 2013 CrLJ 2060)**

S. 125—Maintenance—The ground of divorce cannot be a ground of refusing maintenance u/s. 125, even a divorced Muslim Women would be entitled to claim maintenance from her divorced husband as long as she does not remarry

Hon'ble Supreme Court further held that cumulative reading of the relevant portion of judgments of the Court in Danial Latifi and Iqbal Bano, would make it crystal clear that even a divorced muslim woman would be entitled to claim maintenance from her divorced husband, as long as she does not remarry. This being a beneficial piece of legislation, the benefit thereof must accrue to the divorced Muslim women. Therefore, the ground of divorce cannot be a ground of refusing maintenance under section 125 Cr.P.C.

In the counter affidavit it has been specifically alleged that the revisionist has remarried and solemnized his marriage on 26.11.2009 with Smt. Nazma which has also not been denied. Further it goes to show that the husband has no intention to keep the respondents with him.

In these days of inflation, the maintenance of Rs. 10,000/- to wife and Rs. 5000/- each to the minor children cannot be said to be excessive more particularly in view that the income of the revisionist husband is Rs. 2 lacs per month. **(Mohammad Asif Siddiqui vs. Smt. Sofia Bano; 2013 (81) ACC 162 (All)**

S. 125 – Interim maintenance – Claimed by wife – Order passed ex parte – Validity of

The record of the case shows that there was no service of notice of the application for interim maintenance on the revisionist and the impugned order has been passed without such notice. There are catena of decisions of the Hon'ble Supreme Court and this Court and the law is settled that an opportunity of rebuttal must be granted to the opposite party against whom an order is to be passed. Moreso, when there is a clear law on the subject quoted above, that an order of interim maintenance is to be passed only after service of notice. **(Ashwani Misra v. Abha Diwedi; 2013 (3) ALJ 261 (Lko Bench)**

S.125 – If Marriage between the parties invalid on concurrent of previous spouse living then wife cannot claim any maintenance from her subsequent sustained

Learned Counsel insists that the documents produced by respondent No. 2 in compliance with the order of the learned trial judge was simply an 'Ikrarnama' and not a divorce-deed. This Respondent No. 2 had not been divorced and therefore, the marriage between the respondent No. 2 and the revisionist was a nullity. The learned Counsel refers to case law, in Savitaben Somabhaibhatiya v. State of Gujarat and others, [2005(3) SCC 636=2005(51) ACC 923(SC)]. In para-8 of the aforesaid judgment, it has been held that, 'there may be substance in the plea of learned Counsel for the appellant that law operates harshly against the woman who unwillingly gets into relationship with a married man and section 125 of the Code does not give protection to such woman. This may be an inadequacy in law, which only the legislature can undo. But as the position in law stands presently there is no escape from the conclusion that the expression 'wife' as per section 125 of the Code refers to only legally married wife.

The position of law is admitted. Where the marriage is invalid because of previous spouse living the wife cannot claim any maintenance from her subsequent husband. **(Shamim Ahmad vs. State of U.P. and another; 2013(81) ACC 732)**

S. 125 – Proceeding under – Nature – Summary and quasi civil in nature

Proceedings under section 125 Cr.P.C. are summary and quasi civil in nature. Matters are decided on the principle of preponderance of probability and not on the principle of proving the case beyond reasonable doubt. The wife having already stated that she had been divorced by her former husband and her father also deposing that his daughter had already been divorced by her former husband, divorce has been adequately proved. The applicant has been admitted as married wife and the validity of the marriage having not been displaced by any

evidence to the contrary, she remains legally wedded wife of and entitled to maintenance from the revisionist. **(Shamim Ahmad vs. State of U.P. and another; 2013(81) ACC 732)**

S. 154 – FIR – Information given to police on basis of hearsay is not liable to be treated as FIR

Information given to police on basis of hearsay, not liable to be treated as FIR, but treating statement of eyewitness, though recorded later in point of time, as FIR Justified. **(Umesh Singh v. State Bihar; AIR 2013 SC 1743)**

S. 154 - Murder case Information given to Police on basis of hearsay not liable to be treated as FIR

In view of the concurrent finding of the High Court regarding the place of occurrence is very much certain as it is said to be at Tungi. PW4 Ashok Kumar Singh in his evidence has categorically stated that he is not an eye-witness but on the basis of hearsay he has informed the police. The I.O. has further stated in his evidence that PW4 is a hearsay witness and therefore his information could not have been treated as FIR. Hence he has requested this Court that there is no merit in this appeal, particularly, having regard to the concurrent finding on the charge by the High Court on proper appreciation of legal evidence and record and affirming the conviction and sentence for charge under Section 302 read with Section 34, IPC. Hence, the learned senior counsel has requested this Court not to interfere with the same in exercise of its jurisdiction.

PW2 Arvind Kumar, who is the cousin brother of the deceased, accompanied him on the date of occurrence of the incident. At that point of time the appellant, along with other accused, surrounded them and it is stated that the appellant shot at the Kanpatti with revolver and other accused persons Binda Singh with the rifle in the stomach of the deceased and Sudhir Singh with rifle in the left thigh. PW7 has stated in his evidence that the aforesaid accused persons fled away at that time Ashok Singh, Damodar Singh, Balram Singh and Shyam Sunder Singh were going to the bazaar who have witnessed the incident. His evidence is supported by the evidence of the other witness namely PW3, who has stated that he has seen Moti Singh and Jaddu Singh catching both hands of the deceased and Moti Singh ordered him to fire and the said witness also spoken about the firings by Awadhesh Singh and Nawal Singh as stated by the PW2. Further, he has supported his evidence that Awadhesh Singh pushed the dead body in the Payeen and also stated that Moti Singh and Jaddu Singh had caught hold of the informant also. PW5 also claimed to have seen Jaddu Singh and Moti Singh catching hands of the deceased and further he has stated that Umesh Singh, the appellant herein, had fired at the temple region of the deceased. Further, he

has given categorical statement stating that Binda, Sudhir, Awadhesh and Nawal also had fired at the deceased with their rifles. Therefore, the evidence of PW2 has been supported by PW3, PW5 and PW7. In so far as PW6 is concerned he has given a general statement that he has seen the several persons surrounding the deceased and killing the deceased with rifle and revolver. Therefore, the trial court was right in recording the finding on the charge against the appellant on proper appraisal of the evidence of the eye-witness PW2 supported by PW3 and PW5. The said finding of fact on the charge of Sections 302 read with section 34, IPC against this appellant and others was seriously examined by the High Court and concurred with the same and in view of the evidence of PW2 and PW9 the informant who was eye-witness and the I.O.'s evidence regarding his evidence treating the statement of PW2 as FIR is perfectly legal and valid. **(Umesh Singh v. State of Bihar; 2013 CriLJ 2116)**

S. 156, 197—Whether investigation and sanction for prosecution is different—Held "yes"

In this case, court observing that we have no hesitation in holding that notwithstanding the fact that the prosecution had not been able to obtain sanction to prosecute the accused, the accused was not entitled to grant of statutory bail since the charge-sheet had been filed well within the period contemplated under Section 167(2)(a)(ii), Cr.P.C. Sanction is an enabling provision to prosecute, which is totally separate from the concept of investigation which is conducted by the filing of the charge-sheet. The two are on separate footings. **(Suresh Kumar Bhikamchand vs. State of Maharashtra; 2013 Cri.L.J. 1625 (SC)**

S. 156(3) - When Application under section 156 (3) Cr.P.C. rejected, remedy for lies not in filing complaint

In the case of 'Aleque Padamsee', it was held that "when the application under section 156(3) Cr.P.c. is rejected by the Magistrate, the remedy for the informant lies not in filing a writ petition, but in filing a complaint under section 190(1)(b) read with section 200 of the Code".

Simply because a person has a grievance that his FIR has not been registered by the police. For this grievance, the remedy lies under sections 36 and 154(3) before the concerned police officers, and if that is of no avail, under section 156(3) Cr.P.C. before the Magistrate or by filing a criminal complaint under section 200 Cr.P.C. and not by filing a writ petition or a petition under section 482 Cr.P.C.

Thus, there is a clear-cut distinction between an application moved under section 156(3) Cr.P.C. and the complaint moved under section 190(1) (b) r/w section 200 Cr.P.C. In the former case, an application is moved with a view to

invoke the powers of the Magistrate directing the police to register and investigate the matter whereas in the latter case, the complaints filed -with a view to invoke the powers of the Magistrate under section 190(1)(b) Cr.P.C. Now, in the instant case, petitioner moved an' application under section 156(3) Cr.P.C. which was rejected by the Magistrate. He could not have compelled the Magistrate for a favourable order obliging him to issue the direction for registration of the case and investigate the same by the police of the concerned station. (**Anil V. State of Uttarakhand; 2013 (81) ACC 513 (Uttarakhand)**

S.156(3) – Rejection of petition for registered FIR and investigate the case by Magistrate – Revisional Court cannot set aside order of rejection without giving opportunity of hearing to proposed accused

In this petition under section 482 Cr.P.C. the question raised for consideration is whether the court of revision may set aside the order passed by the learned Magistrate rejecting the petition under section 156(3) of Code of Criminal Procedure (for short Cr.P.C) without giving opportunity of being heard to the proposed accused and the FIR sought to be lodged in pursuance of section 156(3) Cr.P.C.

Controversy in question is not res integrated is squarely covered by the judgment of Apex court reported in (2009) 1 SCC (Cri) 801: (AIR 2008 SC (Supp) 706. Raghu Raj Singh Rousha v. Shivam Sunderam Promoters Private Limited and another, wherein relying upon the judgment rendered in (2008) 2 SCC 409: (AIR 2008 SC 907). Sakiri Vasu v. State ofU.P., the Hon'ble Supreme Court held that revisional court has violated the mandate of section 401 (2) Cr.P.C. which provides that no order under this section shall be passed to the prejudice of accused or other person unless he has been given an opportunity of being heard either personally or by pleader in his defence. (**Bhupendra Singh vs. State of U.P. and Anr.; 2013(3) ALJ 465)**

S. 157 – Delay in sending FIR to Magistrate – When in consequential

When there is delayed dispatch of the FIR, it is necessary on the part of the prosecution to give an explanation for the delay. The purpose behind sending a copy of the FIR to the concerned Magistrate is to avoid any kind of suspicion being attached to the FIR. Such a suspicion may compel the Court to record a finding that there was possibility of the FIR being ante-timed or ante-dated. The Court may draw adverse inferences against the prosecution. However, if the Court is convinced as regards to the truthfulness of the prosecution version and trustworthiness of the witnesses, the same may not be regarded as detrimental to the prosecution case. It would depend on the facts and circumstances of the case. In the instant case, on a detailed scrutiny, the evidence cannot be thrown

overboard as the version of the witnesses deserves credence. Thus, this colossal complaint as regards delay in sending copy of FIR to Magistrate pales into insignificance. **(Rattiram v. State of M.P.; 2013 Cr.L.J. 2353)**

S. 164—Principles to be followed while recording the confession reiterated

The case of Rabindra Kr. Pal @Dara Singh vs. Republic of India, 2011 (73) ACC 396 (SC), wherein the Apex Court has summarized the principles for compliance with procedure under section 164, Cr.P.C. to be followed by the Judicial Magistrate entrusted with the task of recording confessional statement of an accused in a criminal case. In para-64 of the report, the Hon'ble Court has listed the principles as under:

"64. The following principles emerge with regard to section 164, Cr.P.C.:-

(i) The provisions of section 164, Cr.P.C. must be complied with not only in form, but in essence.

(ii) Before proceeding to record the confessional statement, a searching enquiry must be made from the accused as to the custody from which he was produced and the treatment he had been receiving in such custody in order to ensure that there is no scope for doubt for any sort of extraneous influence proceeding from a source interested in the prosecution.

(iii) A Magistrate should ask the accused as to why the want to make a statement which surely shall go against his interest in the trial.

(iv) The maker should be granted sufficient time for reflection.

(v) He should be assured of protection from any sort of apprehended torture or pressure from the police in case he declines to make a confessional statement.

(vi) A judicial confession not given voluntarily is unreliable, more so, when such a confession is retracted, the conviction cannot be based on such retracted judicial confession.

(vii) Non-compliance of section 164, Cr.P.C. goes to the root of the Magistrate's jurisdiction to record the confession and renders the confession unworthy of credence.

(viii) During the time of reflection, the accused should be completely out of police influence. The judicial officer, who is entrusted with the duty of recording confession, must apply his judicial mind to ascertain and satisfy his conscience that the statement of the accused is not on account of any extraneous influence on him.

(ix) At the time of recording the statement of the accused, no police or

police official shall be present in the open court.

(x) Confession of a co-accused is a weak type of evidence.

(xi) Usually, the Court requires some corroboration from the confessional statement before convicting the accused person on such a statement."

Before recording confession of an accused under section 164, Cr.P.C. it is the duty of the Magistrate to satisfy himself that the accused was giving statement voluntarily and for this he has to put certain questions to the accused and from the answers given to the questions, the Magistrate would came to the conclusion as to whether the confession which the accused is going to make would be voluntary or under some duress or inducement. The questioning of the accused before recording confession as to whether it was voluntary is a matter of substance and not a mere formality. A Magistrate should ascertain at the beginning of the statement and not at the end whether the confession made is voluntary. In the instant case before us, from the statement of the learned Magistrate, it is clear that he had not put any question to the accused before making confession, but he had given only warning as has been given in the certificate. It is, therefore, clear that before recording the confession, the learned Magistrate had not at all made any enquiry by putting question to the accused for satisfying himself that the confession made by the accused was voluntary and not under duress and inducement. Further, the learned Magistrate has committed gross illegality in administering oath to each accused before recording their confessional statement. Section 164(5), Cr.P.C. specifically provides that no oath shall be administered to an accused while recording his confession. Administration of oath to the accused in his confessional statement is violative of mandatory provisions of Article 20(3) of the Constitution and section 281, Cr.P.C. Thus, the Magistrate cannot administer oath to the accused before recording his confessional statement and if he does so, the statement is illegal and should be excluded from consideration.

In this case no foundation or basis has been laid by the Magistrate for this Court to judge that the Magistrate had satisfied himself that the confession was made voluntarily and he also did not put questions to the accused as to why he was making confession and he had also not be remanded to the police custody even if he did not confess his guilt.

Taking all these infirmities together in the retracted judicial confession, we do not propose to place absolute reliance on the said confession. Even if for the sake of argument, it is accepted that the said judicial confession which was subsequently retracted, was voluntary one, (to which do not agree) conviction cannot be based solely on the said retracted judicial confession, though there

appears to be no bar for basing conviction on the retracted judicial confession, but as a rule of prudence which has sanctified itself to the rule of law, the Courts to look for corroboration before acting upon and accepting the retracted confession. In the case of Paramananda Pegu vs. State of Assam; 2004 (50) ACC 323 (SC), the Hon'ble Supreme Court has observed that retracted confession cannot be acted upon unless corroborated. The Courts have held that apart from the statement being voluntary it should be true and should receive sufficient corroboration in material particulars by independent evidence. What amount of corroboration would be necessary in a case would be a question of fact to be determined by the Court in the light of the circumstances of the case. **(Mohammad Asif Siddiqui vs. Smt. Sofia Bano; 2013 (80) ACC 162 (All)**

Ss. 167(2) and S. 173 (8) – Entitlement of bail on ground of failure to file charge-sheet within prescribed period - Second investigation - Effect of

The prayer for default bail was under section 167 Cr.P.C. was made by the petitioner accused in respect of the first FIR filed by the State Police. The Petitioner was fully aware of the situation while making the application for grant of bail, knowing that he was under arrest in connection with the first F.I.R. and not under the second F.I.R. lodged by the C.B.I. (upon the direction of the Supreme Court). In the event the second investigation is treated to be a fresh investigation and the Petitioner had been arrested in connection therewith, then the contentions made by the petitioner for release default bail would have been relevant. However, since the prayer for default bail was made in connection with first F.I.R in which the charge-sheet had been filed within the stipulated period of 90 days, the argument with regard to the default bail is not available to the Petitioner.

The mere undertaking of a further investigation either by the Investigating Officer on his own or upon the directions of the superior police officer or pursuant to a direction by the concerned Magistrate to whom the report is forwarded does not mean that the report submitted under Section 173(2) is abandoned or rejected. It is only that either the Investigating Agency or the concerned Court is not completely satisfied with the material collected by the investigating agency and is of the opinion that possibly some more material is required to be collected in order to sustain the allegations of the commission of the offence indicated in the report. (**Vipul Shtal Prasad vs. State of Gujarat & Another; (2013) 2 SCC (Cri.) 475)**

S. 173 – Submission of charge-sheet – Duty of I.O. – I.O. has to inform Magistrate whether accused is in jail or on bail or is being forwarded with charge-sheet, if charge-sheet is being submitted after declaring accused as

absconder, case u/s 174-A of IPC has also to be registered

The charge-sheet sans details about the accused i.e. whether accused is in judicial custody or in police custody or is an absconder, will not be complete and legal. Para 122 of the Police Regulation specifically states that the Investigation Officer must comply with the provisions of Ss. 161 to 171 and 173 of the Cr.PC.

Unless Investigating Officer furnishes these three informations, Magistrate would be justified in not accepting the charge-sheet.

Although, Government Order, the word "ordinarily" (samanyatah) has been used, needless to say that this is qualified by subsequent phrase "bina kisi bhedbhaao kiye", therefore, it can be said that the charge-sheet has to be submitted after complying with S. 170, Cr.P.C. in every case and no exception is contemplated by the Government Order. The word "ordinarily" has been used to cover the case of absconders. If Investigating Officer submits charge-sheet without arresting the accused persons (unless he is on bail), it can be submitted only if he has been declared absconder and the case under S. 174-A, I.P.C. has also been registered as a result of this proclamation.)

If report under S. 173 falls short of above compliance, Court will be justified in insisting on compliance before accepting it for cognizance or otherwise. **(Iqbal v. State of U.P.; 2013 (2) ALJ 564)**

S. 173—Defect in investigation—Lapse on part of the investigating officer cannot be a ground for acquittal

It is clear that merely because of some defect in the investigation, lapse on the part of the I.O., it cannot be a ground for acquittal. Further, even if there had been negligence on the part of the investigating agency or omissions etc., it is the obligation on the part of the Court to scrutinize the prosecution evidence de hors such lapses to find out whether the said evidence is reliable or not and whether such lapses affect the object of finding out the truth. **(Hema vs. State through Inspector of Police, Madras; 2013(81) ACC 21(SC)**

S. 173(8)—In complete charge sheet which does not disclosed any other eye-witness than informant and submitted by constable—Effect of—May be irregular but does not vitiate the charge-sheet

The learned Counsel for the revisionists, in the alternative, contended that the charge-sheet submitted was incomplete inasmuch as it does not disclose any other eye-witness than the informant even though the presence of other witnesses was also shown in the first information report. It was submitted that the charge-sheet was submitted through a Constable, and not an officer authorized as provided by Regulation 122 of the U.P. Police Regulation, therefore, the said

charge-sheet is liable to be ignored and, as such, its filing cannot defeat the right of the revisionists to obtain bail under the proviso to sub-section (2) to section 167 of the Code.

To test the aforesaid submission of the learned Counsel for the revisionists, I have carefully read the counter-affidavit dated 3.9.2012 filed by Devi Ram Gautam, the Investigating Officer, on behalf of the State. A perusal of the counter-affidavit indicates that the investigation was completed as well as the charge-sheet prepared by 31.3.3012. Thereafter by the order of the Senior Superintendent of Police, Ghaziabad, the Investigating Officer was transferred on 2.4.2012. It appears that the Constable Pairokar, Jarman Singh, had directly submitted the charge-sheet in Court on 2.5.2012 and the Court also took cognizance on the said charge-sheet. From the affidavit so filed, it cannot be said that the charge-sheet was incomplete. Even otherwise, there is no challenge to the charge-sheet either in the revision or by way of any collateral proceedings. As regards the direct filing of the charge-sheet, through a Constable, it may be an irregularity, but it would certainly not vitiate the charge-sheet and the order taking cognizance thereon. **(Pravin Kasana vs. State of U.P.; 2013(81) ACC 91 (All)**

S. 173(8) - When fresh facts come to light police has right to further investigate under section 173(8)

The Court have considered the said argument and perused the materials on record including the impugned order. I have also perused the verdict, The Hon'ble Apex Court given in case of Ramacandran v. Udhayakumar. The Hon'ble Apex Court in para 6 of the aforesaid verdict has observed as under:

> "(6) At this juncture it would be necessary to take note of section 173 of the Code. From a plain reading of the above section it is evident that even after completion of investigation under sub-section (2) of section 173 of the Code, the police has right to further investigate under sub- section (8), but not fresh investigation or re-investigation. This was highlighted by this Court in K. Chandrasekhar v. State of Kerala and Others) 1998 (37) ACC 136 (SC) It was, inter alia, observed as follows:
>
> > The dictionary meaning of "further" (when used as an adjective) is "additional; more; supplemental" "further" investigation therefore is the continuation of the earlier investigation and not a fresh investigation or reinvestigation to be started ab initio wiping out the earlier investigation altogether. In drawing this conclusion we have also drawn inspiration from the fact that sub-section (8) clearly envisages that on completion of further investigation the investigating agency has to forward to the Magistrate a "further" report or reports and not fresh report or reports-

regarding the "further" evidence obtained during such investigation."

In view of the aforesaid decision of the Hon'ble Apex Court, the police has right to further investigate the matter under sub-section (8) of section 173 Cr.P.C. even after completion of investigation under sub-section (2) of section 173 of the Code but fresh investigation or reinvestigation.

After Considering the aforesaid verdict of Hon'ble Apex Court as well as Hon'ble Kerala High Court, it is apparent that even the police after completion of investigation under sub-section (2) of section 173 of the Code and the magistrate can give formal permission to make further investigation to police when fresh facts come to light (when police informs and seek permission of the Court. (**Siya Ram v. State of U.P. and another; 2013 (81) ACC 569 (All)**

Ss. 178(8) and 156(3) - Further Investigation and Fresh Investigation – Meaning - Determination of whether direction for second investigation is one for further investigation or fresh or re-investigation

The mere undertaking of a further investigation either by the Investigating Officer on his own or upon the directions of the superior police officer or pursuant to a direction by the concerned Magistrate to whom the report is forwarded does not mean that the report submitted under Section 173(2) is abandoned or rejected. It is only that either the Investigating Agency or the concerned Court is not completely satisfied with the material collected by the investigating agency and is of the opinion that possibly some more material is required to be collected in order to sustain the allegations of the commission of the offence indicated in the report.

The earlier direction given by the Supreme Court to the State Police to hand over the investigation of the case to CBI, would not mean that the charge-sheet submitted by the State Police stood implicitly rejected. The investigation undertaken by CBI was in the nature of further investigation under Section 173 (8) Cr.P.C. pursuant to the direction of the Supreme Court, notwithstanding the registration of a "fresh FIR" in the case by CBI. The fact that CBI purported to have registered a "fresh FIR" does not lead to a conclusion in law that the earlier report or the material collected by the State Police on the basis of which they filed the charge-sheet ceased to exist. **(Vipul Shital Prasad vs. State of Gujarat & Another; (2013) 2 SCC (Cri.) 475)**

S. 190 – Cognizance - Date on which taken – It is deemed to be date of institution of case

The First Schedule to the Criminal Procedure Code, 1973 classifies offences under the IPC for purposes of determining whether or not a

particular offence is cognizable or non-cognizable and bailable or non-bailable. Column 6 of the First Schedule indicates the Court by which the offence in question is triable.

It is, however, trite that a case must be deemed to be instituted only when the Court competent to take cognizance of the offence alleged therein does so. The cognizance can, in turn, be taken by a Magistrate on a complaint of facts filed before him which constitutes such an offence. It may also be taken if a police report is filed before the Magistrate in writing of such facts as would constitute an offence. The Magistrate may also take cognizance of an offence on the basis of his knowledge or suspicion upon receipt of the information from any person other than a police officer. In the case of the Sessions Court, such cognizance is taken on commitment to it by a Magistrate duly empowered in that behalf. All this implies that the case is instituted in the Magistrate's Court when the Magistrate takes cognizance of an offence, in which event the case is one instituted on a complaint or a police report. The decision of the Court in Jamuna Singh and Ors. v. Bahdai Shah; AIR 1964 SC 1541, clearly explains the legal position in this regard. To the same effect is the decision of this Court in Devrapally Lakshminarayana Reddy and Ors. v. Narayana Reddy and Ors.; (1976) 3 SCC 252 where the Court held that a case can be said to be instituted in a Court only when the Court takes cognizance of the offence alleged therein and that cognizance can be taken in the manner set out in clauses (a) to (c) of Section 190(1) of the Cr.P.C. The Court may also refer to the decision of the Court in Kamlapati Trivedi v. State of West Bengal; (1980) 2 SCC 91 where the Court interpreted the provisions of Section 190 Cr.P.C. and reiterated the legal position set out in the earlier decisions.

Applying the test judicially recognized in the above pronouncements to the case at hand, we have no hesitation in holding that no case was pending before the Magistrate against the appellant as on the date the Amendment Act came into force. That being so, the Magistrate on receipt of a charge-sheet which was tantamount to institution of a case against the appellant was duty bound to commit the case to the Sessions as three of the offences with which he was charged were triable only by the Court of Sessions. The case having been instituted after the Amendment Act had taken effect, there was no need to look for any provision in the Amendment Act for determining whether the amendment was applicable even to pending matters as on the date of the amendment no case had been instituted against the appellant nor was it pending before any Court to necessitate a search for any such provision in the Amendment Act. The Sessions Judge as also the High Court were, in that view, perfectly justified in holding that the order of committal passed by the

Magistrate was a legally valid order and the appellant could be tried only by the Court of Sessions to which the case stood committed. **(Ramesh Kumar Soni vs. State of Madhya Pradesh; AIR 2013 SC 1896)**

S. 190 - Cognizance – When can be taken – It deemed to be date institution of case

The Code of Criminal Procedure does not, however, provide any definition of institution of a case. It is, however, trite that a case must be deemed to be instituted only when the Court competent to take cognizance of the offence alleged therein does so. The cognizance can, in turn, be taken by a Magistrate on a complaint of facts filed before him which constitutes such an offence. It may also be taken if a police report is filed before the Magistrate in writing of such facts as would constitute an offence. The Magistrate may also take cognizance of an offence on the basis of his knowledge or suspicion upon receipt of the information from any person other than a police officer. In the case of the Sessions Court, such cognizance is taken on commitment to it by a Magistrate duly empowered in that behalf. All this implies that the case is instituted in the Magistrate's Court when the Magistrate takes cognizance of an offence, in which event the case is one instituted on a complaint or a police report. The decision of this Court in Jamuna Singh and Ors. v. Bahdai Shah; AIR 1964 SC 1541, clearly explains the legal position in this regard. To the same effect is the decision of this Court in Devrapally Lakshminarayana Reddy and Ors. v. Narayana Reddy and Ors.; (1976) 3 SCC 252 where the Court held that a case can be said to be instituted in a Court only when the Court takes cognizance of the offence alleged therein and that cognizance can be taken in the manner set out in clauses (a) to (c) of Section 190(1) of the Cr.P.C. (**Ramesh Kumar Soni v. State of Madhaya Pradesh; 2013 CrLJ 1738)**

Ss. 190(1)(b), 173(2), 319—Power of Magistrate to disagree with police report—Magistrate can take cognizance against accused named in F.I.R. but not in charge-sheet, by independently applying his mind u/s. 190(1)(b) and need not wait till S. 319 stage

The order passed by the Chief Judicial Magistrate in AUP NO. 572 of 2011 dated 18.4.2011 was challenged by the petitioners before the High Court, without any success; against this special leave petition has been preferred. We notice that cognizance has been taken by the Magistrate vide its order dated 8.4.2011 against the petitioners for the offences under Sections 302/34 IPC read with Section 27 of the Arms Act.

The counsel for the petitioners submitted that the learned Magistrate was not justified in invoking Section 319 of the Code of Criminal Procedure (CrPC) since the petitioners were not charge-sheeted by the police after conducting the investigation. The learned counsel pointed out that so far as those persons against

whom charge-sheet has not been filed they can be arrayed as accused persons in exercise of powers under Section 319 CrPC only when some evidence or materials are brought on record in the course of trial.

Learned counsel appearing for the respondent State, on the other hand, placed reliance on a subsequent judgment of this Court in Uma Shankar Singh vs. State of Bihar, (2010) 9 SCC 479 and stated that such a request was declined by this Court stating that: (SCC p. 483, para 19)

> "19… even if the investigating authority is of the view that no case has been made out against an accused, the Magistrate can apply his mind independently to the materials contained in the police report and take cognizance thereupon…."

The Court notice that in this case the petitioners have been named in the FIR and the learned Magistrate after perusing the FIR, case diary and the death report came to a prima facie conclusion of the involvement of all the persons named in the FIR in the occurrence. The learned Magistrate expressed the view that there are enough materials to initiate prosecution against them apart from the charge-sheeted accused persons. The High Court has also concurred [Dhrup Singh vs. State of Bihar, Criminal Misc. No. 22713 of 2011, order dated 6.4.2012 (Pat)] with that view. In such a situation, we find no good reasons to take different view from that of the learned Magistrate as well as that of the High Court. **(Dhrup Singh vs. State of Bihar; (2013) 4 SCC 275)**

S. 197 - Sanction for prosecution – Once sanction has been accorded u/s 19 of Prevention of Corruption Act 1988 which is Spl. Act no further sanction is required u/s 197 of CrPC

In view of the law laid by the Apex Court, it is crystal clear that once the sanction has been accorded section 19 of the Prevention of Corruption Act read with section 13(1) and 13(1) (d) of Prevention of Corruption Act, 1988, which is a special Act, no further sanction is required under section 197 Cr.P.C. **(Dr. Arun Kumar Chowdhary v. State of U.P. and others; 2013 CriLJ 1747)**

S. 197 – Sanction for prosecution – Once sanction has been accorded u/s 19 of prevention of Corruption Act, no further sanction is required u/s 197 CrPC.

In view of the law laid by the Apex Court, it is crystal clear that once the sanction has been accorded section 19 of the Prevention of Corruption Act read with section 13(1) and 13(1) (d) of Prevention of Corruption Act, 1988, which is a special Act, no further sanction is required under section 197 Cr.P.C. **(Arun Kumar Chaoudhary v. State of U.P.; 2013 (2) ALJ 624)**

S. 204 – For issue of process two conditions must be present firstly, facts disclosed in complaint and secondly by witness prima facie constitute offence

It may be mentioned that as per scheme of Chapter XV and section 204 Cr.P.C. the scope of inquiry is very limited. Chapter XV Cr.P.C. relates to complaints to the Magistrates. It covers cases before actual commencement of the criminal proceedings in a Court or before a Magistrate. Scope of preliminary enquiry-in sections 200 and 202, Cr.P.C. is very limited. At his stage, the limited purpose behind proceedings under Chapter XV Cr.P.C. is to see whether on a cursory perusal of the complaint and the statements recorded under sections 200 and 202, Cr.P.C., there is a prima facie evidence in support of allegations made against the accused. All that the learned Magistrate has to see whether or not there is a sufficient ground for proceeding against the accused.

The Court have examined and analysed the impugned order taking into consideration the above settled legal position. On a cursory perusal of the complaint it appears that the facts disclosed therein prima facie constitute commission of offence of which learned C.J. M. is competent to take cognizance. On perusal of statements of the complainant and the witnesses, recorded by the C.J.M. under Section 200, Cr.P.C, it appears that there is prima facie evidence against the accused persons/ revisionists, who according to the complainant have committed the offence. Thus, there is a sufficient ground for issuing process against the accused persons/revisionists under section 204, Cr.P.C. At the stage of sections 203/204, Cr.P.C the Magistrate has to see that a prima facie case is made out and there is a prima facie evidence against the person, who according to the complainant has committed the offence. The test is whether there was sufficient ground for proceeding and not whether there was sufficient ground for conviction. The Apex Court in the cases of Chandra Deo Singh, Nirmaljit Singh Hoon, R.G. Ruia and Vadilal Panchal, reaffirmed and upheld in the case of Shievjee Singh (supra), held that the Magistrate at the stage of Charter XV of the Cr.P.C must consider whether there is a sufficient ground for proceeding and that whether there was prima facie evidence or not. Thus, the impugned order passed by the learned C.J.M. is absolutely within the' four corners of law and finds full support from the case laws cited as above. **(Durga Prasad vs. State of U.P.; 2013(81) ACC 865)**

Ss. 204 – Issuance of process – Validity

The respondent No. 2 filed a complaint in the Court of CJM, Kaushambi on 15.1.2005 disclosing therein that he is the Member of Gram Panchayat Pashchim Sarira, District Kaushambi. Since he opposed the allotment of plots to be made by the Land Management Committee, therefore, accused persons/revisionists bore enmity with him. On 26.12.2004 at about 4.00 p.m. the complainant was going to market. When he arrived near Sabji Mandi, all the accused persons already present there surrounded him and started beating him with fists and kicks, and also with sticks. On his raising alarm, nearby shop-keepers arrived there and any how saved him. The complainant approached local police station to get lodged the FIR. The police did not lodge FIR. Then he also sent written report about the occurrence to the Superintendent of Police Kaushambi through the registered post dated 5.1.2005 but no action was taken by the police. Therefore, he moved the complaint in the Court of CJM.

The learned CJM after having adopted the procedure as envisaged under Chapter XV, Cr.P.C. had taken cognizance of offence on the complaint and ordered to issue process against the accused persons (the revisionists) which is under challenge in this revision.

On a cursory perusal of the complaint it appears that the facts disclosed therein prima facie constitute commission of offence of which learned CJM is competent to take cognizance. On perusal of statement of the complainant and the witnesses, recorded by the CJM under Section 200 Cr.P.C. it appears that there is prima facie evidence against the accused persons/revisionists, who according to the complainant have committed the offence. Thus, there is a sufficient ground for issuing process against the accused ersons/revisionists under Section 204, Cr.P.C. At the stage of Section 203/204 Cr.P.C. the Magistrate has to see that a prima facie case is made out and there is a prima facie evidence against the person, who according to the complainant has committed the offence. The test is – Whether there was sufficient ground for proceeding and not whether there was sufficient ground for conviction. The Apex Court in the cases of Chandra Deo Singh (AIR 1963 SC 1430), Nirmaljit Singh Hoon (AIR 1972 SC 2639), R.G. Ruia (AIR 1958 SC 97) and Vadilal Panchal (AIR 1960 SC 1113) re-affirmed and upheld in the case of Shievjee Singh (AIR 2010 SC 2261) (supra) held that the Magistrate at the stage of Chapter XV of the Cr.P.C. must consider whether there is a sufficient ground for proceeding and that whether there was prima facie evidence or not. Thus, the impugned order passed by the learned CJM is absolutely within the four corners of law. **(Durga Prasad v. State of**

U.P.; 2013(2) ALJ 556)

Ss. 221—IPC, Ss. 300, 34—Failure to frame charge under S. 34—Consequence of

In Gurpreet Singh vs. State of Punjab, (2005) 12 SCC 615, the Court held that no prejudice would be claimed by the accused merely because charge was framed under Section 302, IPC simpliciter and not with the help of Section 34, IPC. The Court found that the eye-witnesses had been cross-examined at length from all possible angles and from suggestions that were put to them to the eye-witnesses, the Court was fully satisfied that there was no manner of prejudice caused. What, therefore, needs to be examined is whether any prejudice was caused to the accused persons on account of absence of charge under Section 34 of the IPC. Mere omission of Section 34 from the charge-sheet does not ipso facto or ipso jure lead to any inference or presumption of prejudice having been caused to the accused in cases where the conviction is recorded with the help of that provision. It is only if the accused persons plead and satisfactorily demonstrate that prejudice had indeed resulted from the omission of a charge under Section 34 of the IPC that any such omission may assume importance. Court does not see any such prejudice having been caused in the present case. In fairness to Mr. Ganesh we must mention that although he had strenuously argued the legal proposition dealt with by us above when it came to demonstrating a prejudice on account of absence of charge under Section 34 he was unable to do so. So the absence of charge under Section 34 of the IPC did not, therefore, affect the legality of the conviction recorded by the High Court. **(Chinnam Kameswara Rao vs. State of A.P.; 2013 Cri.L.J. 1540 (SC)**

S. 311 – Legislature has not conferred any power upon trial court to summon any documentary evidence u/s 311, this section contemplates only summoning of witnesses

From the simple reading of Sec. 311 it is apparently clear that it contemplates summoning of witnesses only at any stage of the proceedings or examination of the persons present including the power to recall/re-examine any person already examined, if his evidence appears to be essential for the just decision of the case. The legislature has not conferred any power upon the trial Court to summon any documentary evidence under Section 311 Cr.P.C. The document, on which the accused propose to rely and wants to be produced have to be summoned under Section 233 (3) of the Cr.P.C. **(Tomaso Bruno v. State of U.P.; 2013 (2) ALJ 681)**

S. 311 – Order to recall witness – Powers of Court – Some other questions to be asked from witness cannot be ground to recall witness unless in discretion

of Court recall of witness was necessary for just decision

The powers under section 311 Cr.P.C is the discretion or the obligation of the court to summon or recall a witness, but this discretion of the Court cannot be forced to be used by the accused or the prosecution. While considering the present case the situation is that on behalf of the accused while moving an application under Section 311 Cr.P.C no ground at all were brought forward as to why the witness needs to be recalled for cross-examination and such type of application without any ground was deserved to be dismissed.

Furthermore even if, the ground mention in the order be taken as a ground that the witnesses Desraj the present revisionist in his statement before the court has described that at the time of the occurrence he was not inside the house, but was on his field near expeler was in favour of the accused in-as-much as the witness declined himself to be a witnesses. The entire cross-examination from the witness on two dates was made on this issue only. From those it cannot be said that on behalf of the accused the effect that the witnesses declined himself to be eyewitness was not to their notice. The simple fact that after the cross-examination is over, some other questions creped into the mind of the learned counsel for the accused to be asked from the witness cannot be a ground to recall a witness unless in the discretion of the Court, the recall of witness otherwise was called for or it was necessary for the just decision of the case. **(Desraj Jhodha v. State of U.P. & Ors.; 2013 (3) ALJ 9)**

S. 319—Constitution of India, Art. 21—Trial of added accused—Newly added accused out to be tried with other accused would result in delaying trial of other accused and offending their right of speedy trial

The Court distinguished the earlier decisions rendered in Municipal Corporation of Delhi vs. Ram Kishan Rohtagi (1983) 1 SCC 1 and Michael Machado vs. Central Bureau of Investigation; (2000) 3 SCC 262 held—

> "13. Reliance by learned counsel for Respondent 1 has been placed on Municipal Corpn. of Delhi vs. Ram Kishan Rohtagi in support of the contention that Respondent could be tried only with Chandra shekhar Singh and his trial having concluded, Respondent 1 cannot be now tried pursuant to order under Section 319(1) of the Code. This Court in the cited decision was not concerned with the issue which has fallen for consideration before us. The same is the position in respect of Michael Machado vs. Central Bureau of Investigation. There this Court considered the scope of the provision as to the circumstances under which the court may proceed to make an order under Section 319 and not the question as to the effect of the conclusion of the trial after passing an order under

Section 319(1). None of these decisions have any relevance for determining the point in issue."

To the same effect is the decision of this Court in Rajendra Singh vs. State of U.P. & Anr., (2007) 7 SCC 378, where too a similar question arose for consideration. Relying upon the decision of this Court in Shashikant Singh's case (AIR 2002 SC 2031) (supra) this Court held:

"11…. The mere fact that trial of co-accused Daya Singh has concluded cannot have the effect of nullifying or making the order passed by learned Sessions Judge on 26.5.2005 infructuous."

In the light of the above two decisions rendered by coordinate Benches of this Court, we have no hesitation in holding that even if the addition of the petitioner Babubhai Bhimabhai Bokhiria is held to be justified by the Constitution Bench of this Court, the mere fact that the trial of the remaining accused has already concluded, would not prevent the prosecution of the petitioner for the offences for which he has been summoned by the trial Court.

There is another angle from which the matter can and must be examined. The prosecution has already examined as many as 134 witnesses at the trial. In terms of the ratio of the direction of this Court in Shashikant Singh's case (supra) with the addition of the petitioner as accused all those witnesses shall have to be recalled for a fresh examination. If that be so, the trial would go on for a few more years having regard to the number of witnesses that have to be examined. This would in turn mean that the right of the accused to a speedy trial, that they have labored to complete within six years or so, will be in serious jeopardy on account of the entire process being resumed de novo. Such a result is manifestly unjust and unfair and would be perilously close to being in violation of the fundamental rights guaranteed to the accused persons who cannot be subjected to the tyranny of a legal process that goes on endlessly for no fault of theirs. This Court has in several pronouncements emphasized the need for speedy trials in criminal cases and recognized the same as an integral part of the right to life itself. **(Babubhai Bhimabhai Bokhiria vs. State of Gujarat; 2013 Cri.L.J. 1547 (SC)**

S. 320 - I.P.C, Section 356, 506 - Compounding of offence - During pendency of appeal parties entered into compromise- permission to compound accorded

The learned Chief Judicial Magistrate, Tehri-Garhwahl in Criminal Case No. 921 of 2002, vide judgment and order dated 07-04-2003, has convicted the appellant under sections 354 and 506 of the I.P.C and sentenced him to rigorous imprisonment of one year with fine and rigorous imprisonment of six months,

respectively. Aggrieved by the aforesaid order, the appellant had unsuccessfully appealed before the learned Sessions Judge, Tehri Garhwal, in Criminal Appeal NO. 5 of 2003. The said appeal was rejected and the judgment and order passed by the learned Magistrate was upheld, vide judgment and order dated 14-09-2003. The appellant, against the aforesaid order and judgment, preferred Revision Petition No. 161 of 2004 before the High Court, wherein the High Court, vide the impugned judgement and order dated 23-03-2012, has dismissed it. The appellant questions the correctness or otherwise of the impugned judgment and order in this appeal.

During the pendency of this appeal, we are informed by the learned Counsel appearing for the parties that the parties, namely, the appellant accused and respondent No. 2 have entered into a compromise and, accordingly, respondent No. 2 has filed an affidavit before the Court.

The learned Counsel appearing for respondent No. 2. He submits that he has compromised the lis with the appellant at her own will. In view of the above, while disposing of this appeal, we accord permission to compound the offence and the effect of this would be the acquittal of the accused with the offences he is charged with. (**Surat Singh V. State of Uttaranchal (Now Uttarakhand) and another; 2013 (13) ACC 471 (SC)**

Compromise application—Moved by heirs of injured (Now dead)—Offence was committed in 1981 and it was compoundable u/s. 324 I.P.C. at that time—Application accepted and partly allowed

The question of compounding of an offence under section 324 IPC came to be considered in the case of Manoj and it is worth quoting paragraphs Nos. 12 and 13 of the said judgment:-

> "12. We have examined the provisions of section 320 of the Code of Criminal Procedure (for short 'the Cr.P.C.') which deals with compounding of offences, Section 320 (1) of the Cr.P.C. provides that the offences punishable under the sections of Indian Penal Code specified in the first two columns of the Table next following may be compounded by the persons mentioned in the third column of that Table. Under sub-section (2) of section 320, offences punishable under the sections of the Indian Penal Code, specified in the first two columns of the Table next following may, with the permission of the Court before which any prosecution for such offence is pending, be compounded by the persons mentioned in the third column of that Table. Voluntarily causing hurt by dangerous weapons or means by the accused constitutes an offence under section 324 IPC which can be compounded by person to whom hurt is

caused with the permission of the Court in terms of sub-section (2) of section 320 Cr.P.C.

13. It requires to be noticed that Cr.P.C. (Amendment) Act, 2005 (Act No.25/2005) amended section 320 of the Code and in the Table under sub-section (2) (a) the words "voluntarily causing hurt by dangerous weapons or means" in column 1 and the entries relating thereto in columns 2 and 3 has been omitted. But the said amendment by Act No. 25 of 2005 has not yet been brought into notice. Therefore, the offence under 324 is still compoundable with the permission of the Court".

In the instant case, the offence was committed in 1981 and at the point of time the offence under section 324 IPC was compoundable. Apart from this, reference can be had to sub-section (4) (b) of section 320 Cr.P.C., which is quoted below:--

"320 (4) (b) when the person who would otherwise be competent to compound an offence under this section is dead, the legal representative, as defined in the Code of Civil Procedure, 1908 (5 of 1908) of such person may, with the consent of the Court, compound such offence."

The presence of this provision is only for the purpose of such compounding, which has been discussed in all the judgments that have been referred to by the parties.

Consequently, in view of the application filed by the heirs of the injured Late Nahar Singh, the same is accepted subject to the verification of it's contents by the concerned Magistrate which shall be carried out within one month of the date of receipt of this judgment. In view of the findings recorded herein above, the appellant—Jayanti Prasad having been held guilty of committing the offence under section 324 IPC, is directed to pay a fine of Rs. 25,000/- and his imprisonment shall be confined only to the period that he has already remained in Jail during the period of trial or even after conviction of the Trial Court whereafter he has been on bail. The appeal is, therefore, partly allowed acquitting the accused—appellant No. 3. **(Babu Ram vs. State of U.P.; 2013 (81) ACC 74 (All)**

S. 354 – Penology – Feeling of victim of offence and his family member are relevant considerations

Court must not lose sight of the fact that even though Gurtehal Singh and Harminder Kaur are now aged, they were responsible for the death of Rachhpal Kaur through aluminium phosphide poisoning. Rachhpal Kaur was a young lady when she died and we can only guess the trauma that her unnatural death would

have caused to her parents. Sympathizing with an accused person or a convict does not entitle to us to ignore the feelings of the victim or the immediate family of the victim. **(Lal Bahadur v. State NCT of Delhi; 2013 CrLJ 2199)**

S. 354—Punishment must appropriate and proportional to gravity of the offence and just punishment is collective cry of the society

Recently, this Court in Guru Basavaraj vs. State of Karnataka, (2012) 8 SCC 734, while discussing the concept of appropriate sentence has expressed that:

> "It is the duty of the Court to see that appropriate sentence is imposed regard being had to the commission of the crime and its impact on the social order. The cry of the collective for justice which includes adequate punishment cannot be lightly ignored."

Just punishment is the collective cry of the society. While the collective cry has to be kept uppermost in the mind, simultaneously the principle of proportionality between the crime and punishment cannot be totally brushed aside. The principle of just punishment is the bedrock of sentencing in respect of a criminal offence. A punishment should not be disproportionately excessive. The concept of proportionality allows a significant discretion to the Judge but the same has to be guided by certain principles. In certain cases, the nature of culpability, the antecedents of the accused, the factum of age, the potentiality of the convict to become a criminal in future, capability of his reformation and to lead an acceptable life in the prevalent milieu, the effect—propensity to become a social threat or nuisance, and sometimes lapse of time in the commission of the crime and his conduct in the interregnum bearing in mind the nature of the offence, the relationship between the parties and attractability of the doctrine of bringing the convict to the value-based social mainstream may be guiding factors. Needless to emphasize, these are certain illustrative aspects put forth in a condensed manner. We may hasten to add that there can neither be a strait-jacket formula nor a solvable theory in mathematical exactitude. It would be dependent on the facts of the case and rationalized judicial discretion. Neither the personal perception of a Judge nor self-adhered moralistic vision nor hypothetical apprehensions should be allowed to have any play. For every offence, a drastic measure cannot be thought of. Similarly, an offender cannot be allowed to be treated with leniency solely on the ground of discretion vested in a Court. The real requisite is to weigh the circumstances in which the crime has been committed and other concomitant factors which we have indicated hereinbefore and also have been stated in a number of pronouncements by this Court. On such touchstone, the sentences are to be imposed. The discretion should not be in the

realm of fancy. it should be embedded in the conceptual essence of just punishment. **(Gopal Singh vs. State of Uttarakhand; 2013 (81) ACC 289 (SC)**

S. 354—IPC S. 302—Death Penalty—Rarest of rare case test—Depends on societies perception but it is not Judge centric

To award death sentence, the aggravating circumstances (crime test) have to be fully satisfied and there should be no mitigating circumstance (criminal test) favouring the accused. Even if both the tests are satisfied as against the accused, even then the Court has to finally apply the Rarest of Rare Cases test (R-R Test), which depends on the perception of the society and not "Judge-centric", that is whether the society will approve the awarding of death sentence to certain types of crime or not. While applying this test, the Court has to look into variety of factors like society's abhorrence, extreme indignation and antipathy to certain types of crimes like rape and murder of minor girls, especially intellectually challenged minor girls, minor girls with physical disability, old and infirm women with those disabilities etc. examples are only illustrative and not exhaustive. Courts award death sentence, because situation demands, due to constitutional compulsion, reflected by the will of the people, and not Judge centric. **(Gurvail Singh @ Gala vs. State of Punjab; 2013 Cri.L.J. 1460 (SC)**

S. 366— Death reference—Independent conclusion of high court to the guilt or innocence of the accused has to come, independently of the opinion of the Judge

While dealing with death reference the High Court has to come to its own independent conclusion as to the guilt or innocence of the accused, independently of the opinion of the Judge. In a reference for confirmation of death sentence, the High Court must examine the entire evidence for itself independent of the Session Court's views. While confirming the capital sentence, the High Court is under an obligation to itself consider what sentence should be imposed and not to be content with the trial Court's decision on the point unless some reason is shown for reducing the same. Where in addition to an appeal filed by an accused sentenced to death, the High Court has to dispose of the reference of confirmation to death sentence under S. 366 of the Code, the High Court, while dealing with reference, should consider the proceedings in all its aspects and come to an independent conclusion in all its aspects and come to an independent conclusion on the material on record apart from the views expressed by the Sessions Judge. The confirmation of death sentence cannot be based only on the precedents and or aggravating facts and circumstances of any other case. **(Mohinder Singh vs. State of Punjab; 2013 Cri.L.J. 1559 (SC)**

Ss. 374, 386—Appeal against conviction—Independent appreciation of

evidence by appellate court—Consideration for

The High Court, as a first court of appeal, on facts must apply its independent mind and record its own findings on the basis of its own assessment of evidence. Mere reproduction of the assessment of trial court may not be sufficient and in the absence of independent assessment by the High Court, its ultimate decision cannot be sustained.

In Arun Kumar Sharma vs. State of Bihar, (2010) 1 SCC 108, while reiterating the above view, this Court held that: (SCC pp. 115-16, para 30)

> "30…. In its appellate jurisdiction, all the facts were open to the High Court and, therefore, the High Court was expected to go deep into the evidence and, more particularly, the record as also the proved documents."

Contrary to the above principle, we are satisfied that in the case on hand, the High Court failed to delve deep into the record of the case and the evidence of the witnesses. The role of the appellate court in a criminal appeal is extremely important and all the questions of fact are open before the appellate court. The said recourse has not been adopted by the High Court while confirming the judgment of the trial court. **(Bakshish Ram vs. State of Punjab; (2013) 4 SCC 131)**

S. 378 – Appeal against acquittal – Power of Court to reappreciate evidence but however cannot interfere with acquittal if on evidence two views are possible

Court are of the view that the High Court has correctly appreciated the oral and documentary evidence, including the evidence of PW6, the Chief Medical Officer and rightly came to the conclusion that the trial court had committed an error in discarding their evidence. The Court in State of Punjab v. Ajaib Singh and others; (2005) 9 SCC 94, also recorded that in an appeal against acquittal, the appellate court is entitled to re-appreciate the evidence on record if the court finds that the view of the trial court acquitting the accused was unreasonable or perverse. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to the innocence, the view which is favourable to the accused should be adopted. However, the paramount consideration of the court is to ensure that miscarriage of justice is prevented as noted in the Judgment of this Court in V.N. Ratheesh v. State of Kerala; (2006) 10 SCC 617.

Court are of the considered view that the High Court has rightly found

that the finding recorded by the trial court was unreasonable and perverse and reversed the order of acquittal passed by the trial Court. The appeals, therefore, lack merits and the same are dismissed. **(Habib v. State of Uttar Pradesh; AIR 2013 SC 1764)**

S. 378 – Appeal against acquittal – Re-appreciation of evidence by High Court is permissible in order to find out whether findings recorded by trial court are perverse or unreasonable

As the trial court after having appreciated the evidence in detail acquitted the appellants, the High Court normally should not have taken a different view. We are unable to accept the contentions made by the learned counsel. It is well settled proposition that in an appeal against acquittal, the appellate court has full power to review the evidence upon which the order of acquittal is founded. The High Court is entitled to re-appreciate the entire evidence in order to find out whether findings recorded by the trial court are perverse or unreasonable. **(Lal Bahadur v. State (NCT of Delhi); 2013 CrLJ 2205)**

S. 378 – Appeal against acquittal – An extra ordinary remedy and it allowed only in exceptional case

The provision of filing an appeal by the State or by the complainant against the order of acquittal is contained in section 378 of the Code of Criminal Procedure. The power of the appellate Court in the matters of appeal filed against the judgment and order of conviction as well as the judgment and order of acquittal, is to review or reap price the evidence available on record. This Court while exercising the power of appeal can re-appraise the evidence and come to its conclusion on the basis of evidence available on record and can also reverse the findings recorded by the Trial Court and substitute its own finding only in case where such findings are against the weight of the evidence of record or otherwise perverse. If another view is possible, then the view which favours the accused should be adopted.

A Division Bench of the Court in the case of State of U.P. v. Ran Azore; [1991 (Suppl.) ACC 226 (Alld.)] has held that appeal against the acquittal is an extra ordinary remedy. Appeals from acquittal should be allowed only in exceptional circumstances. Appeals by Government should be allowed in the case where the judgment is clearly wrong and its maintenance amounts to a serious miscarriage of justice. **(State of UP vs. Jaj Singh Kushwaha; 2013(81) ACC 817)**

Ss. 378(2)(bb), 386(a), 379 – Appeal to High Court – Reversal of acquittal by High Court on ground of perversity and unreasonableness, upheld

Much stress has been laid by the appellants on the non-recovery of the dead bodies and the looted articles when the allegation is that after killing the persons they put the dead bodies into gunny bags. The aforesaid plea cannot in any way improve the case of the appellants. Discovery of the dead body of the victim has never been considered as the only mode of proving the corpus deficit in murder. In fact, there are very many cases of such nature like the present one where the discovery of the dead body is impossible, especially when members of a particular community were murdered in such a violent mob attack on Sikh community in different places and the offenders tried to remove the dead bodies and also looted articles.

Therefore, the High Court correctly appreciated the evidence and reversed the findings of the trial court. Thus, there is no merit in the appeals and the same are accordingly dismissed. (**Lal Bahadur vs. State (NCT of Delhi); (2013) 4 SCC 557)**

S. 378(3)—Appeal against acquittal indicate of reasons for formation of opinion while declining to grant leave against the judgments of acquittal

The High Courts, while declining to grant leave against the judgments of acquittal, ought to indicate reasons for formation of such opinion. It is the duty of every Court to bear in mind that when a crime is committed, though an individual is affected or, on some occasions, a group of individuals are victims of the crime, yet in essentiality, every crime is an offence against the collective as a whole. It creates a stir in the society. The degree may be different depending on the nature of the offence. That makes the duty of the High Courts to see that justice is done to the sufferer of the crime which, eventually, mitigates the cause of the collective and satisfies the cry of the society against the crime. It does not necessarily mean that all windows remain constantly open for all kinds of cases to be entertained in appeal, but, while closing the windows, there has to be proper delineation and application of mind so that none would be in a position to say that the order epitomizes "the inscrutable face of the sphinx." The order has to reflect proper application of mind and such reflection of application of mind has to be manifest from the order itself. **(State of M.P. vs. Giriraj Dubey; 2013 Cri.L.J. 1676 (SC)**

S. 386—Appeal against acquittal—No restricted for powers of court—Appellate court can review and re-appropriate

What needs to be examined in the light of the settled legal position is whether the view taken by the trial Court acquitting the accused was a reasonably possible view. If the answer is in the negative nothing prevents the Appellate Court from reversing the view taken by the trial Court and holding the accused

guilty. On the contrary, if the view is not a reasonably possible view the Appellate Court is duty bound to interfere and prevent miscarriage of justice by suitably passing the order by punishing the offender. We have in that view no hesitation in rejecting the contention that just because the trial Court had recorded an acquittal in favour of the appellants the Appellate Court had any limitation on its power to reverse such an acquittal. Whether or not the view was reasonably possible will be seen by us a little later when we take up the merits of the contention urged by the appellant regarding involvement of the accused persons in the commission of the crime. **(Chinnam Kameswara Rao vs. State of A.P.; 2013 Cri.L.J. 1540 (SC)**

S. 386—Criminal appeal—Decision in absence of counsel of accused is not impermissible

It cannot be said that the Court cannot decide a criminal appeal in the absence of counsel for the accused even if the counsel does not appear deliberately or shows negligence in appearing. It depends upon the facts of each case. **(K.S. Panduranga vs. State of Karnataka; 2013 Cri.L.J. 1665 (SC)**

S. 432—Remission—Exercise of power—Cannot be suo motu, it subjected to satisfaction of conditions in Jail Manual or statutory rules

In order to check all arbitrary remissions, the Code itself provides several conditions. Sub-sections (2) to (5) of Section 432 of the Code lay down basic procedure for making an application to the appropriate Government for suspension or remission of sentence either by the convict or someone on his behalf. We are of the view that exercise of power by the appropriate Government under sub-section (1) of Section 432 of the Code cannot be suo motu for the simple reason that this is only an enabling provision and the same would be possible subject to fulfillment of certain conditions. Those conditions are mentioned either in the Jail Manual or in statutory rules. This Court in various decisions has held that the power of remission cannot be exercised arbitrarily. In other words, the decision to grant remission has to be well informed, reasonable and fair to all concerned. The statutory procedure laid down in Section 432 of the Code itself provides this check on the possible misuse of power by the appropriate Government. As rightly observed by the Court in Sangeet and Anr. vs. State of Haryana; 2012 (11) Scale 140, there is misconception that a prisoner serving life sentence has an indefeasible right to release on completion of either 14 years or 20 years imprisonment. A convict undergoing life imprisonment is expected to remain in custody till the end of his life, subject to any remission granted by the appropriate Government under Section 432 of the Code which in turn is subject to the procedural checks mentioned in the said provision and

further substantive check in Section 433-A of the Code. **(Mohinder Singh vs. State of Punjab; 2013 Cri.L.J. 1559 (SC)**

S. 437—Bail application on medical ground—Bail application can be rejected if ailment is of not serious in nature for which applicant required special treatment outside from the jail

Counsel for the applicant submitted that the applicant is an old managed about 71 years and he is suffering from various old age ailments and annexed certain documents regarding his medical treatment at abroad as well as in India. He further produced certified copy of the report of the Medical Officer, District Jail, Ghaziabad dated 22.11.2012. He submitted that the applicant is confined in jail since 5.9.2012 and there is no proper medical treatment of the applicant in jail.

So far as serious ailments of the applicant is concerned, the report of the Medical Officer dated 22.11.2012, shows that the applicant is not suffering from any serious ailments for which any special treatment is required for him outside, which is not available in the District Jail, Ghaziabad. Moreover from the report of the Medical Officer, it is also evident that the applicant was also shifted from Jail for medical treatment outside as and when required for any special ailment and he is being taken proper care in the District Jail Hospital where he is said to be present confined.

In opinion of Court the applicant is not entitled to bail as his participation in the crime in question which is an organized crime does not lesser the liability of the applicant. **(Nand Lal Sehgal vs. C.B.I., E.O.W. IV, New Delhi; 2013 (81) ACC 51 (All)**

Bail—Grant of—Applicant is named in prompt F.I.R. as accused and in F.I.R. specific role of firing upon deceased has been assigned to applicant and no mention in injury report that some unknown person fired on deceased—Bail cannot be granted

The FIR of this case was lodged at 9.35 p.m. the same day, i.e., within 2 hours of the occurrence in question; that the accused applicant is named in the prompt FIR as an accused; that in the FIR itself the specific role of making fire upon the deceased has been assigned to the applicant; that as per the post mortem report, the death of the deceased occurred due to septicemia and shock as a result of ante mortem injuries; that in the injury report the gunshot wound was found on the back of the deceased and there is no mention in the injury report that some unknown person made fire on the deceased/injured; that the deceased was admitted in the hospital by Vinay Pratap Singh, who is the eye witness in the FIR and that the source of information as regards the assault by some unknown

assailant had not been disclosed by the doctor who prepared the death memo and that there is no likelihood or probability that the complainant party would have told the hospital authorities that the deceased was assaulted by some unknown assailants because the FIR in which the accused applicant has been named was lodged on the day of occurrence in question itself by the brother of the deceased, so the accused applicant should not be enlarged on bail. **(Radheyshyam vs. State of U.P.; 2013 (81) ACC 159 (All)**

S. 451 – Disposal of property – Bar to jurisdiction – Application for release of vehicle filed u/s 451/457 before Magistrate would not be proper it should be filed before authorized officer u/s 52-A of Forest Act

From perusal of the section, it is evident that the provision takes away power of dealing of forest produce, carriages, vehicles tools etc. from the Court of a judicial magistrate and now such power lies with the authorised officer under Section 52A of the Act to the exclusion of every other officer/Court/tribunal or authority. In the opening line of Section 52D, it has been mentioned that "notwithstanding anything to the contrary contained in this Act or in the Criminal Procedure Code, 1973 or in any other law for the time being enforce ..... . This makes it abundantly clear that anything contained even in the Act prior to 2001 will not be applicable if it is contrary to the provision of Section 52D of the Act.

In the above circumstances, Court view that there is no illegality in the order passed by the learned Magistrate. **(Mohd. Aslam v. State of U.P.; 2013 (2) ALJ 417)**

S. 482—Exercise of inherent power—Inherent power of the High Court may be exercised only when order passed by the Magistrate suffers from illegality, infirmity or irregularity

From a perusal of the record, it is apparent that on the submission of final report by the police, the complainant opposite party No. 2 had filed a protest petition whereby he has stated that the Investigating Officer, who had submitted the final report did not record the statement of the applicant and the injured, who had received injuries at the hands of the applicants. He had prayed for rejection of the final report and allowing of the protest petition by the Magistrate. The learned Magistrate after considering the material available on record was of the opinion that the matter requires further investigation, hence he directed the Superintendent of Police, Rampur to direct the further investigation into the matter in view of section 173(8), Cr.P.C. by adopting one course which was available to the Magistrate after receiving the protest petition for rejecting the final report and in view of the decision of this Court in the case of Pakhando, the

learned Magistrate was right in directing for further investigation and in pursuance of which the Superintendent of Police had entrusted the investigation by passing the impugned order dated 3.7.2012.

In view of the above, the Court is of the opinion that the impugned orders dated 26.5.2012 passed by the Magistrate and 3.7.2012 passed by the Superintendent of Police, Rampur do not suffer from any illegality, infirmity or irregularity which may call for any interference by this Court in its inherent power under section 482, Cr.P.C. **(Anjar Ahmad Khan vs. State of U.P.; 2013(81) ACC 49 (All)**

Ss. 482 and 320—Inherent powers u/s. 482—Scope of invocation—Criminal proceedings or F.I.R. or complaint can be quashed u/s. 482 in appropriate cases in order to meet ends of justice

The inherent powers of the High Court under Section 482 CrPC are wide and unfettered. It is trite to state that the power under Section 482 should be exercised sparingly and with circumspection only when the Court is convinced, on the basis of material on record, that allowing the proceedings to continue would be an abuse of process of court or that the ends of justice require that the proceedings ought to be quashed. Exercise of such power would depend upon the facts and circumstances of each case and it has to be exercised in appropriate cases in order to do real and substantial justice for the administration of which alone the courts exist. Thus, the High Court in exercise of its inherent powers can quash the criminal proceedings or FIR or complaint in appropriate cases in order to meet the ends of justice and Section 320 CrPC does not limit or affect the powers of the High Court under Section 482 CrPC.

Consequently, even if the offences are non-compoundable, if they relate to matrimonial disputes and the Court is satisfied that the parties have settled the same amicably and without any pressure, it is held that for the purpose of securing ends of justice, Section 320 CrPC would not be a bar to the exercise of power of quashing of FIR, complaint or the subsequent criminal proceedings. **(Jitendra Raghuvanshi vs. Babita Raghuvanshi; (2013) 4 SCC 58)**

S.482 – Inherent powers of the High Court – Ambit and Scope - Inherent powers are wide and unfetters erred, High Court can quash the criminal proceedings or F.I.R. or complaint in appropriate cases in order to meet ends of justice Sec. 320 of Cr.P.C. does not limit or effect the powers of the High Court

The inherent powers of the High Court under section 482 of the Code are wide and unfettered, In B.S. Joshi (supra), this Court has upheld the powers of the High Court under section 482 to quash criminal proceedings where dispute is of a private nature and a compromise is entered into between the parties who are

willing to settle their differences amicably. We are satisfied that the said decision is directly applicable to the case on hand and the High Court ought to have quashed the criminal proceedings by accepting the settlement arrived at.

It is trite to state that the power under section 482 should be exercised sparingly and with circumspection only when the Court is convinced, on the basis of material on record, that allowing the proceedings to continue would be an abuse of the process of the Court or that the ends of justice require that the proceedings ought to be quashed. We also make it clear that exercise of such power would depend upon the facts and circumstances of each case and it has to be exercised in appropriate cases in order to do real and substantial justice for the administration of which alone the Courts exist. It is the duty of the Courts to encourage genuine, settlements of matrimonial disputes and section 482 of the Code enables the High Court and Article 142 of the Constitution enables this Court to pass such orders.

In the light of the above discussion, Court hold that the High Court in exercise of its inherent powers can quash the criminal proceedings or FIR or complaint in appropriate cases in order to meet the ends of justice and section 320 of the Code does not limit or affect the powers of the High Court under section 482 of the Code. **(Jitendra Raghuvanshi vs. Babita Raghuvanshi; 2013(81) ACC 934)**

Sch. 1 - Forum of trial - No has vested right in forum

The amendment to the Criminal Procedure Code in the instant case has the effect of shifting the forum of trial of the accused from the Court of Magistrate First Class to the Court of Sessions. Apart from the fact that as on the date the amendment came into force no case had been instituted against the appellant nor the Magistrate had taken cognizance against the appellant, any amendment shifting the forum of the trial had to be on principle retrospective in nature in the absence of any indication in the Amendment Act to the contrary. The appellant could not claim a vested right of forum for his trial for no such right is recognised. The High Court was, in that view of the matter, justified in interfering with the order passed by the Trial Court. (**Ramesh Kumar Soni v. State of Madhaya Pradesh; 2013 CrLJ 1738)**

Criminal Trial

Appreciation of evidence—Contradictions, inconsistencies, exaggeration or embellishments are relevant only if they are material

Once Court find that the eyewitness account of PW 13 is corroborated by material particulars and is reliable, the Court cannot discard his evidence only on

the ground that there are some discrepancies in the evidence of PW 1, PW 2, PW 13 and PW 19. As has been held by this Court in State of Rajasthan vs. Kalki, (1981) 2 SCC 752, in the deposition of witnesses there are always normal discrepancies due to normal errors of observation, loss of memory, mental disposition of the witnesses and the like. Unless, therefore, the discrepancies are "material discrepancies" so as to create a reasonable doubt about the credibility of the witnesses, the Court will not discard the evidence of the witnesses. **(Subodh Nath vs. State of Tripura; (2013) 4 SCC 122)**

Burden of proof – Prosecution has to prove its case beyond reasonable doubt and cannot take support from weakness of defence case

It was argued that the accused were absconding and, therefore, adverse inference needs to be drawn against them. It is well settled that absconding by itself does not prove the guilt of a person. A person may run away due to fear of false implication or arrest. When the prosecution is not able to prove its case beyond reasonable doubt it cannot take advantage of the fact that the accused have not been able to probablise their defence. It is well settled that the prosecution must stand or fall on its own feet. It cannot draw support from the weakness of the case of the accused, if it has not proved its case beyond reasonable doubt. **(Sunil Kundu v. State of Jharkhand; 2013 CrLJ 2339)**

Injuries, Wounds and Weapons - Failure/Non-explanation of injuries on accused - Effect – Failure of prosecution to explain injuries on accused person may not necessary adversely impact its case

With regard to the injuries suffered by Gurmail Singh son of Nahar Singh, it was held that the evidence showed that the injuries were caused by his co-accused in the darkness. In any case, it was held that the question was not about the injuries suffered by Gurmail Singh son of Nahar Singh but the murder of Gurdial Singh and the injuries to his brother and two daughters.

Learned counsel for the appellants contended that Gurmail Singh son of Bachan Singh had suffered serious injuries and the prosecution has not explained these. Although Gurmail Singh son of Bachan Singh in his statement under Section 313 of the Criminal Procedure Code says that Gurdial Singh, Dial Singh and Kaka Singh attacked him with gandasas, the evidence on record does not indicate that any of the victims were armed. On the contrary, the evidence indicates that Gurmail Singh son of Bachan Singh received injuries at the hands of his co-accused in the darkness. In these circumstances, the prosecution's "failure" to explain the injuries on Gurmail Singh son of Bachan Singh would not disprove the case of the prosecution, namely, that Gurdial Singh was killed and some of those with him had been seriously injured.

As long as the evidence on record is trustworthy (and it has found to be so by both the courts below) the failure of the prosecution to explain the injuries on an accused person may not necessarily adversely impact on its case. In a recent decision Mano Dutt v. State of U.P., (2012) 4 SCC 79 (authored by one of us, Swatanter Kumar, J) it was held as follows:

"…… this Court has taken a consistent view that the normal rule is that whenever the accused sustains injury in the same occurrence in which the complainant suffered the injury, the prosecution should explain the injury upon the accused. But, it is not a rule without exception that if the prosecution fails to give explanation, the prosecution case must fail.

Before the non-explanation of the injuries on the person of the accused, by the prosecution witnesses, may be held to affect the prosecution case, the Court has to be satisfied of the existence of two conditions:

(i) that the injuries on the person of the accused were also of a serious nature; and

(ii) that such injuries must have been caused at the time of the occurrence in question.

Where the evidence is clear, cogent and creditworthy; and where the court can distinguish the truth from falsehood, the mere fact that the injuries on the person of the accused are not explained by the prosecution cannot, by itself, be the sole basis to reject the testimony of the prosecution witnesses and consequently, the whole case of the prosecution. Reference in this regard can be made to Rajender Singh v. State of Bihar [(2000) 4 SCC 298], Ram Sunder Yadav v. State of Bihar [(1998) 7 SCC 365] and Vijayee Singh v. State of U.P. [(1990) 3 SCC 190]."

It is interesting to note that the issue of injuries suffered by Gurmail Singh son of Bachan Singh was not raised by the appellants at the trial stage and has, therefore, not even been adverted to by the Trial Judge. (**Gurmail Singh vs. State of Punjab; (2013) 2 SCC (Cri) 369)**

Judiciary—Judicial independence and courage—Duty of Higher Judiciary to protect subordinate Judicial Officer

A subordinate judicial officer works mostly in a charged atmosphere. He is under a psychological pressure—Contestants and lawyers breathing down his neck. If the fact that he renders a decision which is resented by a litigant or his lawyer were to expose him to such risk, it will sound the death knell of the institution. "Judge bashing" has become a favourite pastime of some people. There is growing tendency of maligning the reputation of judicial officers by

disgruntled elements who fail to secure an order which they desire. For functioning of democracy, an independent judiciary, to dispense justice without fear and favour is paramount. Judiciary should not be reduced to the position of flies in the hands of wanton boys.

The subordinate judiciary works in the supervision of the High Court and it faces problem at the hands of unscrupulous litigants and lawyers, and for them "Judge bashing" becomes a favourable pastime. In case the High Court does not protect honest judicial officers, the survival of the judicial system would itself be in danger. **(Nirmala J. Jhala vs. State of Gurajat; (2013) 4 SCC 301)**

Juvenile/child accused—Joint trial conducted for offences committed when accused was juvenile and for offences committed when he had became an adult—Entire trial when not initiated

So far as the joint trial of the charges is concerned, as the offences committed by the respondent after attaining majority were of a very serious nature, and in view of the provisions of Rule 65 of the Army Rules, only composite (single) sentence is permissible, the High Court could substitute the punishment considering the gravity of the offences committed by the respondent after attaining 18 years of age. But there was no occasion for the High Court to observe that the entire GCM proceedings stood vitiated. **(Union of India vs. Ex-GNR Ajeet Singh; (2013) 4 SCC 186)**

Sentence—Minimum sentence/minimum statutory sentence—Plea of leniency—Untenability—Case established beyond reasonable doubt, plea of leniency is rejected

The learned counsel for the appellants while pointing out that Ramswaroop (Appellant 1 herein) has served 7 years, 4 months and 18 days in jail and Chintu Mahte (Appellant 2 herein), aged about 80 years, has served 6 years, 4 months and 18 days, pleaded for leniency. We are unable to accept the above claim of the learned counsel for the appellants since the prosecution has established its case beyond reasonable doubt, particularly the role of the appellants who caused fatal injuries. Since we are affirming the conviction under Section 302, the Court cannot impose a lesser sentence than what is prescribed by law, however, taking note of the age of Chintu Mahte (Appellant 2 herein), he is free to make a representation to the Government for remission and if any such representation is made, it is for the Government to pass appropriate orders as per the rules applicable. In the above circumstance, the sentence cannot be altered to the period already undergone and the said request of the counsel for the appellants is rejected. **(Ramswaroop vs. State of M.P.; (2013) 4 SCC 64)**

Dowry Prohibition Act

S. 2 – Dowry Demand - Demand for purchase of computer for starting business cannot be said to be demand in connection with marriage

The evidence of PW1 and PW4 is that the demand of Rs.50,000/- by the appellant was made six months after the marriage and that too for purchasing a computer to start his own business. It is only with regard to this demand of Rs.50,000/- that the Trial Court has recorded a finding of guilt against the appellant for the offence under Section 304B, IPC and it is only in relation to this demand of Rs.50,000/- for purchase of a computer to start a business made by the appellant six months after the marriage that the High Court has also confirmed the findings of the Trial Court with regard to guilt of the appellant under Section 304B, IPC. In view of Court, both the Trial Court and the High Court failed to appreciate that the demand, if at all made by the appellant on the deceased for purchasing a computer to start a business six months after the marriage, was not in connection with the marriage and was not really a 'dowry demand' within the meaning of Section 2 of the Dowry Prohibition Act, 1961. The Court has held in Appasaheb & Anr. Vs. State of Maharashtra (2007) 9 SCC 721:

In view of the aforesaid definition of the dowry any property or valuable security should be given or agreed to be given either directly or indirectly at or before or any time after the marriage and in connection with the marriage of the said parties. Therefore, the giving or taking of property or valuable security must have some connection with the marriage of the parties and a correlation between the giving or taking of property or valuable security with the marriage of the parties is essential. Being a penal provision it has to be strictly construed. Dowry is a fairly well known social custom or practice in India. It is well settled principle of interpretation of Statute that if the Act is passed with reference to a particular trade, business or transaction and words are used which everybody conversant with that trade, business or transaction knows or understands to have a particular meaning in it, then the words are to be construed as having that particular meaning. **(Vipin Jaiswal (A-1) v. State of A.P.; 2013 CriLJ 2095)**

Employees' Provident Funds & Miscellaneous Provisions Act

S. 7-A, 1(3)(b) and 2(f) - Applicability of – Authority by order, covered the establishment petitioner samiti under the Act - When there was a clear report in favour of petitioner - The four persons are not being paid salary - And there was no rebuttal of petitioner's case - That they were not attending the petitioner establishment on regular basis on fixed day and timings - They were coming by their own will voluntarily and this fact was also established from various documents - Hence, the impugned orders passed under section 7-A by authority are

quashed

When there was a clear report in favour of the petitioner that those four persons are not being paid salary and there was no rebuttal to the petitioner's case that they were not attending the petitioner establishment on regular basis on fixed day and timings, and were coming at their own will voluntarily and when this fact was also established from various documents including attendance register, we fail to understand what more evidence was expected by the Tribunal from the petitioner to have led. **(Jan Shiksha Prasar Samiti, Barwari Vs. Assistant P.F. Commissioner, M.P., Indore, (2013 (137) FLR 395) (MP HC - Indore Bench).**

Evidence Act

S. 3 – Evidence of solitary star witness of prosecution cannot be discarded only on the ground that related, partisan and inimical witness

The evidence of star solitary witness of the prosecution, informant PW 3. From his depositions it is evident that he is related, partisan, and inimical witness but for those reasons alone his evidence cannot be discarded nor can he be treated to be untruthful witness. However his evidence has to be scanned with caution and circumspection as had been mandated by the Apex Court in innumerable decisions and therefore court has vetted his evidence with myopic scrutiny. **(Munendra v. State of U.P.; 2013 (2) ALJ 487)**

S.3—Murder—Motive—Proof—Accused liable to be convicted

The motive of the crime in this case is well established and proved from the evidence of eye witnesses including the injured witness. According to the evidence of Sital Deo Yadav PW-1 who is first informant and father of the deceased Chandra Shekhar, there was enmity between the accused on the one hand and the injured Som Dutt Chaube PW-4 and first informant on the other hand. The injured Som Dutt Chaube PW-4 got the sale deed of the property of the two old ladies executed in his favour and the appellant got fictitious sale deed of the same property of those two widow laides Nauranga and Karma by setting up two imposters women executed subsequently. Thus after execution of the first sale deed in favour of the injured Som Dutt Chaube PW-4, it was the appellant who setting up two imposters women subsequently got fictitious sale deed of the property in question executed in his favour putting the title of ownership of the injured PW-4 in clouds and the same resulted into filing of the civil suit for cancelation of the fictitious sale deed in the civil Court by those two widow ladies Mst. Nauranga and Mst. Karma in which they prayed for impleading the injured PW-4 as plaintiff. There was old enmity between the parties prior to the present incident including criminal litigation. All these facts find place in the

evidence of Sital Deo Yadav PW-1 mentioned hereinabove. Thus there was sufficient motive for the appellant to commit the said murder besides injuring two persons including PW-4. This is a case based on direct evidence and in such a case, motive pales into insignificance. **(Krishna Kant Chaturvedi vs. State of U.P.; 2013 Cri.L.J. 1491 (All)**

S. 3 Appreciation of evidence - Testimony of police personal cannot be rejected merely because they are police

The testimony of police personnel cannot be rejected merely because they belong to police Department, Their testimony should be treated in the same manner as testimony of any other witness. There is no principle of law that without corroboration by independent witnesses, the testimony of a police personnel cannot be relied on. The presumption that a person acts honestly applies as much in favour of a police personnel as of other persons and it is not a proper judicial approach to distrust and suspect them without good reasons. The defence is required to lay a foundation by way of cross-examining the police witnesses for discarding discarding their testimony. In the latest cases of Govindaraju @ Govinda V. State by sriramapuram P.S. and another [2012(78) ACC 545 (SC)] the Apex Court has illuminatingly highlighted the principles for appreciating evidence of police official in criminal trials. The Hon'ble Court has observed as under:-

"15. Therefore, the first question that arises for consideration is whether a police officer can be a sole witness. If so, then with particular reference to the facts of the present case, where he alone had witnessed the occurrence as per the case of the prosecution. It cannot be stated as a rule that a police officer can or cannot be a sole eye-witness in a criminal case. It will always depend upon the facts of a given case. If the testimony of such a witness is reliable, trustworthy, cogent and duly corroborated by other witnesses of admissible evidences, then the statement of such witness cannot be discarded only on the ground that he is a police officer and may have some interest in success of the case. It is only when his interest in success of the case. It is only when his interest in the success of the case is motivated by overzealousness to an extent of his involving innocent people: in that event, no credibility can be attached to the statement of such witness".

The Court in the case of Girja Prasad (supra), while particularly referring to the evidence of a police officer, said that it is not the law that Police witnesses should not be relied upon and their evidence cannot be accepted unless it is corroborated in material particulars by other independent evidence. The presumption applies as much in favour of a police officer as any other person.

There is also no rule of law which lays down that no conviction can be recorded on the testimony of a police officer even if such evidence is otherwise re- liable and trustworthy. The rule of prudence may require more careful scrutiny of their evidence. If such a. presumption is raised against the police officers without exception, it will be an attitude which could neither do credit to the magistracy nor good to the public, it can only bring down the prestige of the police administration.

Wherever, the evidence of the police officer, after careful scrutiny, inspires confidence and is found to be trustworthy and reliable, it can form the basis of conviction and the absence of some independent witness of the locality does not in any way affect the creditworthiness of the prosecution case. The Courts have also expressed the view that no infirmity attaches to the testimony of the police officers merely because they belong to the police force and there is no rule of law or evidence which lays down that conviction cannot be recorded on the evidence of the police officials, if found reliable, unless corroborated by some independent evidence. Such reliable and trustworthy statement can form the basis of conviction. Rather than referring to various judgments of this Court on this issue, suffices it to note that even in the case of Girja Prasad (supra), this Court noticed the judgment of the Court in the case of Alzer Raja Khima v. State of Saurashtra: AIR 1956 SC 217 a judgment pronounced more than half a century ago noticing the principle that the presumption that a person acts honestly applies as much in favour of a police officer as of other persons and it is not a judicial approach to distrust and suspect him without good grounds therefore. This principle has been referred to in a plethora of other cases as well. Some of the cases dealing with the aforesaid principle are being referred hereunder.

In Tahir v. State (Delli), (1996) 3 SCC 338 dealing with a similar question, the Court held as under:-

"In our opinion no infirmity attaches to the testimony of the police officials, merely because they belong to the police force and there is no rule of law or evidence which lays down that conviction cannot be re- corded on the evidence of the police officials, if found reliable, unless corroborated by some independent evidence. The Rule of Prudence, how- ever, only requires a more careful scrutiny of their evidence, since they can be said to be interested in the result of the case projected by them. Where the evidence of the police officials, after careful scrutiny, inspires confidence and is found to be trust- worthy and reliable, I can form basis of conviction and the absence of some independent witness of the locality to lend corroboration to their evidence, does not in any way affect the creditworthiness of the prosecution case."

The obvious result of the above discussion is that the statement of a police officer can be relied upon and even form the basis of conviction when it is reliable, trust-worthy and preferably corroborated by other evidence on record. (**Rati Ram and another v. State of U.P.; 2013 (81) ACC 550 (All)**

S. 3 – Affidavit – Evidentiary value of – Affidavit is not "evidence" within the meaning of S.3 and it need for cross-examination of deponent for reliance upon affidavit

An affidavit is not "evidence" within the meaning of Section 3 of the Evidence Act, 1872, and the same can be used as "evidence" only if, for sufficient reasons, the court passes an order under Order 19 CPC. Thus, the filing of an affidavit of one's own statement, in one's own favour, cannot be regarded as sufficient evidence for any court or tribunal, on the basis of which it can come to a conclusion as regards a particular fact situation. However, in a case where the deponent is available for cross-examination and opportunity is given to the other side to cross-examine him, the same can be relied upon. Such a view stands fully affirmed particularly in view of the amended provisions of Order 18 Rules 4 and 5 CPC. (**Ayaaubkhan Noorkhan Pathan vs. State of Maharashtra; (2013) 4 SCC 465)**

Circumstantial evidence—Role of—Merely because motive has not been established, prosecution case cannot be dislodged if circumstances proved established prosecution case

In Javed Masood and another vs. State of Rajasthan cited by Mr. Sharan, this Court relying on its earlier decision in Mukhtiar Ahmed Ansari vs. State, (2005) 5 SCC 258, has held that it was open to the defence to rely on the evidence led by the prosecution. In this case, we have found that the evidence of PW 7 does not contradict the evidence of PW 6 and does not support the defence. It, however, appears from the evidence of P.W. 3 that it was Arvind who had a Khatal at Old Bakri Bazar. We have perused the evidence of P.W. 3 and we do not find that P.W. 3 has stated that the appellant did not have a Khatal on the verandah of the Pearl Cinema. Ofcourse, PW 4 has stated that the appellant runs business of bakri (sheep goat) and never ran milk business but in the evidence of PW 4 there is nothing to show that the room on the verandah of Pearl Cinema was not in the occupation of the appellant. At best the defence can rely on P.W. 4 to argue that the appellant did not carry on milk business and therefore the motive for committing the offence did not exist. The evidence of PW 4 may thus create some doubt with regard to the motive of the appellant to kill Ravindra Prasad and Sunny Kumar. Where other circumstances lead to the only hypothesis that the accused has committed the offence, the Court cannot acquit the accused of the

offence merely because the motive for committing the offence has not been established in the case. In Ujjagar Singh vs. State of Punjab, (2007) 13 SCC 90, this Court has held:

"It is true that in a case relating to circumstantial evidence motive does assume great importance but to say that the absence of motive would dislodge the entire prosecution story is perhaps giving this one factor an importance which is not due and (to use the cliché) the motive is in the mind of the accused and can seldom be fathomed with any degree of accuracy."

(Sanaullah Khan vs. State of Bihar; 2013 (81) ACC 302 (SC)

S. 3 - Interested witness – Appreciation of evidence - Evidence of related and interested witness - Ought to be examined with great care and caution than evidence of third party disinterested and unrelated witness

The Evidence of a related or interested witness should be meticulously and carefully examined. In a case where there related and interested witness may have some enmity with the assailant, the bar would need to be raised and the evidence of the witness would have to be examined by applying a standard of discerning scrutiny. This is only a rule of prudence and not one of law. **(Raju Alias Balachandran & Ors. V. State of Tamil Nadu; AIR 2013 SC 983)**

S. 3 – Evidence - Reliability - Has to be judged from entire statement and demeanour of witness - Expression "Sterling worth" - Not of absolute rigidity in criminal jurisprudence

'Sterling worth' is not an expression of absolute rigidity. The use of such an expression in the contest of criminal jurisprudence would mean a witness worthy of credence, one who is reliable and truthful. This has to be gathered from the entire statement of the witnesses and the demeanour of the witnesses, if any, noticed by the Court. Linguistically, 'sterling worth' means 'thoroughly excellent' or 'of great value'. This term, in the context of criminal jurisprudence cannot be of any rigid meaning. It must be understood as a generic term. It is only an expression that is used for judging the worth of the statement of a witness. **(Registrar of Jadavpur University v. Arindam Dutta Gupta and Ors.; AIR 2013 SC 1084)**

S. 3 – Proof – Suspicion however strong, cannot take place of proof, clear and unimpeachable evidence is necessary to convict persons

In this case Court observed that the appellants AI-Anil and A2-Ashok were convicted for the offence punishable under Section 302 of the IPC with the aid of Section 34 thereof. Now, the question is whether the version given by PW3-Meena in the FIR that Al-Anil and A2-Ashok assaulted the deceased is to

be accepted or whether the version given by her in the examination-in-chief that AI-Anil, A2-Ashok, A4-Kishor and A5- Shankar assaulted the deceased has to be accepted or whether the version given by her in the cross-examination that AI-Anil and A2-Ashok only dragged the deceased out in the courtyard along with A3-Baba and A3-Baba assaulted the deceased with others is to be accepted. When there is such a great variance in her versions, we find it risky to convict the accused on the basis of such evidence. If her version in the FIR and examination-in-chief is to be accepted, then A5- Shankar could have been convicted with the aid of Section 34 of the IPC. But, he has been acquitted. If the version given in the cross-examination that Al-Anil andA2- Ashok only dragged the deceased out and A3-Baba assaulted the deceased is to be accepted then it is necessary to examine whether they shared common intention with A3-Baba to commit murder of the deceased. It is possible that they did share common intention with A3-Baba. It is equally possible that they did not. If Al-Anil and A2-Ashok merely dragged the deceased and they had no intention to kill the deceased, they may be guilty of a lesser offence. It appears that unfortunately, this aspect was not examined properly by learned Sessions Judge because during the pendency of the case, A3-Baba was murdered and could not be tried. At this stage, in the absence of evidence, it is not possible for us to make out a new case. The prosecution case is, therefore, not free from doubt. Undoubtedly, the evidence on record creates a strong suspicion about involvement of AI-Anil and A2-Ashok, but, it is not sufficient to prove their involvement in the offence of murder beyond doubt. It is well settled that suspicion, however strong, cannot take the place of proof. Clear and unimpeachable evidence is necessary to convict a person. **(Anil Shamrao v. State of Maharashtra; 2013 CrLJ 2223)**

S. 3 – Discrepancies in evidence – Unless material so as to create doubt about credibility of witness, his evidence cannot be discarded

Once Court found that the eyewitness account of PW -13 is corroborated by material particulars and is reliable, we cannot discard his evidence only on the ground that there are some discrepancies in the evidence of PW-l, PW-2, PW-13 and PW-19. As has been held by this Court in State of Rajasthan v. Smt. Kalki and another [(1981) 2 SCC 752 : (AIR 1981SC 1390)], in the deposition of witnesses there are always normal discrepancies due to normal errors of observation, loss of memory, mental disposition of the witnesses and the like. Unless, therefore, the discrepancies are "material discrepancies" so as to create a reasonable doubt about the credibility of the witnesses, the Court will not discard the evidence of the witnesses. **(Subodh Nath v. State of Tripura; 2013 CrLJ 2308)**

S. 3 - Standard of proof for circumstantial evidence - Golden principles

required to be followed, for basing conviction

Before considering the materials placed by the prosecution and the defence, let us analyse the legal position as declared by this Court on the standard of proof required for recording a conviction on the basis of circumstantial evidence. In a leading decision of this Court in Sharad Birdhichand Sarda vs. State of Maharashtra, (1984) 4 SCC 116, this Court elaborately considered the standard of proof required for recording a conviction on the basis of circumstantial evidence and laid down the golden principles of standard of proof required in a case sought to be established on the basis of circumstantial evidence which are as follows:

> "153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:
>
> > (1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.
> >
> > It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra,(1973) 2 SCC 793 where the observations were made: [SCC para 19, p. 807): "Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."
> >
> > (2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,
> >
> > (3) the circumstances should be of a conclusive nature and tendency,
> >
> > (4) they should exclude every possible hypothesis except the one to be proved, and
> >
> > (5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human

probability the act must have been done by the accused.

154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence."

With the same elaborately, with the above "five golden principles", let us consider the case of the prosecution and find out whether it satisfies all the tests. **(Prakash v. State of Rajasthan; 2013 CriLJ 2040)**

S. 3 – Appreciation of evidence – Presumption to consent – Two fingers test and its interpretation – Even if report is affirmative, cannot ipso facto give rise to presumption of consent

In rape cases so far as two finger test is concerned, it requires a serious consideration by the court as there is a demand for sound standard of condonation and interpreting forensic examination of rape survivors.

In view of international Covenant on Economic, Social, and Cultural Rights 1966; United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 1985, rape survivors are entitled to legal recourse that does not retraumatize them or violate their physical or mental integrity and dignity. They are also entitled to medical procedures conducted in a manner that respects their right to consent. Medical procedures should not be carried out in a manner that constitutes cruel, inhuman, or degrading treatment and health should be of paramount consideration while dealing with gender-based violence. The State is under an obligation to make such services available to survivors of sexual violence. Proper measures should be taken to ensure their safety and there should be no arbitrary or unlawful interference with his privacy.

Thus, undoubtedly, the two finger test and its interpretation violate the right of rape survivors to privacy, physical and mental integrity and dignity. Thus, this test, even if the report is affirmative, cannot ipso facto, give rise to presumption of consent. **(Lillu v. State of Haryana; 2013 CrLJ 2446)**

S. 6 - Facts admissible under rule of res gestae - Nature

The test to determine admissibility under the rule of "res gestae" is embodied in words "are so connected with a fact in issue as to form a part of the same transaction." It is therefore, that for describing the concept of "res gestae", one would need to examine, whether the fact is such as can be described by use of words/phrases such as, contemporaneously arising out of the occurrence, actions having a live link to the fact, acts perceived as a part of the occurrence, exclamations of hurt, seeking help, of disbelief, of cautioning and the like arising out of the fact spontaneous reactions to a fact, and the like.

Where in case regarding bomb blast confession made by accused in some other case was sought to be admitted as evidence. But the confession was made 2 years after blast (fact in issue) it was held that confession in question cannot be said to have contemporaneously arisen along with bomb blast and hence would not admissible under rule of res geste. **(State of Maharashtra v. Kamal Ahmed Mohammed Vakil Ansari and Ors.; 2013 Cri. L.J. 2069)**

S. 8 – Motive – Existence of strong motive is not an essential pre requisite for conviction for murder when there is other credible evidence on record

The counsel for the appellant submitted that the identification of the accused in the court should not be relied upon. The Court have no hesitation in rejecting this submission. The attack was dastardly. It is difficult to forget such heinous episode. The injuries suffered by the deceased show how brutally they were attacked. The eyewitnesses had seen the accused from close quarters. There is, therefore, nothing unusual if the eyewitnesses identified some of the accused in the court. This Court has accepted the evidence of identification in the court in several cases (see: Malkhansingh v. State of M.P.; (2003) 5 SCC 746: 2003 SCC (Cri) 1247). This submission must, therefore, be rejected. It is pertinent to note that some witnesses have honestly stated that they could not identify some of the accused. That shows that they were not tutored. It was argued that the prosecution has not been able to establish motive. The incident appears to have taken place because juvenile delinquent Gopal was detained by deceased Hemanta. Assuming, however, that this is a case of weak motive or that the prosecution has not established motive, that will not have adverse impact on its case because when there is credible evidence of eyewitnesses on record, the motive pales into insignificance. **(Subal Ghorai vs. State of West Bengal; (2013) 4 SCC 607)**

S. 17 – Admissibility in evidence depends on whether admission relates to 'relevant fact' or 'fact in issue

Sections 17 to 31 of the Evidence Act pertain to admissions and confessions. Sections 17 to 31 define admissions/confessions, and also, the admissibility and inadmissibility of admissions/confessions. An analysis of the aforesaid provisions reveals, that an admission or a confession to be relevant must pertain to a "fact in issue" or a "relevant fact". In that sense, Section 5 (and consequently Sections 6 to 16) of the Evidence Act are inescapably intertwined with admissible admissions/confessions. It is, therefore, essential to record here, that admissibility of admissions/confessions would depend on whether they would fall in the realm of "facts in issue" or "relevant facts". That in turn is to be determined with reference to Sections 5 to 16 of the Evidence Act. The

parameters laid down for the admissibility of admissions/confessions are, however, separately provided for under the Evidence Act, and as such, the determination of admissibility of one (admissions/confessions) is clearly distinguishable from the other (facts in issue/relevant facts) **(State of Maharashtra v. Kamal Ahmed Mohammed Vakil Ansari and Ors.; 2013 Cri.L.J. 2069)**

Ss. 24, 25, 26, 30 – Admission/confession - Admissible only against its maker i.e. Admission/confession made by accused in one case not admissible as confession against accused in another case

The admission/confession is admissible only as against the person who had made such admission/confession. Naturally, it would be inappropriate to implicate a person on the basis of a statement made by another. Therefore, the next logical conclusion, that the person, who has made the admission/confession, should be a party to the proceeding because that is the only way a confession can be used against him. Section 24 leads to such a conclusion. Under Section 24, a confession made "by an accused person", is rendered irrelevant "against the accused person", if made under threat, inducement of promise. Likewise Section 25 contemplates, that a confession made to a police officer cannot be proved "as against a person accused of any offence". A confession made by a person while in custody of the police, cannot "be proved as against such person." The gamut of the bar contemplated under Sections 25 and 26, is however marginally limited by way of a proviso thereto, recorded in Section 27 of the Evidence Act. There under, a confession has been made admissible, to the extent of facts "discovered" on the basis of such confession. The scheme of the provisions pertaining to admissions/confessions depicts one way traffic. Such statements are admissible only as against the author thereof. Therefore the admission/confession made by accused in one case would not be admissible as confession against accused in other case. **(State of Maharashtra v. Kamal Ahmed Mohammed Vakil Ansari and Ors.; 2013 Cri. L.J. 2069)**

S. 25 – Extra-judicial confession is capable of sustaining conviction provided it is voluntary and truthful and not made under inducement

The confessional statement in the case at hand has been made by the appellant almost immediately after the commission of the crime. The appellant is alleged to have gone over to P.W.1 S.K. Natarajan, Village Administrative Officer, who was the concerned Village Administrative Officer of Veriappur and narrated to the witness the genesis of the incident leading to his throwing baby Savitha into the well at a short distance from his house. P.W. 1 S.K. Natarajan recorded the confessional statement of the appellant, which was marked Exh. P-1

at the trial, and got the same signed from the appellant and took the appellant with him to the jurisdictional police station. At the police station P.W. 1 S.K. Natarajan got the first information report regarding the incident registered as Crime No. 61/05 setting legal process into motion in the course whereof Investigating Officer was taken to the well by the appellant in which he had thrown the child. At the well, the Inspector of police prepared the Mahazar which was signed by the witness including P.W. 1 S.K. Natarajan himself and took charge of the dead body of the child which had, by that time, been brought out of the well. A towel lying about 20 ft. from the well was also seized.

The legal position is fairly well settled that an extra judicial confession is capable of sustaining a conviction provided the same is not made under any inducement, is voluntary and truthful. Whether or not these attributes of an extra judicial confession are satisfied in a given case will, however, depend upon the facts and circumstances of each case. It is eventually the satisfaction of the Court as to the reliability of the confession, keeping in view the circumstances in which the same is made, the person to whom it is alleged to have been made and the corroboration, if any, available as to the truth of such a confession that will determine whether the extra judicial confession ought to be made a basis for holding the accused guilty. **(R. Kuppusamy vs. State Rep. by Inspector of Police; 2013(81) ACC 995)**

S. 27 – Recovery evidence – Evidentiary value

In the present case, allegation that in broad-day light and in busy market place accused fired two shots at police party. Both shots missed target no one was hit. Incident was witnessed by passersby but no independent witness had come forward to support prosecution case. Recovery of revolver and empty cartridges from accused but no opinion of Ballistic expert was on record regarding alleged recovered items. There were apparently no independent witness of incident and recovery other than police personals, raised suspicion. So evidence did not appear creditable and prosecution failed to prove its case beyond reasonable doubt. Hence, conviction of accused not proper. **(Shiv Kant v. State of U.P.; 2013 (3) ALJ 252)**

S. 32 – Dying declaration – Doctor certifying fitness of patient to make statement – magistrate directing all police officials of Relatives out of the room – Magistrate recording the statement after being satisfied about parties it is condition – After recording doctor certifying patients' condition during recording of statement – Dying declaration duly recorded – No need of corroboration

Coming to the claim that inasmuch as the husband Rakesh also sustained

bum injuries in his hands, it is highly impossible to set her ablaze, it is relevant to note that the incident occurred late night on 14.05.1998, though the accused-husband took her to the hospital admittedly, he did not try to get any treatment from the doctor for the alleged burn injuries. As rightly pointed out by the learned counsel for the State, if he had sustained burn injuries in his hands nothing prevented him from taking treatment on the same day from the same doctor. Admittedly, he did not get treatment till he was arrested on 21.05.1998. In view of the same, the argument of the learned counsel for the appellant that inasmuch as the burn injuries were found on the hands of the husband, it was necessary to look for corroboration is liable to be rejected. In view of the factual position, the decisions of various Courts relied on by the counsel for the appellants on this aspect are not applicable to the case on hand and there is no need to refer the same. (**Rakesh vs. State of Haryana; 2013(3) Supreme 500)**

S. 32 – Multiple dying declarations – Variance – If such variation was only as regard nature of demand then such variation is of no importance

It was contended that there is a variation between the two dying declarations with respect to the reasons for setting her on fire. Now as far as this variation between the two statements is concerned, it is only this much that in her first statement Chandrakala had stated that the appellant used to harass and ill-treat her because he was demanding gold from her, and was asking her to marry her sister to him for which she was not agreeable. In the second dying declaration she had once again stated that he was demanding gold from her, but had also added that he had sought the transfer of the land belonging to her maternal uncle to him. This time she has not stated about his insisting to marry her sister. The demand for gold is the common factor in both the statements. In the first statement she has additionally referred to his insisting on marrying her sister, whereas in the second one she has referred to his demand for the agricultural land of her maternal uncle. The Sessions Court and the High Court have not given any importance to this variation, and in our view rightly so. This is because one must understand that Chandrakala had suffered 91 % burn injuries. Earlier, the duty-doctor had asked her as to how the incident had occurred, and later on the Head Constable on duty had repeated the query. Any person in such a condition will state only that much which he or she can remember on such an occasion. When asked once again, the person concerned cannot be expected to repeat the entire statement in a parrot-like fashion. One thing is very clear in both the statements viz., the greed of the appellant and her being harassed on that count. Besides, it is relevant to note that her mother and brother have both corroborated her statement that the appellant was demanding gold and land from her. Initially Chandrakala spoke about this demand for gold and later also for the land. This cannot in any

way mean an attempt to improve. Similarly, the non-mention on the second occasion of his insistence to marry her sister cannot be an omission to discredit her statements**. (Hiraman v. State of Maharashtra; 2013 CrLJ 2191)**

S. 32 – Multiple dying declarations – Reliability of Discrepancies and contradictions in dying declarations make them unreliable

Court may now examine, whether statement of PW3 – Prem Chand recorded under Section 161, Cr.P.C., marked as Ex.P6 could be accepted as a dying declaration, wherein it was stated by him that the deceased was raising hue and cry and was abusing her father in law for ablazing her. PW3 was declared as hostile. Further, PW4 and PW5, the neighbours, who have stated to have seen the deceased in a burning state and raising hue and cry, neither disclosed the cause of death nor mentioned the names of any of the accused persons. Consequently, the dying declaration made by Prem Chand remained uncorroborated. It is trite law that it is unsafe to base reliance on the statement made under Section 161 Cr.P.C. as dying declaration without any corroboration. Although corroboration as such is not essential but it is expedient to have the same, in order to strengthen the evidentiary value of declaration. The court in Arvind Singh v. State of Bihar (2001) 6 SCC 407 while dealing with the case of oral dying declaration stated as follows:

> "Dying declaration shall have to be dealt with care and caution. Corroboration is not essential but it is expedient to have the same, in order to strengthen the evidentiary value of declaration. Independent witnesses may not be available but there should be proper care and caution in the matter of acceptance of such a statement as trustworthy evidence."

The Court in Bhajju Alias Karan Singh v. State of Madhya Pradesh (2012) 4 SCC 327 while dealing with admissibility of dying declaration held as follows:

"The law is well settled that a dying declaration is admissible in evidence and the admissibility is founded on the principle of necessity. A dying declaration, if found reliable, can form the basis of a conviction.

The Court had occasion to consider the scope of multiple dying declarations in Smt. Kamla v. State of Punjab (1993) 1 SCC 1, this Court held as follows:

> "A dying declaration should satisfy all the necessary tests and one such important test is that if there are more than one dying declaration they should be consistent particularly in material particulars."

In Lella Srinivasa Rao v. State of A.P. (2004) 9 SCC 713, the Court had

occasion to consider the legality and acceptability of two dying declarations. Noticing the inconsistency between the two dying declarations, the Court held that it is not safe to act solely on the said declarations to convict the accused persons.

Court have gone through both the dying declarations and there are not only material contradictions in both the declarations but also inter se discrepancies in the depositions of the witnesses as well. In the first dying declaration recorded by ASI, signed by PW13, there is no mention of the names of any of the accused persons and the deceased had stated that she could not recognize the person who set her ablaze even though the declaration was in consonance with Rule 6.22 of the Rajasthan Police Rules, 1965.

Due to discrepancies and contradictions between the two dying declarations and also in the absence of any other reliable evidence, in our view, the High Court is justified in reversing the order of conviction which calls for no interference by this Court. In view of above, the appeal is, therefore, dismissed**. (State of Rajasthan vs. Shravan Ram & Anr.; AIR 2013 SC 1890)**

S. 32 – Dying Declaration – Reliability – Failure to secure present of Magistrate to record statement and to record it in question-answer form, do not affect its evidentiary value

Chandrakala having suffered 91 % burn injuries, there was hardly any time to secure the presence of competent Magistrate or to record her statement in a detailed question-answer form. Absence of these factors itself will not take away the evidentiary value of the recorded statement. The parameters from this paragraph are as follows:

"16. On a review of the relevant provisions of the Evidence Act and of the decided cases in the different High Courts in India and in this Court, we have come to the conclusion, in agreement with the opinion of the Full Bench of the Madras High Court, aforesaid, (1) that it cannot be laid down as an absolute rule of law that a dying declaration cannot form the sole basis of conviction unless it is corroborated; (2) that each case must be determined on its own facts keeping in view the circumstances in which the dying declaration was made; (3) that it cannot be laid down as a general proposition that a dying declaration is a weaker kind of evidence than other pieces of evidence; (4) that a dying declaration stands on the same footing as another piece of evidence and has to be judged in the light of surrounding circumstances and with reference to the principles governing the weighing of evidence; (5) that a dying declaration which has been recorded by a competent Magistrate in the proper manner, that is to say, in the form of questions and answers, and, as far as practicable, in the words of the maker of the

declaration, stands on a much higher footing than a dying declaration which depends upon oral testimony which may suffer from all the infirmities of human memory and human character, and (6) that in order to test the reliability of a dying declaration, the Court has to keep in view, the circumstances like the opportunity of the dying man for observation, for example, whether there was sufficient light if the crime was committed at night; whether the capacity of the man to remember the facts stated, had not been impaired at the time he was making the statement, by circumstances beyond his control; that the statement has been consistent throughout if he had several opportunities of making a dying declaration apart from the official record of it; and that the statement had been made at the earliest opportunity and was no the result of tutoring by interested parties."

The court has further held that bears special sanctity, if made at earliest opportunity without any influence ought to be accepted as relevant and truthful as to cause of death. Absence of corroboration does not take away its relevance. **(Hiraman v. State of Maharashtra; 2013 CrLJ 2191)**

S. 32 – Dying declaration – Credibility of – Statement of deceased concealing injury to defence side in same incident is unworthy of credence

A dying declaration is just like any other piece of evidence and can be accepted or discarded in the same manner as any other oral or documentary evidence. It does not stand on a better or higher footing than oral testimonies of a witnesses, If it is found to be un-tutored, unembellished, reliabilities documented in the words of the dying man, at the earliest opportunity and does not suffer from vices of failing memory or critical condition of the deceased then, even without corroboration, it is sufficient for holding an accused guilty. Since admissibility of dying declaration is an exception to the rule of hear-say evidence it should be approached by the Courts very cautiously, in the given facts and surrounding circumstances, especially because it is seldom made in the immediate presence of the accused who also does not have any opportunity to test the veracity of the maker of such a statement through cross-examination. It is because of these reasons that the Apex Court has to dilate and deliberate on these facets of law, succinctly and lucidly, in Khushal Rao v. State of Bombay, AIR 1958 SC 22 decades ago. Hon'ble Supreme Court has lucidly adumbrated in that decision some guide lines for acceptability of dying declarations in the following words:-

> "16. On a review of the relevant provisions of the Evidence Act and of the decided cases in the different High Courts in India and in this Court, we have come to the conclusion, in agreement with the opinion of the

Full Bench of the Madras High Court, aforesaid, (1) that it cannot be laid down as an absolute rule of law that a dying declaration cannot form the sole basis of conviction unless it is corroborated;

(2) that each case must be determined on its own facts keeping in view the circumstances in which the dying declaration was made; (3) that it cannot be laid down as a general proposition that a dying declaration is a weaker kind of evidence that other pieces of evidence; (4) that a dying declaration stands on the same footing as another piece of evidence and has to be judged in the light of surrounding circumstances and with reference to the principles governing the weighing of evidence; (5) that a dying declaration which has been recorded by a competent magistrate in the proper manner, that is to say, in the form of questions and answers, and, as far as practicable, in the words of the maker of the declaration, stands on a much higher footing than a dying declaration which depends upon oral testimony which may suffer from all the infirmities of human memory and human character, and (6 that in order to test the reliability of a dying declaration, the Court has to keep in view, the circumstances like the opportunity of the lying man for observation, for example, whether there was sufficient light if the crime was corn mitted at night; whether the capacity of the man to remember the facts stated, had not been impaired at the time he was making the statement, by circumstances beyond his control; that the statement has been consistent throughout if he had several opportunities of making a dying declaration apart from the official record of it; and that the statement has been made at the earliest opportunity and was not the result of tutoring by interested parties.

17. Hence, in order to pass the test of reliability, a dying declaration has to be subjected to a very close scrutiny, keeping in view the fact that the statement has been made in the absence of the accused who had no opportunity of testing the veracity of the statement by cross-examination. But once, the Court has come to the conclusion that the dying declaration was the truthful version as to the circumstances of the death and the assailants of the victim, there is no question of further corroboration.

If, on the other hand, the Court, after examining the dying declaration in all its aspects, and testing its veracity, has come to the conclusion that it is not reliable by itself, and that it suffers from an infirmity, then without corroboration it cannot form the basis of a conviction. Thus, the necessity for corroboration arises not from any inherent weakness of dying declaration as a piece of evidence, as held in some of the reported cases, but from the fact that the Court. in a given case, has come to the

conclusion that particular dying declaration was not free from the infirmities referred to above or from such other infirmities as may be disclosed in evidence in the case."

Again in a full Bench decision in Thurukanni Pompiah and another v. State of Mysore, All 1965 SC 939 Apex Court, while disbelieving, the dying declaration as truthful piece of evidence, on the facts and circumstances of that case.

"9. Under Cl. (1) of S. 32 of the Indian Evidence Act, 1872, a statement made by a person who is dead, as to the cause of his death or as to any of the circumstances of the transaction which resulted in his death is a relevant fact in cases in which the cause of that person's death comes into question, and such a statement is relevant whether the person who made it was or was not, at the time when it was made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question. The dying declaration of Eranna is, therefore, relevant and material evidence in the case. A truthful and reliable dying declaration may form the sole basis of conviction, even though it is not corroborated. But the Court must be satisfied that the declaration is truthful. The reliability of the declaration should be subjected to a close scrutiny, considering that it was made in the absence of the accused that had no opportunity to test its veracity by cross-examination. If Court finds that the declaration is not wholly reliable and a material and integral portion of the deceased's version of the entire occurrence is untrue, the Court may, in all the circumstances of the case, consider it unsafe to convict the accused on the basis of the declaration alone without further corroboration. "

In yet another decision Harbans Singh v. State of Punjab, AIR 1962 SC 439 it has been observed by the Apex Court as under:-

"18. In view of this latest pronouncement of this Court - which it should be stated in fairness to the Trial Judge was made long after he gave his judgment - it must be held that it is neither a rule of law nor of prudence that a dying declaration requires to be corroborated by other evidence before a conviction can be based thereon. The evidence furnished by the dying declaration must be considered by the Judge, just as the evidence of any witness, though undoubtedly some special considerations arise in the assessment of dying declaration which do not arise in the case of assessing the value of a statement made in Court by a person claiming to be a witness of the occurrence. In the first place, the Court has to make

sure as to what the statement of the dead man actually was. This it is often a difficult task, specially where the statement had not been put into writing. In the second place, the Court has to be certain about the identity of the persons named in the dying declarations - a difficulty which does not arise where a person gives his depositions in Court and identifies the person who is present in Court as the person whom he has named. Other special considerations which arise in assessing the value of dying declarations have been mentioned by this Court in 1958 SCR 552: (AIR 1958 SC 22) and need not be repeated here."

Now applying the guide lines to facts and circumstances of the present appeal, court at the very outset, record that none of the alleged three dying declarations mentions about the murder of deceased Smt. Atli and her sustaining gunshot wounds in the same incident and thus all the three dying declarations suffer from the same criticism as that of PW3 and therefore, for concealing injury to the defence, side it becomes unworthy of credence. **(Munendra v. State of U.P.; 2013 (2) ALJ 487)**

S. 32 (1) - Dying declarations - Reliability - Mere presence of some close relatives of deceased would not affect credibility of declaration

Ms. Shalini Nagpal, Judicial Magistrate, First Class, Rohtak, who recorded the dying declaration of the deceased, was examined as PW-10. According to her, on 16.05.1998, the police had moved an application before her for recording the statement of Kailash, and she had visited PGIMS, Rohtak at about 5.50 p.m. on the same day and contacted the doctor concerned in Ward No.5 and sought his opinion about her fitness to make a statement. She asserted that the doctor had declared Kailash fit to make a statement (Memo Ex PB/3). She further explained that thereafter, she recorded her statement in the form of question and answers form which is Ext. PB. The statement was concluded by her at 6.25 p.m and PW-6, after examining the deceased certified that Kailash was in her sense throughout the period of her examination. She also deposed that the statement (Ex.PB) had been recorded by her in the very language of Kailash without any addition or omission and her certificate to that effect is Ex. PB/5. The certificate of the doctor about the physical condition of the deceased during the course of examination is Ex. PB/4. She also informed the Court that the statement was read over to Kailash who accepted the contents to be correct. She also stated that she did not obtain the thumb impression of the patient as both her hands were burnt, hence she elected to obtain the impression of her right toe. In the cross examination, she admitted that the document exhibited as Ex. PB by her is the carbon copy prepared by her in the same process. It is also clear from her evidence that before recording the statement of the deceased, she specifically

directed the police officials and relatives to leave the ward so that the patient was not under any influence while making the statement before her. Though, in the evidence, it has come on record that few of the relatives were standing in the ward, in view of the assertion of the Magistrate (PW-10) who recorded her statement, mere presence of some of the close relatives would not affect the contents of the declaration. (**Rakesh vs. State of Haryana; (2013) 2 SCC (Cri.) 312)**

S. 32(2) – Cr.P.C., S. 162 – Statement U/s. 161 Cr.P.C. of an injured recorded by I.O. during course of Investigation can be accepted as dying declaration and it becomes admissible in evidence as substantive piece of evidence

When Court tests the submission of the earned Counsel for the appellant in the case on hand at the time when 161 Cr.P.C. statement of the deceased was recorded, the offence registered was under section 326, IPC having regard to the grievous injuries sustained by the victim. PW -4 was not contemplating to record the dying declaration of the victim inasmuch as the victim was seriously injured and immediately needed medical aid. Before sending him to the hospital for proper treatment PW-4 thought it fit to get the version about the occurrence recorded from the victim himself that had taken place and that is how Exhibit Ka-2 came to be recorded. Undoubtedly, the statement was recorded as one under section 161 Cr.P. C. Subsequent development resulted in the death of the victim on the next day and the law empowered the prosecution to rely on the said statement by treating it as a dying declaration, the question for consideration is whether the submission put forth on behalf of the respondent Counsel merits acceptance.

Learned Senior Counsel made a specific reference to section 162 (2) Cr. P. C. in support of his submission that the said section carves out an exception and credence that can be given to a 161 statement by leaving it like a declaration under section 32(1) of the Evidence Act under certain exceptional circumstances.

Going by section 32(1) Evidence Act, it is quite clear that such statement would be relevant even if the person who made the statement was or was not at the time when he made it was under the expectation of death. Having regard to the extraordinary credence attached to such statement fall under section 32(1) of the India Evidence Act, time and again this Court has cautioned as to the extreme care and caution to be taken while relying upon such evidence recorded as a dying declaration. **(Irshad and another vs. State of U.P.; 2013(81) ACC 734)**

S. 45 – Non-filing of report of forensic science laboratory – Effect of – If report could not be brought on record, it would not effect merits of case

which based on testimony of eye-witnesses including injured eye-witness

The last argument of learned counsel for the appellants is that no report of Forensic Science Laboratory has been filed in the case so adverse inference should be drawn against the prosecution. No doubt PW-4, the investigating officer has stated in his examination-in-chief that the case property was sent to Forensic Science Laboratory for examination and has also proved the case property in his deposition before the trial Court, but no report of the Laboratory has been filed by the prosecution. Two empty cartridges were also recovered from the spot. It would have been better if the report of Laboratory was filed during trial, but if it could not be brought on record for any reason what so ever it would not affect the merits of the case which is based on testimony of eye-witnesses including an injured witness. **(Kallu s/o Nanhku Singh and Anr. v. State of U.P.; 2013 (3)ALJ 215)**

Ss. 45 and 138—Photographic evidence of photographer—When credible and can be admissible

In this case court has held that PW 2 photographer being thoroughly cross-examined, his deposition being relied on by trial court and no expert being examined to discredit his evidence—Evidence of PW-2, held, is credible and cannot be doubted on ground that another photograph was not examined. Appellate court erred in considering irrelevant material, while most relevant evidence i.e. adoption ceremony and adoption deed, were disregarded on basis of mere surmises and conjectures. (**Laxbai vs. bhagwantbuva; (2013) 4 SCC 97)**

S. 47 – Handwriting of accused – Proof

The contention that the evidence of Sundaram (PW-14), who was examined for the purpose of proving the handwriting of the appellant and whose competency to identify the writing of the appellant itself is doubtful, as rightly pointed out by the respondent that it was admitted by A-5 (appellant herein), while questioning under Section 313 that she had been working in Sugir Tours and Travels run by PW-14 during 1987-91 and, hence, the evidence of PW-14, who identified the writings available in Exhs.P-2 to P-43 as that of A-5 is admissible under Section 47 of the Indian Evidence Act. We are satisfied that the same was rightly acted upon by the trial Court and the High Court while holding the charge against the accused-appellant as proved to have committed in pursuance of the conspiracy**. (Hema v. State, through Inspector of Police, Madras; AIR 2013 SC 1000)**

Ss. 59 and 60—Evidentiary value of oral testimony

Do not have the slightest hesitation in accepting the broad submission of Mr. Jain that the conviction can be based on the sole testimony of the prosecutrix, if found to be worthy of credence and the reliable and for that no corroboration is required. It has often been said that oral testimony can be classified into three categories, namely, (i) wholly reliable, (ii) wholly unreliable, and (iii) neither wholly reliable nor wholly unreliable. In case of wholly reliable testimony of a single witness, the conviction can be founded without corroboration. This principle applies with greater vigour in case the nature of offence is such that it is committed in seclusion. In case prosecution is based on wholly unreliable testimony of a single witness, the court has no option than to acquit the accused. **(State of Rajasthan vs. Babu Meena; (2013) 4 SCC 206)**

S. 106 – Burden of proof – Burden on inmates of house to give cogent explanation as to how murder committed in secrecy inside house

Where offence like murder is committed in secrecy inside house, initial burden to establish case would undoubtedly be upon prosecution, but nature and amount of evidence to be led by it to establish charge cannot be of same degree as is required in other cases of circumstantial evidence. Burden would be comparative of lighter character. In view of S. 106, Evidence Act, there will be corresponding burden on inmates of house to give cogent explanation as to how crime was committed. Inmates of house cannot get away by simply keeping quiet and offering no explanation on supposed premise that burden to establish it's case lies entirely upon prosecution to offer any explanation. **(Santosh Nai S/o Ojha Nai v. State of U.P.; 2013(3) ALJ 209)**

S. 113-A—Presumption under suicide committed by a woman in her matrimonial home—Presumption u/s. 113-A springs into action

Court observed that two most vital circumstances which must be kept in mind while dealing with this case are that Girija had committed suicide in the matrimonial home and her death took place within seven years of her marriage. Presumption under section 113-A of the Indian Evidence Act, 1872 springs into action which says that when the question is whether the commission of suicide by a woman had been abetted by her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her

husband. The question is whether the appellant had been able to rebut this presumption. **(Vajresh Venkatray Anvekar vs. State of Karnataka; 2013 (81) ACC 24 (SC)**

S. 113–B - Dowry death and presumption regarding – Applicability - Proof of unnatural death and dowry relates harassment to woman son before her death are essential

A perusal of Section 113B of the Evidence Act and Section 304B, I.P.C. shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. In other words, the prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of the "death occurring other wise than in normal circumstances" The prosecution is obliged to show that soon before the occurrence, there was cruelty or harassment and only in that case presumption operates. As observed earlier, if the alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the woman concerned, it would be of no consequence. In the case on hand, admittedly, the prosecution heavily relied on the only evidence of Sibo (PW-2) –mother of the deceased which, according to us, is a hearsay, in any event, a very general and vague statement which is not sufficient to attract the above provisions. In such circumstances, as argued by the learned counsel for the appellant, accidental death cannot be ruled out. (**Bakshis Ram and another v. State of Punjab; 2013 Cri.LJ 2052)**

S. 115 – Estoppel – Applicability- Promissory estoppel cannot be invoked for enforcement of promise made contrary to Law

The law as interpreted or explained by the Supreme Court always has retrospective consequences unless applied prospectively through an express direction. The principle of promissory estoppel, therefore, cannot be invoked compelling the authorities for enforcement of a promise made contrary to the law or which is prohibited by law. **(Dheera Singh v. UT Chandigarh Admn. & Ors.; AIR 2013 P&H 93)**

Ss. 125, 17 – Admission/confession - Probative value does not depends upon it communication to other

Admissions and confessions are exceptions to the "hearsay" rule. The Evidence Act places them in the province of relevance, presumably on the ground, that they being declarations against the interest of the person making them, they are in all probability true. The probative value of an admission or a confession des not depend upon its communication to another. Just like any other piece of evidence, admissions/ confessions can be admitted in evidence only for drawing inference of truth. There is, therefore, no dispute whatsoever, that truth

of an admission or a confession cannot be evidenced, through the person to whom such admission/confession was made. The position, however, may be different if admissibility is sought under Sections 6 to 16 as a "fact in issue" or as a "relevant fact" **(State of Maharashtra v. Kamal Ahmed Mohammed Vakil Ansari and Ors.; 2013 Cri. L.J. 2069)**

Circumstantial Evidence – Appreciation of

It is true that the appellant pointed out the discrepancy in the evidence of PWs 11, 12, 16 and 21 about the condition of the dead body. It is relevant to point out that these prosecution witnesses are villagers and further the body was recovered only on 20-4-1998 whereas the incident occurred on 15-4-1998. In fact, PWs 9 and 11, who are cattle grazers, have deposed that the dead body was partly eaten. In view of the same, merely because the prosecution witnesses were not consistent in describing the dead body of the 7-year-old boy, the entire prosecution case cannot be disbelieved. **(Prakash vs. State of Rajasthan; (2013) 4 SCC 668)**

SCs, STs – Caste Certificate – Challenge to status of holder of – Necessity to give opportunity to cross examine of witness is integral part and partial of the Natural Justice

The right of cross-examination is an integral part of the principles of natural justice. The meaning of providing a reasonable opportunity to show cause against an action proposed to be taken by the Government, is that the government servant is afforded a reasonable opportunity to defend himself against the charges, on the basis of which an inquiry is held. The government servant should be given an opportunity to deny his guilt and establish his innocence, so also when the validity of a duly granted caste certificate is challenged. The government servant concerned/ certificate holder can do so only when he is told what the charges against him are. He can, therefore, do so by cross-examining the witnesses produced against him. The object of supplying statements is that the certificate holder will be able to refer to the previous statements of the witnesses proposed to be examined against him. Unless the said statements are provided to the certificate holder, he will not be able to conduct an effective and useful cross-examination. Not only should the opportunity of cross-examination be made available, but it should be one of effective cross-examination, so as to meet the requirement of the principles of natural justice. In the absence of such an opportunity, it cannot be held that the matter has been decided in accordance with law, as cross-examination is an integral part and parcel of the principles of natural justice. **(Ayaaubkhan Noorkhan Pathan vs. State of Maharashtra; (2013) 4 SCC 465)**

General Clauses Act

S.5 – Effect date of Rules – It would be when Rules are published vide Gazette notification and not from date when the Rules were under preparation

The Court however have no hesitation in holding that this contention is fit to be rejected outright as the rules cannot be held to be made effective from the date of its preparation but will attain legal sanctity and hence capable of enforcement only when the rules are made effective and the date on which it is to be made effective would obviously be the date when the rules are published vide the gazette notification. **(State of UP and anothers vs. Mahesh Narain etc.; 2013(3) ALJ 774)**

S. 5 - Effective date of Rules would be when Rules are published vide Gazette Notification and not from date when the Rules where under preparation

Court however have no hesitation in holding that this contention is fit to be rejected outright as the rules cannot be held to be made effective from the date of its preparation but will attain legal sanctity and hence capable of enforcement only when the rules are made effective and the date on which it is to be made effective would obviously be the date when the rules are published vide the gazette notification. In that view of the matter, we find no infirmity in the Respondents plea that they possessed the requisite experience of five years on the post of Scientific Officer as they had already put in five years of service from the publication of the amended Rules of 1990 and, therefore, they were rightly held eligible for consideration of promotion to the next post of Assistant Director. We are thus pleased to approve and uphold the view taken by the High Court on this count. **(State of U.P. and others v. Mahesh Narain etc.; AIR 2013 SC 1778)**

Hindu Adoptions and Maintenance Act

S. 3(a) – Custom - Mean established practice at variance with General law - Custom overrides personal law - But not statutory law unless expressly saved

Custom is a rule, which in a particular family, a particular class, community, or in a particular district, has owing to prolonged use, obtained the force of law, custom has the effect of modifying general personal law, but it does not override statutory law, unless the custom is expressly saved by it. Such custom must be ancient, uniform, certain, continuous and compulsory. No custom is valid if it is illegal, immoral, unreasonable or opposed to public policy. He who relies upon custom varying general law, must plead and prove it. Custom must be

established by clear and unambiguous evidence. **(Laxmibai (Dead) Thr. LRs. & Anr. v. Bhagwantbuva (Dead) Thr. LRs. & Ors.; AIR 2013 SC 1204)**

S. 3(a) – Custom – Proof - Ought to be by clear and unambiguous evidence - Custom cannot be extended by analogy or logical process

A custom must be proved to be ancient, certain and reasonable. The evidence adduced on behalf of the party concerned must prove the alleged custom and the proof must not be unsatisfactory and conflicting. A custom cannot be extended by analogy or logical process and it also cannot be established by a priori method. Nothing that the Courts can take judicial notice of needs to be proved. When a custom has been judicially recognised by the Court, it passes into the law of the land and proof of it becomes unnecessary under Section 57(1) of the Evidence Act, 1872. Material customs must be proved properly and satisfactorily, until the time that such custom has, by way of frequent proof in the Court become so notorious, that the Courts take judicial notice of it. **(Laxmibai (Dead) Thr. LRs. & Anr. v. Bhagwantbuva (Dead) Thr. LRs. & Ors.; AIR 2013 SC 1204)**

Ss. 16, 18 to 11—Validity of adoption deed—Onus of proof and manner of appreciation—Initially placed on propounder to prove adoption, once a registered deed is presented before court, onus shifted to person who challenged it

Undoubtedly, adoption disturbs the natural line of succession, owing to which, a very heavy burden is placed upon the propounder to prove the adoption. However, this onus shifts to the person who challenges the adoption, once a registered document recording the adoption is brought before the court. This aspect must be considered taking note of various other attending circumstances i.e. evidence regarding the religious ceremony (giving and taking of the child), as the same is sine qua non for valid adoption.

The trial court in this regard has held that the fact that the natural parents of the adoptive child had signed along with seven other witnesses as attestants to the deed, and not as its executors, would not create any doubt regarding the validity of the adoption, or render the said registered document invalid, as they possessed sufficient knowledge with regard to the nature of the document that they were executing, and that additionally, no challenge was made to the registration of the document, immediately after its execution. The first appellate court took note of the deposition of Shri Vasant Bhagwantrao Pandav (PW-1), who had deposed that the adoption deed had been scribed, and that the signatures of the parties and witnesses to the deed had been taken on the same, only after the contents of the said documents had been read over to Smt. Laxmibai, the

adoptive mother, and then to all parties present. Smt. Laxmibai, appellant-plaintiff was in good health, both physically and mentally, at the time of the adoption. The validity of the adoption deed, however, was being challenged on the basis of the mere technicality, that only interested witnesses had been examined and the court finally rejected the authenticity of the said document, observing that witnesses who wanted to give weight to their own case, could not be relied upon.

The appellate courts further held that the adoption deed had neither been properly executed, nor satisfactorily proved, and that as the adoption remains a unilateral declaration by the appellant-plaintiffs, owing the fact that the natural parents of the adopted child had not signed the adoption deed as executors but as witnesses, the same could not be held to be a valid deed. Undoubtedly, a mere signature or thumb impression on a document is not adequate with respect to proving the contents of a document, but in a case where the person who has given his son in adoption, appears in the witness box and proves the validity of the said document, the court ought to have accepted the same, taking into consideration the presumption under Section 16 of the 1956 Act, and visualizing the true purport of the document, without going into such technicalities. This must be done particularly in view of the fact that the respondent-defendants have not made even a single attempt to challenge the validity of the said document. In fact, they have not made any reference to the same. We have no hesitation in holding that the document was valid, and that the same could not have been discarded by the appellate courts. (**Laxbai vs. bhagwantbuva; (2013) 4 SCC 97)**

(a) Hindu Adoptions and Maintenance Act, 1956, Section 18 - Civil Procedure Code, Order 23 Rule 3 - Right of wife to maintenance - Compromise in proceedings under Section 125 Cr. P.C., whether closes the right under the Act - Held, an order passed under Section 125 Cr. P.C. by compromise or otherwise cannot foreclose the remedy available to a wife under Section 18(2) of the Act

(b) Contract Act, 1872, Section 25 - Agreement which is opposed to public policy - Held, is not enforceable in a court of law

The question that is raised for consideration in this case is whether a compromise entered into by husband and wife under Order XXIII Rule 3 of the Code of Civil Procedure (CPC), agreeing for a consolidated amount towards permanent alimony, thereby giving up any future claim for maintenance, accepted by the Court in a proceeding under Section 125 of the Code of Criminal Procedure (CrPC), would preclude the wife from claiming maintenance in a suit under Section 18 of the Hindu Adoptions and Maintenance Act, 1956 (for short "the Act").

Section 125 Cr.P.C. 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 an final determination of the status and personal rights of parties, which is in the nature of a civil proceeding, though are governed by the provision of the Cr.P.C. and the order made under Section 125 Cr.P.C. is tentative and is subject to final determination of the rights in a civil court.

Section 25 of the Contract Act provides that any agreement which is opposed to public policy is not enforceable in a Court of Law and such an agreement is void, since the object is unlawful. Proceeding under Section 125 Cr.P.C. is summary in nature and intended to provide a speedy remedy to the wife and order passed under Section 125 Cr.P.C. by compromise or otherwise cannot foreclose the remedy available to a wife under Section 18(2) of the Act.

The above being the legal position, Court finds no error in the view taken by the Family Court, which has been affirmed by the High Court. The Petition is, therefore, dismissed in limine. **(Nagendra Natikar Vs. Neelamma, (2013 (31) LCD) (SC).**

Hindu Marriage Act

S. 13-B(2) - Divorce by mutual consent Grant of - Within time bound period before its expiry no divorce on mutual consent could be granted- Said period cannot in any way be relaxed or shorten

Section 13-B(2) of the Act provides that on the motion of both the parties for divorce by mutual consent, a decree of divorce declaring the marriage to be dissolved can be passed not earlier than six months of the date of presentation of the petition if not withdrawn in the meantime. Therefore, no order of divorce by mutual consent can be passed before six months of the presentation of the divorce petition under Section 13-B of the Act. The divorce petition has been presented jointly by the petitioners on 4th of April, 2012. The period of six months from the date of its presentation would be expiring around 4th April, 2012. The aforesaid period is a statutory period and before its expiry no divorce on mutual consent can be granted. The said period cannot in any way be relaxed or shorten. The parties have to wait for the expiry of the above period before a decree of divorce by mutual consent can be passed provided the petition presented for the purpose is not withdrawn during the said period. **(Vivek Kumar Rajendra Prashad & Anr. v. State of U.P. & Anr.; AIR 2013 All. 58)**

Hindu Succession Act

Respondent No. 1 had filled suit before Small Causes Court (Trial Court)

alleging that Appellant was not entitled to receive any compensation or rehabilitation grant bonds as she was only a life estate holder. Trial Court dismissed suit holding that no relationship of landlord and tenant existed between Respondent Nos. 1 and 2 and Appellants. The said judgment and decree was set aside by the Revisional Court, vide judgment and decree and the case was remanded to the Judge, Small Causes Court for deciding the same afresh. After such remand, the suit was decreed vide judgment and decree dated 20.4.2001, holding that the suit property had been acquired by Gopi Krishan. Agrawal, Plaintiff/Respondent and that the relationship of a landlord and tenant, could in fact be deemed to have been created between the parties. The Appellants/Defendants had hence, been in default of payment of rent. The Appellants filed Revision before the District Judge, Kanpur, which was dismissed vide judgment and order dated 13.5.2002. The said judgment and order has been affirmed by the High Court, dismissing the writ petition vide judgment and order dated 6.9.2002. The Appellants preferred a review petition, which has also been dismissed by High Court.

Held

The Small Causes Court cannot adjudicate upon the issue of title. In the instant case therefore, the trial court has rightly refused to go into such issue, and neither can any fault be found with the findings recorded by the courts below in this regard. Furthermore, as it is an admitted fact that Defendant Nos.1 and 2 were tenants of the original Plaintiffs, the question of title could not be adjudicated at the behest of the Appellants under any circumstance.

The inherent powers enshrined under Section 151 Code of Civil Procedure can be exercised only where no remedy has been provided for in any other provision of the Code of Civil Procedure. In the event that a party has obtained a decree or order by playing a fraud upon the court, or where an order has been passed by a mistake of the court, the court may be justified in rectifying such mistake, either by recalling the said order, or by passing any other appropriate order. However, inherent powers cannot be used in conflict of any other existing provision, or in case a remedy has been provided for by any other provision of the Code of Civil Procedure. Moreover, in the event that a fraud has been played upon a party, the same may not be a case where inherent powers can be exercised.

The Legal issue is summarized as:

(i) An application under Order IX Rule 13 Code of Civil Procedure cannot be filed by a person who was not initially a party to the proceedings;

(ii) Inherent powers under Section 151 Code of Civil Procedure can be exercised by the Court to redress only such a grievance, for which no remedy is provided for under the Code of Civil Procedure;

(iii) In the event that an order has been obtained from the Court by playing fraud upon it, it is always open to the Court to recall the said order on the application of the person aggrieved, and such power can also be exercised by the appellate court;

(iv) Where the fraud has been committed upon a party, the court cannot investigate such a factual issue, and in such an eventuality, a party has the right to get the said judgment or order set aside, by filing an independent suit.

(v) A person aggrieved may maintain an application before the Land Acquisition Collector for reference under Section 18 or 30 of the Act, 1894, but cannot make an application for impleadment or apportionment before the Reference Court.

Hence, order of High Court liable to be set aside - Appeal allowed. **(Ramji Gupta and another vs. Gopi Kishan Agrawal (D) and others; 2013(3) AWC 2782 (SC)**

Indian Penal Code

S. 8—Motive—Relevancy—Motive is relevant in murder case

Where prosecution relies on circumstantial evidence only, motive is a relevant fact and can be taken into consideration under Section 8 of the Indian Evidence Act, 1872 but where the chain of other circumstances establish beyond reasonable doubt that it is the accused and accused alone who has committed the offence and this is one such case the Court cannot hold that in the absence of motive of the accused being established by the prosecution, the accused cannot be held guilty of the offence. In Ujjagar Singh vs. State of Punjab, (2007) 13 SCC 90, this Court observed:

"It is true that in a case relating to circumstantial evidence motive does assume great importance but to say that the absence of motive would dislodge the entire prosecution story is perhaps giving this one factor an importance which is not due and (to use the cliché) the motive is in the mind of the accused and can seldom be fathomed with any degree of accuracy." **(Vivek Kalra vs. State of Rajasthan; 2013 Cri.L.J. 1524 (SC)**

S. 34 – Conviction with aid of S. 34 condition must be satisfied

Section 34 IPC is intended to cover a situation wherein the accused persons have done something with common intention to constitute a criminal Act. To get Section 34 attracted, certain conditions precedent are to be satisfied. The act must have been done by more than one person and they must have shared a common intention either by omission or commission in effectuating the crime. It is always not necessary that every accused must do a separate act to be responsible for must do a separate act to be responsible for the ultimate criminal act. What is required is that an accused person must share the common intention to commit the act. **(Syed Yousuf Hussain v. State of Andhra Pradesh; 2013 CrLJ 2172)**

S. 34 – Invocation of s. 34 – In absence of charge – Accused even if not charged u/s 34 can be convicted with aid of S. 34

It is not necessary for us to deal with the contention of the learned counsel of the appellants that the provisions of Sections 141 and 149, IPC, relating to unlawful assembly would not be attracted in case of offences affecting the human body such as the offence under Section 302, IPC, nor is it necessary for us to deal with the contention of the appellants that after the acquittal of A-5 and A-6 by the trial court and the High Court respectively, there were only four accused persons and for constituting 'unlawful assembly', a minimum of five persons are necessary because we find from the evidence that the conviction of A-I, A-2, A-3 and A-4, the appellants herein, under Section 302, IPC can be sustained without the aid of Sections 141 and 149, IPC. **(Babu v. State; 2013 CrLJ 2176)**

S. 34 – Common intention – Murderous assault – Proof

In State of M.P. v. Gopi, AIR 1992 SC 1878 Apex Court has countenanced conclusion arrived at by the high Court by observing thus:-

> "7. As mentioned above the occurrence took place on June 30, 1977. Investigating Officer recorded the statement of Ramvishal P.W. 3 and Halku P.W. 4 on September 30, 1977 and October 7, 1977 respectively. The statement of Kalidin P.W. 6 was also recorded on July 30, 1977. No satisfactory, explanation, according to the High Court was given for this delay in recording the statements specially of P.W. 3 and P.W. 41 who were the alleged eye-witnesses.
>
> 8. Rajju-accused, according to the prosecution, was armed with a gun. It is highly improbable that in an attack with the intention of causing fatal injuries Rajju would not have used his gun and permitted others to use less effective weapons. Even after Rajju had received grievous injuries

the gun was not used by Rajju.

9. We are of the view that the High Court was justified in reversing the findings of the trial Court and acquitting the respondents. We see no infirmity in the High Court judgment. Court agrees with the reasoning and the conclusions reached therein. Court, therefore, dismiss the appeal."

In the present case also court found that the deceased could not sustain wrist and ankle injury as alleged by the prosecution from point blank range as that would indicate that all the accused had no intention to commit murder of the deceased otherwise why they will shoot him on most non vital part of the body without any repetition. **(Mundendra v. State of U.P.; 2013 (2) ALJ 487)**

S. 84 – Plea of insanity – Benefit of the insanity available only if in capacity of person to understand nature of act exists at time of commission of offence

Since the appellant has raised the plea of insanity seeking protection under Section 84 of the IPC, it is useful to refer the same:

"84. Act of a person of unsound mind.- Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law."

The above section makes it clear that a person, who, at the time of doing it by reason of unsoundness of mind, commits anything, he is permitted to claim the above exception (emphasis supplied). In other words, insanity or unsoundness of mind are the stages when a person is incapable of knowing the nature of the act or unable to understand what is wrong or right and must relate to the period in which the offence has been committed.

After adverting to Sections 84 and 299 IPC and Sections 105 and 101 of the Evidence Act, this Court concluded that "when a person is bound to prove the existence of any fact, the burden of proof lies on that person". This Court also held as under:

"35. It is also a settled proposition of law that the crucial point of time for ascertaining the existence of circumstances bringing the case within the purview of Section 84 is the time when the offence is committed. Court may notice here the observations made by this Court in Ratan Lal v. State of M.P. (AIR 1971SC 778). In para 2 of the aforesaid judgment, it is held as follows:

"It is now well settled that the crucial point of time at which unsoundness

of mind should be established is the time when the crime is actually committed and the burden of proving this lies on the [appellant]."

As concluded, we also reiterate that at the time of commission of offence, the physical and mental condition of the person concerned is paramount for bringing the case within the purview of Section 84. **(Mariappan v State of Tamil Nadu; 2013 CrLJ 2334)**

S. 149 – Applicability - Provision of S. 149 will came in to play and over every member of unlawful assembly, when three ingredients are present

Section 149 of the IPC constructively criminalizes all members of an unlawful assembly if a member of that assembly commits an offence in prosecution of a common object of that assembly or if the members of that assembly knew likely to be committed in prosecution of that object. To bring a case within Section 149 of the IPC three features must be present. Firstly, there must be in existence an unlawful assembly within the meaning of Section 141 of the IPC. This is a mixed question of fact and law, which was overlooked by the Trial Judge. Secondly, an offence must have been committed by a member of the unlawful assembly. Thirdly, the offence committed must be in prosecution of a common object of the unlawful assembly or must be such as the members of the unlawful assembly knew likely to be committed in prosecution of that object. Once these ingredients are satisfied, the provisions of Section 149 of the IPC will come into play and cover every member of the unlawful assembly. (**Gurmail Singh vs. State of Punjab; (2012) 2 SCC (Cri.) 369)**

S. 299 – Applicability – Discovery of dead body is not sine quo non for applicability of S. 299 of IPC

On the contention of the appellants that dead bodies were never recovered and found and as such there is no evidence with regard to the fact that they were ever killed and that too by the accused, the High Court referring to Rama Nand & Ors. v. State of H.P., (1981) 1 SCC 511 : (AIR 1981 SC 738) and Ram Bahadur alias Denny v. State, 1996 Cr.L.J. 2364, observed that it is well settled law that in a murder case to substantiate the case of the prosecution it is not required that dead bodies must have been made available for the identification and discovery of dead body is not sine qua non for applicability of Section 299 of IPC.

It is well settled that discovery of dead body the victim has never been considered as the only mode of proving the corpus deliciti in murder. In fact, there are very many cases of such nature like the present one where the discovery of the dead body is impossible, specially when members of a particular community were murdered in such a violent mob attack on Sikh community in

different places and the offenders tried to remove the dead bodies and also looted articles. **(Lal Bahadur v. State (NCT of Delhi); 2013 CrLJ 2205)**

S. 300 – Murder – If case is based on circumstantial evidence, motive assumes significance

It is fairly well-settled that while motive does not have a major role to play in cases based on eye-witness account of the incident, it assumes importance in cases that rest entirely on circumstantial evidence. Absence of strong motive in the present case, therefore, is something that cannot be lightly brushed aside**. (Rishi Pal v. State of Uttarakhand; 2013 (2) ALJ 589)**

S. 300 – Murder – Last seen together evidence – Sufficiency for conviction – Consideration for

In the case of Mohibur Rahman and Anr. v. State of Assam (2002) 6 SCC 715: (AIR 2002 SC 3064: 2002 AIR sew 3523), this Court held that the circumstance of last seen does not by itself necessarily lead to the inference that it was the accused who committed the crime. It depends upon the facts of each case. There may however be cases where, on account of close proximity of place and time between the event of the accused having been last seen with the deceased and the factum of death, a rational mind may be persuaded to reach an irresistible conclusion that either the accused should explain how and in what circumstances the victim suffered the death or should own the liability for the homicide. Similarly in Arjun Marik and Ors. v. State of Bihar; 1994 Supp (2) SCC 372, this Court reiterated that the solitary circumstance of the accused and victim being last seen will not complete the chain of circumstances for the Court to record a finding that it is consistent only with the hypothesis of the guilt of the accused. No conviction on that basis alone can, therefore, be founded. So also in Godabarish Mishra v. Shakuntala Mishra and another (1996) 11 SCC 264: (AIR 1997 se 286: 1997 AIR sew 33), this Court declared that the theory of last seen together is not of universal application and may not always be sufficient to sustain a conviction unless supported by other links in the chain of circumstances. In Bharat v. State of M.P (2003) 3 SCC 106 : (AIR 2003 SC 1433 = 2003 AIR SC 770); two circumstances on the basis whereof the appellant had been convicted were (i) the appellant having been last seen with the deceased and (ii) recovery of ornaments made at his instance. This Court held:

"Mere non-explanation cannot lead to the proof of guilt against the appellant. The prosecution has to prove its case against the appellant beyond reasonable doubt. The chain of circumstances, in our opinion, is not complete so as to sustain the conviction of the appellant. .... "

Court may also refer to State of Goa v. Sanjay Thakran and Am. (2007)

3 SCC 755 : (AIR 2007 se (Supp) 61 : 2007 AIR SCW 2226) where this Court held that in the absence of any other corroborative piece of evidence to complete the chain of circumstances it is not possible to fasten the guilt on the accused on the solitary circumstance of the two being seen together. Reference may also be made to Bodh Raj alias Bodha and Ors. v. State of Jammu and Kashmir (2002) 8 SCC 45 : (AIR 2002 SC 3164: 2002 AIR sew 3655) where this Court held:

"The last-seen theory comes into play where the time-gap between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases .... "

Finally in Jaswant Gir v. State of Punjab (2005) 12 SCC 438, this Court held that it is not possible to convict appellant solely on basis of 'last seen' evidence in the absence of any other links in the chain of circumstantial evidence, the Court gave benefit of doubt to accused persons.

Abdul Mabood-deceased was a young, physically stout boy aged 20-22 years. In the absence of any suggestion as to how and where he was done to death it is difficult to infer anything incriminating against the appellant except a strong suspicion when he returned at night to the farm of Tajveer Singh with soiled clothes. The explanation given by the appellant for his clothes getting soiled can also not said to be so absurd that one could straightway reject and count the same as an incriminating circumstance so conclusive in nature that the Court could presume that they were explainable only on the hypothesis that the appellant had committed the crime alleged against him.

Suffice it to say that even if we take the most charitable liberal view in favour of the prosecution, all that we get is a suspicion against the appellant and no more. The High Court was in that view justified in setting aside the order passed by the trial Court and acquitting the appellant of offence of murder under Section 302, IPC. **(Rishi Pal v. State of Uttarakhand; 2013 (2) ALJ 589)**

S. 300 – Murder – Proof – Accused absconding after incident is by itself does not prove guilt of accused

It was argued that the accused were absconding and, therefore, adverse inference needs to be drawn against them. It is well settled that absconding by itself does not prove the guilt of a person. A person may run away due to fear of

false implication or arrest. **(Sunil Kundu v. State of Jhankahand, 2013 CrLJ 2339)**

S. 300 – Murder – Credibility of eye-witness

Court is not persuaded by learned counsel for the appellants to take a view that the evidence of PW-3 was not reliable as he was a suspect and had ran away to Cachar. As has been explained by PW-13 himself, he left for Cachar because of his fear of the appellants who had threatened him with dire consequences if he disclosed the incident to anyone. At any rate, we find that the evidence of PW -13 is supported by the evidence of PW-6 who has stated that on the date of the incident he had found the deceased and appellants grazing cows in Nallia Tilla at around 1.30 p.m. Moreover, the evidence of the Investigating Officer (PW-19) read with inquest report (Ext. P-2) prepared by him shows that there were injuries on the dead body of deceased caused by an axe and a gun. PW -19 has also stated that he recovered handle of the axe near the dead body of the deceased and he seized the handle of the axe after preparing a seizure list in presence of the witnesses. Thus, the evidence of PW-13 is corroborated by material particulars by reliable testimony, direct and circumstantial. **(Amitbhai Anilchandra Shah v. Central Bureau of Investigation; 2013 CRLJ 2313)**

Ss. 300, 96 – If injuries on accused which were neither insignificant nor minor nor could have been self suffered then accused cannot be held guilty

It is discernible that where prosecution suppresses genesis of the incident or it fails to offer any explanation of the injuries sustained by the accused side, which were neither insignificant nor minor nor could have been self-suffered, then, in that eventuality, the only inescapable conclusion which can be drawn is that prosecution has failed to discharge it's initial burden of proof and was un-successful in bringing accused guilt home. The golden rule of criminal jurisprudence is that it is for the prosecution to establish accused guilt beyond all reasonable doubts by tendering admissible, reliable and confidence inspiring evidences which should be compatible only with one hypothesis of accused being guilty of the crime and no other. In cases where any reasonable doubt creeps in, it is better to err in favour of accused than to adhere pedantically to the prosecution story. Here we would hasten to add that every doubt, howsoever fanciful or insignificant it may be, will not come to the rescue of the accused but the doubt has to be reasonable and pragmatic view of a prudent man, which should be capable shaking the veracity of the prosecution edifice. **(Mundendra v. State of U.P.; 2013 (2) ALJ 487)**

Ss. 300, 201 – Evidence Act, S. 3 – Murder causing disappearance of evidence – Proof

In the present case, marriage between the spouses was solemnised more than two decades ago and it is difficult to swallow that after such a long period a wife will state a false allegation against her husband, more so when she had attained mother hood by two sons. It has been evidenced by the informant PW1 that since last four/five years that he was informed about appellant's extra marital relationship with Saroj who was also a married women. PW1 also stated that he had met Saroj at the house of the appellant two/three times and had remonstrated her as to why she was ruining the marital life of his sister, to which she had replied that she will not make further visits. PW1 had met Saroj during twilight and he had accosted her in front of the appellant. In that connection PW1 and his uncle had met Saroj's father also at his residence. All these depositions which had occurred in the cross-examinations of informant PW1 is corroborated by other witnesses Sewa Ram, PW2 vide (Para 3) and Ram Pal PW3 vide Paras 1 & 4 of their testimonies. Since accused appellant had miserably failed to discredit prosecution witnesses on this score it remains certain that appellant had enough reasons to do away with the deceased as she must have been an eye sore in his cupid relationships. Because of aforesaid reason fight between the appellant and the deceased was a usual feature is also a proven fact beyond any shadow of doubt as all the three fact witnesses have deposed it promiscuously in no uncertain terms. Prosecution thus has succeeded in establishing presence of a strong and sufficient motive for the appellant to commit the charged offence. This is the first strong piece of incriminating evidence against the appellant.

This evidence by PW2 virtually remained unchallenged by the appellant so much so that he was not even suggested that such a claim is false or fabricated. This is the second incriminating established evidence against the appellant.

Turning to the third one the Court note that PW2 specifically stated that sound of parking of a car was heard after commotion of struggle died down and after five minutes it went away in the night preceded disclosure of crime. This version by PW2 was lend credence by PW4 who also deposed that the appellant had brought cadaver of his wife to village Khampur by a car and had reached there at half past one in the night. House of PW4 is just two houses away from the house of the appellant in village Khampur. Munshi, father of appellant Janeshawar had called PW4 and had informed him that appellant was taking his wife to Kahtauli but en-route she expired because of decease and then he had brought her back. Both father and son arranged to cremate her corpse same night, to which PW4 had objected tersely, but in vain, and all the charge sheeted accused had cremated the deceased cadaver that very night in cremation ground. PW4 further stated that to his knowledge deceased was not ailing. Thus there are two witnesses who have deposed that the appellant had carried the dead body of

the deceased to his native village and there had disposed it off by cremating it. This evidence is further authenticated by the appellant through his confessional statement which was made in the presence of some independent persons also. Defence had also suggested to PW1 & PW4 that deceased had died in Khampur and thus her cremation at Khampur is also a well proven fact. This is the third circumstance against the appellant pointing towards appellant's guilt. Another incriminating circumstance of grave significance is the surreptitious and clandestine disposal of the dead body of the deceased to obliterate evidence of murder same night without informing her family relatives including the informant by the appellant. Even if defence of the appellant, for the sake of argument, is considered to be true without admitting it to be as such, even then there was no earthly reason for him to cremate the body without informing deceased parental relatives in dead hour of night. From the proven facts the only inevitable possible conclusion seems to be that the appellant wanted to cover up his crime in quick succession to obliterate it's evidences. This shows appellant's mens rea and a strong incriminating circumstance against him. Thus the above bracketed two categories of evidences, first is of relatives who had deposed happening of the incident at Muzzafarnagar, and second of witnesses of village Khampur, when put together forms a complete chain of events which clamour only guilt of the appellant. Deliberately speaking a prevaricated story by an accused is a very strong piece of evidence against him specially in matters covered by circumstantial evidences especially in those cases where the happening of the incident was in the special knowledge of the accused alone. The oxymoron defence so pleaded by the appellant is the last nail struck into his defence plea which, to us seems to be afterthought, cooked up, fabricated and mendacious. We discard such a defence plea out rightly. The Court therefore do not find any reason to dilute appellant's crime from 302 IPC to one under section 304 Part I IPC and therefore, repel appellant's contention regarding that. **(Janeshwar Prasad v. State of U.P.; 2013 (3) ALJ 222)**

Sec. 302 – Evidence of eye witness establishing liability of accused - Injuries inflicted sufficient to cause death in ordinary course of nature - No infirmity in conviction

The High Court has rightly concluded that the present appellants, viz., Ramswaroop and Chintu Mahte have caused fatal blows due to which Badri succumbed to injuries while on the way to hospital. Also, as per the medical evidence, the injuries received by him at the instance of the present appellants were sufficient to cause death in the ordinary course of nature. **(Ramswaroop and Another v. State of Madhya Pradesh; 2013 (2) Supreme 506)**

Ss. 302, 395 r/w 149, 147 and 390 – Non-recovery of dead bodies and looted

articles for conviction is not mandatory

The High Court reappreciated the evidence of the witnesses in detail and meticulously examined the facts and circumstances of the case in its right perspective and recorded a finding that the prosecution has proved the case against the appellants. In an appeal against acquittal, the appellate court has full power to review the evidence upon which the order of acquittal is founded. The High Court is entitled to reappreciate the entire evidence in order to find out whether findings recorded by the trial court are perverse or unreasonable. (**Lal Bahadur vs. State (NCT of Delhi); (2013) 4 SCC 557)**

S. 302 r/w S. 34 - Murder - Testimony of related witness if corroborated by other evidence would be credible and become ground of conviction

In this case PW2 Arvind Kumar, who is the cousin brother of the deceased, accompanied him on the date of occurrence of the incident. At that point of time the appellant, along with other accused, surrounded them and it is stated that the appellant shot at the Kanpatti with revolver and other accused persons Binda Singh with the rifle in the stomach of the deceased and Sudhir Singh with rifle in the left thigh. PW7 has stated in his evidence that the aforesaid accused persons fled away at that time Ashok Singh, Damodar Singh, Balram Singh and Shyam Sunder Singh were going to the bazaar who have witnessed the incident. His evidence is supported by the evidence of the other witness namely PW3, who has stated that he has seen Moti Singh and Jaddu Singh catching both hands of the deceased and Moti Singh ordered him to fire and the said witness also spoken about the firings by Awadhesh Singh and Nawal Singh as stated by the PW2. Further, he has supported his evidence that Awadhesh Singh pushed the dead body in the Payeen and also stated that Moti Singh and Jaddu Singh had caught hold of the informant also. PW5 also claimed to have seen Jaddu Singh and Moti Singh catching hands of the deceased and further he has stated that Umesh Singh, the appellant herein, had fired at the temple region of the deceased. Further, he has given categorical statement stating that Binda, Sudhir, Awadhesh and Nawal also had fired at the deceased with their rifles. Therefore, the evidence of PW2 has been supported by PW3, PW5 and PW7. In so far as PW6 is concerned he has given a general statement that he has seen the several persons surrounding the deceased and killing the deceased with rifle and revolver. Therefore, the trial court was right in recording the finding on the charge against the appellant on proper appraisal of the evidence of the eye-witness PW2 supported by PW3 and PW5. The said finding of fact on the charge of Ss. 302 read with section 34, IPC against this appellant and others was seriously examined by the High Court and concurred with the same and in view of the evidence of PW2 and PW9 the informant who was eye-witness and the IO's

evidence regarding his evidence treating the statement of PW2 as FIR is perfectly legal and valid. Therefore, reliance placed upon the decisions of this Court referred a by the learned Senior Counsel in the course of his submission are not tenable in law as they are misplaced.

In view of the concurrent findings by the High Court as well as the learned Additional Sessions Judge and an order of conviction and sentence imposed against the appellant herein is on the basis of legal evidence on record and on proper appreciation of the same. Therefore, the same is not erroneous in law as the finding is supported with valid and cogent reasons. For the foregoing reasons the impugned judgment and order cannot be interfered with by this Court. Hence, the appeal is devoid of merit and accordingly it is dismissed. (**Umesh Singh vs. State of Bihar; (2013) 2 SCC (Cri) 401)**

Sec. 304 B - Dowry – Husband demanding money to purchase computer to start his own business – Not a dowry demand

Court have perused the evidence of PW 1 and PW 4, the father 'and mother of the deceased respectively. The Court find that PW 1 has stated that at the time of marriage, gold, silver articles, ornaments, TV, fridge and several other household articles worth more than Rs.2,50,000/- were given to the appellant and after the marriage, the deceased joined the appellant in his house at Kagaziguda. He has, thereafter, stated that the appellant used to work in a Xerox cum type institute in Nampally and in the sixth month after marriage, the deceased came to their house and told them that the appellant asked her to bring Rs.50,000/- from them as he was intending to purchase a computer and set up his own business. Similarly, PW4 has stated in her evidence that five months after the marriage, the appellant sent her away to their house and when she questioned her, she told that the appellant was demanding Rs.50,000/- and that the demand for money is to purchase a computer to start his own business. Thus, the a evidence of PW1 and PW4 is that the demand of *Rs.50.000/-by* the appellant was made six months after the marriage and that too for purchasing a computer to start his own business. It is only with regard to this demand of *Rs.50,00/-* that the Trial Court has recorded a finding of guilt against the appellant for the offence under Section 304B, IPC and it is only in relation to this demand of *Rs.50,000/-* for purchase of a computer to start a business made by the appellant six months after the marriage that the High Court has also confirmed the findings of the Trial Court with regard to guilt of the appellant under Section 304B, IPC. In our view, both the Trial Court and the High Court failed to appreciate that the demand, if at all made by the appellant on the deceased for purchasing a computer to start a business six months after the marriage, was not in connection with the marriage and was not really a 'dowry demand' within the meaning of S. 2 of the Dowry Prohibition Act,

1961. The Court has held in Appasaheb & Anr. Vs. State of Maharashtra; (2007) 9 SCC 721.

"In view of the aforesaid definition of the word "dowry" any property or valuable security should be given or agreed to be given either directly or indirectly at or before or any time after the marriage and in connection with the marriage of the said parties. Therefore, the giving or taking of property or valuable security must have some connection with the marriage of the parties and a correlation between the giving or taking of property or valuable security with the marriage of the parties is essential. Being a penal provision it has to be strictly construed. Dowry is a fairly well known social custom or practice in India. It is well settled principle of interpretation of Statute that if the Act is passed with reference to a particular trade, business or transaction and words are used which everybody conversant with that trade, business or transaction knows or understands to have a particular meaning in it, then the words are to be construed as having that particular meaning. (See Union of India v. Garware Nylons Ltd., AIR (1996) SC 3509 and Chemicals and Fibres of India v. Union of India, AIR (1997) SC 558)." **(Vipin Jaiswal v. State of AP Rep. by Public Prosecutor; 2013 (2) Supreme 485)**

S. 304 B - High Court drawing presumption against appellant husband u/s 113B Evidence Act – Appellant failing to rebut the presumption - Conviction not improper

The High Court had also rightly drawn the presumption under Section 113B of the Evidence Act that appellant had caused the dowry death of the deceased within the meaning of Section 3048 IPC and the appellant was required to rebut this presumption that he had caused the dowry death. The appellant did make an attempt to rebut this presumption in his statement under Section 313 Cr.P.C. while answering question No. 16. The appellant stated that the deceased had died a natural death because she was suffering from rheumatic pain (heart disease) and at that time she was being treated by Dr. Roop Chand at Satnali and she was also attended by Dr. Roop Chand on the day of her death. If this was the defence of the appellant in his statement under Section 313 Cr.PC. it was in content upon him to have produced Dr. Roop Chand as a defence witness, but he has not done so. The result is that the appellant has failed to rebut the presumption under Section 113B of the Indian Evidence Act that it is he who had caused dowry death of the deceased within the meaning of Section 304B of the IPC. **(Satya Pal v. State of Haryana & Anr.; 2013 (2) Supreme 490)**

S. 304 B and 498 A – Ingredients - Cruelty and Harassment essential for invoking S. 304 B and 498A

Court are unable to agree with this opinion of the High Court that by keeping silence and by not coming forward to settle the dispute with regard to the dowry, the appellant Nos. 2 and 4 were are guilty of the offences under Sections 498A and 3048 of the IPC. In the facts of this case, as found both by the trial court and by the High Court, the deceased got married to the appellant No. 1 on 10th June, 2003 and she went back to the house of the appellants on 5th August, 2003 and committed suicide on 17th August, 2003 while she was in the house of her parents. True, there may have been a demand of dowry by the appellants at the time of marriage and it is quite possible that the demand of dowry may have persisted even after the marriage but unless **it** is established that the appellant Nos. 2 and 4 committed some act of cruelty or harassment towards a woman, they cannot be held guilty of the offences under Sections 3048 and 498A IPC. **(Bharat Bhushan & Anr. State of Madhya Pradesh; 2013 (2) Supreme 510)**

Ss. 304-B and 498-A – Cruelty and Dowry death – Proof

Admittedly, the deceased - Smt. Pushpa had been married about a year back with the accused/appellant Ram Dayal Gupta. It is also admitted that she died within one year of her marriage. A perusal of FIR as well as statement of P.W. 3 show that giving a ring and chain a dowry was a condition of marriage which could not be fulfilled by father of the deceased. According to the statement of P.W. 1, he had promised to fulfil the aforesaid demand of dowry some time after marriage as he could not fulfil the same at the time of marriage. It has come out in the evidence as well as in the FIR that in-laws of the deceased i.e. appellants in the present appeal were not only demanding dowry since settlement of her marriage, but were harassing and torturing the deceased after marriage had been performed. She had told this to her father in presence of P.W. 3 also about the continuing demand of ring and chain which had not been given in dowry at the time of marriage. Therefore, all the elements provided for applicability of section 304-B of LPC for dowry death are proved from the record.

A perusal of post-mortem report shows that the doctor had opined that death was caused due to shock and hemorrhage as a result of ante-mortem injuries which have been elicited above. The deceased was brutally killed in her matrimonial home and there is no explanation how the body of the deceased came to the railway track. It is noteworthy that Dr. M.K. Sinha P.W. 8 has stated that ante mortem injuries found on the person of deceased cannot be sustained by her in railway accident. This statement of the doctor has gone unchallenged. Section 304- B does not imply on overt-act by the accused persons. It is sufficient for its application if the conditions laid down therein are met and as soon as they are fulfilled, a presumption to death for demand of dowry comes

into existence**. (Ram Dayal Gupta v. State of U.P.; 2013 ALJ 472)**

S. 304-B – Reduction of sentence from minimum prescribed not possible

Court has given considerable thought to this submission but find that the law prescribes a minimum of seven years imprisonment for an offence under Section 304-B of the IPC. There is no provision for reducing the sentence for any reason whatsoever or has any exception being carved out in law. Consequently, court cannot accept this plea. Court must not lose sight of the fact that even though Gurtehal Singh and Harminder Kaur are now aged, they were responsible for the death of Rachhpal Kaur through aluminium phosphide poisoning. Rachhpal Kaur was a young lady when she died and we can only guess the terauma that her unnatural death would have caused to her parents. Sympathizing with an accused person or a convict does not entitle to us to ignore the feelings of the victim or the immediate family of the victim. **(Kulwant Singh v. State of Punjab; 2013 CrLJ 2199)**

Ss. 304-B and 498-A—Dowry death by burning alleged—Ingredients were not proved only hearsay evidence of matter of deceased, husband's conduct did not suggest homicidal burning—Accidental death could not be rule doubt

It is but natural that being the mother of the deceased if she had come across any harassment or ill-treatment of her daughter in connection with demands for dowry soon before her daughter's death, she could have explained the same in her evidence. She had neither asserted nor narrated any complaint from her daughter about harassment or ill-treatment by the appellants. The mother of the deceased has not stated anything in her evidence with regard to harassment or maltreatment of the deceased by the appellants on the basis of her personal knowledge: rather admittedly her knowledge is hearsay since her whole narration in this regard in court is based on whatsoever was stated to her by her husband and father of the deceased. B. Under Section 60 of the Evidence Act hearsay evidence is not admissible as B was not examined in court and no other witness was produced by the prosecution to prove maltreatment and harassment of the deceased by the appellants. Therefore, the ingredients of Section 304-B IPC were not met by the prosecution for holding the appellants guilty thereunder. Even otherwise, since the demands made by the appellants were met by the parents of the deceased, there was no reason for the appellants to set the deceased on fire. Even the other witness, namely, J (PW-3), has nowhere stated in his deposition before the court with regard to any maltreatment to the deceased or being aware of any such incident. Hence, his evidence is not helpful insofar as the allegation of harassment and maltreatment is concerned either. **(Bakshish**

Ram vs. State of Punjab; (2013) 4 SCC 131)

Ss. 306, 498-A—Ingredients not proved—Mere matrimonial discord—Suicidal tendency of deceased—Relevance of

The respondent's wife committed suicide by consuming poison at her residence. The deceased left a suicide note that no one was responsible of her death. The trial court acquitted the respondent. The High Court did not interfere with the order of the acquittal. The criminal appeal filed by the complainant abated as the complainant expired during the pendency of the appeal.

The counsel for the State submitted before the Supreme Court that there was evidence of PW-1, son of the deceased, to show that there were quarrels between the deceased and the respondent-accused husband over innumerable loans taken by the accused and that the accused used to take away the salary of the deceased. The accused used to lock the house from outside keeping the deceased inside, the said evidence makes out the case of harassment, cruelty and abetment of suicide. The deceased had a suicidal tendency. Except that the respondent husband used to bolt the door from outside, there was no other evidence available to establish abetment of suicide under Section 306 IPC or cruelty under Section 498-A IPC. The respondent had taken PW 1 and his younger brother for a movie when the deceased committed suicide. The deceased did not oppose their going to the motive without her and did not oppose the main door being locked from outside. The deceased herself opted not to go to movie along with the respondent and their two sons. Neither the respondent nor the two sons had any thought that the deceased would commit suicide when they would not go to the movie. No act of cruelty or harassment as such committed by the respondent within the meaning of clauses (a) and (b) of the Explanation to Sec. 498-A IPC is found either. On the day of occurrence the respondent was not in any way guilty of any willful conduct which was likely to drive the deceased to commit suicide or did the respondent cause any grave injury to the deceased. Though PW 1 stated that the respondent used to take away the salary of the deceased, he had not stated so before the police. The concurrent findings of the courts below that the respondent was not guilty of the offences under Sections 498-A and 306, hence, are not liable to be interfered with. **(K.R.J. Sarma vs. R.V. Surya Rao; (2013) 4 SCC 118)**

S. 366 - Conviction can be based on sole evidence of prosecutrix if reliable and creditable

The law on the issue whether a conviction can be based entirely on the statement of a rape victim has been settled by this Court in several decisions. A detailed discussion on this subject is to be found in Vijay @ Chinee v. State of

Madhya Pradesh; (2010) 8 SCC 191. After discussing the entire case law; this Court concluded in paragraph 14 of the Report as follows:-

"Thus, the law that emerges on the issue is to the effect that the statement of the prosecutrix if found to be worthy of credence and reliable, requires no corroboration. The Court may convict the accused on the sole testimony of the prosecutrix."

This decision was recently adverted to and followed in State of Rajasthan v. Babu Meena, 2013 (2) SCALE 479. **(State of Haryana v. Basti Ram; 2013 (2) Supreme 633)**

S. 376 - Rape – Non-Examination of Doctor examining prasecutrix – Plea that as prosecutrix was examined many days after incident non-examination of doctor do not prejudice accused would not be tenable

The courts below could not have, at any stretch of imagination, on the basis of the evidence on record held that the appellant is guilty of committing the offence under Section 376, IPC. Further, according to the prosecutrix, PW3 who is alleged to have rescued her from the place of occurrence of offence, has clearly stated in his evidence that he does not know anything about the incident in his statement thereby he does not support the version of prosecution. The High Court has erroneously accepted the finding of the trial court that the appellant has not been prejudiced for non-examination of the doctor for the reason that she was working as a Nurse in the private hospital of PW4 and being a nurse she knew that the information on commission of rape is grave in nature and she would not have hesitated in giving the information to the police if the occurrence was true. Further, the finding of the courts below that non-examination of the I.O. by the prosecution who has conducted the investigation in this case has not caused prejudice to the case of the appellant, since the prosecution witnesses were unfavorable to the prosecution who were either examined or declared hostile by the prosecution, which reasoning is wholly untenable in law. Therefore, the finding and reasons recorded by both the trial court as well as the High Court regarding non-examination of the above said two witnesses in the case has not prejudiced the case of the appellant is totally an erroneous approach of the courts below. For this reason also, we have to hold that the findings and reasons recorded in the impugned judgment that the trial court was justified in holding that the prosecution has proved the charge against the appellant and that he has committed the offence on the prosecutrix, is totally erroneous and the same is wholly unsustainable in law. **(Rajesh Patel v. State of Jharkhand; 2013 Cri.L.J. 2062)**

S. 376 – Rape – consent – Age of prosecutors – Determination

So far as the issue of determining the age is concerned, in the instant case Doctor has found that prosecutrix was having only 28 teeths, 14 in each jaw. Such an issue was considered by this Court in Bishnudayal v. State of Bihar, AIR 1981 SC 39, wherein the court appreciated the evidence as under:

> "8. The evidence with regard to the age of the girl was given by the prosecutrix (P.W.9), and her father J. agamath (P. W.4) and Dr. Asha Prasad (P.W. 14). P'W.9 and P.W.4 both stated that Sumitra (P.W.9) was 13-14 years of age at the time of occurrence. Dr. Asha Prasad opined that the girl was only 13 or 14 years of age on July 6, 1967 when the witness examined her. The Doctor based this opinion on physical facts, namely, that the examinee (P.W.9) had 28 teeth. 14 in each jaw, smooth pubic hair and axillary hair, which means the hair, according to the opinion of the Doctor, had just started appearing at the age of 14."

Similar view has been reiterated by this Court while deciding Criminal Appeal No.1962 of 2010, Kailash alias Tanti Banjara v. State of M.P., vide judgment and order dated 10.4.2013, wherein relying upon several other factors for determining the age, this very Bench has taken a view that as the prosecutrix therein had only 28 teeth considering the other sexual character, she was only 14 years of age. Therefore, in view of the above, we do not find any fault with the finding recorded by the High Court so far as the issue of age is concerned.

In case, the prosecutrix was below 16 years of age at the relevant time, the issue of consent becomes totally irrelevant. Even the issue of consent is no more res integra even in a case where the prosecutrix was above 16 years of age.

In State of H.P. v. Mange Ram, AIR 2000 SC 2798, this Court, while dealing with the issue held:

> "Submission of the body under the fear or terror cannot be construed as a consented sexual act. Consent for the purpose of Section 375 requires voluntary participation not only after the exercise of intelligence based on the knowledge of the significance and moral quality of the act but after having fully exercised the choice between resistance and assent. Whether there was consent or not, is to be ascertained only on a careful study of all relevant circumstances."

(Dilip v. State of M.P.; 2013 CrLJ 2449)

S. 376, CrPC S. 482 – Establishing physical relation with girl without promise cannot be said to be a promise to marry

Counsel for the petitioners relied on a precedent of Hon’ble Apex Court rendered in case of Vijayan v. State of Kerela, (2009)3 SCC (Cri) 585. In that

case almost identical facts existed. The prosecutrix was forcibly put to sexual intercourse by the accused, but she kept this fact secret continuously for seven months only because the accused had promised to marry her after the commission of the alleged crime. But when the accused did not honour his promise and refused to marry her, then she revealed the incident.

Learned Counsel for the petitioners argued that the instant case is on better footing than the case referred to, by him inasmuch as in the said case, the Hon'ble Apex Court acquitted the accused, while the allegation against him was that he forcibly committed rape upon the prosecutrix. But in the case in hand, the prosecutrix Samma Devi consented and willingly submitted herself for sexual advancement to Vineet Panwar just on the promise that he would marry & take case of her if anything unusual turns up subsequently. Even in her statement under Section 161 CrPC (Annexure-5 to the petition) as well as in the statement under Section 164 CrPC (Annexure 1 to the counter affidavit filed by Sub-Inspector of Police), the prosecutrix has nowhere said that before or at the time of establishing physical relations, accused had promised to marry her. She has stated only this much in both of her statements that accused had promised to carry her, which cannot be equated with a promise to marry her.

So, in view of the above narrated facts and circumstances of the case and the legal proposition (supra), this petition has force and it is liable to be allowed.

Resultantly, the petition is allowed. Impugned order of cognizance dated 3.1.2009 as well as the entire proceedings of Criminal Case No. 8/2009, State vs. Vineet Panwar & Smt. Babli Devi, under section 376 & 120B IPC, pending before the Chief Judicial Magistrate, Uttarkashi are hereby quashed. (**Vineet Panwar vs. State of Uttarakhand; 2013(81) ACC 806)**

S. 376 – Rape victim – Care and caution expected of State authorities

It is an obligation on the part of the State authorities and particularly, the Director General of Police and Home Ministry of the State to issue proper guidelines and instructions to the other authorities as how to deal with sexual assault cases and what kind of treatment is to be given to the prosecutrix victim of sexual assault requires a totally different kind of treatment not only from the society but also from the State authorities. Certain care has to be taken by the Doctor who medically examines the victim of rape. The victim of rape should generally be examined by a female doctor simultaneously, she should be provided the help of some psychiatric. The medical report should be prepared expeditiously and the Doctor should examine the victim of rape thoroughly and give his/her opinion with all possible angle e.g. opinion regarding the age taking into consideration the number of teeths, secondary sex characters, and

radiological test, etc. The Investigating Officer must ensure that the victim of rape should be handled carefully by lady police official/officer, depending upon the availability of such official/officer. The victim should be sent for medical examination at the earliest and her statement should be recorded by the 1.0, in the presence of her family members making the victim comfortable except in incest cases. The investigation should be completed at the earliest to avoid the bail to the accused on technicalities as provided under S. 167, Cr.P.C. and final report should be submitted under S. 173, Cr. P.C. at the earliest. State directed to issue comprehensive guidelines in this regard. The guidelines so issued would be in addition to directions issued in (1995) 1 SCC 14. (**Dilip v. State of M.P.; 2013 CrLJ 2449)**

Ss. 376, 363 and 366 - Sole testimony of prosecutrix - When reliable - Conviction can be based on sole testimony of prosecutrix - If found to be worthy of credence and reliable and for that no corroboration is required

The Court do not have the slightest hesitation in accepting the broad submission of Mr. Jain that the conviction can be based on the sole testimony of the prosecutrix, if found to be worthy of credence and reliable and for that no corroboration is required. It has often been said that oral testimony can be classified into three categories, namely (i) wholly reliable, (ii) wholly unreliable and (iii) neither wholly reliable nor wholly unreliable. In case of wholly reliable testimony of a single witness, the conviction can be founded without corroboration. This principle applies with greater vigour in case the nature of offence is such that it is committed in seclusion. In case prosecution is based on wholly unreliable testimony of a single witness, the court has no option than to acquit the accused.

In the background of the aforesaid legal position, when we consider the case in hand we are of the opinion that the statement of the prosecutrix is not at all reliable or in other words wholly unreliable. No other evidence has been led to support the allegation of rape. Hence, it shall be unsafe to base the conviction on her sole testimony. (**State of Rajasthan vs. Babu Meena; (2013) 2 SCC (Cri.) 364)**

S. 409 – Criminal Breach of trust – Three ingredients are necessary

For the offence of criminal breach of trust by a public servant, as defined under section 409 I.P.C. the following ingredients are necessary:-

1. The accused must be a public servant.
2. He must have been entrusted in such capacity with property.
3. He must have committed the breach of trust in respect of such property.

In the case in hand, the first two ingredients are fully proved. It is an admitted case of the accused-respondent that he was a public servant and was also entrusted with the property being in-charge of Government Seed Godown. The third ingredient is the most important ingredient and it has to be proved by the prosecution beyond reasonable doubt. (**State of U.P. vs. Rai Singh Kushwaha; 2013(81) ACC 817)**

Ss. 415 to 420 and 405 to 409 - Cheating or Brach of trust-Nature of act - Both a Civil Wrong and Criminal Offence

There is no dispute with regard to the legal proposition that the case of breach of trust or cheating are both a civil wrong and criminal offence, but under certain situations where they are alleged would predominantly be a civil wrong, such an act does not constitute a criminal offence. (**CHCL Employees stock option trust vs. India INFOLINE Ltd.; (2013) 2 SCC (Cri) 414)**

S. 498-A – Cruelty to women – Proof

It is clear from the aforesaid evidence of PW 1 that the deceased herself opted not to go to the movie on that day along with the respondent and their two sons and neither the respondent nor the two sons had any thought that the deceased would commit suicide when they have gone to the movie. This being the evidence of the prosecution witness (PW 1), court fail to see how the case for abetment of suicide by the respondent could be made out, particularly when the deceased had left behind a suicide note (Ext. PI) absolving the respondent and all others from the responsibility for the step taken by her to commit suicide by taking poison.

Also from the evidence of PW 1 we do not find any act of cruelty or harassment as such committed by the respondent within the meaning of Clauses (a) and (b) of the Explanation to Section 498A, IPC. Clause (a) of the Explanation to Section 498A, IPC states that any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health, whether mental or physical of the woman amounts to 'cruelty'. Court has noticed from the evidence of PW 1 that on the day the deceased committed suicide, the respondent was not in any way guilty of any wilful conduct which was likely to drive the deceased to commit suicide, nor did the respondent cause any grave injury to the deceased. Clause (b) of the Explanation to Section 498A, IPC states that harassment of a woman with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand amounts to 'cruelty'. Though PW 1 has stated that the respondent used to take away the salary of the deceased, he has very

fairly conceded in cross-examination that he had not stated before the police that the respondent used to take away the salary of the deceased. Considering this evidence of PW 1, we are of the view that the concurrent findings of the Trial Court and the High Court that the respondent was not guilty of the offences under Sections 498A and 306, IPC should not be interfered with by us in exercise of our powers under Article 136 of the Constitution. **(K.R.J. Sarma v. R.V. Surya Rao; 2013 CrLJ 2189)**

S.498–A, Explanation (a) and (b) – Prosecution has to prove beyond reasonable doubt that husband or his relative has subjected the victim to cruelty as defined in closes (a) and (b) of explanation

To establish the offence of dowry death under section 304-B, I.P.C. the prosecution has to prove beyond reasonable doubt that the husband or his relative has subjected the deceased to cruelty or harassment in connection with demand of dowry soon before her death. Similarly, to establish the offence under section 498-A, I.P.C. the prosecution has to prove beyond reasonable doubt that the husband or his relative has subjected the victim to cruelty as defined in Clauses (a) and (b) of the Explanation to section 498-A, I.P.C. In the present case, the prosecution has not been able to prove beyond reasonable doubt that the appellants have subjected the deceased to any cruelty or harassment. (**Indrajit Sureshprasad Bind vs. State of Gujarat; 2013(81) ACC 931)**

Industrial Disputes Act

S. 2-A(2) - Constitution of India, 1950 - Articles 226 and 227 - Writ petition - Dismissed by learned Single Judge - On account of extraordinary delay in filing writ petition -However though no period of limitation prescribed - But it must be filed within reasonable time - Sufficient explanation and cause must be given - In the case award passed in 1992, which was challenged in 2002 - No reasonable explanation given - Hence there is not illegality in order passed by learned Single Judge

It is therefore clear that though no specific period of limitation has been provided under law, for institution of writ petition, they must be instituted within a reasonable time. Further, one, who is not vigilant in seeking the intervention of the Court within a reasonable time from the date of accrual of cause of action or violation of constitutional, legal or other right, is not entitled to seek the indulgence of the High Court under Article 226 of the Constitution. While invoking the powers of the High Court under Article 226 of the Constitution of India with a delay, sufficient cause has to be shown and also give reasons explaining the delay in filing the writ petition.

No reasonable explanation is forthcoming as to why he kept quiet from

1994 till he filed the writ petition in the year 2002 after obtaining a Xerox copy of the award. The explanation sought to be given is baseless and without any reason. This is a classic case where the writ petitioner slept over his rights and seeks the indulgence of the High Court after ten years from the date of accrual of cause of action.

There is no illegality or irregularity in the order passed by the learned Single Judge and the same warrants no interference. **(K.R. Shankar Singh Vs. Presiding Officer, Industrial Tribunal-cum-Labour Court, Karimnagar and other, (2013 (137) FLR 160) (AP HC).**

Ss 2(oo) (bb), 10(1) and 25-F - Ad hoc appointment - Appellant, alleged that he was appointed on 26.3.2001 on as hoc basis and he was not allowed to mark his attendance w.e.f 5.2.2004 - Labour Court held him not entitled to reinstatement and regularization - He worked as an ad hoc employee for about three years - Not appointed against a sanctioned post - Not even selected - His case not covered under Clause (bb) of section 2 (oo) of Act - Ad hoc employee has no right to seek regularisation - Order passed by learned Single Judge and by Labour Court set aside-Respondent is directed to pay a sum of Rs. 3,00,000/- as compensation

It cannot be said that the case of the appellant was covered under Clause (bb) of section 2(oo) of the Act.

The appellant before us was appointed on as hoc basis, he worked as an ad hoc employee for about three years, he was not appointed against as sanctioned post, he did not undergo any process of selection and there is not sanctioned post of Data Entry Operator against which he could be reinstated. Considering all these facts and circumstances, while setting aside the order passed by the learned Single Judge, as well as the award of the Industrial Tribunal, we direct the respondent to pay a sum of Rs. 3,00,000/- as compensation to the appellant in lieu of reinstatement with or without back wages.

Industrial Disputes Act, 1947 - Section 2(oo) (bb) - Ad hoc employee - Does not have any right or regurarisation - But as workman has worked for more than 240 days -Termination of his services would be illegal - Unless justified under section 2(oo) of Act

It is an undisputed of law that an ad hoc appointment does not give any right to the employee to seek regularization and it is well within the competence of the Appointing Authority to terminate an, as hoc appointment at any point of time, without assigning any reason. But, when it comes to an employee, who is also a workman within the meaning of section 2(s) of the Act and who has put in

continuous service of at least 240 days, the termination of his services would be illegal unless such an order can be justified under Clause (bb) of section 2(oo) of the Act. Once it is shown that a workman was employed for a continuous period of 240 days or more and his retrenchment is not covered by section 2(oo) (bb), such a retrenchment would be illegal in the eyes of law, irrespective of whether the workman in question was appointed on ad hoc basis or otherwise and whether he was working against a sanctioned post or not.

Industrial Disputes Act, 1947 - Section 25-F – Retrenchment - In violation of section 25-F-Court may award compensation

This is by now more or less settled proposition of law that even in a case where a workman is retrenched in violation of the provisions contained in section 25-F of the Act, the Court may, in appropriate cases, award compensation, instead of directed reinstatement of the workman with or without back wages. The question whether the workman should be reinstated in service or paid compensation in lieu reinstatement with or without back wages depends upon a number of factors such as (a) the period of the service rendered by him; (b) the nature of his appointment as to whether it was permanent/temporary/regular/ad hoc/on daily wage basis; (c) whether the workman was appointed following due process of selection in accordance with the prescribed Recruitment Rules or not; (d) whether the workman was appointed against a duly sanctioned post or not; (e) whether there is an existing post against which the workman can be reinstated and (f) time period which has elapsed since retrenchment of the workman. **(P.K. Sharma Vs. Municipal Corporation of Delhi, (2013 (137) FLR 741) (Del HC).**

S. 6-N - Temination of services – Award - Petitioner's services terminated - Non compliance of section 6-N - Continuously working for more than 240 days - Not proved - No evidence of any nature was brought before the Labour Court to prove the continuous working of workman for 240 days - Initial burden which was upon workman himself was not discharged - Consequently the onus could not be shifted upon the employers - labour Court has considered the documents - Because of a lot of cuttings and overwriting by changing the name of worker, the genuineness of photo copies becomes doubtful - Labour Court has given a finding that workman could not prove that he had worked for more than 240 days - Consequently the principle of last cone first to go becomes wholly redundant - No error found in the award answering the reference in negative - No interference made with

The photo stat copies of the payment vouchers indicated a lot of cuttings and overwriting by changing the name of the worker, and consequently, the genuineness of the photo stat copies becomes doubtful. The Labour Court

accordingly rejected the photo stat copies as secondary evidence. This being a finding of fact, which is not perverse, and consequently, the Court is not inclined to interfere in.

No evidence of any nature was brought before the Labour Court to prove that the workman had worked for more than 240 days in a calendar year, the initial burden, which was upon the petitioner himself was not discharged and, consequently, the onus could not shift upon the employers. The decision cited by the learned Counsel for the petitioner consequently has no application to the present facts and circumstances of the case. The Labour Court has given a finding that the workman could not prove that he had worked for more than 240 days. Consequently, the principle of last come first to go" becomes wholly redundant. **(Jai Pal Vs. Regional manager, Bank of Baroda, Kanpur Nagar and another, (2013 (137) FLR 656) (All HC).**

S. 6-N - Non-compliance of Petitioner's services as electrician on daily wages dispensed with - Without compliance of section 6-N of Act - Though he completed 240 days in service - Labour Court rejected the claim of petitioner - Labour Court committed a manifest error in rejecting the claim of petitioner and in placing burden entirely upon the workman-petitioner - Though initial burden to prove a fact discharged by petitioner - workman and Fact stated by workman not rebutted by employer - Failed to discharge its burden - The employer failed to produce the relevant documents with him - Therefore adverse inference has to be drawn against the employer - Hence impugned award is quashed - Matter remitted to Labour Court to re-decide it - Constitution of India, 1950, Article 226

The Labour Court committed a manifest error in rejecting the claim of the petitioner and in placing the burden entirely upon the workman. No doubt, it is a settled principle of law, that the burden to prove the case is upon the plaintiff, namely, the workman in the instant case who has filed the claim before the Labour Court. In the instant case, the petitioner has filed a copy of the resolution of the Nagar Panchayat and has also proved this resolution in his evidence-in-chief indicating that the Nagar Panchayat had passed a resolution for appointing the petitioner as an electrician on daily wages basis. To this extent the petitioner has proved his case that he was appointed as an electrician. However, the petitioner has contended that he had worked continuously for more than 240 days in a calendar year. This fact has been stated in his written statement and has also been stated in his evidence, which has not been rebutted in his cross-examination.

The initial burden to prove a fact, was upon the petitioner, which had been done substantially and thereafter the onus shifted upon the employer, which, in the instance case, an opportunity was given and which the employers failed to

discharge.

The impugned award cannot be sustained and is quashed. The petition is allowed and the matter is remitted to the Labour Court again to re-decide the matter. **(Ganga Ram Vs. Labour Court, Allahabad and others, (2013 (137) FLR 261) (All HC).**

Ss. 10 and 25-F – Termination of service – Reference without adopting procedure – Effect of

The issue involved in the present petition is of quite importance, namely, as procedure to be adopted by the Labour Courts or Industrial Tribunals in the cases where the petitioner-workman, at whose instance a reference has been made to the Labour Court/Tribunal, does not appear for any reason? It is especially in the cases where no pleadings have been filed and consequently no evidence led on behalf of the petitioner-workman. In such cases, the Labour Courts/Tribunals had dismissed the references by passing the awards against the petitioner-workman therein, which were sent to the appropriate government for publication in the official gazette. After the award is published, the Labour Court/Tribunal becomes functus officio and if there are good reasons for non-appearance of the petitioner- workman before the Labour Court/Tribunal, the only remedy available to him is to approach this court, which is not only expensive but time-consuming.

Section 10 of the Act provides for reference of dispute to the Court/Tribunal. Sub-section (2-A) thereof provides that at the time of reference of dispute, the appropriate government shall specify the period within which the Court/Tribunal shall submit its award of such dispute. Section 15 of the Act throws light on the duties of the Labour Court/Tribunal. It envisages expeditious disposal of the cases and submission of award to the appropriate government, which is required to be published in the official gazette within a period of 30 days from the receipt in terms of Section 17 of the Act.

If the facts of the case in hand are considered, the case set up by the petitioner is that he was not served with the notice as only his authorised representatives was sent a notice by the Tribunal. This is despite the fact that the petitioner had furnished his permanent address in the pleadings before the authorities. The authorised representative had been engaged only for representing the petitioner before the Labour-cum-Conciliation Officer and not before the Court. As the petitioner did not receive any intimation from the Tribunal, he was unable to put in appearance. In the absence of any pleadings or evidence, the issue was decided against him, hence, such an order passed by the Tribunal deserves to be set aside. **(Balbir Singh v. Presiding Officer; 2013 (2) SLR 724**

(P&H)

Ss 10(1)(d), 12(4), 25-T and 2(ra) – Reference - Unfair labour practice - Claim of petitioner that reference made was in complete - Cannot be accepted - For the reason that the said question is not specific and is general in nature - Which cannot be adjudicated by Industrial Tribunal - Inasmuch as, if there is any instance of unfair labour practice - Same if proved is punishable under section 25-U of Act - Petitioner has an alternative remedy, which can be worked out

The claim of the petitioner that the said reference is incomplete, without the question, i.e., "whether unfair labour practices adopted by M/s. HINDALCO Industries Ltd. under the Industrial Disputes Act, 1947 is legal and/or justified?" being referred to the Tribunal, cannot be accepted for the reason that the said question is not specific and is general in nature which cannot be adjudicated by the Industrial Tribunal, inasmuch as, if there is any instance of unfair labour practice, the same, if proved in accordance with law, is punishable under the provisions of section 25-U of t he Act and the petitioner has an alternative remedy, which can be worked out. **(Prafulla Kumar Nayak Vs. State of Odisha and others, (2013 (137) FLR 108) (Orissa HC).**

S. 11-A – Termination - There are two charges in the chargesheet - Out of 57 only 14 passengers had been issued tickets even for shorter distance and that some blocks of ticket book were unfilled - But the Inquiry Officer did not find him guilty of any misappropriation or financial irregularity - Just for not filing some blocks of ticked book promptly, services could not be terminated - Award of punishment of stopping of two increments by Labour Court was perfectly in accordance with section 11-A of Act -But awarding complete back wage was not right for reason that the dispute raised after six years - Workman is required to return the wages - Award is modified only in respect of backwages

The Court fully agrees with the view of the Industrial Tribunal that just for not filling some blogs of ticket book promptly services could not be terminated. I further agree with the punishment awarded by the labour Court i.e. stopping of two increments. It was perfectly in accordance with section 11-A of Industrial Disputes Act.

Due to late filing of the claim workman is required to return the amount of wages for the period from 17.12.1988 till 2.6.1994 when reference was made (through Notification No. 6216-CP-45/94, Agra). Let the said amount be recovered from the petitioner in equal instalments from his future salary by deducting one third of the total salary payable to him every month until the entire amount is recovered/adjusted. **(U.P.S.R.T.C. Vs. Mahar Singh and others (2013 (137) FLR 407) (All HC).**

S. 11-A and 10(1) - Dismissal from service - For his continued absence from 20.6.1994 onwards without any permission or leave - After enquiry, charges levelled proved -Taking into consideration the enquiry report, the order of dismissal passed - The facts are not in dispute - In exercise of its discretion, when labour Court directed reinstatement - High Court ordinarily shall not interfere with - However, since the continuity of service from date of dismissal till the date of award was not justifiable - The learned Single Judge rightly modified the award - In so far as granting continuity of service from date of dismissal till the date of award - No reason found to interfere with

The learned Single Judge held that the award of the Labour Court in ordering continuity of service from the date of dismissal i.e., from 4.7.1996 till the date of award of the Labour Court dated 31.3.2005 cannot be justified. On those findings, the learned Single Judge modified the award of the Labour Court only in so far as ordering continuity of service and other benefits for the period from 4.7.1996 to 31.3.2005. The Writ Court made it clear that the earlier service rendered by the 2nd respondent prior to the order of dismissal shall be counted for all the purposes viz., fixing for salary from the date of award and for other terminal benefits.

In exercise of its discretion when the Labour Court directed reinstatement, exercising Writ Jurisdiction, High Court shall not ordinarily interfere with the discretion, exercised by the Labour Court in modifying the sentence. Since the continuity of service from the date of dismissal i.e., 4.7.1996 till the date of award of the Labour Court dated 31.3.2005 was not justifiable, the learned Single Judge rightly modified the award of the Labour Court insofar as granting continuity of service from 4.7.1996 till 31.3.2005. We do not find any reason warranting interference with the order of the learned Single Judge. **(Managing Director, Tamil Nadu State Transport Corporation (Coimbatore) Ltd. Vs. Presiding Officer, Labour Court, Salem and another, (2013 (137) FLR 473) (Mad HC).**

S. 17-B-Wages - Order directing appellant to pay last drawn wages or minimum wages from the date of award - However, in view of fact and law the order modified by directing payment under section 17-B from the date of filing application - Not from the date of award

The punishment of depriving the respondent workman altogether from section 17B wages for not having made a clean breast of the state of affairs would be too harsh and the ends of justice would be served by directing payment as aforesaid from the date of the application.

Modify the order dated 29.2.2012 of the learned Single Judge by directing

payment under section 17B of the I.D. Act not from the date of the Award but from the date of filing of the application under section 17B of the I.D. Act. **(Delhi Technological University Vs. Dinesh Kumar, (2013 (137) FLR 442) (Del HC).**

S. 17-B - Constitution of India, 1950, Article 226 - Provision of section 17-B - Does not in any manner impair or interfere with powers of High Court under Article 226 of Constitution - Court still possesses the discretion to go into the question and award a lesser amount than the exact quantum of last drawn wages - Hence learned Single Judge has rightly ordered that the respondent appellant shall comply with provisions of section 17-B of Act

In view of the above decision, the Stat may be directed to comply with the provisions of section 17-B of the Act for which order has been passed and which has not been interfered by us this judgment. So order as has been passed by the learned Single Judge is required to be complied with great promptitude in the light of the decision given by Hon'ble Supreme Court in the case of Workmen represented by Hindustan V.O. Corpn. Ltd. V. Hindustan Vegetables Oils Corporation Ltd. and others. **(State of Jharkhand and another Vs. Sanjay Kumar and others, (2013 (137) FLR 14) (Jhar HC).**

Ss 25-F, 25-G and 25-H - Termination of Services – Compensation - Award of reinstatement with 50% back wages by Labour Court - Upheld by learned Single Judge - Award challenged by management - Workman was appointed as steward on 17.10.1987 and was not allowed to work after 1.3.1988 - Labour Court found violation of sections 25-G and 25-H of Act - He has worked total 132 days and it is 25 years old matter - Hence, the Court held that ends of justice will meet in payment of lumpsum amount of compensation of Rs. 50,000/- to workman *in lieu* of his, reinstatement with back wages - Hence, employer/appellant is directed accordingly

Looking to all the facts and circumstances of the present case, particularly the nature of appointment, period of work done by the workman and further that it is 25 years old matter, we are of the view that ends of justice will meet, in case a lump sum amount of compensation of Rs. 50,000/- (Rs. Fifty Thousand) is awarded to the workman, in liew of his reinstatement with back wages. **(Hotal Mansingh, Jaipur Vs. Judge, Labour Court, Jaipur and another (2013 (137) FLR 492) (Raj HC - Jaipur Bench).**

S. 25-F – Retrenchment - Without due compliance of section25-F - Labour Court set aside the retrenchment and directed reinstatement with back wages - But again order or retrenchment passed on the day he joined - Labour Court again set aside the retrenchment and directed reinstatement with 50 to back wages - He was reinstated and again retrenched - Once he was reinstated in service, it certainly relates back to date of his initial appointment and he was

entitled to benefit of section 25-F - However employer shall now take steps regarding regularization of respondent workman and may pass necessary orders at least from date person junior to him stood regularized

Once he was reinstated in service it certainly relate back to the date of his initial appointment which was 18.1.1985 in the instant case and the employer was under obligation if at all was of the view that workman was to be retrenched his service was supposed to be counted taking note of his first appointment in service as casual labour.

We do not find any error being committed by the learned Single Judge under order impugned which may require interference but at the same time we modify the judgment impugned to the extent that the employer shall now take steps regarding regularization of the respondent-workman and may pass necessary orders at least from the date person junior to him stood regularized. **(UCO Bank and another Vs. Narendra Kumar Sharma, (2013 (137) FLR 636) (Raj HC - Jaipur Bench).**

Ss 25-F and 10(1) - Termination of Services - Award passed by Labour Court, ordering reinstatement of workman, without back wages - Termination of services of respondent workman, without complying with mandatory requirement of section 25-F, was held illegal and unjustified - The workman has continuously worked for more than three years with appellant - Merely because he was engaged on daily wages basis, he cannot be denied reinstatement nor be awarded compensation instead of reinstatement - No interference made with award

From 11.6.1991 to 12.12.2005, he is deemed to be in continuous service of the appellant-management. It has also been found that in spite of availability of the post of Driver, services of the respondent-workman were illegally terminated. In these circumstances, we do not find any ground to award compensation to the respondent-workman in lieu of re-instatement. Merely because initially, he was engaged on daily wages basis, he cannot be denied re-instatement.

If the termination of services of the daily wager is found to be contrary to the provisions of the Act, he can be ordered to be reinstated with back wages, keeping in view the facts and circumstances of the case. It cannot be accepted as a Rule that such employee has to be awarded compensation instead of reinstatement. **(UCO Bank, Karnal Vs. Presiding Officer, Ctrl. Govt. Industrial Tribunal-cum-Labour Court, Chandigarh and another (2013 (137) FLR 685) (P&H HC).**

S. 33 - Expression "during the pendency of any proceedings" - Cannot be interpreted to mean a continuous process or proceeding without any

interruption - Starting from date of filing of complaint before the Labour Officer, till the date of pronouncement of verdict by Industrial Tribunal - However, the Court inclined to grant police protection as prayed for

By no stretch of imagination the expression "during the pendency of any proceedings" can be interpreted to mean a continuous process or proceeding without any interruption starting from the date of filing of complaint before the Labour Officer till the date of pronouncement of the verdict of adjudication by the Industrial Tribunal.

Now police protection is sought for, carrying out rubber tapping works. Whatever be the right, respondents 1 to 5 have no right to obstruct the petitioner from enjoying his property especially when their claim is referred to the statutory authority under law for adjudication. It is for respondents 1 to 6 await the outcome of the same and desist from taking law into their hands and refrain from obstructing the petitioner's employees from doing their rubber tapping works. Consequently in the above circumstances, we are inclined to grant police protection as prayed for. **(Ranadevan Vs. Subramannyan, (2013 (137) FLR 389) (Ker HC).**

S. 33(2)(b) and 33(3) - Industrial Disputes (Central) Rules, 1957 - Rule 61(4) - Protected workman - Union sent names of protected workmen under Rule 61 (1) of Rules - Even though appellant-management did not responded but the respondent - Union approached the Assistant Labour Commissioner under Rule 61(4) - Decision of A.L.C. has necessarily to be held to be declaratory and dating back to date of communication -Not from date of decision - Protection contemplated is for full year - Thus, the removal of such workman, after he has been notified under Rule 61(1) as protected and before decision of A.L. Commissioner would be of no avail

The decision of the Assistant Labour Commissioner has necessarily to be held to be declaratory and dating back to the date of communication under Rule 61 (1) and cannot be held to be conferring the protection from the date of the decision. In this respect we are one with the Bombay High Court. The protection contemplated is for the full year commencing from 30th April and the term of the protection cannot be reduced as would be the consequence if it were to be held from the date of the decision of the Assistant Labour Commissioner.

Thus the removal of the workman, after he has been notified under Rule 61(1) as protected and before the decision of the Assistant Labour Commissioner would be of no avail.

It axiomatically follows that the appellant before removing the respondent was required to obtain the prior approval under section 33(3). **(Batra Hospital**

and Medical Research Centre Vs. Batra Hospital Employees' Union; (2013 (137) FLR 925) (Del HC).

Labour Court - Constituted under U.P. Industrial Disputes Act - Are also Labour Courts established by the State Government under Industrial Disputes Act (Central) - As provided under section 7(1) of Central I.D. Act - Accordingly such Labour Court can very well hear the matters specified in 2nd Schedule of Industrial Disputes Act (Central) - State Government under section 6-G of U.P.I.D. Act is empowered to transfer a proceeding from a Tribunal to a Labour Court - If the dispute is within jurisdiction of the Labour Court

The instant dispute might either be referred to Labour Tribunal or to Labour Court. Labour Courts constituted under U.P. Industrial Disputes Act are also Labour Courts established by the State Government under Industrial Disputes Act (Central) as provided under section 7(1) of Industrial Disputes Act (Central),

Accordingly, Labour Court constituted under U.P. Industrial Disputes Act can very well hear the matters specified in Second Schedule of Industrial Disputes Act (Central).

Section 6-G of U.P. Industrial Disputes Act where State Government has been empowered to transfer a proceeding from a Tribunal to la Labour Court if the dispute is within jurisdiction of the Labour Court.

Adjournment - Expeditions disposal of case - Labour Court is directed to decide the case expeditiously - No unnecessary adjournment shall be granted - However if any adjournment is granted - It shall be on heavy cost of not less than Rs. 500/-

Presiding Officer, Labour Court is directed to decide the case very expeditiously. Absolutely no unnecessary adjournment shall be granted to the employer. If any adjournment is granted, it shall be on heavy cost which shall not be less than Rs. 500/- per adjournment payable before the next date failing which petitioner employer shall not be permitted to participate in the proceedings of the case. **(Wockhardt Ltd. Vs. Presiding Officer, Labour Court, Agra and others, (2013 (137) FLR 1025) (All HC).**

Interpretation of Statutes

Basic Rule - To determine of legislative intent/object of Legislation

Section 6 of the JJ Act contains a non-obstante clause, giving overriding effect to any other law for the time being in force. It also provides that the Juvenile Justice Board, where it has been constituted, shall "have the power to deal exclusively" with all the proceedings, relating to juveniles under the Act,

that are in conflict with other laws. Moreover, non-obstante clauses contained in various provisions thereof, particularly Sections 15, 16, 18, 19 and 20, render unambiguously, the legislative intent behind the JJ Act, i.e. of the same being a special law that would have an overriding effect on any other statute, for the time being in force. Such a view stands further fortified, in view of the provisions of Sections 29 and 37, that provide for the constitution of Child Welfare Committee, which provides for welfare of children in all respects, including their rehabilitation.

Clause (p) of Section 2 of the JJ Act defines 'offence', as an offence punishable under any law for the time being in force. Thus, the said provision does not make any distinction between offences punishable under the IPC or one that is punishable under any local or special law.

The provisions of the JJ Act have been interpreted by this Court time and again, and it has been clearly explained that raising the age of "juvenile" to 18 years from 16 years would apply retrospectively. It is also clear that the plea of juvenility can be raised at any time, even after the relevant judgment/order has attained finality and even if no such plea had been raised earlier. Furthermore, it is the date of the commission of the offence, and not the date of taking cognizance or of framing of charges or of the conviction, that is to be taken into consideration. Moreover, where the plea of juvenility has not been raised at the initial stage of trial and has been taken only on the appellate stage, this Court has consistently maintained the conviction, but has set aside the sentence. (**Union of India vs. Ajeet Singh; (2013) 2 SCC (Cri) 347)**

Deeming clauses – Court for interpreting has to ascertain purpose for creating fiction

Legislature is competent to create a legal fiction, for the purpose of assuming existence of a fact which does not really exist. Sub-section (3) of Section 10 contained two deeming provisions such as "deemed to have been acquired" and "deemed to have been vested absolutely". Let us first examine the legal consequences of a 'deeming provision'. In interpreting the provision creating a legal fiction, the Court is to ascertain for what purpose the fiction is created and after ascertaining this, the Court is to assume all those facts and consequences which are incidental or inevitable corollaries to the giving effect to the fiction. This Court in Delhi Cloth and General Mills Company Limited v. State of Rajasthan (1996) 2 SCC 449 held that what can be deemed to exist under a legal fiction are facts and not legal consequences which do not flow from the law as it stands. **(State of U.P. v. Hari Ram; 2013 (3) ALJ 157 (SC)**

Penal statutes – Need to be given strict construction is not to rule of

universal application but it depends on fact of case

The principle that a penal statute should be strictly construed is not of universal appliation. Murlidhar Meghraj Loya v. State of Maharashtra, AIR 1076 SC 1929, this court was dealing with the Prevention of food Adulteration Act, 1954. Speaking for this court, Krishna Iyer, J. held that any narrow and pedantic, literal and lexical construction of Food Laws is likely to leave loopholes for the offender to sneak out of the meshes of law and should be discouraged and criminal jurisprudence must depart from old canons defeating criminal statutes calculated to protect the public health and the nation's wealth. Similar view was taken in Kisan Trimbak Kothula and ors. v. State of Maharashtra. Therefore, whether the penal statute should be given strict interpretation or not will depend on facts of each case. Considerations of public safety may weight with the court in a given case and persuade it not to give a narrow construction to a penal statute**. (Ritesh Sinha v. State of U.P.; 2013 (2) ALJ 435)**

Words unidentified in statute – To be construed in light of general purpose of Statute

Each word, phrase or sentence that we get in a statutory provision, if not defined in the Act, then is to be construed in the light of the general purpose of the Act. As held by this Court in Organo Chemical Industries v. Union of India (1979) 4 SCC 573 that a bare mechanical interpretation of the words and application of a legislative intent devoid of concept of purpose will reduce most of the remedial and beneficial legislation to futility. Reference may also be made to the Judgment of this Court in Directorate of Enforcement v. Deepak Mahajan (1994) 3 SCC 440. Words and phrases, therefore, occurring in the statute are to be taken not in an isolated or detached manner, it is associated on the context but are read together and construed in the light of the purpose and object of the Act. **(State of U.P. v. Hari Ram; 2013 (3) ALJ 157 (SC)**

Juvenile Justice (Care & Protection of Children) Act

Ss. 2(1), 6, 7 and 7-A—Applicability of—Raising of age of juvenile from 16 yrs. to 18 yrs. to operate retrospectively

The provisions of the JJ Act has been interpreted by this Court time and again, and it has been clearly explained that raising the age of "juvenile" to 18 years from 16 years would apply retrospectively. It is also clear that the plea of juvenility can be raised at any time, even after the relevant judgment/order has attained finality and even if no such plea had been raised earlier. Furthermore, it is the date of the commission of the offence, and not the date of taking cognizance or of framing of charges or of the conviction, that is to be taken into consideration. Moreover, where the plea of juvenility has not been raised at the

initial stage of trial and has been taken only on the appellate stage, this Court has consistently maintained the conviction, but has set aside the sentence. **(Union of India vs. Ex-GNR Ajeet Singh; (2013) 4 SCC 186)**

Ss. 6, 2(1), 15, 16, 18, 19, 20 and 37—Overriding effect—Extent of

The JJ Act that came into force on 1.4.2001 repealed the Juvenile Justice Act, 1986 and provides that a juvenile will be a person who is below 18 years of age:

Section 6 of the JJ Act contains a non obstante clause, giving overriding effect to any other law for the time being in force. It also provides that the Juvenile Justice Board, where it has been constituted, shall "have the power to deal exclusively" with all the proceedings, relating to juveniles under the Act, that are in conflict with other laws. Moreover, non obstante clauses contained in various provisions thereof, particularly Sections 15, 16, 18, 19 and 20, render unambiguously the legislative intent behind the JJ Act i.e. of the same being a special law that would have an overriding effect on any other statute for the time being in force. Such a view stands further fortified in view of the provisions of Sections 29 and 37 that provide for the constitution of the Child Welfare Committee which provides for welfare of children in all respects including their rehabilitation.

Clause (p) of Section 2 of the JJ Act defines "offence", as an offence punishable under any law for the time being in force. Thus, the said provision does not make any distinction between an offence punishable under IPC or one that is punishable under any local or special law. **(Union of India vs. Ex-GNR Ajeet Singh; (2013) 4 SCC 186)**

S. 7A - Juvenile Justice (Care and Protection of Children) Rules (2007) , R. 12 – Juvenility - Claim of - Can be raised for first time before Supreme Court - Words "any court" – Wide enough to include Supreme Court

The expression 'any court' in Section 7A is too wide and comprehensive; it includes Supreme Court. Supreme Court Rules do not limit the operation of Section 7 A to the Courts other than Supreme Court where the plea of juvenility is raised for first time after disposal of case. **(Abuzar Hossain alias Gulam Hossain v. State of West Bengal; AIR 2013 SC 1020)**

Ss. 7-A, 2(k), 20 proviso and Expl.—Claim of juvenility for first time in appeal before High Court- Maintainability of

Counsel appearing for the appellants, submitted that on 9.10.1998 when the offence was alleged to have been committed, Appellant 2, Paritosh, was less than 18 years of age and was, therefore, a juvenile within the meaning of Section

2(k) of the Juvenile Justice (Care and Protection of Children) Act, 2000 (for short "the 2000 Act"). He relied on the copy of the primary education certificate issued by the Teacher-in-charge of West Bilthai S.B. School, Dharmanager, Tripura (N), to show that the date of birth of Appellant 2 was 28.5.1983. He submitted that accordingly his age was about 16 years on 9.10.1998, the date on which the offence was committed. He submitted that the trial court and the High Court, however, took the view that the provisions of the 2000 Act would not apply to the offence which was committed on 9.10.1998 and instead the provisions of the Juvenile Justice Act, 1986 (for short "the 1986 Act") would apply and under the 1986 Act only a person who is shown to be less than 16 years of age at the time of the commission of the offence is a juvenile and it was satisfactorily proved that Appellant 2 was 16 years of age on the date of commission of the offence. He submitted that in Hari Ram vs. State of Rajasthan, (2009) 13 SCC 211, this Court has taken a view that all persons who were below the age of 18 years on the date of commission of the offence would have to be treated as juveniles by virtue of the 2000 Act as amended by the Amendment Act of 2006. He submitted that, therefore, the appeal of Appellant 2 will have to be allowed and the impugned judgment of the High Court qua Appellant 2 will have to be set aside.

Learned counsel appearing for the State of Tripura, relied on the decision of this Court in Pratap Singh vs. State of Jharkhand, (2005) 3 SCC 551 to submit that Appellant 2 was not protected by the 2000 Act and was liable to be punished for the offence under Section 302 read with Section 34 I.P.C. being more than 16 years of age when the offence was committed. He submitted that, therefore, this Court should not disturb the conviction of Appellant 2 by the trial court as well as by the High Court only on the ground that he was entitled to the benefit of the 2000 Act.

The Court have considered the submissions of the learned counsel for the parties with regard to the appeal of Appellant 2 and we find that the High Court has held in para 28 of the impugned judgment that Paritosh (Appellant 2) is satisfactorily shown to be 16 years of age at the time of the alleged occurrence i.e. on 9.10.1998, and he was not a juvenile under the 1986 Act.

Section 7-A and the proviso and the Explanation to the aforesaid Section 20 quoted above were inserted by the Amendment Act of 2006, w.e.f. 22.8.2006 and before the insertion of Section 7-A and the proviso and the Explanation to Section 20, this Court delivered the judgment in Pratap Singh vs. State of Jharkhand, (2005) 3 SCC 551 on 2.2.2005 cited by Mr. Biswas. The judgment of this Court in Pratap Singh vs. State of Jharkhand therefore is of no assistance to decide this matter.

After the insertion of Section 7-A and the proviso and the Explanation to Section 20 in the 2000 Act, this Court delivered the judgment in Hari Ram vs. State of Rajasthan, (2009) 13 SCC 211. The facts of this case were that the accused committed the offences punishable under Sections 148, 302, 149, 325/149 and 323/149 IPC on 30.11.1998. The date of birth of the accused was 17.10.1982. The medical examination of the accused conducted by the Medical Board indicated his age to be between 16-17 years when he committed the offence on 30.11.1998. The High Court held that on the date of the incident the accused was about 16 years of age and was not a juvenile under the 2000 Act and the provisions of the 2000 Act were, therefore, not applicable to him. This Court set aside the order of the High Court and held that the accused had not attained the age of 18 years on the date of the commission of the offence and was entitled to the benefit of the 2000 Act, as if the provisions of Section 2(k) thereof had always been in existence even during the operation of the 1986 Act by virtue of Section 20 of the 2000 Act as amended by the Amendment Act of 2006 and accordingly remitted the case of the accused to the Juvenile Justice Board, Ajmer, for disposal in accordance with law. **(Subodh Nath vs. State of Tripura; (2013) 4 SCC 122)**

R. 22 – Determination of age of juvenile – Explained

In the present case, all the possible evidence has been adduced and the academic certificates and school records have not been withheld deliberately with any ulterior motive. As far as the copy of the Parivar Register is concerned, it appears that no witness in this regard has been produced by any of the parties and the contents of Parivar Register have not been proved. It also appears that the said Parivar Register in original has also been proved during the proceedings. Admittedly the birth certificate given by Corporation or Municipal Authority and the date of birth certificate from the School first attended has also not been produced by any of the parties. In these circumstances, in view of provisions of sub-rule (5) of Rule 22, it was the matriculation or equivalent certificate and the medical opinion could be relied upon but sub-rule (4) of Rule 22 provides that in absence of birth certificate and the matriculation certificate, the medical opinion may be considered. In the present case the Juvenile Justice Board has passed its decision on the basis of extract of Parivar Register and the medical opinion as well as on the basis of physical appearance. Rule 22 nowhere provides any option to the Juvenile Justice Board to assess the age of the person on the basis of physical appearance. As far as the medical opinion is concerned, it can be relied upon in absence of any aforesaid school certificate.

As far as the fact that the opposite party No. 2 has appeared in High-school examination from two institutions in the same year, it is relevant to

mention that in both the institutions his date of birth has been mentioned as 15.8.1992. The opposite party No. 2 may be liable for any prosecution for appearing from two institutions simultaneously for the same examination which is also not practically possible but apart from it, the date of birth in both the institutions have been mentioned as 15-8-1992. As there was sufficient evidence regarding the matriculation or equivalent certificates circumstances, the medical opinion was not to be given any weightage in view of the provisions of Rule 22 of U.P. Juvenile Justice (Care and Protection of Children) Rules, 2004. **(Satya Pal Singh vs. State of U.P.; 2013(81) ACC 888)**

Juvenility – Plea of juvenility on be taken at any stage but must be considered on same rational basis

The Apex Court has firmly laid down that plea of juvenility can be taken by the accused at any stage. However, in Criminal Appeal No. 22 of 1982, Raghuraj Singh (now dead) and others v. State of U.P. and others, [2013(80) ACC 256, this Court held that claim to juvenility must be on some basis as burden to prove that appellant was juvenile in conflict with law is upon the person claiming juvenility.

From the above facts and law, it appears that the plea of juvenility can be raised at any time but must be considered on some rational basis. The basis for consideration the question of age for the purpose is provided in Juvenile Justice (Care and Protection of Children) Act, 2000. The Court in Raghuraj Singh's case (supra), considering section 7-A of the aforesaid Act, held as follows:

> "2 …..No evidence in support of application has been given by the appellant. The application has been moved after 28 years of presenting the appeal by the appellant. Merely because on the basis of affidavit wherein neither any documentary proof of age nor age assessed on the basis of medical examination has been brought on record, burden to prove that appellant was juvenile in conflict with law in view of provisions contained in Juvenile Justice (Care and Protection of Children) Act, 2000, is on the appellant in which he failed.
>
> 3. Therefore, we are of the firm opinion that this application has been moved only to delay the proceeding of appeal."

Rule 12 of the Rules framed under the aforesaid Act also provide guidelines/basis/ documents which can be taken into consideration for determination of question of juvenility. However, in the instant case there is neither any application under section 7 of the Act moved by the appellant nor any documentary proof of age. Even no medical examination of appellant Nanha has been brought on record nor any affidavit has been filed claiming juvenility,

hence the argument of the learned Counsel for the appellant at the far end stating that accused Nanha was a juvenile on the basis of his particulars given in his deposition, cannot be accepted to be incorrigible proof of his age for the purpose of determination of juvenility. **(Nanha and anothers vs. State of U.P.; 2013(81) ACC 714)**

S. 16 - Plea of juvenility raised for first time before Supreme Court - Validity of

The appellant, along with two others, were charge sheeted for offences punishable under Sections 341, 294, 307 read with Section 34 IPC for conspiring to murder of one Atul Mishra on 27.8.1993 in Rewa at Allahabad Road, near Kalewa Hotel. For the said purpose, the appellant accused gave a country made pistol to the accused Raj Kumar Singh and exhorted him to shoot Atul Mishra. Raj Kumar Singh fired at Atul Mishra with the said country made pistol and he succumbed to his injuries. The trial Court convicted him under Sections 341, 307 read with Section 34 IPC, but acquitted him of the charges under Section 294 IPC. For the offence under Section 341 IPC, he was sentenced to undergo rigorous imprisonment for one month and for the offence under Section 307 IPC, he was sentenced to rigorous imprisonment for one year along with a fine of Rs.500/-. Both the sentences were directed to run concurrently.

On appeal, the High Court set aside the conviction and sentence for the offence punishable under Section 341 IPC, but the conviction as well as the sentence awarded for offence punishable under Section 307 IPC was maintained, against which this appeal has been preferred.

Going by those documents, evidently, the date of birth of the appellant is 25.2.1977. If that be so, the appellant was a juvenile on the date of the incident. We have extensively examined the provisions of the Juvenile of Justice (Care and Protection of Children) Act, 2000 in Ashwani Kumar Saxena v. State of M.P. (2012) 9 SCC 750 and we are of the view that the principle laid down in the above judgment squarely applies to the facts of the present case. Under such circumstances, we are inclined to set aside the sentence awarded by the trial Court, confirmed by the High Court and the case records are directed to be placed before the concerned Juvenile Justice Board for awarding the appropriate sentence. **(Kamlendra Singh alias Pappu Singh v. State of M.P.; AIR 2013 SC 1783)**

Land Acquisition Act

S. 4 - Acquisition cannot be challenged be belatedly

The Court have considered the rival submissions made by the learned

counsel for the parties and perused the records.

It is a settled legal proposition that acquisition proceedings cannot be challenged at belated stage. In the instant case, the earlier writ petition filed by the society and the khatedars jointly, was dismissed by the High Court only on the ground of delay. This court upheld the said judgment and order, while granting the said parties liberty to challenge the acquisition afresh, on the ground of discrimination along. **(The Rajasthan State Industrial Development and Investment Corporation v. Subhash Sindhi Cooperative Housing Society Jaipur & Ors; 2013 (2) Supreme 345)**

S. 4 – Court giving liberty to approach proper forum for release of suit land if done to similarly situated persons - Locus standi similarly situated - Society has to satisfy the discrimination

Even if the lands of other similarly situated persons has been released, the society must satisfy the court that it is similarly situated in all respect, and has an independent right to get the land released. Article 14 of the Constitution does not envisage negative equality, and it does not envisage negative equality, and it cannot be used to perpetuate any illegality. The doctrine of discrimination based upon the existence of an enforceable right, and Article 14 would hence apply, only when invidious discrimination is meted out to equals, similarly circumstanced without any rational basis, or to relationship that would warrant such discrimination.

The Respondent society claims to have applied before the Jaipur Development Authority (hereinafter referred to as the 'JDA') and deposited requisite charges etc. for regularization of their proposed scheme as per GOs issued by the State Government, also for providing relief to the societies that had no construction on the land which belonged to them, on the date of initiation of acquisition proceedings. However, there is nothing on record to show that the society had ever applied for release of the said land before the Competent Authority i.e. Secretary to the Department of Industries, Rajasthan, who had initiated the acquisition proceedings under the Act. Furthermore, the society is not in a position to show that the societies whose lands stood released, were similarly situated to itself in all respects, i.e., such Societies had no title over the land, and had in fact, entered into an agreement to sell subsequent to the issuance of the notification under section 4 of the act. **(The Rajasthan State Industrial Development and Investment Corporation v. Subhash Sindhi Cooperative Housing Society Jaipur & Ors.; 2013 (2) Supreme 345)**

Facts

The State of Uttar Pradesh under Section 4(1) of the Land Acquisition Act, 1894 proposed to acquire 246.931 acres of land situated at Village Abdullapur, Pargana, Tehsil and District Meerut. The aforesaid land was sought to be acquired for the purpose of construction of a residential/commercial building under planned Development Scheme by the Meerut Development Authority. Section 17(1) of the Act was invoked and inquiry under Section 5A of the Act was dispensed with. Thereafter, declaration under Section 6 read with Section 17(1) & (4) of the Act was published. Consequently, notice under Section 9 of the Act was issued and pursuant to that Appellants are said to have filed their objections. On 17.3.1992, Respondent No. 3- the Special Land Acquisition Officer, Meerut passed an award. After the said award, on request of appellants, matter was referred the matter to District Judge.

By resolution dated 17.9.1997, Respondent No. 4-the MDA decided to withdraw the acquisition of the land except the land measuring 42.018 acres for which compensation was paid. The MDA is said to have decided to derequisition the land measuring 204.912 acres. In 2001-2002 meetings were held and correspondences exchanged between the authorities, the District Magistrate, Meerut and the State Government and ultimately the State Government decided not to accede to the decision of the MDA for de-requisition of the land. The Appellants, on these facts, filed the aforementioned writ petitions. The question emerges whether the Government can assign the land to the erstwhile owners?

Held

Land in question was acquired by the State Government for the purpose of expansion of city i.e. construction of residential/commercial building under planned development scheme by the Meerut Development Authority and that major portion of the land has already been utilized by the Authority. Merely because some land was left at the relevant time, that does not give any right to the Authority to send proposal to the Government for release of the land in favour of the land owners. The impugned orders passed by the High Court directing the Authority to press the Resolution are absolutely unwarranted in law.

It is settled law that if the land is acquired for a public purpose, after the public purpose was achieved, the rest of the land could be used for any other public purpose. In case there is no other public purpose for which the land is needed, then instead of disposal by way of sale to the erstwhile owner, the land should be put to public auction and the amount fetched in the public auction can be better utilised for the public purpose envisaged in the Directive Principles of the Constitution. The executive order in present matter is not in consonance with the provision of the Act and is, therefore, invalid. Division Bench - justified in

declaring executive order as invalid. Whatever assignment is made, should be for a public purpose. Otherwise, the land of the Government should be sold only through the public auctions so that the public also gets benefited by getting a higher value. No merit in these appeals- Accordingly dismissed. **(Mahadeo (D) through L.Rs. and Ors. Vs. State of U.P. and Ors.; 2013(3)AWC 2787 (SC)**

S.23 – Market value – Determination

It was the case of the claimants- appellants that the land in question has a great potentiality as it was adjacent to the Kanpur- Lucknow Highway and there were several other developed areas and establishments like P.A.C., Scooter India Limited, Sainik School and Airport. Apart from it, the Krishna Nagar residential colony also situates within a very close distance. Learned court below has relied upon the evidence of (PW-1) Ravindra Nath Singh in this regard and was also of the view that the land in question has great building potentiality and is also valuable land. The learned trial court fixed the market value of the land in question at the rate of 6 Rs. per square feet but on the ground of largeness of the area reduced this market value to the extent of 40%.

The Court have gone through the record of the case it is evident from the perusal of the record that the learned reference court has placed reliance on the sale deed (S3-Ga) as exempler and on the basis of the same, the market value of the land in question, was determined @ Rs. 6/-per square feet. It was regarding the land, which was not only close in proximity with the acquired land but was executed very close to the time of the date of acquisition in the instant case. The other sale deed was filed as exempler for lesser sale consideration, which were mentioned in the judgment. The law is settled on the point that the exempler of the higher value must be considered.

In the present case, the Special Land Acquisition Officer has himself admitted that the land in question is adjacent to the Lucknow-Kanpur Highway and situated on the eastern side of the said road. It has also been mentioned that P.A.C. Establishment, Scooter India Factory, Sainik School and Airport Establishment are also situated within the close proximity. It has been mentioned that facility of conveyance, transportation and electricity is also available near the land in question. Therefore, these factors ought to have been taken into consideration while fixing the percentage of deductions in the market value.

In view of the above circumstances, we hold that the deduction of 40% was much higher and the same must be reduced. Thus, the deduction of 15% of the market value as assessed by the court below and applying deduction of 15% the value of the land in question comes to Rs. 5.10/- per square feet, which is close to the market value, which was awarded earlier with regard to the land

acquired in the vicinity. (**Lucknow Development Authority, through its, Secretary vs. Ravindra Nath Singh and Ors.; 2013(3) ALJ 707)**

S. 28 – Interest awardable U/s. 20 includes within its ambit both market value and statutory solatium

Other grievance of the claimants/appellant is that interest of solatium was not granted. This aspect has been considered by the Apex Court in the constitution Bench decision in the case of Sunder v. Union of India, reported in [AIR 2001 SC 3516] while considering the various decision of the High Court and approving the decision of the Punjab and Haryana High Court reported in [AIR 1980 Punjab & Haryana 117] held that interest awardable under Section 28 includes within its ambit both the market value and the statutory solatium and it was held by Hon'bleApex Court that the person is entitled to the compensation and is also entitled to get interest on the aggregate amount including solatium. This view of the Apex Court has been followed in a recent judgment in the case of Mehrawal Khewaji Trust (Regd.) Faridkot & Ors. v. State of Punjab & Ors, reported in [AIR 2012 SC 2721]. Therefore, the claimants/appellants were also entitled to the interest on the solatium amount. (**Lucknow Development Authority, through its, Secretary vs. Ravindra Nath Singh and Ors.; 2013(3) ALJ 707)**

S. 34 – Payment of interest – Entitlement to – Interest of 12% granted to land-owner from date of taking possession to date of notification would not proper but it will be from taking possession prior to issuance of notification U/s. 4(1) of above Act

In this case, the Apex Court has specifically held that in a case where a land owner is dispossessed prior to issue of earlier notification under section 4 (1) of the Act, the Government merely take possession of the land. It is fully open to the land owner to recover compensation of the land by taking appropriate legal proceedings, therefore, he is only entitled to get rent or damages for use and occupation for the area government has taken possession of the property. Where possession is taken prior to the issues of the preliminary notification it will be just and adequate that the Collector may also determine rent or damages for use of the property to each of the land owner is entitled while determining the compensation amount payable to the land owner for the acquisition for the property. As the matter is too old hence it will not be proper to remand the matter for such determination. Hence we are of the view that Collector be directed and is so directed to determine such amount as compensation for use and occupation of the land from the date of taking possession till the date of notification i.e. 01.07.1971 till 16.02.1997, within a period of one year from producing a certified copy of

this order. If the Collector fails to do so within that period, then it will be open to the claimants to resort to appropriate legal action/remedy.

Claimants are further awarded 9% interest on excess amount that has been found due by this Court and that has not been paid by the S.L.A.O., Kanpur Nagar, from the date of notification i.e. 16.02.1997 till the period of one year and after the expiry of the above period, claimants are further entitled for 15% p.a. interest on the above excess sum which has been found due by this court and which has not been awarded by the S.L.A.O. Kanpur Nagar till the date of payment under section 28 of Land Acquisition Act.

The 12% additional amount of the market value from 01.07.1971 to 16.02.1997 i.e. from the date of taking possession to the date of notification which has been allowed by the reference court is disallowed and instead, claimants are entitled to rent/damages as determined by Collector Kanpur Nagar, as directed above. **(Union of India & Ors. v. Anil Kumar & Ors.; 2013 (3) ALJ 57)**

Legal Services Authorities Act

S. 22C – At Pre-litigation stage, issuance of notice by Lok Adalat is not at all without jurisdiction

So far no proceedings before the civil court or before the permanent Lok Adalat have been instituted by the bank for recovery of the aforesaid amount. The notice impugned has been issued at a pre-litigation stage in exercise of powers under Section 22C of the Legal Services Authority Act, 1987 for the purposes of making a settlement, if possible, before bringing any dispute for adjudication before the court.

In the end learned counsel for the petitioners submits that the matter cannot even be resolved at any stage by the Lok Adalat, in as much as, it is not a matter relating to the public utility service. This is a matter which the petitioners can agitate before the Lok Adalat pursuant to the impugned notice. Thus, in view of totality of the aforesaid facts and circumstances, the issuance of the notice by the Lok Adalat at a pre-litigation stage in exercise of powers under Section 22C of the Legal Services Authority Act, 1987 is not at all without jurisdiction. It is only a device to explore the possibility of any settlement instead of getting the dispute adjudicated by the court. **(Afsar Khan v. Central Bank of India; 2013 (3) ALJ 369)**

Limitation Act

S. 29(2) – Applicability of provisions of Act – Provisions of Limitation Act are not applicable to election petition filed under R. 33 of U.P. Zila

Panchayat (Election of Adhyaksha and Up-Adhyaksha and Settlement of Election Disputes) Rules

The Limitation Act will not be applicable to an election petition filed under Rule 33 of the Rules and consequently there is no power to condone the delay in filing the election petition under Rule 33 of the 1994 Rules.

The Rules are a complete code in themselves so far as the election petition is concerned, there is no provision in Rule 33 for condoning the delay in filing the petition though there is a specific provision in Rule 47 for condoning the delay in filing the appeal filed against the order passed under Rule 40 of the 1994 Rules. The scheme of the Rules, as noticed hereinabove, therefore, clearly suggests that the time limit prescribed for filing an application under Rule 33 is absolute and cannot be extended by taking resort to the provisions of Section 5 of the Limitation Act. **(Smt. Sharda Devi Dinesh Chaudhary v. State of U.P. and Ors.; 2013 (3) ALJ 186)**

Motor Vehicles Act

S. 147 – Contract Act, S. 56 – Contract of insurance is not purely contractual but also statutory – Consequently doctrine of frustration of contract enshrined in S. 56 of Contract Act cannot be invoked.

The contract of insurance is not purely contractual but is also statutory. In a contract based on agreement of parties, a party, for whom its performance becomes more onerous generally, is nevertheless bound to perform. Hardship entitles the disadvantaged party to request the other party to enter into re-negotiation of the original terms of contract with a view to adapting them to the changed circumstances. Of course the request should be made without undue delay indicating the grounds on which the request is sought subject to principal of good faith and the duty of co-operation.

In statutory contracts the rights of the parties are governed by the provisions of particular statute under which the contract has been entered into between the parties. In such cases doctrine enshrined in section 56 of Indian Contract Act cannot be invoked. **(National Insurance Co. Ltd. v. Smt. Golana, and Anr.; 2013(3) ALJ 292)**

S. 147 – liability of Insurer – In absence of any evidence adduced by insurer, it cannot be absolved from its liability to pay compensation.

It has been categorically pleaded by the owner of the vehicle that the premium was paid in cash. The pleadings of owner of vehicle before tribunal had not been controverted. Therefore, in absence of any evidence adduced by the Appellant-Insurance Company, we do not find any substance in the submission

made by the learned counsel for the appellant on this issue. (**New India Assurance Co. Ltd. vs. Smt. Savitri Singh & Ors.; 2013(3) ALJ 455)**

S. 149(2) – Third party risk – Liability of Insurer – Even in case of breach of tenure of insurance policy, insurer would liable to pay a amount of compensation determined and recover same from owner

The insurer and the insured are bound by the conditions enumerated in the policy and the insurer is not liable to the insured if there is violation of any policy condition. But the insurer who is made statutorily liable to pay compensation to third parties on account of the certificate of insurance issued shall be entitled to recover from the insured the amount paid to the third parties, if there was any breach of policy conditions on account of the vehicle being driven without a valid driving licence. Learnd counsel for the insured contended that it is enough if he establishes that he made all due enquiries and believed bonafide that the driver employed by him had a valid driving licence, in which case there was no breach of the policy condition. As we have not decided on that contention it is open to the insured to raise it before the Claims Tribunal. In the present case, if the Insurance Company succeeds in establishing that there was breach of the policy condition, the Claims Tribunal shall direct the insured to pay that amount to the insurer. In default the insurer shall be allowed to recover that amount (which the insurer is directed to pay to the claimant third parties) from the insured person."

The Hon'ble Supreme Court in National Insurance Company Ltd. v. Swam Singh and others, (2004) 3 SCC-297 : (AIR 2004 SC 1531) had the occasion to consider this aspect. In para 108 of the judgment it has been observed that orders passed after exercising jurisdiction vested in Article 142 of constitution of India by the Apex Court cannot be treated as binding precedent. The same is quoted herein below:

> "108. Although, as noticed hereinbefore, there are certain special leave petitions wherein the persons having the vehicles at the time when the accidents took place did not hold any license at all, in the facts and circumstances of the case, we do not intend to set aside the said awards. Such awards may also be satisfied by the petitioners herein subject to their right to recover the same from the owners of the vehicles in the manner laid down therein. But this order may not be considered as a precedent."

While dealing with the obligations of the insurer in established case of breach of terms of policy it was held that the insurance company cannot be absolved with its liability to pay the compensation in the cases falling in the category of "third party risk", but insurer, of course, have a right to recover the

amount from the owner of the vehicle if so advised. (**National Insurance Co. Ltd. vs. Smt. Gita Mishra and Ors.; 2013(3) ALJ 577)**

S. 163-A – Conversion of claim petition U/s. 166 to one U/s. 163-A – There is no legal impediment to get petition U/s. 166 amended to one U/s. 163 A

The learned counsel for Insurance Company submits that in this case the petition was initially filed under Section 166 of M.V. Act but later on got amended with intent to bring it under Section 163 (A) of the M.V. Act, which is not permissible.

The Court do not find any force in this argument too. After insertion of amendment in pleadings the earlier pleadings stand out and no value could be attached to those pleadings which were not found in the pleadings after amendment. More over there is no legal impediment to get the petition under Section 166 amended to get it under section 163(A). The only impediment in view of sub-section 163(B) is that simultaneous claims under Section 166 and 163(A) could not be prosecuted as held by Hon'ble Supreme Court in (2001) 5 SCC 175 : (AIR 2001 SC 1832), Oriental Insurance Co. Ltd. v. Hansrajbhai V. Kodala and in a recent judgment reported in (2012) 2 SCC 356: (AIR 2012 SC 797), National Insurance Co. Ltd. v. Sinitha and others. (**New India Assurance Co. Ltd., Lucknow vs. Sanjeev Kumar, and Anr.; 2013(3) ALJ 620)**

S. 163-A – Claim petition for compensation by brother of deceased which depended on deceased would be maintainable

In the present case, there is evidence on record to show the petitioner was also dependent upon the income of the deceased. On this score no effective cross examination has been conducted on behalf of the appellant with the petitioner nor any other evidence has been adduced from the side of the appellant or the owner of the vehicle to show that petitioner was not dependent upon the deceased. Consequently, on the basis of evidence available on record and in view of the statement of the petitioner on oath, which cannot be disbelieved for want of any contrary evidence on record, the petitioner's claim for the compensation under the Motor Vehicles Act would be maintainable.

Therefore, in view of the above factual and legal proposition, we find no merit in the submission of the counsel for the appellant and point No.2 is accordingly decided against the appellant and held thereunder that the claimant being brother of the deceased could present the claim petition under section 163(A) of M.V. Act. **(New India Assurance Co. Ltd., Lucknow vs. Sanjeev Kumar, and Anr.; 2013(3) ALJ 620)**

S. 163-A (As inserted by Act 54 of 1994) – Effect of repeal of M.V.

Amendment Act of 1994 by which S.163-A was inserted – As such repeal of M.V. (Amendment) Act 1994, from statute book will not amount to repeal of incorporated portion in Principle Act (M.V. Act 1988)

In view of the provisions contained in Section 4 of Repealing and Amending Act of 2001 it is clear that the repeal by that Act shall not affect any other enactment (in the case Motor Vehicles Act, 1988) in which the repeal enactment [i.e. The Motor Vehicles (Amendment) Act, 1994] has been applied, incorporated or referred to Motor Vehicles (Amendment) (Act No. 54 of 1994) with effect from 14th November,1994 vide Notification No. S.O. 728(E), dated 6-10-1994, published in the Gazette of India 6-10-1994, No. 506 has come into force. From the aforesaid notification the amendments sought by Act No. 54 of 1994 were already incorporated in the Principal Act (The Motor Vehicles Act, 1988). As such the repeal of Motor Vehicles Act, (Amendment) Act, 1994 from the statute book will not amount to repeal of the incorporated portion in Principal Act (M.V. Act 1988). After incorporation and insertion of amendments in M.V. Act, 1988 by section 1 to 64 of Act, No. 54 of 1994, that Act become redundant. (**New India Assurance Co. Ltd., Lucknow vs. Sanjeev Kumar, and Anr.; 2013(3) ALJ 620)**

S. 163-A – Compensation U/s. 163-A – Payment of – Insurance of vehicle is not necessary

The word 'instrument' used in Section 163-A of the Act includes insurance policy and compensation may b e awarded to the victim despite the contrary terms and conditions contained in the insurance policy. For payment of compensation under Section 163-A of the Act, it is not necessary that the vehicle should be insured. However, in case vehicle is insured, then the compensation shall be paid by the insurance company but in case it is not insured, then it shall be paid by owner of the vehicle. **(National Insurance Co. Ltd. v. Smt. Kulwanti Kaur and Ors.; 2013 (3) ALJ 298 (All HC, LB)**

Ss. 166, 167 and 168 - Workmen's Compensation Act, 1923 - Section 8 and 10 - Claim of compensation under M.V. Act - Award of compensation - To respondents legal heirs of deceased pump operator - By Motor Accident Tribunal - Despite the compensation awarded by Workmen's Compensation Commissioner under W.C. Act - As the proceedings initiated under section 8 at the behest of employer "*suo motu*" - Not by dependants/claimants - Hence, the dependants/claimants could not be deemed to be precluded from seeking compensation under section 166 of M.V. Act - Therefore the compensation awarded by M.V. Tribunal is affirmed and order of deduction of amount awarded under W.C. Act from the amount of compensation awarded under

M.V. Act -No interference required with

The procedure under section 8 aforesaid (as noticed above) is initiated at the behest of the employer *"Suo motu",* and as such, in our view cannot be considered as an exercise of option by the dependants/claimants to seek compensation under the provisions of the Workmen's Compensation Act, 1923. The position would have been otherwise, if the dependants had raised a claim for compensation under section 10 of the Workmen's Compensation Act, 1923.

It can be stated that the respondents-Claimants having never exercised their option to seek compensation under section 10 of the Workmen's Compensation Act, 1923, could not be deemed to be precluded from seeking compensation under section 166 of the Motor Vehicles Act, 1988.

Affirm the determination rendered by the Motor Accidents Claims Tribunal, Bagalkot and the High Court in awarding compensation quantified at Rs. 11,44,440/- to the claimant. The Motor Accidents Claims Tribunal, Bagalkot, as also, the High Court, ordered a deduction therefrom of a sum of Rs. 3,26,140/- (paid to the claimants under the Workmen's Compensation Act, 1923). The said deduction gives full effect to section 167 of the Motor Vehicles Act, 1988, inasmuch as, it awards compensation to the respondents-claimants under the enactment based on the option first exercised, and also ensures that, the respondents-claimants are not allowed dual benefit under the two enactments. **(Oriental Insurances Co. Ltd. Vs. Dyamavva and others, (2013 (137) FLR 417) (SC).**

S. 166(3) (before its deletion in year 1996) claim petition – Bar of Limitation – Prescribed time limit was done away within 1994 by deleting S. 163 (3) – Deletion would be prospective in nature

In the year 1988 when the accident took place Motor Vehicles Act, 1939 was applicable. The Motor Vehicles Act, 1988 was enforced w.e.f. 1.7.1989. Both under the old Act as well as in the new Act Section 163(3) of the Act provided for a limitation of six months from the date of accident for filing the claim petition. In further provided that the delay of further six months in filing the claim petition is condonable on sufficient ground. Thus, at the relevant time the limitation for filing the claim petition was six months with a further grace period of six months subject to the satisfaction of the tribunal.

The time limit prescribed for filing the claim petition was done away within the year 1994 by deleting sub-section (3) of the Section 163 of the Act. The said exclusion of limitation is only prospective in nature and would not cover the matters for which cause of action had arisen and expired before the aforesaid

amendment.

In view of the aforesaid facts and circumstances, the claim petition filed about 17 years of the accident was certainly barred by limitation as was prescribed by Section 163(3) of the old Act which was applicable at the relevant time and such a long delay in filing the claim petition could not have been condoned in any case as per the provisions of the old Act. **(Smt. Samla Devi Mishra v. National Insurance Company Ltd., Allahabad and Anr.; 2013(3) ALJ 311)**

S. 167 – Motor accident in course of employment – Option to claim compensation either under MV Act or WC Act, when can be said to be excised

Under S. 8 of Workmen's Compensation Act when a workman during the course of his employment suffers injuries resulting in his death, the employer has to deposit the compensation payable, with the Workmen's Compensation Commissioner. The Procedure envisaged in S. 8 of the Workmen's Compensation Act, 1923 (W.C. Act) can be invoked only by the employer for depositing compensation with the Workmen's Compensation Commissioner consequent upon such 'suo motu' deposit of compensation the by the employer with the Workmen's Compensation Commissioner, the Commissioner may summon the dependents of the concerned employee, to appear before him under sub-section (4), Section 8. Having satisfied himself about the entitlement of the dependants to such compensation, the Commissioner is then required to order the rightful apportionment thereof amongst the dependants. As against the aforesaid, where an employer has not suo motu initiated action for payment of compensation to an employer or his/her dependants, in spite of an employee having suffered injuries leading to the death, it is open to the dependants of such employee, to raise a claim for compensation under Section 10 of the Workmen's Compensation Act, 1923. The Procedure under S. 8 of W.C. Act is initiated at the behest of the employer 'suo motu", and as such, cannot be considered as an exercise of option by the defendants/claimants to seek compensation under the provisions of the Workmen's Compensation Act, 1923. Mere acceptance of compensation by the dependent would not disentitle him from filing claim petition under M.V. Act. **(Oriental Insurance Co. Ltd. v. Dyamavva and Ors.; AIR 2013 SC 1853)**

S. 168 – Just Compensation means that the amount is fair, reasonable and equitable and not a forensic lottery – Just compensation does not mean perfect or absolute compensation

Section 168 of the 1988 Act provides the guideline that the amount of

compensation shall be awarded by the claims tribunal which appears to it to be just. The expression, 'just' means that the amount so determined is fair, reasonable and equitable by accepted legal standards and not a forensic lottery. Obviously 'just compensation' does not mean 'perfect' or 'absolute' compensation. The just compensation principle requires examination of the particular situation obtaining uniquely in an individual case. **(Reshma Kumari and Ors. v. Madan Mohan and Anr.; 2013 (2) Supreme 577)**

S. 168 - Just compensation – Determination of

The point which court are trying to bring home is that even if widow has been given employment under the (Dying in Harness) Rules, she will not be able to attend her mother-in-law and the minor daughter, needs assistance of attendant to look after them.

In the present case, the appellant No. 1 (widow) was looking after her minor daughter Km. Rekha (appellant No. 2) and Smt. Pachoo (mother-in-law). This is also an important factor to reject the contention of insurer that there is no pecuniary loss to the dependents of the deceased.

In view of court's discussion, court's of the opinion that the Tribunal did not approach the matter in issue with right angle and committed illegality in not awarding any compensation amount to wards pecuniary loss. **(Lalitha Rathore v. Darshan Lal; 2013 ALJ 638)**

S. 169 – Amendment in claim petition at belated stage and no explanation given for such long delay – Refusal to allow amendment by Tribunal would be proper

The amendment has been sought at a belated stage and no explanation for moving amendment application after such a long delay has been given by the revisionist. In view of this fact the learned Tribunal rightly observed that the amendment application has been moved with intention to delay the disposal of the case, which is mala fide. **(Oriental Insurance Company Ltd. v. Smt. Vijay Laxmi and Ors.; 2013 (3) ALJ 370 (All HC, LB)**

S.173 – Appellant cannot claim admission of appeal as a matter of right

Neither the claimant nor the insurer can claim as a matter of right admission of an appeal. It is for the appellate court to look into the matter and appreciate the finding recorded by the tribunal and if necessary, the appeal may be admitted or may be dismissed at the threshold of admission stage in absence of any merit in the matter. Summoning of record is not necessary for hearing of an appeal filed under Section 173 of the Motor Vehicles Act, unless the appellate court is satisfied. The appellant cannot claim admission of an appeal as a matter

of right. The appellant does not possess right to claim admission of appeal even under Section 96, CPC. (**Oriental Insurance Co. Ltd. vs. Ram Ratan and Ors.; 2013(3) ALJ 600)**

National Security Act

S. 3(5) – Preventive Detention – If there was no undue delay in deciding representation then order of detention would be proper

Learned counsel appearing on behalf of Union of India and from the perusal of the record it appears that in the present case, the order of detention under NSA passed on 22.12.2011, the main ground of the detention is that from the possession of the petitioner, counterfeited currency notes, printer etc. used in manufacturing the counterfeited currency notes have been recovered is to run a parallel system by manufacturing the counterfeited currency notes and circulating the same through the agents, it is adversely affecting national currency and its circulation. The detaining authority passed the impugned order after considering sufficient material available before him. The impugned order is not suffering from any illegality or irregularity, the impugned order has been passed on 22.12.2011, but the representation has been sent by the petitioner on 10.1.2012, the same was received by the State Government on 16.1.2012, on the same day it was sent to State Advisory Board, the State Advisory Board has considered the representation of the petitioner also and submitted the report expressing the opinion that there was sufficient cause of detention of the petitioner. It has been further averred by the deponent-Prem Shanker, Under Secretary Home Department, U.P.in the counter affidavit which has not been controverted by the petitioner in his rejoinder affidavit, therefore, the State Government has not committed any error in confirming the detention order after considering the above mentioned opinion of State Advisory Board.

The representation dated 10.1.2012 has been rejected by the District Magistrate, Aligarh on the same day and it was rejected by the State Government on 18.1.2012 there was no undue delay in deciding the representation by the State Government , the representation of the petitioner was received by the Central Government on 18.1.2012, it has been rejected on 28.1.2012, the period taken in deciding the representation has been properly explained by the Central Government, there was no undue delay in deciding the representation of the petitioner. In such circumstances, neither the detention order is illegal nor the continuation of the petitioner in detention is illegal. **(Dushyant v Union of India and Ors.; 2013 (3) ALJ 333)**

Payment of Gratuity Act

S. 4(2) – Gratuity - Payment of - Settled law - That gratuity has to be calculated on basis of last pay drawn by workman - However pay scale was revised which has let to a decrease in the last drawn wages - Hence gratuity was rightly calculated on revised last drawn wages

The law is settled, namely, that the gratuity has to be calculated in the basis of the last pay drawn by the workman.

The gratuity is payable to an employee on the basis of, the rate of wages last drawn by employee concerned. From the aforesaid, it is clear that the wages last drawn the employees is the criteria for payment of gratuity but is hedged with a condition that it should be passed on the rate of wages payable to the workman. Sub-section (2) of Section 4 does not mean that gratuity has to be on the wages last drawn. If last drawn wages has wrongly been computed, it does not mean that the gratuity has to be computed on the basis of last drawn wages. The gratuity has to be computed on the rate of wages that is actually payable to the workman and which is last drawn by him.

Admittedly last drawn wages paid to the workman mean was incorrect but it will not entitle the workman to be paid the gratuity on the basis of last drawn wages. Since the pay-scale was revised which has led to a decrease last drawn wages. **(U.P.S.R.T.C., Azamgarh Vs. Additional Labour Commissioner, U.P.-cum-Appellate Authority (Payment of Gratuity Act) and others, (2013 (137) FLR 226) (All HC).**

S. 4(6) - Industrial Disputes Act, 1947 - Section 2(p) - I.D. (Central) Rules, 1957 - Rule 58 – Gratuity - Settlement between management and petitioner, wherein he allegedly has given up his right to claim the gratuity - Though the settlement not arrived at in course of conciliation proceeding - Not in consonance with Rule 58 of Rules, 1957 read with form H of section 2(p) of I.D. Act - Hence, it cannot be given weightage - Settlement is not in accordance with provisions of section 4(6) of Gratuity Act - Petitioner cannot be denied payment of gratuity only because a criminal case was initiated against him - Therefore, Legal heirs of petitioner (deceased) are directed to file a representation before opposite party

It is, therefore, not in consonance with Rule 58 of the Rules, 1957 read with Form H of section 2(p) of the Industrial Disputes Act, 1947 and hence the same cannot be given any weightage.

The settlement arrived at between the parties is not in accordance with the provisions of sub-section (6) of section 4 of the Payment of Gratuity Act, 1972 (in short "Gratuity Act"). Sub-section (6) of section 4 of the Gratuity Act provides for the case where the employer can withheld the gratuity of an

employee.

Accordingly it is held that the petitioner cannot be denied for payment of gratuity only because a criminal case was initiated against him. **(Gokul Chandra Das (Dead) by Lrs. and others Vs. Chairman-cum-Managing Director Mahanndi Coal Fields Ltd. and others, (2013 (137) FLR 398) (Orissa HC).**

S. 4(6) – Gratuity – Payment - Calculation and adjustment of - Towards the housing loan taken by the employee - Respondent employee while taking the loan had executed a loan agreement and has consented to recovery of outstanding amount from provident fund, gratuity or leave encashment - He is bound by such terms of agreement - Bank is justified in adjusting the outstanding amount in terms of loan agreement

The Court finds that the amount towards gratuity was calculated and the said amount was thereafter adjusted towards the housing loan taken by the employee. In the opinion of the Court, such amount can be adjusted.

The employee is bound by such terms of agreement. On the other hand the bank was justified in adjusting the outstanding amount in terms of the loan agreement. There is no violation of any provisions of the Payment of the Gratuity Act.

The controlling authority as well as the appellate authority committed a manifest error in directing the petitioner to pay the gratuity amount, which amount stood adjusted in t he outstanding loan amount of the employee. **(State Bank of Bikaner and Jaipur Vs. Appellate Authority Payment of Gratuity Act and Dy. Chief Labour Commissioner (Central), Kanpur and others, (2013 (137) FLR 591) (All HC).**

S. 7 (3-A) and 4 – Gratuity - Payment of - Claim of gratuity of respondent allowed -Admittedly respondent retired after 1984 and thereafter filed application - Therefore there was no question of any wage limit - Even if on date the employee retired and was getting higher wages - He would be entitled to the benefit - No period prescribed for filing application - In fact the obligation is upon the employer under section 7 to determine the amount of gratuity and give a notice - Workman claimed gratuity within a reasonable time - Controlling authority was fully justified to award interest under section 7 (3-A) of Act

Admittedly, the private respondent retired after 1994 and thereafter the application was filed. Therefore, there was no question of any wage limit. Otherwise also, in view of the Explanation, even if on the date the employee retired and was getting higher wages, he would still be entitled to the benefit if he fulfils the requirement of section 4.

It cannot be said that the petitioner slept over his right or did not present his application before the Authority concerned within a reasonable time.

The obligation was with the petitioner to have determined the gratuity and to pay it within the specified time but it forced the petitioner to approach the Controlling Authority. The Controlling Authority was fully justified to award interest under sub-section (3A) of section 7 of the Act.

Gratuity - Term "gratuity" in service jurisprudence - Means a certain amount to be paid to a retiring employee - It has to be calculated according to length of service

The very term 'gratuity' in Service jurisprudence, means a certain amount to be paid to a retiring employee and under the Act, it has to be calculated according to the length of service, so how could the amount be calculated while he still remains in service. **(Kraft Place Vs. Appellate Authority Under Payment of Gratuity Act and others, (2013 (137) FLR 332) (All HC).**

Gratuity - To judicial officers - Provision of Payment of Gratuity Act have no application to judicial officers, in particular and State Government employees in general - Hence judgment of entitlement of benefit of gratuity would fall to ground -Deserves to be recalled

It is now accepted by the Counsel for the original writ petitioners that the provisions of Payment of Gratuity Act, 1972 have no application to judicial officers, in particular and State Government employees, in general. Once this position is accepted, the basis on which the Court proceeded to answer the issue in favour of the original writ petitioners would fall to the ground. Hence, the judgment in question deserves to be recalled and the respective writ petitions will have to be restored to file, to be heard afresh. **(State of Maharashtra Vs. Navinchandra Brij Ratan Lal Shah and others, (2013 (137) FLR 708) (Bom HC).**

Payment of Wages Act

Civil Procedure Code, 1908, Order XXII - Payment of Wages Act, 1936 - Substitution application - Has to be filed in every case - Whether Order XXII applies or not - Provisions/Rules of C.P.C. as contained in Order XXII do not apply to proceeding under Payment of Wages Act, 1936

Provisions/Rules of C.P.C. as contained in Order XXII do not apply to the proceedings under the Act. Accordingly, there is no question of automatic abatement. However, application for substitution has to be filed in every case whether Order XXII C.P.C. applies or not. The only difference is that in case Order XXII C.P.C. applies then substitution application has to be filed within the

prescribed time otherwise within reasonable time. **(UOI & another Vs. Adl. Distt. Judge Court No. 1, Mau & others (2013 (137) FLR 64) (All HC).**

Prevention of Corruption Act

Ss. 3(1) (c) and 13(2) - I.P.C., S. 477-A provisions of Probation Act - Where specific sentence probation Act cannot be invoice

It is not in dispute that the issue raised in this appeal has been considered by this Court in State through SP, New Delhi v. Ratan lal Arora 2004 (19) AIC 822 (SC) wherein in similar circumstances, the Court held that since section 7 as well as section 13 of the prevention of Corruption Act provide for a minimum sentence of six months and one year respectively in addition to the maximum sentences as well as imposition of fine, in such circumstances claim for granting relief under the Probation of Offenders act is not permissible. In other words, in cases where a specific provision prescribed a minimum sentence, the provisions of the Probation Act cannot be invoked. (**Shyam Lal Verma V. Central Bureau of Investigation; 2013 (81) ACC 470) (SC)**

Ss. 7, 8, 9, 10, 13 – Cr.P.C. S. 482 – Quashment - Conduct of accused in delaying in trial is not ground for quashment

In considering the issue of quashment on the ground of delay, the court must consider the impact of the crime on society and the confidence of the people in the judicial system. There cannot be a mechanical approach. From the principles laid down in many an authority of the Supreme Court, it is clear as crystal that no time-limit can be stipulated for disposal of a criminal trial. The delay caused has to be weighed on the factual score, regard being had to the nature of the offence and the concept of social justice and the cry of the collective.

It is perceivable that delay in the present case has occurred due to the dilatory tactics adopted by the accused, laxity on the part of the prosecution and faults on the part of the system i.e. to keep the court vacant. Though there was no order directing stay of the proceedings before the trial court, yet at the instance of the accused, adjournments were sought. After the High Court clarified the position, the accused, by exhibition of inherent proclivity, sought adjournments and filed miscellaneous applications for prolonging the trial, possibly harbouring the notion that asking for adjournment is a right of the accused and filing applications is his unexceptional legal right. The accused is not debarred in law to file applications, but when delay is caused on the said score, he cannot advance a plea that the delay in trial has caused colossal hardship and agony warranting quashment of the entire criminal proceeding. (**Niranjan Hemchandra Sashittal**

vs. State of Maharashtra; (2013) 4 SCC 642)

Protection of Women from Domestic Violence Act

S. 12 - Place of trial – Determination of

On the date of application, she had left her job by submitting the resignation. It appears that her status in employment is shown in the Company as active because of non-acceptance of resignation, but it is not certified by the Company that she was regularly attending the office. Her version that now she would live at Lucknow in her parental house, cannot be interpreted in the manner that on that date she was not living thereat, as even by living in the parental house on that date too she could state that now she would live parental house. Thus, her residence may be temporary at Lucknow on the date of institution of the complaint under Section 12 of the Domestic Violence Act is well established, therefore, I am of the view that the learned Magistrate at Lucknow is vested with the jurisdiction to try the offence committed under Section 12(1) of the Domestic Violence Act. **(Neeraj Goswami and others v. State of U.P. and Anr.; 2013 Cri.LJ 1767)**

S. 12 - CrPC, S. 482 – Quashing of criminal proceedings - Proceedings under 2005 Act initiated by wife against husband, in-laws and many others including tenant whom she did not know - Proceedings initiated against persons other then husband and in laws liable to be quashed

While allowing this appeal in part, the Court quashes the proceedings as against appellant nos. 4 to 12 in Case No.240 of 2007. We direct the learned Chief Judicial Magistrate, Agra to proceed with the aforesaid case; only against the husband i.e. Shri Ashish Dixit, S/o. Padmakar Dutt Sharma, her father in law, Shri Padmakar Dutt Sharma, S/o. late Pt. Diwakar Dutt Sharma and Smt. Girja Dixit, W/o.Shri Padmakar Dutt Sharma, her mother in law. **(Ashish Dixit and Ors. V. State of U.P. and Anr.; AIR 2013 SC 1077)**

Provincial Small Cause Courts Act

S. 15 – Jurisdiction of Small Cause Courts – Court of Small Cause is court of preferential jurisdiction and not of exclusive jurisdiction

The language of provisions of Act of 1887 makes it clear that the Legislature has laboured to specify the cases which shall not be cognizable by Courts of Small Causes as ordinary suits when there is already a Court having jurisdiction to try such suits but in view of the Scheme of Act, 1887 and Sections 15 and 16 of Code of Civil Procedure, it is clear that the Court of Small Causes is a Court of preferential jurisdiction and not of an exclusive jurisdiction. It cannot be said that a Civil Court on regular side lacks inherent jurisdiction to try suits

of nature specified in Section 15(2) of Act 1887. **(Hukum Singh (since deceased) by L.Rs. v. 1st Adl. District Judge, Shahjahanpur & Ors.; 2013 (3) ALJ 74)**

S. 15 – Jurisdiction of Small Cause Court – Suit for eviction from building or land leased out – Court of Small Cause has jurisdiction to entertain suit

Now coming to the second point referred to above for determination, a plain reading of the plaint demonstrates that the suit for eviction and damages was instituted after determining the tenancy by notice under Section 106 of the Transfer of Properties Act in respect of the property No.14 and 15 (new No.15 and15A) Jagniganj, Ghaziabad on which after the lease a two storied pakka building has been constructed. Therefore, the suit is essentially for the eviction from the building standing over the demised piece of land after determination of the tenancy. The suit is not for vacating the open piece of land alone or for recovery of its possession.

It is but natural that when the landlord allowed a building to be put up on the open plot of land the character of the premises let out would automatically change with the raising of the constructions over it and the plot of land would not remain an open piece of land.

In simple terms, the nature of the property from which the eviction is claimed in the suit is material and not the nature of the property that may have been let out for the purposes of determining the jurisdiction of the Small Causes Court. In view of the above, the revisionists cannot escape from the jurisdiction of the Small Causes Court as the suit is essentially one for their eviction from the 'building' and not simplicitor from the land leased out. **(Govardhan Goyal & Ors. v. Rishi Raj Singhal; 2013 (3) ALJ 394)**

Fact:

Respondent No. 1 had filled suit before Small Causes Court (Trial Court) alleging that Appellant was not entitled to receive any compensation or rehabilitation grant bonds as she was only a life estate holder. Trial Court dismissed suit holding that no relationship of landlord and tenant existed between Respondent Nos. 1 and 2 and Appellants. The said judgment and decree was set aside by the Revisional Court, vide judgment and decree and the case was remanded to the Judge, Small Causes Court for deciding the same afresh. After such remand, the suit was decreed vide judgment and decree dated 20.4.2001, holding that the suit property had been acquired by Gopi Krishan. Agrawal, Plaintiff/Respondent and that the relationship of a landlord and tenant, could in fact be deemed to have been created between the parties. The Appellants/Defendants had hence, been in default of payment of rent. The

Appellants filed Revision before the District Judge, Kanpur, which was dismissed vide judgment and order dated 13.5.2002. The said judgment and order has been affirmed by the High Court, dismissing the writ petition vide judgment and order dated 6.9.2002. the Appellants preferred a review petition, which has also been dismissed by High Court.

Held

The Small Causes Court cannot adjudicate upon the issue of title. In the instant case therefore, the trial court has rightly refused to go into such issue, and neither can any fault be found with the findings recorded by the courts below in this regard. Furthermore, as it is an admitted fact that Defendant Nos.1 and 2 were tenants of the original Plaintiffs, the question of title could not be adjudicated at the behest of the Appellants under any circumstance.

The inherent powers enshrined under Section 151 Code of Civil Procedure can be exercised only where no remedy has been provided for in any other provision of the Code of Civil Procedure. In the event that a party has obtained a decree or order by playing a fraud upon the court, or where an order has been passed by a mistake of the court, the court may be justified in rectifying such mistake, either by recalling the said order, or by passing any other appropriate order. However, inherent powers cannot be used in conflict of any other existing provision, or in case a remedy has been provided for by any other provision of the Code of Civil Procedure. Moreover, in the event that a fraud has been played upon a party, the same may not be a case where inherent powers can be exercised.

The Legal issue is summarized as:

(i) An application under Order IX Rule 13 Code of Civil Procedure cannot be filed by a person who was not initially a party to the proceedings;

(ii) Inherent powers under Section 151 Code of Civil Procedure can be exercised by the Court to redress only such a grievance, for which no remedy is provided for under the Code of Civil Procedure;

(iii) In the event that an order has been obtained from the Court by playing fraud upon it, it is always open to the Court to recall the said order on the application of the person aggrieved, and such power can also be exercised by the appellate court;

(iv) Where the fraud has been committed upon a party, the court cannot investigate such a factual issue, and in such an eventuality,

a party has the right to get the said judgment or order set aside, by filing an independent suit.

(v) A person aggrieved may maintain an application before the Land Acquisition Collector for reference under Section 18 or 30 of the Act, 1894, but cannot make an application for impleadment or apportionment before the Reference Court.

Hence, order of High Court liable to be set aside - Appeal allowed. **(Ramji Gupta and another vs. Gopi Kishan Agrawal (D) and others; 2013(3)AWC 2782 (SC)**

Public Premises (Eviction of Unauthorized Occupants) Act

S. 15 – Suit for eviction – Bar to suit – As per s. 3(p) of relevant Act (13 of 1972) Bank was also public sector corporation, hence eviction suit filed by Bank is barred by s. 15 of above Act, 1971

The term "public sector corporation", in view of its definition contained in Section 3(p) of Act, 1972, covers a Bank also and, therefore, in view of aforesaid amendment in Act, 1972 the building in dispute is exempted from operation of aforesaid Act. That being so, the question of considering matter in the light of Section 20 of Act, 1972 would not be attracted in the present case and, hence, the suit before Small Causes Court, in the present case, would have to be held barred by Section 15 of Act, 1971.

The judgment in Reserve Bank of India would not apply in the present case since that was a case before insertion of Section 2(1)(a) in Act, 1972 and, therefore, since Act, 1972 had not exempted the kind of buildings at that time, the Court decided the matter taking into consideration provisions of Act, 1972 but that is not the situation in present case. In that case the Court specifically relied on the provisions of Act, 1972 in order to take a view that suit was not barred by Section 15 of act, 1971 observing that otherwise the plaintiff would have no remedy under that Act. The reasons and rationality provided therein referring to Act, 1972 has ceased now after the amendment to Section 2(1) by U.P. Act No. 17 of 1985 and, therefore, the said decision as such, is no longer applicable in the changed circumstances. **(Hari Krishan Ojha v. State Bank of Bikaner and Jaipur; 2013 (3) ALJ 361)**

Registration Act

S. 17 (1)(d) – Whether rent note would be compulsorily registrable – "Yes" if it was not of 11 months and it stipulated that rent shall be revisable and increased after every five years

In this case, it is contended that there was stipulation in the rent note that rent shall be revisable and increased after every five years. Meaning thereby that earlier part of stipulation that tenancy is only for 11 months, i.e. for a period of one year is not correct but it is a document creating lease rights for a period of more than one year and, therefore, it is compulsorily registrable. This Court is of the view that a document when specifically contemplates that tenancy has been created only for a limited period of 11 months, the conditions in the lease deed itself would not govern the period for which the lease rights have been created. In taking this view court was fortified by a judgment of Calcutta High Court in Boyd. v. Kreig, 1890 ILR (17) Cal. 548. Therein a lease was executed for a period of one year with a stipulation that tenant shall have an option of renewal for a further period of one year after expiry of initial period of one year. The Court held that this stipulation in the lease deed would not itself constitute as if the lease was granted for a period exceeding one year and, therefore, when a lease deed not exceeding one year is not required to be registered compulsorily, such a deed as above was also not compulsorily registrable. Applying the same reason in the present case also, Court found that period for which tenancy rights created, are, specifically mentioned in the document that it is a period of 11 months. Rest of stipulations by itself would not confer a right upon a tenant to treat this document as if tenancy rights have been conferred for a period of more than 11 months. Such a document by itself cannot be termed a "lease" executed for a period exceeding one year. **(Satendra Pal Singh v. Dwarika Das; 2013 (2) ALJ 514)**

Representation of People Act

S. 83 – Non-compliance with requirements of provisions of S.83 of Representation of People Act – Effect of – Although non-compliance with provisions of S.83 is curable defect, yet there must be substantial compliance therewith

There is no mandate in the RP Act that to maintain an election petition (in a case where resort to corrupt practices has been alleged against the returned candidate), it is imperative for an election petitioner to file an affidavit in terms of Order 6 Rule 15(4) CPC in support of the averments made in the election petition in addition to an affidavit required to be filed by the proviso to Section 83(1) of the RP Act. P.A. Mohammed Riyas; (2012) 5 SCC 511 which suggests to the contrary, is overruled on this point.

Order 6 Rule 15 CPC no doubt requires that a verification of the plaint is necessary and in addition to the verification, the person verifying the plaint is "also" required to file an affidavit in support of the pleadings. However, Section

83(1)(c) of the RP Act merely requires an election petitioner to sign and verify the contents of the election petition in the manner prescribed by CPC. There is no requirement of the election petitioner "also" filing an affidavit in support of the averments made in the election petition except when allegations of corrupt practices have been made. The Order 6 Rule 15 requires an affidavit "also" to be filed does not mean that the verification of a plaint is incomplete if an affidavit is not filed. The affidavit, in this context, is a stand-alone document. A plain and simple reading of Section 83(1)(c) of the RP Act clearly indicates that the requirement of an additional affidavit is not to be found therein. While the requirement of "also" filing an affidavit in support of the pleadings filed under CPC may be mandatory in terms of Order 6 Rule 15(4) CPC, the affidavit is not a part of the verification of the pleadings-both are quite different. While the RP Act does require a verification of the pleadings, the plain language of Section 83(1)(c) of the RP Act does not require an affidavit in support of the pleadings in an election petition. The Court is being asked to read in a requirement that does not exist in Section 83(1)(c) of the RP Act.

While the necessity of filing an affidavit in support of the facts stated in a plaint may be beneficial and may have salutary results as opined by the Law Commission of India while proposing an amendment in this regard in CPC in the form of Order 6 Rule 15(4) therein, but the Court has to go by the law as it is enacted and not go by the law as it ought to be. (**G.M. Siddeshwear vs. Prasanna Kumar; (2013) 4 SCC 776)**

Ss. 83(1)(c), Proviso, 80 – Election petition - Alleging corrupt practice - Petition filed exhibiting complete non-compliance with S. 83 – Not an election petition-liable to be dismissed at threshold

The principles emerging from these decisions are that although non-compliance with the provisions of Section 83 of the Act is a curable defect, yet there must be substantial compliance with the provisions thereof. However, if there is total and complete non-compliance with the provisions of Section 83 of the Act, then the petition cannot be described as an election petition and may be dismissed at the threshold. Integral part of an election petition. **(G.M. Siddeshwar v. Prasanna Kumar; AIR 2013 SC 1549)**

Election Petition – Petition challenging election of returned candidates – Duty of courts while dealing with

The Court must make a fine balance between the purity of the election process and the avoidance of an election petition being a source of annoyance to the returned candidate and his constituents. In Azhar Hussain v. Rajiv Gandhi; 1986 Supp SCC 315, the Court observed (in the context of summary dismissal

of an election petition): (SCC p. 325, para 12)

> "12 .... So long as the sword of Damocles of the election petition remains hanging an elected member of the legislature would not feel sufficiently free to devote his whole-hearted attention to matters of public importance which clamour for his attention in his capacity as an elected representative of the constituency concerned. The time and attention demanded by his elected office will have to be diverted to matters pertaining to the contest of the election petition. Instead of being engaged in a campaign to relieve the distress of the people in general and of the residents of his constituency who voted him into office, and instead of resolving their problems, he would be engaged in campaign to establish that he has in fact been duly elected."

In the light of the above, it is not possible to accept the view that the salutary intention of the Law Commission of India to ensure purity in the litigation process must extent to an election petition notwithstanding the mandate of Parliament as expressed in Section 83 of the Act. **(G.M. Siddeshwear vs. Prasanna Kumar; (2013) 4 SCC 776)**

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act

S. 34 – Bar to jurisdiction of civil court would not apply in respect of recovery of Rs. 6,02,993/- Debts Recovery Tribunal covers matters relating to recovery of loan/dues of Rs. 10,00,000 and above

Section 17 of the Recovery of Debts Dues to Banks and Financial Institutions Act, 1993 authorizes the Debts Recovery Tribunal to decide applications of the Bank and financial institutions for recovery of debts due to such banks and financial institutions. However, Section 1 sub-section (4) of the said Act clearly lays down that the aforesaid Act would not be applicable where amount of debts due to any bank or financial institutions is less than Rs.10,000/. Thus, the recovery of any amount by the bank or financial institution of a sum of Rs.10,000/- and less would not be covered by the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and would not be cognizable by Debt Recovery Tribunal. The Debts Recovery Tribunal covers matters relating to recovery of loan/dues of Rs.10,000/- and above.

In this view of the matter, the bar of jurisdiction contained in Section 34 of the Act would not apply in respect of recovery of Rs.6,02,993/-. **(Afsar Khan v. Central Bank of India; 2013 (3) ALJ 369)**

Service Laws

S. 311 - Misconduct – Order of dismissal – Validity

Mere wrong orders passed by a competent authority cannot be termed to be misconduct, unless and until such orders, prima facie, proved to be mala fide, biased or passed for extraneous considerations. Hon'ble the Apex Court has also held that such wrong orders can be corrected in appeal/ revision. The very purpose of providing remedy of revision/appeal is, that the law expects that the wrong orders, if passed by the authorities, can be corrected by way of revision/appeal. So far as question of loss of revenue is concerned, there is a report on record to the effect that no loss of revenue has been assessed. Merely on the basis of presumption that if the orders would have been passed otherwise then the higher revenue would have been recovered, it cannot be termed to be loss of revenue, unless and until assessment orders for imposition of tax is passed till then it cannot be said that there was any loss of revenue. Therefore, the order for the recovery of the loss caused to the department also does not appear to be sustainable under the law.

Therefore, in view of the aforementioned discussion, it is clear that the petitioner in exercise of lawful jurisdiction while working on the post of Deputy Commissioner Assessment Trade Tax passed the assessment orders and without any oral enquiry-these orders were held by the inquiry officer to be wrong. Mere wrong exercise of lawful jurisdiction cannot be said to be misconduct. There was no charge against the petitioner that they passed such orders for extraneous consideration. Perusal of the inquiry report shows that no witness was examined to prove the case of the department and only on the basis of the charges and the assessment orders and the written reply submitted by the petitioner, the inquiry was concluded.

In the facts of present case, there is no oral inquiry. The perusal of the inquiry report establishes that no witness was examined, therefore, the inquiry report and the orders of dismissal passed thereon cannot be sustained in view of the aforementioned factual and legal position. (**S.P. Srivastava vs. State of U.P. and another; 2013(3) ALJ 470)**

Constitution of India, Art. 311 - Commencement of Disciplinary proceedings - Determination of – It commence only when charge sheet is issued

In Chairman-cum-Managing Director, Coal India Limited and Others vs. Ananta Saha and Others; (2011) 5 SCC 142, the Court held as under:

> "27. There can be no quarrel with the settled legal proposition that the disciplinary proceedings commence only when a charge-sheet is issued to the delinquent employee. (Vide Union of India v. K.V. Jankiraman,

(1991) 4 SCC 109 and UCO Bank v. Rajinder Lal Capoor; (2007) 6 SCC 694)"

Court also reiterates that the disciplinary proceedings commence only when a charge sheet is issued. Departmental proceeding is normally said to be initiated only when a charge sheet is issued.

In the light of the above discussion and in view of factual position as highlighted in the earlier paras, we hold that the ratio laid down in Jankiraman's case (supra) are fully applicable to the case on hand, hence we are in agreement with the ultimate decision of the High Court. Consequently, the appeal filed by the Union of India fails and the same is dismissed. However, there will be no order as to costs. **(Union of India & Ors. Vs. Anil Kumar Sarkar; AIR 2013 SC1661)**

Allahabad Bank Employees Pension Scheme, 1974 – Voluntary Retirement Scheme – Pension – Gratuity – Respondent, who had sought voluntary retirement from service and was paid gratutiy by appellant under the payment of Gratuity Act along with C.P.F. is entitled to pension

In case of Allahabad Bank and another v. All India Allahabad Bank Retired Employees Association, the Court considered the question whether the retired employees who have received pension are entitled to gratuity under the 1972 Act. The Association of retired employees had represented to the appellant that its members be paid gratuity in accordance with the provisions of the 1972 Act. The appellant rejected the claim of the Association .and this was conveyed vide letter dated 10.1.1989 sent by the Chief Manager (PA) to the General Secretary of the Association.

In the impugned order, the Division Bench of the High Court noticed the aforesaid judgment of this Court and observed:

> "Though the Supreme Court limited the judgment aforesaid to the employees of the Bank working prior to 1st July, 1979 and who had retired after coming into force. of the said Act on 31st October, 1993 and in which the petitioner as aforesaid is. covered but even if we were to consider the case of the petitioner as not covered by the said dates, the counsel for the respondent Bank is unable to show as to how the ratio aforesaid of the judgment would not apply to the petitioner. The petitioner is admitted to be entitled to pension under the Old Pension Scheme of the year 1890 of the respondent Bank. The said pension is sought to be denied to the petitioner only for the reason of the gratuity under the Gratuity Act having been paid to the petitioner but which gratuity the Supreme Court has held to be a statutory right not affected by the pension. We have also

put it to the counsel for the. respondent Bank as to whether the petitioner would not have been in the same position as the retired employees before the Supreme Court had he not been paid gratuity and had started availing of the pension and would have thereafter claimed the gratuity. No reply to the said proposition has been forthcoming."

In view of Court, the High Court's interpretation/understanding of the judgment of this Courts correct and there is no merit in the argument of Shri Nariman that the respondent, who had received gratuity under the 1972 Act, is not entitled to pension or that he must refund the amount of gratuity as a condition for payment of pension.

In view of the plain language of the above reproduced provision, which contains a non-obstante clause, every eligible employee is, notwithstanding anything inconsistent contained in any other enactment or instrument or contract is entitled to gratuity. Therefore, even if the respondent had opted for pension he could have legitimately claimed gratuity without being required to refund the amount of pension already received by him. **(Allahabad Bank v. A.C. Aggarwal; 2013 (3) SLR 242 (SC)**

Arts. 16. 315 to 320 – Appointment of Chairman of Punjab Public Service Commission – Validity of

In fairness to Mr. Dhanda it must be noted that his affidavit clearly mentions that he did not apply for or otherwise seek the post of Chairperson of the Punjab Public Service Commission. He was invited by the Chief Min to submit his bio-data and to accept the post. The question is that with these ualifications, could it be said that Mr. Dhanda was eminently suited to holding the post of the Chairperson of the Public Service Commission? The answer to this must be in the negative if one is to agree with the expectation of this Court declared in various decisions. This is not to say that Mr. Dhanda acks integrity or competence, but that he clearly has no administrative experience for holding a crucial constitutional position. Merely because Mr. Handa is an advocate having had electoral successes does not make him eminently suitable for holding a constitutional position of considerable importance and significance. It is more than apparent that Mr. Dhanda's political affiliation weighed over everything else in his appointment as the Chairperson of the Punjab Public Service Commission.

As far as the deliberative process is concerned (or lack of effective consultation, as described in Mahesh Chandra Gupta) it is quite apparent that the entire process of selection and appointment of Mr. Dhanda took place in about a day. There is nothing to show the need for a tearing hurry, though there was some urgency, in filling up the post following the demise of the then Chairperson of the

Punjab Public Service Commission in the first week of May 2011. But, it is important to ask, since the post was lying vacant for a couple of months, was the urgency such that the appointment was required to be made without considering anybody other than Mr. Dhanda. There is nothing to show that any consideration whatsoever was given to appointing a person with adequate administrative experience who could achieve the constitutional purpose for which the Public Service Commission was created. There is nothing to show that any background check was carried out to ascertain whether Mr. Dhanda had come in for any adverse notice, either in a judicial proceeding or any police inquiry. It must be remembered that the appointment of Mr. Dhanda was to a constitutional post and the basics of deliberation before making the selection and appointment were imperative. In this case, clearly, there was no deliberative process, and if any semblance of it did exist, it was irredeemably flawed. The inbuilt constitutional checks had, unfortunately, broken down.

The question of the Chief Minister or the State Government having "confidence" (in the sense in which the word is used with reference to the Chief Secretary or the Director General of Police or any important statutory post) in the Chairperson of a State Public Service Commission simply does not arise, nor does the issue of compatibility. The Chairperson of a Public Service Commission does not function at the pleasure of the Chief Minister or the State Government. He or she has a fixed tenure of six years or till the age of sixty two years, whichever is earlier. Security of tenure is provided through a mechanism in our Constitution. The Chairperson of a State Public Service Commission, even though appointed by the Governor, may be removed only by the President on the ground of misbehaviour after an inquiry by this Court, or on other specified grounds of insolvency, or being engaged in any other paid employment or being unfit to continue in office by reason of infirmity of mind or body. There is no question of the Chairperson of a Public Service Commission being shifted out if his views are not in sync with the views of the Chief Minister or the State Government. **(State of Punjab v. Salil Sabhlok; 2013 (2) SLR 659 (SC)**

Constitution of India, Art. 16 – Delay in payment of retiral dues – Entitlement for payment of interest – Consideration

Admittedly, retirement benefits were required to be paid and the same was not released upon the retirement of the petitioner. The respondents were aware that the petitioner would retire on a particular date and was required to process the retirement dues on or before the date of retirement to enable the petitioner to get the post retirement dues. This court also finds that the petitioner had made a request that the loss suffered by the department may also be adjusted and the balance amount may be released thereafter. Even though a specific

request was made the same remained un-addressed and no effort was made by the department to release the balance amount and the same was released only when the contempt proceedings were drawn against the respondents.

In the light of the aforesaid, the Court finds that there has been a dereliction of duty on the part of the respondents in not releasing the amount within a reasonable period.

In view of above, the writ petition is allowed and a writ of mandamus is issued commanding the respondents to pay interest on belated payments at the rate of 6% per annum within two months from the date of production of a certified copy of this order. **(Mohd. Wali Jan S/o Late Barkat v. State of U.P. through its Secretary, Department of Food and Civil Supply; 2013 (3) ALJ 16)**

Constitution of India, Art. 16 – Recovery of salary as arrears of land revenue – Validity

In the present case petitioner was called upon to submit his reply to the show cause notice before passing of the impugned recovery order. The reply submitted by petitioner was considered by the authorities. As such, I am satisfied that procedure required for imposing minor penalty was complete and no further opportunity was required to be provided to petitioner before passing of the impugned order.

It also to be noted that under Rule 3 (iv) of the 1999 Rules recovery by way of pay of the whole or part of any pecuniary loss caused to Government by negligence or breach of order can be imposed.

So far as contention of learned counsel for petitioner that petitioner has worked during the period 20.7.2004 to May, 2007 and, therefore, he is entitled to get salary for the said period and no recovery of paid amount shall be made is concerned, it is to be noted that there is allegation that appointment of petitioner was itself based on fraud and he had no right to work on the basis of said appointment as unless and until it is established that appointment of petitioner was genuine, he had no right to get salary. **(Vinay Kumar Singh v. State of U.P. & Ors.; 2013 (3) ALJ 305 (Lko Bench)**

Constitution of India, Arts. 226 and 311 – Maharashtra Judicial Services Rules, 2008 – R. 10(4) – Adverse remarks regarding integrity and poor legal knowledge of Judicial Officer and endorsed by full court cannot be discarded

The integrity is the foremost requirement of a judicial officer. The great English Jurist and philosopher Francis Bacon has said, "Judges ought to be more

learned than witty, more reverent than plausible and more advised than confident. Above all things, the integrity is their portion and proper virtue. Joseph Addison English Essayist says, "Justice discards party, friendship and kindred and is therefore, represented blind". Their Lordships of the Apex Court in the case of Rajendra Singh Verma (dead) through L.Rs. (supra) at page 345 of the report propound, "Judicial Service is not a service in the sense of an employment as is commonly understood. Judges are discharging the functions while exercising the sovereign judicial power of the State. Their honesty and integrity is expected beyond doubt. It should be ret1ected in their overall reputation. There is no manner of doubt that nature of judicial service is such that it cannot afford to suffer continuance in service of persons of doubtful integrity or who have lost their utility". **(Pradip Vasant Bavkar v. State of Maharashtra; 2013 (2) SLR 565 (Bom)**

Ad-hoc appointment – Pension - whether the respondents, who were appointed to the teaching post viz Asstt. Professor/Lecturer and continued as such for more than two decades, would be entitled to get the benefit of pension under university Pension Regulations, 1990 – Held. "No" since they were appointed on ad-hoc for particular objective

In the present case, Teachers/Lecturers appointed on ad-hoc basis and as stop-gap arrangement allowed to continue for more than two decades, but on basis of appointment letters, issued after termination, every year. Attempt to get services regularized failed in earlier lis. So, appointees cannot claim any benefit as they were appointed on ad-hoc basis for particular objective. **(University of Rajasthan v. Prem Lata Agarwal; 2013 (2) SLR 612)**

Higher Judicial Service - Adverse remark - Cannot be made against any judicial officer without giving an opportunity to explain the conduct

Higher Judicial Service - Severe strictures and direction, by the High Court against a member of Higher Judicial Service - Word "Severe strictures" mentioned in the impugned judgment but no logical reasoning given as to what was the fault of the appellant - No finding recorded by the High Court as to why it disagreed with reasoning given by the appellant - Assertion of the appellant that he had neither rendered any decision as a Trial Court Judge not as the First Appellate Court Judge - Strictures passed against the appellant neither warranted nor in conformity with settled law propounded by the Apex Court - Adverse remarks passed in the impugned judgment relating to the appellant set aside

The case of the appellant, in brief, is as under:

(a) The appellant, who is Member of the U.P. Higher Judicial Service,

is posted as Additional District and Sessions Judge, Moradabad and according to him, he is having unblemished service career and has successfully completed 30 years of service.

(b) The High Court, while allowing the Second Appeal No. 1444 of 2000 titled U.P. Avas Evam Vikas Parishad, Lucknow and another v. Lajja Ram, passed severe strictures against the appellant herein in the judgments which, according to him, are ultimately going to affect permanently not only his reputation but also his entire service career.

(c) It is the claim of the appellant that in the Second Appeal No 1444 of 2000, he has not rendered any judgment as Trial Court Judge or as the first Appellate Court Judge. According to him, a suit bearing No. 418 of 1977 was filed by Shri Lajja Ram against the U.P. Avas Evam Vikas Parishad, Lucknow and another and the said suit was decided by one learned Civil Judge, Senior Division, Ghaziabad presided over by Shri Chaturbhuj by a judgment and order deated 2.5.1997. Aggrieved by the said judgment, a first appeal was filed being First Appeal No. 105 of 1997 in the Court of Shri A.K. Aggarwal, Second Additional District & Sessions Judge, Ghaziabad. The First Appellate Court framed 12 additional issues and on those additional issues, the matter was remanded to the Court the appellant as he was working as Civil Judge, Senior Division, Ghaziabad. Thereafter, in compliance with the order of the first Appellate Court, after recording the evidence of the parties, the appellant recorded the evidence of the parties and gave his findings on 31.5.1999.

(d) It is the case of the appellant that in the impugned judgment and order, the High Court has neither furnished any independent finding on the issues which were determined by the appellant herein nor anything about his ultimate decision. The present appeal is confined only to the portion wherein the High Court has made certain strictures. The appellant has also asserted that the High Court has not considered that the appellant has not rendered any decision as Trial Judge or as the Judge of the First Appellate Court. On the direction by the First Appellate Court, only 12 additional issues were adjudicated by the appellant. Inasmuch as “severe strictures”, if allowed to stand, would affect his entire further prospects of service, he approached this Court by filing this appeal by way of special leave.

(e) While answering the substantial questions of law, namely, 3,4,5 and 6, the High Court decided the same in favour of the appellants therein and against the respondents. Ultimately, both the second appeals were allowed with exemplary cost of Rs. 5 Lakhs in Second Appeal No. 1444 of 2000 and Rs. 1 Lakh in Second Appeal No. 1445 of 2000. The High Court ultimately set aside

the decrees passed by the Courts below and dismissed both the suits. The High Court also directed that a FIR be lodged immediately against the plaintiffs for malicious prosecution and manipulation in the official records. After issuing such directions the High Court passed the following order, with which we are concerned in these appeals:

> "Severe stricture is passed against the Judge of the Trial Court as well as of Lower Appellate Court for passing extremely illegal and unjust judgments and decrees. A copy of this judgment shall be placed in their service records and be also sent to Hon'ble the Chief Justice to consider as to whether disciplinary proceedings are warranted against them."

(f) On coming to know of the strictures and the ultimate direction of the High Court, the appellant filed a Civil Misc. Modification Application No. 122702 of 2012 in Second Appeal No. 1444 of 2000 for expunging the remarks made in the judgment dated 1.3.2012. The High Court, after hearing the Counsel for the judicial officer without modifying the judgment, observed that "I did not intend to make any suggestion for initiating disciplinary proceedings against the Judge who had decided the remitted issues only", and by saying so disposed of the said application, however, permitted the appellant to make representation on the administrative side of the High Court. Not satisfied with the same, the appellant has filed the above appeal for a limited purpose of expunging those adverse remarks.

The questions which arise for consideration are:

(a) Whether in the facts and circumstances of the case, the High Court was justified in making severe strictures and directions against the appellant in its judgment dated 1.3.2012?

(b) Whether the direction to send the impugned judgment to Hon'ble Chief Justice of the High Court with a request to consider whether disciplinary proceedings are warranted against the appellant herein was justified?

(c) Whether the High Court is justified in disposing of the application for modification without expunging the offending portion which was made without affording opportunity to the appellant?

The Court hold that the adverse remarks made against the appellant were neither justified nor called for. The perusal of the impugned judgment would show that the word "severe strictures" is mentioned whereas no logical reasoning has been given as to what is the fault of the appellant and the High Court has not adduced any finding as to why it has disagreed with the reasoning given by the

appellant particularly when the appellant asserted that neither he has rendered any decision as Trial Court Judge nor as the First Appellate Court Judge except deciding 12 additional issues on the directions issued by his predecessor. The strictures passed against the appellant are neither warranted nor is in conformity with the settled law as propounded by this Court.

Under circumstances, the adverse remarks passed in the impugned judgment and the final orders dated 1.3.2012 and 23.4.2012 insofar as the appellant is concerned are set aside. Since these appeals are confined only for expunging the strictures, the same are allowed as pointed above. No costs. **(Awani Kumar Upadhyay Vs. Hon'ble High Court of Judicature at Allahabad and others; (2013(137) FLR 139) (SC)**

Departmental enquiry—Enquiry procedure—Reliance on preliminary enquiry—Extent to which permissible

The preliminary enquiry may be useful only to take a prima facie view, as to whether there can be some substance in the allegation made against an employee which may warrant a regular enquiry.

"A prima facie case does not mean a case proved to the hilt but a case which can be said to be established if the evidence which is led in support of the case were [to be] believed. While determining whether a prima facie case had been made out or not the relevant consideration is whether on the evidence led it was possible to arrive at the conclusion in question and not whether that was the only conclusion which could be arrived at on that evidence."

The issue, as to whether in the instant case the material collected in preliminary enquiry could be used against the appellant, has to be considered by taking into account the facts and circumstances of the case. In the preliminary enquiry, the department placed reliance upon the statements made by the accused-complainant and Shri C.B. Gajjar, Advocate. Shri C.B. Gajjar in his statement has given the same version as he has deposed in regular enquiry. Shri Gajjar did not utter a single word about the meeting with the appeallant on 17.8.1993, as he had stated that he had asked the accused-complainant to pay Rs. 20,000 as was agreed with by Shri P.K. Pancholi, Advocate. Of course, Shri C.B. Gajjar, complainant, has definitely reiterated the stand he had taken in his complaint. The charge-sheet served upon the appellant contained 12 charges. Only the first charge related to the incident dated 17.8.1993 was in respect of the case of the complainant. The other charges related to various other civil and criminal cases. The same were for not deciding the application for interim reliefs, etc.

The charge-sheet was accompanied by the statement of imputation, list of witnesses and the list of documents. However, it did not say that so far as Charge 1 was concerned, the preliminary enquiry report or the evidence collected therein, would be used/relied upon against the appellant.

There is nothing on record to show that either the preliminary enquiry report or the statements recorded therein, particularly, by the complainant-accused or Shri C.B. Gajjar, Advocate, had been exhibited in regular inquiry. In the absence of information in the charge-sheet that such report/statements would be relied upon against the appellant, it was not permissible for the enquiry officer or the High Court to rely upon the same. Natural justice is an inbuilt and inseparable ingredient of fairness and reasonableness. Strict adherence to the principle is required, whenever civil consequences follow up, as a result of the order passed. Natural justice is a universal justice. In certain factual circumstances even non-observance of the rule will itself result in prejudice. Thus, this principle is of supreme importance. **(Nirmala J. Jhala vs. State of Gurajat; (2013) 4 SCC 301)**

Departmental Enquiry - Notice sent to delinquent at wrong address - Enquiry held ex-parte punishment of dismissal imposed - Entire proceeding rendered vulnerable

The High Court has taken the view that the ex-parte enquiry held against the appellant could not be faulted as his whereabouts were not known and has also justified the non-supply of a copy of the enquiry report to the appellant for the same reason. However, the High Court seems to have overlooked that the notice with regard to the departmental enquiry was sent at the address of house No.147 but the correct address of the appellant was house No.l77 and not No. 147. Thus, the ex parte enquiry and the order of dismissal passed on that basis were quite vulnerable and the Tribunal has rightly held that the order of dismissal was passed on the basis of an enquiry which is untenable in law. **(Mohd. Yousuf v. Director General of Fire Services, A.P. & Ors.; 2013 (2) Supreme 573)**

Departmental Enquiry – Court holding invalid on technical grounds should permit employer to conduct enquiry from the point the same stood visited – However this will be warranted if gravity of misconduct so warrants

It is a settled legal proposition that, once the Court set asides an order of punishment on the ground, that the enquiry was not properly conducted, the Court should not severely preclude the employer from holding the inquiry in accordance with law. It must remit the concerned case to the disciplinary authority, to conduct the enquiry from the point that it stood vitiated, and to conclude the same in accordance with law. However, resorting to such a course

depends upon the gravity of delinquency involved. Thus, the court must examine the magnitude of Misconduct alleged against the delinquent employee. It is in view of this, that courts/tribunals, are not competent to quash the charge-sheet and related disciplinary proceedings, before the same are concluded, on the aforementioned grounds. (**Shri Anant R. Kulkarni vs. Y.P. Education Society & Ors.; 2013(3) Supreme 475)**

Departmental Enquiry – Should not be quashed only on the ground of delay inclusion of the same - Most of other factors are to be considered

The court/tribunal should not generally set aside the departmental enquiry, and quash the charges on the ground of delay in initiation of disciplinary proceedings; as such a power is de hors the limitation of judicial review. In the event that the court/tribunal exercises such power, it exceeds its power of judicial review at the very threshold. Therefore, a charge-sheet or show cause notice, issued in the course of disciplinary proceedings, cannot ordinarily be quashed by court. The same principle is applicable in relation to there being a delay in conclusion of disciplinary proceedings. The facts and circumstances of the case in question, must be carefully examined, taking into consideration the gravity/magnitude of charges involved therein. The Court has to consider the seriousness and magnitude of the charges and while doing so the Court must weigh all the facts, both for and against the delinquent officers and come to the conclusion, which is just and proper considering the circumstances involved. The essence of the matter is that the court must take into consideration all relevant facts, and balance and weigh the same, so as to determine, if it is in fact in the interest of clean and honest administration, that the said proceedings are allowed to be terminated, only on the ground of -a delay in their conclusion.

In Surath Chandra Chakravarty v. The State of West Bengal; AIR 1971 SC 752, the Court held, that it is not permissible to hold an enquiry on vague charges, as the same do not give a clear picture to the delinquent to make out an effective defence as he will be unaware of the exact nature of the allegations against him, and what kind of defence he should put up for rebuttal thereof. The Court observed as under:-

"The grounds on which it is proposed to take action have to be reduced to the form of a definite charge or charges which have to be communicated to the person charged together with a statement of the allegations on which each charge is based and any other circumstance which it is proposed to be taken into consideration in passing orders has to be stated. This rule embodies a principle which is one of the specific contents of a reasonable or adequate opportunity for defending oneself. If a person is not told clearly and definitely what the

allegations are on which the charges preferred against him are founded, he cannot possibly, by projecting his own imagination, discover all the facts and circumstances that may be in the contemplation of the authorities to be established against him."

The purpose of holding an enquiry against any person is not only with a view to establish the charges levelled against him or to impose a penalty, but is also conducted with the object of such an enquiry recording the truth of the matter, and in that sense, the outcome of an enquiry may either rest in establishing or vindicating his stand, and hence result in his exoneration. Therefore, fair action on the part of the authority concerned is a paramount necessity. (**Shri Anant R. Kulkarni vs. Y.P. Education Society & Ors.; 2013(3) Supreme 475)**

Departmental Enquiry – After retirement

Court may add that the court has not been appraised of any rule that may confer any statutory power on the management to a hold a fresh enquiry after the retirement of an employee. In the absence of any such authority, the Division Bench has erred in creating a post-retirement forum that may not be permissible under law.

In light of the facts and circumstances of the case, none, of the charges are specific and precise. The charges have not been accompanied by any statement of allegations, or any details thereof. It is not therefore permissible, for the respondents to hold an enquiry on such charges. Moreover, it is a settled legal proposition that a departmental enquiry can be quashed on the ground of delay provided the charges are not very grave. (**Shri Anant R. Kulkarni vs. Y.P. Education Society & Ors.; 2013(3) Supreme 475)**

Appointment - Person included in select list do not set any legal right to appointment state is found to fill in all vacancies select list not published - No plan coming into existence - No candidate gets any right to appointment – Also no question of life of such non-existent panel despite selection made on a particular date

Following the decision in Shankarsan Dass case (Supra), the Court in State of Orissa & Anr. v. Rajkishore Nanda & Ors.; 2010 (6) SCALE 126 held:

"A person whose name appears in the select list does not acquire any indefeasible right of appointment. Empanelment at the best is a condition of eligibility for purpose of appointment and by itself does not amount to selection or create a vested right to be appointed. The vacancies have to be filed up as per the statuto0try rules and in conformity with the constitutional mandate"

Even assuming the preparation of a panel goes rise to any such right, since no panel had actually ever been prepared and published not has the same been prepared and published not has the same been produced before the High Court or before us, we have no hesitation in holding that the direction issued to the Commission to act on the basis of the panel was wholly unjustified and unsustainable. the view taken by Dpankar Datta J. in his order dated 27th July, 2009 that considerable time had expired since the selection process was initiated and that other candidates who may have in the meantime become qualified for consideration may be deprived of the right to compete was a reason enough for the High Court to decline a mandamus. In the facts and circumstances of the case, the Division Bench of the High Court, in our view, committed an error in upsetting that direction. Court also see no real conflict between the orders passed by Dipankar Datta, J. on 12th March, 2009 and that passed on 27th July, 2009, inasmuch as the question of the adding to the life of the panel the period during which there was a stay would arise only if there was a panel drawn in terms of the Regulations. **(Vijoy Kumar Pandey v. Arvind Kumar Rai & Ors.; 2013 (2) Supreme 376)**

Award - Termination of Services – Reinstatement - Back wages - Labour Court by award has allowed the claim, quashed the order of termination, directed reinstatement with continuity and with full back wages - Court finds that only one of the charges proved and other charges not proved - Order of termination was too harsh a punishment - Hence the Labour Court has not committed any fault - Findings based on material evidence on record - No interference required with - However the inquiry proceedings not conducted in a fair and proper manner - Hence award could not be set aside - But the award of full back wages is excessive and in the light of facts and with principle of "no work no pay", grant of 50% back wages with continuity of service is proper - Award is modified accordingly

The Labour Court has considered the evidence and has applied its mind, which the Court does not find any fault. The reasonings given by the Labour Court is based on t he material evidence on record, which this Court is not inclined to interfere in a writ jurisdiction, since the Court does not find that the finding of the Labour Court is perverse.

The Court is of the opinion that the cumulative effects of these charges were not that grave, which would commensurate the penalty of termination of the services and, consequently, on this ground, the Court is of the opinion that the order of termination was too harsh a punishment. The Court is of the opinion that considering these aspects, the award of full back wages is excessive and, consequently, in the light of the aforesaid facts, coupled with the principle of "no

work no pay", this Court is of the opinion that the award of full back wages is likely to be modified and is substituted to 50% back wages but with continuity of service. This modification of the award in relation to back wages will only be applicable in the event, the award has not, as yet been implemented. **(Regional Manager, U.P.S.R.T.C., Etawah Vs. Presiding Officer, Industrial Tribunal II, U.P., Lucknow and another; (2013(137) FLR 219) (All HC).**

Regulation - Contractual employment - District Judge was permitted to appoint Group-D staff on contractual basis following the regular recruitment rule - Appellant became successful in getting the appointment in regular recruitment process - Appointment was purely temporary and contract basis having no claim for regular absorption - It is held that casual and/or contractual appointment could not be regularized as it would offend Articles 14 and 16 of Constitution - However the Government may consider is sympathetically

Casual and/or contractual appointment could not be regularized as it would offend Articles 14 and 16 of the Constitution of India. The Apex Court in the case of Umadevi, (supra) categorically deprecated casual and/or contractual appointments in regular post in public employment. While doing so, the Apex Court appreciated the difficulty that might be faced by the public offices as also the people who were working for decades in regular posts through irregular process of appointment. The Apex Court asked the Authorities to take up one time measure to absorb them.

The correspondence annexed to the pleadings would reveal, the District Judge, Purulia as well as the High Court administration were sympathetic to the appellant and his colleagues being similarly circumstanced. The Government however did not accede to the request. At this juncture, we are unable to extend any special blessing and/or mandate save and except hoping, good sense would prevail upon the Government who would sympathetically re-examine the case. **(Binoy Mahato Vs. State of West Bengal and others; (2013 (137) FLR 1078) (Cal HC).**

(a) Service – Education - Contractual appointments, right of continuance - Teachers engaged on contractual basis - Held, in academic matters where teachers are engaged by the university on contractual basis under the scheme or course which is likely to continue for years, ordinarily such engagement should not be terminated in case the conduct and work of the person engaged is satisfactory - Hiring and firing policy deprecated

Instant petition has been referred under Article 226 of the Constitution of India by the petitioner on account of hiring and firing policy adopted by the respondent University to engage teachers for MBA course under self-financing scheme under the grant of contractual assignment. Admittedly, the petitioners

were appointed in the year 2003 and 2006 of contractual basis for the period of eleven month to impart education to the students of the respondent University (Institute of Business Studies) on fixed salary. They have been continuing in service from the very inception of Establishment though it was for eleven month. However, respondent took a decision to dispense with the service of petitioners and make a fresh recruitment for the respective course. Feeling aggrieved approached this court.

In academic matters where teachers are engaged by the University may be on contractual basis under the scheme or course which is likely to continue for years to come, ordinarily such engagement should not be terminated in case the conduct and work of the person engaged is satisfactory. It is not a case where work and conduct of the petitioners are not satisfactory rather it appears that petitioners have discharged their obligation with bright service record.

In view of above, the Court allow the writ petition. A writ in the nature of mandamus is issued directing the respondents to continue the petitioner in service for academic session 2013 and 2014 and pay him honorarium/salary as the case may be in accordance to Rules. Petitioners shall be permitted to continue in service till continuance of course or the scheme, as the case may be paid honorarium subject to satisfactory discharge of duties.

Writ petition is allowed accordingly. No order as to costs. (**Ranjit Singh and others Vs. State of U.P. and others; (2013 (31) LCD 806) (All HC - Lucknow Bench).**

Regularisation – Entitlement – Complete adhoc appointment does not create any entitlement to regularization

The Society issued advertisement in the newspaper for appointment on the post of Lecturer in History and pursuant to that Respondent 1 along with other candidates participated in the interview conducted by the College. After the selection process and interview, Respondent 1 was not selected rather one T.S. Malleshappa was selected for the said post. The said Malleshappa joined and continued for about a year and thereafter he left service and joined M Phil course. Thereafter, the Society issued another advertisement dated 3-5-1996 inviting applications from eligible candidates for the post of Lecturer and one R. Siddegora was appointed as Lecturer in History on probation for a period of two years. Curiously enough, Respondent 1 did not challenge the selection and appointment of the above named two candidates, Malleshappa and Siddegora. Instead a writ petition was filed by Respondent 1 seeking regularisation of his services on the post of Lecturer in History with all consequential benefits. Respondent 1 ultimately approached the Tribunal. As noticed above, the Tribunal

on the basis of some entries made in the registers maintained by the College passed the impugned order for regularisation of the services with all monetary benefits. It is worth mentioning here that the Tribunal although came to the conclusion that the certificate produced by Respondent 1 goes to show that he was in the College as temporary and part-time employee even then the Tribunal held that due to passage of time the Court will be justified in directing the College/ Society to regularise his services. The Tribunal although directed regularisation as mentioned hereinabove but in the subsequent paragraphs the Tribunal further directed reinstatement of the respondent in service.

In considered opinion of the Court, the Tribunal completely misdirected itself in passing such an order of regularisation and reinstatement in a case where the respondent allegedly worked in the College as part-time Lecturer without any appointment letter and without any selection process. Since the Society never issued any letter of appointment, a letter of termination was also not served upon the respondent.

As stated above, in the absence of any appointment letter issued in favour of the respondent as he was temporary/part-time lecturer in the College, there cannot be any legitimate expectation for his continuing in the service. This was the reason that when in the years 1995 and 1996, two persons were appointed one after the other on the post of Lecturer in History, the respondent did not challenge the said appointments. Even assuming that the respondent was permitted to work in the College as part-time lecturer for some period, the action of the management of the College asking him to stop doing work cannot be held to be punitive. The termination simpliciter is not per se illegal and is not violative of the principles of natural justice. (**B.T. Krishnamurthy vs. Sri Basaveswara Education Society with Sri Basaveswara Education Society vs. T.D. Vishwanath; (2013) 4 SCC 490)**

House Rent Allowances – Husband and wife – Entitlement of – Held, since it is not possible for wife to come to office from State of Orissa – Both of them are to get house rent allowance and there should not be any ceiling limit

Admittedly, the appellant and her husband in the present case do not share the common roof since the husband is posted at a different place outside the State of West Bengal. Therefore, the appellant/ petitioner herein has been compelled to arrange the accommodation in the State of West Bengal for discharging her duties in the Vidyasagar University. Similarly, the husband of the said appellant has also, been staying at a different accommodation in the State of Orissa in order to discharge the duty at Paradip which is his place of employment. In the aforesaid circumstances, the appellant/petitioner is claiming maximum

admissible House Rent Allowance notwithstanding the fact that her husband is also employed and receiving House Rent Allowance.

The Government of West Bengal has made the specific rule relating to House Rent Allowance and in terms of the said rules, House Rent Allowance is admissible to each Government employee in the revised pay structure subject to a maximum of Rs. 6000/- per month. The ceiling of House Rent Allowance has also been prescribed for the husband and- wife together employed and receiving House Rent Allowance from the employer. The logic behind the fixation of ceiling of House Rent Allowance is based on the assumption that the husband and wife shall share the common roof while discharging the duties in the respective working place. Both the husband and wife cannot draw House Rent Allowance in respect of a particular accommodation where husband and wife are sharing a common roof for attending their respective places of employment. Therefore, House Rent Rules have been framed wherein provision for ceiling of House Rent Allowance has been mentioned in order to restrict a married employed couple from drawing House Rent Allowance twice in respect of the same accommodation wherein the said married couple under normal circumstances are supposed to reside for attending their respective place of employment. However, the aforesaid ceiling limit cannot be made applicable where the married employed couples are compelled to reside separately in two separate residential accommodations like present case.

It is not possible for the appellant to attend the duties from the working place of her husband at Paradip. Therefore, the appellant has been compelled to arrange. a separate accommodation for herself in order to attend the place of employment. Since the appellant has been compelled to arrange an independent accommodation for herself only to attend the place of employment, aforesaid ceiling of employment in respect of the married employed couple cannot be made applicable. The Rules relating to House Rent Allowance should be given an appropriate and reasonable meaning. The ceiling of House Rent Allowance in respect of husband and wife together can be made applicable when the husband and wife are able to share a common roof for the purpose of attending their respective working places and not otherwise. If it is established that the husband and wife are compelled to maintain to two separate residential accommodations in order to report to their respective place of employment, question of imposition of the ceiling of House Rent Allowance cannot be made applicable either on the husband or on the wife.

In such circumstances, the employee concerned would be entitled to receive House Rent Allowance as admissible under the Rules and no restriction should be made in this regard on the plea that the spouse is also employed and

receiving House Rent Allowance. The ceiling of House Rent Allowance can only be imposed on the married employed couple wherein both the husband and wife will be in a position to share a common roof for the purpose of attending the respective places of employment. (**Latika Sahu vs. State of West Bengal; 2013(2) ESC 686 (Cal)(DB)**

Termination – Involvement in a criminal case – Entitlement to continue on post after acquittal - In view of Hindustan Tin Works' case, principle of 'no work no pay' would not be applicable. Therefore, petitioner held entitled for salary from his joining upto year 2003 – Directions issued

In case an employee is acquitted in criminal case there are two options before the employer if the charges of the criminal case and the departmental proceedings are identical and same then in the case of acquittal from the criminal trial the departmental proceedings can be dropped and the employee can be reinstated. The second option before the employer is to continue the departmental proceedings as scope of the departmental proceedings and the criminal proceedings are different. Reference may be made to the following judgment of the Supreme Court G.M Tank v. State of Gujrat and others, 2006 (5) SCC 446; Captain M.Pal Anthony v. Bharat Gold Mines Ltd., 1999 (3) SCC 679 ; Union of India v. Jai Pal Singh, 2004(1) SCC 121; R.P. Kapoorv. Union of India, AIR 1964 SC 787; Corpn. of the City of Nagpur v. Ram Chandra; AIR (1984) 626.

In the case on hand the committee of management, the employer itself has found that charges against the petitioner were not serious enough and as such it did not take any decision to initiate domestic inquiry on those charges against the petitioner. The only question remains to answer is whether the petitioner is entitle for the full salary? In case where the order of dismissal or removal are set aside the reinstatement is automatic with full back wages is no more res integra. The earlier view of the Supreme Court was that if the dismissal/removal/termination order is set aside the reinstatement with the full back wages is a normal rule as held by the Supreme Court in the case of Hindustan Tin Works (P) Ltd. v. Employees, 1979 (2) SCC 80. This view was followed in SurendraKumar Vermav Central Government Industrial Tribunal/Labour Court, 1980 (4) SCC 443 and Mohan Lal v. Bharat Electronics Ltd., 1981 (3) SCC 225.

But the recent trend is not automatic reinstatement with full back wages. Reference may be made to some of the recent judgment of the Supreme Court where the reinstatement and full back wages has not been held to be automatic, as held in Allahabad Jal Sansthan v. Daya Shanker Rai, 2005 (5) SCC 124, U.P. State Brassware Corporation Ltd. v. Udai Narairi Pandey; 2006 (1) SCC 479;

Kendriya Vidyalaya Sangathan v. S.C. Sharma; 2005 (2) SCC 363. However, the Supreme Court in the case of J.K. Synthetics Ltd. v. K.P. Agarwal and another; 2007 (2) SCC 433, after noticing the recent trend that the reinstatement and full back wages is not automatic held that there are two exceptions. The Supreme Court while carving out the exceptions observed as under:

"But there are two exceptions. The first is where the Court sets aside the termination as a consequence of employee being exonerated or being found not guilty of the misconduct. Second is where the Court reaches a conclusion that the inquiry was held in respect of a frivolous issue or petty misconduct, as a camouflage to get rid of the employee or victimise him, and the disproportionately excessive punishment is a result of such scheme or intention. In such cases, the principles relating to back wages, etc. will be the same as those applied in the cases of an illegal termination."

The aforesaid exceptions can be applied safely in the present case as the petitioner was acquitted in the criminal case and no disciplinary proceeding under the regulations of Intermediate Act was conducted by the appointing authority albeit it decided to reinstate the petitioner as it found that there was no serious charges against the petitioner. Therefore the law laid down by the Supreme Court in case of Hindustan Tin Works (P) Ltd. v. Employees; 1979 (2) SCC 80 would be applicable in the present case and the principle of no work and no pay would not be applicable in the facts of this case. (**Raj Kumar Singh vs. District Inspector of Schools; 2013(2) ESC 749(All)**

Appointment – High Court Judge – Respondent No. 3 appointed as Judge of High Court in Andhra Pradesh on recommendation by the High Court Collegium and approval and consent accorded by the Supreme Court Collegium and the Central Government – Allegation of pendency of criminal case against him no case was made out for issuing a writ of quo warranto quashing the appointment of respondent No. 3, As the Judge of A.P. High Court. Petition dismissed with costs

The Court have carefully gone through the record relating to the appointment of respondent No. 3 as a judge of the Andhra Pradesh High Court. From the record it is evident that none of the members of the High Court or the Supreme Court Collegia was aware of the fact. The State Government was equally unaware of the fact and so was the Central Government as is evident from the resume prepared by the Law Ministry as also the IB Report.

This is not all. In 1993, respondent No. 3 was a candidate for the post of the Member of the Income Tax Appellate Tribunal and in that connection he was interviewed by a Selection Committee headed by a sitting judge of the Supreme

Court. He was selected for appointment and was issued an appointment letter dated September 8, 1995 as judicial member in the ITAT. The appointment letter was undoubtedly issued to him only after police verification and nothing was mentioned even at that stage about any criminal case pending against him. He did not accept the appointment is another matter altogether.

From all the attending circumstances, it is clear beyond doubt that not only respondent No. 3 himself but practically no one was aware of the pendency of the case in which he was named as an accused. The question, therefore, arises can a fact that is unknown to anyone be said to be not taken into consideration and can the consultative process faulted as incomplete for that reason. To our mind, the answer can only be in the negative. To fault the consultative process for not taking into account a fact that was not known at that time would put an impossible burden on the Constitutional Authorities engaged in the consultative process and would introduce a dangerous element of uncertainty in the appointments.

In case it comes to light that some material facts were withheld by the person under consideration or suppressed at his behest then that may be a case of fraud that would vitiate the consultative process and consequently the appointment resulting from it. But in case there was no suppression and the fact comes to light a long time after the person appointed has assumed the office of a judge and if the Members of the two Houses of the Parliament consider the discovered fact sufficiently serious to constitute misbehaviour and to warrant his removal, then he may still be removed from office by taking recourse to the provisions of Article 124(4) or Article 217 read with Article 124(4) as the case may be. In case, however, the fact was unknown and there was no suppression of that fact, a writ of quo warranto would certainly not lie on the plea that the consultative process was faulty.

In light of the discussion made above, we are clearly of the view that no case is made out for issuing a writ of quo warranto quashing the appointment of respondent No. 3 as the judge of Andhra Pradesh High Court. (**M. Manohar Reddy vs. Union of India; 2013(2) ESC 283 (SC)**

Appointment – Compassionate appointment - Death of fair price shop dealer - Her wife applied for her appointment as dealer, on compassionate ground - Her claim has to be considered in accordance with Government Order, dated 17-8-2002

At this juncture, the question arises as to what should be the position where the deceased dealer was of the category other than that for which reservation of a particular class/ category of society for a fresh dealer has been

provided for. In our opinion, the policy of reservation for appointment as dealer will be considered only when a regular appointment is to be made and not otherwise. Where the vacancy of any dealership of a fair price shop has occurred because of the death of the dealer and the conditions provided in the Government Order for appointment on compassionate basis stand fulfilled, the appointment on compassionate ground is to be considered first under paragraph 10 (Jha) of the Government Order dated 17.8.2002. If any other interpretation than this is given to the above Government order, the provision of the Government order shall become a nullity and the same can be availed by the dependents of the deceased dealer only in a case where the dealer was of the category for which the reservation is provided and not otherwise. Such cannot be the purpose as obviously para 10 (Jha) of the Government order has been inserted to safeguard the interest of the dependents of the deceased dealer. As such without considering the position of reservation which has not been provided for his case of compassionate appointment, the concerned authority shall look to the welfare of the dependents of the deceased dealer, otherwise the entire purpose of providing for such appointment would be frustrated. The interpretation which has been given by the impugned order is opposed to the public policy of safe-guarding the interests of the dependents of the deceased-dealer.

The Court are thus of the view that appointment under paragraph 10 (Jha) of the Government Order dated 17.8.2002 would not be covered by the Rule of reservation as it is a special appointment on compassionate ground and only condition which has to be considered is that the deceased-fair price shop dealer had a good reputation and the applicant is the dependant of such deceased – dealer. (**Smt. Meera Pandey vs. State of U.P.; 2013(2) ESC 810 (All) (DB)**

Salary Petitioner, appointed on post of teacher on 7.8.2007 on basis of payment on honorarium in terms of Government Order, dated 7.4.1988 delay in grant of approval - Appointee teacher should not be made to suffer, as he had worked since date of his appointment

On due consideration of rival submissions, we are of the view that the petitioner is entitled to get the salary from the date of joining, for the committee of management of college, which was competent to issue advertisement and to carry out selection of teacher in the college, recommended the case of petitioner for approval of the Director, Higher Education after candidate's selection in accordance with the Government order dated 7.4.1998.

It is not a case that the recommendation of committee of management was declined by the Director, Higher Education for any reason whatsoever. The recommendation was rather not acted upon, and therefore, the petitioner filed a

writ petition, namely, Writ Petition No. 15753 of 2010, which was decided on 25.3.2010. In terms of the directions given in the order, the recommendation of the committee of management dated 7.8.2007 was granted approval, vide the order of Director, Higher Education, dated 12.11.2010. Thus, there was no defect in the order or laxity whatsoever on the part of the committee of management and if the Director, Higher Education did not approve the proposal or failed to act upon in time, the teacher cannot be made to suffer for the period he has worked. Thus, the petitioner - teacher would be entitled to get salary from the date of joining and not from the date of approval. Besides, the approval has been granted only on the recommendation dated 7.8.2007.

In these premises, we direct that the respondents shall pay arrears of salary to the petitioner till the date from which he started getting honorarium**. (Kapil Kaushik vs. State of U.P.; 2013(2) ESC 828 (All) (DB)**

Departmental proceedings – Criminal proceedings – Whether can go on simultaneously

Having heard the learned counsel for the petitioner at some length, the Court finds that the position of law is well-settled, namely, that the departmental proceedings and the criminal proceedings can go on simultaneously, except where a departmental proceeding and a criminal proceeding are based on the same set of facts and evidence and where the witnesses are common in the said cases, the Court has to decide taking into account the said features of the case to whether simultaneously continuance of both the proceedings would be appropriate and proper or not. In the light of the aforesaid, there leaves no scope for doubt that there is no bar for simultaneous proceedings being taken against the delinquent employee in the form of a criminal action and also in the form of a disciplinary proceedings unless the charges are extremely serious and grave requiring judicial administration in preference to the verdict in domestic enquiry proceedings.

In the instant case a criminal action and disciplinary proceedings are not grounded upon the same set of facts. In the opinion of the Court, the purpose of the two proceedings is quite different. The object of the departmental proceedings is to ascertain whether the petitioner is required to be retained in service or not. On the other hand, the object of the criminal prosecution is to find out whether the offence in the penal statute has been made out or not. Therefore, in the opinion of the Court the area covered by the two proceedings is distinct and different and are not identical. The objects of both the proceedings are different. Whereas the departmental proceedings are taken to maintain discipline in the service, the criminal proceedings is initiated to punish a person for committing an

offence violating any public duty.

In the instant case the Court finds that the charges mentioned in the domestic disciplinary proceedings are totally different and distinct. The Court finds that the charge of murder was slapped against the petitioner in the criminal proceedings where he was acquitted by giving him a benefit of doubt and it was not a clean acquittal. In the domestic inquiry, the charge against the petitioner was of misuse of his post and official rifle while on duty, which was proved. (**Nirdosh Kumar vs. State of U.P.; 2013(2) ESC 1098 (All)**

Promotion Concept of sealed cover Mere pendency of a criminal case cannot debar petitioner - No Rule or Regulation commanding employers to keep recommendation of departmental proceedings in abeyance, till conclusion of criminal case

Having heard the learned counsel for the parties, the Court is of the opinion, that mere pendency of a criminal case cannot debar the petitioner from not being considered for a promotional post. There is no Rule or Regulation commanding the employers to keep the recommendation of the departmental proceedings in abeyance, till the conclusion of the criminal case. The Court is of the opinion, that action pursuant to the department proceedings should be taken and, in the event criminal proceedings goes against the petitioner, action on it, can be taken at that stage. But, in anticipation of the result of the criminal proceedings, the decision of the Departmental Promotion Committee cannot be kept in abeyance nor can it be kept in a sealed cover. The concept of a sealed cover is not for the purpose of keeping the recommendation of the Departmental Promotion Committee in abeyance. The concept of a sealed cover has been explained by this Court in Km. Maya Mahalla v. State of U.P. and others, 2011(5) ADJ 818. The Court held:

"The concept of "sealed cover" is normally applicable when conduct of an employee is under investigation, as to whether such person is guilty of misconduct warranting any kind of punishment which may dis-entitle him any promotion on higher post and during such period of suspended animation the authority keeps the matter of promotion in sealed cover so as to take a decision in this regard later on in accordance with the result of inquiry held against such person. But in cases where the incumbent has been considered for promotion in accordance with rules according to zone of consideration and field of eligibility and has been found ultimately selected therein, the question of keeping his result in a sealed cover is nothing but a flimsy pretext in as much as result of selection is already known to everybody. Mere pendency of the matter of cadre allocation or if for any reason the incumbent is not relieved for joining in Uttranchal State,

it ought not to have caused any hindrance in the matter of carrier advancement of such person since for such pendency the incumbent concerned cannot be said to be at fault."

Further, the Court finds that the petitioner has already been acquitted in one criminal case and inquiry report had already been submitted in the departmental proceedings with regard to the second case against the petitioner, in which no decision has been taken by the employers for the post three years. (**Diwakar Singh vs. State of U.P.; 2013(2) ESC 1101 (All)**

Dismissal – Class IV employee – Absent from duty without sanction of leave - Enquiry conducted - No enquiry report given to the petitioner - No oral evidence adduced by the Department to establish the charge - Since the petitioner died during pendency of petition - Hence, it would be deemed that petitioner had died in harness - He would be entitled to salary from the date of termination upto the date of death on basis of last pay drawn by him

The petitioner was subjected to disciplinary proceedings. In the impugned order itself it is mentioned that suspension order was revoked and he was allowed to continue. However, he was again absent without any application for leave. The said fact is seriously disputed by the petitioner and he has brought on the record several applications to establish that he was suffering from Tuberculosis and he has submitted several applications which he has sent under Postal Cover. In the enquiry it is mentioned that Disciplinary Authority has sought comments from the said department and one Shaheen Clerk submitted a report that no such application is on the record. The Court find the submissions of learned counsel for the petitioner that the said clerk was not examined in the departmental proceeding has considerable force. The Clerk concerned ought to have been examined to prove the said facts.

From the aforesaid judgments it emerges that while imposing major penalty oral evidence is necessary. In the present case no witness has been produced by the department to prove the charges. Concededly Inquiry report was not served on the petitioner, for the said reasons enquiry is vitiated.

For the aforesaid reasons dismissal order dated 21-11-1995 (Annexure XII to the writ petition) is liable to be struck down. It is accordingly set aside and it shall be treated as the impugned order has not been passed and it would be deemed that the petitioner had died in harness. The petitioner would become entitled to the payment of salary from the date of termination upto the date of death on the basis of last pay drawn by him. All the dues stated above shall be paid to the substituted petitioners within six months from the date of communication of this order. (**Munna Lal (Dead) vs. Ayukta Khadya Tatha**

Rasad Vibhag; 2013(2) ESC 1148 (All)

Appointment of Class III Employee Power - Ban imposed by Government Order dated 15.3.2012, Not applicable to privately managed and State aided Intermediate College – A clerk is required for preparing salary bills and all other clerical jobs including the communication with the education department with a further assistance to the Principal in maintaining accounts and records, hence an institution could not envisaged or imagined without a clerk - Appointment of clerk in the college, not illegal

It is to be noted as an illustration that most of the aided Institutions have only one post of Clerk and in such circumstances; a total ban would really amount to abrogating the provision under the 1921 Act which makes a provision for a class III post. It is further to be noted that a clerk is required in the College for preparing salary bills and all other clerical jobs including the communication with the education department with a further assistance to the office of the Principal in maintaining accounts and records like the scholar register, fee-register etc. Thus, an institution cannot be envisaged or imagined without a clerk keeping in view the nature of duties and the function which is required to be performed by such an employee. The office of the Manager and the Principal is a secretarial set up for the processing of the administrative transaction of the institution.

In the aforesaid circumstances, the Government Order dated 15.3.2012 cannot be read as a ban in relation to class III post as well in Intermediate Colleges. It is for this reason that when the matter of outsourcing came to be challenged before this Court, it was held that such a ban or restrain on aided intermediate Colleges cannot be countenanced keeping in view the observations that have been made. Consequently, the Government Order dated 15.3.2012 cannot amount to a ban in relation to appointment against class III posts in an aided Inter College governed by the provisions of U.P. Intermediate Education Act, 1921. (**Committee of Management, Shiv Charan Das Kanhaiya Lal Inter College, Allahabad v. State of U.P.; 2013(2) ESC 1176 (All)**

Regional Rural Banks Act, 1976 – Section 17 – Regional Rural Banks (Appointment and Promotion of Officers and other Employees) Rules, 1998 – Rules 2(e) and 2(f) - Rules provide that officers holding post in 8 years on regular basis, would be considered for next higher post but did not provide that an officer, who had been suffered a punishment or had received adverse entry, should not be eligible - Hence, circular excluding such employees from consideration for promotion, who were otherwise eligible to be considered for promotion, would be illegal - Validity of such circular rightly refused - High Court rightly set aside such circular

The Court also do not find any merit in the submission of Mr. Dhruv Mehta that the Circular No. 17 of 2009 dated 30th November, 2009 and Circular dated 12th July, 2010 are to ensure that the individual members of the DPC do not recommend for promotion an individual officer despite having been punished in the preceding 5 years. Such curtailment of the power of the DPC would have to be located in the statutory service rules. The 1998 Rules do not contain any such provision. The submission needs merely to be stated, to be rejected. We also do not find any merit in the submission of Mr. Mehta that without the aforesaid guidelines, an officer, even though, he has been punished for gross misconduct would have to be permitted to be promoted as no minimum marks are prescribed for interview of performance appraisal. In our opinion, it is fallacious to presume that under the 1998 Rules, once an officer gets the minimum marks in the written examination, he would be entitled to be promoted on the basis of seniority alone. There is no warrant for such a presumption. The misconduct committed by eligible employee/ officer would be a matter for DPC to take into consideration at the time of performance appraisal. The past conduct of an employee can always be taken into consideration in adjudging the suitability of the officer for performing the duties of the higher post. There is another very good reason for not accepting the submissions made by Mr. Dhruv Mehta. Different rules/regulations of the banks provide specific punishments such as "withholding of promotion, reduction in rank, lowering in ranks/ pay scales". However, there is another range of penalty such as censure, reprimand, withholding of increments etc. which are also prescribed under various staff regulations. To debar such an employee from being considered for promotion would tantamount to also inflicting on such employee, the punishment of withholding of promotion. In such circumstances, a punishment of censure/ reprimand would, in fact, read as censure/reprimand + 5 years debarment from promotion. Thus the circulars issued by the bank debarring such employees from being considered would be clearly contrary to the statutory rules. The circulars clearly do not fall within the ratio in Sant Ram's case (supra).

In opinion of the Court, the observations made by this Court in the case of Ram Ashish Dixit (supra) are a complete answer to the submissions made by the learned counsel for the appellants, Mr. Dhruv Mehta. Therefore, the High Court, in opinion of the Court, has rightly quashed the aforesaid two Circulars and directed that the respondent be considered for promotion in accordance with the applicable rules. (**Rani Laxmibai Kshetriya v. Manoj Kumar Chak; 2013(3) ESC 393 (SC)**

Promotion

No right to get promoted automatically on completion of minimum length

of service- Where the criteria for promotion is on the basis of the seniority-cum-merit, Punishment for a misconduct, would form a part of his record of service which would be taken into consideration whilst adjudging his suitability on the criteria of seniority-cum-merit. If on such assessment of his record of service the Appellant is not promoted, it cannot be said to be by way of punishment. It is a non-promotion on account of the Appellant not reaching a suitable standard to be promoted on the basis of the criteria. No merit in the civil appeal - dismissed. **(Ram Ashish Dixit vs. Chairman, Purvanchal Gramin Bank Ltd. and Another; 2013(3) AWC 2961 (SC)**

Specific Relief Act

S. 20 – Agreement to sell – Suit for specific performance – If execution of agreement proved by vendee by producing sufficient documentary and oral evidence and vendor failed to produce best piece of evidence to demolish claim of vendee, so vendee entitled to get relief of specific performance

The court found that judgement of the lower appellate court cannot be sustained. The finding of lower appellate court that agreement exhibit-1 is forged document on the basis of various circumstances such as purchase of stamp from Azamgarh, agreement written on one page only and period of two years for execution of sale deed mentioned in the agreement are perverse findings. It appears that lower appellate court considered totally irrelevant circumstances and did not consider material evidence on record. The lower appellate court though recorded the finding that execution of document was proved by the plaintiff by producing sufficient documentary and oral evidence. However, proceeded to examine minor discrepancies pointed out by the defendants. While considering the discrepancies pointed out the defendants lower appellate court had totally ignored the fact that defendant did not produce sale deed relied upon by them executed by defendant no.1 in favour of defendant II set. The signatures on the said sale deed undoubtedly can be the best piece of evidence to substantiate the contention of the defendant that signatures on agreement dated 18.5.1974 exhibit-1 was not his signature. The plaintiff had filed every document to establish his case whereas the best piece of evidence which could have been produced by the defendant to demolish the claim of plaintiff was not brought before the courts below. The lower appellate court did not consider the said aspect of the matter. The trial court had recorded the definite finding against the defendant for non production of sale deed and Will deed which contained natural signature of Jamuna Singh for comparison and said finding was not even touched by the lower appellate court and it proceeded totally in different direction. The trial court having categorically recorded the finding that non production of sale deed and Will deed was deliberate act of the defendants and, therefore, rightly drawn

adverse inference against them.

The defendant could have produced the said documents even before the lower appellate court, however, they did not do so. Further the defendant II set had failed to prove that they were bonafide purchaser for consideration without notice and knowledge of the agreement. There are contraindications in their statements recorded before the court below. The contention of the defendant no.1 that sale deed dated 14.4.1975 had been acted upon as possession was handed over to the defendant nos. 2 to 6 was not established from the report of the commissioner itself. The finding recorded by the trial court that alleged sale deed dated 14.4.1975 is sham as no effort was made by the defendant II set for partition of the disputed land and possession of the same. There is no document on record to establish the possession of the defendants no. 2 to 6 over the disputed land as alleged by the defendant no.1.The finding that even commissioner report did not support the contention of the defendants regarding possession of defendants nos. 2to 6 is finding recorded on the basis of material evidence on record.

This apart, the admission of defendant no.1in his oral statement recorded that he was in need of money for repayment of loan was found true. The lower appellate court had committed manifest error of law in ousting the claim of the plaintiff on the grounds discussed above. The finding arrived at are perverse. Sufficient evidence has come to the light to hold that defendant was in need of money for repayment of loan and the amount of Rs. 2500 was paid by the plaintiff. The alleged sale deed executed in favour of defendants no 2 to 6 is sham and without consideration. The adverse inference drawn by the trial court is clearly legal and justified in the facts and circumstances of the case. **(Shri Ganga Singh son of Shri Chetai Singh v. Jamuna Singh son of Shri Rang Singh; 2013 (3) ALJ 169)**

S. 20 - Hindu Minority and Guardianship Act, Section 8, - Exercise of discretion in case involving immovable property of minor – When the requirement of necessary legal requirements is found missing, the discretion ought not to have been exercised

This is one aspect which would have justified Lower Appellate Court to decline to exercise discretion under Section 20 of Act, 1963 inasmuch the property of a minor could not have been forced to be alienated by enforcing an agreement for sale entered into by mother, without there being any pleading and evidence and proof that the said agreement was entered into for certain family necessities etc. Moreover, once minor, on attaining majority, exercises his discretion to revoke the agreement, such an agreement, in my view, could not

have been enforced. It is well settled that the discretion under Section 20 of Act, 1963 though not to be exercised arbitrarily, but has to be guided by judicial principles and has to be reasonable. In a case involving immovable property of a minor, when the requirement of necessary legal requirement is found missing, the discretion ought not to have been exercised in favour of plaintiff, by decreeing the suit for specific performance. Question No. 2, therefore, is answered by holding that LAC has not considered the question whether the discretion under Section 20 of Act, 1963 should have been exercised in favour of plaintiff. (**Babu Lal vs. Nathi Lal (since deceased & substituted by legal heirs); 2013 (2) ARC 438)**

S. 20 - Discretion for specific performance of agreement – Scope - Relief of specific performance of contract is discretionary and this discretion does not mean whimsical and arbitrary discretion

The scope of Section 20 of Act, 1963 has come up for consideration before the Courts again. It cannot be doubted that relief of specific performance of contract is discretionary. However, this discretion does not mean whimsical and arbitrary discretion.

It has been held that once plaintiff seeking enforcement of contract is able to show his readiness and willingness, mere delay or laches would not justify refusal of specific performance of contract. In Ajit Prasad Jain Vs. N.K. Widhani and Ors.; AIR 1990 Delhi 42 the Court said, grant of relief of specific performance is a rule and refusal an exception on valid and cogent grounds. This Court in Mt. Gaindo Devi v. Shanti Swarup and ors.; AIR 1937 All. 161 said that jurisdiction to decree specific performance is discretionary, but it must be understood that discretion of Court is not to be arbitrarily exercised but has to be guided by judicial principles. (**Babu Lal vs. Nathi Lal (since deceased & substituted by legal heirs); 2013 (2) ARC 438)**

S. 34 – Suit for declaration as to ownership – Maintainability

Unaccepted offer of the plaintiff does not create any right or any obligation on the part of the defendant to execute the lease deed. In fact, this principle is well settled by this Court in the case of Bhagwan Das Goverdhan Das Kedia v. Girdhari Lal & Co.; AIR 1966 SC 543, wherein this Court has held that mere making of an offer does not form part of the cause of action for claiming damages for breach of contract. In the case in hand, the aforesaid principle, without recourse, is applicable in the fact situation for the reason that the plaintiff was the highest bidder and his offer was merely accepted but no communication was sent to him as required under Section 3 of the Contract Act. Therefore, no legal right accrued in favour of the plain-tiff to invoke remedy

available under Section 34 of the Specific Relief Act, seeking declaratory relief as prayed in the original suit filed by the plaintiff.

The proposal is said to have been completed when the same is accepted by the competent authority, which has not been done in the instant case. Neither the Housing Commissioner nor the Assistant Housing Commissioner accepted the proposal in writing; therefore, there is no communication of acceptance of the offer of the plaintiff. In this regard, this court in Haridwar Singh v. Begum Sumbrui; AIR 1972 SC 1242, has held that the communication of acceptance of the highest bid is necessary for concluding the contract. In view of the aforesaid factual and legal proposition of law and the highest bid offered to take the property on lease for a period of 90 years with renewal for further 20 years for construction of the cinema hall, the same was neither accepted by the competent authority nor was the same communicated. Therefore, here is no concluded contract in favour of the plaintiff in respect of the plot in question and the plaintiff cannot claim any legal right and question of enforcement of the said right as provided under Section 34 of the Specific Relief Act seeking declaratory relief by the plaintiff the same did not arise in the case in hand. The above important factual and legal aspects have not been examined in proper and constructive manner either by the trial court or by the second appellate court. Therefore, the impugned judgment, order and decree are liable to be set aside.

In view of the fact that no legal right accrued in his favour in the absence of a concluded contract which was said to have existed by mere offering of highest bid in relation to the property in question to obtain the property on lease for a period of 90 years amounting to disposal of the property of the first defendant being an authority under Article 12 of the Constitution, no right was accrued upon the bidder in relation to the property in question. Therefore, the suit itself is not maintainable and the suit filed on the basis of the alleged cause of action did not arise. Hence, the trial court could not have granted any relief by not framing the relevant and proper issue and answering the same. (**U.P. Avas Evam Vikas Parishad and Ors. vs. Om Prakash Sharma; 2013(3) ALJ 762)**

Stamp Act

S. 3 – Memorandum reducing gift in writing is not chargeable

Recently, the Apex Court in Hafeeza Bibi and others v. Shaikh Farid (Dead) by LRs. and others 2011 (2) ARC 218 : (AIR 2011 SC 1695) has dealt with gift under the Mohammedan Law and has ruled as under:-

> "In our opinion, merely because the gift is reduced to writing by a Mohammadan instead of it having been made orally, such writing does not become a formal document or instrument of gift. When a gift could

be made by Mohammadan orally, its nature and character is not changed because of it having been made by a written document."

In addition to the above, the definition of 'instrument' under Section 2(14) of the Act contemplates a document or a record creating or extinguishing rights and liabilities which means existence of a document in some form or the other. Therefore, where an oral gift is permissible and made there happens to be no document or record of rights and liabilities which could be subjected to stamp duty. Liability of payment of stamp duty arises only on the execution of an instrument. (Reference: AIR 1934 Allahabad 1052 Sukhdeo Prasad). The subsequent writing it out on a paper would not make it a gift deed as the gift stood completed in the past by making an oral declaration, its acceptance and delivery of possession. His Lordship of the Rajasthan High Court in Hanuman Prasad vs. The State of Rajasthan, AIR 1958 Raj 291ruled that a document which is not an instrument of gift but only a record of the past transaction does not require to be stamped under the Act.

In the above situation neither the gift made by a Mohammedan orally nor its reduction in writing subsequently would amount to execution of an instrument which could be subjected to payment of stamp duty. Thus, Court is of the opinion that the authorities below grossly erred in law in subjecting the above memorandum of gift dated 8.5.2002 to stamp duty. **(Mohd. Kaleem vs. State of U.P. and Ors.; 2013(3) ALJ 652)**

Succession Act

S. 63 – Will - Mental capacity of testator to execute is Question of fact and cannot be gone into at appellate stage

The submissions made with regard to the mental capacity of Sumitra Devi at the time of execution of the Will cannot also be looked into at this stage because the mental capacity of the testator to execute a Will being a question of fact, we would like to accept the findings arrived at by the court below and all allegations with regard to soundness of mind of Sumitra Devi at the time of execution of the Will or allegation with regard to undue influence of the present appellant with whom Sumitra Devi was residing at the time of her death cannot be looked into by this Court as they are the issues pertaining to fact. We, therefore, do not accept the submissions made with regard to validity of the Will executed by Sumitra Devi. **(Narinder Singh Rao v. AVM Mahinder Singh Rao and Ors.; AIR 2013 SC 1470)**

Suits Valuation Act

S. 8 – Stamp Act S. 2 - West Bengal Court Fee Act, S. 11 - Court Fee -

Market value –Market value of suit property assessed for suit valuation cannot be followed for registration

The Suits Valuation Act and Stamp Act operate in different fields. Market value for the purpose of Indian Stamp Act, 1899 is not the same as suit valuation for the purpose of jurisdiction and Court fee. The procedures are different for assessment of the stamp duty and for registration of an instrument. The reference to the expression 'on the basis of any court decision after hearing the State Government' appearing in Rule 3of the West Bengal Stamp (Prevention of Undervaluation of Instruments) Rules, 2001, clearly shows that the suit valuation cannot be automatically followed for the purpose of registration. In situation where the registering authority has any difference of opinion as to assessment of the stamp duty on the instrument presented for registration on the orders of the Court, it will only be appropriate that Registrar makes a back reference to the court concerned and the court undertakes a fresh exercise after affording an opportunity of hearing to the registering authority with regard to the proper value of the instrument for registration. **(Adl. Distt. Sub Registrar, Siliguri v. Pawan Kumar Verma and Ors.; AIR 2013 SC 1886)**

Terrorist and Disruptive Activities (Prevention) Act

S. 15 - Confession by accused - Admissibility against co-accused - Requirement is that author of confession and person against whom it is to be used must be co-accused

"There is no room for any doubt, that Section 15 of the TADA expressly makes such confessional statement made by a person admissible not only against the person who has made it, but also as against others implicated therein, subject to the condition, that the person who has made the confession, and the others implicated (the co-accused abettor or conspirator) are being "tried in the same case together".

Therefore, it is necessary for us first to specifically highlight, that the admissibility of the aforesaid confessional statements was determined not with reference to the Evidence Act, but under Section 15 of the TADA. What the High Court, as also the respondents before us have overlooked is, that the proviso under sub-Section (1) of Section 15 of the TADA expressly postulates, that a confessional statement made by an accused as against himself, as also a co-accused (abettor or conspirator) is admissible, provided that, the co-accused (abettor or conspirator) is being tried in the same case together with the accused who had made the confession. The proviso under sub- Section (1) of Section 15 of the TADA is founded on the same principle, which we have referred to hereinabove, while analyzing Section 30 of the Evidence Act. The link for

determining admissibility is not case specific. A confessional statement may be admissible in any number of cases or none at all. To determine admissibility the test is, that the author of the confessional statement must be an accused, in the case (in which the confessional statement is admissible). And in case it is to be used against persons other than the author of the confessional statement, then besides the author, such other persons must all be co-accused in the case. It is therefore apparent, that the confessional statement made by an accused was held to be relevant in State of Gujarat Vs. Mohammed Atik (supra) under Section 15 of the TADA, on the fulfillment of the condition, that the same was recorded in consonance with the provisions of the said Act, as also, the satisfaction of the ingredients contained in the proviso under sub-Section (1) of Section 15 of the TADA, namely, the person who had made the confession, and the others implicated were facing a joint trial. **(State of Maharashtra v. Kamal Ahmed Mohammed Vakil Ansari and Ors.; 2013 Cri. L.J. 2069)**

Transfer of Property Act

S. 54 – Auction Sale - Title in property when posses to purchaser - On payment of full purchase price, ownership in property sold in public auction would stand transferred

The legal position with regard to transfer of title in respect of the property forming part of the compensation pool put to public auction under R. 90 of the 1955 Rules may be summarized thus: on approval of the highest bid by the Competent Authority, a binding contract for sale of property to the auction-purchaser comes into existence. Once the payment of the full purchase price is made, title in the property would pass to an auction-purchaser. In other words, on the payment of the full purchase price, the ownership in the property sold in public auction would stand transferred but the transfer formally becomes complete on issuance of the certificate of sale. If in the sale certificate, any particular date is mentioned as provided in the pro forma appended to Rule 90, such date mentioned in the sale certificate may be presumed to be the date on which the purchase has become effective but crucial date for transfer of ownership in the property in favour of auction- purchaser is the date when full purchase price has been paid by the auction purchaser. **(Saraswati Devi (D) By L.R. v. Delhi Development Authority and Ors.; AIR 2013 SC 1717)**

S. 111 – Lease – Holding over of demised premise – Holding over of dismissed premises by lessee after expiry of lease is totally unfair, arbitrary and as trespassers

By careful reading of the said clause of the lease deed having regard to the undisputed fact that the demised premises was mortgaged in favour of the mortgagee

with possession as the appellant had executed mortgage deed in his favour on 12.01.1962, he continued to be a mortgagee till the property was redeemed in his favour on 15.4.1983. It is also the case of the first respondent that it had sent a notice for renewal of the lease deed to the appellant, but not to the mortgagee as he had stepped into the shoes of the owner of the mortgaged property till the same was redeemed to the appellant on 15.04.1983. In view of the above undisputed fact to avail the benefit of Clause 3(d) of the lease deed, the first respondent should have sent the notice to the mortgagee of the property seeking renewal of lease of the demised property as provided under the above clause. Therefore, the first respondent Corporation has failed to exercise its right to get the renewal of lease in respect of the demised premises. This aspect of the matter has been overlooked by both the trial court as well as the High Court though the first appellate court considered this aspect of the matter in its judgment. Therefore, the determination of tenancy of the demised property by the appellant under Section 106 of the T.P. Act is perfectly legal and valid. Further, it has been held that the first respondent after termination of tenancy continued in possession of the property as a tenant of holding-over. Thus, in law, holding over of the suit schedule property by the first respondent after the termination of lease is that of a trespasser not a tenant and therefore, it becomes liable to pay mesne profits by way of damages to the appellants. **(Ram Bharosey Lal Gupta (D) by LRs., & Ors. Vs. M/s. Hindustan Petroleum Corpn. Ltd., & Anr.; 2013(3) ALJ 757)**

U.P. Agricultural Credit Act

S. 11-A – Recovery of agricultural debt – Power of Bank to issue recovery certificate U/s. 11-A and subsequent proceedings

The height of irresponsibility and illegality on the part of respondents may further be demonstrated from the fact that Section 11- A confers jurisdiction upon Bank to issue a recovery certificate only when the agriculturist fails to pay the amount due together with interest on the due date. After giving-benefit of Scheme, 2008, and recalculating dues, the Bank found balance of Rs. 47059/-, only as on 01.04.2008. There is nothing on record to show, when and by which date, the petitioner was required to deposit aforesaid sum of Rs. 47059/- and what was the due date for that purpose. Even thereafter adding amount of interest fell due w.e.f. 01.04.2008 and onwards, there is nothing on record to show that before issuing recovery certificate dated 23.01.2009, any demand was raised to petitioner to pay the said outstanding dues so as to constitute a "due date". In fact after determining outstanding dues of Rs. 47059/- pursuant to Scheme, 2008, though a certificate was issued by Bank to petitioner on 18.09.2008 (Annexure-I to the writ petition) but neither before that nor after that petitioner was ever required to deposit the aforesaid sum of Rs. 47059/- by a particular date. Hence, there was no occasion to infer that petitioner-agriculturist has failed to deposit

outstanding dues by due date entitling the Bank to issue certificate of recovery under Section 11-A of Act, 1973. In the circumstances, since no right or authority accrued to the Bank to issue a recovery certificate under Section 11-A of Act, 1973, not only the recovery certificate but all subsequent proceedings are a nullity in the eyes of law. (**Jai Singh vs. State of U.P. Thru. Collector, Barabanki, and ors.; 2013(3) ALJ 695)**

U.P. Consolidation of Holdings Act

S. 19(e) – Nature of – Provisions contained under sub-section (e) of s. 19 of Act is directory in nature - Not mandatory

In view of the various decisions of the Apex Court, it is clear that while holding a particular statute as mandatory or directory, it would be necessary to look into the intention of the Legislature and the language used in the Statute. Here the section itself mentions that as far as possible compact area be allotted at the original holding, meaning thereby, it do not put any embargo that in case the allotment is not made at the original holding, it will render the allotment illegal. Therefore, Court is of the considered opinion that the provisions contained under sub-section (e) of section 19 of the Act is directory in nature not mandatory. (**Manmohan vs. Deputy Director of Consolidation/ Addl. Distt. Magistrate and others; 2013 (119) RD 326)**

Explanation (2) of section 48 of Act explains interlocutory order

Here in this case, the delay has been condoned, meaning thereby, the other side had right to pursue the appeal. Had the delay not been condoned, the right of pursuing appeal would have never arisen, as unless the delay is condoned, there can be no appeal. Explanation (2) of section 48 of the Act explains the interlocutory order, here the effect of allowing the application filed under section 5 of the Limitation Act would mean attaching the finality to the proceeding, therefore, such order will not fall in the ambit of interlocutory order and the revision was maintainable. The learned DDC has erred in dismissing the revision as not maintainable. **(Bodda vs. Deputy Director of Consolidation, Banda and others; 2013 (119) RD 180)**

In absence of any compelling reason to the contrary, Courts can exercise the power vested in them to avoid abatement of the suit by exempting the plaintiff from necessity of substituting the legal representative of the deceased-defendant

It would appear from the above that the Legislature incorporated the provision of Order XXII, Rule 4 (4) with a specific view to expedite the process of substitution of the L.Rs. of non- contesting defendants. In the absence any

compelling reason to the contray the Courts below could and indeed ought to have exercised the power vested in them to avoid abatement of the suit by exempting the plaintiff from the necessity of substituting the legal representative of the deceased-defendant-Virendra Kumar. We have no manner of doubt that the view taken by the First Appellate Court and the High Court that, failure to bring the legal representatives of deceased Virendra Kumar did not result in abatement of the suit can be more appropriately sustained on the strength of the power of exemption that was abundantly available to the Courts below under Order XXII, Rule 4 (4) of the CPC.

It is important to note that the legal representatives of Virendra Kumar, deceased, have already been brought on record in place of Devendra Kumar, their uncle (Virendra Kumar's brother) who died issueless. They can, therefore, represent the estates left behind by both Virendra Kumar and Devendra Kumar. Grant of exemption in that view is only a matter of maintaining procedural rectitude more than any substantial adjudication of the matter in controversy. This Court has at any rate adopted a liberal approach in setting aside abatement of suits. (**Mata Prasad Mathur (D) By L.Rs. vs. Jwala Prasad and others; 2013 (119) RD 406)**

U.P. Cooperative Societies Act

S.70 – Whether suit against co-operative society is barred U/s. 70 of above Act – Held, "No"

The dispute, as enumerated in the plaint, does not disclose dispute relating to registration of a Co-operative Society or its bye-laws, nor it relates to the supersession or suspension of Committee of Management nor against any order or award made under U.P. Co-operative Societies Act, nor it is a dispute as enumerated in Section 70 of the U.P. Co-operative Societies Act.

As mentioned earlier, the suit is for permanent injunction by which the plaintiff has prayed that a decree for permanent injunction be granted and defendant Nos. 2 to 5 be restrained from interfering in peaceful possession and enjoyment of plaintiff over the disputed plot or from entering into the premises to the said plot, in any manner whatsoever. Ouster of jurisdiction is not to be easily inferred. Bar of jurisdiction is to be established by cogent reasoning's. In a civil suit, plaintiff is the 'dominus litus', and the plaint can only be rejected through a meaningful-not formal-reading of the plaint. If it is manifestly vexatious and meritless, in the sense of not disclosing a cause of action or clear right to sue, the Trial Court should exercise his power under Order VII, Rule 11 C.P.C. (**B.P. Singh and Ors. vs. Ramesh Chandra Rai and Anr.; 2013(3) ALJ 462)**

U.P. Muslim Wakfs Act

S. 49-A – Wakf property – Effect of non-registration – It cannot cease its nature merely on ground that it was not registered under above Act, applicable at relevant time

The registration or no registration of a waqf under the provisions of relevant statute applicable from time to time would not affect nature of waqf once created since property in waqf once created shall always remain waqf property and it cannot cease its nature merely on the ground that it was not registered under the waqf Act applicable at the relevant time. Further the property of a waqf cannot be sold out by a Mutwalli inasmuch as no such power is vested in him. **(Haji Ehsan Elahi v. Additional District Judge, Kanpur Nagar and Ors.; 2013(3) ALJ 20)**

U.P. Urban Buildings (Regulation of Letting Rent & Eviction) Act

S. 12 – Declaration of vacancy – Consideration

It is thus evident that in respect to disputed premises initial tenancy of Sri Ram Chandra Mishra is not disputed. It appears that the house in question was sold by erstwhile landlords, Sri Krishan Kumar Srivastava and his brothers by executing three sale deeds on 10.08.1990. These documents were executed in respect to separate portion of building in dispute to Smt. Usha Rani wife of petitioner's younger brother Sri Sunil Kumar Mishra, second to Sri Rajeev Prakash and third in favour of Smt. Neeta Awasthi. The dispute relates to portion of accommodation sold to Sri Rajeev Prakash and Smt. Usha Rani Mishra wife of petitioner's younger brother.

The RCEO came into action not on an application filed by subsequent purchaser-land-lords but on an application filed by one Sri P.S. Chauhan seeking allotment of disputed accommodation vide application dated 26.09.1990. Thereupon the RCEO sought report of Rent Control Inspector who submitted it on 07.01.1991 stating that petitioner and his brother. Sri Sunil Kumar Mishra was found in possession of disputed property. They claim to be in possession for the last 25 years. The petitioner also informed that Sri Ram Chandra Mishra, erstwhile tenant, shifted to Karnal (Haryana) along with his entire hag and baggage and thereafter his brother Sri Ram Ashrey Mishra and his family continued to stay in disputed accommodation and pay rent to the erstwhile landlord.

It is not in dispute that Sri Ram Ashrey Mishra also died in 1965 and petitioner being his son, acquired tenancy rights, which may be along with other legal heirs, namely, petitioner's brother Sri Sunil Kumar Mishra who was also

residing thereat and all of them resided in their own rights.

This by itself would not give any quietus to the matter for the reason that in case possession and continued tenancy rights of petitioner and respondent No. 4 are held to be valid since 1964/1965, after the death of Sri Ram Ashrey Mishra, the Court still has to examine consequences of purchase of residential accommodation by wife of respondent No. 4 in 1990.

Section 12(1)(c) clearly talks of acquiring of a residence by a tenant or his member of family elsewhere, meaning thereby it does not talk of the same residential accommodation which is already under his tenancy. It thus would not apply to the disputed accommodation.

Next comes Section 12(3). It also talks of acquisition of a residential building by the tenant or any member of his family or otherwise in a vacant state or if he gets vacated residential building in the same city, municipality etc. Here also even if the Court assumes that acquisition of a property or residential building by wife of one of joint-tenant is construed as if the tenant or his family member has acquired a residential building, it cannot be said that the said building is in a vacant state for the reason that petitioner and his family members are already residing therein. The acquisition of a building would have to relate to any other building and not the same building in which the tenant is already residing. It would be wholly improbable to argue that a building is available in vacant state to be occupied by the tenant and his family members and simultaneously they have to vacate the same also treating therein a deemed vacancy. Both are mutually destructive and cannot co-exist. Sections 12(1)(c) and 12(3) contemplates a situation where the tenant and his family members are capable to shift themselves in a vacant residential building after having acquired the same and yet have not done so and only such a situation would result in a deemed vacancy in the tenanted building, but where the building is the same which is tenanted as well as it has been claimed to have been acquired, none of the aforesaid two provisions would apply for the reason that the very purpose for which legislature has enacted the said provision would stand frustrated and cannot be given effect to. An interpretation which defeats the very purpose of legislative intent cannot be conceived. A statute has to be read so as to give effect to it. A simple reading which otherwise does not create any ambiguity, cannot be misread in such a manner so as to create disastrous and inequitable results. Thus in view of Court, Section 12, in the present case, will have no application. That being so, the purchase of part of tenanted accommodation by petitioner's brother's wife will make no impact on the petitioner's status and his right to hold possession of disputed accommodation and enjoying his tenancy rights. **(Sheel Kumar Misra v. Additional City Magistrate, 5th/Rent Control Eviction**

Officer, Kanpur Nagar & Ors.; 2013 (3) ALJ 248)

S. 16 – Allotment of accommodation – Liability – Ex-parte orders declaring vacancy and allotment passed without looking entire record available before RCEO would not be proper

Rule 8(2) of Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 (hereinafter referred to as "Rules, 1972") provides that as far as possible, inspection shall be made in presence of landlord and tenant or any other occupant. No attempt appears to have been made by RCI or RCEO to convey any information to landlord or to alleged erstwhile tenants to find out current state of affairs or requesting them to present on the date when RCI proposed to make inspection. It is true that Rule 8(2) of Rules, 1972 talks of in terms of "so far possible" but in the present case there does not appear to have been any attempt whatsoever on the part of RCI or RCEO to make it possible at all. A complete blind inspection was made by RCI since premises was locked and yet he did not make any attempt to find out as to who has locked the premises. This fact that premises has been vacated by M/s Lal Chand Shadi Ram told by respondent no.3, as stated in the report, but it does not appear that RCI on his own part made any attempt to verify this information.

On one hand there is nothing to show that RCEO ensured service of notice upon landlord at any point of time, on the other hand this fact was already brought to his notice through affidavit filed by respondent no.3 that accommodation in dispute is still under occupation of M/s Lal Chand Shadi Ram yet he did not make any effort thereupon to issue notice to M/s Lal Chand Shadi Ram i.e. petitioner no.2 so as to give opportunity to it and also have correct and full facts before him.

It is really surprising and shocking as to what prompted RCEO not to address itself and apply mind on this aspect of the matter and thereby issue notice to the petitioner before passing the impugned order. The Court is also at a loss to understand and appreciate urgency of passing an ex parte order without looking entire record available before respondent no.1 i.e. RCEO. The only thing which appears to be reason behind such kind of proceeding is something other than bona fide and unlawful nexus between respondents No.1 and 3. RCEO cannot presume vacancy of building unless provisions relating to deemed vacancy are applicable or premises has actually been vacated by tenant or premises has been released in favour of landlord with order of ejectment of concerned tenant. None of these things have been pointed out in impugned orders by RCEO while rejecting petitioner's application for recall of his earlier orders. The respondents no.1 and 3, in the present case, have clearly acted wholly illegally inasmuch as

respondent no.3 has induced the entire proceedings making false allegations that accommodation has been vacated by petitioner no.2 long back though in a subsequent affidavit before RCEO dated 22.6.1992 he himself has stated in para 5 that petitioner no.2 is still continue in possession of accommodation in question and therefore, it is evident that respondent no.3 has got proceedings initiated on totally false statements and misrepresentation. Respondent no.1 is guilty of passing wholly illegal orders, not only by not strictly complying with requirement of statute including procedure prescribed in Rules 8(2) and 9 but also acting wholly illegally by not adhering to procedure of law and ignoring relevant materials placed on record by petitioners. That is how they have dragged petitioner in a wholly unwarranted litigation. The Apex Court in the case of Salem Advocate Bar Association Vs. Union of India, AIR 2005 SC 3353 has observed that while deciding a case, Court may impose cost and when situation so justify, exemplary cost should be imposed so that frivolous litigation should be discouraged.

In view of the facts and circumstances, in Court's view, this writ petition deserves to be allowed with exemplary cost against respondents no.1 and 3. **(Shadi Ram and Anr. v. Rent Control and Eviction Officer, Muzaffarnagar and Ors.; 2013 (3) ALJ 262)**

S. 16(3) – Enforcement of allotment order – Legal heirs have rights to obtained possession of allotted accommodation after the death of the original allottee, if he was unable to obtained possession

Now coming to the question that original allottee if not able to obtain possession, whether his legal heirs can enforce allotment order seeking possession of allotted accommodation. This aspect has been considered by this Court in Writ Petition No.23970 of 2002 (reported in 2012 (94) All LR 630) (Shahwaiz Warsi & Ors. v. Smt. SamrunNissan & Ors.). Relying on Apex Court's decision in Achal Misra v. Rama Shanker Singh & Ors., 2005 (1) ARC 877, this Court has held that an allottee is treated to be a tenant from the date of allotment and on his death, his legal heirs are entitled to be treated as 'tenant' . This Court in paras 15 and 16 of the judgment in Shahwaiz Warsi & Ors. (supra) has held as under:

> "15. Coming to the next question that after death of original allottee his legal heirs cannot be substituted and no right survive to them, I find that Rule 25 of Rules, 1972 entitle legal heirs of any person to get substituted and to pursue the matter further after death of person who has initiated the proceedings. It is no doubt true that allotment was made in favour of Mohd. Naseer on 15.05.1989. The allotment results in deeming the

allottee a tenant of allotted premises from the date the order of allotment was passed. That being so, if the original allottee, who is deemed to be tenant of building allotted to him, died, his legal heirs who normally resided with him can be substituted and pursue the matter. Such right is not dependant on the fact, whether allottee could actually get possession of allotted property or not. If such an interpretation is accepted, a wrongful occupant or unauthorised occupant may successfully deprive an otherwise valid allottee or his legal heirs from the possession of an accommodation declared vacant by District Magistrate under Section 16 (1) of Act, l972. He would be able to deprive such allottee or his legal heirs possession of property in one or the other matter and sometimes taking recourse to an ex parte interim order of a Court of law, in a proceeding initiated by such occupant himself, as has happened in the present case, where by virtue of interim order passed in revision the allottee could not get possession, thereafter pursuant to interim order passed in earlier writ petition, possession could not be given to original allottee, and now under the interim order passed on 11.06.2002 in the present writ petition, said possession has been denied.

16. Acceptance of argument of learned counsel for the petitioners would also amount to confer benefit upon such petitioners of a wrong on their part as also on account of an wrong on their part as also on account of an ex parte interim order passed by this Court. It is well settled that act of Court shall prejudice none. Actus curiae neminem gravabit is a well recognized maxim/principle of law having applied in such circumstances, time and against."

Court informed that against the aforesaid decision a S.L.P. (Civil) No. 28419 of 2012 (Shahwaiz Warsi & ors. v. Samrun Nissa and anr), has been filed but no order passed there.

Be that as it may, he is well settled that mere filing S.L.P. would not deprive a judgment of this Court from the status of a binding precedent and therefore so long as judgment dated 13.8.2012 in case of Shahwaiz Warsi & ors. is not reversed, this Court has no reason not to follow law laid down therein**. (M/s Kanhaiya Mal Kasturi Lal v. Hari Prasad; 2013 (2) ALJ 542)**

S. 20 – Scope – S.20 of above Act only places certain restrictions upon right of landlord to evict tenant

In case court has held that learned counsel for landlords respondent that under Section 20(2) of the Act suit for eviction may be filed on the ground of default but suit for recovery of rent alone cannot be filed is not acceptable. Suit

for recovery of rent can be filed under common law like all other suits. Section 20 of the Act only places certain restrictions upon the right of the landlord to evict the tenant. It does not provide remedy to seek eviction to the landlord. Such remedy is already there under common law. Even if Rent Control Act does not apply landlord can very well seek eviction of the tenant under common law. Section 20 merely curtails/restricts the right. **(Roman Catholic Diocese of Agra Limited, through its Constituted Attorney Rev, Agra vs. Rajendra Singh S/o. Late Mahavir Singh; 2013(3) ALJ 741)**

S. 20 – Eviction – Suit for recovery of arrears of rent could be decreed only with effect from date of sale and not from pair to date of sale

In the sale deed which according to learned counsel for the petitioner was filed before the trial court and copy of which has been supplied by him, unpaid rent if any was not transferred. Accordingly petitioner could not claim rent prior to the date of purchase. In view of this it was not at all necessary to decide as to whether until the sale of the property by the previous owner rent had or had not been paid by the tenant-petitioner to the previous landlord. Both the courts below committed patent error of law by decreeing the suit for recovery of rent from 15.4.1995. Suit for recovery of rent could be decreed only with effect from the date of sale. (**Smt. Bashiran vs. Additional District Judge Court No. 1, District, Jhansi and Ors.; 2013(3) ALJ 754)**

S. 20(2)(f) – Eviction of tenant – Denial of title of landlord – In case of denial of "original title" ground for eviction U/s. 20(2)(f) shall always attracted, but denial pertain "derivate title" by tenant would not constitute ground for eviction of tenant, it depends on facts and circumstances of particular case

The kind of title which ex facie admits some suspicion or doubt over the clear title or right of possession of the owner of property in absolute terms, only then there may be an occasion to extend the benefit of such reasonable doubt to the tenant by not permitting his eviction if he denies the title of landlord but not in case of every such denial in the name of "derivative title". All the kinds of titles recognised in law, as discussed above, are form of "derivative title" though some are also part of original title but it cannot be said that in every case of "derivative title" the tenant cannot incur any liability of eviction under Section 20(2)(f) of Act, 1972. For example in case of a good title, absolute title, perfect title, a tenant cannot escape his liability of eviction in case he denies landlord's title of one of the kind, as above. In case of imperfect title, defective title, adverse title, paper title, presumptive title etc., in Court's view, there may be a scope where the tenant, not being sure about clear title of landlord, if deny the same, may not suffer the liability of eviction on aforesaid grounds.

In case of "original title", ground for eviction under Section 20(2)(f) shall always be attracted and there is no scope of defence otherwise but the "derivative title" has different shades and colours, therefore, certain limited kinds of "derivative title", if disputed or denied, may not result in giving a ground to landlord to seek evidence of tenant but not at all. It all depends on the facts and circumstances of a particular case. **(Sukh Lal (deceased by LR's) and Ors. v. Ashok Kumar Raghuwansi; 2013(3) ALJ 82)**

S. 20(4) – Striking off defence – Validity

The learned trial Court has specifically mentioned that the defendant-revisionist did not make any payment in compliance of the provision contained in Section 20 (4) of U. P. Act No.13 of 1972. An agreement to sell must necessarily be registered and reduced to writing; such heavy transaction cannot take place orally.

It was correctly argued by learned counsel for the plaintiff-respondent that his client (respondent) is residing at Kolkata and he has let out his apartment to the defendant-revisionist, who is not paying any rent and is continuing his occupation in illegal manner and is not depositing even a single pie before the learned Court. Not only this, the defendant-revisionist has manufactured the false story, which is nothing but sort of a fraud.

The Courts of law should be careful enough to see of such diabolical plans of the mischievous litigants should not encourage frivolous and cantankerous litigations causing law's delay and bringing bad name to the judicial system. The dispute being raised by the defendant-revisionist has been raised for the sole purpose of remaining in possession of the disputed accommodation somehow or the other.

The learned trial Court has rightly struck of the defence of the defendant-revisionist. This revision demonstrates how a determined and dishonest litigant can interminably drag on litigation to frustrate the results of a judicial determination in favour of the other side. The history of this litigation shows nothing but cussedness and lack of bona fides on the part of the defendant-revisionist. This is distressing and deserves to be deprecated by imposition of exemplary costs'- of Rs.20,000 on the revisionist. This is not a mere revision, but an attempt of the tenant to protect the litigation by raising frivolous and fictitious contention. (**Vipul Bhatia vs. Prem Kumar S/o. Late C.P. Singh; 2013(3) ALJ 409)**

S. 20(4) – Protection from eviction – When available

It also held that once the date of "first hearing" is determined and

thereafter the case is adjourned, the date of first hearing of the suit would not change on every adjournment of the suit for final hearing. Thus the effective date of first hearing of the suit should be, when the Court proposed to apply its mind. Therefore it would be the date fixed earliest for final disposal/hearing and not adjourned for reasons attributable to the defendant-tenant. In the present case when I apply the aforesaid dictum, I find that deposit made on 4.8.1988 satisfy requirement of deposit made on the first date of hearing of the suit. In fact it appears that dispute raised by petitioner was regarding rate of rent and his entire claim of non compliance of Section 20(4) was founded on the ground that monthly rent was Rs.240/- per month while the Courts below have determined monthly rent at Rs.40/- per month and this is a finding of fact in respect where to nothing has been shown perverse or contrary to record. **(Smt. S. Ravis v. Judge Small Cause Courts, Allahabad, and Ors.; 2013 (3) ALJ 12)**

Urban Land (Ceiling and Regulation) Act

S. 10(3) – Acquisition and vesting excess vacant land does not take in defacto possession

The purpose of the Act is to impose ceiling on vacant land, for the acquisition of land in excess of the ceiling limit thereby to regulate construction on such lands, to prevent concentration of urban lands in hands of few persons, so as to bring about equitable distribution. For achieving that object various procedures have to be followed for acquisition and vesting. Looking at those words in the above setting and the provisions to follow such as sub-sections (5) and (6) of Section 10, the words 'acquired' and 'vested' have different meaning and content. Under Section 10(3) what is vested is de jure possession not de facto possession. The word "vesting" in S. 10(3) takes in every interest in the property including de jure possession and, not de facto but it is always open to a person to voluntarily surrender and deliver possession, under S. 10(3) of the Act. **(State of U.P. v. Hari Ram; 2013 (3) ALJ 157 (SC)**

Words and Phrases

"Accident" includes any untoward, unexpected event

The deceased being a professional heavy vehicle driver when undertakes the job of such driving as his regular avocation it can be safely held that such constant driving of heavy vehicle, being dependant solely upon his physical and mental resources & endurance, there was every reason to assume that the vocation of driving was a material contributory factor if not the sole cause that accelerated his unexpected death to occur which in all fairness should be held to be an untoward mishap in his life span. Such an 'untoward mishap' can therefore

be reasonably described as an 'accident' as having been caused solely attributable to the nature of employment indulged in with his employer which was in the course of such employer's trade or business.

Having regard to the evidence placed on record there was no scope to hold that the deceased was simply travelling in the vehicle and that there was no obligation for him to undertake the work of driving. On the other hand, the evidence as stood established proved the fact that the deceased was actually driving the truck and that in the course of such driving activity as he felt uncomfortable he safely parked the vehicle on the side of the road near a hotel soon where after he breathed his last. In such circumstances, we are convinced that the conclusion of the Commissioner of Workmen's Compensation that the death of the deceased was in an accident arising out of and in the course of his employment with the second respondent was perfectly justified and the conclusion to the contrary reached by the learned Judge of the High Court in the order impugned in this appeal deserves to be set aside. The appeal stands allowed. The order impugned is set aside. The order of the Commissioner for Workmen's Compensation shall stand restored and there shall be no order as to costs. **(Mst. Param Pal Singh through Father v. M/s. National Insurance Co. and anr.; AIR 2013 SC 974)**

"Cause of Action"- Meaning of

The expression 'cause of action' is more commonly and easily understood in the realm of civil laws. The expression is not defined anywhere in the Code of Civil Procedure to which it generally bears relevance but has been universally understood to mean the bundle of facts which the plaintiff must prove in order to entitle him to succeed in the suit. (**Mrs Leathers vs. S. Palaniappan; (2013) 2 SCC (Cri.) 458)**

Word "Destitute" – Meaning of

The expression 'destitute' has not been defined under the Act, 1956 or under the Code of Criminal Procedure, 1973, or Code of Civil Procedure, 1908. The dictionary meaning is "without resources, in want of necessaries." A person can be held destitute when no one is to support him and is found wandering without any settled place of abode and without visible means of subsistence. In the instant case, no factual foundation has ever been laid by the appellant widow before the lower court regarding her being destitute. In such a fact situation, the issue of appellant being destitute does not require consideration. Thus order rejecting the claim of the appellant of having acquired an absolute title in suit property would be proper. **(Shivdev Kaur (D) By L.R. and Ors. v. R.S. Grewal; AIR 2013 SC 1620)**

Word "encumbrance" – Means interest in land that subsist in person other than owner

The word "encumbrance", according to its ordinary significance, means any right existing in another to use the land or whereby the use by the owner is restricted. The word "encumbrance" imports within itself every right or interest in the land, which may subsist in a person other than the owner; it is anything which places the burden of a legal liability upon property. The word "encumbrance" in law has to be understood in the context of the provision under consideration but ordinarily its ambit and scope is wide. Seen thus, it is difficult to see why a binding contract entered into between an auction-purchaser and the government on approval of the highest bid relating to sale of property, which is part of compensation pool under Section 14 of the 1954 Act followed by provisional possession to the auction-purchaser, should not come within the purview of the word "encumbrance". **(Saraswati Devi (D) By L.R. v. Delhi Devt. Authority and Ors.; AIR 2013 SC 1717)**

"Vest" – word "vest" takes colour from contest in which it used and related provisions

Vest/vested, therefore, may or may not include "transfer of possession" the meaning of which depends on the context in which it has been placed and the interpretation of various other related provisions. **(State of U.P. v. Hari Ram; 2013 (3) ALJ 157 (SC)**

Word "Vest" – Meaning of

Vest/vested, therefore, may or may not include "transfer of possession" the meaning of which depends on the context in which it has been placed and the interpretation of various other related provisions. **(State of U.P. v. Hari ram; AIR 2013 SC 1793)**

"Void" - Means thing that is not-est – And requiring no order setting it aside

The word, "void" has been defined as: ineffectual; nugatory; having no legal force or legal effect; unable in law to support the purpose for which it was intended. (Vide: Black's Law Dictionary). It also means merely a nullity, invalid; null; worthless; sipher; useless and ineffectual and may be ignored even in collateral proceeding as if it never were.

The word "void" is used in the sense of incapable of ratification. A thing which is found non-est and not required to be set aside though, it is sometimes convenient to do so. There would be no need for an order to quash it. It would be automatically null and void without more ado. The continuation orders would be nullities too, because no one can continue a nullity. (Vide: Behram Khurshid

Pesikaka v. State of Bombay; AIR 1955 SC 123; Pankaj Mehra & Anr. v. State of Maharashtra & Ors.; AIR 2000 SC 1953; Dhurandhar Prasad Singh v. Jai Prakash University & Ors., AIR 2001 SC 2552; and Government of Orissa v. Ashok Transport Agency & Ors., (2002) 9 SCC 28). **(The Rajasthan State Industrial Development and Investment Corporation v. Subhash Sindhi Co-operative Housing Society Jaipur & Ors.; AIR 2013 SC 1226)**

Workmen's Compensation Act

S. 3 – Compensation - Deceased a truck driver of 45 years of age, felt giddy - Died in route from Delhi to Jharkhand - Died in accident in course of employment - There was causal connection to death of deceased - Such an untoward mishap can be reasonably described as an 'accident' - Commissioner has rightly awarded compensation and held that it was accident arising out of and in course of his employment

The deceased being a professional heavy vehicle driver when undertakes the job of such driving as his regular avocation it can be safely held that such constant driving of heavy vehicle, being dependant solely upon his physical and mental resources & endurance, there was every reason to assume that the vocation of driving was material contributory factor if not the sole cause that accelerated his unexpected death to occur which in all fairness should be held to be an untoward mishap in his life span. Such an 'untoward mishap' can therefore be reasonably described as an 'accident' as having been caused solely attributable to the nature of employment indulged in with his employer which was in the course of such employer's trade or business.

The conclusion of the Commissioner of Workmen's Compensation that the death of the deceased was in a accident arising out of and in the course of his employment with the second respondent was perfectly justified and the conclusion to the contrary reached by the learned Judge of the High Court in the order impugned in this appeal deserves to be set aside. **(Param Pal Singh Vs. National Insurance Co. Ltd. and another; (2013 (137) FLR 1) (SC).**

S. 3 – Compensation - Deceased Kunj Bihari was driver and was employee of respondent No. 2 - Anti-social elements intended to loot the tanker and when the driver resisted, he was shot dead - It is not a case of murder but a clear case of accident - Injury resulting in death had been caused by accident - Arising out of and in course of his employment - Therefore the claimants are entitled for compensation under the Workmen's Compensation Act - Commissioner has rightly awarded compensation and insure, the appellant was directed to pay the amount of compensation - Word "accident" discussed

The Workmen's Compensation act is a beneficial Act to compensate the

loss suffered by the injured or by the dependants on account of injuries or death, as the case may be. Therefore, a wider meaning should be given to the word "accident" used in section 3 of the Act. The word "accident" is not defined under the Act. In the absence of any definition it would be appropriate to consider the definition given in various dictionaries.

In the present case injury resulting the death had been caused by accident arising out of and in the course of his employment and, therefore, the claimants are entitled for compensation under the aforesaid Act. The Commissioner has rightly held so. **(New India Assurance Co. Ltd. Vs. Smt. Sumitra Devi and another; (2013 (137) FLR 55) (Alld HC).**

S. 4-A(3) - Interest and Penalty - Employer has accepted his liability for payment of compensation to heirs of deceased immediately - Hence he has to pay interest from the date after 30 days from the date of accident - Payment of interest under section 4-A(3) is mandatory - Compensation awarded - There was no unreasonable delay in payment of compensation awarded - Hence the order of Commissioner waiving the penalty does not require any interference - Interest shall be calculated @ 12% p.a.

The compensation becomes payable within one month from the date it falls due and that interest also becomes payable from that date. The employer becomes liable to pay compensation as soon as personal injury is caused to the workman arising out in the course of his employment and that it was the duty of the appellant to pay compensation at the rate provided by section 4 of the Act which he failed to do so.

The employer has accepted his liability for payment of compensation, but, did not pay the compensation to the heirs of the deceased immediately. Providing any other kind of help does not mitigate the compensation payable under the Act. The Commissioner Workmen's Compensation could not waive this payment of interest as it was not in his discretion to do so. Payment of interest under section 4-A(3) is a mandatory provision. The Supreme Court in *Siby George* (supra), has held that "Clause (a) of section 4-A (3) makes the levy of interest with no option", meaning thereby that it is mandatory to levy interest. The Commissioner, Workmen's Compensation committed an error in waiving levy of interest on compensation that was awarded. These are sufficient and valid reasons in the given circumstances to exempt levy of penalty. The Court is of the opinion, that the order of the Commissioner waiving the penalty does not require any interference. **(Bhuri Devi and another v. State of UP and others; (2013 (137) FLR 648) (Alld HC).**

S. 6 and 23 – Review – Workmen's Compensation Commissioner had no power

of review - Specific power of review is under section 6 of Act - By necessary implication all other types of review are prohibited - Though certain powers exercisable by Civil Court under C.P.C. by section 23, conferred upon Commissioner - But power of review of Civil Court not mentioned in that section - However power of review would have been available to Commissioner, in case some fraud is shown to have been played by insurance company - But absolutely no fraud committed by insurance company in the case

The Court also agrees with the view taken by the Workmen's Compensation Commissioner that he had no power of review. Under section 6 of Workmen's Compensation Act, 1923, a specific power of review which is quite limited regarding half monthly payment has been provided. Accordingly, by necessary implication all other types of review are prohibited. Moreover, by virtue of section 23 of the Act certain powers exercisable by Civil Court under C.P.C. have been conferred upon the Commissioner while hearing the matters. The powers are taking evidence on oath enforcing the attendance of witnesses and compelling the production of documents and material objects. The power of review of Civil Court has not been mentioned in the said section. In this regard reference may be made to AIR 1935 All 408 and 1998 Labour and Industrial Cases 34, wherein it has been held that under the Act there is no general power of review available to the Commissioner.

Workmen's Compensation Act, 1923 - Section 30(2) - Constitution of India, 1950 - Article 226 – Appeal - Writ petition filed within 60 days of period of limitation prescribed for appeal - Hence this writ petition could be treated to be an appeal

In case writ petition had been filed within 60 days the period prescribed for appeal under section 30(2) of Workmen's Compensation Act, then this writ petition could be treated to be an appeal and would have been allowed. **(Smt. Urmila and another Vs. Workmen's Compensation Commissioner, Ghazaiabad and others; (2013 (137) FLR 66)(Alld HC).**

S. 30 - Limitation Act, 1963 - Section 5 – Appeal - Against ex-parte award - Filed with delay of 117 days and barred by time - Have failed to show sufficient cause for condonation of inordinate delay in filing appeal - Appellants filed restoration application under Order 9, Rule 13 CPC - Even then they could have filed appeal - But the appellants have not so far challenged the rejection of restoration application - Since application for condonation of delay in filing appeal is rejected - Appeal also stands dismissed as barred by limitation

The appellants filed restoration application under Order Ix, Rule 12 C.P.C. on 6.10.2012 and even then they could have preferred the appeal challenging the impugned award before this Court. It is also pertinent to note

that the appellants have not so far challenged the order dated 19.1.2013 passed by Workmen's Compensation Commissioner whereby their application under Order IX, Rule 13 CPC was rejected. It means that they have acquiesced with the aforesaid order.

Eventhough provisions of section 5 of the Limitation Act make no distinction between State and citizens, it appears that they have taken the Courts in their hand for condoning the delay whenever they file petition as in some cases the Apex Court and the High Courts have granted them liberty in the peculiar facts and circumstances of that case by condoning delay in filing the petitions. This attitude of the State Government is to be changed.

The officers of the appellants utterly failed to take a proper decision within the period of limitation for the reasons best known to them to file statutory appeal against the award, as such we find that the the appellants have failed to shoe sufficient cause for condonation of inordinate delay in filing the instant appeal. **(Executive Engineer, Electrical Distribution Division, Hapur and another Vs. Smt. Sukhpal Kaur; (2013 (137) FLR 212) (All HC).**

Ss. 30, 3 and 4 – Compensation - Awarded to respondent-employee - And employer was directed to pay as sum of Rs. 2,13,494/- to respondent injured as compensation together with interest @ 12% - Employee met with accident, while on duty - In which, he lost total loss of vision - Resulting 100% loss of earning capacity - Occurrence of accident is admitted by employer/appellant - The respondent succeeded in proving his age and his income on account of his wages at the time of such accident in the instant case - No infirmity found in computation of compensation payable by the employer in the impugned award - No substantial question of law involved - Appeal therefore, stands dismissed - Award passed by learned Commissioner affirmed

The Court have no hesitation to hold that the learned Commissioner was justified in coming to the conclusion that in course of employment, the workman received injury on 18th March, 2003 and as a result of such injury, he lost his total vision in his both eyes and thereby he lost his total earning capacity.

The respondent succeeded in proving his age and his income on account of his wages at the time of such accident in the instant case.

The Court also do not find any infirmity in the computation of compensation payable by the employer to the workman in the impugned award. Court also find that no substantial question of law is involved in this appeal. The appeal thus deserved no merit for consideration. The appeal thus stands dismissed on contest. **(Naba Kumar Roy Vs. Swapan Kumar Dhara; (2013 (137) FLR 816) (Cal HC).**

Workmen's Compensation - Award Passed by Workmen's Compensation Commissioner/Dy. Labour Commissioner - Allowed the claim, awarding compensation to be paid by Appellant Insurance Company - As a matter of fact the deceased was found to be employee of owner of vehicle involved and the relationship of employee and employer between him and both the deceased were admitted - Hence the Tribunal has not wrongly passed the award - Hence appeal has no merit and dismissed - Workmen's Compensation Act, 1923

In this view of the matter the relationship of employer and employee having been admitted by the owner, we do not find any substance in the argument of learned Counsel for the appellant that the Tribunal has wrongly passed the award.

Admitted facts do not require any proof and in the facts and circumstances of the case the appeal has no merit and is hereby dismissed. **(National Insurance Co. Ltd. Vs. Badrul Hasan Alias Haji Bundu and others; (2013 (137) FLR 774) (All HC).**

Workmen's Compensation - Award of compensation to petitioner passed by Commissioner, workmen's Compensation - Writ petition filed seeking a writ of mandamus commanding District Magistrate to comply with - However since the amount has now been recovered and has been sent to the commissioner, Workmen's Compensation - Petitioner can apply before the Commissioner for release of amount - And since there has been a dereliction of duty in recovering the amount a cost of Rs. 20,000/- each shall be paid by Collector and Executive Engineer - Constitution of India, 1950-Article 226

Since the amount has now been recovered and has been sent to the Commissioner Workmen's Compensation, it would be open to the petitioner to apply before the Commissioner Workmen's Compensation for release of amount. Since there has been a dereliction of duty in recovering the amount, a cost of Rs. 20,000/- each shall be paid by the Collector as well as by the Executive Engineer. **(Smt. Madarsi Devi Vs. State of U.P. and others, (2013 (137) FLR 1022) (All HC).**

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Statutory Provisions:

The Uttar Pradesh State Law Commission (Repeal) Act, 2012
(U.P. Act No. 70F 2013)
[As passed by the Uttar Pradesh Legislature]
An Act to repeal the Uttar Pradesh State Law Commission Act, 2010

It is hereby enacted in the Sixty-third Year of the Republic of India as follows:-

Prefatory Note-Statement of Objects and Reasons.-A State Law Commission had been constituted in Uttar Pradesh by the executive Order No. 166n9-Vi-I-08-09-08, dated January 28, 2008 for identifying matters for the reform of State Laws. The Uttar Pradesh State Law Commission Act, 2010 (V.P. Act No. 10 of 2010) was enacted to provide for the constitution of the State Law Commission in the State for the said purpose. The said Act was enforced retrospectively with effect from January 28, 2008 to bring the said law commission within the ambit of the said Act. After tile enactment of the said Act it was felt that the objectives for which the Law Commission was constituted were not being fulfilled by the said Law Commission. In such situation the continuance of the State Law Commission had become unnecessary. It was, therefore, decided to repeal the said Act in order to abolish the State Law Commission.

Since the State Legislature was not in session and immediate legislative action was necessary, the Uttar Pradesh State Law Commission (Repeal) Ordinance, 2012 (U.P. Ordinance No. 7 of 2012) was promulgated by the Governor on September 11, 2012.

This Bill is introduced to replace the aforesaid Ordinance.

1. Short title and commencement.-(1) This Act may be called the Uttar Pradesh State Law Commission (Repeal) Act, 2012.

2. It shall be deemed to have come into force on September 11, 2012.

2. Repeal of U.P. Act No. 10 of 2010.- The Uttar Pradesh State Law Commission Act, 2010 is hereby repealed.

3. Repeal of U.P. Ordinance No. 7 of 2012.- The Uttar Pradesh State Law Commission (Repeal) Ordinance, 2012 is hereby repealed.

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The
Uttar Pradesh Municipalities (Amendment) Act, 2012
[U.P. Act No. 9 of 2013]
(As passed by the Uttar Pradesh Legislature)
An Act further to amend the Uttar Pradesh Municipalities Act, 1916

It is hereby enacted in the Sixty-third Year of the Republic of India as follows:-

Prefatory Note-Statement of Objects and Reasons.- In Section 25-A of the Uttar Pradesh Municipal Corporation Act, 1959 (U.P. Act No. 2 of 1959) it has been provided with respect to bar to Legislators becoming or continuing as Mayor, Deputy Mayor or Corporator that a person shall be disqualified for being elected at, and for being a Mayor, Deputy Mayor or Corporator if he is a Member of Parliament or of the State Legislature and if a person after his election as Mayor, Deputy Mayor or Corporator is subsequently elected or nominated as a Member of Parliament or of the State Legislature he shall on the date of first publication in the Gazette of India or of the Uttar Pradesh of the declaration of his election or his nomination, within a period of fourteen days from such notification intimate by notice in writing signed by him and delivered to any person authorized by the Government in this behalf, submit his option, in which office he wishes to serve and any choice so intimated shall be conclusive, failing which he shall upon expiry of the said period to hold the office of Mayor, Deputy Mayor or Corporator and a casual vacancy shall thereupon occur in the office of the Mayor, Deputy Mayor or Corporator as the case may be. The said provision with respect to the President and Members did not exist in the Uttar Pradesh Municipalities Act, 1916 (V.P. Act No. 2 of 1916). With a view to making uniform provision in both the said Acts it was decided to amend the Uttar Pradesh Municipalities Act, 1916 to make similar provision therein with respect to the President and Member.

Since the State Legislature was not in session and immediate legislative action was necessary to implement the aforesaid decision the Uttar Pradesh Municipalities (Amendment) Ordinance, 2012 (U.P. Ordinance No. 10 of 2012) was promulgated by the Governor on November 8, 2012. This Bill is introduced to replace the aforesaid Ordinance.

1. Short title and commencement.-(1) This Act may be called the Uttar Pradesh Municipalities (Amendment) Act, 2012.

(2) It shall be deemed to have come into force on November 8, 2012.

2. Insertion of new Section 13·DD of U.P. Act No. 2 of 1916.-After Section

13-D of the Uttar Pradesh Municipalities Act, 1916 hereinafter referred to as the principal Act, the following section shall be *inserted,* namely-

"I3-DD. *Bar of legislators becoming or continuing as President or Member*.- Notwithstanding anything to the contrary contained in any other provision of this Act,-

(a) a person shall be disqualified for being elected as, and for being a President or Member, if he is a Member of Parliament or of the State Legislature;

(b) if a person, after his election as President or Member, is subsequently elected or nominated to any of the offices referred to in clause *(a)* he shall on the date of first publication in the Gazette of India or of the Uttar Pradesh of the declaration of his election for nomination, within a period of fourteen days from such notification, intimate by notice in writing signed by him and delivered to any person authorized by the Government in this behalf, submit his option, in which office he wishes to serve and any choice so intimated shall be conclusive, failing which he shall upon the expiry of the said period, cease to hold the office of the President or Member and casual vacancy shall thereupon occur in the office of the President or Member as the case may be."

3. Repeal and Savings.-(l) The Uttar Pradesh Municipalities (Amendment) Ordinance, 2012 (U.P. Ordinance No. 10 of 2012) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the provisions of the principal Act as amended by the Ordinance referred to in sub-section (1) shall be deemed to have been done or taken under the corresponding provisions of the principal Act as amended by this Act as if the provisions of this Act were in force at all material times.

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The Uttar Pradesh Co-operative Societies (Amendment) Act, 2013
[U.P. Act No. 13 of 2013]
(As passed by the Uttar Pradesh Legislature)
An Act further to amend the Uttar Pradesh Co-operative Societies Act, 1965

It is hereby enacted in the Sixty-fourth Year of the Republic of India as follows:-

Prefatory Note-Statement of Objects and Reasons.-With a view to making the provisions in accordance with the 97th Amendment 2011 in the Constitution of India, it has become necessary to amend the Uttar Pradesh Co-operative Societies Act, 1965 to provide for ensuring the democratic feature, reservation norms in the Committee of Management of the Co-operative Societies, bringing about uniformity in the term of Committee of Management, making a centralized system for the election of the Committee of Management, office bearers and delegates of the Co-operative Societies, completing the proceedings of suspension and supersession of the Committee of Management of the Co-operative Societies in the stipulated time frame and making mandatory provision for audit of accounts of Co-operative Societies. It has therefore been decided to amend the Uttar Pradesh Co-operative Societies Act, 1965 (U.P. Act no. 11 of 1966) for the said purposes.

The Uttar Pradesh Co-operative Societies (Amendment) Bill, 2013 is introduced accordingly.

1. Short title and commencement.-(1) This Act may be called the Uttar Pradesh Co-operative Societies (Amendment) Act, 2013.

(2) It shall be deemed to have come into force on February 15, 2013.

2. Amendment of Section 2 of U.P. Act No. 11 of 1966.- In Section 2 of the Uttar Pradesh Co-operative Societies Act, 1965 hereinafter referred to as the principal Act, after clause *(J)* the following clause shall be *inserted*, namely-

"(jj) "Election Commission" means the Uttar Pradesh State Co-operative Societies Election Commission constituted by the State Government;"

3. Amendment of Section 29.-ln Section 29 of the principal Act, for sub-sections (2), (3), (4), (5), (6) and (7) the following sub-sections shall be *substituted*, namely-

"(2)(a) The term of every Committee of Management shall be five years and the term of elected members of the Committee of Management shall be eo-terminus with the term of such Committee.

(b) The provisions of clause *(a)* shall apply also to a Committee of

Management in existence on the date of the commencement of the Uttar Pradesh Co-operative Societies (Amendment) Act, 2013 and to the elected members of such committee.

(3) Election to reconstitute the Committee of Management of every Co-operative Society shall be completed in the prescribed manner under the superintendence, control and direction of the Election Commission at least fifteen days before the expiry of the term of the Committee of Management and the members so elected shall replace the Committee of Management whose term expires under sub-section (2):

Provided that where the Election Commission is satisfied that the circumstances exist which render it difficult for it to hold the election on the date fixed, it may postpone the election and all proceedings with reference to the election shall commence afresh in all respects.

(4) It shall be the duty of the Secretary or the Managing Director of the co-**o**perative society as the case may be, to send to the Election Commission four months before the expiry of the term of the Committee of Management, a requisition for conducting the election and to furnish all such information as may be required by the election commission within such period as may be fixed by it.

(5) A co-operative society may have as many members in its Committee of Management as may be provided in its bye-laws but an Apex Society may have its Committee of Management subject to a maximum of seventeen members, a central society may have its Committee of Management subject to a maximum of fifteen members and every other co-operative society may have its Committee of Management subject to a maximum of thirteen members. Any other committee or sub-committee of the society shall be smaller than its Committee of Management and in no case such committee or sub-committee shall consist of more than seven members:

Provided that in the Committee of Management of every co-operative society four seats shall be reserved of which one shall be for the person belonging to the Scheduled Castes or the Scheduled Tribes, one shall be a person belonging to the Other Backward Classes of Citizens and two shall be for the women.

(6) Notwithstanding anything to the contrary contained in any other provision of this Act, the Committee of Management of every Co-operative Society shall co-opt at least two professional persons having special knowledge or experience in the field of accounting, law, banking, management, agriculture or rural economy as may be stipulated by the State

Government. It is not necessary that a co-opted member shall be a member of the General Body of the Co-operative Society:

Provided that the number of such eo-opted members shall not exceed twon addition to the number of members specified in sub-section (5).

Provided further that such a eo-opted member shall not have the right to vote in any election or in any no confidence motion moved in the Co-operative Society in their capacity as such member or to be eligible to be elected as office bearers of the Committee of Management.

(7) The Committee of Management of every co-operative society may fill a casual vacancy on the Committee of Management by nomination out of the same class of members in respect of which the casual vacancy has arisen, if the term of the office of the Committee of Management is less than half of its original term."

4. Amendment of Section 35.-ln Section 35 of the principal Act *(a)* for sub-section (1) the following sub-section shall be *substituted,* namely-

"(I) Where in the opinion of the Registrar the Committee of Management of any Co-operative Society persistently makes default or is negligent in the performance of the duties imposed on it by this Act or the rules or the bye-laws of the society or commits any act which is prejudicial to the interest of he society or its members, has failed to conduct the election in accordance with the provisions of this Act before the expiry of the term of the Committee of Management or is otherwise not functioning properly, the Registrar after affording the Committee of Management a reasonable opportunity of being heard and obtaining the opinion of the General Body of the society in a general meeting called for the purpose in the manner prescribed may, by order in writing, supersede the Committee of Management:

Provided that where under the prescribed circumstances it is not feasible to convene a general meeting of the General Body of the society, the Registrar may dispense with the requirement of obtaining the opinion of the General Body of the society:

Provided further that in the case of Central Co-operative Bank or the Uttar Pradesh Co-operative bank, the suspension or supersession of the Committee of Management shall not be made by the Registrar unless the Reserve Bank of India has been consulted:

Provided also that the Committee of Management of the Primary Agriculture Co-operative Credit Society may be superseded by the

Registrar only on any of the following grounds-

(i) If a society incurs losses for three consecutive years, or
(ii) If serious financial irregularities or fraud have been committed,
(iii) If there are judicial directives to this effect or there is perpetual lack of the quorum:

Provided also that the Committee of Management of any such co-operative society shall not be superseded or kept under uspension by the Registrar, where there is no Government shareholding or loan or financial assistance or any guarantee by the Government."

(b) In sub-section (2) after the existing proviso the following provisos shall be *inserted*, namely-

"Provided further that the proceeding under sub-section (1) shall be completed within one year with respect to a society carrying on the business of banking and within six months with respect to a society carrying on business other than banking and if it is not completed within stipulated period, the proceeding initiated under sub-section (1) shall be deemed to have dropped and the Committee of Management, if under suspension, shall stand reinstated."

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LEGAL QUIZ:

Q.1 Whether a suit for cancellation of sale deed will abate if consolidation proceeding starts?

Ans. Civil suit for cancellation of voidable sale deed is not to abate u/s 5 of C.H. Act See-

(1) Gorakh Nath vs. Smt. H.N. Singh; 1973 R.D. 423 SC
(2) Ram Nath v. Smt. Munna; 1976 R.D. 220 All F.B.
(3) Brijendra Singh v. IIIrd ADJ; 2005(1999) R.D. 16 All
(4) Hawaldar Singh v. Aditya Singh; AIR 1978 All 266

Suit for cancellation of void sale deed is to abate u/s 5 of C.H. Act See-

(1) Gorakh Nath vs. Smt. H.N. Singh; 1973 R.D. 423 SC
(2) Bhurey Lal v. District Judge, Badaun; 1997 (88) R.D. 149 All
(3) Sri Niwas v. Sarwan; 1965 R.D. 310 (All)

Q.2 Is there any provision in which Sessions Judge can permit an under-trial to file nomination in Panchayat Election?

Ans. There is no such provision in CrPC kindly see followings in this reragrd-

(1) Shekhar Tiwari v. State of U.P.; AIR 2009 (NOC) 2863 (All- DB)

(2) Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav; (2005) 3SCC 307 (Three Judge Bench)

(3) K. Anandan Nambiar v. Chief Secretary, Government of Madras; AIR 1966 SC 657

Q.3 *क्या भारतीय उत्तराधिकार अधिनियम के अन्तर्गत प्रोबेट प्रार्थना पत्र अपर जिला जजों द्वारा या (उत्तर प्रदेश) में केवल जिला जज को ही, प्रोबेट प्रार्थना पर पर विचार करने एवं प्रोबेट देने का अधिकार है?*

Ans. S. 2 (bb) of the Indian Succession Act, 1925 says, "the District Judge means the Judge of Principal Civil Court of original jurisdiction"

S. 8 Additional Judges:

(1) When business pending before any District Judge requires the aid of Additional Judges for its speedy disposal, State Govt. may, having consulted High Court, appoint such Additional Judges as may be requisite

(2) Additional Judges so appointed shall discharge any of the functions of a District Judge, which the District Judge may assign to them, and in the discharge of those functions they shall exercise the same power as the District Judge.

Full Bench of five Judges of Calcutta High Court in Rup Keshar Lal v, Jaijaj Bebi; AIR 1916 Cal 561, after considering S. 8(2) of Bengal Civil Court Act, 1887 held that it is open to the District Judge to assign, to an additional District Judge a petition for grant of letter of administration.

Allahabad High Court also in Chander Kumar Jain v. Anand Kumar Jain; 1999 (4) AWC 2785, held that "the Additional District Judge is competent to dispose of the matter transferred to it, regarding issue of Probate neither the definition of District Judge as contained in the Indian Succession Act nor any other provision inhibits the Additional District Judge from exercising the powers of District Judge.

So, keeping in view the above provision of Indian Succession Act and Bengal, Agra & Assam Civil Courts Act, 1887 an Additional District Judge is competent enough to decide the matter of probate transferred to him by the District Judge. Please also See-

(1) Sagar Chaudhrary & Others v. Nabin Chaudhary & others; AIR 1970 Assam 111
(2) Iftikharuddin v. Aisha bibi; AIR 1956 Bhopal 69

Q.4 *क्या धारा-437-ए द0प्र0सं0 की अनुपालन किया जाना आवश्यक है? यदि अभियुक्त नये जमानती, जैसा कि धारा- 437क में उपबन्धित है, देने से इन्कार कर दे तो न्यायालय के पास क्या विकल्प हैं।*

Ans. In S. 437 (A) of Code of Criminal Procedure, 1973 the word used is "shall". This depicts the mandatory character of the provision so far as the 1st part of the query is concerned the compliance of S. 437(A) of Code of Criminal Procedure Code is mandatory.

As far as the 2nd part of this query is concerned the Code of Criminal Procedure, 1973 is silent on this point. However, the 154th Report of Law Commission of India, in pursuance of which S. 437(A) Code of Criminal Procedure was enacted and which also contains the Aims and Objectives of incorporating this section. Please see Report 154th of Law Commission.

Q.5 Can bail order be passed without Probation Officer's report? (S.13 (b), Rule 13(e) of J.J. Rules, 2007)

Ans. S. 13(b) imposes a duty on police who has arrested a juvenile to inform his parent or guardian and Probation Officer and Rule 13(1)(e) relates to the notification of next date of hearing and obtaining social investigation report form Probation Officer. Please see Sec. 12 granting bail to juvenile.

Q.6 Where Juvenile is held guilty, can judgment of conviction be Passed, in absence of DPO Report? (S. 15(2), Rule 15(2)

Ans. S. 15(2) and Rule 15(2) clearly provide that Board shall obtain the social investigation report either through a Probation Officer or a recognized voluntary organization or otherwise, and shall take into consideration the findings of such report before passing an order. If no report is given by P.O., the report of voluntary organization may be taken into account while passing order after holding the juvenile guilty.

Q.7 S. 14 Proviso R/w R. 13(6) mandates that every inquiry shall be completed within 4 months and in exceptional cases 6 months and R. 13(7) mandates that delay beyond 6 months shall lead to "Termination of Proceedings," except in serious offences.

(a) The Word "serious offence" is not defined in J.J. Act nor in Rules, 2007. Only a running reference is made in R. 11(7). Can the definition of R. 11(7) be fully applied?
(b) Since "termination" of proceeding is not provided in S. 14 of Act only R. 13(7) permits it, can R. 13(7) shall prevail over S. 14 of Act?
(c) What will be the effect of "Termination" whether acquittal or discharge?
(d) Can S. 258, Cr.PC be applied r/w R.13(2)(e)?

Ans. (a) The Word "serious offences" has been explained u/r. 13(7)
(b) Rules can not prevail over the Provisions of Act.
(c) The words 'acquittal' or Discharge' has not been used in the Act
(d) All the procedure of trial in summon cases, shall be applied.

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