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

Quarterly Digest

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

July – September, 2014

Volume: XXXVI **Issue No.: 3**

FROM THE CHAIRMAN'S DESK

Some recent events, developments and views expressed by the Supreme Court are worth noticing.

Justice V.R. Krishna Iyer who retired as Supreme Court Judge in the year 1980 died at the age of about hundred years on 04.12.2014. No other judge remained relevant, active and in discussion for such a long time after his retirement as Justice Krishna Iyer. Fali S. Nariman in his autobiography "Before Memory Fades" has compared Justice V.R. Krishna Iyer and Justice Subba Rao with the pointers in the northern sky, the two stars in seven stars Polar Bear which always point towards North Star.

Justice Iyer sensitized the Supreme Court to the interests and problems of weaker sections and litigants. It is difficult to say whether he had better command over Law or on English language. Probably his extra ordinary command over extra ordinary

style of English language overawed, stunned and silenced others otherwise, he being solitary crusader against the traditional approach at that time would have easily been browbeaten and sidelined. His linguistic elitism took materialistic elitism head-on. He may be adored, admired, criticized or condemned but he can never be ignored. H.M. Seervai, the Constitutional expert in his Constitution of India wrote that the Supreme Court moved towards its finest hour when on 24.06.1975, a day before declaration of Emergency Justice Iyer refused to grant blanket stay order in the appeal filed by Indira Gandhi the then Prime Minister against the judgment of Allahabad High Court declaring her election as invalid. Several write-ups and articles in different newspapers on Justice Krishna Iyer have been published, after his death. In 'The Hindu', dated 06.12.2014, Anand Parthasarthy titled his lordship as 'The Renaissance Man of the Bench'. The views expressed by him in his judgments were

sometimes quite extreme on the left side. However, his admirers say that in order to nullify the extreme right swing it was essential. Extremism of any kind is not good for any system, particularly law, its interpretation and application. Without balance in approach the Court becomes soulless and a gallery where extreme ideas hang in golden frames. "Life of law is not logic but experience" (O.W. Holmes). However, soul and spirit of law is balance. Balanced laws and their balanced interpretations are more likely to command respect and be followed.

Justice Krishna Iyer wrote 113 books (As per the list mentioned by the publisher in the book “To work is a pleasure”) mostly containing articles written by him from time to time, on current affairs. He also wrote his autobiography wandering in Many Worlds'. Some of the books are Centenary Miscellany at Law, 98 Not Out, Random Reflection, Social Justice - Sunset or Dawn, Supreme Court Shall Not Disown Social Justice. Books

have been written on Justice Krishna Iyer also. He is the only Indian judge on whom three doctoral thesis have been written by the scholars in three different universities. Justice Krishna Iyer regularly contributed to the Hindu Newspaper. The long age for which Justice Krishna Iyer lived (about a century) is important and encouraging for old people. However, what is more important is that he remained mentally active and involved until the end. According to the doctors attending him during his last days, even though several of his vital parts and systems had become almost non-functional but his mind remained quite alert. Only few months before his death he wrote "Centenary Miscellany at Law" which was published by Universal Law Publishing House, New Delhi with the logo "celebrating 100th year of a living legend". His last book published by the same publisher on 15.11.2014 three weeks before his death, is titled as 'To Work is a Pleasure'

The Government of India has decided to repeal Section 309 IPC prescribing punishment for attempt to suicide.

Recently (on 8.12.2014) the Supreme Court gave a judgment as reported in the Times of India, Lucknow Edition 09.12.2014 observing that false cruelty cases were ruining marriages. It held "for no fault the in-laws especially old parents of the husband are taken to jail the moment a false complaint is filed against them by a woman under Section 498A (IPC), by roping in in-laws without a reason and settling a score with the husband. The false and exaggerated 498A complaints are causing havoc to marriages." The Supreme Court also observed that such false cases were increasingly making husbands adamant not to take back their wives. In *Malathi Ravi v. B.V. Ravi, AIR 2014 SC 2881* it has been held that filing cases under Section 498A IPC and Dowry Prohibition Act against in-laws and husband and their consequent arrest is mental cruelty, warranting divorce. In *Srinivas v. K. Sunita, Civil Appeal No. 1213 of 2006* decided on 19.11.2014 (reported in Times of India dated 24.11.2014) the Supreme Court has again

emphasized that in view of well reasoned judgment in *K. Srinivas v. D.A.Deepa, 2013(5) SCC 226, "It is now beyond cavil that if a false criminal complaint is preferred by either spouse it would invariably and indubitably constitute matrimonial cruelty, such as would entitle the other spouse to claim a divorce".* In *Arnesh Kumar v. State of Bihar, 2014 (8) SCC 273* the Supreme Court noticed the rampant misuse of Section 498A I.P.C. and Dowry Prohibition Act and issued general directions to the police *inter alia* not to arrest the accused automatically. Para 4 of the judgment and first sentence of para 5 are quoted below:-

Para 4:

> *"There is a phenomenal increase in matrimonial disputes in recent years. The institution of marriage is greatly revered in this country. Section 498-A IPC was introduced with avowed object to combat the menace of harassment to a woman at the hands of her husband and his relatives. The fact that Section 498-A IPC is a cognizable and non-bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives. The simplest way to harass is to get the husband and his relatives arrested under this provision. In a quite number of cases, bedridden grandfathers and*

grandmothers of the husbands, their sisters living abroad for decades are arrested. "Crime in India 2012 Statistics" published by the National Crime Records Bureau, Ministry of Home Affairs shows arrest of 1,97,762 persons all over India during the year 2012 for the offence under Section 498-A IPC, 9.4% more than the year 2011. Nearly a quarter of those arrested under this provision in 2012 were women i.e. 47,951 .which depicts that mothers and sisters of the husbands were liberally included in their arrest net. Its share is 6% out of the total persons arrested under the crimes committed under the Penal Code. It accounts for 4.5% of total crimes committed under different sections of the Penal Code, more than any other crimes excepting theft and hurt. The rate of charge-sheeting in cases under Section 498-A IPC is as high as 93.6%, while the conviction rate is only 15%, which is lowest across all heads. As many as 3,72,706 cases are pending trial of which on current estimate, nearly 3,17,000 are likely to result in acquittal."

Para-5

"Arrest brings humialiaon, curtails freedom and casts scars forever."

In *Dashrath Rupsingh Rathod v. State of Maharashtra, AIR 2014 SC 3519,* the Supreme Court has held that cognizance of offence under Section 138

Negotiable Instruments act can be taken only at the place where the cheque is dishonoured by the bank on which it was drawn and not where the bank in which it was deposited is situate. The Supreme Court itself has noticed in para 20 that its judgment will affect lakhs of pending cases. In para 57 it has been recorded that number of pending cases under Section 138 of N.I.Act as of October 2008 was estimated to be more than 38 lakhs by Law Commission of India in its 213th report.

An alarming incident regarding district judiciary of Delhi has been reported in the Newspaper (24.11.2014) to the effect that 300 Delhi Lower Court Judges are under probe in laptop scam. The allegation is that they were sanctioned Rs. 1.1 lakh each for upgrading computer infrastructure. However, instead they purchased TVs, home theater system etc. The elevation of 5 District Judges to the High Court has also been held-up because one of them is among 300 odd judges under probe for the alleged irregularity in the purchase of computers.

In the Times of India, Lucknow edition dated 30.11.2014 there is a news item with the heading SC Judges bat for succinct judgments. It is mentioned

that the Supreme Court judges after nearly forty thousand judgments since 1950, many of which run into hundreds of pages had informally come together to accept a hitherto un-admitted yet serious problem- verbose verdicts often create confusion both for law and litigants. It is further reported that the Hon'ble Judges of the Supreme Court feel that adding pages to the judgment is neither desirable nor it serve any purpose and the time has come for 'lean to the point judgment delivered in quick time'. One of the main reasons for delay in disposal is lengthy judgments. Unless judges seriously consider to shorten their judgments by pruning unnecessary repetitive material, problem of pendency cannot be solved. In the said report it has also been mentioned that for the advocates particularly senior advocates, time limit for arguments must be fixed.

Ms. Jayalalithaa, sitting Chief Minister of Tamil Nadu was convicted and sentenced for four years by a District Court on corruption charges in the last week of September, 2014 and taken to jail straight from the Court. AIADMK the party headed by her elected another Chief Minister. Public demonstrations in favour of Ms. Jayalalithaa were held at several places

in the state, some of which were quite violent. She was granted bail by the Supreme Court.

On 19.11.2014, Ram Pal self-proclaimed god-man was arrested from his fortified Satlok Ashram near Barwala in Haryana after evacuation of over 15000 followers who were forcibly kept inside the Ashram. The tense and violent standoff between his supporters and police was continuing for several days. He was even having his private commandos. He was required to be arrested by Punjab & Haryana High Court. He was avoiding arrest for years hence the High Court issued stern directions for immediate arrest. The situation when the police went to arrest him was quite unique and in spite of deployment of heavy police the arrest was getting delayed. The Home Ministry of Government of India had to ask the Haryana Government to ensure early arrest. During the whole episode six persons died. Fresh charges including that of sedition have been leveled against him.

Few months before, a woman, Additional District Judge of Madhya Pradesh had resigned complaining of sexual harassment by a High Court Judge. The Chief Justice of Madhya Pradesh High Court set up an

inquiry committee to probe the incident which was challenged by the Ex-Additional District Judge before Supreme Court. The Supreme Court on 18.12.2014 accepted her contentions and scrapped the inquiry committee holding that inquiry by judges of the same High Court was not appropriate and only Chief Justice of India could appoint inquiry committee of Judges of other High Courts. The judge concerned has been divested of all his administrative and supervisory functions.

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159. **Union of India vs. TATA Chemicals Ltd., (2014) 6 SCC 335**

160. **Vinod Kumar v. State of Kerala; (2014) 2 SCC (Cri) 663**

161. **Vishwa Lochan Madan v. Union of India and others, (2014)7 SCC 707**

162. **Yogendre Kumar Shrivastava @ Jogendra And Another v. Rajendre Singh And Another, 2014 (2) ARC 505**

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Andhra Pradesh Prevention of Dangerous Activities Act

S. 3—Preventive detention—Validity—Order directing detention of detenu for a period of twelve months at a stretch—Is invalid and illegal

A reading of the provisions of S.3 of the Act makes it clear that the State Government, District Magistrate or Commissioner of Police are the authorities, conferred with the power to pass orders of detention. The only difference is that the order of detention passed by the Government would remain in force for a period of three months in the first instance, whereas similar orders passed by the District Magistrate or the Commissioner of Police shall remain in force for an initial period of 12 days. Section 13 of the Act mandates that the maximum period of detention under the Act is 12 months. Proviso to sub-section (2) of S. 3 is very clear in its purport, as to the operation of the order of detention from time to time. An order of detention would in the first instance be in force for a period of three months. The Government alone is conferred with the power to extend the period, beyond three months. Such extension, however, cannot be for a period, not exceeding three months, at a time. Thus, when the provisions of S. 3 of the Act clearly mandated the authorities to pass an order of detention at one time for a period not exceeding three months only, the Government order in the present case, directing detention of the husband of the appellant for a period of twelve months at a stretch is clear violation of the prescribed manner and contrary to the provisions of law. The Government cannot direct or extend the period of detention up to the maximum period of twelve months, in one stroke, ignoring the cautious legislative intention that even the order of extension of detention must not exceed three months at any one time. One should not ignore the underlying principles while passing orders of detention or extending the detention period from time to time. **[Cherukuri Mani w/o Narendra Chowdari vs. Chief Secretary, Government of Andhra Pradesh, 2014 Cri.L.J. 2748 (SC)]**

Appeal & Revision

Appeal and Revision - Scope and distinction of – It being settled position of law that right of appeal held a substantive right while no substantive right in making application for revision under Section 115 CPC, however, Section 115 CPC being essentially a source of power for High Court or Court concerned to supervise the sub-ordinate Court as observed

In Shiv Shakti Co-op. Housing Society, Nagpur v. M/s Swaraj Developers and others, reported in AIR 2003 SC 2434, it was held:-

"It is fairly a well settled position in law that the right of appeal is a

substantive right. But there is no such substantive right in making an application under S. 115. Section 115 is essentially a source of power for the High Court to supervise the subordinate courts. It does not in any way confer a right on a litigant aggrieved by any order of the subordinate court to approach the High Court for relief. The scope for making a revision under S. 115 is not linked with a substantive right."

[Chandra Kala v. Sri Riyasat Nawab & Others; 2014 (2) ARC 519]

Arbitration and Conciliation Act

Ss. 8, 5, 11, 16 and 45 - Reference to arbitration- Appointment of arbitrator - Simultaneous arbitral and criminal proceedings- Permissibility and warrantedness

In this case courts has observed that it is mandatory for courts to refer disputes to arbitration, if agreement between parties provides for reference to arbitration. Thus, registering of criminal case as to execution of said contract is not an absolute bar to refer disputes to arbitration- Further held, there is no inherent risk of prejudice to any party in permitting arbitration to proceed simultaneously with criminal proceedings since findings recorded by Arbitral Tribunal are not binding in criminal proceedings. In a eventuality where ultimately award is rendered by Arbitral Tribunal, and criminal proceedings result in conviction rendering underlying contract void as provided for in the contract, necessary plea can be taken on the basis of such conviction to resist execution/enforcement of award. If matter is not referred to arbitration and criminal proceedings result in acquittal leaving no ground for claiming that underlying contract is void or voidable, it would result in undesirable delay in arbitration. Further held, allegations of impropriety in grant of contract in favour of petitioner and alleged charging of exorbitant rates can be duly considered by Arbitral Tribunal. Also, in instant case, ground that contract had been rendered void in view of initiation of criminal proceedings was never taken till filing of present petition before Chief Justice. Thus, balance of convenience is tilted more in favour of permitting arbitration proceedings to continue – Contract Act, 1872- Ss. 2(j) and 11 to 27 – Void and voidable contracts – Distinguished – Practice and procedure – Civil and Criminal proceedings – Evidence Act, 1872, Ss. 40 to 43. [**Swiss Timing Ltd. vs. Commonwealth Games 2010 Organising Committee, (2014) 6 SCC 677]**

Arms Act

S. 27(3) – Imposition of punishment – S. 27(3) declared ultra vires the Constitution and void by Supreme Court – Thus imposing punishment of death sentence against accused for offences under S. 27(3) would liable to be set aside

In the light of the said legal position, we have no hesitation in setting aside that part of the Judgment of the trial Court as well as the High Court imposing the punishment of death sentence as against the Appellants for the offences found proved under Section 27(3) of Arms Act. **[Md. Jamiluddin Nasir v. State of West Bangal, 2014 AIR 2(SC) 587]**

Central Civil Service (Leave) Rules

Rules 43-C and 7 - Child care Leave (CCL) - For 730 days uninterrupted leave - As the respondents have not shown any reason to refuse 730 days leave-Validity of - C.C.L. for 730 days continuous if refused, reason must be shown

Under sub-rule (2) of Rule 7 leave can be refused or revoked by the competent authority in the case of exigencies of public service.

As per those circulars where all applications for leave cannot, in the interest of public service, be granted at the same time, the leave sanctioning authority may draw up phased programme for the grant of leave to the applicants be turned with due regard to the principles enunciated under the aforesaid circulars.

In the present case the respondents have not shown any reason to refuse 730 days continuous leave. The grounds taken by them and as held by High Court cannot be accepted. **[Kakali Ghosh vs.Chief Secretary, Andman and Nicobar Administration and ors.; (2014 (142) FLR 16 Supreme Court]**

Civil Procedure Code

S. 47 – Execution proceeding - Objection against by revisionist - Rejection of – Legality - Not open to revisionist to say the decree holder has played a fraud and misrepresented before the court to obtain the award after the award has attained finality upto the Apex Court

In this case, Court has observed that it appears that award passed under the Arbitration and Conciliation Act by the U.P. Industry Felicitation Council was assailed by the revisionist before the District Judge who rejected the objections vide his order dated 10.12.2010 and the First Appeal From Order filed there against was dismissed by the Division Bench of this Court vide the

order dated 09.03.2011 and the Special Leave to Appeal against the said order dated 09.03.2011 was dismissed by the Apex Court on 19.08.2011, as such it is not permissible for the Executing Court now to go behind the decree since the challenge made under Section 47 CPC in execution proceedings cannot be with respect to the illegality of the decree itself. It is not the case that the decree is unexecutable.

By the impugned order dated 30.07.2013 passed in Misc. Case No.400 of 2011 arising out of Execution Case No.1 of 2008 the objection under Section 47 CPC filed by the revisionist has been rejected. The reasons given in the impugned order have been already recited herein above and therefore to say that the decree holder has played a fraud and misrepresented before the court to obtain the award is now no more open for the revisionist to challenge in these execution proceedings after the award has attained finality upto the Apex Court. **[Krishi Utpadan Mandi Samiti v. M/s An Ads, Chowk Bazar, Bulandshahar 2014 (2) ARC 529]**

S. 92 – Public charities – Attractibility of – For applicability of S. 92 the trust must be for public purpose either charitable or religious

Plain and simple reading of the provision reverals that the institution of a suit under Section 92 CPC by two or more persons with the leave of the court has to be in respect of the trust created for public purposes of a charitable or religious nature. Therefore, for bringing a suit under Sec. 92 CPC the existence of a public trust is sine qua non.

In other words, in order to apply Sec. 92 the trust must be for public purposes either charitable or religious. It has no application where the trust is not for public purpose or is of a private nature. **[Karunanidhi v. Gyan Prakash, 2014 (2) ARC 835]**

S. 96(3)-O-23 R.-3 Proviso and O.43, R.-1-A - Bar of filing appeal against consent decree - When not applicable? - When factum of compromise is disputed, Bar Under Section 96(3) will not be applicable

So far as bar contained under Section 96 (3) C.P.C. is concerned, by Act No. 104 of 1976, a Proviso has been added under Order 23 Rule 3 C.P.C., Authorizing the Court to examine the validity of the compromise, if challenged by any of the parties. Corresponding amendment was also made under Order 43 and Rule-1-A has been added in it, providing an appeal from the order passed under Order 23 Rule 3 Proviso. The matter came for consideration before Supreme Court in Banwari Lal v. Chando Devi, AIR 1993 SC 1139' Supreme Court held that when factum of compromise is disputed, then bar contained under Section 96(3) will not be applicable and in view of amended

provisions of C.P.C., the trial court as well as the appellate court are competent to examine the filing of the compromise. **[Nargis Bano v. Board of Revenue, U.P. at Allahabad and others, (2014 (32) LCD 1550) (Allahabad High Court)]**

S. 100 - Second appeal – Scope - High Court in second appeal not competent to entertain question as to soundness of findings of facts by Court below

In the case of Ram Gopal v. Shakshaton (1893) ILR 20 Calcutta 93 (P.C) the Court emphasized that a court of second appeal is not competent to entertain questions as to the soundness of a finding of facts by the courts below **[Sajid Miyan And 3 Ors. v. State of U.P. and 5 Ors. 2014 (2) ARC 770]**

S. 100 - Jurisdiction under, principles for, exercise of

" The principles relating to Section 100 CPC relevant for this case may be summarised thus:

(*i*) An inference of fact from the recitals or contents of a document is a question of fact. But the legal effect of the terms of a document is a question of law. Construction of a document involving the application of any principle of law, is also a question of law. Therefore, when there is misconstruction of a document or wrong application of a principle of law in construing a document, it gives rise to a question of law.

(*ii*) The High Court should be satisfied that the case involves a substantial question of law, and not a mere question of law. A question of law having a material bearing on the decision of the case (that is, a question, answer to which affects the rights of parties to the suit) will be a substantial question of law, if it is not covered by any specific provisions of law or settled legal principle emerging from binding precedents, and, involves a debatable legal issue. A substantial question of law will also arise in a contrary situation, where the legal position is clear, either on account of express provisions of law or binding precedents, but the court below has decided the matter, either ignoring or acting contrary to such legal principle. In the second type of cases, the substantial question of law arises not because the law is still debatable, but because the decision rendered on a material question, violates the settled position of law.

(*iii*) The general rule is that High Court will not interfere with the concurrent findings of the courts below. But it is not an absolute rule. Some of the well-recognised exceptions are where (*i*) the courts below have ignored material evidence or acted on no evidence; (*ii*) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (*iii*) the courts have wrongly cast the burden of proof. When we refer to "decision based on no evidence", it not

only refers to cases where there is a total depth of evidence, but also refers to any case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding."

Court has to place reliance on the afore-mentioned case to hold that the High Court has framed substantial questions of law as per Section 100 of the CPC, and there is no error in the judgment of the High Court in this regard and therefore, there is no need for this Court to interfere with the same. **[Sebastiao Luis Fernandes (Dead) & Others v. K.V.P. Shastri (Dead) & Others, (2014 (32) LCD 1452) (SC)]**

S. 100 - Second appeal – Concurrent findings of Courts below when interfered by High Court

It is true that as a general principle of law, the concurrent finding of facts arrived at by the courts below cannot be interfered by the **High Court** in the second appeal under Section 100 CPC. However, it cannot be said to be a hard and fast rule. There are some exceptions to it.

In Hero Vinoth (Minor) Versus Sheshammal, 2006 AIR (SC) 2234, Hon'ble Apex Court has mentioned the following three exceptions in which concurrent findings of fact can be interfered by the High Court in the second appeal:-

I. where the courts below have ignored the material evidence.

II. where the courts below have wrong inferences from proved facts by applying the law erroneously and

III. where the courts below have wrongly cast the burden of proof.

[Chandra Kali (Smt.) v. Smt. Indrawati & Others; 2014(2) ARC 598]

S. 105 - Other orders - Object and scope of

In the present case, point raised before Court by the learned counsel for the appellants is in respect of orders passed by the Court by which the Court has refused to set aside the ex-parte hearing proceedings against the appellants. Further, the appellants have also challenged the order rejection of his written statement. Section 105 of C.P.C. provides as under;

Other orders.- (1) Save as otherwise expressly provided, no appeal shall lie from any order made by a Court in the exercise of the original or appellate jurisdiction; but where a decree is appealed from any error, may be set forth as a ground of objection in the memorandum of appeal.

(2) Notwithstanding anything contained in sub-section (1), where any

party aggrieved by an order of remand from which an appeal lies does not appeal therefrom, he shall thereafter be precluded from disputing its correctness.

The above said section clearly provides that in case of filling an appeal, the appellants can also challenge the other interlocutory orders passed during pendency of trial of the suit. [**Khadi Evam Gramodyog Board Lko. And others vs. M/s Purvanchal Janta Gram. Sewa Sansthan and another, 2014 (3) ARC 52]**

S. 149 – Application under – Power to make up deficiency of Court fees plaintiff respondent to pay Court fee accordingly within a period of one month as stipulated whereupon only decree would be executed

There are ample precedence where proper court fees was not paid but the court while deciding the appeal finally and granting the relief directed payment of the requisite court fee as a condition for implementation of the decree. Learned counsel for the defendant appellant on the basis of (2012) 7 SCC 738 Nawab John and others Vs. V. N. Subramaniyam submits that granting of time to make good the court fees though discretionary but the discretion cannot be exercised in an arbitrary manner without examining the explanation. This may be good while dealing with an application under Section 149 C.P.C. but not where the question of court fees payable has been determined at the time of granting final relief. In view of the aforesaid facts and circumstances and the relief as claimed in the plaint, the relief in the suit is essentially one which is for recovery of possession on determination of the licence for which the period of limitation is 12 years as provided under Article 66 of the Limitation Act subject to payment of requisite court fees on such a relief.

The plaintiff respondent is directed to pay court fees accordingly within a period of one month from today whereupon only the decree would be executed. **[Dori Lal Premi, Advocate v. Smt. Vidya Devi 2014(2) ARC 536]**

S. 151, Order 23, Rule-1 – Withdrawal of suit – Right thereof - Plaintiff has unfettered right to withdraw the application for withdrawal of suit

It is not disputed that application (Paper No. 145-C) dated 06.08.2008 filed by the attorney-holder of the plaintiff was an application under Rule 1 of Order XXIII of the "Code". It is also not disputed that on the said date, power of attorney of Lal Chandra Nirmal was subsisting. However, moot issue before the Court is as to whether application (Paper no. 145/C) stood allowed upon mere filing or was it contingent upon further orders of the Court. The issue is no longer res-integra in view of the decision of the Apex Court in the case of

Rajendra Prasad Gupta (supra), wherein the Apex Court held that powers under Section 151 of the Code are to be exercised ex debito justitiae, i.e. in the interest of justice. Since there is no specific provision in the Code for dealing with such a contingency i.e. of withdrawal of a withdrawal application, power under Section 151 of the Code could always be invoked. The decision of Rajendra Prasad Gupta (supra) has been quoted with approval in the subsequent decision of the Apex Court in the case of Ratan Bai v. Ram Das, 2012 (3) SCC 48. Thus the position, which emerges is that it is always open for the plaintiff to withdraw the withdrawal application.

The Court has perused the said judgment and is of the view that the issue stands crystallized in the case of Rajendra Prakash Gupta (supra) which confers an unfettered right on the plaintiff to seek withdrawal of the application for withdrawal.

The order impugned does not suffer from any jurisdictional error. [**Smt. Tabassum Ghazala Vs. Ravi Bala Garg and others, 2014(32) LCD 1833]**

S. 115 – Scope of- High Court's interference in revision with Concurrent findings is permissible, when findings are perverse and arbitrary

The submission that the High Court in exercise of its civil revisional jurisdiction could not have dislodged the concurrent findings of the courts cannot be accepted. It is true, the High Court, in revision, is not entitled to interfere with the findings of the appellate court, until and unless it is found that such findings are perverse and arbitrary. But in the present case, trial court as well as the appellate court have reached their conclusions on the basis of inferences, as the issue of sub-letting can be established on the basis of legitimate inference drawn by a court. However, drawing inference from the facts established is not purely a question of fact. In fact, it is always considered to point of law insofar as it relates to inferences to be drawn from finding of fact. When inferences drawn do not clearly flow from facts and are not legally legitimate, any conclusion arrived at on that basis becomes absolutely legally fallible. Therefore, it cannot be said that the High Court has erred in exercise of its revisional jurisdiction by substituting the finding of fact which has been arrived at by the courts below. The High Court has not committed any illegality in its exercise of revisional jurisdiction under the obtaining facts and circumstances. [**S.F. Engineer vs. Metal Box India Ltd. and Another, (2014) 6 SCC 780]**

Revision - Scope of – Inference drawn from facts – Raises question of law - Open to interference in revision

Court is obliged to deal with the submission of Mr. Sundaram, learned senior counsel for the appellant, that the High Court in exercise of its civil revisional jurisdiction could not have dislodged the concurrent findings of the courts below. We have been commended to an authority in Renuka Das v. Maya Ganguly and another (2009) 9 SCC 413 wherein it has been opined that it is well settled that the High Court, in revision, is not entitled to interfere with the findings of the appellate court, until and unless it is found that such findings are perverse and arbitrary. There cannot be any cavil over the said proposition of law. But in the present case, as court notices, the trial court as well as the appellate court have reached their conclusions on the basis of inferences. In P. John Chandy and Co. (P) Ltd. v. John P. Thomas (2002) 5 SCC 90 while dealing with a controversy under the rent legislation arising under the Kerala Buildings (Lease and Rent Control) Act, 1965, it has been ruled that drawing inference from the facts established is not purely a question of fact. In fact, it is always considered to be a point of law insofar as it relates to inferences to be drawn from finding of fact. Court entirely agrees with the aforesaid view. When inferences drawn do not clearly flow from facts and are not legally legitimate, any conclusion arrived at on that basis becomes absolutely legally fallible.

Therefore, it cannot be said that the High Court has erred in exercise of its revisional jurisdiction by substituting the finding of fact which has been arrived at by the courts below. Therefore, Court has no hesitation in holding that the High Court has not committed any illegality in its exercise of revisional jurisdiction under the obtaining facts and circumstances. **[M/s S.F. Engineer v. Metal Box India Ltd., and another; AIR 2014 SC 2189]**

Order 2, Rule 2 – Bar of subsequent suit – Conditions for invocation of – When cause of action and parties involved in both suits are the same and reliefs claimed in subsequent suit could have been claimed in previous suit itself but had been omitted, only then would subsequent suit be barred under R.2

The provisions of Order 2 Rule 2 CPC are offshoots of the ancient principle that there should be an end to litigation. No one ought to be vexed twice for the same cause. In the light of the above, from a plain reading of Order 2 Rule 2, it emerges that if different reliefs and claims arise out of the same cause of action then the plaintiff must place all his claims before the court in one suit and cannot omit one of the reliefs or claims before the court in one suit and cannot omit one of the reliefs or claims except without the leave of the court. Order 2 Rule 2 CPC bars a plaintiff from omitting one part of claim and

raising the same in a subsequent suit.

The bar of Order 2 Rule 2 CPC comes into operation where the cause of action on which the previous suit was filed, forms the foundation of the subsequent suit; in the earlier suit; and both the suits are between the same parties. The bar under Order 2 Rule 2 CPC must be specifically pleaded by the defendant in the suit and the trial court should specifically frame a specific issue in the regard wherein the pleading in the earlier suit must be examined and the plaintiff is given an opportunity to demonstrate that the cause of action in the subsequent suit is different.

The courts in order to determine whether a suit is barred by Order 2 Rule 2 CPC must examine the cause of action pleaded by the plaintiff in his plaints filed in the relevant suits. Considering the technicality of the plea or Order 2 Rule 2 CPC, both the plaints must be read as a whole to identify the cause of action, which is necessary to establish a claim or necessary for the plaintiff to prove if traversed. Therefore, after identifying the cause of action if it is found that the cause of action pleaded in both the suits is identical and the relief claimed in the subsequent suit could have been pleaded in the earlier suit, then the subsequent suit is barred by Order 2 Rule 2 CPC.

In the present factual matrix both the reliefs are being claimed separately in the two suits concerned. This scenario negates the principle of Order 2 Rule 2 CPC in the absence of any explanation as to why the respondent failed to claim the relief by way of a single suit when the cause of action was the same in the both. Therefore, the trial court correctly held that in the light of the earlier suit, the subsequent suit is barred under Order 2 Rule 2 CPC. The High Court has misappreciated the facts in the light of Order 2 Rule 2 of the Code and thereby the reasoning of the High Court cannot be sustained in the eye of the law. [**Coffee Board v. Ramesh Exports (P) Ltd., (2014) 6 SCC 424]**

Order VI, Rule 17 and Order I, Rule 10 - Amendment of pleading - By way of amendment petitioner want to replace relief of permanent injunction to declaratory decree- held – Amendment can't allowed as it is changing the nature of suit from permanent injunction to declaratory decree

In this case, the petitioner has submitted that the petitioner had filed the Suit no. 967 of 2010 for permanent injunction relating to the property in suit. According to him the temporary injunction was refused. During the pendency of the suit the defendants executed certain sale deeds whereupon the plaintiff

petitioner filed an application under Order VI Rule 17 CPC for amendment of his pleadings and under Order I Rule 10 for impleading the subsequent purchaser. He states that the said application has been illegally rejected by both the courts below and hence this writ petition. Having considered the submission of learned counsel for the petitioner and perused the record in the plaint the relief claimed by the plaintiff petitioner against the then defendants was of a permanent injunction. Subsequently in the application under Order VI Rule 17 CPC he wanted to replace that relief of permanent injunction by a declaratory decree against the defendants that the plaintiff is in possession of the disputed property. This relief which was sought by amendment was rejected by the courts below on the ground that although he has pleaded that sale deeds have executed in favour of strangers during pendency of the suit but he has not claim for cancellation of the sale deeds as such the declaratory decree claimed by him by amendment to declare that he is in possession of the property in question is not a relief directed against the subsequent purchaser as such while finding that the nature of the suit itself is being changed the Trial Court has disallowed the prayer made by the plaintiff petitioner under Order I Rule 10 CPC to implead the subsequent purchaser for the reason that there is no relief claimed against the subsequent purchasers even in the amendment application. The revisional court has affirmed the said order of the Trial Court. There is nothing on record of this writ petition to indicate that apart from the relief claimed by the plaintiff petitioner in his amendment application there is any other relief claimed by him against the subsequent purchaser so that they could be impleaded as defendants nor the amendment in the pleadings and relief claimed by amendment could be allowed since it was changing the nature of the suit from one of permanent injunction to that of a declaratory decree. **[Aditya Kumar Vajpai v. Vinod Kumar Tripathi and 4 others 2014 (2) ARC 530]**

Order VIII, Rule 1 - Written statement - Non acceptance of

Petitioners are defendants in O.S. No.242 of 2006, Rajendra Vs. Yogendra Kumar and others. The suit is pending before Civil Judge (S.D.), Mau. Defendants petitioners filed the written statement extremely late and in spite of the fact that earlier repeated opportunities had been provided to them. Ultimately, written statement was filed on 06.10.2009. Through order dated 27.07.2012, Civil Judge (S.D.), Mau refused to take the written statement on record. Against the said order, petitioner filed Civil Revision No.45 of 2012, which was dismissed on 06.04.2013 by District Judge, Mau, hence this writ petition.

From the perusal of the impugned orders, it is clear that petitioners were

not vigilant and had filed written statement quite late. However, in view of Supreme Court authority reported in Kailash Vs. Nanhku, AIR 2005 SC 2441 : 2005 (4) SCC 480 writ petition is disposed of with the direction that in case petitioners file an application for recall of the order dated 27.07.2012 before the trial court within three weeks from today after getting prepared a draft of Rs.25,000/- in the name of the plaintiff and annexing photostat copy of the said draft along with the application, then the trial court may sympathetically consider the said application and in case the trial court decides to allow the application and take on record the written statement filed by the defendants petitioners then the application shall be allowed on payment of Rs.25,000/- as cost and the draft shall at once be handed over by the petitioners to the plaintiff respondent before the court concerned. **[Yogendre Kumar Shrivastava @ Jogendra And Another v. Rajendre Singh And Another, 2014 (2) ARC 505]**

Order VIII, Rule 10 – Exparte decree Validity of – Merely because it is an exparte decree, the same does not cease to have the force of decree, it valid for all purpose

Having referred to the entire contentions of the plaintiff, the Judgment was pronounced under Order VIII, Rule 10 of the Code of Civil Procedure, 1908 since there was no written statement. The Court has taken the position that the defendants had failed to file written statement. Therefore, the Court, in the facts of the case, opted to pronounce the Judgment, under Order VIII, Rule 10 of the Code of Civil Procedure, 1908 and draw the decree accordingly.

No doubt, the decree passed under Order VIII, Rule 10 of the Code of Civil Procedure, 1908 is an ex parte decree. But merely because it is an ex parte decree, the same does not cease to have the force of the decree. It is a valid decree for all purposes.

It is also worthwhile to note that the Judgment was pronounced under the pre-amended Rule 10 under Order VIII, of the Code of Civil Procedure, 1908 and there was more discretion with the Court regarding pronouncement of the Judgment in the absence of written statement. Still further, it is to be noted that Rule 10 speaks about the requirement of written statement indicating thereby that there are cases where written statement was required to be filed. Written statement is the defense of the defendants. They chose not to file it. Despite the absence of such defence, the Court still applied its mind and after referring to the pleadings, pronounced a judgment allowing the suit for

specific performance, though the Judgment says that the suit is decreed as prayed for and though all the prayers have been incorporated in the decree, it is to be noted that the suit is one for specific performance of the agreement. The suit that has been decreed is the suit for specific performance of the agreement. Once the decree for specific performance attained finality, they cannot thereafter turn round and make weak and lame contentions regarding the executability of the decree. [**Rajinder Kumar v. Kuldeep Singh and others, 2014 (124) RD 240 (SC)]**

Order 21, Rule 89 – Time for making requisite deposit in court, reiterated is the same as prescribed under Art. 127 of Limitation Act for filing application for setting aside court sale i.e. 60 days from date of sale. Non-deposit within that period would result in dismissal of application – Hence, sale restored

Although Order 21 Rule 89 CPC does not prescribe any period either for making the application or the required deposit, Art. 127 of the Limitation Act now prescribes 60 days as the period within which such an application should be made. In absence of any separate period prescribed for making the deposit, the time to make the deposit and that for making the application would be the same. The deposit of the requisite amount in the court is a condition precedent or a sine qua non to application for setting aside the execution of sale and such an amount must be deposited within the prescribed time for making the application otherwise the application must be dismissed.

In the present case the High Court committed grave error in law in allowing the writ petition for reconsideration of the petition under Order 21 Rule 89 CPC. In absence of required deposit made by the judgment-debtor within the time mandated by law, such an exercise would be only an exercise in futility because the executing court does not have any option but to reject the petition. [**Annapurna v. Mallikarjun and another, (2014) 6 SCC 397]**

Order XLI, Rule 27 – Appeal filed along-with an application under O.XLI, R.27 for permission to file additional documents – Appellate Court has held that appellant had not satisfied any of the conditions stipulated under Order XLI, Rule 27 and hence not entitled to produce additional evidence – Said finding has rightly been confirmed by High Court

In this present cases the parties to an appeal shall not be entitled to produce additional evidence in the Appellate Court unless the conditions stipulated under Order XLI, Rule 27, C.P.C. are satisfied. It is not the case of the appellant that the Trial Court had refused to admit the said evidence which ought to have been admitted. It is also not the case of the appellant that the said evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him during pendency of the suit before the Trial Court. On the other hand it is vehemently contended that the said evidence namely the document was filed but was omitted to be tendered in evidence and got exhibited in the suit. The lower Appellate Court elaborately considered the factual matrix and held that the appellant has not satisfied any of the conditions stipulated under Order XLI, Rule 27 and hence is not entitled to produce additional evidence. In our view the said finding has rightly been confirmed by

the High Court. [**Lekhraj Bansal v. State of Rajasthan and Another, 2014 (124) RD 254 (SC)]**

Order 41, Rule 31 –Provisions – Compliance of – Non framing of point of determination – Sustainability of – Not sustainable as framing of the point of determination by the Appellate Court is mandatory

As per admitted position of the case while passing the judgment and decree dated 21.03.2014 (decree signed on 01.04.2014) passed by Additional District Judge, Court N0. 12, Ghaziabad, the appellate court has not framed the point of determination as provided under Oder 41 Rule 31 CPC the said exercise is mandatory on the part of the appellate court as per judgment given by Hon'ble the Apex Court in the case of Union of India and another Vs. Ranchod and others, 2009 (27) LCD 407 has held as under:-

> "Section 54 of the Act, insofar as relevant for the purposes of the present appeals, says that subject to the provisions of the Code of Civil Procedure, 1908, applicable to appeals from original decrees, and notwithstanding anything to the contrary in any enactment for the time being in force, an appeal shall only lie in any proceedings under this Act to the High Court from the award, or from any part of the award of the Court."

Order XLI CPC deals with appeals from original decrees. Order XLI Rule 31 lays down that the judgment of the appellate court shall be in writing and shall state (a) the points for determination, (b) the decision thereon, (c) the reasons for the decision, and (d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled. This provision has come up for consideration in innumerable occasions and its meaning and scope has been explained.

As in the instant matter as the appellate court without following the procedure required under Order 41 Rule 31 Code of Civil Procedure passed the judgment and decree therefore, without entering into the merits , the impugned judgment and decree dated 21.03.2014 (decree signed on 01.04.2014) passed by Additional District Judge, Court No. 12, Ghaziabad is set aside and the matter is remanded to the appellate court to decide the civil appeal in accordance with law. [**Lakhmi And Others Vs. Jugendralal And Another, 2014 (32) LCD 1824]**

Civil Services Regulations

Regulation 351-A - Applicability in corporation - Disciplinary proceeding intiated after attaining the age of superannuation - Since regulation 351-A

of civil services regulation not adopted by Corporation-Hence the initiation of disciplinary proceedings after retirement is without authority of law

The power to initiate disciplinary proceedings under the Service Rules is not vested with the Corporation. Regulation 351-A of the Civil Services Regulations has also not been adopted by the Corporation. In these circumstances, if the very source of power is lacking, then initiation of disciplinary proceedings after retirement is without authority of law. **[Raj Kishore Dubey vs. U.P. State Warehousing Corporation and another, [2014 (142) FLR 358 (Allahabad High Court -Lucknow Bench)]**

Constitution of India

Art. 14 - Observance of principles of natural Justice in service matter – Necessity of

To say that the Chief Justice can appoint a person without following the procedure provided under Articles 14 and 16 would lead to an indefinite conclusion that the Chief Justice can dismiss him also without holding any inquiry or following the principles of natural justice/Rules etc., for as per Section 16 of General Clauses Act, 1897 power to appoint includes power to remove/suspend/dismiss. (Vide: Pradyat Kumar Bose v. The Hon'ble Chief Justice of Calcutta High Court, 1956 SC 285; and Chief Justice of Andhra Pradesh & Anr. v. L.V.A. Dikshitulu & Ors., AIR 1979 SC 193).

But as no employee can be removed without following the procedure prescribed by law or in violation of the terms of his appointment, such a course would not be available to the Chief Justice. Therefore, the natural corollary of this is that the Chief Justice cannot make any appointment in contravention of the Statutory Rules, which have to be in consonance with the scheme of our Constitution. **[Renu and others v. District & Sessions Judge, Tis Hazari and another, AIR 2014 SC 2175]**

Arts. 14 and 245 - Equality clause facet of Article 14 - Breach of rule of Law can be ground for invalidating legislation

Breach of rule of law, amounts to negation of equality under Art. 14. It cannot be said that rule of law is not above law and cannot be a ground for invalidating legislations since rule of law is a facet of equality under Art. 14 and breach of rule of law amount to breach of equality under Art. 14 and, therefore, breach of rule of law may be a ground for invalidating the legislation being in negation of Art. 14. **[Dr. Subramanian Swamy v. Director,**

Central Bureau of Investigation & Anr., AIR 2014 SC 2140 (Constitutional Bench)]

Articles 16 and 226 - Compassionate appointment- Petitioner applied for compassionate appointment on attaining majority after lapse of more than six years- Post cannot be kept vacant till dependant attained majority - Claim barred by limitation

Material on record discloses that the petitioner's father died on 16.09.2005 in harness. At that time, the petitioner was aged about 9 years. The petitioner's mother has given a representation dated 04.12.2008 to the respondents seeking employment assistance on compassionate grounds to the petitioner's brother viz., Senthil Kumar, who was aged only 14 years at the time of application. The respondents denied employment assistance to him on the ground that he was a minor. Therefore, the petitioner's mother made an application on 09.02.2009 for providing employment assistance to her. In the meanwhile, the petitioner attained majority and therefore he has submitted an application on 10.12.2009 to provide compassionate appointment. By the impugned order in Na.Ka.No.A4/2592/2009 dated xx..07..2012, signed on 03.08.2012, it was stated by the Commissioner of Police, Madurai that as per the Circular of the Additional Director General of Police, Chennai - 4 in Na.Ka.No.34918/C.A.2/05 dated 23.06.2005, the application of the petitioner cannot be considered, and that same has been rejected. Challenging the same, the petitioner has filed this writ petition.

In the case of State of J&K v. Sajad Ahmed Mir, reported in 2006 (5) SCC 766, the court has held that:

> Normally, an employment in the Government or other public sectors should be open to all eligible candidates who can come forward to apply and compete with each other. It is in consonance with Article 14 of the Constitution. On the basis of competitive merits, an appointment should be made to public office. This general rule should not be departed from except where compelling circumstances demand, such as, death of the sole breadwinner and likelihood of the family suffering because of the setback. Once it is proved that in spite of the death of the breadwinner, the family survived and substantial period is over, there is no necessity to say "goodbye" to the normal rule of appointment and to show favour to one at the cost of the interests of several others ignoring the mandate of Article 14 of the Constitution."

The principles enunciated in the above said judgments would makes it clear that compassionate appointment is not a vested right which can be exercised at any time, in future. Compassionate employment cannot be claimed after a lapse of time.

It could be seen from the catena of decisions, the object of providing employment assistance is to tide over the financial constraint due to the untimely death of the breadwinner and that, a post cannot be kept vacant till the dependent attains the majority, so as to enable him to seek employment assistance on compassionate grounds. Employment assistance can be sought for by any one of the dependents in the family, including wife or son or daughter depending upon age and the educational qualifications, prescribed by the Government, at the time of making the application. If there are more than one dependents, a No Objection Certificate is insisted from other legal heirs. One of the criteria for employment assistance on compassionate ground is that the family, should be in indigent circumstances and that the same has to be certified by a competent authority.

In the light of the decisions cited supra, this Court is of the view that this court cannot alter or modify the time prescribed by the Government for submission of an application, so as to enable any legal heir to seek for employment assistance.

For the reasons stated above, this Court does not find any patent illegality warranting intervention. Hence, the impugned order is sustained and this writ petition is liable to be dismissed. [**P. Saravana Kumar v. Superintendent of Police, Madurai, 2014 (4) SLR 128 (Mad)]**

Art. 21 – Freedom of choice of marriage – An inherent aspect of right to life

Ultimately, the question which ought to consider and assess by this Court is whether the State Police Machinery could have possibly prevented the said occurrence. The response is certainly a 'yes'. The State is duty bound to protect the Fundamental Rights of its citizens; and an inherent aspect of Article 21 of the Constitution would be the freedom of choice in marriage. Such offences are resultant of the States incapacity or inability to protect the Fundamental Rights of its citizens. **[In Re: Indian Woman Says Gang-raped on Orders of Village Court, 2014 AIR (SC) 2816]**

Art. 48-A – and 51-A – Doctrine of public trust – Doctrine enjoins duty on Governments to conserve and not waster natural resources – State enjoins a duty upon every citizen to protect and improve environment

There cannot be any two opinions that natural resources are the assets of the nation and its citizens. It is the obligation of all concerned, including the Central and the State Governments, to conserve and not waste such valuable resources. Article 48-A of the Constitution requires that the State shall endeavour to protect and improve the environment and safeguard the forests

and wild life of the country. Similarly, Article 51-A enjoins a duty upon every citizen to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for all the living creatures. In view of the Constitutional provisions, the Doctrine of Public Trust has become the law of the land. The said doctrine rests on the principle that certain resources like air, sea, waters and forests are of such great importance to the people as a whole that it would be highly unjustifiable to make them a subject of private ownership. **[State of NCT of Delhi v. Sanjay, 2014 (6) Supreme 209]**

Art.-141 - Prospective overruling- Nature and scope - Principles summarised

The doctrine of prospective overruling has its origin in American jurisprudence. It was first invoked in this country in C. Golak Nath, AIR 1967 SC 1643, with the Supreme Court proceeding rather cautiously in applying the doctrine. However, the doctrine has not remained confined to overruling of earlier judicial decision on the same issue as was understood in Golak Nath case. In several later decisions, the Supreme Court has invoked the doctrine in different situations including in cases where an issue has been examined and determined for the first time. The Supreme Court held that it was open to the Court to grant, mould or restrict the relief in a manner most appropriate to the situation before it in such a way so as to advance the interest to justice. The doctrine is a useful tool to bring about smooth transition of the operation of law without unduly affecting the people who acted upon the law that operated prior to the date of the judgment overruling the previous law. [**K. Madhava Reddy and others vs. State of A.P. and others, (2014) 6 SCC 537 (DB)]**

Art. 142 - Directions for establishing of Fast Track courts for disposal of cases involving the charge of rape at the trial stage

Court has considered that the Fast Tract Courts no doubt are being constituted for expeditious disposal of cases involving the charge of rape at the trial stage, but court are perturbed and anguished to notice that although there are Fast Tract Courts for disposal of such cases, we do not yet have a fast track procedure for dealing with cases of rape and gang rape lodged under Section 376 IPC with the result that such heinous offences are repeated incessantly.

Court has further observed that there is a pressing need to introduce drastic amendments into the Cr.P.C. in the nature of fast tract procedure for Fast Track Courts when we considered just and appropriate to issue notice and called upon the Union of India to file its response as to why it should not take initiative and sincere steps for introducing necessary amendment into the Cr.P.C., 1973 involving trial for the charge of Rape by directing that all the

witnesses who are examined in relation to the offence and incident of rape cases should be straightway produced preferably before the Lady Judicial Magistrate for recording their statement to be kept in sealed cover and thereafter the same be treated as evidence at the stage of trial by producing the same in record in accordance with law which may be put to test by subjecting it to cross-examination. We were and are further of the view that the statement of victim should as far as possible be recorded preferably before the Lady Judicial Magistrate under Section 164 Cr.P.C. skipping over the recording of statement by the Police under Section 161 Cr.P.C. to be kept in sealed cover and thereafter the same be treated as evidence at the stage of trial which may be put to test by subjecting it to cross-examination. We are further of the view that the statement of victim should as far as possible be recorded preferably before the Lady Judicial Magistrate under Section 164 Cr.P.C. skipping over the recording of statement by the police under Section 161 Cr.P.C. which is any case is inadmissible except for contradiction so that the statement of the accused thereafter be recorded under Section 313 Cr.P.C. The accused then can be committed to the appropriate Court for trial whereby the trial court can straightway allow cross examination of the witnesses whose evidence were recorded earlier before the Judicial Magistrate.

Court, thereafter appointed the learned senior counsel Mr. Shekhar Naphade and Mr. U.U. Lalit, who appeared and addressed this Court. Learned senior advocate Mr. Shekhar Naphade agreed with the suggestions given by this Court that the statement of the victim of rape and gang rape may be and should be recorded under Section 164 of the Cr.P.C. which should be placed on record treated as evidence of the victim and may later be relied upon as evidence and then the accused may be given a chance to cross-examine the prosecution version and the evidence recorded at the instance of the victim.

On considering the same, court has accepted the suggestion offered by the learned counsel who appeared before us and hence exercising powers under Article 142 of the Constitution, court are pleased to issue interim directions in the form of mandamus to all the police station in charge in the entire country to follow the direction of this Court which are as follows:

> (i) Upon receipt of information relating to the commission of offence of rape, the Investigating Officer shall make immediate steps to take the victim to any Metropolitan/preferably Judicial Magistrate for the purpose of recording her statement under Section 164 Cr.P.C. A copy of the statement under Section 164 Cr.P.C. should be handed over to the Investigating Officer immediately with a specific direction that the contents of such statement under Section 164 Cr.P.C. should not be

disclosed to any person till charge sheet/report under Section 173 Cr.P.C. is filed.

(ii) The Investigating Officer shall as far as possible take the victim to the nearest Lady Metropolitan/preferably Lady Judicial Magistrate.

(iii) The Investigating Officer shall record specifically the date and the time at which he learnt about the commission of the offence of rape and the date and time at which he took the victim to the Metropolitan / preferably Lady Judicial Magistrate as aforesaid.

(iv) If there is any delay exceeding 24 hours in taking the victim to the Magistrate, the Investigating Officer should record the reasons for the same in the case diary and hand over a copy of the same to the Magistrate.

(v) Medical Examination of the victim: Section 164 A Cr.P.C. inserted by Act 25 of 2005 in Cr.P.C. imposes an obligation on the part of Investigating Officer to get the victim of the rape immediately medically examined. A copy of the report of such medical examination should be immediately handed over to the Magistrate who records the statement of the victim under Section 164 Cr.P.C.

[State of Karnataka by Nonavinakere police v. Shivanna @ Tarkari Shivanna, 2014(86) ACC 308]

Art. 226 - Penal interest-Adjustment with post retiral dues – Permissibility -Post retiral dues and gratuity could not be retained for recovery of penal rent/interest

The brief facts of the case that respondent no. 2, who was a Railway employee, retired on 31.10.1994, while he was posted at Mirzapur. He was provided Railway accommodation no. 83-B, Type-II, Railway Colony, Mirzapur. It appears that after the retirement, he had been allowed to retain the house upto 29.2.1995. No further permission was granted to retain the said house after 1st March, 1995. Admittedly, the respondent no. 2 had vacated the premises on 15.2.2000. The respondent was required to pay the penal rent for the period 1.3.1995 to 15.2.2000 for which it appears that notices had been given to which the respondent no. 2 filed and finally by the order dated 8.1.2000, penal rent at Rs. 1,08,759.07 has been calculated. Further, on consideration of the reply of the respondent no. 2, by the order dated 24.4.2002, after the adjustment of gratuity amount of Rs. 36,855/-, the respondent no. 2 has been asked to pay balance amount of Rs. 71,904/-.

The main contention of respondent no. 2 before the Tribunal was that

the accommodation has been upto 2000 because of non-payment of post retiral dues and further that the penal rent cannot be adjusted with the gratuity amount. The Tribunal by the impugned order has directed the payment of rent/damages @ Rs. 200/- per month with effect from 1.11.1994 till the date on which the premises has been vacated and directed the respondent no. 2 to pay the amount within eight weeks. The Tribunal further held that amount of rent cannot be adjusted with the gratuity amount and accordingly directed to pay the amount of gratuity or any other post retiral dues within a period of two months from the date of aforesaid deposit of rent/damages.

Court is of the view that the delay in settlement of post retiral dues and its payment and the retention of accommodation without permission unauthorizedly are two separate issues. Merely because the post retiral dues has not been settled within time and had been settled belatedly, it would be open to the retired employee to claim interest for such delay, but this reasons will not absolve the respondent no. 2 from the liability of penal rent, which is payable in accordance to rules for the illegal retention of accommodation. The record reveals that the calculation of penal interest has been made after giving opportunity and exchange of correspondence, which has not been disputed by the respondent no. 2 at any stage. Therefore, court is of the view that respondent no. 2 is liable to pay penal interest at Rs. 1,08,759.07 and the Tribunal has erred in directing payment of rent/damages @ Rs. 200/- per month. The order of the Tribunal to this extent is liable to be set aside.

In view of the aforesaid discussions, court has considered view that the amount of post retiral dues, including gratuity could not be retained for the recovery of penal rent and could not be adjusted with the penal rent. The order of the Tribunal to this extent is liable to be sustained. **[Union of India Through General Manager, N.C.R., Allahabad and v. Central Administrative Tribunal, Allahabad and another, (2014 (142) FLR 254 (Allahabad High Court)]**

Art. 226 - Retiral benefits – Gratuity – Withholding of retiral benefits - Legality of - Withholding of retiral benefits of retired employees for years together not only illegal but arbitrary

After receiving instructions, learned Counsel appearing for respondents fairly stated that at the time of retirement, no departmental enquiry was pending against petitioner. He, however, submitted that in the year 2013, two enquiries have been initiated but could not show any provision under which if any enquiry was not pending against an employee at the time of retirement, still his gratuity would not have been paid or respondents were authorized by some

other provision to withhold gratuity of petitioner for such a long time.

Withholding of retiral benefits of retired employees for years together is not only illegal and arbitrary but a sin if not an offence since no law has declared so. The officials, who are still in service and are instrumental in such delay causing harassment to the retired employee must however feel afraid of committing such a sin. It is morally and socially obnoxious. It is also against the concept of social and economic justice which is one of the founding pillar of our constitution.

In view of the above, I have no hesitation in holding that nonpayment of gratuity to petitioner is wholly arbitrary and unreasonable. There was no justification at all for respondents to delay payment thereof. In any case, 90% of gratuity being provisional payment has to be made even if an enquiry would have been pending at the time of retirement but in the present case even that is not the state of affairs. In these facts and circumstances it is evident that withholding of gratuity for more than two years on the part of the respondents is patently illegal, erroneous, unjust, improper and unwarranted. **[Mahendra Prakash Srivastava v. District Judge, Allahabad & another, 2014 (4) SLR 274 (All)]**

Arts. 227 and 226 – Interference in civil/private disputes – When permissible in writ jurisdiction – Principles reiterated

The only question which was required to be determined in this case was: whether the High Court while exercising its power under Articles 226 and 227 of the Constitution is competent to set aside the plaint in a civil/private dispute?

A petition under Article 226 or 227 of the Constitution can neither be entertained to decide the landlord-tenant dispute nor is it maintainable against a private individual to determine an intense dispute including the question whether one party is harassing the other party. The High Court under Article 227 has the jurisdiction to ensure that all subordinate courts as well as statutory or quasi-judicial tribunals, exercise the powers vested in them within the bounds of their authority but it was not the case of Respondent 1 tenant that the order passed by the trial court was without any jurisdiction or was so exercised exceeding its jurisdiction. If a suit is not maintainable it was well within the jurisdiction of the High Court to decide the same in appropriate proceedings but in no case power under Articles 226 and 227 of the Constitution can be exercised to question a plaint. [**Jacky v. Tiny @ Antony and Others, (2014) 6 SCC 508]**

Article 311 – Contractual employee - Dismissal from service - Petitioner accepted the terms of the contract which had given him service for a period of two year – Removal of the petitioner from service on completion of the period of two years will require no interference from this Court

While this Court is not inclined to interfere with the order of removal of the petitioner as directed in the order dated 11.08.2011 for a simple reason that the petitioner with his eyes open had accepted the terms of the contract which had given him service for a period of two years and therefore, when such appointment letter had also bound the petitioner with a specific condition that after completion of the period of two years his services would automatically come to an end, the petitioner on completion of the period of two years service cannot be heard to say that he ought to have been continued in service even after completion of a period of two year. In that view of the matter, the removal of the petitioner from service on completion of the period of two years will require no interference from this Court. **[Kartik Prasad Singh v. The State of Bihar and others, 2014 (4) SLR 47 (Patna)]**

Art. 311 – Disciplinary proceeding – Choice of punishment – Factor relevant in deciding punishment

When the charge proved, as happened in the instance case, it is the disciplinary authority with whom lies the discretion to decide as to what kind of punishment is to be imposed. Of course, this discretion has to be examined objectively keeping in mind the nature and gravity of charge. The Disciplinary Authority is to decide a particular penalty specified in the relevant Rules. Host of factors go into the decision making while exercising such a discretion which include, apart from the nature and gravity of misconduct, past conduct, nature of duties assigned to the delinquent, responsibility of duties assigned to the delinquent, previous penalty, if any, and the discipline required to be maintained in department or establishment where he works, as well as extenuating circumstances, if any exist. **[Deputy Commissioner, KVS and others v. J Hussain, 2014 (3) ESC 297 (SC)]**

Art. 311 – Removal – Proportionality – School employee – Forcibly entering principals office inebriated condition constitutes serious misconduct – Punishment of removal not disproportionate

In Court's view entering the school premises in working hours i.e. 11.30 a.m. in an inebriated condition and thereafter forcibly entering into the Principals room would constitute a serious misconduct. Penalty of removal for such a misconduct cannot be treated as disproportionate. It does not seem to be unreasonable and does not shock the conscience of the Court. Though it does

not appear to be excessive either, but even if it were to be so, merely because the Court feels that penalty should have been lighter than the one imposed, by itself is not a ground to interfere with the discretion of the disciplinary authorities. The penalty should not only be excessive but disproportionate as well, that too the extent that it shocks the conscience of the Court and the Court is forced to find it as totally unreasonable and arbitrary thereby offending the provision of Article 14 of the Constitution. Discretion lies with the disciplinary/appellate authority to impose a particular penalty keeping in view the nature and gravity of charge. Once, it is found that the penalty is not shockingly disproportionate, merely because in the opinion of the Court lesser punishment could have been more justified, cannot be a reason to interfere with the said penalty. The High Court has also mentioned in the impugned order that the respondent is a married man with family consisting of number of dependents and is suffering hardship because of the said "economic capital punishment". However, such mitigating circumstance are to be looked into by the departmental authorities. It was not even pleaded before them and is an after effect of the penalty. In all cases dealing with the penalty of removal, dismissal or compulsory retirements, hardship would result. That would not mean that in a given case punishment of removal can be discarded by the Court. That cannot by a reason to interdict with the said penalty. **[Deputy Commissioner v. J Hussain, 2014 (3) ESC 297(SC)]**

Consumer Protection Act

S. 2(1) (d) – Complaint – Maintainability - Since complainant is transecting business, he cannot be said to be a consumer – His complaint is liable to be dismissed on this score

The definition of the expression 'consumer' in Section 2(d), a consumer means in so far as is relevant for the purpose of this appeal, (i) a person who buys any goods for consideration; it is immaterial whether the consideration is paid or promised, or partly paid and partly promised, or whether the payment of consideration is deferred; (ii) a person who uses such goods with the approval of the person who buys such goods for consideration (iii) but does not include a person who buys such goods for resale or for any commercial purpose. The expression "resale" is clear enough. Controversy has, however, arisen with respect to meaning of the expression "commercial purpose". It is also not defined in the Act. In the absence of a definition, we have to go by its ordinary meaning. "Commercial" denotes "pertaining to commerce" (Chamber's Twentieth Century Dictionary); it means "Connected with , or engaged in commerce; mercantile; having profit as the main aim" (Collins English

Dictionary) whereas the word "commerce" means "financial transactions especially buying and selling of merchandise, on a large scale" (Concise Oxford Dictionary). The National Commission appears to have been taking a consistent view that where a person purchases goods "with a view to using such goods for carrying on any activity on a large scale for the purpose of earning profit, he will not be a "consumer" within the meaning of Section 2(d)(i) of the Act. Broadly affirming the said view and more particularly with a view to obviate any confusion the expression "large-scale" is not a very precise expression the Parliament stepped in and added the explanation to Section 2(d)(i) by Ordinance/Amendment Act, 1993. The explanation excludes certain purpose from the purview of the expression "commercial purpose"- a case of exception to an exception. Let us elaborate: a person who buys a typewriter or a car and uses them for his personal use is certainly a consumer but a person who buys a typewriter or a car for typing others' work for consideration or for playing the car as a taxi can be said to be using the typewriter/car for a commercial purpose. The explanation however clarified that in certain situations, purchase of goods for "commercial purpose" would not yet take the purchaser out of the definition of expression "consumer". If the commercial use is by the purchaser himself for the purpose of earing his livelihood by means of self – employment, such purchaser of goods is yet a "consumer".

It is thus clear that since the complainant is transacting business, therefore, he cannot be said to be a 'consumer'. The complaint is liable to be dismissed on this score. [**M/s. N.L.P. Organics Pvt. Ltd. Through Sh. Anil Bahl, Managing Director vs. The Chairman-cum-Managing Director, Indian Bank & Ors.**, **2014(3) CPR 468(NC)]**

Ss. 2(1) (g) r/w Section 2(1)(o) and 2(1)(r) – Duty of consumer forum – Consideration - Consumer forum is primarily must to provide protection to consumers and their claims cannot be defeated on technical grounds

Respondent No. 1, (Opposite Party No. 1) was the owner of property situated at 232/C/1, G.T. Road, Belur, Howrah. He, along with his son, Respondent No. 2 herein (Opposite Party No. 2) developed the said property into several residential flats. For the purpose of development and sale of flats so constructed, Respondent No. 1 executed Power of Attorney in favour of Respondent No. 2. On 21.11.2003 the said Respondents entered into an agreement for sale of a flat on the first floor to the Complainant for a total consideration of `2,88,900/-. A sum of `1,30,000/- was paid by the Complainant by various cheques. In addition, a sum of `1,60,000/- was stated to have been paid in cash against proper receipts between the period 10.07.2003 to 27.11.2003. As per the agreement, possession of the flat was to be delivered

to the Complainant by 31.05.2004. Despite repeated requests, the said Respondents refused to deliver possession of the flat. He claims to have learnt in the meantime that some time in the year 2005 the said Respondents had inducted Respondent No. 3 (Opposite Party No. 3) in the said flat without his knowledge and consent. Thus alleging deficiency in service and unfair trade practice on the part of Respondents No. 1 and 2 for not delivering possession despite payment of full consideration, the Complainant filed Complaint against the Respondent, praying for delivery of possession of the flat, free from all encumbrances, or in the alternative, for refund of `2,90,000/- with bank rate of interest thereon along with a compensation of `1,00,000/- and costs.

Before the District Forum, Respondents No. 1 & 2 were proceeded ex-parte, as they had refused to accept the notice. The complaint was, however, contested by Respondent No. 3 mainly on the ground that he was not aware of the agreement for sale between the Complainant and Respondents No. 1 & 2; the said Respondents had entered into an agreement with him for sale of the said property on 19.01.2004; sale deed in his favour was executed on 08.09.2004 and in the absence of any claim by the Complainant against him, the Complaint deserved to be dismissed.

Upon consideration of the documents placed on record by the Complainant, which included the agreement for sale and the receipts bearing the signatures of Respondents No. 1 & 2, the District Forum came to the conclusion that there was deficiency in service and unfair trade practice on the part of Respondents No. 1 & 2. Consequently, the District Forum allowed the complaint against the said Respondents, directing them to refund the afore-noted amount deposited by the Complainant with them along with interest @ 18% p.a. from the date of full payment till realization.

Aggrieved, Respondents No. 1 & 2 preferred appeal to the State Commission. Accepting their plea that they were not afforded an opportunity to adduce evidence and that the agreement for sale dated 21.11.2003 was not properly stamped, the same having been executed on a stamp paper of `10/-, it should have been impounded.

In the present case, in our opinion, the factum of execution of the agreement for sale not being in dispute, the State Commission committed a serious illegality in non-suiting the Complainant on a technical ground that requisite stamp duty on agreement for sale had not been paid. A Consumer Forum is primarily meant to provide protection to the consumers and their claims cannot be defeated on technical grounds. In Commission's view the alleged non-payment of sufficient stamp duty was not material for the purpose

of determining the question as to whether there was any deficiency in service under Section 2 (1) (g) read with Section 2(1) (o) of the Act. In our opinion, non-delivery of possession of the flat in question within the stipulated time undoubtedly amounted to deficiency in service on the part of Respondents No. 1 & 2, falling within the purview of the Act. **[Sanjay Kumar Gupta v. Kebal Kishan Barm & Ors., 2014(3) CPR 236(NC)]**

S.15, 17 – Medical Negligence – When does not constitute – Post-Operative complications do not always show medical negligence

On perusal of records we are convinced that, Dr. Sudhir Kumar, the so called Gynecologist and a B.E.M.S. degree holder, and Smt. Munni Devi, a midwife, were working in Dr. Sudhir Kumar's "Jachcha-Bachcha Kendra". Complications developed during the treatment and the said Dr. Sudhir Kumar, appears to be a quack and not qualified to treat such patients. Then she took treatment from Dr. Madhu Shah, a doctor in Ramkrishna Mission Sevashrama wherein she has prescribed Injection Voveron. We find no mention of the medical qualification of Dr. Madhu Shah on record. Though Dr. Madhu Shah had kept the patient under her treatment for 14 days, but no medical records are availing pertaining to the treatment given by her. On 14.08.2006, when Dr. Madhu Shah observed the ultrasound she reported of some complications in lower abdomen, hence she discontinued the treatment of the Complainant. She also had advised the complainant to consult a surgeon.

Abdominal exploration was a right decision and did proper lavage in the presence of senior surgeon Dr. N. K. Aggarwal. Obviously, the surgical margins the tissue show necrotic changes and takes much time to heal. On post-operative period she developed would dehiscence. Wound dehiscence usually occurs in the presence of severe infection (Pus) in the abdomen and poor General condition of the patient. It is not related to ambulation of the patient. The patient was referred at right time on the day when she developed a wound dehiscence.

Therefore, we do not find any element of negligent treatment rendered by the Op. Her approach was reasonable and as per standard of medical practice. We put reliance upon various judgments of Hon'ble Supreme Court and of this Commission on the subject of medical negligence. The OP succeeds the **Bolam's Test**. Hence, both the fora below erred to appreciate the treatment given by OP to the complainant. The earlier doctors, Dr. Sudhir Kumar and Dr. Madhu Gupta who appear to be negligent from beginning of treatment, had ventured in unnecessary and improper treatment of the complainant. But, it is unfortunate that those doctors have not been arrayed as parties, to the

complaint, hence we are helpless to fix liability upon them. [**Dr. Manpreet Kaur, Preet Maternity Home & ENT Centre Vs. Smt. Laxmi Devi alias Gudiya, 2014(3) CPR 430 (NC)]**

Ss. 15, 17, 19 and 25 – Deficiency in service - Petitioner has failed to show any agreement/ contract with respondent for construction of house - In absence of any agreement/contract for construction of house, it cannot be said that respondent was service provider – Petitioner cannot claim compensation for amount spent in construction of his house and for deficient work and service provider cannot be penalised in absence of any agreement or contract

The petitioner has failed to show any Agreement/Contract with the respondent for construction of house. There is no evidence on record that he had awarded a contract to the respondent to construct the house. In fact, in his complaint, He has admitted that he had supplied the entire material for construction and also admitted that he has spent a sum of Rs. 8 Lakhs on the construction of the house. Out of this, as per the complaint only Rs. 1,25,000/- has been given to the respondent. He has also admitted that he has receipts only for Rs.1,05,600/-. As per respondent Rs. 1,05,600/- has been paid to him for providing, good labour for the construction work. In the absence of any Agreement or contract for construction of well-established, modern house, it cannot be said that the respondent was a service provider. Thus, the petitioner cannot claim compensation for the amount expended in the construction of his house and for deficient work. Further, the petitioner has also failed to provide any evidence to support his contention that the respondent is a Civil Engineer engaged in the business of construction of houses and shops on contract basis.

Thus, no jurisdictional or legal error has been shown to us to call for interference in the exercise of powers under Section 21(b) of Act. The orders of the fora below do not call for any interference nor they suffer from any infirmity or erroneous exercise of jurisdiction or material irregularity. **[Shri Om Prakash v. Shri Mahesh Chand Gupta, 2014 (3) CPR 33(NC)]**

Ss. 15, 19, 21 – Allotment of houses under Housing scheme – Cancellation of allotment without prior notice – Validity of – Cancellation of allotment with prior notice is unjustified

Based on the admitted facts, we agree that the respondent was totally unjustified in cancelling the allotment of the two new units offered to the Petitioners in the "Udyan Scheme" in lieu of the earlier allotments without waiting for the 18 months period to end, more so when the Petitioners had in writing accepted the offer and had only raised some pertinent questions relating

to the enhanced payment sought as also the revised schedule of payment. We not that even earlier the Respondent had not kept their commitment of handing over possession of the houses as per the Scheme within the stipulated period although right upto 1991 the Petitioners had been making payment to the respondent as per the agreed payment schedule. It is, of course, a fact that the Petitioners did not pay the entire amount of Rs. 71,000/- and taking into account this aspect the District Forum had not granted compensation sought by the Petitioners.

Keeping the above facts, we had pointedly asked counsel for the Respondent whether the unit is offered to the petitioners vide their letter dated 26.02.1993 were currently available. Counsel for the respondent after checking up from the Respondent reiterated that these units were no longer available but he conceded that the Counsel for the Petitioners was right in stating that some units in similar Schemes are available in Lucknow, for which the market rates are much higher than for the units under the Udayan Scheme.

Taking into account that totality of the above facts, particularly the conduct of the Respondent in initially not adhering to their assurance of handing over the first set of units within the stipulated period and thereafter offering alternative units which was also cancelled arbitrarily and without waiting for the 18 months period offered by them to the Petitioners for making the enhanced payment, we are of the view that they were guilty of both deficiency in service and unfair trade practice. Therefore, we partially accept the Revision Petitions and direct the Respondent to allot one built up unit to each of the Petitioners of the same area and dimensions as offered under the Udyan Scheme from among one of their existing Projects/Schemes in Lucknow, on the Petitioner paying the outstanding amount of Rs. 79,000/- alongwith 9% interest. [**Smt. Asha Mahrotra vs. M/s. Eldeco Housing & Industries Ltd., 2014(3) CPR 599 (NC)]**

S. 21- Revision - Scope and ambit – Scope of revisional jurisdiction is very limited

It is well settled that under Section 21 (b) of the Consumer Protection Act, 1986 (for short 'Act'), the scope of revisional jurisdiction is very limited.

Under Section 21 of the Act, this Commission can interfere with the order of the State Commission where such State Commission has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity.

Hon'ble Supreme Court in Mrs.Rubi Chandra Dutta Vs. M/s United India Insurance Co. Ltd., 2011 (3) Scale 654 has observed ;

> "Also, it is to be noted that the revisional powers of the National Commission are derived from Section 21 (b) of the Act, under which the said power can be exercised only if there is some prima facie jurisdictional error appearing in the impugned order, and only then, may the same be set aside. In considered opinion there was no jurisdictional error or miscarriage of justice, which could have warranted the National Commission to have taken a different view than what was taken by the two Forums. The decision of the National Commission rests not on the basis of some legal principle that was ignored by the Courts below, but on a different (and in our opinion, an erroneous) interpretation of the same set of facts. This is not the manner in which revisional powers should be invoked. In this view of the matter, commission is of the considered opinion that the jurisdiction conferred on the National Commission under Section 21 (b) of the Act has been transgressed. It was not a case where such a view could have been taken by setting aside the concurrent findings of two fora."

Thus, no jurisdiction or legal error has been shown to call for interference in the exercise of power under section 21 (b) of the Act, since two fora below have given cogent reasons in their order, which do not call for any interference nor they suffer from any infirmity or revisional exercise of jurisdiction. It is not that every order passed by the fora below is to be challenged by a litigant even when the same is based on sound reasoning. [**Senior General Manager Government of India, Ministry of Defence Indian Ordance Factories, Ordance Factory Raipur, District Dehradun Uttrakhand v. Mr. Anand Swaroop, 2014 (3) CPR 64 (NC)]**

S. 23 – Medical services – Medical negligence

Doctor cannot be held guilty of medical negligence if his conduct is not below normal standard of a reasonably competent practitioner in his field.

Undoubtedly, the complainant had aorta dissection. The question is as to whether it was the direct result of any negligenct or rash act committed by Dr. Chawla while conducting the angiography. From the entries made in the discharge summary, we do not find that there was any emergency to treat the aortic dissection. Aortic dissection came to be noticed beyond all reasonable doubt on September 3, 1999. She was not operated upon. It may be mentioned here that in case of acute aortic dissection, emergency open heart surgery is required. However, in case of sub-acute aortic dissection, treatment with

medication may be sufficient. There is sufficient material to come to the conclusion that the complainant was found stable after third day of angiography and till the date of discharge on September 8, 1999. The only allegation of the complainant is of abdominal paid during the process of angiography. There is no dispute that she was aged about 55 years and suffering from hypertension when the angiorgraphy procedure was conducted on her. It is probable that due to such associated causes the passage of the catheter through aortic space was not smooth. There is no material to infer that Dr. Chawla had undertaken any adventurous step. There is nothing on record which points out that Dr. Chawla used any brutal force to push the catheter. In our opinion, mere completion of the angiography does not rule out aorta dissection during the procedure. We find that the complainant did not had a serious aorata dissection but was having sub-acute aorta dissection and this is the reason that the complainant was subjected to clinical management and, in fact, her condition became stable without any surgical interference. It is nobody's case that Dr. Chawla is not a competent coronary expert or he lacked adequate knowledge in the field of coronary surgery. he is duly qualified and has good academic credentials. We have not found his conduct to be below the normal standard of a reasonably competent practitioner in his field. We are in agreement with the reasoning and the conclusion arrived at by the National Commission that the complainant has not been able to prove medical negligence on the part of Dr. Chawla. [**Mrs. Kanta v. Tagore Heart Care & Research Centre Pvt. Ltd. and Anr., 2014(3) CPR 627 (SC)]**

Contempt of Court Act

Contempt of Court – Generally – Safeguarding judicial system – Continuous wilful disobedience of court orders – Need of an iron hand to enforce rule of law, punish contemnors and maintain faith and confidence of people in the judiciary

Non-compliance with judicial orders shakes the very foundation of judicial system and undermines the rule of law which Supreme Court is bound to honour and protect. This is essential to maintain faith and confidence of the people in judiciary. **[SEBI v. Sahara India Real Estate Corpn. Ltd.; (2014) 2 SCC (Cri) 618]**

Defences – Apology – Connotation. "apology" means regretful acknowledgement or an excuse for failure - It is an explanation offered to a person affected by one's action that no offence was intended

The appellant has tendered an absolute and unconditional apology which has not been accepted by the High Court. The apology means a regretful

acknowledgment or an excuse for failure. An explanation offered to a person affected by one's action that no offence was intended, coupled with the expression of regret for any that may have been given. Apology should be unquestionable in sincerity. If should be tempered with a sense of genuine remorse and repentance, and not a calculated strategy to avoid punishment.

Undoubtedly, an apology cannot be a defence, a justification, or an appropriate punishment for an act which tantamount to contempt of court. An apology can be accepted in case where the conduct for which the apology is given is such that it can be 'ignored without compromising the dignity of the court", or it is intended to be the evidence of real contrition. It should be sincere. Apology cannot be accepted in case it is hollow; there is no remorse; no regret; no repentance, or if it is only a device to escape the rigour of the law. Such an apology can merely be termed as "paper apology".

An apology for criminal contempt of court must be offered at the earliest since a belated apology hardly shows the "contrition which is the essence of the purging of contempt". Of course, an apology must be offered and that too clearly and at the earliest opportunity. However, even if the apology is not belated but the court finds it to be without real contrition and remorse, and finds that it was merely tendered as a weapon of defence, the court may refuse to accept it. If the apology is offered at the time when the contemnor finds that the court is going to impose punishment, it ceases to be an apology and becomes an act of a cringing coward.

An apology tendered is not to be accepted as a matter of course and the court is not bound to accept the same, the court is competent to reject the apology and impose the punishment recording reasons for the same. The use of insulting language and later on tendering an apology does not absolve the contemnor on any count whatsoever. If the words are calculated and clearly intended to cause any insult, an apology, if tendered and lack penitence, regret or contrition, does not deserve to be accepted. **[Bal Kishan Giri v. State of U.P., (2014)3 SCC (Cri.) 29)]**

S.12 - Punishment for contempt – Nature and exercise of power - Power to punish for contempt is rare species of judicial power which by very nature calls for exercise with great care and caution

That the power to punish for contempt is a rare species of judicial power which is by the very nature calls for exercise with great care and caution. Such power ought to be exercised only where "silence is no longer an option." (See S. Mulgaokar , in re, H.G. Rangangound vs. State Trading State Trading Corporation of India Ltd., AIR 2012 SC 490; Maninderjit Singh Bittav vs.

Union of India Ltd., (2012) 1 SCC 273; T.C. Gupta & Anr. v. Hari Om Prakash and Arun Kumar Yadav vs. State of U.P., (2013) 10 SCC 658. Power of courts to punish for contempt is to secure public respect and confidence in judicial process. Thus, it is a necessary incident to every court of justice.

Being a member of the Bar, it was his duty not to demean and disgrace the majesty of justice dispensed by a court of law. It is a case where insinuation of bias and predetermined mind has been levelled by a practicing lawyer against three judges of the High Court. Such casting of bald, oblique, unsubstantiated aspersions against the judges of High Court not only causes agony and anguish to the judges concerned but also shakes the confidence of the public in the judiciary in its function of dispensation of justice. The judicial process is based on probity, fairness and impartiality which is unimpeachable. Such an act especially by members of Bar who are another cog in the wheel of justice is highly reprehensible and deeply regretted. Absence of motivation is no excuse.

In view of the above, we are of the considered opinion that the High Court has not committed any error in not accepting the appellant's apology since the same is not bona fide. There might have been an inner impulse of outburst as the appellant alleges that his nephew had been murdered, but that is no excuse for a practicing lawyer to raise fingers against the court.[**Bal Kishan Giri vs. State of U.P., (2014)7 SCC 280]**

Criminal Procedure Code

S. 41 – Power to arrest – Arrest fast bringing humiliation, curtailing freedom and casting scars forever – Power to arrest breeds arrogance and corruption – To arrest first and then proceed to investigate – Despicable – No arrest should be made only because the offence is non-bailable and cognizable and therefore, lawful for the police officers to do so

Nearly a quarter of those arrested under this provision in 2012 were women i.e. 47,951 which depicts that mothers and sisters of the husbands were liberally included in their arrest net. Its share is 6% out of the total persons arrested under the crimes committed under Indian Penal Code. It accounts for 4.5% of total crimes committed under different sections of penal code, more than any other crimes excepting theft and hurt. The rate of charge-sheeting in cases under Section 498A, IPC is as high as 93.6%, while the conviction rate is only 15%, which is lowest across all heads. As many as 3,72,706 cases are pending trial of which on current estimate, nearly 3,17,000 are likely to result in acquittal. Arrest brings humiliation, curtails freedom and cast scars forever. Law makers know it so also the police.

There is a battle between the law makers and the police and it seems that police has not learnt its lesson; the lesson implicit and embodied in the Cr.PC. It has not come out of its colonial image despite six decades of independence, it is largely considered as a tool of harassment, oppression and surely not considered a friend of public. The need for caution in exercising the drastic power of arrest has been emphasized time and again by Courts but has not yielded desired result. Power to arrest greatly contributes to its arrogance so also the failure of the Magistracy to check it. Not only this, the power of arrest is one of the lucrative sources of police corruption.

The attitude to arrest first and then proceed with the rest is despicable. It has become a handy tool to the police officers who lack sensitivity or act with oblique motive. Law Commissions, Police Commissions and this Court in a large number of judgments emphasized the need to maintain a balance between individual liberty and societal order while exercising the power of arrest. Police officers make arrest as they believe that they possess the power to do so. As the arrest curtails freedom, brings humiliation and casts scars forever, court feel differently. Court believe that no arrest should be made only because the offence is non-bailable and cognizable and therefore, lawful for the police officers to do so.

In order to ensure what court had observed above, court give the following direction: All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A of the IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41, Cr.PC; All police officers be provided with a check list containing specified sub- clauses under Section 41(1)(b)(ii); The police officer shall forward the check list duly filed and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention; The Magistrate while authorising detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorise detention; The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of police of the district for the reasons to be recorded in writing;

Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before High Court having territorial jurisdiction. Authorising detention without

recording reasons as aforesaid by the judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.

Court hasten to add that the directions aforesaid shall not only apply to the cases under Section 498-A of the I.P.C. or Section 4 of the Dowry Prohibition Act, the case in hand, but also such cases where offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years; whether with or without fine. Court direct that a copy of this judgment be forwarded to the Chief Secretaries as also the Director Generals of Police of all the State Governments and the Union Territories and the Registrar General of all the High Courts for onward transmission and ensuring its compliance. By order dated 31st of October, 2013, this Court had granted provisional bail to the appellant on certain conditions. Court made this order absolute. In the result, Court allow this appeal, making our aforesaid order dated 31st October, 2013 absolute; with the directions aforesaid. **[Arnesh Kumar v. State of Bihar & anr., 2014 (5) Supreme 324]**

S.125 – Maintenance – Obligation of husband to maintain wife and children – Duty to provide maintenance has to be fulfilled even by earning money by physical labour

S. 125 was conceived to ameliorate the agony, anguish, financial suffering of a woman who left her matrimonial home for the reasons provided in the provision so that some suitable arrangements can be made by the court and she can sustain herself and also her children if they are with her. The concept of sustenance does not necessarily mean to lead the life of an animal, feel like an unperson to be thrown away from grae and roam for her basic maintenance somewhere else. She is entitled in law to lead a life in the similar manner as she would have lived in the house of her husband. That is where the status and strata come into play, and that is where the obligations of the husband, in case of a wife, become a prominent one. In a proceeding of this nature, the husband cannot take subterfuges to deprive her of the benefit of living with dignity. Regard being had to the solemn pledge at the time of marriage and also in consonance with the statutory law that governs the field, it is the obligation of the husband to see that the wife does not become a destitute, a beggar. A situation is to be maladroitly created where under she is compelled to resign to her fate and think of life "dust unto dust". It is totally impermissible. In fact, it is the sacrosanct duty to render the financial support even if the husband is required to earn money with physical labour, if he is able bodied. There is no escape route unless there is an order from the Court that the wife is not entitled to get maintenance from the husband on any legally

permissible grounds. **(Bhuwan Mohan Singh v. Meena, 2014 AIR (SC) 2875)**

Ss. 154, 157 – FIR – Non mentioning of the name of accused in initial FIR – Is not fatal to prosecution case

In the present case, the FIR initially did not mention the name of the accused and on the other hand, father of the deceased child had suspected one of his relatives for the offence. It was however, revealed after investigation that it was the accused who committed the act and the police in fact was proceeding in the right path. The invovlement of the accused has been further corroborated by the recovery of the shawl of the deceased on the basis of the confession of the accused which was made in the presence of witnesses. Held, non mentioning of the name of accused in the initial FIR is not fatal to prosecution case. Hence, the plea of the appellant-accused that since his name did not appear in the FIR, he is entitled to acquittal, would be not maintainable. [**Ramesh v. State through Inspector of Police, 2014 AIR (SC) 2852]**

S. 154 - Delayed FIR- If fully explained - Delay can be condoned

In this case, it was further submitted that there was a delay of 22 days in lodging the FIR against the appellant as the alleged occurrence took place on 20.08.2006 at about 2 p.m. but the FIR was registered on 11.09.2006.

The counsel for the respondent-State however supported the reasons relied upon by the High Court as also the Sessions Court for upholding the conviction and took us to the evidence led by the prosecution viz. PW-2 Daulat Ram-father of the victim girl who stated that when the prosecutrix became unconscious on consuming poison, they took her to the Hospital at Dadahu and from there she was taken to Nahan and then to PGI, Chandigarh where she remained admitted till 10.09.2006. The victim girl on regaining consciousness at PGI, Chandigarh was asked by the witness PW1 - father and his son-brother of the victim girl as to why she had consumed poison to which the prosecutrix stated that on 20.08.2006, the accused had committed rape on her in the Jungle and he had threatened her not to disclose the incident to anyone and as she could not bear the suffering and trauma of the incident, she consumed poison as she was feeling ashamed due to the offence committed upon her by the accused. After discharge from PGI, Chandigarh on 10.9.2006, FIR was lodged.

So, the delay in lodging the FIR has been clearly explained by the prosecution relating the circumstance and the witnesses supporting the same have stood the test of scrutiny of the cross examination as a result of which the version of the victim girl cannot be doubted. The delay in lodging the FIR

thus stands fully explained. **[Puran Chand v. State of H.P., 2014 (86) ACC 279]**

S. 154 - F.I.R. - Scope of – FIR need not contain a detailed account of the incident rather the object of an FIR is to give such information only which is necessary to set the criminal law in motion

It a settled law that an F.I.R. need not contain a detailed account of the incident. It also cannot be taken as an encyclopedia of the events. The object of an F.I.R. is to give such information only which is necessary to set the criminal law in motion. **[Shiv Murti Singh v. Nawab khan, (2014 (32) LCD 1553) Allahabad High Court (Lucknow Bench)]**

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Ss. 154 to 157 – FIR – Delay in sending FIR to court – Whether cast doubt on prosecution case

The occurrence took place at 6.30 p.m. on 7.8.2005 and PW 7 Shanti Lal lodged the complaint at 7.20 p.m. in Police Station Aalot: According to Investigating Officer PW 17 P.K. Sharma the copy of FIR could not be sent in the night and it was dispatched next day to the Court. The High Court held that in the totality of the circumstances of the case there was no inordinate delay in sending the FIR to the Court. We concur with the view of the High Court. [**Bahadur Sing and others v. State of M.P., (2014) 3 SCC (Cri.) 90]**

S. 156—Sting operation by enforcement agencies—Use of for crime detection and proof—Not yet recognized as absolute principles in other jurisdiction

Sting operations conducted by the law enforcement agencies themselves in the above jurisdictions have not been recognized as absolute principles of crime detection and proof of criminal acts. Such operations by the enforcement agencies are yet to be experimented and tested in India and legal acceptance thereof by our legal system is yet to be answered. **[Rajat Prasad vs. C.B.I., 2014 Cri.L.J. 2941 (SC)]**

S. 173(8) – Further investigation – consideration of – Minimum required that the police should seek formal permission of the Court to make further investigation

In courts opinion it is well established that once the Magistrate has taken cognizance of an offence on the basis of the police report submitted earlier and the police report submitted earlier and the police does desire on

certain fresh information coming to light to conduct further investigation, the minimum requirement is that the police should express their regard and respect for the Court by seeking its formal permission to make further investigation. **[Prakash Ahirwar v. State of U.P., 2014 (86) ACC 768) (All)]**

S. 197 (1) – Requirements Enumerated

Section 197 (1) of the Code will be required to be noticed at this stage and is therefore extracted below:

> "197. Prosecution of judges and public servants.- (1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction -
>
> (a) in case of a person who is employed or, as the case may be was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;
>
> (b) in the case of a person who is employed or, as the case may be was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government :
>
> Provided that where the alleged offence was committed by a person referred to in Clause (b) during the period while a Proclamation issued under Clause (1) of Article 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression "State Government" occurring therein, the expression "Central Government : were substituted."

A reading of the provisions of Section 197 (1) of the Code reveals that there are three mandatory requirements under section 197 (1) of the Code, namely:

(a) that the accused is a public servant;

(b) that the public servant can be removed from the pose by or with the sanction either of the Central or the State Government, as the case may be;

(c) the act(s) giving rise to the alleged offence had been

committed by the public servant in the actual or purported discharge of his official duties.

In a series of pronouncements commencing with Satwant Singh vs. State of Punjab [AIR 1960 SC 266]; Harihar Prasad vs. State of Bihar [(1972) 3 SCC 89] and Prakash Singh Badal & Anr. vs. State of Punjab & Ors.[(2007) 1 SCC 1] it has been consistently held that it can be no part of the duty of a public servant or acting in the discharge of his official duties to commit any of the offences covered by Section 406, 409, 420 etc. and the official status of the public servant can, at best, only provide an opportunity for commission of the offences. Therefore, no sanction for prosecution of the public servant for such offences would be required under Section 197 of the Code. Notwithstanding the above, the High Court had granted liberty to the appellant to raise the issue of sanction, if so required, depending on the evidence that may come on record in the course of the trial. Despite the view taken by this Court in the series of pronouncements referred to above, the opportunity that has been provided by the High Court to the benefit of the appellant need not be foreclosed by us inasmuch as in Matajog Dobey vs. H.C. Bhari[AIR 1956 SC 44], P.K. Pradhan vs. State of Sikkim[(2001) 6 SCC 704] and Prakash Singh Badal (supra) this Court had consistently held that the question of sanction under Section 197 of the Code can be raised at any time after cognizance had been taken and may have to be determined at different stages of the proceeding/trial. The observations of this Court in this regard may be usefully extracted below.

Matajog Dobey vs. H.C. Bhari (para 21)

"The question may arise at any stage of the proceedings. The complaint may not disclose that the act constituting the offence was done or purported to be done in the discharge of official duty; but facts subsequently coming to light on a police or judicial inquiry or even in the course of the prosecution evidence at the trial, may establish the necessity for sanction. Whether sanction is necessary or not may have to be determined from stage to stage. The necessity may reveal itself in the course of the progress of the case."

P.K. Pradhan vs. State of Sikkim (para 15)

"It is well settled that question of sanction under Section 197 of the Code can be raised any time after the cognizance; may be immediately after cognizance or framing of charge or even at the time of conclusion of trial

and after conviction as well. But there may be certain cases where it may not be possible to decide the question effectively without giving opportunity to the defence to establish that what he did was in discharge of official duty. In order to come to the conclusion whether claim of the accused, that the act that he did was in course of the performance of his duty was reasonable one and neither pretended nor fanciful, can be examined during the course of trialby giving opportunity to the defence to establish it. In such an eventuality, the question of sanction should be left open to be decided in the main judgment which may be delivered upon conclusion of the trial."

[Chandan Kumar Basu v. State of Bihar, 2014 ACC (86) 856)(SC)]

S. 211 – Charges framed – No prejudice caused to accused persons – Not infirmity

In this case at hand, as has been stated earlier, the charges have been framed and court do not found any vagueness. That apart, neither any prejudice has been caused nor has there been any failure of justice. Thus, the submission of Mr. Jain in this regard leaves us unimpressed. **[Chandra Prakash v. State of Rajasthan, 2014 (4) Supreme 646]**

S. 228 – For framing of charge under section 228, the Judge is not required to record detailed reasons as to why such charge is framed

Relative scope of sections 227 and 228, Cr.P.C. was noticed and considered by this Court in Amit Kapoor v. Ramesh Chander and another, (2012) 9 SCC 460). This Court held as follows :

"17. Framing of a charge is an exercise of jurisdiction by the Trial Court in terms of S. 228 of the Code, unless the accused is discharged under Sec. 227 of the Code. Under both these provisions, the Court is required to consider the "record of the case" and documents submitted therewith and, after hearing the parties, may either discharge the accused or where it appears to the Court and in its opinion there is ground for presuming that the accused has committed an offence, it shall frame the charge. Once the facts and ingredients of the section exists, then the Court would be right in presuming that there is ground to proceed against the accused and frame the charge accordingly. This presumption is not a presumption of law as such. The satisfaction of the Court in relation to the existence of constituents of an offence and the facts leading to that offence is a *sine qua non* for exercise of such jurisdiction. It may even be weaker than a prima facie case. There is a fine distinction between the language of sections 227 and 228 of the Code. Section 227 is the expression of a

definite opinion and judgment of the Court while section 228 is tentative. Thus, to say that at the stage of framing of charge, the Court should form an opinion that the accused is certainly guilty of committing an offence, is an approach which is impermissible in terms of Section 228 of the Code."

"19. At the initial stage of framing of a charge, the Court is concerned not with proof but with a strong suspicion that the accused has committed an offence, which, if put to trial, could prove him guilty. All that the Court has to see is that the material on record and the facts would be compatible with the innocence of the accused or not. The final test of guilt is not to be applied at that stage."

[Dinesh Tiwari v. State of U.P., 2014 (86) ACC 872 (SC)]

Ss. 362, 353—Recall or review of order—Order acquitting petitioner dictated in open court, but had not be signed can be recalled of order by High Court

Court does not find any forcible submission advanced on behalf of the petitioners that once the order had been dictated in open court, the order to review or recall is not permissible in view of the provisions of Section 362, Cr.P.C. for the simple reason that Section 362, Cr.P.C. puts an embargo to call, recall or review any judgment or order passed in criminal case once it has been pronounced and signed. In the instant case, admittedly the order was dictated in the court, but had not been signed.

In view of the provisions of Section 362, Cr.P.C. while deciding the case, the Patna High Court relied upon the judgment of Calcutta High Court in Amodini Dasee vs. Darsan Ghose, 1911 ILR (Cal) 828 and the judgment of Allahabad High Court in Emperor vs. Pragmadho Singh, 1932 ILR (All) 132. A similar view has been reiterated by the Division Bench of the Bombay High Court in State of Bombay vs. Geoffrey Manners & Co., AIR 1951 Bom. 49. The Bombay High Court had taken the view that unless the judgment is signed and sealed, it is not a judgment in strict legal sense and therefore, in exceptional circumstances, the order can be recalled and altered to a certain extent.

In view of the above, Court is of the considered opinion that no exception can be taken to the procedure adopted by the High Court in the instant case. **[Kushalbhai Ratanbhai Rohit vs. State of Gujarat, 2014 Cri.L.J. 2951 (SC)]**

S. 378 - Appeal against acquittal - Powers of Appellate court - Principles to be kept in mind while dealing with such appeals stated

In dealing with appeals against acquittal, the appellate court must bear in mind the following: (i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court, (ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal, (iii) Though, the power of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the trial court had an advantage of seeing the demeanor of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate court in interfering with such conclusions is fully justified, and (iv) Merely because the appellate court on re-appreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate court in the judgment of the trial court. . **[Muralidhar alias Gidda and another v. State of Karnataka, AIR 2014 SC 2200]**

S. 386 – Appeal against acquittal – Interference – Not permissible if view taken by High Court is a reasonably possible view

The acquittal is not recorded by the trial court but by the High Court. We shall therefore see whether there were sufficient reasons for the High Court to set aside the conviction. We must however bear in mind that if the view taken by the High Court is a reasonably possible view it should not be disturbed because the acquittal of the accused by the High Court has strengthened the presumption of their innocence. **(Balbir v. Vazir, 2014 AIR (SC) 2778)**

S. 389—Suspension of sentence and grant of bail—Validity of

The mere fact that during the period, when an accused person was on bail during trial, there was no misuse of liberty does not per se warrant suspension of sentence and grant of bail. What really is necessary to be considered by the Court is whether reasons exist, on the merits of the case, to suspend the execution of sentence and, thereafter, grant bail to the applicant.

[**Chandra Shekhar Bharti vs. The State of Bihar, 2014 Cri.L.J. 2953 (Pat. HC)]**

S. 389 (1) – Stay of sentence – Unless there are exceptional circumstances appellate court cannot stay conviction, although it can suspend the sentence after recording reasons – High Court, after elaborate discussion holding the instant case not fit for staying conviction – No infirmity

That declaration is made after the court finds him guilty of the charges which have been proved against him. Thus, in effect, if one prays for stay of conviction, he is asking for stay of operation of the effects of the declaration of being guilty. It has been consistently held by this Court that unless there are exceptional circumstances, the appellate court shall not stay the conviction, though the sentence may be suspended. There is no hard and fast rule or guidelines as to what are those exceptional circumstances. However, there are certain indications in the Code of Criminal Procedure, 1973 itself as to which are those situations and a few indications are available in the judgments of this Court as to what are those circumstances.

It may be noticed that even for the suspension of the sentence, the court has to record the reasons in writing under Section 389(1) Cr.PC. Couple of provisos were added under Section 389(1) Cr.PC pursuant to the recommendations made by the Law Commission of India and observations of this Court in various judgments, as per Act 25 of 2005. It was regarding the release on bail of a convict where the sentence is of death or life imprisonment or of a period not less than ten years. If the appellate court is inclined to consider release of a convict of such offences, the public prosecutor has to be given an opportunity for showing cause in writing against such release.

The High Court has discussed in detail the background of the appellant, the nature of the crime, manner in which it was committed, etc. and has rightly held that it is not a very rare and exceptional case for staying the conviction. Court do not, thus , found any merit in the appeal and the same is accordingly dismissed. However, court made it clear that the observations in this judgment are only for the purpose of this order and they shall have no bearing while hearing the appeal. **(Shyam Narain Pandey v. State of Uttar Pradesh, 2014 (6) Supreme 507)**

Ss. 482 and 320 – Quashment, compounding and settlement/compromise – Inherent power of High Court under S. 482 to quash criminal proceedings involving non-compoundable offences in view of compromise/settlement arrived at between the parties – General guidelines and limitations on exercise of quashment power of High Court in all such cases, laid down.

We sum up and lay down the following principles by which the High Court would be guided in giving adequate treatment to the settlement between the parties and exercising its power under Section 482 of the Code while accepting the settlement and quashing the proceedings or refusing to accept the settlement with direction to continue with the criminal proceedings:

(I) Power conferred under Section 482 of the Code is to be distinguished from the power which lies in the Court to compound the offences under Section 320 of the Code. No doubt, under Section 482 of the Code, the High Court has inherent power to quash the criminal proceedings even in those cases which are not compoundable, where the parties have settled the matter between themselves. However, this power is to be exercised sparingly and with caution.

(II) When the parties have reached the settlement and on that basis petition for quashing the criminal proceedings is filed, the guiding factor in such cases would be to secure:

(i) ends of justice, or

(ii) to prevent abuse of the process of any Court.

While exercising the power the High Court is to form an opinion on either of the aforesaid two objectives.

(III) Such a power is not be exercised in those prosecutions which involve heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society. Similarly, for offences alleged to have been committed under special statute like the Prevention of Corruption Act or the offences committed by Public Servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender.

(IV) On the other hand, those criminal cases having overwhelmingly and pre-dominantly civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes should be quashed when the parties have resolved their entire disputes among

themselves.

(V) While exercising its powers, the High Court is to examine as to whether the possibility of conviction is remote and bleak and continuation of criminal cases would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal cases.

(VI) Offences under Section 307 IPC would fall in the category of heinous and serious offences and therefore is to be generally treated as crime against the society and not against the individual alone. However, the High Court would not rest its decision merely because there is a mention of Section 307 IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of Section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to proving the charge under Section 307 IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delegate parts of the body, nature of weapons used etc. Medical report in respect of injuries suffered by the victim can generally be the guiding factor. On the basis of this prima facie analysis, the High Court can examine as to whether there is a strong possibility of conviction or the chances of conviction are remote and bleak. In the former case it can refuse to accept the settlement and quash the criminal proceedings whereas in the later case it would be permissible for the High Court to accept the plea compounding the offence based on complete settlement between the parties. At this stage, the Court can also be swayed by the fact that the settlement between the parties is going to result in harmony between them which may improve their future relationship.

(VII) While deciding whether to exercise its power under Section 482 of the Code or not, timings of settlement play a crucial role. Those cases where the settlement is arrived at immediately after the alleged commission of offence and the matter is still under investigation, the High Court may be liberal in accepting the settlement to quash the criminal proceedings/investigation. It is because of the reason that at this stage the investigation is still on and even the charge sheet has not been filed. Likewise, those cases where the charge is framed but the evidence is yet to start or the evidence is still at infancy stage, the High Court can show benevolence in exercising its powers favourably, but after prima facie assessment of the circumstances/material mentioned above. On the other hand, where the prosecution evidence is almost complete or after the conclusion of the evidence the matter is at the stage of argument, normally the High Court should refrain from exercising its

power under Section 482 of the Code, as in such cases the trial court would be in a position to decide the case finally on merits and to come a conclusion as to whether the offence under Section 307 IPC is committed or not. Similarly, in those cases where the conviction is already recorded by the trial court and the matter is at the appellate stage before the High Court, mere compromise between the parties would not be a ground to accept the same resulting in acquittal of the offender who has already been convicted by the trial court. Here charge is proved under Section 307 IPC and conviction is already recorded of a heinous crime and, therefore, there is no question of sparing a convict found guilty of such a crime. [**Narinder Singh & Others v. State of Punjab and Another, (2014) 6 SCC 466]**

S. 482 – Quashing of complaint – Considerations – Court has only to look at un-controverted allegation in complaint whether they disclose prima facie offence – Should not delve in disputed question of facts

When a prosecution at the initial stage is asked to be quashed, the tests to be applied by the Court is as to whether the uncontroverted allegations as made in the complaint *prima facie* establish the case. The Courts have to see whether the continuation of the complaint amounts to abuse of process of law and whether continuation of the criminal proceeding results in miscarriage of justice or when the Court comes to a conclusion that quashing these proceedings would otherwise serve the ends of justice, then the Court can exercise the power under Section 482 Cr.P.C. While exercising the power under the provision, the Courts have to only look at the uncontroverted allegation in the complaint whether *prima facie* discloses an offence or not, but it should not convert itself to that of a trial Court and dwell into the disputed questions of fact. **(Rishipal Singh v. State of U.P., 2014 AIR (SC) 2567)**

Sentence - Relevant factors - Consideration of

Court observed that facts and circumstances in each case, nature of crime, manner in which it was planned and committed, motive, conduct of accused, nature of weapons used and other attending circumstances need to be taken into consideration by the Court **[State of U.P. v. Sudhir Gupta and others, 2014 (86) ACC 349]**

Criminal Trial

Circumstantial Evidence – Generally – Conviction based solely on circumstantial evidence – When sustainable – Principles reiterated

For establishing the guilt on the basis of circumstantial evidence, it is also to be taken into account that the chain of circumstantial evidence must be

completed. It appears from the facts that the said chain of circumstantial evidence cannot be concluded in the manner sought to be done by the prosecution. The circumstances must be conclusive in nature. In the instant case, after analyzing the facts, it appears to us that there is a gap between the circumstances tried to be relied upon to hold the appellants as guilty. Thus, court find many loopholes in the case of the prosecution and grounds on which the High Court has convicted the appellant-accused.

Court would refer to the decision of this Court in Munish Mubar v. State of Haryana, (2012)10 SCC 464: (2013)1 SCC (Cri) 52, wherein Dr. Chauhan, J. has very aptly and succinctly stated the following: (SCC p.473, para 28)

> "28…. The circumstantial evidence is a close companion of factual matrix, creating a fine network through which there can be no escape for the accused, primarily because the said facts, when taken as a whole, do not permit us to arrive at any other inference but one indicating the guilt of the accused."

A court has to examine the entire evidence in its entirely especially in case of circumstantial evidence and ensure that the only inference drawn from the evidence is the guilt of the accused. If more than one inference can be drawn then the accused must have the benefit of doubt as it is not the court's job to assume and only when guilt beyond reasonable doubt is proved then it is fair to record conviction. In case of circumstantial evidence, each circumstance must be proved beyond reasonable doubt by independent evidence, and the circumstances so proved must form a complete chain without giving any chance of surmise or conjecture and must also be consistent with the guilt of the accused. [**Dhan Raj Alias Dhand v. State of Haryana, With Badal v. State of Haryana, (2014)3 SCC (Cri.) 126]**

Circumstantial Evidence - Time of death of deceased not clear - Effect of – It cannot be said that chain of circumstantial evidence is not complete

So far as the argument of learned counsel for the appellants that time of death of the deceased persons is not clear, as such, chain of circumstantial evidence is missing is concerned, has no substance. In this regard, in a case law Gade Lakshmi Mangaraju alias Ramesh Vs. State of A.P., (2001) 6 Supreme Court Cases 205, in paragraphs 22 and 23 the Hon'ble Supreme Court has held as under:-

> "22. Learned counsel contended next that the inability of the prosecution to indicate the time of murder can go to the benefit of the appellant because the appellant alone was once found in the house

whereas he was found only at the restaurant in the company of A-2. According to the counsel if A-2's finger impressions on the almirah is of any use the possibility of A-2 committing the murder all alone cannot be ruled out.

Court cannot approve of the said contention as a safe method for appreciating a case based on circumstantial evidence. One circumstance by itself may not unerringly point to the guilt of the accused. It is the cumulative result of all circumstances which could matter. Hence, we are not inclined to cull out one circumstance from the rest for the purpose of giving a different meaning to it."

So to court view, merely because the exact time of death of the deceased is not clear, it cannot be said that the chain of circumstantial evidence in this regard is not complete. **[Satnam Singh and another v. State of U.P., 2014 (86) ACC 134]**

Extra-judicial confession if found credible, can be solely form basis of conviction

It is no doubt true that this Court time and again has held that an extra-judicial confession can be relied upon only if the same is voluntary and true and made in a fit state of mind. The value of the evidence as to the confession like any other evidence depends upon the veracity of the witness to whom it has been made. The value of the evidence as to the confession depends on the reliability of the witness who gives the evidence. But it is not open to any court to start with the presumption that extra-judicial confession is insufficient to convict the accused even though it is supported by the other circumstantial evidence and corroborated by independent witness which is the position in the instant case. The Courts cannot be unmindful of the legal position that even if the evidence relating to extra-judicial confession is found credible after being tested on the touchstone of credibility and acceptability, it can solely form the basis of conviction. **[Baskaran and another v. State of Tamil Nadu, 2014 (86) ACC 284]**

S. 304 –B – Expression "soon before her death" - To be considered under specific circumstances of each case and it is synonymous with term "immediately before"

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

can come within term "soon before" is left to be determined by courts depending upon the facts and circumstances of each case. **[Dinesh v. State of Haryana, 2014(86) ACC 288]**

Sentence – Sentencing policy – Purpose/jurisprudential justification of awarding sentence (deterrence, retribution or rehabilitation) vis-à-vis nature of crime – Relevant

Law prohibits certain acts and/or conducts and treats them as offences. Any person committing those acts is subject to penal consequences which may be of various kinds. Mostly, punishment provided for committing offences is either imprisonment or monetary fine or both. Imprisonment can be rigorous or simple in nature. Why those persons who commit offences are subjected to such penal consequences? There are many philosophies behind such sentencing justifying these penal consequences. The philosophical/jurisprudential justification can be retribution, incapacitation, specific deterrence, general deterrence, rehabilitation, or restoration. Any of the above or a combination thereof can be the goal of sentencing.

Whereas in various countries, sentencing guidelines are provided, statutorily or otherwise, which may guide Judges for awarding specific sentence, in India we do not have any such sentencing policy till date. The prevalence of such guidelines may not only aim at achieving consistencies in awarding sentences in different cases, such guidelines normally prescribe the sentencing policy as well namely whether the purpose of awarding punishment in a particular case is more of a deterrence or retribution or rehabilitation etc. In the absence of such guidelines in India, Courts go by their own perception about the philosophy behind the prescription of certain specified penal consequences for particular nature of crime. For some deterrence and/or vengeance becomes more important whereas another Judge may be more influenced by rehabilitation or restoration as the goal of sentencing. Sometimes, it would be a combination of both which would weigh in the mind of the Court in awarding a particular sentence. However, that may be a question of quantum.

What follows from the discussion behind the purpose of sentencing is that if a particular crime is to be treated as crime against the society and/or heinous crime, then the deterrence theory as a rationale for punishing the offender becomes more relevant, to be applied in such cases. Therefore, in respect of such offences which are treated against the society, it becomes the duty of the State to punish the offender. Thus, even when there is a settlement between the offender and the victim, their will would not prevail as in such cases the matter is in public domain. Society demands that the individual

offender should be punished in order to deter other effectively as it amounts to greatest good of the greatest number of persons in a society. [**Narinder Singh and Others v. State of Punjab and Another, (2014) 6 SCC 466]**

Conviction – Ocular testimony supported by medical evidence - Recovery of weapons pursuant to the information furnished by accused persons – No infirmity in conviction

The High Court after careful and close scrutiny of the evidence entertained doubt with regard to the participation of eight of the accused on account of absence of overt act attributable to them and gave them benefit of doubt and acquitted them. The ocular testimony of PW7 Shanti Lal about the attack made by the appellants herein on Babu Lal is corroborated by the medical evidence and the recovery of weapons pursuant to the information furnished by them. In court's considered view the conviction and sentence imposed on the appellants does not call for any interference. **[Bahadur Singh and others v. State of Madhya Pradesh, 2014 (4) Supreme 642]**

Delhi Special Police Establishment Act

S. 6-A—Constitution of India, Art. 14—Prevention of Corruption Act, S. 13—Public servant—Alleged to be guilty of corruption—Requirement of approval from Central Govt. for investigation/inquiry if he is of level of Joint Secretary or above—Is discriminatory—Classification made between corrupt public servants on basis of status—Is impermissible—Section 6-A of 1946 Act and S. 26(c) of 2003 Act are invalid.

Central Vigilance Commission Act (45 of 2003), S. 26(c)

The classification made by S. 6-A cannot be justified on ground that those protected are decision-making officers. No distinction can be made for certain class of officers specified in S. 6-A who are described as decision-making officers for the purpose of inquiry/investigation into an offence under the P.C. Act, 1988. There is no rational basis to classify the two sets of public servants differently on the ground that one set of officers is decision-making officers and not the other set of officers. Where there are allegations against a public servant which amount to an offence under the P.C. Act, 1988, no factor pertaining to expertise of decision-making is involved. Yet, S. 6-A makes a distinction. It is this vice which renders S. 6-A violative of Art. 14. The decision-making power does not segregate corrupt officers into two classes as they are common crime-doers and have to be tracked down by the same process of inquiry and investigation.

The classification of corrupt public servants made under S. 6-A of 1946 Act cannot be said to be based on intelligible differentia. When one set of bureaucrats of Joint Secretary level and above who are working with the Central Government are offered protection under S. 6-A while the same level of officers who are working in the States do not get protection though both classes of these officers are accused of an offence under P.C. Act, 1988 and inquiry/investigation into such allegations is to be carried out.

The object of Section 6-A, that senior public servants of the level of Joint Secretary and above who take policy decision must not be put to any harassment, side-tracks the fundamental objective of the PC Act, 1988 to deal with corruption and act against senior public servants. When the object of S. 6-A is itself discriminatory the discrimination cannot be justified on the ground that there is a reasonable classification because it has rational relation to the object sought to be achieved. **[Dr. Subramanian Swamy vs. Director, Central Bureau of Investigation, AIR 2014 SC 2140]**

Evidence Act

S. 3 - Evidence of close relative i.e. father of deceased - Credibility of - Merely because witness happen to be father of the victim- His evidence cannot be doubted

In the present case, disclosed that a few days before the date of occurrence, accused teased his daughter and also threatened her. Her daughter Km. 'x' explained about the accused misconduct to her cousin Ashok Kumar. Later, on having received the complaint about the indecent behaviour of the accused, he scolded him. Unfortunately, evidence of the victim's father is quite convincing and worth to believe. In fact in FIR he has not named the accused. Merely because P.W. 1 is the father of the deceased victim girl, his evidence cannot be doubted on that count in absence of any suspicion. **[Lalit Kumar Yadav @ Kuri v. State of Uttar Pradesh, 2014 (86) ACC 247]**

Ss. 3, 45—Dog tracking evidence—Credibility—Identification of accused by sniffer dog along with other evidence can be relied upon to prove guilt of accused

In the present case, the services of a sniffer dog was taken for investigation. The said dog traced the accused and he was formally arrested in the evening of the next day. The Investigating Officer, Ashok Kumar Yadav (PW-10) corroborated the evidence of Abdul Lais Khan (PW-4) to the effect that 'Raja' sniffer dog after picking up scent from the place of occurrence tracked down the house of the accused. What is relevant to note is that the accused has not been convicted on the ground that the sniffer dog tracked

down the house of the accused and barked at him. The evidence of dog tracking only shows how the accused was arrested. The Trial Court and the Appellate Court noticed the motive of the accused. Ram Chandra Chaurasiya (PW-1) disclosed in his evidence that a few days before the date of occurrence, the accused has teased his daughter and also threatened her. Her daughter Km. 'x' complained about the misconduct of the accused to her cousin Ashok Kumar and the latter admonished the accused for the same. Ashok Kumar died subsequently but the evidence of the girl's father is quite convincing and worthy of credit. The aforesaid incident clearly reflects upon the motive of the accused. **[Lalit Kumar Yadav vs. State of U.P., 2014 Cri.L.J. 2712 (SC)]**

S. 9 – Test identification parade – Non-holding of – Murder case – Incident does not see to have lasted for a long time. Failure to hold identification parade is a serious drawback in the prosecution case

Significant aspect of this case is absence of identification parade. Persons who were named in the FIR and others, who had witnessed the incident at different stages did not know all the assailants but they claimed that they could identify the assailants. But the prosecution failed to hold test identification parade. It is argued that identification made in court is sufficient. The incident does not seem to have lasted for a long time. The eye-witnesses were sitting outside the Satsang hall. It cannot be said that they had sufficient opportunity to see the faces of the accused who were on the run. In such a case failure to hold identification parade is a serious drawback in the prosecution case. **[Balbir v. Vazir, 2014 CrLJ 3697]**

S. 27 – Recovery and arrest of accused – S. 27 only requires that the person leading to recovery must be an accused and he must be "in the custody of a police officer" - It is not essential that such an accused must be under formal arrest

As the material brought on record would show, the accused was in the custody of the investigating agency and the fact whether he was formally arrested or not will not vitiate the factum of leading to discovery. However, it may be stated that the accused was also arrested on that day. Court had dealt with the issue that formal arrest is not necessary as Mr. Jain has seriously contended that the arrest was done after the recovery. As court had clarified the position kin law, the same would not make any difference. **[Chandra Prakash v. State of Rajasthan, 2014 (4) Supreme 646]**

S. 27 –Expression custody – Meaning and scope

Section 27 of the Evidence Act explains how much of information

received from the accused may be proved. Section 27 reads as follows:

> "27. How much of information received from accused may be proved.- Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police-officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved."

The expression "custody" which appears in Section 27 did not mean formal custody, which includes any kind of surveillance, restriction or restraint by the police. Even if the accused was not formally arrested at the time when the accused gave the information, the accused was, for all practical purposes, in the custody of the police. This Court in State of Andhra Pradesh v. Gangula Satya Murthy (1997) 1 SCC 272 held that if the accused is within the ken of surveillance of the police during which his movements are restricted, then it can be regarded as custodial surveillance. Consequently, so much of information given by the accused in "custody", in consequence of which a fact is discovered, is admissible in evidence, whether such information amounts to a confession or not. Reference may also be made to the Judgment of this Court in A.N. Venkatesh v. State of Karnataka (2005) 7 SCC 714. In Sandeep v. State of Uttar Pradesh (2012) 6 SCC 107, this Court held that it is quite common that based on admissible portion of the statement of the accused, whenever and wherever recoveries are made, the same are admissible in evidence and it is for the accused in those situations to explain to the satisfaction of the Court as to nature of recoveries and as to how they came into the possession or for planting the same at the place from where they were recovered. Reference can also be made to the Judgment of this Court in State of Maharashtra v. Suresh (2000) 1 SCC 471, in support of the principle. Assuming that the recovery of skeleton was not in terms of Section 27 of the Evidence Act, on the premise that the accused was not in the custody of the police by the time he made the statement, the statement so made by him would be admissible as "conduct" under Section 8 of the Evidence Act. In the instant case, there is absolutely no explanation by the accused as to how the skeleton of Diana was concealed in his house, especially when the statement made by him to PW14 is admissible in evidence. **[Dharam Deo Yadav v. State of U.P., 2014(86) ACC 293]**

S. 27- Applicability of recovery of incriminating articles – Defence plea that mandate of S. 27 of the act was not satisfied should be repel

In Bodh Raj alias Bodha and others v. State of Jammu and Kashmir, AIR 2002 SC 3164, it was held that a statement even by way of confession made in police custody which distinctly relates to the facts

discovered is admissible in evidence against the accused. The statement which is admissible under Section 27 is the one which is the information leading to discovery. Thus what is admissible being the information, same has to be proved and not the opinion formed on it by the police officer. The exact information given by the accused while in custody which led to the recovery of the article has to be proved; the exact information must be adduced through evidence.

In the present case the recovery of 'Gamchha' and 'Baniyan' at the instance of the accused from the underneath the Takhat (Cot) is an important factor that connects the accused with the crime. According to the report of the chemical examiner and serologist, blood was also found on the said 'Gamchha' and 'Baniyan' belonging to the accused. This leads to the conclusion that at the time of committing murder the accused was wearing the 'Gamchha' and 'Baniyan' and thereafter he concealed them underneath the Takhat.

Therefore, the aforesaid contention raised on behalf of the appellant that the alleged recovery of clothes i.e. Gamchha and Baniyan do not satisfy the mandate of Section 27 of the Indian Evidence Act cannot be sustained. **[Lalit Kumar Yadav @ Kuri v. State of Uttar Pradesh, 2014 (86) ACC 247]**

S. 30 – Confession by accused – Use of against co-accused – Consideration of

Court has held that when such overwhelming evidence independent of confession of Appellant Nasir is on record court is convinced that the confession of appellant Nasir can be fully applied and thereby, the involvement of Aftab in the criminal conspiracy and the following insurrection on the police force at the American Centre stands fully established and accordingly court answer the said question to the effect that the confession of Appellant Nasir can be relied on as against appellant Aftab. **[Md. Jamiluddin Nasir v. State of West Bangal, 2014 AIR (SC) 2587]**

S. 32 - Dying Declaration – If dying declaration not recorded in actual words of maker but on dictation of some other person – Creates suspicion

The sanctity is attached to a dying declaration because it comes from the mouth of a dying person. If the dying declaration is recorded not directly from the actual words of the maker but as dictated by somebody else, in our opinion, this by itself creates a lot of suspicion about credibility of such statement and the prosecution has to clear the same to the satisfaction of the court. The trial court on over-all consideration of the evidence of PW-25, PW-30 and PW-36 coupled with the fact that there was over-writing about the time at which the statement was recorded and also insertion of two

names by different ink did not consider it safe to rely upon the dying declaration and acquitted the accused for want of any other evidence. In the circumstances, in courts view, it cannot be said that the view taken by the trial court on the basis of evidence on record was not a possible view. The accused were entitled to the benefit of doubt which was rightly given to them by the trial court. **[Muralidhar @ Gidda and another v. State of Karnataka, 2014 (86) ACC 259]**

S. 32 – Oral dying declaration – Reliability

It is well settled that an oral dying declaration can form basis of conviction if the deponent is in a fit condition to make the declaration and if it is found to be truthful. The courts as a matter of prudence look for corroboration to oral dying declaration. As we have already noted, the dying declaration of deceased Krishna Gir does not inspire confidence. One can perceive an effort to involve number of persons by giving their minute particulars. It does not appear to be a natural voluntary statement of a dying man. The prosecution could have infused some credibility in it if it had examined the driver of the car in which deceased Krishna Gir was taken to the hospital and Ramgiriji who was also in the car. It is not understood why such vital evidence is kept back. Thus, there is no corroboration to lend assurance to the dying declaration of deceased Krishna Gir. In this connection, we may usefully refer to Heikrujam Chaoba Singh vs. State of Manipur, (1999) 8 SCC 458 : (AIR 2000 SC 59) where the deceased was stated to have made a dying declaration to his brother in the ambulance. There were four other persons in the ambulance. None of them was examined. This Court refused to place reliance on the dying declaration as the disinterested persons sitting in the van were not examined. In the instant case, admittedly PW-3 Prithvi Gir was very close to deceased Krishna Gir. He was the successor of deceased Krishna Gir. There was enmity between the accused and deceased Krishna Gir followers. The prosecution should have, therefore, examined the driver or Ramgiriji who was in the car. This is an additional reason why alleged dying declaration of deceased Krishna Gir cannot be relied upon. **[Balbir v. Vazir, 2014 AIR (SC) 2778]**

S. 32(1) - Dying declaration - Credibility - Mode of recording of - Relevance

No doubt, it is emphasised by Supreme Court that recording of such a statement in the form of questions and answers is the more appropriate method which should generally be resorted to - However, that would not mean that if such a statement otherwise meets all requirements of S. 32(1) and is found to be worthy of credence, it is to be rejected only on ground that it was not recorded in the form of questions and answers - Executive Magistrate recorded statement of deceased before her death - Before taking statement, certificate of doctor was taken - Dying declaration was rightly accepted as admissible under S. 32(1) of Evidence Act. [**Satish Chandra & Another vs. State of M.P., (2014) 6 SCC 723]**

S. 35 – Khasra entries – Do not convey title – Entries are only relevant for

purposes of paying land revenue and has nothing to do with ownership

The High Court committed a grave and manifest error of law in reversing the well reasoned judgment and decree passed by the Trial Court by simply placing reliance upon Khasara entires even without properly appreciating the settled law that Khasara entries do not convey title of the suit property as the same is only relevant for the purposes of paying land revenue and it has nothing to do with ownership. **[Municipal Corporation, Gwalior v. Puran Singh, 2014 AIR (SC) 2665]**

S. 101 and 102 - Burden of proof and 'onus of proof', - Distinction of

Section 101 of Evidence Act in nutshell provides that a person who asserts a particular facts has to prove the same. Section 102 of Evidence Act provides that the burden of proof would lie on that person who would fail if no evidence at all were given on either side.

Section 111 of Evidence Act provides that where there is a question as to the good-faith of a transaction between the parties, one of whom stands to the other in a position of active confidence, the burden of proving the good-faith of the transaction will be on the party who is in a position of active confidence.

In K.S. Nanji and Co. Versus Jatashankar Dossa and others, AIR 1961 SC 1474 while considering the provisions of Section 101 of Evidence Act a clarification was made by the Hon'ble Supreme Court between the burden of proof and onus. It was held therein by the Apex Court that the burden of proof is on a plaintiff who asserts a right, and it may be having regard to the circumstances of each case, that the onus of proof may shift to the defendant. In context of the pleadings and evidence the Hon'ble Apex Court clarified the position of burden of proof and onus as follows:-

> "Under the evidence act there is an essential distinction between the phrase "burden of proof" as a matter of law and pleading and as a matter of adducing evidence. Under S.101 of the evidence act, the burden in the former sense is upon the party who comes to court to get a decision on the existence of certain facts which he asserts. That burden is constant throughout the trial; but the burden to prove in the sense of adducing evidence shifts from time to time having regard to the evidence adduced by one party or the other or the presumption of fact or law raised in favour of one or the other."

A conjoint and plain reading of Sections 101 and 102 of Evidence Act makes it clear that the burden of proof would always remain upon a person who asserts that fact and in case no evidence is given by him in support of his said assertion, he would fail in proving that fact. Meaning thereby that the burden of

proof remains constant; whereas, the onus may shift from time to time according to the facts and circumstances of each case depending upon the nature of the evidence adduced by the parties subject to presumption of fact or law raised in favour of one or the other.

The question of applicability of Section 111 of Evidence Act which provides a protection to an executant of a transaction against a party who is in a position of active confidence or in a position to dominate his will, will not arise. Applicability of this section would have arisen only when instead of making allegations of execution by impersonation, the plaintiff-respondent had made allegations in his pleadings against the defendant-appellant of having got the sale-deed executed by the deceased himself by playing fraud upon him. **[Chandra Kali (Smt.) v. Smt. Indrawati & Others, 2014(2) ARC 598]**

S. 114 –A – Medical evidence showing non-rupture of hymen and not supporting the prosecution case- Court to give utmost weightage to version of the prosecutrix as definition of rape also includes attempt to rape

In fact, at this stage, the amendment introduced in the Indian Evidence Act, 1872 in Section 114-A laying down as follows is worthwhile to be referred to:-

> "Presumption as to absence of consent in certain prosecutions for rape.- In a prosecution for rape under clause (a) or clause (b) or clause (c) or clause (d) or clause (e) or clause (g) of sub- section (2) of section 376 of the Indian Penal Code, where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and she states in her evidence before the Court that she did not consent, the Court shall presume that she did not consent."

Section 114-A no doubt addresses on the consent part of the woman only when the offence of rape is proved but it also impliedly would be applicable in a matter of this nature where the victim girl had gone to the extent of committing suicide due to the trauma of rape and yet is sought to be disbelieved at the instance of the defence that she weaved out a concocted story even though she suffered the risk of death after consuming poison. If this were to be accepted, we fail to understand and lament as to what is the need of incorporating an amendment into the Indian Evidence Act by incorporating Section 114A which clearly has been added to add weight and credence to the statement of the victim woman who suffers the offence of rape and a claustrophobic interpretation of this amended provision cannot be made to infer that the version of the victim should be believed relating merely to

consent in a case where the offence of rape is proved by other evidence on record. If this view of the matter is taken into account relying upon the amended Section 114-A of the Indian Evidence Act which court clearly do, then even if there had been a doubt about the medical evidence regarding non rupture of hymen the same would be of no consequence as it is well settled by now that the offence of rape would be held to have been proved even if there is an attempt of rape on the woman and not the actual commission of rape. Thus, if the version of the victim girl is fit to be believed due to the attending circumstances that she was subjected to sexual assault of rape and the trauma of this offence on her mind was so acute which led her to the extent of committing suicide which she miraculously escaped, it would be a travesty of justice if court to disbelieve her version which would render the amendment and incorporation of Section 114A into the Indian Evidence Act as a futile exercise on the part of the Legislature which in its wisdom has incorporated the amendment in the Indian Evidence Act clearly implying and expecting the Court to give utmost weightage to the version of the victim of the offence of rape which definition includes also the attempt to rape. **[Puran Chand v. State of H.P., 2014 (86) ACC 279]**

Ss. 133, 24 to 26 and 114III.(b) – Evidence of an accomplice – Evidentiary value – Consideration of

In relation to Akshardham Temple Attack by to fidayeens (terrorist attackers), the statements of alleged accomplices (PWs 50, 51 and 52) not being able to established any connection of attack with A-1 to A-6 except casting a mere suspicion regarding involvement of A-1 to A-6. Name of A-6 had no been mentioned in the evidence of any of the accomplices/ approvers. If money collected by A-3 was use to run relief camps in Gujarat, it merely casts a suspicion. Court has held that the twin test was not satisfied in present case. Though it can be presumed that the accomplices have implicated themselves, their statements have failed to prove the guilt of accused beyond reasonable doubt. Further, there were complaints about wrongful confinement of accomplices and police torture to depose as directed by police and further, the evidence of accomplices was not corroborated by independent witnesses, rater their evidence contradicted the prosecution story. Therefore, it has held that their statements are not admissible and could not have been used by courts below to corroborate the confessions of accused persons. [**Adambhai Sulemanbhai Ajmeri and others v. State of Gujarat, (2014)7 SCC 716]**

Last seen Theory – Role in conviction – Conviction cannot be based solely on this ground

It is trite law that a conviction cannot be recorded against the accused merely on the ground that the accused was last seen with the deceased. In other words, a conviction cannot be based on the only circumstance of last seen together. The conduct of the accused and the fact of last seen together plus other circumstances have to be looked into. Normally, last seen theory comes into play when 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 perpetrator of the crime becomes impossible. It will 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. However, if the prosecution, on the basis of reliable evidence, establishes that the missing person was seen in the company of the accused and was never seen thereafter, it is obligatory on the part of the accused to explain the circumstances in which the missing person and the accused parted company. Reference may be made to the judgment of this Court in Sahadevan Alias Sagadeven v. State represented by Inspector of Police, Chennai (2003) 1 SCC 534. In such a situation, the proximity of time between the event of last seen together and the recovery of the dead body or the skeleton, as the case may be, may not be of much consequence. But, as already indicated, to record a conviction, that itself would not be sufficient and the prosecution has to complete the chain of circumstances to bring home the guilt of the accused. **[Dharam Deo Yadav v. State of U.P., 2014(86) ACC 293)]**

Hindu Adoption and Maintenance Act

S. 16(2) Proviso – Unregistered Adoption Deed - Presumption of correctness -U.P. Amendment, w.e..f. 1.1.1977 – Effect of

The appellant-petitioner, being adopted son of deceased government employee late Naumilal, was appointed on compassionate ground on 16.2.2014. His appointment was cancelled by the impugned order dated 1.6.2004 on the ground that his adoption-deed was not registered one. At the face of the record, the impugned order dated 1.6.2004 has been passed solely on one ground that the adoption-deed was not registered under the statutory mandate. Section 16 of the Hindu Adoption and Maintenance Act, 1956 provides that there shall be presumption with regard to registered documents relating to adoption. However, the U.P. Amendment given effect 1.1.1977 provides that secondary evidence of such document shall be admissible under certain circumstances in

the manner laid down in the Indian Evidence Act, 1872. For convenience, Section 16 followed by U.P. Amendment given effect 1.1.1977 is reproduced as under:-

> "16. Presumption as to registered documents relating to adoption. - Whenever any document registered under any law for the time being in force is produced before any Court purporting to record an adoption made and is signed by the person giving and the person taking the child in adoption, the Court shall presume that the adoption has been made in compliance with the provisions of this Act unless and until it is disproved.
>
> STATE AMENDMENT
>
> UTTAR PRADESH:
>
> In its application to State of Uttar Pradesh S. 16 is renumbered as sub-section (1) thereof and after sub-section (1) as to renumbered, sub-section (2), inserted namely:
>
> "(2) In case of an adoption made on or after first day of January, 1977 no Court in Uttar Pradesh shall accept any evidence in proof of the giving and taking of the child in adoption, except a document recording an adoption, made and signed by the person giving and the person taking the child in adoption, and registered under any law for the time being in force:
>
> Provided that secondary evidence of such document shall be admissible in the circumstances and the manner laid down in the Indian Evidence Act, 1872. "See Uttar Pradesh Civil Laws (Reforms and Amendment) Act, 1976 (57 of 1976), S. 35 (w.e.f. 1.1.1977)"

Accordingly, the sole ground, on which the appellant-petitioner's appointment has been cancelled, seem to require consideration on merit. Learned Single Judge, while dismissing the writ petition by impugned judgment and order dated 31.3.2014, has not considered the proposition of law raised by the appellant-petitioner, which seems to be on record. It shall be appropriate that this court should record finding with regard to the effect of the U.P. Amendment as well as the affect of judgment and decree of the Civil Court by which succession certificate has been issued and appellant-petitioner has been provided post retiral dues of the deceased government employee late Naumilal. Once the government has accepted the succession certificate and does not dispute it and provided retiral dues to appellant-petitioner, then prima-facie the government has no right to deny the appointment on compassionate

ground under dying in harness rules, merely on the ground that the adoption deed was not registered one. U.P. Amendment provides that additional evidence under the Indian Evidence Act shall be admissible to defend any unregistered adoption deed. [**Sanjay Kumar Vs. State of U.P. And Another, 2014 (32) LCD 1872]**

Hindu Law

Joint family property – Claim of joint possession and ownership – Has to be pleaded and proved – Facts showing jointness in ownership and possession should be reflected in plaint itself

It is settled that for joint possession and ownership over any property, firstly the plaintiff's are required to plead the same and the said fact should be reflected in the plaint itself. There is a concept of joint family amongst the Hindus but that is required to be pleaded and proved. As the ancestors of the plaintiff's do not belong to one family, but three different family having three different castes, the joint possession of the plaintiff cannot be accepted. The High Court failed to notice the aforesaid fact while allowing the appeal of the plaintiff's. **[Municipal Corporation, Gwalior v. Puran Singh, 2014 AIR (SC) 2665]**

Hindu Marriage Act

S. 13(1)(i-b) – Desertion - Essential elements - Inference of desertion, how can be drawn

For the offence of desertion so far as the deserting spouse is concerned, two essential conditions must be there (1) the factum of separation, and (2) the intention to bring cohabitation permanently to an end (animus deserendi). Similarly two elements are essential so far as the deserted spouse is concerned: (1) the absence of consent, and (2) absence of conduct giving reasonable cause to the spouse leaving the matrimonial home to form the necessary intention aforesaid. For holding desertion as proved the inference may be drawn from certain facts which may not in another case be capable of leading to the same inference; that is to say the facts have to be viewed as to the purpose which is revealed by those acts or by conduct and expression of intention, both anterior and subsequent to the actual acts of separation. [**Malathi Ravi. M.D. vs. B.V. Ravi, M.D., (2014) 7 SCC 640]**

Indian Contract Act

S. 124 - Contract of indemnity - Concept of

It is thus clear that merely because the Corporation acted under Section 29 of the State Financial Corporation Act did not mean that the contract of indemnity came to an end. Section 29 merely enabled the Corporation to take possession and sell the assets for recovery of the dues under the main contract. It may be that only the Corporation taking action under Section 29 and on their taking possession they became deemed owners. The mortgage may have come to an end, but the contract of indemnity, which was an independent contract,

did not. The right to claim for the balance arose, under the contract of indemnity, only when the sale proceeds were found to be insufficient. The right to sue on the contract of indemnity arose after the assets were sold. The present case would fall under Article 55 of the Limitation Act, 1963 which corresponds to old Articles 115 and 116 of the old Limitation Act, 1908. The right to sue on a contract of indemnity/ guarantee would arise when the contract is broken. **[Deepak Bhandari v. Himachal Pradesh State Industrial Development Corpn. Ltd., (2014 (32) LCD 1412 (SC)]**

Indian Penal Code

S. 300—Murder—Abscondance of accused—Can be treated as one of incriminating circumstances—But cannot itself be ground of conviction unless other circumstances are linked

The Court has observed that there is no doubt that the circumstances like absconsion can be treated as one of the incriminating circumstance but the said circumstance itself cannot be a ground of conviction unless the other circumstances are linked with that one. **[Gour Mani Roy vs. State of Tripura, 2014 Cri.L.J. 2843 (Tripura HC)]**

S. 300 Murder – Proof

As far as the contention made on behalf of the Appellant that non-production of the weapon used in the attack is fatal to the case of the Prosecution is concerned, the reliance placed upon by the learned Additional Solicitor General to the decision reported in Ram Singh vs. State of Rajasthan - (2012) 12 SCC 339 would meet the said contention. In paragraphs 8 and 10, this Court has also held that the non-production of the weapon used in the attack is neither fatal to the Prosecution case nor any adverse inference can be drawn on that score. **[Md. Jamiluddin Nasir v. State of West Bangal, 2014 AIR (SC) 2587]**

Ss. 302, 397, 307, 450 – Murder and robbery – Death sentence – Validity of

In the present case the appellant is an educated person, he was about 26 years old at the time of committing the offence. The accused was a tutor in the family of the deceased-Noorjahan. He was in acquaintance with the deceased as well as Zeenat Parveen (PW-3) and Razia Khatoon (PW-4). There is nothing specific to suggest the motive for committing the crime except the articles and cash taken away by the accused. It is not the case of the prosecution that the appellant cannot be reformed or that the accused is the social menace. Apart from the incident in question there is no criminal antecedent of the appellant. It

is true that the accused has the appellant. It is true that the accused has committed a heinous crime, but it cannot be held with certainty that this case falls in the "rarest of the rare category". On appreciation of evidence on record and keeping in mind the facts and circumstances of the case, court's view that sentence of death penalty would be extensive and unduly harsh.

Accordingly, court commute the death sentence of appellant to life imprisonment. **[Santhosh Kumar Singh v. State of Madhya Pradesh, 2014 CrLJ 3788]**

Ss. 304-A and 336 to 338 – Criminal negligence – Causation of harm – Principle of causa causans explained

Incident caused by fire that started from a transformer on ground floor, adjacent to stilt parking lot, noxious smoke from which entering cinema, and due to obstructions and deviations from safety norms created by occupiers/licensees of cinema hall, victims who were unable to move out of the smoke filled area died because of asphyxiation not burn injuries - Held, failure to exit was the immediate cause of death, the causa causans. Causa causans was not the fire in the transformer but the breaches committed by occupiers of the cinema theatre which prevented or at least delayed rapid dispersal of the patrons thereby fatally affecting them because of poisonous gases in the smoke filled atmosphere inside cinema - Causa causans was closure of the exit on right side, closure of right side gangway, failure to provide required number of exits, failure to provide emergency alarm system and even emergency lights or to keep exit signs illuminated and to provide help to the victims when needed most, all attributable to A-1 and A-2, the occupiers of the cinema. **[Sushil Ansal v. State, (2014) 2 SCC (Cri) 717]**

S. 304-A and Ss. 336 to 338 – Causing death by a rash or negligent act - "Rash" act and "negligent" act – Distinguished

The essence of negligence whether arising from an act of commission or omission, held, lies in neglect of care towards a person to whom the defendant or the accused, as the case may be, owes a duty of care to prevent damage or injury to the property or the person of the victim - Existence of a duty of care is thus the first and most fundamental of ingredients in any civil or criminal action brought on the basis of negligence; breach of such duty and the consequences flowing from the same being the other two - To find whether there was any negligence on the part of the defendant/accused, the courts will have to address the above three aspects to find a correct answer to the charge - Unlike rashness, where the imputability arises from acting despite the consciousness of the consequences, negligence implies acting without such consciousness, but in

circumstances which show that the actor has not exercised the caution incumbent upon him.

Sec. 304-A IPC makes any causing death by a rash or negligent act not amounting to culpable homicide, punishable with imprisonment of either description for a term which may extend to two years of with fine or with both. The terms "rash" or "negligent" appearing in Section 304-A have not been defined in IPC. Judicial pronouncements have all the same given a meaning which has been long accepted as the true purport of the two expressions appearing in the provisions. In a rash act, the criminality lies in running the risk of doing an act with recklessness or indifference as to the consequence. In the case of "negligence" the courts have favoured a meaning which implies a gross and culpable neglect or failure to exercise that reasonable and proper care and precaution to guard against injury either to the public generally or to an individual which having regard to all the circumstances out of which the charge arises, it may be the imperative duty of the accused to have adopted. Negligence has been understood to be an omission to do something which a reasonable man guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable person would not do. Unlike rashness, where the imputability arises from acting despite the consciousness, negligence implies acting without such conscientiousness, but in circumstances which show that the actor has not exercised the caution incumbent upon him. The imputability in the case of negligence arises from the neglect of the civil duty of circumspection. **[Sushil Ansal v. State, (2014) 2 SCC (Cri) 717]**

S. 304-B – Dowry death – Word "relative of the husband" in S. 304-B – would mean such persons, who are related by blood marriage or adoption

Interpretation of statute – Rule of construction

It is well known rule of construction that when the Legislature uses same word in different part of the statute, the presumption is that those word have been used in the same sense, unless displaced by the context. The word "relative of the husband" in Section 304-B would mean such persons, who are related by blood, marriage or adoption. Applying such principle the respondent-brother of aunt of husband of deceased cannot be said to be a relative of the deceased's husband as he is not related to the husband of the deceased either by blood or marriage or adoption. Therefore, order of High Court quashing the order summoning the respondent to face trial would be proper. Further a person not a relative of the husband, may not be prosecuted for offence under Section 304-B, IPC but it does not mean that such a person cannot be prosecuted for any other offence viz. Section 306 IPC, in case the allegations constitute

offence other than Section 304-B IPC. [**State of Punjab v. Gurmit Singh, 2014 CrLJ 3586]**

S. 304-B - Dowry death - Suicide by burning - Dying declaration found credible and duly corroborated by other evidence on record, but only against A-2, mother-in-law but not against A-I, husband -A-2 convicted, but A-I acquitted

Marriage of deceased was solemnised in April 1988. She committed suicide within three years of her marriage. Deceased had suffered 92% burns. Just before her death, she gave a statement. After her death, it was treated as dying declaration .On basis of dying declaration of deceased trial court found that there was in fact a quarrel which took place on the date of occurrence immediately before deceased put herself on fire. Both appellants were convicted and sentenced to 10 yrs' RI under S.304-B. High Court affirmed conviction and sentence of appellants. High Court relied upon dying declaration recorded in presence of Magistrate with certification from doctor to the effect that deceased was in a fit state of mind to give statement, notwithstanding the fact that she suffered 92% burns. Dying declaration duly supported by testimony of father, brother and uncle of deceased. Even when they are interested witnesses being close relation of deceased, held, there was no reason to discard their testimony. Their testimony was supported by written documents, namely, letters written by deceased. Commission of offence under S. 304-B IPC against mother-in-Law stands conclusively proved in view of ironclad dying declaration. Deceased has nowhere stated that on that date when her mother-in-law had quarreled with her, husband was associated or even responsible for that. [**Satish Chandra and Another vs. State of M.P., (2014) 6 SCC723]**

Ss. 306, 498-A and 304-B – Abetment of suicide – Culpability for – General mental state of deceased – Relevance – General unhappiness with life, though main cause driving person to suicide being abettor's conduct

Undoubtedly, the death of S is caused by burns and has occurred otherwise than under normal circumstances. It has happened within 7 years of her marriage. Further, the trigger point for committing suicide was the quarrel between her and her mother-in-law on the fateful day. At the same time it is also to be borne in mind that it is not a case where the appellants have poured kerosene and put her on fire. That is the act of the deceased herself and thus it is a case of suicide, but the quarrel between the deceased and her mother-in-law can be treated as satisfying the condition that "soon before her death she was subjected to cruelty or harassment for, or in connection with, in demand for dowry". On reading the dying declaration in totality, it becomes clear that cause/reason for regular fights was dowry. One can clearly find out from the statement that on that day also Appellant 2 fought with her for that reason. Hence Appellant 1 is acquitted under Section 304-B IPC, but the conviction of Appellant 2 is upheld. [**Satish Chandra and another v. State of Madhya Pradesh, (2014)3 SCC (Cri.)113]**

S. 307 – Attempt to murder – Ingredients – In order to attract S. 307, injury need not be on vital part of body

The scope of S. 307, IPC has elaborately been dealt with by this Court in Mohan's case (AIR 2013 SC 3521) : (2013 AIR SCW 5150), wherein this court has taken the view that if anybody does any act with intention or knowledge that by his act he might cause death and hurt is caused, that is sufficient to attract S. 307 IPC. Further, this Court has also taken the view that, in order to attract S. 307 IPC., the injury need not be on the vital part of the body. **[Anjani Kumar Chaudhary v. State of Bihar, 2014 CrLJ 3798]**

Ss. 375 & 376 – Rape – Consent – Consensual sexual relationship – Absence of any false promise, inducement, persuasion or misstatement of fact or law by accused – On facts, consequent sexual indulgement amounted to consensual sexual relationship for which accused cannot be held guilty for rape

In the conspectus that unfolds itself in the present case, the prosecutrix was aware that appellant was already married but, possibly because a polygamous relationship was not anathema to her because of the faith which she adheres to, the prosecutrix was willing to start a home with appellant - In these premises, it cannot be concluded beyond reasonable doubt that appellant is culpable for the offence of rape; nay, reason relentlessly points to commission of a consensual sexual relationship, which was brought to an abrupt end by the appearance on the scene of the uncle of the prosecutrix.

The Court is duty bound when assessing the presence or absence of consent, to satisfy itself that both parties are ad idem on essential features; in the case in hand the prosecutrix was led to believe that her marriage to the Appellant had been duly and legally performed. It is not sufficient that she convinced herself of the existence of this factual matrix, without the Appellant inducing or persuading her to arrive at that conclusion. It is not possible to convict a person who did not hold out any promise or make any misstatement of facts or law or who presented a false scenario which had the consequence of inducing the other party into the commission of an act. There may be cases where one party may, owing to his or her own hallucinations, believe in the existence of a scenario which is a mirage and in the creation of which the other party has made no contribution. If the other party is forthright or honest in endeavouring to present the correct picture, such party cannot obviously be found culpable. **[Vinod Kumar v. State of Kerala; (2014) 2 SCC (Cri) 663]**

S. 376, 326-A, 326-D – Criminal P.C. (2 of 1974), S. 357-A – Rape victim – Compensation – State is obliged to pay

The obligation of the State does not extinguish on payment of compensation, rehabilitation of victim is also of paramount importance. The mental trauma that the victim suffers due to the commission of such heinous crime, rehabilitation becomes a must in each every case.

Further, court also wish to clarify that according to Section 357-B, the compensation payable by the State Government under Section 357-A shall be in addition to the payment of fine to the victim under Section 326-A or Sec. 376-D of the IPC. **[In Re: Indian Woman Says Gang-raped on Orders of Village Court, 2014 AIR (SC) 2816]**

S. 498-A Expln. (a) or (b)- Cruelty by husband and/or in Laws - What is - While upholding conviction of mother-in-law u/Sec. 498-A I.P.C., A-1 husband of deceased, acquitted, since it could not be established that he had treated deceased with "cruelty" as defined under Sec. 498-A Expln. (a) or (b)

Deceased subjected to cruelty on account of unlawful demand for property viz. gold chin and harassment upon failure on her part to meet that demand, which ultimately drove her to commit suicide. Trial court convicted and sentenced mother-in-law and sister-in-law and husband of deceased under S. 498-A IPC. However sister-in-law of deceased acquitted by High Court as after her marriage she had been living separately at Indore - Deceased in her statement accused only her mother-in-law and sister-in- law for demand of dowry. She had not blamed her husband at all. She categorically stated that her husband was innocent. Maybe at times Appellant 1 had beaten his wife on his mother's saying so but deceased had not connected this with demand of dowry. It is not conclusively proved that there was any "cruelty" on his part either in terms of S. 498-A Expln. (a) or (b) Tenor of letters written by deceased to her relatives insofar as they relate to husband indicates that he is not to be blamed. In fact, in order to please and satisfy his wife, he was making all efforts to become something in life and was struggling for that. Benefit of doubt given to husband for charge under S. 498-A IPC. **[Satish Chandra and another vs. State of M.P., (2014) 6 SCC 723]**

Ss. 498-A, 306 – Cruelty and abetment of suicide – Proof

In the present case from the evidence of prosecution witnesses particularly of Santoshbai (PW-6), Geeta (PW-7) Chanrakanta (PW-8), Ranjit (PW-9) and Ranchhod Prasad Pande (PE-11), court found that the harassment of the deceased was with a view to coerce her to convince her parents to

meet demand of dowry. The said wilful conduct has driven the deceased to commit the suicide or not is a matter of doubt, in absence of specific evidence. Therefore, in the light of Clause (b) of Section 498-A, IPC, court when hold and accused Nos. 1 to 6 guilty for the offence under Section 498-A IPC Court hold that the prosecution failed to prove that the deceased committed suicide. The accused are, therefore, acquitted for the offence under Section 306 r/w 34 IPC. This part of the judgment passed by the Trial Court thus cannot be upheld. **[State of Maharashtra v. Rajendra, CrLJ 3811]**

Indian Stamp Act

S. 47A (iv)-U.P. Stamp (Valuation of Property) Rules 7 - Market Value - Determination of property

Rule 7 of 1997 Rules while providing for determination of market value nowhere refers to either minimum value fixed under Rule 4 or 5 of 1997 Rules or provides that the market value shall be determined by the Collector which must be in all cases higher than the value set forth in the instrument by the parties concerned. The question as to how and what manner market value would have to be determined by the Collector has been discussed in detail and various aspect have been considered by this Court in Ram Khelawan with which I entirely agree and, therefore, is of the view that the Collector is under a statutory obligation before holding that an instrument does not set forth correct market value, to determine as to what is the market value of the property in question.

It is thus clear that circle rate by itself does not provide a true market value of the property, which is subject-matter of instrument. It is only a guiding factor. In the present case interestingly the proceedings were initiated on the assumption that stamp duty has not been paid according to prevailing circle rate/market value treating the market value at par with circle rate but when the impugned order has been passed instead of confining to circle rate the Additional Collector has gone to increase value by 25% further to the prescribed circle rate and in doing so he has not given any reason whatsoever as to why he has treated that the true market value would be 25% more than the prescribed circle rate. Proceedings in question show a complete non-application of mind on the part of authorities. **[Amit Kumar Tyagi and another v. State of U.P. and others, 2014 (4) AWC 3686 (Allahabad High Court)]**

Industrial Disputes Act

Ss. 2 (oo)(bb) and 6 N - Non observance of mandatory provisions in terminating the service of employee-Effect of – Employee is entitled to

reinstatement with all benefit

In the present case, no plea was made by the respondent in its written statement filed before the Labour Court with regard to the provision of section 2(oo)(bb) of the I.D. Act. Nonetheless, this legal ground without any factual foundation was pressed into operation before the Labour Court by the learned counsel for the respondent. The same has been addressed by the Labour Court by rejecting the said contention by assigning its own reasons. Before court record its finding on this contention, it is pertinent to mention the provision of Section 2 (oo) (bb) of the I.D. Act, which reads thus:

> "2. (oo) "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include-
>
> > [(bb) termination of the service of the workman as a result of the non- renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under the stipulation in that behalf contained therein; or]"

It is argued by the learned counsel for the appellant that there is no provision in pari materia to this provision in the U.P. I.D. Act. Therefore, even if the service of the appellant is terminated on expiry of the contract period of service, it would fall within the definition of retrenchment under the U.P. I.D. Act for non compliance of the mandatory requirement under Section 6-N of the U.P. I.D. Act. The order of termination against the appellant is rendered void ab *initio* in law, therefore, the appellant is entitled to be reinstated with back wages and consequential benefits.

The learned counsel for the appellant therefore, rightly submitted that Section 2 (oo) (bb) of the I.D. Act will not be attracted in the present case and on the other hand, the provision of Section 6-N of the U.P. I.D. Act is required to be fulfilled mandatorily by the respondent to retrench the appellant from his service.

Therefore, the Labour Court was correct on factual evidence on record and legal principles laid down by this Court in catena of cases in holding that the appellant is entitled to reinstatement with all consequential benefits. Therefore, court has set aside the Order of the High Court and upheld the order of the Labour Court by holding that the appellant is entitled to reinstatement in the respondent-Company. **[Bhuvanesh Kumar Dwivedi vs. M/s. Hindalco**

Industries Ltd., 2014 (142) FLR 20 SC]

S. 17 (B) – Wages - Paid U/s. 17-B cannot be recovered under whatever circumstance -Even in the fact of reversal of findings by the court or by Supreme Court

This issue, being no longer res-integra, has been considered by this court as well as the Hon'ble Supreme Court on more than one occasion. Both have categorically held that the wages under section 17-B of the Act cannot be recovered under whatever circumstance, even in the face of the reversal of the findings by this Court or subsequently by the Supreme Court.

L.W.P. No. 15215 of 2009 is hereby set aside as being in violation of law, and further consequently direct the Respondents to pay back whatever the amount that has so far been recovered from that petitioner from and out of the wages that have been paid under Section 17-B of the Act. **[Bongu Venkunaidu v. Executive Engineer, I & CAD, Srikakulam and others, 2014 (142) FLR 912]**

S. 25-F - Setting aside of illegal termination as violative of S. 25-F - Relief to be granted - Reinstatement with back wages, or, compensation - Matters to be considered

Relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice. An order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded. The Supreme Court has distinguished between a daily-wager who does not hold a post and a permanent employee. The reason for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal because of non-payment of retrenchment compensation and notice pay as mandatorily required under Section 25-F of the Industrial Disputes Act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation. Since such a workman was working on daily wage basis and even after he is reinstated, he has no right to seek regularization (see: State of Karnataka vs. Uma Devi (2006) 4 SCC 1). Thus when he cannot claim regularization and he has no right to continue even as a daily wage worker, no useful purpose is

going to be served in reinstating such a workman and he can be given monetary compensation by the Court itself inasmuch as if he is terminated again after reinstatement, he would receive monetary compensation only in the form of retrenchment compensation and notice pay. In such a situation, giving the relief of reinstatement, that too after a long gap, would not serve any purpose. **[Hari Nandan Prasad vs. Food Corporation of India, (2014) 7 SCC 190]**

S. 25- F – Daily wager - Termination of services - 240 days – Rest day entitlement of for the purpose computation of 240 days for getting benefit u/s 25-F

When service of a workman was terminated on September 1, 1986, to challenge it he went to the Labour Court. It was his case that preceding the date of his termination in 12 calendar months, he has actually worked with his employer (the appellant) for 240 days in service. He contended that his service has wrongly been terminated without issuing notice, conducting any enquiry and also without payment of retrenchment compensation as is necessary under the provisions of Section 25-F of Industrial Disputes Act, 1947 (In short the Act). His prayer was for re-instatement in service and payment of back wages. The appellant opposed his claim by stating that he had not completed the requisite period of service, which may entitle him to get protection under provisions of the Act.

The Labour Court, on appraisal of evidence, came to a conclusion that the workman had worked only for 234 days, however, by placing reliance upon ratio of the judgment of the Hon'ble Supreme Court in Workmen of American Express International Banking Corporation vs. Management of American Express International Banking Corporation (AIR1986 Supreme Court 458), added Saturdays, Sundays and paid holidays in the service period, of 12 months, preceding the date of retrenchment and set aside termination of the workman. Further by noting that the termination was ordered without complying with the provisions of S. 25 F of the Act, the order was declared illegal and void and the workman was ordered to be reinstated with continuity in service and on payment of full back wages.

The appellant came to this Court to impugn the above order, It is case of the appellant that Sundays, Saturdays and holidays on which wages were not paid to the workman should not have been included in calculating the requisite period of 240 actual working days to give him benefit under the provisions of Section 25-F of the Act. [**Executive Engineer, Public Health Division No. 1, Panipat v. Sanjay Rana and another, 2014 (4) SLR 381]**

Interpretation of Statute

Basic Rules - Beneficent construction of statutes - When not applicable

This Court in Shyam Sunder vs. Ram Kumar, (2001) 8 SCC 24 has observed that in relation to beneficent construction, the basic rules of interpretation are not to be applied where: (i) the result would be relegislation of a provision by addition, substitution or alteration of words and violence would be done to the spirit of legislation, (ii) where the words of provision are capable of being given only one meaning and (iii) where there is no ambiguity in a provision, however, the court may apply the rule of beneficent construction in order to advance the object of the Act. [**Union of India vs. TATA Chemicals Ltd., (2014) 6 SCC 335]**

Particular statutes or provisions – Taxation laws – Strict interpretation – Reiterated, a taxing statute should be strictly construed

It is time and again reiterated that the courts, while interpreting the provisions of a fiscal legislation should neither add nor subtract a word from the provisions of instant meaning of the sections. It may be mentioned that the foremost principle of interpretation of fiscal statutes in every system of interpretation is the rule of strict interpretation which provides that where the words of the statute are absolutely clear and unambiguous, recourse cannot be had to the principles of interpretation other that the literal rule.

Thus, the language of a taxing statue should ordinarily be read and understood in the sense in which it is harmonious with the object of the statute to effectuate the legislative animation. A taxing statute should be strictly construed; common sense approach, equity, logic, ethics and morality have no role to play. Nothing is to be read in, nothing is to be implied; one can only look fairly at the language used and nothing more and nothing less.[**Commission of Income Tax v. Calcutta Knitwears, Ludhiana, (2014) 6 SCC 444]**

Reconciliation of provisions of two Acts - Special and general Acts - If it is fail, provision of special Act will prevail

In the present case, court has observed that failing the reconciliation between the provisions of the Electricity Act, 2003 and the SEZ Act, the provisions, objects and purpose of the SEZ Act will prevail (Section 51 of the SEZ Act). The object and purpose of the SEZ Act, inter alia, is to provide an internationally for export production, expeditious and single window approval mechanism and a package of incentives to attract foreign and domestic investments for promoting export-led growth. [**M/s Sesa Sterlite Ltd. v.**

Orissa Electricity Regulatory Comm. & Other, 2014(3) CPR 5 (SC)]

Statutory Provision construction of - Court can construe statutory provision but cannot reconstruct it

This court, or any other court, whilst construing the statutory provision cannot reconstruct the same. **[Securities and Exchange Board of India v. M/s Akshya Infrastructure Pvt. Ltd., AIR 2014 SC 1963]**

Juvenile Justice (Care and Protection of Children) Act

S. 7A – Juvenile Justice (Case and Protection of Children) Rules (2000), Rr. 12, 98 – Determination of age – Procedure to be followed

In case where documents mentioned in R. 12(3)(a)(i) to (iii) of the Rules, 2007 are unavailable or where they are found to be fabricated or manipulated, it is necessary to obtain medical report for age determination of the accused. In the present case the documents are available but they are, according to the police, fabricated or manipulated and therefore, it is necessary to go for medical report for age determination of the appellant. Delay cannot act as an impediment in seeking medical report as Section 7-A of the J.J. Act, 2000 gives right to an accused to raise the question of juvenility at any point of time even after disposal. **[Kulai Ibrahim v. State Rep. by the Inspector of Police, Coimbatore, 2014 CrLJ 3775]**

S. 41 - Scope and ambit-Adoption of Children by person irrespective of religion, caste, creed etc. - Section 41 as amended in 2006 contemplates adoption and Provisions of this section enabling any person, irrespective of religion he professes to take child in adoption

The Juvenile Justice (Care and Protection of Children Act, 2000, as amended, is an enabling legislation that gives a prospective parent the option of adopting an eligible child by following the procedure prescribed by the Act, Rules and the C.A.R.A. guidelines, as notified under the Act. The Act does not mandate any compulsive action by any prospective parent leaving such person with the liberty of accessing the provisions of the Act, if he so desires. Such a person is always free to adopt or choose not to do so and, instead, follow what he comprehends to be the dictates of the personal law applicable to him. The J.J. Act, 2000 is a small step in reaching the goal enshrined by Article 44 of the Constitution. Personal beliefs and faiths, though must be honoured, cannot dictate the operation of the provisions of an enabling statute. An optional legislation that does not contain an unavoidable imperative cannot be stultified by principles of personal law which, however, would always continue to govern any person who chooses to so submit himself until such time that the vision of a

uniform Civil Code is achieved. **[Shabnam Hashmi v. Union of India and others, 2014 (4) AWC 3691 (SC)]**

Juvenile Justice (Care and Protection of Children) Rules

Rule 12 – Blindly believing of the School Leaving Certificate only - R. 12 of the above Rules providing that the School Leaving Certificate should be given preference – Over the Medical evidence – Is meant for determination of age of juvenile in conflict with law – Not for determination of age of the prosecutrix who has willing performed love marriage

Learned counsel for the revisionists has argued that the prosecutrix, who is major, has been detained in Nari Niketan against her will. It has been further argued that in her both the statements recorded under Sections 161 and 164 Cr.P.C., the revisionist/prosecutrix has categorically stated that she, with her own free will, has performed marriage with revisionist No. 2 Ansar Ahmad and she intends to live with him in her matrimonial home. It is next contended that the radiological age of the girl has been found to be 19 years but the learned Magistrate, wrongly relying on the School Leaving Certificate and admission register of prosecutrix, has held her to be a minor, without paying any attention to the material discrepancies in the statements of witnesses produced by the prosecution in support of her minority. It is further contended that the learned Magistrate has ignored the Medical Examination Report of the prosecutrix in illegal and arbitrary manner so it has been prayed that the impugned order be set aside and the revision be allowed.

Learned AGA has opposed the above submissions by arguing that the learned Magistrate has committed no illegality while holding the prosecutrix as minor on the basis of her School Leaving Certificates and the order impugned does not require any interference by this Court.

Hon'ble Apex Court too, in th case of Juhi Devi v. State of Bihar, 2005 (13) SCC 376, where the facts were almost the same as according to the medical report the prosecutrix was major, whereas the father of the prosecutrix had produced some school certificates contrary to that of medical certificate in proof of her minority. Hon'ble Supreme Court discarded the school certificates and believing on medical report ordered that the prosecutrix be released from remand home and permitted her to go with her husband. A Division Bench of this Court in two cases, Smt. Reena v. State of U.P., H.C. Writ petition No. 10180 of 2012 and Smt. Saroj v. State of U.P., H.C. W.P. No. 19037 of 2011 has upheld the view that in case of conflict between medical and educational evidence, medical evidence should prevail.

It is common mistake committed by the Magistrates while deciding the custody application, that they apply the same principles, applicable for

determination of the age of a juvenile in conflict with law, without paying any attention to the fact that Rule 12 of the Juvenile Justice (Care and Protection of Children) Act, 2007 providing that the school leaving certificate should be given preference over the medical evidence, is meant for determination of age of juvenile in conflict with law and not for determination of the age prosecutrix, who has willingly performed love marriage against the wishes of her parents and who intends to live with her husband. **[Asmat Jahan v. State of U.P., 2014(86) ACC 730) (All)]**

Labour Laws

Termination – Natural Justice – Appellant dismissed without issuing first or second show cause notice – Violation of natural justice – Termination vitiated

In the present case, before passing the order of dismissal for the act of alleged misconduct by the workman-appellant, the respondent should have issued a show cause notice to the appellant, calling upon him to show cause as to why the order of dismissal should not be passed against him. The appellant being an employee of the respondent was dismissed without conducting an enquiry against him and not ensuring compliance with the principles of natural justice. The second show cause notice giving an opportunity to show cause to the proposed punishment before passing the order of termination was also not given to the appellant-workman by the respondent which is mandatory in law as per the decisions of this Court in the case of Union of India and others v. Mohd. Ramzan Khan, (1991) 1 SCC 588 and Managing Director, ECIL, Hyderabad v. Karunakar, (1993) 4 SCC 727. **[Raghubir Singh v. General Manager, Haryana Roadways, Hissar, 2014 (6) Supreme 243]**

Land Acquisition Act

S.5-A - Objection by interested person – A valuable right in favor of a person whose land is sought to be acquired

The rules of natural justice have been ingrained in the scheme of section 5-A of the Act of 1894 with a view to ensure that before any person is deprived of his land by way of compulsory acquisition, he must get an opportunity to oppose the decision of the State Government and/or its agencies/ instrumentalities to acquire the particular parcel of land.

Section 5-A(2) of the Act of 1894, which represents statutory embodiment of the rule of *audi alteram partem*, gives an opportunity to the objector to make an endeavour to convince the Collector that his land is not required for the public purpose specified in the notification issued under section

4(1) of the Act 1894 or that there are other valid reasons for not acquiring the same. Thus, section 5-A of the Act 1894 embodies a very just and wholesome principle that a person whose property is being or is intended to be acquired should have a proper and reasonable opportunity of persuading the authorities concerned that acquisition of the property belonging to that person should not be made.

On the consideration of the said objection, the Collector is required to make a report. The State Government is then required to apply mind to the report of the Collector and take final decision on the objections filed by the landowners and other interested persons. Then and then only, a declaration can be made under section 6(1) of the Act of 1894.

Therefore, section 5-A of the Act of 1894 confers a valuable right in favour of a person whose lands are sought to be acquired. It is trite that hearing given to a person must be an effective one and not a mere formality. Formation of opinion as regard the public purpose as also suitability thereof must be preceded by application of mind having due regard to the relevant factors and rejection of irrelevant ones. The State in its decision making process must not commit any misdirection in law. It is also not in dispute that section 5-A of the Act, 1894 confers a valuable important right and having regard to the provisions, contained in Article 300-A of the Constitution of India has been held to be akin to a fundamental right.

Thus, the limited right given to an owner/ person interested under section 5-A of the Act of 1894 to object to the acquisition proceedings is not an empty formality and is a substantive right, which can be taken away only for good and valid reason and within the limitations prescribed under section 17(4) of the Act of 1894.

The Land Acquisition Collector is duty-bound to objectively consider the arguments advanced by the objector and make recommendations, duly supported by brief reasons, as to why the particular piece of land should or should not be acquired and whether the plea put forward by the objector merits acceptance. In other words, the recommendations made by the Land Acquisition Collector should reflect objective application of mind to the entire record including the objections filed by the interested persons.

In view of the above, the law on the issue can be summarized to the effect that the very person/officer, who accords the hearing to the objector must also submit the report/ take decision on the objection and in case his successor decides the case without giving a fresh hearing, the order would stand vitiated having been passed in violation of the principles of natural justice. [**Union of India and others**

v. Shiv Raj and others, 2014 (124) RD 282 (SC)]

Ss. 5-A and 6(1) – Object of – Making of report/Recommendations by Collector to Government after hearing objections under S. 5-A

It is trite that hearing given to a person must be an effective one and not a mere formality. Formation of opinion as regard the public purpose as also suitability thereof must be preceded by application of mind having due regard to the relevant factors and rejection of irrelevant ones. The State in its decision-making process must not commit any misdirection in law. Therefore, under Section 5-A of the LA Act, the Land acquisition collector is duty-bound to objectively consider the arguments advanced by the objector and make recommendations, duty supported by brief reasons, as to why the particular piece of land should or should not be acquired and whether the plea put forward by the objector merits acceptance. In other words, the recommendations made by the Land Acquisition Collector should reflect objective application of mind to the entire record including the objections filed by the interested persons. On consideration of the said objection under Section 5-A of the LA Act, the Collector is required to make a report to the State Government. The State Government is then required to apply its mind to the report of the Collector and take final decision of the objections filed by the landowners and other interested persons. Then and then only, a declaration can be made under Section 6(1) of the LA Act. [**Union of India and others vs. Shiv Raj and others, (2014) 6 SCC 564]**

S. 23- Compensation – Market value of Land - Determination of

The market value of the land is to be assessed keeping in mind the limitation prescribed in certain exceptional circumstances under Section 23 of the Act. A guess work, though allowed, is permissible only to a limited extent. The market value of the land is to be determined taking into consideration the existing use of the land, geographical situation/location of the land alongwith the advantages/disadvantages i.e. distance from the National or State Highway or a road situated within a developed area etc. In urban area even a small distance makes a considerable difference in the price of land. However, the court should not take into consideration the use for which the land is sought to be acquired and its remote potential value in future. In arriving at the market value, it is the duty of the party to lead evidence in support of its case, in absence of which the court is not under a legal obligation to determine the market value merely as per the prayer of the claimant.

There may be a case where a huge tract of land is acquired which runs

though continuous, but to the whole revenue estate of a village or to various revenue villages or even in two or more states. Someone's land may be adjacent to the main road, others land may be far away, there may be persons having land abounding the main road but the frontage may be varied. Therefore, the market value of the land is to be determined taking into consideration the geographical situation and in such cases belting system may be applied. In such a fact- situation every claimant cannot claim the same rate of compensation. In the present case, the appellant's land so acquired had been at a distance of 6 Kms. from the Mathura Road, while other lands relied upon by the appellant before us are adjacent to Mathura Road,, and thus the lands are surrounded by hospitals and residential and commercially developed areas. No site plan has been produced showing the distance between the land in Jaitpur and the appellant's land, nor any other evidence is shown to compare the lands and to determine as to whether the award in respect of the land in Jaitpur could be used as an exemplar as only on a comparison would it be possible to arrive at a conclusion that both the lands are similarly situated in all respects.

Held, appellant would not be entitled for same compensation which had been given to other claimant of comparable lands and therefore, appeal for enhancement of compensation would be dismissed. **[Bhule Ram v. Union of India and another, AIR 2014 SC 1957]**

Limitation Act

S. 5 - U.P.Z.A. and L.R. Act, Section 198(4) and (6) - Applicability of Section 5 to the proceedings for cancellation of Patta - Section 5 has no application as the application for proceeding of the nature of suit

Section 5 of the Limitation Act, 1963 has no application as the application for cancellation of patta under Section 198(4), is the original proceedings of the nature of suit and not an application falling in the categories given from Article 118 to 137. **[Jiyachhi v. State of U.P. and others, 2014 (32) LCD 1544, (Allahabad High Court)]**

Ss. 5 and 17 – U.P.Z.A. and L.R. Act, 1950, Ss. 198(5) and (6) – Nature of – Explained

By the amendment in the Act, by U.P. Act No. 20 of 1982 and U.P. Act No. 24 of 1986, the Act itself provides limitation for initiation of cases for cancellation of patta under section 198(4)of the Act, as such the limitation as provided in Appendix III (vide Entry 24) has become redundant. In case of contradiction between the Act and the Rules, the Act will prevail. Section 198(6) of the Act now uses the words "every notice to show cause", thus

different limitation as previously provided for suo motu action under Entry 24 of Appendix III has also came to an end and by using words "every notice to show cause" under section 198(6) of the Act, one limitation for the action on the case filed by aggrieved persons as well as suo motu cancellation of patta has been provided. Full Bench of Board of Revenue U.P. in Virendra Singh's case [Virendra Singh vs. State of U.P., 1994 RD 540 (F.B.)] has not taken notice of legislative change and does not hold the good law.

Under section 5 of Limitation Act, 1963 delay can be condoned only in the appeals and applications falling under second Division and Third Division of the schedule. The case for cancellation of patta as given under section 198(4) of the Act cannot be treated as an application as provided under Third Division of the schedule from Article 118 to 137. Section 198(4) provides the provision of the category of the suit. Section 5 of Limitation Act, 1963 has no application and delay cannot be condoned in exercise of powers under section 5 of Limitation Act, 1963.

In this case, Additional Collector, by order dated 29.8.2006 condoned the delay in filing the application under section 198(4) of the Act, in exercise of powers under section 5 of the Limitation Act, 1963. As held above, provisions of section 5 of the Limitation Act, 1963 are not applicable to the proceedings under section 198(4) of the Act, as this proceeding is of the nature of suit. In such circumstances, Additional Collector ought to have framed an issue regarding limitation and after taking evidence of both the parties, he may decide the issue relating to limitation as a preliminary issue. In case fraud and misrepresentation is established and within period of five years the fraud could not came to the knowledge of the respondents, then he may give benefit of limitation under section 17 of the Limitation Act, 1963. [**Ram Pal and others v. State of U.P. through Secretary, Revenue (U.P.), Lucknow, 2014 (124) RD 221 (All. HC)]**

Articles 66, 113 - Provisions under - Limitation for recovery of possession as accrued could be filed within 12 years from said date as provided under Article 66 of Act, whereas, limitation for institution of a suit for mandatory injunction for direction to recover possession would be 3 years from said date as provided in Art. 113 of Act specified

The Limitation Act, 1963 (hereinafter referred to as the Limitation Act) does not provide for any limitation for a suit for mandatory injunction. Therefore, the suit for mandatory injunction would be covered by the residuary clause of Article 113 of the Act where limitation for suits is three years. Article 113 of the Limitation Act prescribes limitation of three years from the date

when the right to sue accrues for instituting a suit in respect of matters not otherwise provided under the Act.

In the instant case, the right to sue for recovery of possession accrued with the determination of the licence vide notice dated 10.4.01. The limitation for instituting a suit for mandatory injunction for direction to recover possession would be 3 years from the said date as provided in Article 113 of the Limitation Act; whereas a suit for recovery of possession can be filed within 12 years from the said date as provided under Article 66 of the Limitation Act. Therefore, in these circumstances, it is to be seen whether the present suit is to be treated strictly a suit for mandatory injunction or that for recovering of possession. **[Dori Lal Premi, Advocate v. Smt. Vidya Devi, 2014(2) ARC 536]**

Minimum Wages Act

S. 20 (2) - Claim for minimum wages - Application has to be filed within six months from the date it becomes payable

In the present case, the application was required to be filed within six months from January, 1995 unless it was accompanied by an application for condonation.

The view taken by the learned Single Judge is apparently in teeth of the statutory provisions and court find it difficult to sustain the order under appeal on that ground alone.

In conclusion, court hold that the claim of the private respondent was itself barred by limitation unaccompanied by any application for condonation. **[Hira Lal v. State of Bihar and others, 2014 (142) FLR 789]**

Motor Vehicles Act

S. 140 & 147 – Motor insurance – No fault liability – Scope of inquiry – Liability of insurance company – AT the time of passing order under Section 140 if there is no dispute that accident occurred due to sue of offending vehicle and it is covered under valid policy on the date of accident, then insurance company cannot escape from its liability

It is not in dispute that both the awards under Section 140 of Motor Vehicles Act arose out of the same accident. In the case registered as M.A.C.P. No. 64 of 2006, victim Bayabai, w/o Shrawan Butle, a labourer, age d about 40 years, while travelling by truck bearing No. MH 34-A 6890 on 20-12-2005 met with an accident due to rash and negligent driving of the offending vehicle. There is no dispute about the ownership of the offending motor vehicle as also the same was insured with the appellant. The contention that the victim was not authorized to travel in the truck (offending motor vehicle) as a passenger, can be considered when the main petition under Section166 of the Motor

Vehicles Act is decided on merits on the basis of the evidence. At the interim stage, when the order under Section 140 of the Motor Vehicles Act was passed, it is the liability of the insurer to pay compensation during the pendency of the main petition, without any fault on the part of the insurer or driver of the vehicle because of which the accident occurred.

In the case which is registered as MACP No. 65 of 2006, victim Lilabai, w/o Udhao Butle, aged about 35 years, was also a labourer, who did in the accident, caused by the offending motor vehicle bearing No. MH 34-A 6890. It appears from the impugned judgment and award that the truck was insured with the appellant under the insurance policy on the date of accident and because of the use of the offending motor vehicle, the accident had occurred.

Under these circumstances, the impugned judgments and awards passed by the Tribunal under Section 140 of Motor Vehicles Act cannot be blamed, when the motor accident had admittedly occurred due to the use of the motor vehicle, which was covered under the insurance policy on the date of incident. The insurer, therefore, cannot escape from its liability under Section 140 of the Motor Vehicles Act. It is open for the insurer to contest the main petition under Section 166 of the Motor Vehicles Act on merits. [**National Insurance Co. Ltd. Vs. Udhao and others, 2014 ACJ 1999]**

S. 166 – Claim application – Maintainability of – Financier – Liability of

The respondents/claimants being legal representatives of deceased Gopal Ram, who died in a motor accident on 27.4.1998, filed a claim application before the Claims Tribunal stating inter alia that Shri Gopal Ram, while driving the offending vehicle/tractor trolley (unregistered), owned and being driven by himself, suffered death. It was further pleaded that the said vehicle was purchased by Shri Gopal Ram after obtaining loan from the appellant/society. It was also pleaded that the appellant society had undertaken to get the vehicle insured but they did not get the vehicle insured. It was finally pleaded that they are entitled to get Rs. 9,02,000/- as compensation for the death of Shri Gopal Ram from appellant/Society.

The appellant/society filed written statement before the claims Tribunal pleading inter alia that the appellant/society is only a financial institution and loan of Rs. 2,00,000/- was granted to Shri Gopal Ram for purchase of tractor-trolley pursuant to the application made by him. It was further pleaded that being financer of the vehicle they are not liable to make compensation.

The Supreme Court in a decision reported in (2008) 5 SCC 107 (Godavari Finance Company vs. Degala Satyanarayanamma and others) has held that in case motorcycle, which is subjected to hire purchase agreement

financer cannot, ordinarily be treated as owner. The person, who is in possession of the vehicle and not the financer being the owner, would be liable to pay the damages for the motor vehicle. In that case, the appellant admittedly was the financer of the vehicle, as the vehicle was the subject-matter of hire purchase agreement and the appellant's name was mentioned in the registration book, the Supreme Court held that the appellant was not liable to pay any compensation to the claimants.

In the present case, the deceased being in possession of the vehicle as owner of the vehicle therefore the appellant/Society cannot be held liable to pay the amount of compensation.

Having regard to the principle laid down by the Supreme Court in aforesaid case and applying the ratio of the aforesaid case, it is held that the appellant being only financer of the offending vehicle, therefore, the appellant/society cannot be held liable to pay the compensation to the respondents/claimants for the death of deceased Ganesh Ram (owner of the vehicle). **[Jila Antyavasayi Sahkari Vikas Samiti Maryadit, Ambikapur v. Thibli Bai, 2014 ACJ 2142]**

Ss. 166 and 163-A – Claim application – Conversion of claim from U/s 166 to one U/s 163-A – Consideration

Though the submissions have been made, both the petitions under Section 166 of the Act as well as the petition under section 163-A of the Act are permissible under a law and it is for the claimant to have the option whether he would prefer to file a petition under Section 166 of the Act, which does not provide any limit of claim of compensation or whether he would file a petition under Section 163-A of the Act, which provides a limit for the compensation based on structured formula. Thw Hon'ble Supreme Court in a judgment reported in **Hansrajbhai v. Kodala case, 2001 ACJ 827 (SC)**, has considered the legislative history and clearly made the observation referring to the objects and reasons for the provisions under Section 163-A. Therefore, considering such objects, reasons and the underlying purpose of the legislature, there is no reason why such an option could be restricted once the application is preferred under a different provision. In fact this very issue, as rightly submitted, has been addressed by the Division Bench of this Court and the Hon'ble Division Bench in a judgment reported in **Mukeshbhai Bhalchandrabhai Jani, 2004 ACJ 1533 (Gujarat)** , has expressly provided that such a conversion is permissible at any stage. Therefore, the submission made by learned advocate, Mr. Mazmudar, that even if it is assumed that the claimant has two options – either to file a petition under section 166 of the Act or under Section 163-A of

the Act, it is available at the initial stage, but once having filed the petition under Section 166 of the Act, he cannot convert such petition, cannot be sustained in view of the aforesaid observation of the Hon'ble Division Bench. Further, as discussed above, considering the underlying policy of the legislature and the discussion and the observations of the Hon'ble Apex Court in a judgment reported in **Hansrajbhai V. Kodala case, 2001, ACJ 827 (SC)** and the interpretation has to be liberal as it is a beneficial legislation. The submission that it is trying to get out of the statutory provision regarding establishment of the negligence under Section166 of the Act is misconceived inasmuch as if the law permits an option to the claimant – applicant, he can have a recourse as provided in law subject to all limitations including the ceiling or the limit for claiming compensation under Section 163-A of the Act based on structure formula. In fact the legislature, having considered the relevant aspects, has enacted section 163-A based on structured formula in order to provide compensation, where the death has occurred. [**Patel Manjulaben Rameshkumar and another vs. Patel Rameshbhai Vittaldas and another, 2014 ACJ 1859]**

S. 168(1) – Words and phrases - Just compensation – It means compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident

The provision of Motor Vehicles Act, 1988, makes it clear that award must be just, which means that compensation should, to the extent possible, fully and adequately restore the claimant to the position prior the accident. That object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The Court or Tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences is inevitable. A person is not only to the compensated for the physical injury, but also for the loss which is suffered as a result of such injury. This means that he is to be compensated for his inability to lead a life with dignity and comfort, his inability to enjoy those normal amenities which he would have enjoyed but for the injures, and his inability to earn as much as he used to earn or could have earned. [**Shashanka Choudhury Vs. Amal Bhattachargee and another, 2014 ACJ 1803]**

Ss. 166, 168 and 173 – Permanent disability – Compensation – Basic principles for award of compensation, reiterated – Routine personal injury cases distinguished from serious cases of injury

The appellant claimant, an embroider, sustained serious injuries in an accident involving the vehicle in question. His right leg above the knee was amputated. His loss of earning capacity was assessed at 70%. He claimed compensation of Rs 15 lakhs whereas MACT awarded compensation of Rs 4,83,472 with 7% interest. Liability was fastened on R-2 Insurance Company. In appeal, the High Court enhanced the compensation to Rs 6,35,808.

The heads under which compensation is awarded in personal injury cases are the following:

Pecuniary damages (Special damages)

(i) Expenses relating to treatment, hospitalisation, medicines, transportation, nourishing food, and miscellaneous expenditure.

(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability.

(iii) Future medical expenses.

Non-pecuniary damages (General damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity).

In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life. **[Sanjay Kumar v. Ashok Kumar and Another; (2014) 2 SCC (Cri) 550]**

S. 168 - Just and Reasonable compensation- Functional disability vis-a-vis physical disability - Assessment on the impact caused by the injury on the victim's profession/career and to what extent his career has been affected by lowering of income

Whether an accident victim is entitled to get compensation for functional disability? If so, what is the method for computation of compensation? These are the two issues arising for considerations in this case.

Computation of just and reasonable compensation is the bounden duty of the Motor Accident Claims Tribunal. In view of the plethora of judgments rendered by this Court regarding the approach to be made in the award of compensation, court did not find it necessary to start with the first principles. In Rajesh and Others v. Rajbir Singh and Others, (2013) 9 SCC 54, Master malikarjun v. Divisional Manager, The National Insurance Company Limited, 2013 (10) SCALE 668 and in Rekha Jain v. National Insurance Company Limited and Others, (2013) 8 SCC 389, this Court recently has extensively dealt with the principles governing the fixation of compensation and the approach to be made by the courts in this regard.

In Rekha Jain's case this Court following the case of National Insurance Company Limited v. Mubasir Ahmad and Another, (2007) 2 SCC 349, developed a very important principle on functional disability while fixing the compensation. Rekha Jain, a cine artist suffered an injury in a motor accident at the age of 24 years on account of which she suffered 30% permanent partial disability which included disfigurement of her face, change in the physical appearance, etc. It was found that on account of such development, she could no more continue her avocation as an actress and, hence, it was held that she had suffered 100% functional disability. Hence, this Court awarded compensation following the principles laid down in Sarla Verma (Smt.) and Others v. Delhi Transport Corporation and Another, (2009) 6 SCC 121.

As far as compensation for functional disability is concerned, it has to be borne in mind that the principle cannot be uniformly applied. It would depend on the impact caused by the injury on the victim's profession/career. To what extent the career of the victim has been affected, thereby his regular income is refused or dried up will depend on the facts and circumstances of each not involve any functional disability at all. **[G. Dhanasekar v. M.D. Metropolital Transport Corporation Limited, (2014 (32) LCD 1361) (SC)]**

Ss. 173(1) and 170 – Motor insurance – Maintainability of – Appeal

In a recent decision in **Rekha Jain v. National Insurance Co. Ltd., 2013 ACJ 2370 (SC)**, the Supreme Court again held that statutory defences which are available to the insurer to contest a claim are confined to what are provided in sub-section (2) of Section 149 of the Act, 1988 and not more and for that reason if any insurer is to file an appeal, the challenge in the appeal would confine to only those grounds in absence of permission from the Claims Tribunal to avail the defence on behalf of the insured as required under Section 170 (b) of the Act, 1988.

As aforesaid, the appellant insurance company has been refused permission under section 170 of the Act, 1988 by the order dated 9.9.2011 to contest on merits and same has attained finality, therefore the defence of the appellant insurance company is confined to the statutory defence as provided in section 149 (2) of the Act, 1988 and the appellant insurance company is not entitled to challenge the quantum of compensation in absence of permission under section 170 of the Act, 1988 and the appeal filed by appellant insurance company challenging quantum of compensation is not entertainable and as such it dismissed as not maintainable. (**Neelima Verma and another vs. Dileshwar Kenwat and others, 2014 ACJ 1846)**

S. 173(1) and Civil Procedure Code, 1908, Order 41, rule 33 – Appeal – Powers of appellate court – Just compensation – Enhancement of compensation amount without claimant's appeal or cross-objection. Section 168(1) of Motor Vehicles Act, 1988, empowers the court to award just compensation and it can be more than the amount claimed.

The deceased was engaged in the tent house business and, therefore the income of Rs. 5,000 assumed by the Claims Tribunal does not warrant any interference in view of the judgment of the Supreme Court in Municipal Corporation of Delhi v. Association of Victims of Uphaar Tragedy, 2012 ACJ 48 (SC). The minimum wages cannot be taken into consideration in respect of self-employed persons.

It is well settled that Order 41, Rule 33 of the Code of Civil Procedure empowers the appellate court to grant relief to a person who has neither appealed nor filed any cross-objections. The object of this provision is to do complete justice between the parties. Order 41 Rule 33 of the Code of Civil Procedure.

The scope of Order 41, rule 33 of the Code of Civil Procedure and the power of the High Court to enhance the award amount in accident cases in the absence of cross-objections has been discussed by the Supreme Court in Nagappa v. Gurudayal Singh, 2003 ACJ 12 (SC), where the Apex Court has held that the court is required to determine just compensation and there is no other limitation or restriction for awarding such compensation and in appropriate cases where from the evidence brought on record if the Tribunal/Court considers that the claimant is entitled to get more compensation than claimed, the Tribunal may pass such award and would empower the court to enhance the compensation at the appellate stage even without the injured filing an appeal or cross-objections. [**National Insurance Co. Ltd. V. Komal, 2014 ACJ 1540 (Del)]**

Fatal accident – Principles of assessment – Multiplier – Choice of – Deceased aged 55, Assistant Manager in a Public Sector Corporation, drawing Rs.16,800 p.m. Tribunal adopted multiplier of 5, reckoning 3 years of remaining service while computing compensation - Held: A person after retirement does not cease to exist, he could be resourceful in so many ways and securing alternative employment or proved a moral support to the family and that is precisely why a multiplier number is provided larger than the remaining years of service; multiplier of 11 applied.

The quantum of compensation as assessed is also a subject of challenge before this court. The Tribunal was in error in providing for the contribution of income to the family only during the possible period of service, by applying a multiplier of 5. On the other hand, as a uniform scale of compensation to be granted in all motor accident cases, the Supreme Court in Sarla Verma v. Delhi Transport Corporation, 2009 ACJ 1298 (SC), has provided for a multiplier of 11 for persons aged between 51 and 55. It was not as if the Apex Court was not aware of the normal period of superannuation for government employees. However, a relatively higher multiplier is taken only by duly factoring the usefulness of a male as a contributor to the family even after retirement. A person on retirement does not cease to exist. He could be resourceful in so many ways and securing alternative employment or provide a moral support to the family. That precisely is the reason why a multiplier number is provided larger than the remaining years of service. I would take the income as stated already after tax as Rs. 16,800 per month, provide a 1/3 rd deduction and take the contribution to the family at Rs. 11,200. After annualizing the sum and applying a multiplier of 11, the loss of dependency will be Rs. 14,78,400. Adding Rs. 10,000 for loss of consortium and for loss of love and affection for the children, and a further amount of Rs. 5,000 for funeral expenses and Rs. 5,000 towards loss to estate, the total compensation will be Rs.14,98,400 which I round off to Rs. 15,00,000. The additional amount of compensation over what has been determined already by the Tribunal shall attract interest at 7.5 percent from the date of petition till the date of payment. [**Rekha Chabbra v. Gurmail Singh, 2014 ACJ 1476 (P&H)]**

Pleadings & Proof - Rule of – Applicability in Motor Accident claim cases - Held, "Rule of pleadings do not strictly apply to motor accident claim cases"

In United India Insurance Company Ltd. v. Shila Dutt and others, (2011) 10 SCC 509, a there Judges Bench of Hon'ble Supreme Court culled out certain underlying principles and propositions for deciding claim petitions

under the Act. Some of them as relevant to the facts of present case are ;-

1. The rules of the pleadings in principle do not strictly apply as the claimant is required to make an application in a form prescribed under the Act. In fact, there is no pleading where the proceedings are suo moto initiated by the Tribunal.

2. That, though the Tribunal adjudicates on a claim and determines the compensation, it does not do so as in adversarial litigation.

3. The Tribunal is required to follow such summary procedure as it thinks fit. It may choose one or more persons possessing special knowledge of the matters relevant to inquiry, to assist it in holding the enquiry.

4. The Tribunal while passing the award makes a statutory determination of compensation on the occurrence of a accident after due enquiry in accordance to the statute.

In Bimla Devi and others v. Himachal Road Transport Corporation, (2209) 13 SCC 530, Hon'ble Supreme Court held that a motor accident claim petition is required to be decided by the Tribunal on the touch stone of preponderance of probability and not on the basis of proof beyond reasonable doubt.

In Dulcina Fernandes and others v. Joaguim Xavier Cruz and another, (2013) 31 LCD 2432, Hon'ble Supreme Court following the dictum laid down by it in Shila Dutta and Bimla Devi's Cases held that the rules of pleadings do not strictly apply to motor accident claim cases and that the plea of negligence is required to the decided by the Tribunal on the touch stone of preponderance of probability and not on the basis of proof beyond reasonable doubt.

Court thus find that the findings recorded by the Tribunal with regard to Issue No. 1 not based on the settled principle of touch stone of preponderance of probability but are based on mere surmises and conjectures. **[Shiv Murti Singh v. Nawab khan, 2014 (32) LCD) Allahabad High Court 1553 (Lucknow Bench)**

Quantum – Deductions – Family pension – Whether family pension payable to widow and other family members of the deceased would be deductible while determining compensation – Held, No

In this connection, court may refer to the cases of United India Insurance Co. Ltd. v. Rajni Kumari, 2012 (4) TAWC 404 (All) and United Indian Insurance Co. Ltd. v. Geeta Devi, 2012 (4) TAC 429 (All). This court speaking though one of us referring to the cases of Bhakra Beas Management

Board and Helen C. Rebello and several other case-laws has held that while computing compensation family pension being drawn by the widow is not liable to be deducted.

Learned counsel for the appellant has tried to distinguish these cases on the premises that in those cases the deceased were in service and had not retired. Court afraid how this contention is sustainable? It is wholly immaterial whether the government servant concerned was in service or had attained the age of superannuation at the time of his death in motor accident and was getting pension. Family pension is earned by employee for the benefit of family in the form of his contribution, which is payable to his heirs after his death. Even if a government servant may be retired, dies natural death or on account of some ailment his widow is liable to receive family pension. Why this benefit should be given to a tortfeasor, i.e., the driver of the offending vehicle, or vehicle owner or insurer who has taken the life of the deceased in a motor accident. Thus, sole contention raised on behalf of appellant for challenge in this award has no force. **[Reliance General Insurance Co. Ltd. v. Safedi, 2014 ACJ 2070]**

Quantum – Fatal accident – Principles of assessment – Structured formula – It would be safe to calculate compensation on the basis of structured formula stipulated in Second Schedule for uniformity of awards

For uniformity it would be safe to calculate compensation on the basis of the structured formula as stipulated in the 2nd schedule to the Motor Vehicles Act. To compute compensation, the income of the deceased should be determined. If there are materials in support of the claim of the claimants to compensation, the actual income should be taken into account. If income cannot be proved, it would have to be assessed on hypothetical basis. Out of the income as determined, a deduction should be made with regard to the amount which the deceased would have spent on himself by way of his own personal and living expenses which should ordinarily be 1/3rd of the income, as stipulated in the Second Schedule to the Motor Vehicles Act. Of course, as held by the Supreme Court, the 2nd schedule is in the nature of guidelines and may be deviated from in appropriate cases, for the ends of justice. **[New India Assurance Co. Ltd. v. Niyati Kumar, 2014 ACJ 2100]**

Quantum – Fatal accident – Principles of assessment – Pain and suffering – Whether any compensation could be awarded for pain and suffering caused to the family members on the death of the deceased – Held, No

The learned Tribunal, in our view, erred in law in awarding Rs.10,000 for mental pain and agony. As observed above, in Sarla Verma (supra) the

Supreme Court clearly held that no amount could be awarded for loss, and suffering caused to the family members of the victim. **(New India Assurance Co. Ltd. v. Niyati Kumar, 2014 ACJ 2100)**

Quantum – Fatal accident – Principles of assessment – Future prospects – Deceased aged 32, self employed as mechanic – Whether future prospects of the deceased have to be taken into consideration while computing compensation – Held, Yes

In view of the ratio of the aforesaid authorities, as the deceased was 32 years old, addition of 50% of the income is made to the income of the deceased. Thus, the income comes to Rs.6000/- per month (4000+2000). The Tribunal was right in the deducting 1/4 from the income of the deceased. Deducting 1/4 the dependency comes to Rs.45,00/- per month. Though, the Tribunal has applied multiplier of 17 which in opinion of this Court should have been 16 as per the authoritative guidelines issued in Smt. Sarla Verma and others v. Delhi Transport corporation and another 2009 AIR SC 3140 but since no appeal has been filed by the insurance company or the owner/driver of the offending vehicle so, this Court would not like to disturb the same. Otherwise too, economic condition of the deceased was such that he was considered to be a casual labourer. Applying the multiplier of 17, the amount comes to Rs. 9,18,000 [Rs. 6,000 sic Rs. 4,500) x 12 x 17]. In Rajesh, 2013 ACJ 1403 (SC), the deceased was 33 years old and left behind a widow and three minor children. The Hon'ble Apex Court awarded a sum of Rs. 1,00,000 towards loss of consortium. **(Sudha v. Dalip Singh, 2014 ACJ 2060)**

Narcotic Drugs and Psychotropic Substances Act

S.37—Release on bail or suspension of sentence—Can be ordered by Supreme Court even without getting itself satisfied with requirements of S. 37 when that is necessary for doing complete justice—Such power is not available to High Court or trial court

The Supreme Court may grant release on bail or suspension of sentence without getting itself with the requirements of S. 37 if that is necessary for doing complete justice, such an authority, however, is not available to the High Court or the trial Court, as the case may be. The order passed in the case of (2004) 13 SCC 42 is a reflection of the authority exercised by the Supreme Court under Art. 142 of the Constitution of India, is not having a binding effect or in other words, an authority of precedent for the High Court or the other courts subordinate. The judgments given in the case of AIR 2009 SC 3203 : 2000 CriLJ 4619 and AIR 2009 SC (Supp) 1567 : 2009 CriLJ 3042 are laying down law, hence, are having binding effect and those are required to be adhered in their true spirit. Thus it is to

be followed by the courts while dealing with the applications submitted by the accused of the offences referred in S. 37 for grant of bail or for suspension of sentence. **[Daulat Singh alias Gatu vs. State of Rajasthan, 2014 Cri.L.J. 2860 (Raj. HC)]**

S. 50 - Search of person - Attractibility of - Provisions of Section not attracted in cases where search of a person is not required to be conducted i.e. in case of search and recovery from a bag or briefcase or container, section 50 of above act not applicable

It is clear from the reading of the aforesaid provision that it is applicable only where search of a person is involved. It is not made applicable in those cases where no search of a person is to be conducted. A bare reading of Section 50 shows that it only applies in case of personal search of a person. It does not extend to search of a vehicle or a container or a bag or premises (see Kalema Tumba v. State of Maharashtra; (1999) 8 SCC 257, State of Punjab v. Baldev Singh; (1999) 6 SCC 172 and Gurbax Singh v. State of Haryana; (2001) 3 SCC 28. The language of Section 50 is implicitly clear that the search has to be in relation to a person as contrasted to search of premises, vehicles or articles. This position was settled beyond doubt by the Constitution Bench in Baldev Singh case. Above being the position, the contention regarding non-compliance with Section 50 of the Act is also without any substance. **[Krishan Kumar v. State of Haryana 2014 (86) ACC 237]**

S. 50 – Search and seizure – Chance recovery of charas during a personal or body search of accused – Provisions of S. 50 not attracted

Court is not in agreement with the view of the High Court that since the police officers had a positive suspicion that Sunil Kumar was carrying some contraband, therefore, it could be said or assumed that they had reason to believe or prior information that he was carrying charas or some other narcotic substance and so, before his personal or body search was conducted, the provisions of Section 50 of the Act ought to have been complied with. The recovery of charas on the body or personal search of Sunil Kumar was clearly a chance recovery and, in view of Baldev Singh (AIR 1999 SC 2378) : (1999 AIR SCW 2494) it was not necessary for the police officers to comply with the provisions of Section 50 of the Act.

Under the circumstances, court set aside the judgment and order passed by the High Court and uphold the decision of the Trial Court convicting Sunil Kumar for an offence punishable under Section 20 of the Act. **(State of H.P. v. Sunil Kumar, 2014 CrLJ 3532)**

Negotiable Instrument Act

S. 138—Dishonour of cheque—Multiple cheques—A single complaint will be maintainable for all these dishonoured cheques

Though, it is explicitly clear under the provisions of Section 218 (1) Cr.P.C., which provides that for every distinct offence of which any person is accused, there shall be a separate charge and every such charge shall be tried separately. Section 220(1) Cr.P.C. states that if in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with and tried at one trial for every such offence. Section 220(1) and Section 223(d) Cr.P.C. constitute an exception to Section 218 as well as Section 219 (2) Cr.P.C. Since Section 220 Cr.P.C. is an enabling provision, therefore separate trials in respect of the offence charged are not barred. However, where series of acts are so connected together forming same transaction, accused can be tried in one case by the Court. All the ten cheques have been simultaneously presented to the banker on the same day and dishonour so effected on the same very day for all the cheques, regarding which a consolidated notice has been issued calling upon the drawer to make good the payment of these cheques, does not suffer from the vice of joinder of many offences in one trial. It is after the expiry of the period of the receipt of the notice, prescribed under Section 138 (c) of the Act, offence under Section 138 of the Act is deemed to have been committed. Thus by all means, the facts disclose as constituting only one offence and it cannot be said that ten offences have been committed by the accused and therefore, Section 219 Cr.P.C, does not come into play. **[Sh. Charashni Kumar Talwani vs. M/s. Malhotra Poultries, Naraingarh Road, Barwala, 2014 Cri.L.J., 2908 (P&H High Court)]**

Ss. 138 and 141 - Dishonour of Cheque - Offence by company – Consideration of- No specific allegations against appellants in a complaint that they were incharge and responsible for conduct of business of company at relevant time- Complaint liable to be quashed

It is necessary for a complainant to state in the complaint that the person accused was in charge of and responsible for the conduct of the business of the company. Although, no particular form for making such an allegation is prescribed, and it may not be necessary to reproduce the language of Section 138 of the Negotiable Instruments Act, 1981, but a reading of the complaint should show that substance of the accusation discloses that the accused person was in charge of and responsible for the conduct of the business of the company at the relevant time. From the averment made in the complaint, it can

safely be said that there is no specific or even a general allegation made against the appellants. Under these circumstances, the complaint against the appellants deserves dismissal. **[Mannalal Chamaria and another v. State of West Bengal and another, AIR 2014 SC 2240]**

S. 138 – Cr.P.C. - Ss. 177, 178 and 179 – Dishonour of cheque – Territorial jurisdiction of court to entertain complaints

In Bhaskaran, this Court resolved the confusion as to the place of commission of the offence by relying upon Sections 177 to 179 of the Cr.P.C. But the confusion arises only if one were to treat the proviso as stipulating the ingredients of the offence. Once it is held that the conditions precedent for taking cognizance are not the ingredients constituting the offence of dishonour of the cheque, there is no room for any such confusion or vagueness about the place where the offence is committed. Applying the general rule recognised under Section 177 of the Cr.P.C. that all offences are local, the place where the dishonour occurs is the place for commission of the offence vesting the Court exercising territorial jurisdiction over the area with the power to try the offences. Having said that we must hasten to add, that in cases where the offence under Section 138 is out of the offences committed in a single transaction within the meaning of Section 220 (1) of the Cr.P.C. then the offender may be charged with and tried at one trial for every such offence and any such inquiry or trial may be conducted by any Court competent to enquire into or try any of the offences as provided by Section 184 of the Code. So also, if an offence punishable under Section 138 of the Act is committed as a part of single transaction with the offence of cheating and dishonestly inducing delivery of property then in terms of Section 182 (1) read with Sections 184 and 220 of the Cr.P.C. such offence may be tried either at the place where the inducement took place or where the cheque forming part of the same transaction was dishonoured or at the place where the property which the person cheated was dishonestly induced to deliver or at the place where the accused received such property. These provisions make it clear that in the commercial world a party who is cheated and induced to deliver property on the basis of a cheque which is dishonoured has the remedy of instituting prosecution not only at the place where the cheque was dishonoured which at times may be a place other than the place where the inducement or cheating takes place but also at the place where the offence of cheating was committed. To that extent the provisions of Chapter XIII of the Code will bear relevance and help determine the place where the offences can be tried.

Before parting with this aspect of the matter, we need to remind ourselves that an avalanche of cases involving dishonour of cheques has come

upon the Magistracy of this country. The number of such cases as of October 2008 were estimated to be more than 38 lakhs by the Law Commission of India in its 213th Report. The result is that cases involving dishonour of cheque is in all major cities choking the criminal justice system at the Magistrate's level. Courts in the four metropolitan cities and other commercially important centres are particularly burdened as the filing of such cases is in very large numbers. More than five lakh such cases were pending in criminal courts in Delhi alone as of 1st June 2008. The position is no different in other cities where large number of complaints are filed under S.138 not necessarily because the offence is committed in such cities but because multinational and other companies and commercial entities and agencies choose these places for filing the complaints for no.0 better reason than the fact that notices demanding payment of cheque amounts were issued from such cities or the cheques were deposited for collection in their banks in those cities. Reliance is often placed on Bhaskaran's case to justify institution of such cases far away from where the transaction forming basis of the dishonoured cheque had taken place. It is not uncommon to find complaints filed in different jurisdiction for cheques dishonoured in the same transaction and at the same place. This procedure is more often than not intended to use such oppressive litigation to achieve the collateral purpose of extracting money from the accused by denying him a fair opportunity to contest the claim by dragging him to a distant place. Bhaskaran's case could never have intended to give to the complainant/payee of the cheque such an advantage. Even so, experience has shown that the view taken in Bhaskaran's case permitting prosecution at any one of the five different places indicated therein has failed not only to meet the approval of other benches dealing with the question but also resulted in hardship, harassment and inconvenience to the accused persons. While anyone issuing a cheque is and ought to be made responsible if the same is dishonoured despite compliance with the provisions stipulated in the proviso, the Court ought to avoid an interpretation that can be used as an instrument of oppression by one of the parties. The unilateral acts of a complainant in presenting a cheque at a place of his choice or issuing a notice for payment of the dishonoured amount cannot in court's view arm the complainant with the power to choose the place of trial. Suffice it to say, that not only on the Principles of Interpretation of Statutes but also the potential mischief which an erroneous interpretation can cause in terms of injustice and harassment to the accused the view taken in the Bhaskaran's case needs to be revisited as court have done in foregoing paragraphs. **(Dashrath Rupsingh Rathod v. State of Maharashtra, 2014 (5) Supreme 641)**

Payment of Wages Act

S.17 – Limitation Act, Section 5 – Appeal – Application for candoning delay has been rejected by Appellate Court – Legality of – Payment of wages Act does not admit of applicability of any provision of Limitation Act – Supreme Court has held that the applicability of Limitation Act to be judged not from the terms of Limitation Act but by provision of Act in which to be applied

Provisions of section 5 of the Limitation Act will not be applicable to the provisions of section 17 of the Payment of Wages Act and Appellate Court has no power to condone the delay and except the appeal beyond limitation provided in that. The Court of appeal has rightly rejected the application for condonation of delay and no interference is required in that order rejected. Hence, the petition is liable to dismissed and it is hereby by dismissed. [**Union of India v. XIII A.D.J., Lucknow and others, 2014(142) FLR 1029]**

POTA

S.32 – Confession under, retracted afterwards – Retracted confession of and held, not corractorated – By endependent evidence

It is clear from the deposition of PW 123 that firstly, A-6 is not the owner of the car since it was registered in the name of some other person as per the report of RTO (Ext. 672). Secondly, as per the order of the CJM of Budgam, Jammu and Kashmir (Ext. 674) dated 11.10.2003, A-6 was not in physical possession of the car which was allegedly used for carrying weapons for the attack on Akshardham whereas he was actually found in possession of another car bearing Registration No. CHOIX 3486. Finally, though a panchnama was drawn up of the alleged car, by the police of Jammu and Kashmir, it was for them to hand over the car from their custody to the Gujarat Police. No panchanama or document of seizure of the car had been produced before us to show that the car was recovered from the workshop/ garage of A-6 or even that the garage/ workshop from which the car was allegedly recovered belongs to A-6. Therefore, court cannot see how the car can be linked to A-6 in the absence of any independent evidence other than his confessional statement which had been subsequently retracted.

It is also of the utmost importance for us to mention the statement of PW 125, Ibrahim Chauhan, Crime Branch, Ahmedabad regarding the seizure of the car since it is reflective of how casually and with what impunity the investigation has been conducted in the instant case by the investigating officer. PW 125, who was a part of the investigation of this case in Kashmir, and who

was also responsible for escorting A-2, A-4 and A-5 to Srinagar, Kashmir.

In the light of the evidence mentioned above, court is not inclined to give any weightage to the panchnama drawn by Gujarat Police at Jammu and Kashmir for the seizure of car already in the possession of Jammu and Kashmir Police at SOG camp, in the absence of the original panchnama and seizure memo drawn by the police of Jammu and Kashmir. In view of the evidence on record, and the reasons recorded by court, court answer Point (vi) in favour of the appellants and hold that the prosecution had failed to prove that the car was used by A-6 to carry weapons from Jammu and Kashmir to Bareilly for carrying out the attack on Akshardham. (**Adambhai Sulemanbhai Ajmeri and others v. State of Gujarat, (2014)7 SCC 716)**

Practice and Procedure

Doctrine of finality - Scope of - Supreme Court has extensive power to correct error or to review its decision but that can be done at cost doctrine of finality and it has to be applied in strict sense

Violation of Fundamental Rights guaranteed under the Constitution have to be protected, but at the same time, it is the duty of the court to ensure that the decisions rendered by the court are not overturned frequently, that too, when challenged collaterally as that was directly affecting the basic structure of the Constitution incorporating the power of judicial review of this court. There is no doubt that this Court has an extensive power to correct an error or to review its decision but that cannot be done at the cost of doctrine of finality. **[Union of India and others v. Major S.P. Sharma and others, 2014 (4) AWC 3319 (SC)]**

Prevention of Corruption Act

S. 5 (2) – Power of Special Judge - Tender of pardon to accomplice – Order granting pardon passed by Magistrate in good faith even after appointment of Special Judge under above Act since both have concurrent jurisdiction is only a curable irregularity which do not vitiate proceeding since case was under investigation

Both the Magistrate as well as the Special Judge has concurrent jurisdiction in granting pardon under Section 306 Cr.P.C. while the investigation is going on. But, in a case, where the Magistrate has exercised his jurisdiction under Section 306 Cr.P.C. even after the appointment of a Special Judge under the P. C. Act and has passed an order granting pardon, the same is only a curable irregularity, which will not vitiate the proceedings, provided the order is passed in good faith. In fact, in the instant case, the Special Judge

himself has referred the application to Chief Metropolitan Magistrate/Metropolitan Magistrate to deal with the same since the case was under investigation. In such circumstances, we find no error in Special Judge directing the Chief Metropolitan Magistrate or the Metropolitan Magistrate to pass appropriate orders on the application of CBI in granting pardon to second respondent so as to facilitate the investigation. **[P.C. Mishra v. State (C.B.I.) and another, AIR 2014 SC 1921]**

Probation of Offenders Act

S. 4(1) – Cr.P.C. 1973 – Ss. 360 & 361 – IPC 1860 – Ss. 120-B/420 – Prevention of Corruption Act, 1988 – S. 13(1)(a) read with 13(2) - Order releasing the accused on probation for good conduct – Absolute principle of law cannot be laid down regarding when a convict can be released on probation – Principles laid down in sections 360 and 361, Cr.P.C. and Act of 1958 should be followed to take appropriate decision depending on facts of each case

To sum up:

(a) For awarding a just sentence, the Trial Judge must consider the provisions of the Probation of Offenders Act and the provisions on probation in the Criminal Procedure Code;

(b) When it is not possible to release a convict on probation, the Trial Judge must record his or her reasons;

(c) The grant of compensation to the victim of a crime is equally a part of just sentencing;

(d) When it is not possible to grant compensation to the victim of a crime, the Trial Judge must record his or her reasons; and

(e) The Trial Judge must always be alive to alternative methods of a mutually satisfactory disposition of a case.

It does not appear that depending upon the facts of each case, causing death by what appears (but is not) to be a rash or negligent act may amount to an offence punishable under Part II of section 304 IPC, not warranting the release of the convict under probation. There may also be situations where an offence is punishable under section 304-A of the IPC in an accident "where mens rea remains absent" and refusal to release a convict on probation in such a case may be too harsh an approach to take. An absolute principle of law cannot be laid down that in no case falling under section 304-A of the IPC should a convict be released on probation – it is only that the principles laid down in sections 360 and 361 of the

Criminal Procedure Code and the Probation of Offenders Act should not be disregarded but should be followed and an appropriate decision, depending on the facts of the case, be taken in each case. **[State v. Sanjiv Bhalla, 2014 (86) ACC 938]**

Protection of Women from Domestic Violence Act

Ss. 3, 2 and 12 – Domestic Violence u/s 3 of above act – Scope – Father of complainant (i.e. Daughter) who is living separately from his daughters, his case would not cover under "Domestic violence"

The petitioner is the real father of respondent No. 4, Smt. Usha Mishra. On 6.2.2004, his daughter Usha Gupta solemnized her inter-caste marriage with one Ramji Gupta against the wishes of her father (petitioner) and after marriage, she having ceased to have any relations with her parental house, started living with her husband, Ramji Gupta separately. As the relations between the daughter and father had become strained, she never came back to the house of the petitioner after her marriage on 6.2.2004. However, on 18.12.2008, she filed a complaint case against her father in the court of Judicial Magistrate, Allahabad under Section 12 of The Protection of Women From Domestic Violence Act, 2005 (hereinafter referred to as the Act) alleging that she is the handicapped daughter of opposite party. Her father is a man of bad character. He has kept another woman as wife with him despite the fact that the first wife i.e. the mother of the complainant is alive. She had earlier moved an application against the atrocities of her father before the Court under Section 156(3) Cr.P.C. On the basis of which, the police had registered a criminal case against her father but by filing a criminal revision against the order passed on the application under Section 156(3) Cr.P.C. his father obtained a stay order in his favour by the revisional court and after obtaining the stay order, he started defaming and humiliating the complainant. It was further alleged by the daughter that her father who keeps an evil eye on her and who was harassing her by instituting false cases against her, came to her house on 16.12.2008 and enticed her to go with him deserting her husband and 4 years old son.

A perusal of the pleadings shows that admittedly the respondent No. 4 was living in a separate house since four years prior to the occurrence i.e. 16.12.2008. The place of occurrence as mentioned in the complaint is daughter's matrimonial home.

Thus, clearly the petitioner is living separately from his daughter since 6.2.2004 and he has never at any point of time resided with her in the house where his daughter was living when the cause of action took place on 16.12.2008, when according to complainant, her father came and asked her to leave her husband and four years old son and come to his parental home so that her remarriage may be performed. Under these circumstances, it cannot be said that the respondent no. 4 can be termed as "aggrieved party" or the petitioner be termed as "respondent" or any "domestic violence" has taken place under

Section 3 of the Act.

There is no allegation of any such thing that the father committed any assault or used any abusive language against her. Although some vague allegations regarding her father having an evil eye on her and committing insult on some previous date are there but neither any time nor any place has been mentioned with regard to those vague allegations.

It is also to be noted that several cases both of civil and criminal nature are pending between the father and the daughter due to their strained relations, so the possibility of false implication cannot be ruled out.

Keeping in view all these facts and circumstances, it is court's considered view that the act of the petitioner is not covered by the definition of "domestic violence" as provided under Section 3 of the Act. **[Nageshwar Prasad Mishra v. State of U.P. and others, 2014 (86) ACC 177]**

Railways Act

S. 123 (C) (2) and 124-A – Untoward incident Bona fide passenger – Burden of proof – Onus to prove that deceased passenger was undertaking travel without ticket shifts on the Railways only once prima facie the initial onus is discharged by the claimants to show that deceased had boarded the train after purchase of ticket

Merely because in a particular judgment, the High Court has observed that the onus of proof is on the Railways to prove that the passenger in a given case was undertaking the travel without ticket, does not mean that in the instant case also, the onus was initially on the respondent to prove that the deceased was undertaking the travel without ticket. Such an onus has to be shifted on to the railway authorities only once prima facie the initial onus is discharged by the appellants to show that the deceased had boarded the train after purchase of ticket and thus was a bona fide passenger. For example, in Leelamma's case, 2010 ACJ 566, the Railways had admitted that there was an accidental fall of the deceased from the train. It was observed in such a contingency that the injuries were not self-inflicted by the passenger or there was no time to commit suicide by him. In such a contingency, it was essentially on the respondent to prove that the deceased was not a bona fide passenger on account of non-production of ticket. Similar was the judgment passed in Hari Narayan Gupta's case (2008 ACJ 822). Therefore the facts of no two cases are similar much less the evidence which is produced and accordingly merely because in one case, the High Court has observed that the burden of showing that deceased was travelling without ticket was not discharged by the Railways, it could not be a ground for denying the compensation to the appellants, does not mean that

in all cases of train accidents, there is a presumption that the deceased was a bona fide passenger and the burden shifts on to the respondent. Such a proposition cannot be laid down nor is laid down by any other authority relied on by the appellants. It is in the given facts and circumstances of each individual case that the court has to consider as to whether the appellants have been able to produce prima facie evidence to show that the deceased was a bona fide passenger. Once this is shown, the onus obviously shifts on to the Railways to show that the deceased was not a bona fide passenger. **[Geeta v. Union of India, 2014 ACJ 1505]**

Rent Laws

Sub-Letting/Sub - Tenant/Sub-Tenancy - Proof of

In order to prove sub-letting as a ground for eviction under rent control laws, two ingredients have to be established viz. (i) parting with legal possession of the premises by the tenant in favour of third party, and (ii) such parting with possession has been done without consent of the landlord and in lieu of monetary consideration. The constructive possession of the tenant by retention of control would not make it parting with possession as it has to be parting with legal possession. Sometimes emphasis has been laid on the fact that the sub-tenancy is created in a clandestine manner and there may not be direct proof on the part of a landlord to prove it but definitely it can bring materials on record from which such inference can be drawn. The court under certain circumstances can draw its own inference on the basis of materials brought at the trial to arrive at the conclusion that there has been parting with the legal possession and acceptance of monetary consideration either in cash or in kind or having some kind of arrangement. The transaction of sub-letting can be proved by legitimate inference though the burden is on the person seeking eviction. The materials brought out in evidence can be gathered together for arriving at the conclusion that a plea of sub-letting is established. **[S.F. Engineer vs. Metal Box India Ltd. and Another, (2014) 6 SCC 780]**

Release application – Dismissed by both courts below on ground of need which was not bonafide – No interference warranted - Scope of judicial

review very limited and narrow

The petitioner is landlord. His application for release of shop in dispute filed under Sec. 21(1)(a) of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as the "Act, 1972") was rejected by Prescribed Authority vide judgment dated 11.04.2002 and there against petitioner's appeal has also been dismissed by Additional District Judge, Court No. 9, Aligarh vide judgment and order dated 18.01.2007.

In para 18 onwards of the judgment of Prescribed Authority this Court finds that it has discussed in detail various false statements made on oath by filing inconsistent affidavits before courts below showing that petitioner had not come with clear hands and has not disclosed correct facts before court below but has tried to take advantage of false statements. In these facts and circumstances, both the courts below have found that need of landlord is not bona fide.

These findings have not been challenged in the entire writ petition and there is not even a whisper that these findings are incorrect or misreading. It is not the case of petitioner that any relevant evidence was ignored or any impermissible or irrelevant evidence was taken into account or there is any other perversity, legal or otherwise, in the judgments impugned in this petition. So, Court does not find any reason to interfere.

The scope of judicial review in these matter under Article 226/227 is very limited and narrow as discussed in detail by this Court in Jalil Ahmad v. 16th Additional District Judge, Kanpur Nagar and others, 2013(2) AWC 2168. There is nothing which may justify judicial review of orders impugned in this writ petition in the light of exposition of law. **[Shanti Devi (Smt.) (since dead) and others v. Satya Prakash Verma, 2014 (2) ARC 885]**

Right of Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act

S.-24(2) - Scope of Land - Acquisition proceedings initiated under LA Act, 1894-Lapsing of, in terms of S. 24(2) of the new Act of 2013

It is common ground of the parties that the award was passed on 18-11-1995 and the compensation has not been paid nor deposited in the court nor received by the appellants till date i.e. 31-1-2014 and even the physical possession of the land in question is with the appellants as on date.

The Right to Fair compensation and Transparency in Land Acquisition,

Rehabilitation and Resettlement Act, 2013 came into effect on 1-1-2014. It is submitted by the appellants and not contested by the respondents that in view of Section 24 of the 2013 Act, the land acquisition proceedings have lapsed.

In a recent decision of this Court in Pune Municipal Corpn. v. Harakchand Misirimal Solankit, a three-Judge Bench speaking through one of us (R.M. Lodha, J.) considered the scope of Section 24, particularly the meaning of the expression "compensation has not been paid" in Section 24(2) of the 2013 Act and held as under: (SCC pp. 187-89, paras 10-11 & 17)

“10. Insofar as sub-section (1) of Section 24 is concerned, it begins with non obstante clause. By this, Parliament has given overriding effect to this provision over all other provisions of the 2013 Act. It is provided in clause (a) that where the land acquisition proceedings have been initiated under the 1894 Act but no award under Section 11 is made, then the provisions of the 2013 Act shall apply relating to the determination of compensation. Clause (b) of Section 24(1) makes provision that where land acquisition proceedings have been initiated under the 1894 Act and award has been made under Section 11, then such proceedings shall continue under the provisions of the 1894 Act as if that Act has not been repealed.

11. Section 24(2) also begins with non obstante clause. This provision has overriding effect over Section 24(1). Section 24(2) enacts that in relation to the land acquisition proceedings initiated under the 1894 Act, where an award has been made five years or more prior to the commencement of the 2013 Act and either of the two contingencies is satisfied viz. (i) physical possession of the land has not been taken, or (ii) the compensation has not been paid, such acquisition proceedings shall be deemed to have lapsed. On the lapse of such acquisition proceedings, if the appropriate Government still chooses to acquire the land which was the subject-matter of acquisition under the 1894 Act then it has to initiate the proceedings afresh under the 2013 Act. The proviso appended to Section 24(2) deals with a situation where in respect of the acquisition initiated under the 1894 Act an award has been made and compensation in respect of a majority of landholdings has not been deposited in the account of the beneficiaries then all the beneficiaries specified in Section 4 notification become entitled to compensation under the 2013 Act.

17. While enacting Section 24(2), Parliament definitely had in its view Section 31 of the 1894 Act. From that one thing is clear that it did not intend to equate the word 'paid' to 'offered' or 'tendered'. But at the same time, we do not think that by use of the word 'paid', Parliament intended receipt of compensation by the landowners/persons interested.
In our view, it is not appropriate to give a literal construction to the expression 'paid' used in this sub-section [sub-section (2) of Section

24]. If a literal construction were to be given, then it would amount to ignoring procedure, mode and manner of deposit provided in Section 31 (2) of the 1894 Act in the event of happening of any of the contingencies contemplated therein which may prevent the Collector from making actual payment of compensation. We are of the view, therefore, that for the purposes of Section 24(2), the compensation shall be regarded as 'paid' if the compensation has been offered to the person interested and such compensation has been deposited in the court where reference under Section 18 can be made on happening of any of the contingencies contemplated under Section 31 (2) of the 1894 Act. In other words, the compensation may be said to have been 'paid' within the meaning of Section 24(2) when the Collector (or for that matter Land Acquisition Officer) has discharged his obligation and deposited the amount of compensation in court and made that amount available to the interested person to be dealt with as provided in Sections 32 and 33."

In view of the above legal position and the fact that the award was passed on 18-11-1995 and the compensation has not been paid nor deposited in the court nor received by the appellants till 31-1-2014 and the physical possession is also with the appellants as on date, the subject acquisition has to be held to have been lapsed. Hence Court held accordingly. [**Bimila Devi vs. State of Haryana, (2014) 6 SCC 583]**

Service Law

Recovery of amount of excess salary paid - Plea that appellant would be getting more amount than what he was entitled - Cannot be accepted in view of policy laid down by Government in G.O. dated 16.1.2007

If any mistake has been committed in pay fixation, the mistake had been committed in 1986, i.e. much prior to the retirement of the appellant and therefore, by virtue of the aforestated G.O. dated 16th January, 2007, neither any salary paid by mistake to the appellant could have been recovered nor pension of the appellant could been reduced.

The submission made on behalf of the learned counsel appearing for the respondent that the appellant would be getting more amount than what he was entitled to cannot be accepted in view of the policy laid down by the Government in G.O. dated 16th January, 2007. If the Government feels that mistakes are committed very often, it would be open to the Government to change its policy but as far as the G.O. dated 16th January, 2007 is in force, the respondent-employer could not have passed any order for recovery of the

excess salary paid to the appellant or for reducing pension of the appellant. **[Sushil Kumar Singhal vs. Pramukh Sachiv Irrigation Department and others, 2014 (142) FLR 225 (Supreme Court)]**

Termination of services of appellant, pursuant to date of birth in record which was alleged incorrect - Effect of - Termination was not justified

In the present case, the appellant was the employee of the erstwhile Bhavnagar Electricity Company Ltd. which was taken over by the respondent-Board and the appellant was appointed afresh as per the agreement in 1978. The appellant gave an application in the year 1987 to change his birth from 27.6.1937 to 27.6.1940 but he was orally informed of the rejection of his request.

As his date of birth was not corrected, the appellant filed a civil suit in the year 1997 for declaration regarding his date of birth and prayed for interim relief, but the same was rejected. He then filed a civil misc. appeal No.124 of 1997 before the District Court, Bhavnagar, against the order of the civil court, but this also came to be rejected. The respondent-board, on 27.6.1997, pursuant to the date of birth in its records, terminated the services of the appellant and the appellant raised an industrial dispute before the Conciliation Officer which was referred by the State Government for adjudication to Labour Court, Bhavnagar vide reference (LCB) no.225 of 1998. The Labour Court has allowed the reference after conducting an enquiry and passed an Award dated 31.7.2001 holding that the termination of the services of the appellant prematurely on the basis of his incorrect date of birth was wrong and further directed the respondent to pay full salary, all admissible ancillary benefits from the date he was wrongfully and prematurely terminated from service till the date of his actual retirement and further, also ordered that a sum of Rs.1,500/- be paid as costs. The respondent filed a petition under Articles 226 and 227, being special civil application no.4168 of 2002 before the High Court of Gujarat at Ahmedabad. The same was allowed and the award passed by the Labour Court in Reference (LCB) No.225 of 1998 was set aside. Aggrieved by the same, the appellant has filed the present civil appeal urging various facts and legal contentions in support of his case.

The judgment and award of the Labour Court well-reasoned and based on facts and evidence on record. The High Court has erred in its exercise of power under Article 227 of the Constitution of India to annul the findings of the Labour Court in its Award as it is well settled law that the High Court cannot exercise its power under Article 227 of the Constitution as an appellate Court or re-appreciate evidence and record its findings on the contentious points. Only if there is a serious error of law or the findings recorded suffer from error apparent on record, can the High Court quash the order of a Lower Court. The Labour Court in the present case has satisfactorily exercised its original jurisdiction and properly appreciated

the facts and legal evidence on record and given a well reasoned order and answered the points of dispute in favour of the appellant. The High Court had no reason to interfere with the same as the Award of the Labour Court was based on sound and cogent reasoning, which has served the ends of justice.

The High Court has committed a grave error by setting aside the findings recorded on the points of dispute in the Award of the labour court. A grave miscarriage of justice has been committed against the appellant as the respondent should have accepted the birth certificate as a conclusive proof of age, the same being an entry in the public record as per Section 35 of the Indian Evidence Act, 1872 and the birth certificate mentioned the appellant's date of birth as 27.6.1940. **[Iswrlal Mohanlal Thakkar Vs. Paschim Gujarat VIJ Company Ltd. and another, (2014 (142) FLR 236 (Supreme Court)]**

Termination – Termination of Class IV employee on the ground of conviction and sentenced for life imprisonment for a criminal offence – Whether they entitled for reinstatement after honourably acquittal – Held, "Yes" if no departmental enquiry is held

Both the employees, namely, Bheem Sen and Sita Ram respondent No. 2 in the connected writ petitions were class IV employees in the petitioner institution. They were terminated by a common order dated 29.1.1980 on the ground that they were convicted and sentenced for life imprisonment in Sessions trial No. 143 of 1979 for the offence under Sections 302 and 304 I.P.C. by judgment and order dated 22.1.1980 passed by the IV Additional District and Sessions Judge, Bareilly. Both the respondent No. 2, namely, Bheem Sen and Sita Ram Filed criminal appeal No. 316 of 1980 (Bheem Sen and another v. State of U.P.) before this Court challenging the order of conviction dated 22.1.1980 passed by the Sessions Court. The appeal was allowed by the judgment and order dated 15.7.1998 and they were honorably acquitted by the appellate Court. After acquittal they had approached the petitioner for their reinstatement. They were denied the same and as such they had raised industrial dispute which was referred by two separate referral order of the same date i.e. 26.2.1999.

It is trite law that once the order of conviction passed by the trial Court is set aside by the higher Court, there does not exist any conviction in the eye of law at all. Punitive action taken against the respondents employees was based solely on the order of conviction and the removal of the order of conviction has the result of removing the entire basis of the order of termination.

In Basanti Prasad v. Chairman, Bihar School Examination Board and others, (2009)6 SCC 791, it was held that the punishment was imposed on the

basis of an order of conviction having been set aside and no independent departmental inquiry was held against the delinquent employee, grievances raised by the employee's wife for monetary and service benefits payable to her late husband (who died during the pendency of litigation) could not have been rejected, resorting to a hypertechnical approach by the high Court.

In view of the facts discussed above, this Court directs that the salary of Sita Ram be paid with effect from the date of his reinstatement i.e. 21.6.2005 pursuant to the interim order, if not already paid, as he has been held entitled to reinstatement after acquittal in criminal case in the year 1998. However he shall not be entitled to back-wages. It is further directed that the arrears of salary of Sita Ram alongwith all other consequential benefits, if any, shall be calculated and paid to him within a period of four months from the date of production of certified copy of this order, in the petitioner institution. [**Moti Lal Nehru Inter College, Bareilly v. Peethaseen Adhikari Labour Court, 2014(2) ESC 1070(All)]**

Seniority – Date of promotion – Consideration of

On April 12, 2013, a Division Bench of this Court, of which one of us namely, Pradeep Nandrajog J. was a member of, had decided a batch of writ petitions, lead matter being WP (C) No. 8102/2012 UOI and another v. K.L. Taneja and another, on the subject as to when can a person be granted promotion from a retrospective date.

The Bench had held that the cornucopia of case law noted above brings out the position:

> (i) Service Jurisprudence does not recognize retrospective promotion i.e. a promotion from a back date.
>
> (ii) If there exists a rule authorizing the Executive to accord promotion from a retrospective date, a decision to grant promotion from a retrospective date would be valid because of a power existing to do so.
>
> (iii) Since mala fides taints every act, requiring a person wronged to be placed in the position but for the mala fide or tainted exercise of power, promotion from a retrospective date can be grated if delay in holding DPC is attributed to a mala fide act i.e. deliberately delaying holding DPC with the intention to deprive eligible candidates the right to be promoted.
>
> (iv) If due to administrative reasons DPC cannot be held in a year and there is no taint of malice, no retrospective promotion can be made.

It is well settled legal position that where an incumbent is initially

appointed to a post as per the applicable Rules, whether on ad hoc basis or otherwise and is later on regularly promoted to said post, his seniority to the said post has to be reckoned from the date of his initial appointment and not from the date of his confirmation/ regularization. However, where the initial appointment is not made as per the Rules but is only a stop-gap arrangement, the period of officiation in such post cannot be taken into account for determination of seniority.

In the instant case, it is not in dispute that the ad hoc promotion of the petitioner to the post of Additional Town Planner was in terms of the applicable Recruitment Rules. In view of above legal position, it has to be h elf that the seniority of the petitioner on the post of Additional Town Planner has to be reckoned from the date of his ad hoc appointment to the said post. As a necessary corollary thereof, the ad hoc service rendered by the petitioner on the post of Additional Town Planner shall be counted towards his regular service on the said post. [**Sunil Kumar Mehra v. MCD and another, 2014(2) ESC 1197(Del)]**

Regularization – Daily wage – Entitlement under U.P. Regularization of Daily wages appointment on Group-D, Rules of 2001 – Rules fixed cutoff date as 29th June, 1991 – Petition entitled to regularisation being appointed prior to the cutoff date – No justification on the part of respondent to reject the petitioner's claim

Petitioners-appellants namely Ram Saran, Ram Tej and Chaitu are daily wage employees, engaged as Mali since the years 1985, 1979 and 1981 respectively in Department of Forest, Government of U.P., the petitioners submitted before the writ court that they are entitled for regularization under U.P. Regularization of Daily Wages Appointments on Group-D Post, Rules, 2001. The representation of the petitioners, to this effect, has been rejected by the Divisional Forest Officer respondent No. 4, which, according to the counsel, suffers from substantial illegality. Writ petition has been dismissed by the learned Single Judge on the ground that the petitioners are not qualified for regularization in accordance with the Regularization Rules. However, a perusal of the impugned judgment reveals that the learned Single Judge has not considered the earlier judgment of this Court in its true spirit whereby this Court had directed to consider the petitioners-appellants case for regularization.

The appointment and engagement of the petitioners and alike persons to meet out the exigency of service, does not seem to be disputed by the respondent-State during the earlier proceedings in this Court. Since the original engagement of the petitioners as daily wager was not in dispute and continuity

of service even after the year 2003, seems to have been considered in its right perspective and affirmed by this Court, there appears no justification on the part of the respondent to reject the petitioners' claim for regularization. The constitution Bench judgment in the case of State of Karnataka v.Uma Devi, (2006) 4 SCC 1 affirmed by the Hon'ble Apex Court in the case of U.P. State Warehousing Corporation v. Sunil Kumar Srivastava and another, (2013) 1 UP LBEL 816, it has been held that the employees have a right to avail the benefit of their statutory right with regard to regularization.

Admittedly, regularization Rule, 2001 is applicable in the present case, hence, it was incumbent upon the respondent-State to consider petitioner-appellants case for regularization, keeping in view the provisions of the regularization rules as well as the continuity of service of the petitioners from the date of their initial appointments/engagements. The learned Single Judge, while dismissing the writ petition, has failed to appreciate the aforesaid legal position as well as factual matrix of the case. **[Ram Saran v. State of U.P., 2014 (3) ESC 1275 (All) (DB) (LB)]**

Selection - In absence of any allegation of malafides against selection committee arrange member thereof- Interference not justification selection

In absence of any allegation of malafides against the Selection Committee or any Member thereof, a negligible few such instances, would not justify the inference that there was a conscious effort to bring some candidates within the selection zone.

In the facts of this case the direction of the High Court to continue with the selection process from the point it stood vitiated does not require interference.**[Bishnu Biswas and others v. Union of India and others, 2014 (142) FLR 818]**

Punishment - Proved cases of corruption - Only punishment is dismissal from service

In recent decision in the case of Rajasthan State Transport Corporation and another v. Bajrang Lal, Civil Appeal No. 104 of 2007, decided on 14.3.2014, the Apex Court has held that the only punishment in case of the proved case of corruption is dismissal from service. **[Union of India through Secretary, Ministry of Communications New Delhi and others v. Rajesh Kumar Singh and another, 2014 (142) FLR 876]**

Voluntary Retirement - Revocation and grant of pension - Permissibility of - appellant cannot after expiry of the two years seek reinstatement in service and taking benefit of order passed by state government

Taking advantage of the leniency shown by the Government in the order passed in appeal on 3.4.2004, the appellant took a chance to move an application after two years i.e. on 27.4.2006 requesting the authorities for reinstatement in service.

The appellant cannot be allowed to proceed further, that too after expiry of two years seeking reinstatement in service taking the benefit of the order passed by the State Government. **[P. Krishna Murthy v. Commissioner of Sericulture, A.P. And another, 2014 (142) FLR 813]**

Writ petition – Public Interest Litigation – Maintainability of – Public Interest Litigation not be maintainable in service matter

It must not be forgotten that procedure is but a handmaiden of justice and cause of justice can never be allowed to be thwarted by any procedural technicalities. Procedural requirement is directory and not mandatory. Supreme Court in S.K. Salim Haji Abdul Khayumsab v. Kumar, AIR 2006 SC 396, held that a procedural law should not ordinarily be construed as mandatory, the procedural law is always subservient to and is in aid to justice. Any interpretation which eludes or frustrates the recipient of justice is not to be followed. Procedural law is not to be a tyrant but a servant, not an obstruction but an aid to justice. Procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice.

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

In view of the aforesaid facts and discussions, court is of the considered view that this writ petition in the nature of a Public Interest Litigation, challenging appointment of respondent No. 3 as Chief Secretary of State of U.P. and his functioning as Agricultural Production Commissioner and Industrial Development Commissioner is not maintainable. [**Prakash Chand Srivastav v. State of U.P. and others, 2014(3) ESC 1665(All) (DB)]**

Departmental enquiry – Delay in disposal – Whether vitiate the proceedings

The reference before the Full Bench has been occasioned as a result of a referring order dated 30 September 2013. Essentially, the issue which arises before the Full Bench can be summarized briefly as follows: Where a Court has prescribed time for the disposal of a disciplinary enquiry and the enquiry is not

concluded within the time so fixed, would the consequence in law be to vitiate the enquiry proceedings resulting in rendering the penalty imposed as being without jurisdiction?

The following questions have been referred in the order of the learned Single Judge for determination by the Full Bench:

> "(a) Whether if an inquiry proceeding is not concluded within a time frame fixed by a Court and concluded thereafter, without seeking extension from the Court then on the said ground the entire inquiry proceeding as well as punishment order passed, is vitiated in view of the judgment in the case of P.N. Srivastava; and
>
> (b) Whether the law as laid down by a Division Bench of this Court in the case of P.N.Srivastava that if an inquiry proceeding is not concluded within a time frame as fixed by a Court, it stands vitiated is still a good law in view of the judgment rendered by the Supreme Court in the case of Suresh Chandra as well as a judgment dated 27.7.2009 of a Division Bench of this Court in Writ Petition No. 1056(SB) of 2009 (Union of India and others v. Satendra Kumar Sahai and another).

Undoubtedly, where the Court has stipulated a period of time by which a departmental enquiry has to be concluded, the stipulation as to time has to be observed. But it must be emphasized that the failure on the part of the employer to conclude the enquiry within the period so stipulated will not result in a situation where the enquiry must, in all cases, and for whatever reason, be regarded as being rendered without jurisdiction or a nullity upon the expiry of that period. The Court which fixes time for completion of an enquiry equally has jurisdiction to extend time for compliance. A stipulation of time in an order of the Court is not akin to a statute of limitation. In each case, it is for the Court to determine as to whether the facts and circumstances are such as would warrant the grant of a further extension of time.

These judgments of the Supreme Court consequently recognize that the delay in concluding a departmental enquiry would not ipso facto vitiate the proceedings or render it invalid or non est. The Court has to take into consideration and balance all the relevant factors. The Court must consider in that balance the need for preserving the sanctity of the administration. On the other hand, fairness towards the delinquent employee requires that disciplinary proceedings should be concluded expeditiously.

In view of the above discussion, court now proceed to answer the questions which have been referred to the Full Bench.

(A) Question No. (a): Court hold that if an enquiry is not concluded within the time which has been fixed by the Court, it is open to the employer to seek an extension of time by making an appropriate application to the Court setting out the reasons for the delay in the conclusion of the enquiry. In such an event, it is for the Court to consider whether time should be extended, based on the facts and circumstances of the case. However, where there is a stipulation of time by the Court, it will not be open to the employer to disregard that stipulation and an extension of time must be sought;

(B) Question No.(b): The judgment of the Supreme Court in the case of Suresh Chandra (supra) as well as the judgment of the Division Bench of this Court in the case of Satyendra Kumar Sahai (supra) clearly indicate that a mere delay on the part of the employer in concluding a disciplinary enquiry will not ipso facto nullify the entire proceedings in every case. The Court which has fixed a stipulation of time has jurisdiction to extend the time and it is open to the Court, while exercising that jurisdiction, to consider whether the delay has been satisfactorily explained. [**Abhisek Prabhakar Awasthi v. New India Assurance Company Limited and others, 2014(3) ESC 1459(All)(LB) (FB)]**

Government Servant – Sanction for prosecution – Consideration of – Satisfaction of the competent authority is essential to validation an order for granting sanction

In State of Maharashtra v. Mahesh G. Jain, 2013(8) SCC 199, the Supreme Court after considering its earlier judgments culled out the following principles for consideration while granting sanction namely,

> From the aforesaid authorities the following principles can be culled out:
>
> (a) It is incumbent on the prosecution to prove that the valid sanction has been granted by the sanctioning authority after being satisfied that a case for sanction has been made out.
>
> (b) The sanction order may expressly show that the sanctioning authority has perused the material placed before him and, after consideration of the circumstances, has granted sanction for prosecution.
>
> (c) The prosecution may prove by adducing the evidence that the material was placed before sanctioning authority and his satisfaction was placed before sanctioning authority and his satisfaction was arrived at upon perusal of the material placed before him.
>
> (d) Grant of sanction is only an administrative function and

the sanctioning authority is required to prima facie reach the satisfaction that relevant facts would constitute the offence.

(e) The adequacy of material placed before the sanctioning authority cannot be gone into by the Court as it does not sit in appeal over the sanction order.

(f) If the sanctioning authority has perused all the materials placed before him and some of them have not been proved that would not vitiate the order of sanction.

(g) The order of sanction is a pre-requisite as it is intended to provide a safeguard to public servant against frivolous and vexatious litigants, but simultaneously an order of sanction should not be construed in a pedantic manner and there should not be a hyper-technical approach to test its validity.

No doubt the sanction order does not show that the sanctioning authority had perused the material placed before it or that the authority was satisfied with the evidence that was placed before it, inasmuch as, the impugned order does not talk about the satisfaction or the materials placed before it. The Court is of the opinion that on this short ground the order cannot be set aside, on the ground of non-application of mind, inasmuch as, the prosecution could prove by leading evidence that all material particulars were placed before the sanctioning authority, who after due application of mind sanctioned permission to prosecute the petitioner. The Court finds from a perusal of paragraph 21 of the counter-affidavit that a specific averment was made that the District Magistrate had closely examined the case diary and other collected evidence and after being fully satisfied gave permission to prosecute the petitioner. The petitioner has not denied this fact in paragraph 20 of the rejoinder affidavit to the extent that no evidence was placed before the competent authority.

In the light of the aforesaid, this Court is of the opinion, that the writ jurisdiction is not the appropriate forum for questioning the order of the competent authority granting permission to prosecute the petitioner. The remedy available to the petitioner is to question such sanction before the trial Court where the prosecution would be obliged to adduce the evidence and prove that relevant material was placed before the sanctioning authority and that the sanction was arrived at upon the perusal of the material placed before him. [**Awadh Narayan v. State of U.P. and others, 2014(3) ESC 1597(All)(DB)]**

Compassionate appointment – Farely – Definition – Dependent of deceased – Inclusion of unmarried brother – Whether unmarried brother of deceased would be included in the defivition of dependent after amendment – Held, "yes"

The father of the petitioner died in the year, 1994 leaving behind him, his wife Smt. Gulabi Devi and three sons namely, Sri Upendra Nath Yadav, Sri Ambujeshwar Nath Yadav and Sri Dhirendra Nath Yadav who were dependents of the deceased employee. To support the dependents of the deceased employee, the mother of the petitioner requested for appointment of her son Upendra Nath Yadav on compassionate ground, which was given by the respondents. Sri Upendra Nath Yadav was unmarried son and he died on 3.9.1998. In these circumstances, the remaining dependents of the deceased employee Sri Shivnath Yadav became entitled for compassionate appointment. In these circumstances, the mother of the petitioner requested for compassionate appointment of the petitioner but the request was declined by the respondents on the ground that on the date the application was moved, the definition of the word "family" did not include the dependent unmarried brother. He submits that the reason given was an incorrect interpretation of law inasmuch as, the amendment provisions as available on the date of taking the decision on the application would be applicable. In support of his submission, he relied upon the Full Bench judgment of this Court in Writ-C No. 41958 of 2008, dated 13.22014 Anand Kumar Sharma v. State of U.P. and others, wherein it has been held that the Government policy as existed on the date of application shall not apply rather the Government policy, which existed on the date of taking decision on the application shall be applicable.

From the perusal of the law laid down by Hon'ble Supreme Court in the aforenoted judgments, it follows that the provisions as on the date when the application for compassionate appointment is being considered shall be applicable and not the unamended provision, which existed on the date of application.

The compassionate appointment has been declined to the petitioner merely on the ground that the amendment provisions of 2002 shall not apply when application for compassionate appointment was being considered in the year 2004 rather the unamended provision shall apply. In the facts and circumstances of the case since, it was not the ground for rejection of application of compassionate appointment of the petitioner and as such new ground cannot be permitted to be raised.

In view of the foregoing discussion, 1 find that the impugned order

dated 23.12.2004 read with the letter of the U.P. Power Corporation No. 5818 are hereby set aside. The respondent No. 5 shall pass appropriate order in accordance with law in the matter of compassionate appointment of the petitioner within a period of three months from the date of a certified copy of this order is filed. [**Dhirendra Nath Yadav v. State of U.P. and others, 2014(3) ESC1368 (All)]**

Discharge – Reinstatement – Discharge after enquiry – Enquires officer respect of charge No. 5 gave a finding in favour of appellant which was positive in nature – If disciplinary authority is to overturn it – Different views are abused to be communicated

The Enquiry Officer gave a finding in favour of the appellant and if the said finding, which is positive in nature, is to be over-turned by the disciplinary authority, the differing view is bound to be communicated and non-communication of the differing view before holding that Charge No. 5 is fully proved, is in violation of principles of natural justice, as held by the Hon'ble Supreme Court in the decision [Punjab National Bank and others v. Kunj Behari Misra and another, 1998(80) FLR 841 (SC)]. In the said decision, in paragraphs 11 and 19, the Hon'ble Supreme Court held thus:-

> "11. ..... The controversy in the present case, however, relates to the case where the disciplinary authority disagrees with the findings of the inquiring authority and acts under Regulation 7(2). The said sub-regulation does not specifically state that when the disciplinary authority disagrees with the findings of the inquiring authority, and is required to record its own reason for such disagreement and also to record its own finding on such charge, it is required to give a hearing to the delinquent officer.
>
> 19. ……. the principles of natural justice have to be read into Regulation 7(2). As a result thereof whenever the disciplinary authority disagrees with the inquiry authority on any article of charge then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the inquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the inquiry officer. the principles of natural justice, as we have already observed, require the authority, which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a

representation before the disciplinary authority records its findings on the charges framed against the officer."

Similar is the view taken by the Hon'ble Supreme Court in the decisions [Central Bank of India v. Bernard, 1990(61) FLR 678(SC)]; [Yoginath D. Bagde v. State of Maharashtra and another, 1999(83) FLR 534 (SC)]; [Lav Nigam v. Chairman & MD. ITI Limited and another, 2007(112) FLR 1077 (SC)]; [Coal India Limited and others v. Saroj Kumar Mishra, 2007(114) FLR 14 (Sum) = AIR 2007 SC 1706] and S.P. Malhotra v. Punjab National Bank and others, 2013(138) FLR 780 (SC)]. Hence, the action of the disciplinary authority in straightaway recording the finding of guilt in respect of Charge No. 5, cannot be sustained. The said aspect has not been considered by the appellate authority and rightly considered by the Labour Court in I.D. No. 56 of 2002.

The appellant is now aged 65 years and therefore, no useful purpose would be served to remit the matter to proceed from the stage where the proceedings got vitiated. In view of the above factual aspects, we are of the view that the order of discharge passed by the disciplinary authority, confirmed by the appellate authority, which was also upheld by the learned Single Judge is liable to be set aside and accordingly, the said orders are set aside and the Award of the Labour Court made in I.D. No.56 of 2002 dated 22.1.2004 is restored and modified to the effect that the appellant is deemed to be reinstated in service from 6.2.1999 with all service benefits, including back wages as the 1st respondent has not proved that the appellant was otherwise employed after 6.2.1999. For the earlier period that was from 15.10.1994 to 5.2.1999, the said period should be counted only for other benefits, other than the back wages. [**K. Mohan v. State Bank of India and another, 2014(142) FLR 992 (Mad. High Court)]**

Specific Relief Act

S. 10 - Suit for specific performance for execution of sale deed of 3/4th share of property - Suit decreed - Appeal against dismissed – Legality of

In Courts opinion, it is not necessary to go into the fact whether any written agreement to sell had been entered into between Smt. Kanak Nahar on one hand and Shri Javed Akhtar and Shri Parvez Akhtar on the other The fact remains that the High Court had permitted Smt. Kanak Nahar to sell her share to the proposed buyers, viz. Shri Javed Akhtar and Shri Parvez Akhtar or to their nominee. Had there not been any understanding among these two parties, viz., the buyer and the seller, possibly the High Court would not have referred to the names of Shri Javed Akhtar and Shri Parvez Akhtar as proposed buyers of the share of Smt. Kanak Nahar.

It is also pertinent to note that it was not possible to divide the property by metes and bounds. The entire problem had arisen because the property was not divisible by metes and bounds and therefore, a Receiver had to be appointed. There is no dispute with regard to the fact that three-fourth share of the property in question had been purchased by Shri Javed Akhtar and Shri Parvez Akhtar in pursuance of the permission granted by the High Court by an order dated 16th July, 1984. If the property was not divisible, one can very well believe that owner of three-fourth share of an indivisible property would be ready and willing to purchase the remaining one-fourth share of the said property and normally no outsider would ever think of purchasing one-fourth share of an indivisible part of a residential house. These factors clearly denote that there must be some understanding among Smt. Kanak Nahar and Shri Javed Akhtar & Shri Parvez Akhtar in relation to purchase of the share of Smt. Kanak Nahar. [**Mohammad**

Hafizullah & Ors. v. Javed Akhtar & Ors., 2014 (2) ARC 752]

Ss. 38 and 35 - Suit for declaration of title coupled with permanent injunction, held is not a suit for perpetual injunction alone, as title has also been claimed - Specific Relief Act, 1877, Section 54 – Property Law – Ownership and title – Title suit seeking consequential relief and injunction and suit for injunction alone - Differentiated

The case of the appellant Nagar Palika is that on finding that Respondent 1-plaintiff has made encroachment on a public road, namely, Khitoli Road, a notice under Sec. 187 of the M.P. Municipalities Act, 1961 dated 26.11.1982 was issued to Respondent . Plaintiff calling upon him to removed the encroachment from Khitoli Road at Mihona, District Bhind, M.P. (hereinafter referred to as "the suit land"). As respondent No.1 . Plaintiff refused to comply with the aforesaid notice and also failed to show any title over the encroached land, another notice was issued on 23rd December, 1982, intimating respondent No.1. Plaintiff that if the encroachment is not removed by him it shall be removed by the appellant, in exercise of power conferred under Section 109 read with Section 223 of the Act, 1961 Act.

Respondent No.1-plaintiff cannot derive advantage of sub Section (3) of Section 319 which stipulates non-application of the Section 319 when the suit was instituted under Section 54 of the Specific Relief Act, 1877 (old provision) equivalent to Section 38 of the Specific Relief Act, 1963 and reads as follows:

> **38. Perpetual injunction when granted**.-(1) Subject to the other provisions contained in or referred to by this Chapter, a perpetual injunction may be granted to the plaintiff to prevent the breach of an obligation existing in his favour, whether expressly or by implication.
>
> (2) When any such obligation arises from contract, the Court shall be guided by the rules and provisions contained in Chapter-II.
>
> (3) When the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of, property, the Court may grant a perpetual injunction in the following cases, namely:
>
> (a) where the defendant is trustee of the property for the plaintiff;
> (b) where there exists no standard for ascertaining the actual damage caused, or likely to be causes, by the invasion;
> (c) where the invasion in such, that compensation in money would not afford adequate relief;

(d) where the injunction is necessary to prevent a multiplicity of judicial proceedings."

The benefit aforesaid cannot be derived by Respondent No.1-plaintiff as the suit was filed for declaration of title coupled with permanent injunction. Respondent No.1 having claimed title, the suit cannot be termed to be suit for perpetual injunction alone**. [Nagar Palika Parishad, Mihona v. Ramnath and another, (2014) 6 SCC 394]**

S. 39 – Mandatory injunctions – In suit for recovery of possession ad valorem Court fees would be payable held to be an irregularity which found of a curable nature

The only difference between a suit for mandatory injunction for a direction of possession and in a suit for recovery of possession would be of the court fees inasmuch as in a suit for mandatory injunction fixed court fees is payable whereas in a suit for recovery of possession ad valorem court fees would be payable.

The counsel for the plaintiff respondent agrees for payment of ad valorem court fee on the suit for possession. A similar controversy has arisen before me in the case of Islam Ahmad Vs. Maqsood Ahmed and another 2007 (8) ADJ 239 and it was held that even though the relief claimed by the party was not properly drafted and was coughed in a language as if it was a suit for mandatory injunction but as in effect the relief claimed is of possession, the party **claiming** possession if legally entitle to the same cannot be denied the benefit of it subject to payment of court fees for the said relief. The court fees was permitted to be made good as non-payment of the same was held to be an irregularity which was of a curable nature. **[Dori Lal Premi, Advocate v. Smt. Vidya Devi 2014(2) ARC 536]**

Succession Act

S. 2(b) –"Will" –To mean a legal declaration of intention of testator/testatrix with respect to his/her property which he/she desires to be carried into effect after his/her death

Section 2(h) of the Indian Succession Act, 1925 (hereinafter Succession Act only) defines 'will' to mean a legal declaration of the intention of the testator/testatrix with respect to his/her property which he/she desires to be carried into effect after his/her death.

No technical words are necessary for a 'will'. However, to constitute a 'will' the instrument must fulfill the following ingredients :

(i) It should be the legal declaration of the intention of the testator.

(ii) The declaration must be with respect to the property of the testator.

(iii) The intention should be described to be carried out into effect after the death of the testator. **[Mahabir Prasad Mishra v. Smt. Shyama Devi, 2014 (2) ARC 650]**

TADA

S. 3 – Constitution of India, Article 72—Death sentence – Unexplained long delay in disposal of mercy petition and accused also has mental illness - Death sentence liable to be commuted into life imprisonment

The three-Judge Bench in Shatrughan Chauhan and others vs. U.O.I. and others, AIR 2014 SC 641 held that insanity/mental illness/schizophrenia is also one of the supervening circumstances for commutation of death sentence to life imprisonment. By applying the principle enunciated in Shatrughan Chauhan, the accused cannot be executed with the said health condition.

In view of the ratio laid down in Shatrughan Chauhan, court deem it fit to commute the death sentence imposed on Devender Pal Singh Bhullar into life imprisonment both on the ground of unexplained/ inordinate delay of 8 years in disposal of mercy petition and on the ground of insanity. **[Navneet Kaur v. State of NCT of Delhi and another, AIR 2014 SC 1935 (Constitutional Bench)]**

Tort

Medical negligence – Determination of - Res ipsa locquitur – It is not necessary to have opinion of expert in each and every case of medical negligence

Supreme Court in **Smt. Savita Garg Vs. The Director, National Heart Institute, (Civil Appeal No.4024 of 2003 dt. 12th October, 2004)** observed;

"Once an allegation is made that the patient was admitted in a particular hospital and evidence is produced to satisfy that he died because of lack of proper care and negligence then the burden lies on the hospital to justify that there was no negligence on the part of the treating doctor or hospital. Therefore, in any case, the hospital is in a better position to disclose that what care was taken or what medicine was administered to the patient. It is the duty of the hospital to satisfy that there was no lack of care or diligence. If a particular doctor is not impleaded, it will not absolve the hospital of their responsibilities."

This Commission in Dr. Vinod Kumar Gupta Vs. Ruplal Yadav and another (R.P. No.4823 of 2012, decided on 15.1.2013), observed;

"The Treaties on Medical Negligence by Michael Jone's book gave illustrations where gangrene developed in Claimant's arm following an intra-muscular injection, relied upon in Cavan Vs. Wilcox (1973) 44 DLR (3d) 42. This has been found to be a case of medical negligence and held to be applied as "RES IPSO LOQUITOR". This has been approved by the Hon'ble Supreme Court vide para 46 of the judgment reported in III (2010) CPJ 1 (SC) in V.Krishna Rao Vs. Nikhil Superior Spl. Hosptial & Others". It is well settled that it is the complainant who is to carry the ball in proving his case. However, when he proves on record some prima facie evidence, the onus shifts on to the OP. The fact that there was development of gangrene was never denied. The expert Dr.N.K.Jha is a Doctor. A thorough study of his statement clearly goes to show that he tried to save the OP. It is apparent that a doctor will refrain from criticising the other doctor when both of them reside in the same city. Development of gangrene is one of the causes. No other cause was pointed out or proved. Onus of proof shifts on to the Doctor to explain as to why did the gangrene develop. The OP has failed to rebut this evidence and facts speak for themselves."

In B. Krishna Rao Vs. Nikhil Super Speciality Hospital, III (2010) CPJ 1(SC) the Hon'ble Apex Court held;

"It is not necessary to have opinion of the expert in each and every case of medical negligence."

In the instant case, appellants in view of the admission made by respondent no.1 as well as on the basis of documentary evidence placed on record, had discharged the initial burden of making a case of negligence and remiss on the part of Respondent No.1. Therefore, we are of the considered view that under such circumstances, there was no requirement of any expert opinion. **[Master Abhishek Ahluwalia & Ors. v. Dr. Sanjay Saluja, MS Ortho, Orthopedics & Physiotherapy Clinic & Ors., 2014(3) CPR 180 (NC)]**

Negligence – Occupier's liability – Duty of care of an occupier in respect of safety of visitors to a cinema hall – Standard of care

Duty of care on occupier, held, is a continuing obligation which the occupier owes towards every invitee, contractual or otherwise every time an exhibition of the cinematograph takes place not only under the common law but even under the statutory regime, and any neglect of the duty is actionable both as a civil and criminal wrong, depending upon whether the negligence is simple or gross. In the case of gross negligence prosecution and damages may be

claimed simultaneously and not necessarily in the alternative. Nature of occupier's duty of care in a cinema hall, explained and illustrated in detail.

Further held, patrons are admitted to the cinema for a price, which makes them contractual invitees or visitors qua whom the duty of care is even otherwise higher than others - The need for high degree of care for the safety of the visitors to such public places offering entertainment is evident from the fact that Parliament has enacted Cinematograph Act and Rules, which cast specific obligations upon the owners/occupiers/licensees of public place of entertainment concerned - Nature and the extent of breach must therefore be seen in the backdrop of the above duties and obligations that arise both under the common law and the statutory provisions alike. **[Sushil Ansal v. State, (2014) 2 SCC (Cri) 717**]

U.P. Consolidation of Holdings Act

S. 48 - Valuation of holdings- Determination - Scope of

Under U.P. Consolidation of Holdings Act valuation is given to every plot according to its potentiality and location. If a land of good valuation is given to someone then the area is reduced and vice-versa. However, there cannot be more than 25 percent reduction in area. Accordingly, if someone is granted high valuation land then his area is reduced. It is further clear that valuation of a particular plot depending upon its quality and location cannot be a ground for taking that out for someone's chak or giving it in someone's chak.

Revision in chak matter cannot be allowed just to satisfy the desire of the revisionist or anyone else. Petitioners had been granted chaks on their original holdings. Accordingly a very strong reason was required to disturb the same. Lower revisional court has not given any cogent reason to disturb their chaks. **[Budh Ram and another v. Asstt. Director of Consolidation, Gonda and others, 2014 (32) LCD 1503, (Allahabad High Court (Lucknow Bench)]**

S. 48 – Remand Order - Passed by Settlement Officer Consolidation – Not an interlocutory order – Revision before Deputy Director of Consolidation is maintainable

By means of this writ petition, the petitioner has challenged the orders passed by the Consolidation Officer (the CO), the Settlement Officer, Consolidation (the SOC) as also the Deputy Director of Consolidation (the DDC) which have been passed in proceedings arising out of an objection under Section 9A-2 of the U.P. Consolidation of Holdings Act. An order was passed in favour of the petitioners on 31.1.1981 by the Assistant Consolidation Officer

on the basis of conciliation. The contesting respondents filed a time barred appeal along with an application for condonation of delay duly supported by an affidavit. The SOC allowed the appeal by his order dated 28.7.1983 and remanded the matter to the CO.

The petitioner filed an application for recall of this order on the same day on the ground that it was an ex party order.

The SOC by his order dated 3.5.1986 dismissed the recall application on the ground that it was directed against an order of remand.

Aggrieved by the order rejecting the recall application, the petitioners filed a revision. The DDC by the impugned order dated 3.2.2014 has rejected the revision on the ground that it was directed against an interlocutory order of remand and, therefore, the same was not maintainable. Hence this writ petition.

Learned counsel for the petitioner has assailed this order and has contended that the view taken by the DDC is patently illegal the contrary to the decision rendered by this Court wherein it has been held that an order of remand is a final order and that a revision against such an order is maintainable. The Division Bench relied upon by the learned counsel for the petitioner is reported in 2010 (28) LCD 1396, Deena Nath & Others vs. DDC, 2010 (110) RD 584.

Learned counsel for the caveator has tried to justify the order impugned but he ultimately conceded that it is contrary to the law settled by the Division Bench supra.

In view of the settled legal position that an order of remand passed by the SOC is not interlocutory order and, therefore, amenable to the revisional jurisdiction of the DDC, the order passed by the DDC cannot be sustained.

Accordingly, Court has set aside the order dated 3.2.2014 and remand back the matter to the DDC, Jaunpur to pass a fresh order on merits after hearing all the concerned parties. [**Rajendra Prasad and others v. D.D.C. and others, 2014 (124) RD 213 (All. HC)]**

U.P. Land Revenue Act

S.28 – Correction of Map – Duties of Collector – Collector U/s. 28 of above act has duty to correct any error in map.

Section 28 of UP Land Revenue Act 1901 is quoted below:

> "Maintenance of map and field-book. – The Collector shall in accordance with the rules made under section 234, maintain a map and field-book of each village in his district and shall cause annually, or at such longer intervals as the (State Government) may prescribe, to be recorded therein all changes in the boundaries of each village or field and shall correct any errors which are shown to have been made in such

map or field-book."

By, using the word 'shall correct any errors' a duty has been caste upon the Collector to correct the error kept in the map. A perusal of the report of Tehsildar shows that there is error in the map. In case the demarcation of plot No. 407 is not made in the map then it is also an error and Collector is duty bound to correct the demarcation of plot No. 407 also. He cannot shirk his responsibility by saying that as the land has been allotted to 109 persons and there is no demarcation of plot No. 407 as such correction in the map is not possible. An incorrect map cannot be maintained by the Collector forever.

In such circumstance, the writ petition succeeds and is allowed. The orders of Additional Collector dated 31-1-2014 as well as the Additional Commissioner dated 26-3-2014 are set aside. [**Udai Bir Singh and others v. Additional Commissioner, 2014 (124) RD 180 (All. HC)]**

Ss 33, 39 - Entry in Revenue Record - Correction of U/s. 33 and 39 - It cannot be allowed to be corrected U/Sec. 33/39 of the Act

The Sub Divisional Officer as well as the Additional Commissioner both proceeded on the basis that Zamindari of the area has not been abolished. Therefore, the provision of U.P. Land Records Manual as it was applicable in the area where Zamindari has not been abolished are relevant. Under the provisions of U.P. Land Records Manual, Chapter 8 is applicable for non ZA area. Lekhpal is competent to make entry in the khatauni. The entry made in 1333 fasli is settlement khatauni and thereafter there is another settlement in the year 1359 fasli. Therefore, two settlement have passed the entry remained as such. The settlement entry cannot be allowed to be corrected under Section 33/39 of the Act. The remedy of the respondents was to file a regular suit under the provisions of U.P. Tenancy Act if the Zamindari has not been abolished. **[Rama Nand and others v. Abunasar and others, 2014 (32) LCD 1541 (All. High Court)]**

S.34 – Land in dispute recorded as talab land in the revenue record – No right can accrue to anyone over it

A perusal of the application as well as order passed on 25-4-2007 shows that the Naib Tahsildar has initiated the proceedings under section 34 of UP Land Revenue Act. The relevant portion of section 34 of UP Land Revenue Act read as follows:-

Report of succession or transfer of possession-

(1) Every person obtaining possession of any land by succession or transfer (other than a succession or transfer which has already been

recorded under section 33-A), shall report such succession or transfer to Tahsildar of the Tahsil in which the land is situated.

Section 34 confers jurisdiction on the Tahsildar to incorporate the mutation in the cases of succession and transfer. Admittedly, there is neither succession nor transfer on the basis of which the petitioner filed the application for mutation of his name as such the application of the petitioner under section 34 of the Act was not maintainable. The land in dispute was recorded as Talab land in the revenue record. No right can accrue to any person over the land of Talab. Civil Court has not directed to record the name of the petitioner over the land in dispute. The order dated 25.4.2007 is illegal, without jurisdiction and null and void. [**Mohd. Saidul Malik v. Additional Commissioner II, Allahabad Division, Allahabad and others, 2014 (124) RD 189 (All HC)]**

Ss. 191 and 192-C.P.C.-Section 24 - Treansfer case - Power of Board or Commissioner - Consideration of

The facts giving rise to this case are that vide order dated 21.1.2014 passed on transfer application 597/LR/2013-14, Kailash Nath Singh v. Suresh Singh, learned Member Board of Revenue has allowed the transfer application and transferred Appeal No. 2 of 2009, Suresh Singh v. Kailash Singh and others, from the court of Additional Commissioner. Varanasi Division, Varanasi, (the respondent No. 2) to the court of Commissioner. Varanasi Division, Varanasi. Respodent No 3. The transfer was sought on the allegation that the behavior of the learned Additional Commissioner was such as if he was siding with the other side with the further allegation that the Respondent No. 2 has got interpolated the record by calling the appellant. Suresh Singh (the petitioner) in his chamber and in this way the respondent applicant become confident that in case the matter is heard by the respondent No. 2 injustice may be done to the contesting respondent No. 4, namely.

Learned Member Board of Revenue by the impugned order believing the allegation made in the transfer application true, has allowed the transfer application without there being any notice or opportunity of hearing to the petitioner as well as the respondent No. 2.

In this case since the transfer has neither been sought on the administrative ground nor personal inconvenience of the person concerned but on the basis of the allegations made against the presiding officer, therefore, the learned Member, Board of Revenue, in may view, has erred in allowing the application without having comment of the respondent No. 2 against whom allegation was made without verifying the genuineness of the grounds taken in the transfer application and also without there being any notice to the other

side.

It is settled principle of law that justice should not only be done, but it appears to have been done. The manner in which the learned Member Board of Revenue proceeded to decide the transfer application cannot be said to be a fair and transparent particularly in the circumstances when the transfer application has been allowed on the allegation of the Mala fide. **[Suresh Singh v. Board of Revenue, Lucknow, U.P. and others, 2014 (4) AWC 3299 (Allahabad High Court]**

U.P. Urban Buildings (Regulation of letting, Rent and Eviction) Act

S. 2 – Applicability of Act – Consideration of

The suit of the petitioner for arrears of rent and eviction has been dismissed by the courts below holding that according to the petitioner's own version the shop was in existence since 1981-82 and, therefore, the provisions of U.P. Act No. 13 of 1972 are applicable.

The only submission of learned counsel for the petitioner is that the provisions of the aforesaid Act are not applicable inasmuch as the construction of the shop was of the year 1991.

There is no dispute that the provisions of the Act are not applicable for the period of 40 years to a building completed on or after 26th April, 1985 otherwise the holiday available is only for ten years.

Explanation 1(a) to Section 2(2) of the Act provides that the construction of a building shall be deemed to have been completed on the date the completion thereof is reported to or otherwise recorded by the local authority or in case it is subject to assessment the date on which the first assessment thereof comes into effect and in the absence of any such report, record or assessment, the date on which it is actually occupied for the first time.

A plain reading of the above explanation points out to three things which are relevant for determining the date of completion of the building, namely, (i) the date on which the completion is reported or is otherwise recorded by the local authority; (ii) in case of building subject to assessment, the date on which the first assessment comes into effect; and (iii) in the absence of report, record or assessment, the date on which it is actually occupied for the first time.

In the instance case, there is no report or record of the local authority regarding the date of competition of the building. The building is subject to assessment and admittedly been assessed to tax for the first time in the year 1989-1990. Thus, the date of first assessment shall be deemed to be the date

of completion of the building and the third condition would not be applicable. It comes into operation only if either of the first two conditions are not applicable.

The courts below despite the first assessment of the building of the years 1980-1990 have held that the building was completed in the year 1981-82 as the petitioner himself admits that it was let out to one of the tenants in the said year. The letting out or the actual occupancy of the building is not relevant or material for determining the date of completion of the building when the building is subject to assessment and its first assessment is of the year 1989-90.

In view of the above, the date of completion of the building would be 1989-90 and the provisions of the Act would not be applicable to it for a period of 40 years. **[Om Prakash Dwivedi v. Istakhar Ahmad, 2014 (2) ARC 825]**

S. 12 - Order declaring vacancy - Locus standi to challenge it does not lie in prospective allottee

In this case the respondent No. 3 is only a prospective allottee. The stage to contest matter for him would arise only when there exists a vacancy and is available for allotment. Earlier thereto. i.e., at the stage of considering question. Whether there exists a vacancy in an accommodation or not, he has no locus standi in the matter. A prospective allottee as such has no legal or otherwise right to be a party in the lis for the reason that whether there exist a vacancy, deemed or otherwise in a building is a question, which has to be considered by Rent Control authorities under the statute, after hearing owner of the property and the occupant, if any, therein and none else. **[Mahaveer Prasad Kamalia v. Rent Control and Eviction Officer, Maharajganj and others, 2014 (4) AWC 3719 (Allahabad High Court)]**

S. 21(1) (a) and 22 – Release of shop in question – Allowed by Prescribed Authority also affirmed by Appellate Court on ground of personal need for setting his unemployed sons in business – Concurrent findings of Court below upheld as held said findings neither perverse nor contrary to record

This is tenant's writ petition, who has lost in both the Courts below. Respondent-landlord instituted application under Section 21(1)(a) of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 registered as P.A. Case No. 2 of 2010 seeking release of shop in dispute on the ground that the same is required for settling his sons in business who are unemployed. Petitioner contended that there is another shop on the eastern side which is lying vacant in which earlier U.P. Hathkargha Udyog was tenant but pursuant to a compromise between landlord and the said tenant, the shop was vacated and that shop is still lying vacant and may be utilized for that purpose. Both the Courts below have recorded a finding that in 2004 after the shop

was vacated, it was let out to Mohan Sindhi who is doing business, and the said shop is in occupation of Mohan Sindhi and not lying vacant. These are concurrent findings recorded by both the Courts below and nothing has been placed before this Court to show that the said findings are perverse or contrary to record.

It is contended that petitioner sought to cross-examine Mohan Sindhi, which was not permitted. In the proceedings under Section 21(1)(a) of Act, 1972 which are summary, it is always open to the petitioner to adduce the oral evidence but when the Courts below did not find any reason to allow cross-examination that by itself would not vitiate the entire proceedings and also the impugned orders founded on the appreciation of evidence available on record, which was enough and sufficient for the purpose of considering his application.

Both the Courts below have recorded findings of facts which have not been shown perverse or contrary to material on record justifying interference. The scope of judicial review under Article 227 is very limited and narrow as discussed in detail by this Court in Jalil Ahmad v. 16th Addl. Distt. Judge, Kanpur Nagar and others 2013 (2) AWC 2168 : 2012 (3) ARC 339. There is nothing which may justify judicial review or order impugned in this writ petition in the light of exposition of law. **[Rajesh Rai v. District Judge, Mau, 2014 (2) ARC 817]**

S. 21(1) - U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Rules 1972- Rule 16 (2) – Application for release on ground of personal requirement (Section 21(1) (a) and 34 (8) – Provision under - Applicability and interpretation of

In Mohd. Ayub and Another vs Mukesh Chand (2012) 2 SCC 155, while interpreting the above provisions of law, this Court has observed in para 15 as under:

> "15. It is well settled the landlord's requirement need not be a dire necessity. The court cannot direct the landlord to do a particular business or imagine that he could profitably do a particular business rather than the business he proposes to start. It was wrong on the part of the District Court to hold that the appellants' case that their sons want to start the general merchant business is apretence because they are dealing in eggs …Similarly, length of tenancy of the respondent in the circumstances of the case ought not to have weighed with the courts below."

In para 17 of the case of Ayub Khan (supra), this Court further observed:

> "17. It is also important to note that there is nothing on record to show that during the pendency of this litigation the respondent made any genuine efforts to find out any alternative accommodation". **[Krishna Kumar Rastogi vs. Sumitra Devi, 1014 (3) ARC 143]**

U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Section 21(1) (a) - Release application - Bonafide need of landlord on plea and evidence to be considered

In Rishi Kumar Govil vs. Maqsoodan and Ors (2007) 4 SCC 465, on the plea and evidence relating to bona fide need of landlord, this Court in para 19 observed as under:

> "19. In Ragavendra Kumar v. Firm Prem Machinery & Co. (2000) 1 SCC 679 : AIR 2000 SC 534, it was held that it is the choice of the landlord to choose the place for the business which is most suitable for him. He has complete freedom in the matter. In Gaya Prasad v. Pradeep Srivastava (2001) 2 SCC 604: AIR 2001 SC 803, it was held that the need of the landlord is to be seen on the date of application for release. In Prativa Devi vs T.V. Krishnan (1996) 5 SCC 353 it was held that the landlord is the best judge of his requirement and courts have no concern to dictate the landlord as to how and in what manner he should live."

In the present case, on going through the papers on record Court find that the High Court has given too much emphasis to the affidavit filed by the witness Vijay Pratap Singh that the appellant attempted to sell disputed shop to him. It is relevant to mention here that the said fact was denied by the appellant. In Court's opinion, merely for the reason that some witness has stated that the landlord attempted to sell the property his statement cannot be said to be reliable, as has been believed by the High Court or the Appellate Court, unless such fact is supported with documentary proof. There appears no document on record to support the bald statement of the witness Vijay Kumar Singh to dislodge the case of bonafide requirement of the shop claimed by the appellant for his son who was unemployed.

Another fact relied by the High Court pertains to the fact that elder son of the appellant was running a business as a tenant in a shop opposite to the disputed shop. Had it been found that the son for whom the landlord needed the shop had already got his own shop, it could have been said that the need for

the landlord is not genuine, but in the present case if one of the sons was running his business that too in a rented accommodation, it cannot be said that the need of the landlord was not bonafide. The sons of the appellant are not supposed to starve on street till the shop is actually vacated for them. **[Krishna Kumar Rastogi vs. Sumitra Devi, 1014 (3) ARC 143]**

U.P.Z.A. and L.R. Act

Ss. 195, 197 and 122-C – Lease granted without prior approval of S.D.O. – Validity of – A previous approval of S.D.O. is condition precedent for allotment of Gaon Sabha land and in absence of it, the land cannot be allotted to anyone

Admittedly the alleged pattas granted to the petitioners was never approved by the Sub Divisional Officer. Under sections 195, 197 and 122-C previous approval of Sub Divisional Officer for allotment of gaon sabha land is a condition precedent and in the absence of the prior approval, the land cannot be allotted to anyone.

So far as the finding recorded by the Additional Commissioner that earlier petitioners produced photostate copies of the pattas which did not bear the seal and signature of Tehsildar and the alleged original pattas produced on 29-5-2009 bears the seal and signature of Tehsildar as such it shows that the subsequent pattas were fabricated papers. This finding of fact also does not suffer from any illegality. In the absence of valid pattas the names of the petitioners cannot be recorded in the revenue record. [**Smt. Meharbano and others v. State of U.P. and others, 2014 (124) RD 173 (All HC)]**

S. 333 - Appealable cases - Revision filed directly instead of filing appeal - Maintainability of - Revision would be maintainable

Court has considered the arguments of the counsels for the parties and examined the records. The revision is filed under Section 333 of U.P. Act No. 1 of 1951, which provides that Board can call for record of any suit or proceeding decided by any court subordinate to him in which no appeal lies or where an appeal lies but has not been preferred, for the purposes of satisfying himself as to the legality or propriety of any order passed in such suit. Thus revision is maintainable in the cases where an appeal lies but has not been preferred. Similar provisions contained in U.P. Consolidation of Holdings Act, 1953. The same controversy has been raised and the matter was referred to and decided by Division Bench in Faujdar Rai v. DDC and other, 2006 (100) RD 462 (DB). Division Bench held that in spite of the fact that the appeal is maintainable and no appeal has been filed, the revision can directly be filed. Thus this case is fully covered by the dictum of Division Bench of this Court. **[Nargis Bano**

v. Board of Revenue, U.P. at Allahabad and others, (2014 (32) LCD 1550) (Allahabad High Court)]

Wakf Act

Ss. 6, 7— CPC, 1908 S.9 - Determination of certain disputes regarding wakf –Scope – Suit for eviction from wakf property is triable by civil court and not by Wakf Tribunal

Bhanwar Lal(AIR 2007 SC 11447) follows the line of reasoning in Ramesh Gobindram(AIR 2010 SC 2897). The decision of this Court in Bhanwar Lal is not in any manner inconsistent or contrary to the view taken by this Court in Ramesh Gobindram. Court fully concur with the view of this Court in Ramesh Gobindram1, particularly with regard to construction put by it upon Sections 83 and 85 of the Act. In Ramesh Gobindram, the Court said:-

There is, in our view, nothing in Section 83 to suggest that it pushes the exclusion of the jurisdiction of the civil courts extends (sic) beyond what has been provided for in Section 6(5), Section 7 and Section 85 of the Act. It simply empowers the Government to constitute a Tribunal or Tribunals for determination of any dispute, question of other matter relating to a wakf or wakf property which does not ipso facto mean that the jurisdiction of the civil courts stands completely excluded by reasons of such establishment.

It is noteworthy that the expression "for the determination of any dispute, question or other matter relating to a wakf or wakf property" appearing in Section 83(1) also appears in Section 85 of the Act. Section 85 does not, however, exclude the jurisdiction of the civil courts in respect of any or every question or disputes only because the same relates to a wakf or a wakf property. Section 85 in terms provides that the jurisdiction of the civil court shall stand excluded in relation to only such matters as are required by or under this Act to be determined by the Tribunal.

The crucial question that shall have to be answered in every case where a plea regarding exclusion of the jurisdiction of the civil court is raised is whether the Tribunal is under the Act or the Rules required to deal with the matter sought to be brought before a civil court. If it is not, the jurisdiction of the civil court is not excluded. But if the Tribunal is required to decide the matter the jurisdiction of the Civil Court would stand excluded.

The matter before the court is wholly and squarely covered by Ramesh Gobindram (AIR 2010 SC 2897). The suit for eviction against the tenant relating to a wakf property is exclusively triable by the civil court as such suit is not covered by the disputes specified in Sections 6 and 7 of the Act.

In view of the above, the impugned order cannot be sustained and it is liable to be set aside and is set aside. The order passed by the Waqf Tribunal on 19.09.2010 is also set aside. The order of the Wakf Tribunal dated 18.09.2010 is restored. The Civil Court shall now proceed with the suit accordingly. **[Faseela M. v. Munnerul Islam Madrasa Committee and another, AIR 2014 SC 2064]**

Words and Phrases

"Fatwa" – Meaning of

A fatwa is an opinion, only an expert is expected to give. It is not a decree, nor binding on the court or the State or the individual. It is not sanctioned under our constitutional schemed. But this does not mean that existence of Dar-ul-Qaza or for that matter practice of issuing fatwas are themselves illegal. It is informal justice delivery system with an objective of bringing about amicable settlement between the parties. [**Vishwa Lochan Madan v. Union of India and others, (2014)7 SCC 707]**

Malice - Malice in fact" and "Malice in Law" – Meaning of

Malice is of two kinds – one, 'Malice in Fact' and two, 'Malice in Law'. 'Malice in fact' is ill-will or spite towards a party and any indirect or improper motive in taking an action. 'Legal Malice' or 'Malice in Law' means 'something done without lawful excuse'. In other words, 'it is an act wrongfully done without reasonable or probable cause, and not necessarily an act done from ill-will or spite'. [**Sunil Kumar Mehra v. MCD and another, 2014(2) ESC 1197(Del)]**

Workmen Compensation Act

S. 2(2) and 12(1) – Compensation- Liability of - Basic liabity to pay loss to the employees is of the contractor in terms of section 12(1) and contractor shall indemnify by principle employer

The basic liability to pay loss to the employees is of the contractor in terms of section 12(1). The contractor was engaged for the purpose of effecting shopping complex, it cannot be, therefore, said to be a trade or business of the authorities or of the Municipal Council, even if the Municipal Council desired to generate revenue. The contractor in the situation was responsible and liable for payment of compensation under section 12(1) of the Workmen's Compensation Act.

The purpose and effect of sub-section (2) of section 12 is that the principal, who is made primarily liable for payment of compensation, shall be

entitled to be indemnified by the contractor, who has engaged employee or the workmen. **[Chief Officer, Latur Municipal Council, Latur v. Manoj Achyut Bhosle, Latur and others, (2014 (142) FLR 51 (Bombay High Court-Aurangabad Bench)]**

Ss. 8(4), 8(8) and 2(1) (d) - Compensation claimed by a divorced Ist wife - Validity of - A divorced wife not a widow and not dependent within meaning of section 2(1) (d) of above Act

In the instant case, for the purpose of enquiry under the Act, 1923, the respondent cannot be said to be enjoying the status of widow of deceased Kishore. Once court has found that so far as the enquiry under the Act, 1923 is concerned., the respondent was not the widow of deceased Kishore, she would be out of the scope and ambit of the definition of the term, 'dependent' as given in section 2(1) (d) of the Workmen's Compensation Act, 1923, which describes, inter alia, a widow of a deceased-workman as his dependent. **[Smt. Varsha and others vs. Smt. Vandana Kishore Tode, Distt. Chandrapur, (2014 (142) FLR 279 (Bombay High Court-Nagpur Bench)]**

S. 10 – Disability - Assessment of disability - Commissioner is not an officer qualified and competent to assess the disability

It is not necessary for the appellants, who are applicants before the Workmen's Compensation Commissioner to produce the x-rays before the Workmen's Compensation Commissioner. Even otherwise, the Commissioner is not an office qualified and competent to assess the disability with reference to the medical records, particularly the x-rays. That is the field of medical experts, the medical practitioner. PW-7- registered medical practitioner has duly assessed the disability with reference to the relevant records and on examining the appellants. There is no case that he has not seen the records or that he has manipulated the records of treatment or he has misread the same. He has also physically examined the appellants after taking x-ray. In such circumstances, it is not required to have the x-ray before the Commissioner. **[B. Lakshmana and others v. Divisional Manager, New India Assurance Co. Ltd. etc., (2014 (142) FLR 8 (Supreme Court)]**

Statutory Provisions

Ministry of Finance (Deptt. Of Revenue), Noti. No. G.S.R. 4526(E), dated July 1, 2014, published in the Gazette of India, Extra, Part II, Section 3(i), dated 1st July, 2014, 2, No. 341

In exercise of the powers conferred by Section 9, read with Section 76, of the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985), the

Central Government hereby makes the following rules further to amend the Narcotic Drugs and Psychotropic Substances Rules, 1985, namely—

1- (1) These rules may be called the **Narcotic Drugs and Psychotropic Substances (Amendment) Rules, 2014.**

(2) They shall come into force on the date do their publication in the Official Gazette.

2- In the Narcotic Drugs and psychotropic Substances Rules, 1985, in Rule 37, in sub-rule (1), for the words, brackets and letters "The manufacture of manufactured drugs notified under sub-clause (b) of clause (xi) of Section 2 of the Act (hereafter referred to as the drugs)" the words, brackets and letters "Subject to the provisions of Rule 36, the manufacture of manufactured drugs notified under sub-clause (b) of clause (xi) of section 2 of the Act (hereafter referred to as the drug) but not including preparation containing any manufactured drug from materials which the maker is lawfully entitled to possess: shall be substituted.

English translation of Chiktsa Anubhag-6, Nott. No. 474N-6-14-1082/87, dated March 4, 2014, published hi the V.P. Gazette, Extra., Part 4, Section (Kha), dated 4th March, 2014, pp.l0-18.

In exercise of the powers conferred by the proviso to Article 309 of the Constitution, the Governor is pleased to make the following rules with a view to amending the Uttar Pradesh Government Servants (Medical Attendance) Rules, 2011 (2011-LLT-V-266[142]).

1. Short title and commencement.-(l) These rules may be called the **Uttar Pradesh Government Servants (Medical Attendance) (First Amendment) Rules, 2014.**

(2) They shall come into force at once.

2. Amendment of Rule 3.-ln the Uttar Pradesh Government Servants (Medical Attendance) Rules, 2011, hereinafter referred to as the said rules, in Rule 3, for existing clauses (f) and (i) the following clauses shall be substituted, namely-

'(f) "family" means-

(i) Husband or wife as the case may be, of the member of the service; and

(ii) The parents, children, step-children, unmarried / divorced / separated daughter, unmarried / divorced/separated sisters, minor

brother(s) and step mother who are wholly dependent on the Government Servant and are normally residing with the Government Servant.

Note 1- Such members of a family will be considered wholly dependent whose income from all sources does not exceed the sum of Rs,. 3500 and the D.A. admissible on the basic pension of Rs 3500 per month at the time of the commencement of the treatment.

Note 2- The age limit for the dependents would be as follows:

(1) Son - Till the time he is employed or attained the age of 25 years or till he is married, whichever is earlier.

(2) Daughter- Till the time she is employed or she is married, whichever is earlier.

(3) Son who is suffering from permanent mental or physical disability - Till lifetime.

(4) Dependent and divorced/separated from husband/widow daughters and dependent unmarried/divorced/separated from husband/widow sisters - Till lifetime.

(5) Minor brothers - Till he attains majority

(i) (I) "Government Hospital" means a Hospital run either by State Government or Central Government or associated to any Government Medical College;

(ii) "Authorized Contracted Hospitals" means such hospitals which are contracted by the State Government to provide treatment at par with the rates of the CGHS, (Centralized Government Hospital Services)

3. Substitution of Rule 4.-In the said rules, for existing Rule 4 the following rule shall be substituted, namely-

"4. Entitlement of free medical services-All beneficiaries shall be entitled to free medical attendance and treatment in Government Hospital or Medical College or Authorized Contracted Hospitals. Ordinarily, this facility shall be provided at the place of residence or posting of the beneficiary. Registration fee and other prescribed fees for medical attendance and treatment shall be reimbursed fully by the Government. Ambulance shall also be provided free of charge in urgent/emergent cases, if the circumstances so require."

4. Amendment of Rule 6.-ln the said rules, in Rule 6 for existing sub-rule (a) the
following sub-rule shall be substituted, namely-

"(a) Free medical treatment shall be available to a beneficiary only when he/she
produces the proof of his/her identity through a numbered health card issued under the signature and seal of the Head of Office on pro forma given in Appendix A. The photograph on the card shall be so stamped with official seal that it covers the photograph and the card partially:

Provided that for a pensioner the designation, place of posting basic pay and pay scale shall relate to his/her last posting before his/her retirements/death but the health card will be issued by the Head of the office of his/her serving department located at the place from where he/she is drawing pension or residing.

In future the Government may stepwise issue U.P. Health Service Identity Card (Smart Card) in place of health Certificate."

5- Amendment of Rule7. In the said rules, in Rule 7, for existing sub-rule (a) the following sub-rule shall be substituted, namely—

"(a) In case of indoor treatment in a Government Hospital or Medical College or Authorized Contracted Hospitals all beneficiaries shall be provided the following accommodation free of cost:

Sl. No.	Basic Pay + Grade Pay	Wards for which beneficiary would be entitled
1	Rs 19,000 or above	Private/Special Wards
2	Above Rs 13,000 and below Rs 19,000	Paying Wards
3	Rs 13,000or below	General Wards

Provided that last basis pay drawn by pensioner shall be taken as basic pay for determining entitlement. However, a pensioner shall be entitled for services not inferior to the ones that he/she been getting just before retirement:

Provided further that in case a beneficiary is provided better accommodation facilities than the actual entitlement on request, he/she shall have to bear the additional expenses.

Note- For indoor treatment in Authorized Contracted Hospitals the criteria for entitlement of ward would be based on the limits of the Basic Pay + Grade Pay as applicable to Government servants covered under the CGJS rates of Government of India in such hospitals."

6- Substitution of Rule 10- In the said rules, for existing Rule 10 the following rule shall be substituted, namely—

"**10.** Treatment in SGPGI/KGMU/Government Medical Colleges.— Beneficiary on payment may get treatment in Sanjay Gandhi Post Graduate Institute of Medical Sciences and Research (SGPGIMS), Lucknow K.G.M.U., Lucknow and Government Medical College with our reference. The expenditure on medical attendance or treatment shall be wholly reimbursable on submission of claim in prescribed manner.

In addition to above, the treatment can be obtained with reference against payment from the Authorized Contracted Hospitals. The expenses incurred on medical care or treatment under the prescribed rules will be fully reimbursable on submission of the claim."

7- Substitution of long heading of Part III- In the said rules, after Rule 10, for the existing long heading "Part II Treatment in emergency on Tour and Specialized Treatment" the long heading "Part III Treatment in Emergency and on Tour and Specialized Treatment" shall be substituted.

8-Substitution of Rule 11- In the said rules, for existing Rule 11, the following rule shall be substituted namely—

"11. Treatment in Urgency/Emergency—A beneficiary is permitted to get treatment in a private Hospital or authorized Contracted Hospitals in urgent/emergent condition or on tour within State or outside. The Cost of treatment shall be reimbursable at eh rates of Sanjay Gandhi Post Graduate Institute of Medical Sciences and Research (SGPGIMS), Lucknow in case of treatment within the State or All India Institute of Medical Sciences, New Delhi in case of treatment outside the State and in case of treatment in Authorized Contracted Hospitals, the Cost of treatment shall be reimbursable at the rates of C.G.H.S. provided:

(a) The treating doctor certifies the urgency/emergency.

(b) The patient or his relative informs the Head of Office as soon as possible but not later than thirty days from the date of the commencement of treatment.

(c) In case of emergency, the expenditure on air ambulance shall also be admissible for reimbursement."

9- Substitution of Rule 12.- In the said rules, for existing Rule 12, the following rule shall be substituted, namely—

"12.Treatment on tour- The Government Servants on official duty or for personal work during tour to other states shall be entitled for medical attendance and treatment in the Government hospital or authorized contracted hospital of the concerned state and the actual expenses incurred thereon

shall be wholly reimbursable:

Provided that the expenditure incurred on treatment in medical colleges, institutes or private hospitals shall be reimbursable at the rate of All India Institute of Medical Sciences (A.I.I.M.S) and treatment in authorized contracted hospital shall be reimbursable at the CGHS rates.

It is expected from the Government servants that they should obtain the travel and health insurance police while on official tour to foreign country so that in case of requirement they can get the benefit of medical treatment during the foreign tour. The insurance premium on the travel and health insurance policy can be reimbursed in the TA bill along with the ticket but under circumstances any medical reimbursement shall be sanctioned by the State Government separately. The cost of medical treatment would not be reimbursable on foreign tour for personal work."

10- Amendment of Rule 13.- In the said Rule 13 for existing sub-rule(a) and (b) the following sub-rule shall be substituted, namely—

"(a) For the treatment of complicated and serious ailments for which medical facilities are not available at the Government hospitals or referring institutions, the treating doctor not below the rank of Professor or Head of the Department of referring institution or Chief Medical Superintendent of the Government District Hospital or Chief Medical Officer of the District may refer the patient to a private hospital or institution recognized by the State or Central Government for specialized treatment and medical attendance.

(b)The reimbursement of the expenditure on treatment in such private hospital or institution shall be limited on the actual expenditure or the rates of S.G.P.G.I.M.S., Lucknow for treatment within State or the rates of All India Institute of Medical Sciences (A.I.I.M.S.), New Delhi for treatment outside the State whichever is less.

The expenditure incurred on referral cases to authorized contracted hospitals shall be reimbursed at the CGHS rates."

11- Amendment of Rule 15.- In the said rules, in Rule 15 for existing sub-rule(e) and (i) the following sub-rules shall be substituted, namely—

"(e) In case of continuous treatment of the disease, second advance may be sanctioned subject to the condition that the earlier sanctioned advance is adjusted by presenting a partial claim, taking into consideration the specific conditions, on the advice and recommendation of the attending doctor.

(i) If the treatment has not started after sanction of the medical advance, the refund of such advance has to be made in three months and if the refund of such advance is not made within a

period of three months, the punitive interest shall also be imposed which will be 2.5% more than the normal rate of interest as applicable in provident fund."

12- Amendment of Rule 19.- In the said rules, in Rule 19 for existing sub-rule(a), the following sub-rule shall be substituted, namely—

"(a) Competent authority for technical examination shall be as follows:

Amount of claim	Competent authority
(i)Up to Rs 50,000	Medical Officer-in-charge/Superintendent of treating or referring Government hospital/ Government Ayurvedic, Unani and Homeopathy hospital
(ii)Up to Rs 50,001 and above	Superintendent-in-Chief/Medical Superintendent of treating or referring Government hospital /CMO/District Homeopathic Medical Officer or Regional Ayurvedic and Unani Officer
(iii)For specialized treatment in private hospitals	By treating doctor not below the rank of the Medical Superintendent/Chief Medical Superintendent/Chief Medical Officer of the District or Professor or Head of the Department of referring institution as provided in Rule 13(a)

13. Substitution of Rule 20.-In the said rules, for existing Rule 20 the following rule shall be substituted, namely—

"20. Sanctioning authority—Authorities competent to sanction the reimbursement claim for treatment shall be as follows:

For working/retired Government Servant

Amount of claim	Sanctioning authority
Up to Rs 2,00,000 up to Rs 5,00,000	Head of Department
From Rs 5,00,000 up to Rs 10,00,000	Administrative Department in the Government
Above Rs 10,00,000	After Recommendation from Medical and Health Department and prior approval of the Finance Department, Administrative Department in the Government."

14. Amendment of Rule 22.—In the said rules, in Rule 22 for existing sub-rules (c) and (a)the following sub-rule shall be substituted, namely—

"(c) The patient and the attendant if any, shall be entitled to traveling allowance for such journey from his/her residence to the place of the treatment and back by shortest rail route to the extent of entitlement of his official journey. However, no daily allowance would be permissible.

(d) in case of critical illness, the journey by aero plane may be allowed by the Government on the written recommendation of the authorized medical attendant. However, no daily allowance would be permissible on such journey."

15. Substitution of Appendix "C" .- In the said rules, for existing Appendix "C" the following Appendix shall be substituted, namely—

APPENDIX "C"
(See Part V, Rules 16 and 18)

Name of head of Office
Subject: Reimbursement of expenditure done on medical treatment.

Sir,

I.....my/family members Name..... took treatment at (hospital name).....for.....(disease name).....from(date).....to..... My health Card No..... I am submitting the claim with following documents for reimbursement:

1- Essentiality Certificate duly signed/countersigned by treating doctors/Superintendent of the Hospital.
2- Original Cash Memo, Bill, Vouchers duly signed and verified by treating doctor.
3- It is certified that the above named family member is wholly dependent on me and normally resides with me.

Kindly do the needful for reimbursement of my claim after adjusting the advance of Rs..... sanctioned for my treatment vide letter no..... dated.....of.....

Dated.....

Name of Officer/Employee
Designation
Place of posting

English translation of Nyaya Anubhag-2 (Adhinsasth Nyayalaya), Noti. No. 617/VII-Naya-2-2014-75G-2014, dated April 25, 2014, published in the U.P. Gazette, Extra., Part 4, Section (Kha), Dated 25 the Aprial, 2014,p.2

In exercise of the powers under Section 11 of the Code of Criminal Procedure, 1973 (Act No.2 of 1974) read with Section 21 of the General Clauses Act, 1897 (Act No. 10 of 1897) and all other powers enabling him in this behalf, the Governor, after consultation with the High Court of Judicature at Allahabad, is pleased to establish with effect from the date of this notification, two courts of Judicial Magistrate of the First Class at Aligarh to exercise the jurisdiction within the local area of the districts of Etah and Aligarh out of which one court of Judicial Magistrate/Metropolitan Magistrate shall have its place of sitting in the district jail, Etah for granting second or subsequent remand to under-trial prisoners.

English translation of Grih (Police) Anubhag-9, Noti. No. 653/VI-P-9-2014-31(90)/2010, dated April 9, 2014, published in the U.P. Gazette, Extra., Part 4, Section (Kha), dated 9th April, 2014, p. 4-7

In exercise of the powers conferred by Section 357-A of the Code of Criminal Procedure, 1973 (Act 2 of 1974), the Governor of Uttar Pradesh, in co-ordination with the Central Government, hereby frames the following scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation, namely-

1. Short title.-This scheme may be called the Uttar Pradesh Victim Compensation Scheme, 2014.

2. **Definitions.-**In this scheme, unless the context otherwise requires.

(a) "Act" means the Code of Criminal Procedure, 1973 (Act No.2 of (974);

(b) "Schedule" means the Schedule appended to this scheme;

(c) "State" means the State of Uttar Pradesh;

(d) "Victim" means a person who himself has suffered loss or injury as a result of the crime and required rehabilitation, and includes his dependent family members;

(e) "District Legal Services Authority" means the District Authority constituted under Section 9 of the Legal Services Authority Act, 1987;

(f) "State Legal Services Authority" means the state authority constituted under Section 6 of the Legal Services Authorities Act, 1987.

3. Victim Compensation Fund.- (1) There shall be established a fund namely Victim Compensation Fund from which amount of compensation under this scheme shall be paid to the victim or his dependents who have suffered loss or injury as result of the crime and who require rehabilitation.

(2) The State Government shall allot a separate budget for the purpose of the Scheme every year.

(3) The Fund shall be operated by the Secretary, State Legal Services Authority.

4. **Eligibility for compensation**.-A victim shall be eligible for the grant of compensation if:

(a) the offender is not traced or identified, but the victim is identified and where no trial takes place; such victim may also apply for grant of compensation under sub-section (4) of Section 357-A of the Act;

(b) the victim/claimant reports the crime to the officer-in-charge of the police station within 48 hours of the occurrence or any senior police officer or Executive Magistrate or Judicial Magistrate of the area provided that the District Legal Services Authority, if satisfied for the reasons to be recorded in writing, may condone the delay in reporting;

(c) the victim/claimant cooperates with the police and the prosecution during the investigation and trial of the case.

5- Procedure for grant of compensation.-(1) Whenever a recommendation is made by the court or an application is made by any victim or his dependent under sub-section (2) of Section 357-A of the Act to the District Legal Services Authority, the District Legal Services Authority shall examine the case and verify the contents of the claim with regard to the loss or injury caused to the victim and arising out of the reported criminal activity and may call for any other relevant information necessary in order to determine genuineness of the claim. After
verifying the claim, the District Legal Services Authority shall, after due enquiry, award compensation within two months from the date of receipt of the recommendation of the court of the receipt of application under sub-section (4) of Section 357-A of the Act in accordance with the provisions of this scheme.

(2) Compensation under this scheme shall be paid subject to the

condition that if the trial court, while passing judgment at later date, orders the accused persons to pay any amount by way of compensation under sub-section (3) of Section 357 of the Act, the victim/claimant shall remit an amount ordered equal to the amount of compensation or the amount ordered to be paid under the said sub-section (3) whichever is less. An undertaking to this effect shall be given by the victim/claimant before the distribution of the compensation amount.

(3) The District Legal Services Authority shall decide the quantum of compensation to be awarded to the victim or his dependents on the basis of loss caused to the victim, medical expenses to be incurred on treatment, minimum sustenance amount required for rehabilitation including such incidental charges as funeral expenses etc. The compensation may vary from case to case depending on the facts of each case.

(4) Keeping in view the particular vulnerabilities and special needs of the affected person in certain cases, the District Legal Services Authority or the State Legal Services Authority, as the case may be, will have the power to provide additional assistance of Rs 25,000 subject to maximum of Rs 1,00,000, in the cases where:

(a) The affected person is a minor girl requiring specialized treatment and care;
(b) The person is mentally challenged requiring specialized treatment and care;
(c) Any other case as may be deemed fit by the Legal Services Authority concerned.

(5) The quantum of compensation to be awarded to the victim or his dependents shall not exceed the maximum limit as per Schedule I.

(6) The amount of compensation decided under the scheme shall be disbursed to the victim or his dependents, as the case may be, from the Fund. The interim or final financial I assistance, as the case may be, shall be remitted to the bank account or the applicant preferably within a week. In cases where the person affected is a minor, the amount shall be may for all dealers or persons or for a class of dealers or persons which he deems fit, the requirement of submission of electronically generated and signed hard copy of such return with the conditions;

(i) that a duly signed electronically generated hard copy of the "acknowledgement" related to such return is submitted along with hard copy of the proof of payment or e-payment of tax or any other dues; and

(ii) that the hard copy of such electronically generated return is protected for the period as is provided to preserve the "accounts" under sub-section (1) of Section 61; and

(iii) That such protected hard copy is produced whenever so required by the assessing authority.

Ministry of finance (Deptt. Of Revenu), Noti. No. G.S.R. 426(E), dated July 1, 2014, published in the Gazette of India, Extra., Part II, Section 3(i), dated 1st july, 2014, P.2, No. 341

In exercise of the powers conferred by Section 9, read with Section 76, of the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985), the Central Government hereby makes the following rules further to amend the Narcotic Drugs and Psychotropic Substances Rules, 1985, namely—

1. (1) Therese rules may be called the Narcotic Drugs and Psychotropic Substances (Amendment) Rules, 2014

(2) The Shall come into force on the dated of their publication in the Official Gazette.

2. In the Narcotic Drugs and Psychotropic Substances Rules, 1985, in Rule 37, in sub-rule (1) for the words, brackets and letters "The manufacture of manufactured drugs notified under sub-clause (b) of clause (xi) of Section 2 of the Act (hereafter referred to as the drug)" the words, brackets and letters "Subject to the provisions of Rule 36, the manufacture of manufactured drugs notified under sub-clause (b)of clause (xi) of Section 2 of the Act (hereafter referred to as the drug) but not including preparation containing any manufactured drug from materials which the maker is lawfully entitled to possess" shall be substituted.

LEGAL QUIZ:

Q.1. In a probate proceeding the revocation is sought on ground of no service of notice (Citation). What will be the procedure of revocation under order 9 Rule 13 C.P.C. Only on ground of notice or all aspects of revocation of probate-order will be seen in the proceeding?

Ans. Pertaining to the procedure of revocation under Order 9, Rule 13 C.P.C. only on ground of notice or all aspects of revocation of probate-order will be seen in the proceedings. Query is being answered as follows:-

"Madhya Pradesh High Court
Bablu Mandal vs. Smt. Vandana Bhowmik on 2 November, 2007
Equivalent citations: 2008(1) MPHT 273
K.K.Lahoti,J.

Section 268 of the Indian Succession Act provides that the proceedings of the Court of District Judge in relation to the granting of probate and letters of administration shall save as otherwise provided, be regulated, so far as the circumstances of the case in regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any Court of Civil Jurisdiction. In view of the aforesaid specific provision under Section 268 of the Act and Section 141 of the CPC, the matter may be examined in the light of provisions contained in Section 263 of the Act. Though the provision of Order 9 of the CPC has not been made specifically applicable, but Section 263 of the Act provides that the grant of probate may be revoked or annulled for just cause and just cause shall be deemed to exist where the proceedings were defective in substance. If the probate was obtained by non-service, or defected service or by a fraudulent service on the other side, it can be very well be treated as a just cause within the meaning of Section 263(a) of the Act. So where the provisions of Section 263 of the Act are wide in nature and meet out all the exigencies including the exigencies enumerated in Order 9 Rule 13 of the CPC it may very well be found that the provision of Order 9 Rule 13, CPC can be invoked in a proceeding for revocation or annulment. A grant of probate on showing that the proceedings were defective in substance can be revoked or annulled. In the opinion of this Court, the provisions of Order 9 Rule 13 of the CPC are not directly applicable, but to show that the service on the defendant was defective or there was a sufficient cause to the defendant for non-appearing before the Court when an ex parte proceedings were directed against the applicant and for this limited purpose, the provisions of Order 9 Rule 13 read with Section 263 of

the Act can be invoked."

However, for the conditions regarding Grant of Probate, the decisions of Hon'ble High Court of Allahabad given in the case of Smt. Bimla Gaindhar v. Smt. Uma Gaindher and another; AIR 2004 All 329 may also be referred.

Q.2. Can co-accused cross examine the witness produced by one accused?

Ans. One co-accused can cross examine the witness produced by other co-accused, if the witness so examined gives statement affecting the interest of that co-accused.

Kindly go through commentary on Section 138 Evidence Act of Ratan Lal & Dhiraj Lal.

Q.3. In a Sessions cases at the stage of cross examination of P.W.-1, accused's counsel refused to cross examine the witness on ground that Hon'ble High Court has directed that no coercive process shall be issued to accused at the stage of investigation and that order is not vacated as yet and he is unable to cross examine the witness in absence of the accused. What course is open to the court?

Ans. Query is being answered as follows-

Hon'ble Apex Court in case titled Akil @ Javed vs. State of NCT of Delhi, (2013)7 SCC 25 has directed all the Hon'ble High Courts to issue appropriate Circular Letters to ensure compliance of Sec. 309 of Cr.P.C. hoping that respective Hon'ble High Courts would take serious note of the directions issued earlier in Raj Deo Sharma and Shambhu Nath's cases. Hon'ble Apex Court has also issued direction to all the trial courts to strictly adhere to the procedure prescribed u/s. 309 of the Cr.P.C. The Hon'ble Apex Court in this case also relied on a previous judgment of the Apex Court reported in State of U.P. vs. Shambhu Nath Singh and others, (2001)4 SCC 667 and quoted it's paragraph 10,11 to 14 and paragraph 33 in this judgment. A Division Bench of our own Hon'ble Allahabad High Court in Criminal Misc. Writ Petition No. 62/2013 vide order dated 24.5.2013 has also stressed for compliance of Sec. 309 Cr.P.C. A Circular Letter No.7756/2013/ Admin G-II/Allahabad/ Dated 30/5/13 is issued by our Hon'ble High Court.

In the query before us it has been mentioned that the direction of

Hon'ble High Court for issuing no coercive process against the accused was specifically for the stage of investigation, although the said direction is not yet vacated but stage of cross examination of PW-1 reveals that the stage of investigation is Already over and charge sheet had already been filed u/s. 173 of Cr.P.C. After taking cognizance on the said charge sheet and committal thereof to the Sessions Court, charge has been framed u/s. 228 of the Cr.P.C., which clearly implies that the accused was present at the time of framing of charge, meaning thereby he might be released on bail and that is why the trial is in progress. The examination-in-chief of PW-1 since already 5recorded and at that stage no objection was taken by the accused's counsel and it is only at the stage of cross examination he has drawn the attention of the court regarding the direction of the Hon'ble High Court probably finding examination-in-chief as well as PW-1 not favourable to accused. Now as stage of investigation is over, therefore the direction of the Hon'ble High Court which was specifically for the stage of investigation is not applicable. In this background the normal courses are open for the court, which are as under:-

1) To close the opportunity of cross examination of accused by specifically mentioning that enough opportunity to the accused counsel has been provided, but he has refused to cross examine the witness; or
2) To adjourn the cross examination only to the next working day on payment of heavy cost with the condition that accused shall ensure the cross examination of the witness and in case of his failure to do so, his bail may be cancelled; or
3) If the gravity of the offences is much higher and in the opinion of the court concerned, it seems that there is a likelihood of tempering and threatening of the witness, the bail of the accused may be cancelled in accordance with law and/or his P.B. be forfeited and notice to sureties be issued; or
4) If the accused's counsel agrees opportunity of cross examination may be granted to the lawyer if an application is moved on the ground that the accused would not dispute his identity as the particular accused in the case.

The said courses are in full consonance with the directions of the Apex Court as well as our own Allahabad High Court as mentioned above.

Ref.-

1. Akil @ Javed vs. State of NCT of Delhi, (2013)7 SCC 25
Paras 34,35,36,37,38,39,40,41,42,43,44

2. State of U.P. vs. Shambhu Nath Singh, AIR 2001 SC 1403
Paras 9,10,11,12,13,14,16,17,18
3. Circular Letter No. 7756/2013/ Admin G-II/Allahabad/ Dated 30/5/13

Q.4. In the matter of collection of toll tax on toll plaza on national highways, is civil court has jurisdiction for the injunction suits?

Ans. The power of the government to collect toll flows to the State Government from Entry 59 of List-II, 7th Schedule of the Constitution of India. So, as far as the National Highways are concerned, it was decided by the Bombay High Court in the case of Avinash and Ors. v. State of Maharashtra and Ors.; Writ Petition No.4378 of 2003; Maharashtra Law Journal (2004), pg. 511, whenever a road passing through the land which belongs to the State or Central Government, be it a State Highways or National Highways, the local bodies are not barred to impose any tax on vehicles entering in areas of the said local body.

Moreover, by virtue of Entry 13 of Eleventh Schedule read with Article 243G and Entry 4 of Twelfth Schedule read with Article 243W, Constitution of India, local bodies can also impose some levy, duty or tax. Therefore, the position for granting of an injunction on toll is similar to that of imposing an injunction on any levy imposed by any State or its Agencies.

Therefore, granting of an injunction against connection of any tax does not fall within the jurisdiction of Subordinate Courts. Any grievances against collection of taxes may be agitated before the Hon'ble High Court or the Supreme Court under their respective jurisdiction.

Q.5. April,2014- Where a succession Certificate was issued by the Court in favour of the applicant but before the certificate was acted upon the applicant died and his legal heir applied for fresh succession certificate with respect to the same property. Whether fresh court fee would be payable on the total value of debt or security mentioned in the application?

Ans. An application for the certificate must be accompanied by a deposit of court fee and on the death of the holder of the certificate, if a fresh application is made, the court fee has to be paid over again. (**Re Saroja Bashini, 20 CWN 1125)** However, payment of court fee is not a condition precedent to be maintainability of the petition and it could be paid at the time of issuance of the certificate also. **(Usha & Ors. vs. State of Orissa, AIR 1998 Ori. 146).**

Therefore, in the present case fresh court fee will be paid for issuing

succession certificate on application of the heir of deceased applicant. The court fee paid by previous applicant will not be adjusted against the court fee liable to paid in subsequent application. It is not mandatory that the court fee on certificate should be paid along with the application.

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