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PART –I (SUPREME COURT)

Administration of Justice:

Held: Criminal justice delivery system cannot be allowed to veer exclusively to benefit of offender making it unidirectional exercise. A proper administration of criminal justice delivery system, therefore requires balancing rights of accused and the prosecution, so that law is not allowed to become a sring board for acquittal in prosecutions prior to the same, irrespective of all other considerations. We therefore hold that all pending criminal prosecutions, trials and appeals prior to the law laid down in Mohan Lal (AIR 2018 SC 3853) shall continue to be governed by individual facts of case. **Varinder Kumar V. State of Himachal Pradesh 2019 (2) Supreme 610**

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Arbitration Act:

Sec. 25 – Requirement of

Section 25 of the Arbitration Act, 1996 deals with the situation where the parties commit default without showing sufficient cause and consequent termination of the proceedings. Section 25 provides three situations where on account of the default of a party, the arbitral tribunal shall terminate the proceedings which are as under:-

(i) Under Section 25(a) where the claimant fails to communicate his statement of claim in accordance with sub-section (1) of Section 23;

(ii) Under Section 25(b) continue the proceedings on the failure of the respondent to communicate his claim of defence in accordance with sub-section (1) of Section 23;

(iii) Under Section 25(c) continue the proceedings, and make the arbitral award on the evidence before it, in the event of a party failing to appear at an oral hearing or produce documentary evidence.

Sec. 25(a) provides that the Arbitral Tribunal shall terminate the proceedings where the claimants failed to communicate his claim in accordance with sub-section (1) of Section 23 of the Act. In the present case, the appellant has failed to file his statement of claim; and only sent the communication to the arbitrator seeking adjournment on the ground that the appellant has approached the High Court by filing petition under Section 11(6) of the Act. When the parties have specifically agreed for appointment of sole Arbitrator of the person appointed by the Engineer-in-Chief/Chief Engineer, HPPWD, the appellant was not right in approaching the High Court seeking appointment of an independent Arbitrator. **Sp Singla Constructions Pvt. Ltd. V. State of Himachal Pradesh 2019 (1) Supreme 131**

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Arbitration & Conciliation Act:

Sec. 2(1) (F)

Sec. 2(1)(f)(iii) of the Act refers to two different sets of persons: an "association" as distinct and separate from a "body of individuals". For example, under Section 2(31) of the Income Tax Act, 1961, "person" is defined as including, under sub- clause (v), an association of persons, or body of individuals, whether incorporated or not. It is in this sense, that an association is referred to in Section 2(1)(f)(iii) which would therefore include a consortium consisting of two or more bodies corporate, at least one of whom is a body corporate incorporated in a country other than India.

Further, the expression "a company or" which was originally at the beginning of Section 2(1)(f)(iii) was omitted by Act 3 of 2016.

The expression "a company or" in Section 2(1)(f)(iii) of the Act cannot possibly be said to refer to a company registered and incorporated in India which may be controlled by persons in a country outside India. The Court held:

"20. The learned counsel contends that the word "or" being disjunctive, sub-clause (iii) of Section 2(1)(f) of the 1996 Act shall apply in a case where sub-clause (ii) shall not apply. We do not agree. The question of taking recourse to sub-clause (iii) would come into play only in a case where sub-clause (ii) otherwise does not apply in its entirety and not where by reason of an exclusion clause, consideration for construing an agreement to be an international commercial arbitration agreement goes outside the purview of its definition. Once it is held that both the companies are incorporated in India, and, thus, they have been domiciled in India, the arbitration agreement entered into by and between them would not be an international commercial arbitration agreement and, thus, the question of applicability of sub-clause (iii) of Section 2(1)(f) would not arise." **M/S Larsen and Toubro Limited Scomi Engineering BHD V. Mumbai Metropolitian Region 2019 (1) Supreme 408**

Sec. 7(5) –Scope of

The scope and intent of Section 7(5) may therefore be summarised thus:

(i) An arbitration clause in another document, would get incorporated into a contract by reference, if the following conditions are fulfilled :

(1) The contract should contain a clear reference to the documents containing arbitration clause,

(2) the reference to the other document should clearly indicate an intention to incorporate the arbitration clause into the contract,

(3) The arbitration clause should be appropriate, that is capable of application in respect of disputes under the contract and should not be repugnant to any term of the contract.

(ii) When the parties enter into a contract, making a general reference to another contract, such general reference would not have the effect of incorporating the arbitration clause from the referred document into the contract between the parties. The arbitration clause from another contract can be incorporated into the contract (where such reference is made), only by a specific reference to arbitration clause.

(iii) Where a contract between the parties provides that the execution or performance of that contract shall be in terms of another contract (which contains the terms and conditions relating to performance and a provision for settlement of disputes by arbitration), then, the terms of the referred contract in regard to execution/performance alone will apply, and not the arbitration agreement in the referred contract, unless there is special reference to the arbitration clause also.

(iv) Where the contract provides that the standard form of terms and conditions of an independent Trade or Professional Institution (as for example the Standard Terms & Conditions of a Trade Association or Architects Association) will bind them or apply to the contract, such standard form of terms and conditions including any provision for arbitration in such standard terms and conditions, shall be deemed to be incorporated by reference. Sometimes the contract may also say that the parties are familiar with those terms and conditions or that the parties have read and understood the said terms and conditions.

(v) Where the contract between the parties stipulates that the Conditions of Contract of one of the parties to the contract shall form a part of their contract (as for example the General Conditions of Contract of the Government where Government is a party), the arbitration clause forming part of such General Conditions of contract will apply to the contract between the parties."

Sec. 7(5) states that the reference in a contract to a document containing an arbitration clause, constitutes a valid arbitration agreement, if the contract is in writing, and the reference is specifically made to incorporate the arbitration clause as a part of the contract. **Giriraj Garg V. Coal India Ltd. 2019 (2) Supreme 121**

Sec. 12(5)—

That arbitration clauses in government contracts providing that an employee of the department will be the sole arbitrator are neither void nor unenforceable. A named arbitrator is an employee of one of the parties is not ipso facto a ground to raise a presumption of bias or lack of independence on his part. The arbitration agreements in government contracts providing that an employee of the department or a higher official unconnected with the work or the contract will be the arbitrator are neither void nor unenforceable. **S.P. Singla Construction Pvt. Ltd. V. State of H.P., (2019 3 SCC 488**

Sec. 25—

Sec. 25 of the Arbitration Act, 1996 deals with the situation where the parties commit default without showing sufficient cause and consequent termination of the proceedings. Section 25 provides three situations where on account of the default of a party, the arbitral tribunal shall terminate the proceedings which are as under:-

(i) Under Section 25(a) where the claimant fails to communicate his statement of claim in accordance with sub-section (1) of Section 23;

(ii) Under Section 25(b) continue the proceedings on the failure of the respondent to communicate his claim of defence in accordance with sub-section (1) of Section 23;

(iii) Under Section 25(c) continue the proceedings, and make the arbitral award on the evidence before it, in the event of a party failing to appear at an oral hearing or produce documentary evidence.

Sec. 25(a) provides that the Arbitral Tribunal shall terminate the proceedings where the claimants failed to communicate his claim in accordance with sub-section (1) of Section 23 of the Act. In the present case, the appellant has failed to file his statement of claim; and only sent the communication to the arbitrator seeking adjournment on the ground that the appellant has approached the High Court by filing petition under Section 11(6) of the Act. When the parties have specifically agreed for appointment of sole Arbitrator of the person appointed by the Engineer-in-Chief/Chief Engineer, HPPWD, the appellant was not right in approaching the High Court seeking appointment of an independent arbitrator. **S.P. Singla Construction Pvt. Ltd. vs. State of H.P., (2019) 3 SCC 488**

Sec. 12(5)—

After the amendment to the Arbitration and Conciliation Act, 1996 in 2015, Section 12(5) prohibits the employee of one of the parties from being an arbitrator. In the present case, the agreement between the parties was entered into on 28.01.2000 and the arbitration proceedings commenced way back in 2009 and thus, the respondent cannot invoke Section 12(5) of the Arbitration and Conciliation (Amendment) Act, 2015. As per Section 26 of the Act, the provisions of the amended Act 2015 shall not apply to the arbitral proceedings commenced in accordance with the provisions of Section 21 of the principal Act, before the commencement of this Act unless the parties otherwise agree. **Rajasthan Small Industries Corporation Ltd. V. Ganesh Containers Movers Syndicate, (2019) 3 SCC 282**

Sec. 15—

Sec. 15 deals with termination of the mandate and substitution of an arbitrator. Sub-section (1) of Section 15 states that in addition to the circumstances referred to in Sections 13 and 14 of the Act, the mandate of an arbitrator shall terminate where he

withdraws from office for any reason or by pursuant to the agreement of the parties. In terms of sub-section (2), after termination of arbitrator's mandate, the appointment of the 24 substitute arbitrator shall be in accordance with the rules applicable to the appointment of an arbitrator who is being replaced.

Even Section 15(2), which regulates appointment of a substitute arbitrator, requires that such an appointment shall be made according to the rules which were applicable to the appointment of an original arbitrator. The term "rules" used in this sub-section is not confined to statutory rules or the rules framed by the competent authority in exercise of the power of delegated legislation but also includes the terms of agreement entered into between the parties. **Rajasthan Small Industries Corporation Ltd. V. Ganesh Containers Movers Syndicate, (2019) 3 SCC 282**

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Civil Procedure Code:

Sec. 2(2)

The mere description of the decision of the Tribunal to be a decree for the limited purpose would not make the decision a decree within the meaning of Section 2(2) of the C.P.C.

The term decree used in Article 11 of Schedule II to the Act is referable to a decree as defined under Section 2(2) of C.P.C. and the decision of the Tribunal does not fulfill the requirements of the decree.

It is well recognised in law that the legislature in enacting the Act used the term 'decree' in the same sense as it is used it in Section 2(2) of C.P.C. Moreover, as the word 'decree' has not been defined under the Act or even the General Clauses Act it is safe to assume that it has been used in the Act in the same sense as in C.P.C.**M/s. Supertech Ltd. v. Subrat Sen, AIR 2019 All. 19.**

Sec. 11 – "Might and ought"

Held: Under the CPC, both res judicata (in the substantive part of Section 11) and constructive res judicata (in Explanation IV) are embodied as statutory principles of the law governing civil procedure. The fundamental policy of the law is that there must be finality to litigation. Multiplicity of litigation enures to the benefit, unfortunately for the decree holder, of those who seek to delay the fruits of a decree reaching those to whom the decree is meant. Constructive res judicata, in the same manner as the principles underlying res judicata, is intended to ensure that grounds of attack or defence in litigation must be taken in one of the same proceeding. A party which avoids doing so does it at its own peril. In deciding as to whether a matter might have been urged in the earlier proceedings, the court must ask itself as to whether it could have been urged. In deciding whether the matter ought to have been urged in the earlier proceedings, the court will have due regard to the ambit of the earlier proceedings and the nexus which the matter bears to the nature of the

controversy. In holding that a matter ought to have been taken as a ground of attack or defence in the earlier proceedings, the court is indicating that the matter is of such a nature and character and bears such a connection with the controversy in the earlier case that the failure to raise it in that proceeding would debar the party from agitating it in the future.

Two principles of res judicata and constructive res judicata seek to achieve the common objective of assuring finality to litigation.

It may be said to be "the broader rule of evidence which prohibits the reassertion of a cause of action". This doctrine is based on two theories: (i) the finality and conclusiveness of judicial decisions for the final termination of disputes in the general interest of the community as a matter of public policy, and (ii) the interest of the individual that he should be protected from multiplication of litigation. It therefore serves not only a public but also a private purpose by obstructing the reopening of matters which have once been adjudicated upon. It is thus not permissible to obtain a second judgment for the same civil relief on the same cause of action, for otherwise the spirit of contentiousness may give rise to conflicting judgments of equal authority, lead to multiplicity of actions and bring the administration of justice into disrepute. It is the cause of action which gives rise to an action, and that is why it is necessary for the courts to recognise that a cause of action which results in a judgment must lose its identity and vitality and merge in the judgment when pronounced. It cannot therefore survive the judgment, or give rise to another cause of action on the same facts. This is what is known as the general principle of res judicata.

But it may be that the same set of facts may give rise to two or more causes of action. If in such a case a person is allowed to choose and sue upon one cause of action at one time and to reserve the other for subsequent litigation, that would aggravate the burden of litigation. Courts have therefore treated such a course of action as an abuse of its process and Somervell.

An adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had decided as incidental to or essentially connected with subject matter of the litigation and every matter coming into the legitimate purview of the original action both in respect of the matters of claim and defence…"**Asgar V. Mohan Varma 2019 (2) Supreme 53**

Sec. 11, Exp. IV, O. 21, R. 97 to 103-Execution petition-Seeking *inter alia* a direction for the payment to them the value of improvements over the property, before an order for delivery of possession was made-Petition dismissed on ground of principle of constructive *res judicata* - Writ petition against also dismissed-Sustainability of-Provisions of O. 21, R. 97 to 103 constitute a complete Code and provide the sole remedy both to parties to a suit and to a stranger to a

decree-Appellants are strangers to the decree, they were required to get that claim adjudicated in the course of their Execution Application which was referable to provisions of O. 21, R. 97 having failed to assert the claim at that stage, the deeming fiction contained in Explanation IV to S. 11 is clearly attracted- An issue which the appellants might and ought to have asserted in the earlier round of proceedings is deemed to have been directly and sustainably in issue-High Court justified incoming to conclusion that the failure of the appellants to raise a claim would result in the application of principle of constructive *res judicata* - Dismissal Proper.

This view which we have adopted following the consistent line of precedent on Rules 97 to 103 of Order 21is buttressed by the provisions of the Act of 1958. A claim under Section 4 (1) has to be addressed to the court which passes a decree for eviction. In the present case, the appellants are strangers to the decree. They were required to get that claim adjudicated in the course of their Execution Application which was referable to the provisions of Order XXI Rule 97. Having failed to assert the claim at that stage, the deeming fiction contained in Explanation IV to Section 11 is clearly attracted. An issue which the appellants might and ought to have asserted in the earlier round of proceedings is deemed to have been directly and substantially in issue. The High Court was, in this view of the matter, entirely justified in coming to the conclusion that the failure of the appellants to raise a claim would result in the application of the principle of constructive *res judicata* both having regard to the provisions of Sections 4 and 5 of the Act of 1958 and to the provisions of Order XXI Rules 97 to 101 of the CPC. **Asgar and others Vs. Mohan Varma and others, 2019(1) ARC 560 (S.C.)**

Sec. 17

Sec.17 uses the words ‘the suit may be instituted in any Court’. The use of word in Section 17 makes it permissive leaving discretion in some cases not to file one suit with regard to immovable property situated in local jurisdiction of more than one court. One of the exceptions to the rule is cases of partial partition where parties agree to keep some property joint and get partition of some of the properties.

The word ‘property’ occurring in Section 17 although has been used in ‘singular’ but by virtue of Section 13 of the General Clauses Act it may also be read as ‘plural’, i.e., ”properties”.

The expression any portion of the property can be read as portion of one or more properties situated in jurisdiction of different courts and can be also read as portion of several properties situated in jurisdiction of different courts.

A suit in respect to immovable property or properties situate in jurisdiction of different courts may be instituted in any court within whose local limits of jurisdiction, any portion of the property or one or more properties may be situated.

A suit in respect to more than one property situated in jurisdiction of different courts can be instituted in a court within local limits of jurisdiction where one or more properties are situated provided suit is based on same cause of action with respect to the properties situated in jurisdiction of different courts. **Shivanarayan (D) by Lrs. V. Maniklal (D) thr. Lrs. And others 2019 (37) LCD 626**

Ss. 21 (1) and 47-Objection to execution of a decree-On ground the Court had no territorial jurisdiction to entertain partition suit-Objection rejected-High Court restored the application raising the objection to file of executing Court for disposal-Sustainability of-The objection raised in execution did not relate to the subject matter of the suit, it was an objection to territorial jurisdiction which does not travel to the root of or to the inherent lack of jurisdiction of a Civil Court to entertain the suit-High Court manifestly in error in coming to conclusion that it was within the jurisdiction of the Executing Court to decide whether the decree in the suit for partition was passed in absence of territorial jurisdiction-Rejection of objection proper.

The objection which was raised in execution in the present case did not relate to the subject matter of the suit. It was an objection to territorial jurisdiction which does not travel to the root of or to the inherent lack of jurisdiction of a civil court to entertain the suit. An executing court cannot go behind the decree and must execute the decree as it stands. In Vasudev Dhanjibhai Modi v Rajabhai Abdul Rehman, (1970) 1 SCC 670, the Petitioner filed a suit in the Court of Small Causes, Ahmedabad for ejecting the Defendant-tenant. The suit was eventually decreed in his favour by this Court. During execution proceedings, the defendant-tenant raised an objection that the Court of Small Causes had no jurisdiction to entertain the suit and its decree was a nullity. The court executing the decree and the Court of Small Causes rejected the contention. The High Court reversed the order of the Court of Small Causes and dismissed the petition for execution. On appeal to this Court, a three judge Bench of this Court, reversed the judgment of the High Court and held thus:

> "6. A court executing a decree cannot go behind the decree: between the parties or their representatives it must take the decree according to its tenor, and cannot entertain any objection that the decree was incorrect in law or on facts. Until it is set aside by an appropriate proceeding in appeal or revision, a decree even if it be erroneous is still binding between the parties.
>
> 8. If the decree is on the face of the record without jurisdiction and the question does not relate to the territorial jurisdiction or under Section 11 of the Suits Valuation Act, objection to the jurisdiction of the Court to make the decree may be raised; where it is necessary to investigate facts in order to determine whether the Court which had passed the decree had no jurisdiction to entertain

and try the suit, the objection cannot be raised in the execution proceeding." **Sneh Lata Goel Vs. Pushplata and others, 2019(1) ARC 590 (S.C.)**

S. 100-Substantial question of law-Non-framing of while deciding second appeal-Justification of-On one hand High Court went on interpreting the terms of the documents after hearing the argument of the both sides and on the other hand, in conclusion held that it does not involves any substantial question of law-High Court decided the second appeal bipartite like the first appeal without keeping in view the scope of its jurisdiction conferred by S. 100(4) and (5), CPC-Impugned order quashed, matter remanded to High Court for fresh decision of the appeal after framing appropriate substantial question(s) of law.
Shri Rajendra Lalitkumar Agrawal V. Smt. Ratna Ashok Muranjan and another, 2019(1) ARC 353 S.C.

Sec. 100 - Appeal

A bare reading of the aforesaid provision clearly establishes that it provides for an appeal against the decision or order of the Appellate Tribunal but unlike Code of Civil Procedure it does not use the words "second appeal" as are used in Section 100 of the C.P.C. It only provides that the appeal can be preferred on any of the grounds mentioned in Section 100 C.P.C. which does not make the appeal to be a second appeal in spite of the fact that it is an appeal against an appellate decision or order and in the sense is virtually a second appeal.

Section 100 C.P.C. reads as under:

"100. Second appeal-(1) Save as otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law."

Section 100 C.P.C. provides for an appeal to the High Court against a decree passed in appeal by courts subordinate to the High Court. Therefore, for maintaining a second appeal thereunder it is essential that it should arise out of a decree passed in appeal and that too by any court subordinate to the High Court. The Appellate Tribunal is not a court subordinate to the High Court and the decision or the order of the Appellate Tribunal is not a decree. The appeal under Section 58 of the R.E.R.A. to the High Court is thus not an appeal against any decree of any court subordinate to the High Court. Therefore, it cannot be recognized as a second appeal as contemplated by Section 100 C.P.C. **M/s. Supertech Ltd. v. Subrat Sen, AIR 2019 All. 19.**

Sec. 115 – When Attracted

The revisional jurisdiction under Section 115 CPC is to be exercised to correct jurisdictional errors only. That while exercising the jurisdiction under Section 115, it is not competent to the High Court to correct errors of fact however gross or even errors of law unless the said errors have relation to the jurisdiction of the Court to try the dispute itself. Clauses (a) and (b) of this section on their plain reading quite clearly do not cover the present case. It was not contended, as indeed it was not possible to contend, that the learned Additional District Judge had either exercised a jurisdiction not vested in him by law or had failed to exercise a jurisdiction so vested in him, in recording the order that the proceedings under reference be stayed till the decision of the appeal by the High Court in the proceedings for specific performance of the agreement in question. Clause (c) also does not seem to apply to the case in hand. The words "illegally" and "with material irregularity" as used in this clause do not cover either errors of fact or of law; they do not refer to the decision arrived at but merely to the manner in which it is reached. The errors contemplated by this clause may, in our view, relate either to breach of some provision of law or to material defects of procedure affecting the ultimate decision, and not to errors either of fact or of law, after the prescribed formalities have been complied with. The High Court does not seem to have adverted to the limitation imposed on its power under Section 115 of the Code. Merely because the High Court would have felt inclined, had it dealt with the matter initially, to come to a different conclusion on the question of continuing stay of the reference proceedings pending decision of the appeal, could hardly justify interference on revision under Section 115 of the Code when there was no illegality or material irregularity committed by the learned Additional District Judge in his manner of dealing with this question. **Tek Singh v. Shashi Verma, AIR 2019 SC 1047.**

Sec. 144 - Restitution

Sec. 144 applies to a situation where a decree or an order is varied or reversed in appeal, revision or any other proceeding or is set aside or modified in any suit instituted for the purpose. In that situation, the Court which has passed the decree may cause restitution to be made, on an application of any party entitled, so as to place the parties in the position which they would have occupied but for the decree or order or such part thereof as has been varied, reversed, set aside or modified. The court is empowered to pass orders which are consequential in nature to the decree or order being varied or reversed. **Murti Bhawani Mata Mandir V. Ramesh, AIR 2019 SC 679.**

Sec. 152—Scope of deciding a 'Note for speaking to the Minutes'—

A "Note for speaking to the Minutes" is required to be entertained only for the limited purposes of correcting the typographical error or an error through oversight, which may have crept in while transcribing the original order. Once, the

judgment/order is pronounced and if any party to the same wants any rectification of any typographical error and any clerical mistake regarding the date or number, such a party may apply to the court concerned for correcting such an error in the judgment/order. However, a "Note for speaking to the Minutes" cannot be considered on a par with a review application or in a given case, with an application for clarification/modification of an order. A "Note for speaking to the Minutes" can never be considered to be an application of such nature. While passing the impugned order, Akhil Bhartvarshiya Marwari Agarwal Jatiya Kosh vs. Brijlal Tibrewal, 2014 SCC Online Bom 4930, the "Note for speaking to the Minutes", the High Court has virtually modified its original order, passed in first appeal. While passing the impugned order, the High Court has given further directions as if the High Court is passing the order on an application for clarification/modification. Therefore, such a course was not open to the High Court while deciding a "Note for speaking to the Minutes". Since, the High Court has travelled beyond its jurisdiction in regard to the scope aside the impugned order passed in Akhil Bhartiya Case, the "Note for speaking to the Minutes". **Akhil Bhartvarshiya Marwari Agarwal Jatiya Kosh V. Brijlal Tibrewal, (2019)2 SCC 684**

O. 1, R. 10 (2)-Identity of defendant- Application for-Stating it should be conclusively be determined as to who the correct defendants are, they are necessary parties to both specific performance suit-Application dismissed holding a question of mistaken identity cannot be gone into a specific performance suit-Appeal against allowed-Sustainability of-Plaintiff in both the suit is *dominus litus* and has chosen 'x' who resides in Delhi (since deceased) and his wife as the persons against whom the *lis exists*-The person in the IAs are neither necessary nor proper parties in the present adjudication-Dismissal of the application proper.

It is clear that if ultimately it is found that there is no cause of action against either of these people, his suit will fail; or if it is found, in execution proceedings, that the aforesaid persons have nothing to do with the agreement to sell in question, such execution proceedings will fail. That is the risk that the plaintiff takes in these matters. It is clear, therefore, that persons who state that they happen to be defendant Nos. 1 and 2 and Defendant Nos. 2 and 3 respectively in the two suits are persons who have to take independent proceedings against the said defendants and/or the plaintiff if they allege collusion between the plaintiff and the defendants. **Hari Mohan Sharma and another Vs. Charanjeet Singh Rekhi and others etc., 2019(1) ARC 73, S.C.**

O. 6, R. 17

Held: It is well settled that amendment in the pleadings cannot be refused merely because of some mistake, negligence, inadvertence or even infraction of the

Rules of Procedure. The Court always gives leave to amend the pleadings even if a party is negligent or careless as the power to grant amendment of the pleadings is intended to serve the ends of justice and is not governed by any such narrow or technical limitations. In State of Maharashtra vs. Hindustan Construction Company Limited1, this Court held as under:-

"17. Insofar as the Code of Civil Procedure, 1908 (for short "CPC") is concerned, Order 6 Rule 17 provides for amendment of pleadings. It says that the court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

18. The matters relating to amendment of pleadings have come up for consideration before the courts from time to time. As far back as in 1884 in Clarapede & Co. v. Commercial Union Assn.2 - an appeal that came up before the Court of Appeal, Brett M.R. stated:

"... The rule of conduct of the court in such a case is that, however negligent or careless may have been the first omission, and, however late the proposed amendment, the amendment should be allowed if it can be made without injustice to the other side. There is no injustice if the other side can be compensated by costs; but, if the amendment will put them into such a position that they must be injured, it ought not to be made...."

19. In Charan Das v. Amir Khan3 the Privy Council exposited the legal position that although power of a Court to amend the plaint in a suit should not as a rule be exercised where the effect is to take away from the defendant a legal right which has accrued to him by lapse of time, yet there are cases in which that consideration is outweighed by the special circumstances of the case.

22. In Jai Jai Ram Manohar Lal4 this Court was concerned with a matter wherein amendment in the plaint was refused on the ground that the amendment could not take effect retrospectively and on the date of the amendment the action was barred by the law of limitation. It was held: (SCC p.871, para 5)

"5. .... Rules of procedure are intended to be a handmaid to the administration of justice. A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of the Rules of procedure.

The court always gives leave to amend the pleading of a party, unless it is satisfied that the party applying was acting mala fide, or that by his blunder, he had caused injury to his opponent which may not be compensated for by an order of costs. However negligent or careless may have been the first omission, and, however late the proposed amendment, the amendment may be allowed if it can be made without injustice to the other side." This Court further stated (Jai Jai Ram Manohar Lal case, SCC p.873, para 7):

"7. ...The power to grant amendment of the pleadings is intended to serve the ends of justice and is not governed by any such narrow or technical limitations."

Non-compliance with any procedural requirement relating to a pleading, memorandum of appeal or application or petition for relief should not entail automatic dismissal or rejection, unless the relevant statute or rule so mandates. Procedural defects and irregularities which are curable should not be allowed to defeat substantive rights or to cause injustice. Procedure, a handmaiden to justice, should never be made a tool to deny justice or perpetuate injustice, by any oppressive or punitive use. The well-recognised exceptions to this principle are:

(i) where the statute prescribing the procedure, also prescribes specifically the consequence of noncompliance;

(ii) where the procedural defect is not rectified, even after it is pointed out and due opportunity is given for rectifying it;

(iii) where the non-compliance or violation is proved to be deliberate or mischievous;

(iv) where the rectification of defect would affect the case on merits or will affect the jurisdiction of the court;

(v) in case of memorandum of appeal, there is complete absence of authority and the appeal is presented without the knowledge, consent and authority of the appellant." **Varun Pahawa V. Mrs. Renu Chaudhary 2919 (37) LCD 589**

O. 6, R. 11-Limitation Act, 1963, Art. 54-Rejection of plaint-Application for-On ground suit for specific performance of an agreement to sell is barred by limitation-Application rejected by High Court-Legality-Merits and demerits of the matter cannot be gone into at this stage while deciding an application filed under O.VII, R. 11, CPC-At this stage only averments in plaint are to be looked into-From reading of averment in the plaint in case on hand, it cannot be said that the suit barred by limitation-The issue as to when the plaintiff had noticed refusal is an issue which can be adjudicate after trial-Even assuming that there is inordinate delay and laches on part of plaintiff same cannot be a ground for rejection of plaint under O. VII, R.11(d) CPC-Rejection of application proper.

Merits and demerits of the matter cannot be gone into at this stage, while deciding an application filed under O.VII R.11 of the CPC. It is fairly settled that at this stage only averments within the plaint are to be looked into and from a reading of the averments in the plaint in the case on hand, it cannot be said that suit is barred by limitation. The issue as to when the plaintiff had noticed refusal, is an issue which can be adjudicated after trial. Even assuming that there is inordinate delay and laches on the a part of the plaintiff, same cannot be a ground for rejection of plaint under O.VII R.11(d) of CPC. **Urvashiben and another V. Krishnakant Manuprasad Trivedi, 2019(1) ARC 13, SC.**

O.6, R.17 - Amendment of plaint-On ground that the Counsel has inadvertently made title of suit wrongly-Amendment rejected-On ground the application is an attempt to convert the suit filed by a private individual into a suit filed by a Private Ltd. Co. which is not permissible as it completely changes the nature of the suit-Jurisdiction of-Memo of parties clearly indicate inadvertently mistake on part of Counsel who drafted the plaint-Such inadvertently mistake cannot be refused to be corrected when the mistake is apparent from the reading of plaint-The Court always gives leave to amend the pleadings even if a party is negligent or careless as the power to grant amendment of the pleadings is intended to serve the ends of justice and is not governed by any such narrow or technical limitations-Rejection improper, amendment allowed.

Varun Pahwa V. Mrs. Renu Chaudhary, 2019(1) ARC 657 (S.C.)

O.7 R. 11 - Application for rejection of plaint of suit filed for declaration of gift-deed void and defendants be restrained from alienating the suit property-On ground plaintiff who is not a recorded khatedar of suit land had filed a suit before the revenue Court for declaration of his khatedari and the suit preferred before the trail Court liable to be dismissed-Application dismissed by Trail Court, but allowed by High Court- Legality of-Civil Court may decree the relief prayed only if it is first determined that the appellants is entitled to khatedari rights in the suit property-Under the provisions of Tenancy Act, the jurisdiction to declare khatedari rights vests exclusively with the revenue Courts, only after such determination may the Civil Court proceed to decree the reliefs as prayed-The Civil Court may not grant relief until the khatedari rights of the appellants have been decreed by a revenue Court-Rejection of the application proper.

The appellant has prayed that the gift deed dated 10.02.2011 be declared void to the extent of the share claimed by the appellant and that respondent Nos. 1 to 5 be restrained from alienating the share of the appellant. The Civil Court may decree the relief prayed only if it is first determined that the appellant is entitled to khatedari rights in the suit property. Under the provisions of the Tenancy Act, the jurisdiction to declare khatedari rights vests exclusively with the revenue Courts. Only after such determination may the Civil Court proceed to decree the relief as prayed. The explanation to Section 207 clarifies that if the cause of action in respect of which relief is sought can be granted only by the revenue Court, then it is immaterial that the relief asked from the Civil Court is greater than, or in addition to or not identical with the relief which the revenue Court would have granted. In view of this matter, the Civil Court may not grant relief until the khatedari rights of the appellant have been decreed by a revenue Court. **Pyarelal V. Shubhendra Pilania (Minor) through**

Natural Guardian (Father) Shri Pradeep Kumar Pilania and others, 2019(1) ARC 355 S.C.

O. 8, R. 10 & O. 5, R. 1(1)

The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 came into force on 23.10.2015 bringing in their wake certain amendments to the Code of Civil Procedure. In Order V, Rule 1, sub-rule (1), for the second proviso, the following proviso was substituted:

> "Provided further that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written statement on such other days, as may be specified by the Court, for reasons to be recorded in writing and on payment of such costs as the court deems fit, but which shall not be later than one hundred twenty days from the date of service of summons and on expiry of one hundred and twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the court shall not allow the written statement to be taken on record." Equally, in Order VIII Rule 1, a new proviso was substituted as follows:
>
> "Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the court, for reasons to be recorded in writing and on payment of such costs as the Court deems fit, but which shall not be later than one hundred and twenty days from the date of service of summons and on expiry of one hundred and twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the court shall not allow the written statement to be taken on record." This was re-emphasized by re-inserting yet another proviso in Order VIII Rule 10 CPC, which reads as under:-
>
> "Procedure when party fails to present written statement called for by Court.- Where any party from whom a written statement is required under Rule 1 or Rule 9 fails to present the same within the time permitted or fixed by the Court, as the case may be, the Court shall pronounce judgment against him, or make such order in relation to the suit as it thinks fit and on pronouncement of such judgment a decree shall be drawn up.
>
> Provided further that no Court shall make an order to extend the time provided under Rule 1 of this Order for filing of the written statement." A perusal of these provisions would show that ordinarily a written statement is to be filed within a period of 30 days.

However, grace period of a further 90 days is granted which the Court may employ for reasons to be recorded in writing and payment of such costs as it deems fit

to allow such written statement to come on record. What is of great importance is the fact that beyond 120 days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the Court shall not allow the written statement to be taken on record. This is further buttressed by the proviso in Order VIII Rule 10 also adding that the Court has no further power to extend the time beyond this period of 120 days.

A Court in which a subsequent suit has been filed is prohibited from proceeding with the trial of that suit in certain specified circumstances. When there is a special provision in the Code of Civil Procedure for dealing with the contingencies of two such suits being instituted, recourse to the inherent powers under s.151 is not justified..." (at page 470) Clearly, the clear, definite and mandatory provisions of Order V read with Order VIII Rule 1 and 10 cannot be circumvented by recourse to the inherent power under Section 151 to do the opposite of what is stated therein. **M/S SCG Contracts India Pvt. Ltd. vs Ks Chamankar Infrastructure Pvt. Ltd. 2019 (37) LCD 583**

O. 21, R. 99

The provisions of O. 21 Rule 99 will not defeat the right of a third person claiming to be in possession of the property forming the subject matter of a decree in his own right to get his objection decided under Rule 97, at a stage prior to dispossession.

It is easily seen that the language of the rule is peremptory and the powers given to the executing Court under the said rule are plenary. The powers given to the executing Court under Rule 101 are not qualified or hedged by any restrictions. On the other hand it shows that the executing Court is required to adjudicate upon all questions mentioned in the said rule as if it had jurisdiction to deal with every question that may so arise. By a legal fiction, an executing Court which may otherwise have no jurisdiction is invested with the jurisdiction to try all questions under the aforesaid rule. **Asgar V. Mohan Varma 2019 (2) Supreme 53**

O. 22, R. 10- Impleadment application- To implead respondent No. 3 as plaintiff No. 3 in suit for specific performance of an agreement to sell and praying to amend the suit pursuant to agreement to sell in his favour-Subsequent to filing of the suit with consent of respondent No. 2 plaintiff No. 1/respondent No. 1 assigned its interest to respondent No. 3-Impleadment allowed-The order allowing the application impleading respondent No. 3 as assignee (O. 22. R. 10 CPC) after 27 years or filing of the suit vitally affects the valuable rights of the appellant, would also cause serious prejudice to the appellant/defendant depriving valuable right of defence available to the appellant-Allowing improper.

O. 22, R. 10-Limitation Act, 1963-Assignmemt of interest-Provisions of Limitation Act-Applicability of-The provisions of limitation do not apply to such an application-Explained.

The order allowing the application impleading respondent No.3 as assignee (Order XXII Rule 10 CPC) after 27 years of filing of the suit vitally affects the valuable rights of the appellant. The order allowing amendment of plaint by impleading respondent No.3 as 'Plaintiff No.3' on the basis of alleged assignment of agreement dated 24.08.1987 decides a vital question which concerns the rights of the parties and hence is a 'judgment' to maintain the Letters Patent Appeal. In our view, allowing of such application after 27 years of filing suit for specific performance would cause serious prejudice to the appellant-defendant depriving valuable right of defence available to the appellant and hence the order of Single Judge allowing the Chamber Summons is a 'judgment' within the meaning of Clause 15 of the Letters Patent Appeal.

The stand of respondent No.3 is that it claims as an assignee of the rights of respondent Nos.1 and 2 and that it has the right to continue the suit under Order XXII Rule 10 CPC and the provisions of limitation, do not apply to such an application.

Under Order XXII Rule 10 CPC, when there has been an assignment or devolution of interest during the pendency of a suit, the suit may, by leave of the Court, be continued by or against person to or upon whom such interest has been assigned or devolved and this entitles the person who has acquired an interest in the subject-matter of the litigation by an assignment or creation or devolution of interest *pendente lite* or suitor or any other person interested, to apply to the Court for leave to continue the suit. When the plaintiff assigns/transfers the suit during the pendency of the suit, the assignee is entitled to be brought on record and continue the suit. Order XXII Rule 10 CPC enables only continuance of the suit by the leave of the court. It is the duty of the court to decide whether leave to be granted or not to the person or to the assignee to continue the suit. The discretion to implead or not to implead parties who apply to continue the suit must be exercised judiciously and not arbitrarily. **Life Insurance Corporation of India Vs. Sanjeev Builders Pvt. Ltd. and Ors., 2019(1) ARC 78, S.C.**

O. 22, R. 4-Non-impleadment of legal representatives-Of a deceased defendant within time-Consequence-The suit shall abate as against a deceased defendant-This rule does not provide that by the omission to implead the legal representatives of a defendant, the suit will abate as a whole-If the interests of the co-defendants are separate, as in the case of co-owners, the suit will abate only as regard the particular interest of the deceased party.

O. 22 R.4, C.P.C. lays down that where within the time limited by law, no application is made to implead the legal representatives of a deceased defendant, the

suit shall abate as against a deceased defendant. This rule does not provide that by the omission to implead the legal representative of a defendant, the suit will abate as a whole. If the interests of the co-defendants are separate, as in the case of co-owners, the suit will abate only as regards the particular interest of the deceased party. In such a situation, the question of the abatement of the appeal in its entirety that has arisen in this case depends upon general principles. If the case is of such a nature that the absence of the legal representatives of the deceased respondent prevents the Court from hearing the appeal as against the other respondents, then the appeal abates *in toto*. Otherwise, the abatement takes place only in respect of the interest of the respondent who has died. **Sunkara Lakshminarasamma(D) by LRs. V. Sagi Subba Raju and others etc., 2019(1) ARC 44, S.C.**

O.26, R. 10. A-Application for sending Will in question to hand writing expert-For comparison with testor's admitted signature-Application rejected by High Court-If the scientific investigation of the document in question facilitates the ascertaining of truth, in the interest of justice, naturally it has to be ordered-High Court observed that the prayer under O.26, R. 10-A CPC can be considered at a later stage-High Court not right in setting aside the order allowing the application.

After their witnesses were examined, the plaintiff/appellant again reiterated the prayer for sending the Will in question to hand-writing expert. If the scientific investigation of the document in question facilitates the ascertaining of truth, in the interest of justice, naturally it has to be ordered. **Ram Avatar Soni V. Mahanta Laxmidhar Das and Others, 2019(1) ARC 401, S.C.**

O.33, R.1-

Held: O. 33 R. 7(3) empowers the court to either allow or refuse to allow the applicant to sue as an indigent person. Rule 9 empowers the court to withdraw the permission granted under Rule 7(3) at the stance of defendant or State counsel if any of the grounds set out in clauses (a) to (c) is made out. Order 33 Rule 11 as amended by the State of Kerala inter alia provides that when the plaintiff is dispaupered, the Court may order the plaintiff to pay the requisite court fees within a time fixed by the Court. **Sushil Thomas Abraham V. M/S Skyline Build. 2019 (37) LCD 677**

O. 39 – Requirement of

The relief of interlocutory mandatory injunctions are thus granted generally to preserve or restore the status quo of the last non-contested status which preceded the pending controversy until the final hearing when full relief may be granted or to compel the undoing of those acts that have been illegally done or the restoration of that which was wrongfully taken from the party complaining. But since the granting of

such an injunction to a party who fails or would fail to establish his right at the trial may cause great injustice or irreparable harm to the party against whom it was granted or alternatively not granting of it to a party who succeeds or would succeed may equally cause great injustice or irreparable harm, courts have evolved certain guidelines. Generally stated these guidelines are:-

(1)The plaintiff has a strong case for trial. That is, it shall be of a higher standard than a prima facie case that is normally required for a prohibitory injunction.

(2) It is necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money.

(3) The balance of convenience is in favour of the one seeking such relief. **Tek Singh v. Shashi Verma, AIR 2019 SC 1047.**

O. 44, R. 1-

Held - Clause (2) of Order 44 Rule 3 of the Code deals with the cases where the applicant was declined the status of an indigent person by the trial court in the suit. In such case, the applicant is entitled to say that he is or has become an indigent person since the date of decree appealed from and, therefore, entitled to prosecute the appeal as an indigent person. In such case also, an inquiry is required to be held to decide his status. **Sushil Thomas Abraham V. M/s Skyline Build. Through its partner and others 2019 (1) Supreme 234**

O. 47, R.1

Held: From a cumulative reading of the various judgments, we sum up the legal position as under:

(a) The conclusions rendered by the three Judge Bench of this Court in Kunhayammed and summed up in paragraph 44 are affirmed and reiterated.
(b) We reiterate the conclusions relevant for these cases as under:

> "(iv) An order refusing special leave to appeal may be a non-speaking order or a speaking one. In either case it does not attract the doctrine of merger. An order refusing special leave to appeal does not stand substituted in place of the order under challenge. All that it means is that the Court was not inclined to exercise its discretion so as to allow the appeal being filed.
>
> (v) If the order refusing leave to appeal is a speaking order, i.e., gives reasons for refusing the grant of leave, then the order has two implications. Firstly, the statement of law contained in the order is a declaration of law by the Supreme Court within the meaning of Article 141 of the Constitution. Secondly, other than the declaration of law, whatever is stated in the order are the findings recorded by the Supreme Court which would bind the parties thereto and also the court, tribunal or authority in any proceedings subsequent thereto by way of judicial

discipline, the Supreme Court being the Apex Court of the country. But, this does not amount to saying that the order of the court, tribunal or authority below has stood merged in the order of the Supreme Court rejecting the special leave petition or that the order of the Supreme Court is the only order binding as res judicata in subsequent proceedings between the parties.

(vi) Once leave to appeal has been granted and appellate jurisdiction of Supreme Court has been invoked the order passed in appeal would attract the doctrine of merger; the order may be of reversal, modification or merely affirmation.

(vii) On an appeal having been preferred or a petition seeking leave to appeal having been converted into an appeal before the Supreme Court the jurisdiction of High Court to entertain a review petition is lost thereafter as provided by sub-rule (1) of Rule 1 of Order 47 CPC." **Khoday Distilleries Ltd. (now known as Khoday India Limited) and others V. Sri Mahadeshwar Sahakara Sakkare Karkhane Ltd., Kollegal (under Liquidation) Represented by the Liquidator 2019 (37) LCD 608**

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Constitution of India:

Art. 14

Our country is governed by the rule of law. Arbitrariness is an anathema to the rule of law. When an employer invites applications for filling up a large number of posts, a large number of unemployed youth apply for the same. They spend time in filling the form and pay the application fees. Thereafter, they spend time to prepare for the examination. They spend time and money to travel to the place where written test is held. If they qualify the written test they have to again travel to appear for the interview and medical examination etc. Those who are successful and declared to be passed have a reasonable expectation that they will be appointed. No doubt, as pointed out above, this is not a vested right. However, the State must give some justifiable, non-arbitrary reason for not filling up the post. When the employer is the State it is bound to act according to Article 14 of the Constitution. It cannot without any rhyme or reason decide not to fill up the post. It must give some plausible reason for not filling up the posts. The courts would normally not question the justification but the justification must be reasonable and should not be an arbitrary, capricious or whimsical exercise of discretion vested in the State. **Dinesh Kumar Kashyap V. South East Central Railway, AIR 2019 SC 24.**

Art. 16, 320(3) – U.P. Urban Planning and Development Act – Ss.5-A, 55 – U.P. Development Authorities Centralised Services Rules (1985) – R. 21-A – Promotion and regularization of services – of direct recruits – to post of "Assistant Engineer

In order to cure the defect which is apparent insofar as the confirmation of the private respondents/promotees is concerned, court considered it appropriate to direct that the State Government should move the UPPSC for consultation within a maximum period of two months from today, and dependent on the result of the consultative process, action be taken, and the seniority list should govern accordingly. This would imply that the promotees would continue to maintain their position in the seniority list so long as there is a favourable opinion of the UPPSC, and only in case of such candidates that the UPPSC advises otherwise, i.e., negatively, would that person not be eligible to form a part of the same seniority. Court made it clear that with the consultation of the UPPSC, a quietus must be put to this dispute in terms of what we have observed and no further litigation should be entertained in this behalf, in case the UPPSC concurs. **Ajay Kumar Singh v. State of Uttar Pradesh, 2019 (1) ALJ 161 (SC)**

Arts. 16 & 14-

In sub-section (1) of Section 16, the legislature has stipulated that a child born from a marriage which is null and void under Section 11 is legitimate, regardless of whether the birth has taken place before or after the commencement of Amending Act 68 of 1976. Legitimacy of a child born from a marriage which is null and void, is a matter of public policy so as to protect a child born from such a marriage from suffering the consequences of illegitimacy. Hence, though the marriage may be null and void, a child who is born from the marriage is nonetheless treated as legitimate by sub-section (1) of Section 16. One of the grounds on which a marriage is null and void under Section 11 read with clause (i) of Section 5 is that the marriage has been contracted when one of the parties had a spouse living at the time of marriage. A second marriage contracted by a Hindu during the subsistence of the first marriage is, therefore, null and void. However, the legislature has stepped in by enacting Section 16(1) to protect the legitimacy of a child born from such a marriage. Sub-section (3) of Section 16, however, stipulates that such a child who is born from a marriage which is null and void, will have a right in the property only of the parents and none other than the parents.

The issue essentially is whether it is open to an employer, who is amenable to Part III of the Constitution to deny the benefit of compassionate appointment which is available to other legitimate children. Undoubtedly, while designing a policy of compassionate appointment, the State can prescribe the terms on which it can be granted. However, it is not open to the State, while making the scheme or rules, to lay down a condition which is inconsistent with Article 14 of the Constitution. The purpose of compassionate appointment is to prevent destitution and penury in the family of a deceased employee. The effect of the circular is that irrespective of the destitution which a child born from a second marriage of a deceased employee may

face, compassionate appointment is to be refused unless the second marriage was contracted with the permission of the administration. Once Section 16 of the Hindu Marriage Act, 1955 regards a child born from a marriage entered into while the earlier marriage is subsisting to be legitimate, it would not be open to the State, consistent with Article 14 to exclude such a child from seeking the benefit of compassionate appointment. Such a condition of exclusion is arbitrary and ultra vires.

The salutary purpose underlying the grant of compassionate appointment, which is to prevent destitution and penury in the family of a deceased employee requires that any stipulation or condition which is imposed must have or bear a reasonable nexus to the object which is sought to be achieved. The learned Additional Solicitor General has urged that it is open to the State, as part of its policy of discouraging bigamy to restrict the benefit of compassionate appointment, only to the spouse and children of the first marriage and to deny it to the spouse of a subsequent marriage and the children. We are here concerned with the exclusion of children born from a second marriage. By excluding a class of beneficiaries who have been deemed legitimate by the operation of law, the condition imposed is disproportionate to the object sought to be achieved. Having regard to the purpose and object of a scheme of compassionate appointment, once the law has treated such children as legitimate, it would be impermissible to exclude them from being considered for compassionate appointment. Children do not choose their parents. To deny compassionate appointment though the law treats a child of a void marriage as legitimate is deeply offensive to their dignity and is offensive to the constitutional guarantee against discrimination. **Union of India v. V.R. Tripathi, AIR 2019 SC 666.**

Art. 21- Fair trial

Held: The importance of a fair investigation from the point of view of an accused as a guaranteed constitutional right under Article 21 of 6 the Constitution of India, it is considered necessary that the law in this regard be laid down with certainty. To leave the matter for being determined on the individual facts of a case, may not only lead to a possible abuse of powers, but more importantly will leave the police, the accused, the lawyer and the courts in a state of uncertainty and confusion which has to be avoided. It is therefore held that a fair investigation, which is but the very foundation of fair trial, necessarily postulates that the informant and the investigator must not be the same person. Justice must not only be done, but must appear to be done also. Any possibility of bias or a predetermined conclusion has to be excluded. This requirement is all the more imperative in laws carrying a reverse burden of proof."

The paramount consideration being to interpret the law so that it operates fairly, the facts of that case did not show any need to visualise what all exceptions

must be carved out and provided for. The attention of the Court was also not invited to the need for considering the carving out of exceptions.

Individual rights of the accused are undoubtedly important. But equally important is the societal interest for bringing the offender to book and for the system to send the right message to all in the society - be it the lawabiding citizen or the potential offender. 'Human rights' are not only of the accused but, extent apart, also of the victim, the symbolic member of the society as the potential victim and the society as a whole.

Law has to cater to wide variety of situations as appear in society. Law being dynamic, the certainty of the legislation appears rigid at times whenever a circumstance (set of facts) appears which is not catered for explicitly. Expediency then dictates that the higher judiciary, while interpreting the law, considers such exception(s) as are called for without disturbing the pith and substance and the original intention of the legislature. This is required primarily for the reason to help strike a balance between competing forces - justice being the end - and also because the process of fresh legislation could take a long time, which would mean failure of justice, and with it erosion of public confidence and trust in the justice delivery system.

The principle of fair trial now informs and energizes many areas of the law. It is a constant, ongoing, evolutionary process continually adapting itself to changing circumstances, and endeavouring to meet the exigencies of the situation - peculiar at times - and related to the nature of crime, persons involved, directly or operating from behind, and so many other powerful factors which may come in the way of administration of criminal justice, wherefore the endeavour of the higher courts, while interpreting the law, is to strike the right balance.

Societal interest therefore mandates that the law laid down in Mohan Lal (supra) cannot be allowed to become a spring board by an accused for being catapulted to acquittal, irrespective of all other considerations pursuant to an investigation and prosecution when the law in that regard was nebulous.

Criminal jurisprudence mandates balancing the rights of the accused and the prosecution. If the facts in Mohan Lal (supra) were telling with regard to the prosecution, the facts in the present case are equally telling with regard to the accused. There is a history of previous convictions of the appellant also. We cannot be oblivious of the fact that while the law stood nebulous, charge sheets have been submitted, trials in progress or concluded, and appeals pending all of which will necessarily be impacted.

Prospective declaration of law is a device innovated 10 by this Court to avoid reopening of settled issues and to prevent multiplicity of proceedings. It is also a device adopted to avoid uncertainty and avoidable litigation. By the very object of prospective declaration of law, it is deemed that all actions taken contrary to the

declaration of law, prior to the date of the declaration are validated. This is done in larger public interest. Therefore, the subordinate forums which are bound to apply law declared by this Court are also dutybound to apply such dictum to cases which would arise in future. Since it is indisputable that a court can overrule a decision there is no valid reason why it should not be restricted to the future and not to the past. Prospective overruling is not only a part of constitutional policy but also an extended facet of stare decisis and not judicial legislation. **Varinder Kumar V. State of Himachal Pradesh 2019 (2) Supreme 610**

Arts. 32, 226 – Administration of Justice

Held – Direction issued by Supreme Court

The Committee will make its recommendations as soon as feasible, other than with respect to the first three Terms of Reference, dealt with above. It may consider, if necessary, sending reports on any of the matters as and when the recommendations are finalized. It shall also make its recommendations to the State Governments.

The Committee will devise its own procedure and formulate modalities necessary for accomplishing the task. It may appoint such advisers, institutional consultants and experts as it may consider necessary for any particular purpose. It may call for such information and take such evidence as it may consider necessary. All State Governments, UT Administrations and the Ministries/Departments of the Central Government will furnish such information, documents and other assistance as required by the Committee.

We request the Committee to complete the collection of data and information and make appropriate recommendations and submit the same to this Court preferably within a period of 12 months.

The Committee may visit the States and interact with authorities concerned of the State Governments. All authorities of the State Governments and Union Territories may be directed to extend full cooperation with Committee. It would be the responsibility of the State Governments to cooperate with the Committee and facilitate its visit and outreach to relevant authorities.

The Committee shall be at liberty to approach this Court to seek any further clarification or direction, if felt necessary.

The Government of India will make the services of an Additional Solicitor General of India, as and when required by the Committee for any assistance.

As and when a copy of the final report is submitted, the matter to be listed for further orders.

The writ petition may be revived and listed as and when required by the learned Amicus Curiae. We record our appreciation of the efforts put in by the learned Amicus who has devoted considerable time in assisting us and has made valuable suggestions from time to time, in a positive manner, and with a view to take forward

the recognition and implementation of the human rights of prisoners. **Re- Inhuman Conditions in 1382 Prisons 2019 (1) Supreme 356**

Art.33 - PIL - Writ petition at instance of next friend of accused for transfer of investigation to independent Investigating Agency or for Court monitored investigation - Cannot be countenanced, as public interest litigation.

Per A. M. Khanwilkar, J. (for and on behalf of Dipak Misra, C.J.I.):- Petitioners, who are strangers to the offence under investigation and since they are merely espousing the cause of the arrested five accused as their next friends, cannot be heard to ask for the reliefs which otherwise cannot be granted to the accused themselves. What cannot be done directly, cannot be allowed to be done indirectly even in the guise of public interest litigation. Prayer for changing the Investigating Agency cannot be dealt with lightly and the Court must exercise that power with circumspection. As a result, we have no hesitation in taking a view that the writ petition at the instance of the next friend of the accused for transfer of investigation to independent Investigating Agency or for Court monitored investigation cannot be countenanced, much less as public interest litigation. **Romila Thapar and Ors. v. Union of India and Ors. 2019 CRI. L. J. SC 262 (Full Bench)**

Art. 141 – Judicial discipline – Issuance of order by High Court contrary to order of its own co-ordinate bench – Is against Judicial propriety

It is against judicial propriety to issue orders contrary to the orders of its own co-ordinate Bench, as the same had attained finality. Judicial discipline disciple mandates respecting mandates respecting of orders of co-ordinate Benches of the High Court. Secondly, the manner in which the order is made without even issuance of notice to the GDA on the first material date of hearing goes against the cherished Principle of Natural Justice, audi alteram partem, the right to fair hearing. **Ghaziabad Development Authority V. Machhla Devi, 2019 (1) ALJ 655)(SC)**

Art. 215-

Article 215 of the Constitution of India reads as under:-

"Article 215. High Courts to be courts of record.— Every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself."

It is clear that these constitutional courts, being courts of record, the jurisdiction to recall their own orders is inherent by virtue of the fact that they are superior courts of record. **Municipal Corporation of Greater Mumbai v. Partibha Industries Ltd., AIR 2019 SC 650**

Art. 226-

A regular suit is the appropriate remedy for settlement of the disputes relating to property rights between the private persons. The remedy under Article 226 of the Constitution shall not be available except where violation of some statutory duty on the part of statutory authority is alleged. In such cases, the Court has jurisdiction to issue appropriate directions to the authority concerned. It is held that the High Court cannot allow its constitutional jurisdiction to be used for deciding disputes, for which remedies under the general law, civil or criminal are available. This Court has held that it is not intended to replace the ordinary remedies by way of a civil suit or application available to an aggrieved person. The jurisdiction under Article 226 of the Constitution being special and extraordinary, it should not be exercised casually or lightly on mere asking by the litigant. **Roshina T. v. Abdul Azeez K.T., AIR 2019 SC 659: 2019(1) ARC 36, S.C.**

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Consumer Protection Act:

S. 2(1) – Maintainability of Complaint

A closer look at Section 2(1)(b) would show that under sub-clause (i) it is the consumer himself, as aggrieved person who could be the Complainant and maintain an action. Under sub-clause (ii), a voluntary organization or association may espouse the cause of such aggrieved person. Under sub- clause (iii) either the central government or the state government may take-up the matter as complainant. We are, however, concerned with the expression appearing in sub-clause (iv) which reads "one or more consumers whether there are numerous consumers having the same interest". This very expression finds incorporated in sub-clause (c) of Section 12(1) with an addition following said expression, namely "….. with the permission of the District Forum, on behalf of, or for the benefit of, all consumers so interested". **Rameshwar Prasad Shrivastava v. Dwarkadhis Projects Pvt. Ltd., AIR 2019 SC 169**

Sec. 12(1)

Section 12(1) thus in its substantive part says that a complaint may be filed with the District Forum by any of the four categories as mentioned in sub-clauses 'a' to 'd'. Since sub-clause (c) contemplates filing of such complaint, "….. with the permission of the District Forum", we will have to see the context and in what manner such permission is required to be taken in terms of the provisions of the Act. The answer is available in Section 13(6) of the Act which inter alia lays down that where the complaint is referable to Section 2(1)(b)(iv), the provisions of Rule 8 of Order 1 of the First Schedule to the CPC, 1908 (Act 5 of 1908) shall apply subject to the modification that every reference therein to a suit or decree shall be construed as a reference to a complaint or the order of the District forum thereon. The mandate, "shall apply" is quite significant. **Rameshwar Prasad Shrivastava v. Dwarkadhis Projects Pvt. Ltd., AIR 2019 SC 169**

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Criminal Jurisprudence:

Held: In a case wherein the High Court has acquitted the accused of all charges, there is a double presumption in favour of the accused, as the initial presumption of innocence is further reinforced by an acquittal by the High Court. In such a case, this Court will keep in mind that the presumption of innocence in favour of the accused has been fortified by the order of acquittal and thus if the view of the High Court is reasonable and based on the material on record, this Court should not interfere with the same. Interference is to be made only when there are compelling and substantial reasons to do so, and if the ultimate conclusion reached by the High Court is palpably erroneous, constituting a substantial miscarriage of justice. Moreover, interference can be made if there is a misconception of law or erroneous appreciation of evidence or the High Court has completely misdirected itself in reversing the order of conviction by the Trial Court. **Ashish Jain V. Makrand Singh 2019 (1) Supreme 466**

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Criminal Procedure Code:

Sec. 53-A – Medical examination of the accused and description of material taken from person of accused for D.N.A. Profiling

While section 53-A of the Cr.P.C. is not mandatory, it certainly requires a positive decision to be taken. There must be reasonable grounds for believing that the examination of a person will afford evidence as to the commission of an offence of rape or an attempt to commit rape. If reasonable grounds exist, then a medical examination as postulated by Section 53-A (2) of the Cr.P.C. must be conducted and that includes examination of the accused and description of material taken from the person of the accused for DNA profiling. Looked at from another point of view, if there are reasonable grounds for believing that an examination of the accused will not afford evidence as to the commission of an offence as mentioned above, it is quite unlikely that a charge-sheet would even be filed against the accused for committing an offence of rape or attempt to rape. **Rajendra Pralhadrao Wasnik V. State of Maharastra, 2019 (106) ACC 717 (SC)**

Ss.154, 156(3) - Registration of FIR - Powers of Magistrate -High Court prescribed guidelines for application of judicial mind by Magistrate while invoking powers under S. 156 (3) of Cr.P.C. Guidelines laid down by High Court for application of judicial mind by Judicial Magistrate while invoking power under S. 156(3) as under -

1. The Magistrate should be well advised to verify truth and veracity of allegations, regard being had to nature of allegations of case.
2. There has to be prior applications under S. 154(1) and 154(3) while filing a petition under S. 156(3) of Code.

3. Both the aspects should be clearly spelt out in application and necessary documents to that effect shall be filed which are the sine qua non for application under S. 156(3).
4. An application under S. 156(3) should be supported by affidavit so that the person making the application should be conscious and also endeavour to see that no false affidavit is made.
5. A number of cases pertaining to fiscal sphere, matrimonial dispute/family disputes, commercial offences, medical negligence cases, corruption cases and the cases where there is abnormal delay/ laches in initiating criminal prosecution are being filed.
6. Learned Magistrate should also be aware of the abnormal delay in lodging of the FIR in initiating criminal prosecution. **Mukul Roy v. State of West Bengal and Ors. 2019 CRI. L. J. SC 245**

Sec. 156(3)—

In the scheme of the Code, an Executive Magistrate has no role to play in directing the police to register an F.I.R. on basis of a private complaint lodged before him. If a complaint is lodged before the Executive Magistrate regarding an issue over which he has administrative jurisdiction, and the Magistrate proceeds to hold an administrative inquiry, it may be possible for him to lodge an F.I.R. himself in the matter. In such a case, entirely different considerations would arise. A reading of the F.I.R. reveals that the police has registered the F.I.R on directions of the SubDivisional Magistrate which was clearly impermissible in the law. The SubDivisional Magistrate does not exercise powers under Section 156(3) of the Code. The very institution of the F.I.R. in the manner done is contrary to the law and without jurisdiction**. Naman Singh Alias Naman Pratap Singh V. State of U.P., (2019) 2 SCC 344**

Sec.167 - Remand - Extension - In absence of provisions empowering Court to extend statutory period of 60 or 90 days - Extension, not permissible.
Sec.167(2), S.173 - Default bail - Entitlement - Investigation report filed 2 days before completion of 90 days of remand returned by Magistrate on ground that it was filed by Police Officer lower in rank than ASP, contrary to order passed by High Court - Thus as on expiry of 90 days, there was no charge-sheet for consideration of Court - Fact that period of completion of investigation coming to end not disclosed when High Court passed its order directing Gazetted Police Officer to complete investigation within two months - Rejection of bail of accused persons by wrongly interpreting that High Court extended period of investigation, erroneous - Accused persons entitled to bail.

The questions however arise in the present matter are slightly of different dimension. Here investigation was completed and Challan under Section 173 was filed on 05.07.2018. However, just two days before that, an order had been passed by the

High Court recording submission of the public prosecutor that investigation in the matter would be conducted by a Gazetted Police Officer. The investigation which led to the filing of the report on 05.07.2018, was not in conformity with the statement made before the High Court. It was for this reason that the papers were returned by the Magistrate. All this happened before the expiry of 90th day. Can it be said that the investigation was complete for the purposes of Section 167(2) of the Code so as to deny the benefit to the accused in terms of said provision. Additionally another issue which arises for consideration is whether the order passed by the High Court could be construed as one under which the period for completing the investigation was extended.

In the present case as on the 90th day, there were no papers or the charge-sheet in terms of Section 173 of the Code for the concerned Magistrate to assess the situation whether on merits the accused was required to be remanded to further custody. Though the charge-sheet in terms of Section 173 came to be filed on 05.07.2018, such filing not being in terms of the order passed by the High Court on 03.07.2018, the papers were returned to the Investigating Officer. Perhaps it would have been better if the Public Prosecutor had informed the High Court on 03.07.2018 itself that the period for completing the investigation was coming to a close. He could also have submitted that the papers relating to investigation be filed within the time prescribed and a call could thereafter be taken by the Superior Gazetted Officer whether the matter required further investigation in terms of Section 173(8) of the Code or not. That would have been an ideal situation. But we have to consider the actual effect of the circumstances that got unfolded. The fact of the matter is that as on completion of 90 days of prescribed period under Section 167 of the Code there were no papers of investigation before the concerned Magistrate. The accused were thus denied of protection established by law. The issue of their custody had to be considered on merits by the concerned Magistrate and they could not be simply remanded to custody dehors such consideration. In our considered view the submission advanced by Mr. Dave, learned Advocate therefore has to be accepted. We now turn to the subsidiary issue, namely, whether the High Court could have extended the period. The provisions of the Code do not empower anyone to extend the period within which the investigation must be completed nor does it admit of any such eventuality. There are enactments such as the Terrorist and Disruptive Activities (Prevention) Act, 1985 and Maharashtra Control of Organised Crime Act, 1999 which clearly contemplate extension of period and to that extent those enactments have modified the provisions of the Code including Section 167. In the absence of any such similar provision empowering the Court to extend the period, no Court could either directly or indirectly extend such period. In any event of the matter all that the High Court had recorded in its order dated 03.07.2018 was the submission that the investigation would be completed within two months by a Gazetted Police Officer.

The order does not indicate that it was brought to the notice of the High Court that the period for completing the investigation was coming to an end. Mere recording of submission of the Public Prosecutor could not be taken to be an order granting extension. We thus reject the submissions in that behalf advanced by the learned Counsel for the State and the complainant.

In our considered view the accused having shown their willingness to be admitted to the benefits of bail and having filed an appropriate application, an indefeasible right did accrue in their favour. **Achpal alias Ramswaroop and Anr. v. State of Rajasthan 2019 CRI. L. J. 401 SC**

Sec.167(2) - Statutory bail - Charge sheet to be filed within 90 days - Special Judge (P.C. Act) having jurisdiction to take cognizance of offence under Prevention of corruption Act against petitioner - However, case was transferred from that court i. e. Special Judge (P.C. Act) on 10th Oct. 2017 with clear direction that supplementary charge sheet to be filed only in court of Special Judge (PMLA) - Thus, after 10 th Oct 2017, Special Judge (P.C. Act) becoming functus officio - He could not have after said date, accepted supplementary charge sheet against petitioner - Since Special Judge (PMLA) did not receive supplementary charge sheet till 17th Oct. 2017, by which time 90 days had elapsed, petitioner was entitled to statutory bail.

The Special Judge (P.C. Act) did have the jurisdiction to take cognizance of the offences under the P.C. Act and IPC. However, once the case was transferred from that court on 10th October, 2017 with a clear direction that the charge sheet was to be filed only in the court of the Special Judge (PMLA),
the learned Special Judge (P.C. Act) could not have thereafter entertained any further request by the CBI. As far as the present case is concerned, after 10th October, 2017, the Special Judge (P.C. Act) should be held to have become functus officio qua this case.

There was no question of the Special Judge (P.C. Act) taking on board, after 10th October, 2017, any supplementary charge sheet with regard to FIR No.205/2016. For the purpose of Section 167 (2), Cr.P.C., the investigation qua the Petitioner was complete only when the supplementary charge sheet was filed in the jurisdictional court. The court of the Special Judge (P.C. Act) ceased to have jurisdiction qua the present case after 10th October, 2017 and in any event, after 12th October 2017, when the file was received by the District Judge (HQ), Tis Hazari Courts with a clear direction that it should be transmitted forthwith to the Special Judge (PMLA) at Saket Court. The order dated 12th
October, 2017 of the District Judge (HQ), Tis Hazari Courts makes it abundantly clear that the Special Judge (P.C. Act), after that date, could not have accepted the supplementary charge sheet filed by the CBI.

The problem of the file not reaching the Special Judge (PMLA) has to do with the internal administrative arrangements in the judiciary. While the CBI cannot be blamed for failing to file the charge sheet before the proper Court,
since the file had not reached such Court, equally the accused cannot also be deprived of the right to statutory bail as a result thereof. It is only when the Court of the Special Judge (PMLA) received the supplementary charge sheet could it be said that the investigation qua the Petitioner was complete.
That did not happen, for the reasons already noted, till 17th October, 2017, by which time the 90 days period had elapsed.
To summarize the conclusions:
(i) The plea of the Petitioner that since no cognizance has yet been taken of the offence qua the Petitioner, the continued detention of the Petitioner in the judicial custody is illegal, is rejected.
(ii) The failure by the Investigating Agency to file a supplementary charge sheet qua the Petitioner before the Court having jurisdiction i.e. the Court of the Special Judge, PMLA, before the expiry of 90 days i.e. on or before 16th October, 2017, would entitle the Petitioner to the relief of the statutory bail/default bail under Section 167(2), Cr.P.C. Directions

Accordingly, the Petitioner is directed to be released on bail in FIR No.205/2016, subject to his furnishing a personal bond in the sum of Rs. one lac with one surety of the like amount to the satisfaction of the Special Judge, PMLA and further subject to the following conditions:
(i) The Petitioner will surrender his passport to the investigating agency.
(ii) The Petitioner will not leave the country without the prior permission of the Special Judge, PMLA.
(iii) The Petitioner will not contact any of the witnesses cited by the prosecution or in any manner interfere with the fair progress of the trial of the case from the stage onwards. **Yogesh Mittal v. State of NCT of Delhi 2019 CRI. L. J. 207 SC**

Sec.173 - Transfer of investigation - Bhima Koregaon violence case - Accused cannot ask for changing the Investigating Agency or to do investigation in a particular manner including Court monitored investigation –

Since accused already resorted to legal remedies before jurisdictional Court and same are pending, they can avail remedies permissible in law before jurisdictional courts during investigation.

Per A. M. Khanwilkar, J. (for and on behalf of Dipak Misra, C.J.I.):-Except pointing out some circumstances to question the manner of arrest of five named accused sans any legal evidence to link them with crime under investigation, no specific material facts and particulars are found in petition about mala fide exercise of power by investigating officer. A vague and unsubstantiated assertion in that regard is

not enough. After considering material on record it seems that it is not case of arrest because of mere dissenting views expressed or difference in political ideology of named accused, but concerning their link with the members of the banned organisation and its activities. This is not the stage where efficacy of the material or sufficiency thereof can be evaluated nor it is possible to enquire into whether the same is genuine or fabricated.

Accused have already resorted to legal remedies before jurisdictional Court and the same are pending. If so, they can avail of such remedies as may be permissible in law before the jurisdictional courts at different stages during the investigation as well as the trial of the offence under investigation.

During the investigation, when they would be produced before the Court for obtaining remand by the Police or by way of application for grant of bail, and if they are so advised, they can also opt for remedy of discharge at the appropriate stage or quashing of criminal case if there is no legal evidence, whatsoever, to indicate their complicity in the subject crime. Accused cannot ask for changing the Investigating Agency or to do investigation in a particular manner including for Court monitored investigation.

Per Dr. D. Y. Chandrachud (Dissenting):-There is a serious allegation that the arrests have been motivated by an attempt to quell dissent and to persecute five individuals who have pursued the cause of persons who have suffered discrimination and human rights violations. Though the prayer seeking the appointment of a Special Investigating Team is sought to be introduced by way of an application for amendment, in original petition it has been stated that the object of petition is not to stop investigation but to ensure independent and credible investigation. Application for amendment, does not, set up a new case but is intended to introduce a formal prayer on basis of averments which have already been made in the petition as it was originally filed. The manner in which Joint Commissioner of Police and Additional Director General of Police, Maharashtra have selectively disclosed purported details of the investigation to media and on television channels casts a cloud on impartiality of investigative process. Conduct of Pune police in utilising the agency of electronic media to cast aspersions on those under investigation fortifies the need for investigation which is fair.

Maintainability of a prayer for relief, seeking that the investigation should be either monitored by this Court or should be entrusted to independent SIT under the directions of this Court cannot be in doubt.

Purpose of proposed directions is to ensure fair process of investigation to every citizen, facing allegations of criminal wrongdoing. This is an integral component of the guarantee against arbitrariness under Art. 14 and of the right to life and personal liberty under Art. 21 'It is trite law that accused persons do not have a say in the matter of appointment of an investigation agency' and that 'the accused

persons cannot choose as to which investigation agency must investigate the alleged offence committed by them', the Court also observed that there were 'large and various discrepancies' in the reports and the investigation conducted by the police authorities of the State of Gujarat and that the charge-sheet filed by the state investigating agency could not be 'said to have run in a proper direction.' In the interest of justice, and particularly when there are serious doubts regarding the investigation being carried out, it is not only permissible, but it is constitutional duty to ensure that the investigation is carried out by a special investigation team or a special investigative agency so that justice is not compromised. Hence a Special Investigating Team must be appointed and investigation shall be monitored by this Court. **Romila Thapar and Ors. v. Union of India and Ors. 2019 CRI. L. J. 262 SC (Full Bench)**

Sec. 231 – Deferral in Cross Examination

Section 231(2) of the Cr.P.C., however, confers a discretion on the Judge to defer the cross-examination of any witness until any other witness or witnesses have been examined, or recall any witness for further cross-examination, in appropriate cases. Judicial discretion has to be exercised in consonance with the statutory framework and context while being aware of reasonably foreseeable consequences. The party seeking deferral under Section 231(2) of the Cr.P.C. must give sufficient reasons to invoke the exercise of discretion by the Judge, and deferral cannot be asserted as a matter of right.

The circumstances in which the High Courts have approved the exercise of discretion to defer cross-examination, so as to avoid prejudice due to disclosure of strategy are:

- Where witnesses were related to each other, and were supposed to depose on the same subject-matter and facts;
- Where witnesses were supposed to depose about the same set of facts

However, the circumstances in which deferral has been refused are:

- where the ground for deferral was the mere existence of a relationship between the witnesses;
- where specific reasons were not given in support of the claim that prejudice would be caused since the defence strategy would be disclosed;
- where no prejudice would have been caused.

There cannot be a straitjacket formula providing for the grounds on which judicial discretion under Section 231(2) of the Cr.P.C. can be exercised. The exercise of discretion has to take place on a case-to-case basis. The guiding principle for a Judge under Section 231(2) of the Cr.P.C. is to ascertain whether prejudice would be caused to the party seeking deferral, if the application is dismissed.

While deciding an Application under Section 231(2) of the Cr.P.C., a balance must be struck between the rights of the accused, and the prerogative of the prosecution to lead evidence. The following factors must be kept in consideration:

- possibility of undue influence on witnesses;
- possibility of threats to witnesses;
- possibility that non-deferral would enable subsequent witnesses giving evidence on similar facts to tailor their testimony to circumvent the defence strategy;
- possibility of loss of memory of the witnesses whose examination-in-chief has been completed;
- occurrence of delay in the trial, and the non-availability of witnesses, if deferral is allowed, in view of Section 309(1) of the Cr.P.C.

These factors are illustrative for guiding the exercise of discretion by a Judge under Section 231(2) of the Cr.P.C.

The following practice guidelines should be followed by trial courts in the conduct of a criminal trial, as far as possible:

i. a detailed case-calendar must be prepared at the commencement of the trial after framing of charges;

ii. the case-calendar must specify the dates on which the examination-in-chief and cross-examination (if required) of witnesses is to be conducted;

iii. the case-calendar must keep in view the proposed order of production of witnesses by parties, expected time required for examination of witnesses, availability of witnesses at the relevant time, and convenience of both the prosecution as well as the defence, as far as possible;

iv. testimony of witnesses deposing on the same subject-matter must be proximately scheduled;

v. the request for deferral under Section 231(2) of the Cr.P.C. must be preferably made before the preparation of the case-calendar;

vi. the grant for request of deferral must be premised on sufficient reasons justifying the deferral of cross-examination of each witness, or set of witnesses;

vii. while granting a request for deferral of cross-examination of any witness, the trial courts must specify a proximate date for the cross-examination of that witness, after the examination-in-chief of such witnesses as has been prayed for;

viii. The case-calendar, prepared in accordance with the above guidelines, must be followed strictly, unless departure from the same becomes absolutely necessary;

ix. in cases where trial courts have granted a request for deferral, necessary steps must be taken to safeguard witnesses from being subjected to undue influence, harassment or intimidation. **State of Kerala v. Rasheed, AIR 2019 SC 721**

Ss.301 & 24 - Role of Public Prosecutor - Public prosecutor has to act with responsibility - He cannot be totally guided by Govt. instructions, for withdrawal from prosecution, without applying his mind to consider effect of such withdrawal on public interest - But is required to assist the Court for achieving social justice.

We are compelled to recapitulate that there are frivolous litigations but that does not mean that there are no innocent sufferers who eagerly wait for justice to be done. That apart, certain criminal offences destroy the social fabric. Every citizen gets involved in a way to respond to it; and that is why the power is conferred on the Public Prosecutor and the real duty is cast on him/her. He/she has to act with responsibility. He/she is not to be totally guided by the instructions of the Government but is required to assist the Court; and the Court is duty bound to see the precedents and pass appropriate orders. **Abdul Wahab K v. State of Kerala and Ors. 2019 CRI. L. J. SC 415**

Sec. 311 – Scope of

Sec. 311 of the Code of Criminal Procedure, 1973 (for short 'the Code') provides for the power of the court to summon material witness or examination person present. It reads as follows:

x. "311. Power to summon material witness, or examine person present.—Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case."

xi. The first part of this Section which is permissive gives purely discretionary authority to the criminal court and enables it at any stage of inquiry, trial or other proceedings under the Code to act in one of the three ways, namely, (i) to summon any person as a witness; or (ii) to examine any person in attendance, though not summoned as a witness; or (iii) to recall and re-examine any person already examined. The second part, which is mandatory, imposes an obligation on the court (i) to summon and examine or (ii) to recall and re-examine any such person if his evidence appears to be essential to the just decision of the case.

xii. It is well settled that the power conferred under Section 311 should be invoked by the court only to meet the ends of justice. The power is to be exercised only for strong and valid reasons and it should be exercised with great caution and

circumspection. The court has vide power under this Section to even recall witnesses for reexamination or further examination, necessary in the interest of justice, but the same has to be exercised after taking into consideration the facts and circumstances of each case. The power under this provision shall not be exercised if the court is of the view that the application has been filed as an abuse of the process of law. **Swapan Kumar Chatterjee V. Central Bureau of Investigation 2019 (2) Supreme 742**

Sec.313 - Examination of accused - Complete non-consideration of defence of accused under S. 313 causing prejudice - Vitiates conviction.

Sec. 313, Cr.P.C. cannot be seen simply as a part of audi alteram partem. It confers a valuable right upon an accused to establish his innocence and can well be considered beyond a statutory right as a constitutional right to a fair trial under Art. 21 of the Constitution, even if it is not to be considered as a piece of substantive evidence, not being on oath under S. 313(2), Cr.P.C. The importance of this right has been considered time and again by Supreme Court, but it yet remains to be applied in practice as we shall see presently in the discussion to follow. If the accused takes a defence after the prosecution evidence is closed, under S. 313(1)(b) Cr.P.C. the Court is duty bound under S. 313(4) Cr.P.C. to consider the same. The mere use of the word 'may' cannot be held to confer a discretionary power on the court to consider or not to consider such defence, since it constitutes a valuable right of an accused for access to justice, and the likelihood of the prejudice that may be caused thereby. Whether the defence is acceptable or not and whether it is compatible or incompatible with the evidence available is an entirely different matter. If there has been no consideration at all of the defence taken under S. 313 Cr.P.C., in the given facts of a case, the conviction may well stand vitiated. A solemn duty is cast on the court in dispensation of justice to adequately consider the defence of the accused taken under S. 313 Cr.P.C. and to either accept or reject the same for reasons specified in writing. In present case, unfortunately neither Trial Court nor the High Court considered it necessary to take notice of, much less discuss or observe with regard to defence of false implication taken by accused under S. 313 Cr.P.C. to either accept or reject it. The defence taken cannot be said to be irrelevant, illogical or fanciful in the entirety of the facts and the nature of other evidence available. The complete nonconsideration thereof has clearly caused prejudice to the appellant. Unlike the prosecution, the accused is not required to establish the defence beyond all reasonable doubt. The accused has only to raise doubts on a preponderance of probability. **Reena Hazarika v. State of Assam 2019 CRI. L. J. 388 SC**

Sec. 313 – Object of

Held: The object of Sec. 313 Cr.P.C. is to put a circumstance against the accused so that he may meet out the prosecution case and explain the circumstances brought out by the prosecution to implicate him in the commission of the offence. If any circumstance had not been put to the accused in his statement, the same shall be excluded from consideration. Of course, this is \subject to a rider whether omission to put the question under section 313 Cr.P.C. has caused miscarriage of justice or prejudice to the accused. **State of U.P. V. Raghuvir and another 2019 (1) Supreme 493**

Section 319 – Scope of-

Sec.319 (1) of the Cr.P.C. empowers the Court to proceed against other persons who "appear" to be guilty of an offence, though not accused before the Court. The word "appear" means "clear to the comprehension", or a phrase near to, if not synonymous with "proved", and imparts a lesser degree of probability than proof. Though only a prima facie case is to be established from the evidence led before the Court, it requires much stronger evidence than a mere probability of the complicity of the persons against whom the deponent has deposed. The test that has to be applied is of a degree of satisfaction which is more than that of a prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes unrebutted, may lead to conviction of the proposed accused. In the absence of such satisfaction, the Court should refrain from exercising the power under Section 319 of the Cr.P.C. **Dev Wati v. State of Haryana, AIR 2019 SC 641**

Sec. 319 – Framing of Charge

The court should keep in mind that the witness when giving evidence against the person so discharged, is not doing so merely to seek revenge or is naming him at the behest of someone or for such other extraneous considerations. The court has to be circumspect in treating such evidence and try to separate the chaff from the grain. If after such careful examination of the evidence, the court is of the opinion that there does exist evidence to proceed against the person so discharged, it may take steps but only in accordance with Section 398 Cr.P.C. without resorting to the provision of Section 319 Cr.P.C. directly. **Deepu v. State of Madhya Pradesh, (2019)2 SCC 393 : AIR 2019 SC 265**

Sec. 319—Supplementary charge sheet ignored by trial court—Effect of

At an earlier point of time the supplementary charge sheet was ignored by the Trail Court while discharging the appellant, there is no bar to proceed against him under Sec. 319 Cr.p.C. based on the supplementary charge sheet, that too when sufficient material is brought on record against him during the course of trial. The

supplementary charge sheet shows that the identification parade was held, herein the appellant was identified by the witnesses as one of the accused who participated in the incident of murder.

The Court should keep in mind that the witness when giving evidence against the person so discharged, is not doing so merely to seek revenge or is naming him at the behest of someone or for such other extraneous considerations. The Court has to be circumspect in treating such evidence and try to separate the chaff from the grain. If after such careful examination of the evidence, the Court is of the opinion thaqt there does exist evidence to proceed against the person so discharged, it may take steps but only in accordance with Sec. 398 Cr.P.C. without resorting to the plrovision of Sec. 319 Cr.P.C. directly. **Deepu Alias Deepak vs. State of M.P., (2019)2 SCC 393 : AIR 2019 SC 265.**

Ss.321&.397 - Withdrawal from prosecution - Public interest - During pendency of criminal proceedings against accused, Public Prosecutor sought withdrawalfrom prosecution - Magistrate allowed request of Public Prosecutor - On ground that case would not likely end in conviction and withdrawal from prosecution necessary for public justice -Public Prosecutor only relying on Govt. Notification for seeking withdrawal - Failure of Public Prosecutor to independently apply his own mind to consider effect of such withdrawal on public interest - Order of Magistrate not passed within parameters of S. 321 - Order of Magistrate allowing application for withdrawal from prosecution passed without due application of mind - Liable to be set aside.

In V.L.S. Finance Limited v. S.P. Gupta and another12, a two-Judge Bench, after analyzing the law in detail, has ruled :-

"42. We have enumerated the principles pertaining to the jurisdiction of the Court while dealing with an application preferred under Section 321 CrPC and also highlighted the role of the Public Prosecutor who is required to act in good faith, peruse the materials on record and form an independent opinion that the withdrawal from the prosecution would really subserve the public interest at large. The authorities referred to hereinabove clearly spell out that the Public Prosecutor is not supposed to act as a post office and he is expected to remember his duty to the Court as well as his duty to the collective."

In the case at hand, as is evincible, the learned Chief Judicial Magistrate has dwelt upon the merits and expressed an opinion that the case is not likely to end in conviction. It is clearly manifest that the Public Prosecutor had not applied his mind but had only placed the Government notification on record. The High Court has unsuited the petitioners on the ground that they are third parties who are unconnected with the case. They had filed revisions and the High Court has been conferred power to entertain the revisions and rectify the errors which are apparent or totally uncalled

for. This is the power of superintendence of the High Court. Thus viewed, the petitioners could not have been treated as strangers, for they had brought it to the notice of the High Court and hence, it should have applied its mind with regard to the correctness of the order. It may be said with certitude that the revision petitions filed before the High Court were not frivolous ones. They were of serious nature. It is a case where the Public Prosecutor had acted like a post office and the learned Chief Judicial Magistrate has passed an order not within the parameters of Section 321 CrPC. He should have applied the real test stipulated under Section 321 CrPC and the decisions of this Court but that has not been done. **Abdul Wahab K v. State of Kerala and Ors. 2019 CRI. L. J. 415 SC**

Sec. 340—Object of

Sec. 340 of Cr.P.C. makes it clear that a prosecution under this Section can be initiated only by the sanction of the court under whose proceedings an offence referred to in Section 195(1)(b) has allegedly been committed. The object of this Section is to ascertain whether any offence affecting administration of justice has been committed in relation to any document produced or given in evidence in court during the time when the document or evidence was in custodia legis and whether it is also expedient in the interest of justice to take such action. The court shall not only consider prima facie case but also see whether it is in or against public interest to allow a criminal proceeding to be instituted. **Narendra Kumar Srivastava V. State of Bihar, (2019) 3 SCC 318**

Sec. 354 (3)

The probability is that the convict cannot be reformed or rehabilitated. This can be reformed or rehabilitated. This can be achieved by bringing on record, inter alia, material about his conduct in jail, his conduct outside jail if he has been on bail for some time, medical evidence about his mental make-up, contact with his family and so on. Similarly, the convict can produce evidence on these issues as well.

It an enquiry of this nature is to be conducted, as it mandated by the decisions of this Court, it is quite obvious that the period between the date of conviction and the date of awarding sentence would be quite prolonged to enable the parties to gather and lead evidence which could assist the Trial Court in taking an informed decision on the sentence. But, there is not hurry in this regard, since in any case the convict will be in custody for a fairly long time serving out at least a life sentence. **Rajendra Pralhadrao Wasnik v. State of Maharastra, 2019 (106) ACC 717 (SC)**

Sec. 417—

It is well-established that in an appeal under section 417 of the Criminal Procedure Code, the High Court has full power to review the evidence upon which the

order of acquittal was founded, but it is equally well settled that the presumption of innocence of the accused is further reinforced by his acquittal by the trial court, and the findings of the trial court which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for very substantial and compelling reasons. **Mohd. Akhtar Alias Kari vs. State of Bihar, (2019) 2 SCC 513**

Cr.P.C. – S. 439 – Bail

At the time of considering an application for bail, the Court must take into account certain factors such as the existence of a prima facie case against the accused, the gravity of the allegations, position and status of the accused, the likelihood of the accused fleeing from justice and repeating the offence, the possibility of tampering with the witnesses and obstructing the Courts as well as the criminal antecedents of the accused. It is also well settled that the Court must not go into deep into merits of the matter while considering an application for bail. All that needs to be established from the record is the existence of a prima facie case against the accused**. State of Orissa v. Mahimananda Mishra, AIR 2019 SC 302: 2019 (1) Supreme 259**

Sec. 439-

Held: At the time of considering an application for bail, the Court must take into account certain factors such as the existence of a prima facie case against the accused, the gravity of the allegations, position and status of the accused, the likelihood of the accused fleeing from justice and repeating the offence, the possibility of tampering with the witnesses and obstructing the Courts as well as the criminal antecedents of the accused. It is also well settled that the Court must not go into deep into merits of the matter while considering an application for bail. All that needs to be established from the record is the existence of a prima facie case against the accused. **The State of Orissa V. Mahimananda Mishra AIR 2019 SC 302: 2019 (1) Supreme 259**

S.439 - Bail application - Judicial custody - Surrender or appearance of accused before Court seeking grant of bail - He is deemed to be in judicial custody - Bail application, maintainable.

Sec. 439 of the Cr.P.C. does not specify about the appearance of the accused before that Court.

It simply says that any person accused of offences and in custody may be released on bail. In Niranjan Singh's case (AIR 1980 SC 785) (supra) Hon'ble Supreme Court has not made any difference between the two sections and according to that decision, the appearance of the accused persons before the Court of Sessions shall also be deemed as custody which has been mentioned in paragraphs 8 and 9 of the judgment of Hon'ble Supreme Court in Niranjan Singh's case (supra):

'8. Custody, in the context of Section 439, (we are not, be it noted, dealing with anticipatory bail under Section 438) is physical control or at least physical presence of the accused in court coupled with submission to the jurisdiction and orders of the court.

9. He can be in custody not merely when the police arrests him, produces him before a Magistrate and gets a remand to judicial or other custody. He can be stated to be in judicial custody when he surrenders before the court and submits to its directions. In the present case, the police officers applied for bail before a Magistrate who refused bail and still the accused, without surrendering before the Magistrate, obtained an order for stay to move the Sessions Court. This direction of the Magistrate was wholly irregular and maybe, enabled the accused persons to circumvent the principle of Section 439, Cr.P.C. We might have taken a serious view of such a course, indifferent to mandatory provisions by the subordinate magistracy but for the fact that in the present case the accused made up for it by surrender before the Sessions Court. Thus, the Sessions Court acquired jurisdiction to consider the bail application. It could have refused bail and remanded the accused to custody, but, in the circumstances and for the reasons mentioned by it, exercised its jurisdiction in favour of grant of bail. The High Court added to the conditions subject to which bail was to be granted and mentioned that the accused had submitted to the custody of the court. We therefore, do not proceed to upset the order on this ground. Had the circumstances been different we would have demolished the order for bail. We may frankly state that, had we been left to ourselves, we might not have granted bail but sitting under Article 136, do not feel that we should interfere with a discretion exercised by the two courts below.'

16. The Division Bench of this Court in Pramod Kumar Mehta's case (2007 Cri LJ 2063) (Chh) (supra) has followed the view laid down in Niranjan Singh's case (AIR 1980 SC 785) (supra). In D.K. Ganesh Babu's case (AIR 2007 SC 1450) (supra), the Hon'ble Supreme Court has not distinguished from what was held in Niranjan Singh's case (supra). Similarly, in Sunita Devi's case (supra), it has been held that in view of the decision in Niranjan Singh's case (supra) there cannot be any doubt that unless a person in custody, application under Section 439 of the Cr.P.C. would not be maintainable which shows affirmation of the view laid down by the Supreme Court in Niranjan Singh's case (supra). Hence, after due consideration, on all the submissions and case laws cited, the surrender of the applicant before a Court or his appearance before a Court for praying for grant of bail can be deemed as custody and in that case the application under Section 439 of the Cr.P.C. shall be considered as maintainable. This answers question Nos.1 and 2. **R. T. Ram Chandran and Anr. v. State of Chhattisgarh and Anr. 2019 CRI. L. J. 382 SC**

Sec.439 - Juvenile Justice (Care and Protection of Children) Act (2of 2016), S.12 - Bail - Allegations of stalking and sexually assaulting minor - Parity – Juvenile along with adult co-accused allegedly ravished minor prosecutrix, shot her photographs and thre atened to circulate them on social media - Prosecutrix alleging that juvenile also sexually assaulted her along with other accused - Case of juvenile not on par with that of adult coaccused, as prima facie case established against him - Benefit of parity cannot be extended to juvenile - Juvenile not entitled for grant of bail.

No doubt if an adult offender is entitled to bail on ground that a prima facie case is not made out, certainly a child in conflict with law on the same charge and evidence would also be entitled to bail bereft of reference to the provisions of Section 12(1) of the Act that come into play even when a case against the juvenile offender prima facie is made out to an extent that if he were an adult, he would not be entitled to bail. In that situation the juvenile is still entitled to bail as a matter of rule subject alone to the three known exceptions engrafted in the proviso to Section 12(1) of the Act, that are:-

1. Where there are reasonable grounds for believing that the release is likely to bring the child into association with any known criminal.
2. The release is likely to expose the child to moral, physical or psychological danger.
3. The release of the child would defeat the ends of justice.

So far as the plea based on a parity of sorts from the case of Surendra is concerned, this Court is not inclined to accept the plea of parity for the juvenile based on the premise that on parity from the case of Surendra, an adult offender, the prosecution on merits of the charge is prima facie not established against the revisionist also. This Court is not inclined to extend the benefit of parity based on the decision of this Court In Re Surendra (supra), inasmuch as, in that case His Lordship perhaps, amongst other evidence, took into account a submission advanced on behalf of the applicant that contrary to the FIR, the statement of the prosecutrix under Section 164, Cr.P.C. shows that after molestation "it was Surendra who committed rape upon her also". That is how the matter was viewed in that case in its totality. But this Court feels that in Surendra (supra) on the submissions noticed on both sides by this Court, it did not figure in prominent relief that it was a case where the prosecutrix categorically urged "a case of gang rape" by each of the four accused, including Surendra; it is not that Surendra, alone raped her. No doubt there is a vastly discrepant version in the FIR and the statement of the prosecutrix under Section 164, Cr.P.C., but with utmost respect to the opinion expressed by His Lordship while granting bail to co-accused Surendra, this Court is not inclined to extend the benefit of parity based on the case of Surendra. However, that is not to say that it is a case where the applicant may not at all have a case to urge on merits that the charge against him is not prima facie discernible to an extent that if he were an adult offender, he would be entitled to

bail under Section 439, Cr.P.C. To pronounce upon that aspect may be to pre-empt a decision that, what would be said a little later, might still rest in the first instance, to be taken afresh by the Appellate Court. **Rohit (Minor) v. State of Uttar Pradesh and Anr. 2019 CRI. L. J. 375(All.)**

Sec. 464(1) – Relates to

Section 464 of the Code relates to the effect of omission to frame, or absence of, or error, in charge. Sub-section (1) thereof provides that no finding, sentence or order of a court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charge, unless, in the opinion of the court of appeal, confirmation or revision, a failure of justice has in fact been occasioned thereby. Section 464 Cr.P.C. reads as under:-

> "Effect of omission to frame, or absence of, or error in, charge – (1) No finding, sentence or order by a Court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charges, unless, in the opinion of the Court of appeal, confirmation or revision, a failure of justice has in fact been occasioned thereby. (2) If the court of appeal, confirmation or revision is of opinion that a failure of justice has in fact been occasioned, it may— (a) in the case of an omission to frame a charge, order that a charge be framed and that the trial be recommenced from the point immediately after the framing of the charge; (b) in the case of an error, omission or irregularity in the charge, direct a new trial to be had upon a charge framed in whatever manner it thinks fit."

The object of framing a charge is to enable an accused to have a clear idea of what he is being tried for and of the essential facts that he has to meet. The charge must also contain the particulars of date, time, place and person against whom the offence was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged.

The accused is entitled to know with certainty and accuracy, the exact nature of the charge against him, and unless he has such knowledge, his defence will be prejudiced. Where an accused is charged with having committed offence against one person but on the evidence led, he is convicted for committing offence against another person, without a charge being framed in respect of it, the accused will be prejudiced, resulting in a failure of justice. But there will be no prejudice or failure of justice where there was an error in the charge and the accused was aware of the error. Such knowledge can be inferred from the defence, that is, if the defence of the accused showed that he was defending himself against the real and actual charge and not the erroneous charge.

In judging a question of prejudice, as of guilt, the courts must act with a broad vision and look to the substance and not to the technicalities, and their main concern should be to see whether the accused had a fair trial, whether he knew what he was being tried for, whether the main facts sought to be established against him were explained to him fairly and clearly, and whether he was given a full and fair chance to defend himself.

The defect in framing of the charges must be so serious that it cannot be covered under Sections 464/465 Cr.P.C, which provide that, an order of sentence or conviction shall not be deemed to be invalid only on the ground that no charge was framed, or that there was some irregularity or omission or misjoinder of charges, unless the court comes to the conclusion that there was also, as a consequence, a failure of justice. In determining whether any error, omission or irregularity in framing the relevant charges, has led to a failure of justice, the court must have regard to whether an objection could have been raised at an earlier stage during the proceedings or not. While judging the question of prejudice or guilt, the court must bear in mind that every accused has a right to a fair trial, where he is aware of what he is being tried for and where the facts sought to be established against him, are explained to him fairly and clearly, and further, where he is given a full and fair chance to defend himself against the said charges. **Kamil v. State of Uttar Pradesh, AIR 2019 SC 45.**

Sec. 482

Held : Notwithstanding settlement of the Civil suits by the parties, the criminal case out of which these appeals arise has to be brought to its logical end one way or the other on merits and the High Court was, therefore, not right in quashing the charge-sheet at its threshold under Sec. 482 of the Cr.P.C. **C.B.I. New Delhi V. B.B. Agarwal 2019 (2) Supreme 689**

Sec. 482 – Inherent Power -

Inherent power given to the High Court under Section 482 CrPC is with the purpose and object of advancement of justice. In case solemn process of Court is sought to be abused by a person with some oblique motive, the Court has to thwart the attempt at the very threshold. Judicial process is a solemn proceeding which cannot be allowed to be converted into an instrument of oppression or harassment. When there are materials to indicate that a criminal proceeding is manifestly attended with mala fide and proceeding is maliciously instituted with an ulterior motive, the High Court will not hesitate in exercise of its jurisdiction under Section 482 CrPC to quash the proceeding. The present is a fit case where the High Court ought to have exercised its jurisdiction under Section 482 CrPC and quashed the criminal proceedings.

It is clear that for quashing the proceedings, meticulous analysis of factum of taking cognizance of an offence by the Magistrate is not called for. Appreciation of

evidence is also not permissible in exercise of inherent powers. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken, it is open to the High Court to quash the same in exercise of the inherent powers. **Dr. Dhruvaram Murlidhar Sonar v. State of Maharashtra, AIR 2019 SC 327**

Sec. 482 –

There is nothing in the words of this Section which restricts the exercise of the power of the Court to prevent the abuse of process of court or miscarriage of justice only to the stage of the FIR. It is settled principle of law that the High court can exercise jurisdiction under Section 482 of Cr.P.C even when the discharge application is pending with the trial court3 . Indeed, it would be a travesty to hold that proceedings initiated against a person can be interfered with at the stage of FIR but not if it has advanced, and the allegations have materialized into a charge sheet. On the contrary it could be said that the abuse of process caused by FIR stands aggravated if the FIR has taken the form of a charge sheet after investigation. The power is undoubtedly conferred to prevent abuse of process of power of any court.

In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. **Anand Kumar Mohatta v. State (Govt. of NCT of Delhi) Department of Home, AIR 2019 SC 210**

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Criminal Trial:

Held: A TIP has to be conducted timely, if not, then the delay has to be explained and such delay should not cause exposure of the accused. However, in the case at hand, not only there was a delay in conducting the TIP, but no explanation for the same has been forthcoming from the prosecution. This creates a considerable doubt about the genuineness of the TIP.

Held: It is well settled principle that a suspicion, however grave it may be, cannot take place of proof, i.e., there is a long distance between “may be” and “must be”, which must be traversed by the prosecution to prove its case beyond reasonable doubt.

The prosecution, it is axiomatic, must establish its case against the accused by leading evidence that is accepted by the standards that are known to criminal

jurisprudence regardless whether the crime is committed in the course of communal disturbances or otherwise. In short, there can only be one set of rules and standards when it comes to trials and judgment in criminal cases unless the statute provides for anything specially applicable to a particular case or class of cases…" **State of Uttar Pradesh V. Wasif Haider 2019 (2) Supreme 596**

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Evidence Act:

Sec. 3 – Circumstantial Evidence

The circumstances from which the conclusion of guilt is to be drawn should be fully established. It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved".

"Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."

The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.

The circumstances should be of a conclusive nature and tendency.

They should exclude every possible hypothesis except the one to be proved.

There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

The underlying principle is whether the chain is complete or not, indeed it would depend on the facts of each case emanating from the evidence and there cannot be a straight jacket formula which can be laid down for the purpose. But the circumstances adduced when considered collectively, it must lead only to the conclusion that there cannot be a person other than the accused who alone is the perpetrator of the crime alleged and the circumstances must establish the conclusive nature consistent only with the hypothesis of the guilt of the accused. **Devi Lal v. State of Rajasthan, AIR 2019 SC 688.**

S. 3 – TIP

TIP has to be conducted timely, if not, then the delay has to be explained and such delay should not cause exposure of the accused. However, in the case at hand, not only there was a delay in conducting the TIP, but no explanation for the same has been forthcoming from the prosecution. This creates a considerable doubt about the genuineness of the TIP. **State of Uttar Pradesh V. Wasif Haider, AIR 2019 SC 38.**

Sec. 32- Dying declaration

Held:The first dying declaration is not only a suspicious document, but it is also considered a self-serving statement by the appellant, attributed to the deceased for saving himself. If the statement had been recorded in the hospital there is no reason why the doctor in whose presence it may have been recorded, not to have initialed it and deposed in support of the same. The 2nddying declaration is oral in nature made before the relatives of the deceased, which may be considered self-serving. In any event the appellant has been acquitted of the charge under Sec. 498A. **Bhagwat V. State of Maharashtra 2019 (2) Supreme 761**

Sec. 35 – Mutation in Revenue Records

Mutation of a land in the revenue records does not create or extinguish the title over such title over such land not it has any presumptive value on the title. It only enables the person in whose favour mutation is ordered to pay the land revenue in question. **Bhimabai Mahadeo Kambekar v. Arthur Import and Export Company, AIR 2019 SC 719.**

S. 54 – Scope of

The history of the convict, including recidivism cannot, by itself, be a ground for awarding the death sentence. This needs some clarity. There could be a situation where a convict has previously committed an offence and has been convicted and sentenced for that offence. Thereafter, the convict commits a second offence for which he is convicted and sentence is required to be awarded. This does not pose any legal challenge or difficulty. But, there could also be a situation where a convict has committed an offence and is under trial for that offence. During the pendency of the trial he commits a second offence for which he is convicted and in which sentence is required to be awarded.

Sections 54 of the Indian Evidence Act, 1872 prohibits the use of previous bad character evidence except when the convict himself chooses to lead evidence of his good character. The implication of this clearly is that the past adverse conduct of the convict ought not to be taken into consideration for the purposes of determining the quantum of sentence, except in specified circumstances. **Rajendra Pralhadrao Wasmik v. State of Maharashtra, AIR 2019 SC 1: 2019 (106) ACC 717**

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Hindu Law:

Sec. 30

Sec. 30 of the Act, the extract of which has been referred to above, permits the disposition by way of Will of a male Hindu in a Mitakshara coparcenary property. The significant fact which may be noticed is that while the legislature was aware of the strict rule against alienation by way of gift, it only relaxed the rule in favour of

disposition by way of a Will of a male Hindu in a Mitakshara coparcenary property. Therefore, the law insofar as it applies to joint family property governed by the Mitakshara school, prior to the amendment of 2005, when a male Hindu dies after the commencement of the Hindu Succession Act, 1956 leaving at the time of his death an interest in Mitakshara coparcenary property, his interest in the property will devolve by survivorship upon the surviving members of the coparcenary. An exception is contained in the explanation to Section 30 of the Act making it clear that notwithstanding anything contained in the Act, the interest of a male Hindu in Mitakshara coparcenary property can be disposed of by him by Will or any other testamentary disposition and in the given facts and circumstances. **Radhamma v. H.N. Muddukrishna, AIR 2019 SC 643**

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Hindu Marriage Act:

Section 13(1) – Dissolution of Marriage-

It is settled in law that for the purposes of dissolution of marriage cruelty can be physical as well as mental. In this case we are only concerned with the mental cruelty. The mental cruelty can be caused if one spouse treats the other in such a manner that it hurts the feelings of the other spouse and cause a reasonable apprehension in the mind of the said spouse that it is not possible for them to live together or it is harmful and injurious to reside together. **Swati Chaudhary V. Sumit Bana, AIR 2019 All. 10**

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Indian Penal Code:

Sec. 31/427 – Default sentence on nonpayment of fine.

There are two provisions in the Code namely Sections 31 and 427 which speak of consecutive and concurrent running of sentences. Section 31 deals with cases where a person is convicted at one trial of two or more offences. The reading of Section 31 makes it clear that unless the Court directs that punishments for such two or more offences at same trial should run concurrently, the normal principle is that the punishments would commence one after the expiration of the other. The provision thus gives discretion to the Court to direct running of such punishments either concurrently or consecutively. Similar discretion is available in Section 427 which deals with cases where a person already undergoing a sentence is later imposed sentence in respect of an offence tried at subsequent trial.

These two provisions namely Sections 31 and 427 thus deal with discretion available to the Court to specify whether the substantive sentences should run concurrently or consecutively. In the context of exercise of power under Section 427 of the Code, our attention was invited by the learned Counsel appearing for State of Maharashtra to certain observations made by this Court in V.K. Bansal (supra). Even while granting the benefit of concurrent running of the substantive sentences in respect of offences arising out of distinct transactions, this Court made certain

observations regarding nonapplicability of such benefit to sentences in default of fine, in para 18 as under :-

"....We make it clear that the direction regarding concurrent running of sentence shall be limited to the substantive sentence only. The sentence which the appellant has been directed to undergo in default of payment of 14 fine/compensation shall not be affected by this direction. We do so because the provisions of Section 427 CrPC do not, in our opinion, permit a direction for the concurrent running of the substantive sentences with sentences awarded in default of payment of fine/compensation."

As against Sections 31 and 427 of the Code which deal with substantive sentences and empower the courts in certain cases to direct concurrent running of more than one sentences, no such specification is available in Section 64 of IPC and in Section 30 of the Code or in any other provision dealing with power to impose sentence of "imprisonment for nonpayment of fine" or in connection with default sentence as is normally known. Is such non specification accidental or is there any idea behind not allowing concurrent running of default sentences?

If the term of imprisonment in default of payment of fine is a penalty which a person incurs on account of non-payment of fine and is not a sentence in strict sense, imposition of such default sentence is completely different and qualitatively distinct from a substantive sentence. We must hasten to add that it is not the case of the appellant that default sentences awarded to him must run concurrently with substantive sentence imposed on him. His case is that all default sentences must inter se run concurrently. Imposition of fine, especially when certain minimum quantum is prescribed and/or mandatory imposition of fine is contemplated, has some significance. Theoretically, if the default sentences awarded in respect of imposition of fine in connection with two or more offences are to be clubbed or directed to run concurrently, there would not be any occasion for the persons so sentenced to deposit the fine in respect of the second or further offences. It would effectively mean imposition of one single or combined sentence of fine. Such an exercise would render the very idea of imposition of fine with a deterrent stipulation while awarding sentence in default of payment of fine to be meaningless. For example, in the present case, in respect of three distinct offences punishable under the provisions of the MCOC Act, fine came to be imposed. Such fine going by the relevant provisions had to be at a minimum scale of Rs.5 lakhs. If the default sentences awarded in respect of each of those three counts under the MCOC Act are directed to run concurrently, the accused may not be inclined to deposit fine in respect of two out of those three counts. If imposition of fine and prescription of mandatory minimum is designed to achieve a specific purpose, the very objective will get defeated if the default sentences were directed to run concurrently. It is precisely for this reason that unlike Sections 31 and 427 17 of the Code, which specifically empower the concerned court to direct

concurrent running of substantive sentences, Section 64 of the IPC does not stipulate such discretion. The language of said Section 64 rather mandates that the sentence awarded for non-payment of fine "imprisonment shall be in excess of any other imprisonment to which he may have been sentenced or to which he may be liable under a commutation of a sentence".Similar is the intent in Sections 30, 428 and 429(2) of the Code as discussed above. The rigour of the provisions is such that even if a person gets the benefit of commutation of a sentence, the sentence in default of payment of fine shall be in excess or in addition.

That imposition of the term of imprisonment in default of payment of fine is not a sentence and it is a penalty which a person incurs on account of non-payment of fine. It is also made clear that if such default sentence is imposed, undoubtedly, an offender must undergo unless it is modified or varied in part or whole in the judicial proceedings. Therefore, there is no power for the Court to order the default sentences to run concurrently. The Hon'ble Apex Court also made it clear that when such a default sentence is imposed, a person is required to undergo imprisonment either because he is unable to pay the amount of fine or refuses to pay such amount. the term of imprisonment in default of payment of fine cannot be deemed to be a sentence, but a penalty which is incurred on account of non-payment of fine. **Sharad Hiru Kolambe V. State of Maharashtra 2019 (1) Supreme 325**

Sec. 53 – Death Sentence - Sustainability

There is really no reason for the Trial Judge to be in haste in awarding a sentence in a case where he might be considering death penalty on the ground that any other alternative option is unquestionably foreclosed. The convict would in any case remain in custody for a fairly long time since the minimum punishment awarded would be imprisonment for life. Therefore, a Trial Judge can take his time and sentence the convict after giving adequate opportunity for the prosecution as well as for the defence to produce material. The possibility of awarding life sentence is open to the Trial Judge as against the death sentence. It must be appreciated that a sentence of death should be awarded only in the rarest of rare cases, only if an alternative option is unquestionably foreclosed and only after full consideration of all factors keeping in mind that a sentence of death is irrevocable and irretrievable upon execution. It should always be remembered that while the crime is important, the criminal is equally important insofar as the sentencing process is concerned. In other words, courts must “make assurance double sure. **Rajendra Pralhadrao Wasmik v. State of Maharashtra, AIR 2019 SC 1**

Sec. 53

Even though the case may be one of circumstantial evidence, it is now well settled that that by itself is not enough to convert a sentence of death into a sentence of imprisonment for life.

While the socio-economic condition of a convict is not a factor for disproving his guilt, it is a factor that must be taken into consideration for the purposes of awarding an appropriate sentence to a convict. **M.A. Antony v. State of Kerala, AIR 2019 SC 194**

Sec. 53 - Death Penalty

Death penalty shall be awarded only in the rarest of rare cases where life imprisonment shall be wholly inadequate or futile owing to the nature of the crime and the circumstances relating to the criminal. Whether the person is capable of reformation and rehabilitation should also be taken into consideration while imposing death penalty. Whether the person would be a threat to society or whether not granting death penalty would send a wrong message to society are additional factors to be looked at. No such analysis was undertaken by the High Court. The High Court has also failed to look at the aggravating and mitigating circumstances regarding the criminal as warranted by Bachan Singh, AIR 1980 SC 898. The fact that the appellant had no previous criminal record apart from the acquittal in the Section 376, IPC, which was a false implication and the alleged motive did not weigh with the High Court as an important mitigating circumstance with respect to the criminal. **Chhannu Lal Verma v. State of Chattisgarh, AIR 2019 SC 243.**

Sec. 63 – requirement of

Held : Section 63 of IPC generally lays down that fine should not be excessive wherever no sum is expressed to which the fine may extend. Naturally, in cases where the concerned provision itself indicates a sum to which the fine may extend, or prescribes a minimum quantum of fine, such element may not apply. In cases covered by Section 64 of IPC the Court is competent to impose sentence of "imprisonment for non-payment of fine" and such sentence for non-payment of fine "shall be in excess of any imprisonment" to which the offender may have been sentenced or to which he may be liable under commutation of a sentence. Sections 30 and 429(2) of the Code also touch upon the principle that default sentence shall be in addition to substantive sentence.

In terms of said Section 30(2) the default sentence awarded by a Magistrate is not to be counted while considering the maximum punishment that can be substantively awarded by the Magistrate, while under Section 429(2), in cases where two or more substantive sentences are to be undergone one after the other, the default sentence, if awarded, would not begin to run till the substantive sentences are over. Similarly, under Section 428 of the Code, the period undergone during investigation,

inquiry or trial has to be set off against substantive sentence but not against default sentence. The idea is thus clear, that default sentence is not to be merged with or allowed to run concurrently with a substantive sentence. Thus, the sentence of imprisonment for non-payment of fine would be in excess of or in addition to the substantive sentence to which an offender may have been sentenced or to which he may be liable under commutation of a sentence.

Insofar as the nature and extent the power to impose fine is concerned, Section 63 of the IPC provides some guidelines and states that wherever no sum is expressed to which a fine could extend, the amount should not be excessive. It follows that if the law in question or the concerned provision stipulates the quantum or minimum amount of fine, the Courts must be guided by such specification. In Shantilal (supra) this Court considered the nature of imposition of fine and what attending circumstances ought to be taken into account by the Court while directing imprisonment for nonpayment of fine. **Sharad Hiru Kolambe V. State of Maharashtra 2019 (1) Supreme 325**

Sec. 228-A—Scope of—

Sec. 228-A IPC imposes a clear-cut bar on the name of identity of the victim being disclosed. Therefore, where the accused is acquitted and the victim of the offence wants to file an appeal under Section 372 CrPC, she is not bound to disclose her name in the memo of appeal. Such a victim can move an application to the Court praying that she may be permitted to file a petition under a pseudonymous name e.g. 'X' or 'Y' or any other such coded identity that she may choose. However, she may not be permitted to give some other name which may indirectly harm another person. There may be certain documents in which her name will have to be disclosed e.g. the power of attorney and affidavit(s) which may have to be filed as per the Rules of the Court. The Court should normally allow such applicant to file the petition/appeal in a pseudonymous name. The victim can file such an appeal by showing her name as 'X' or 'Y' along with an application for non-disclosure of the name of the victim. In a sealed envelope to be filed with the appeal she can enclose the document(s), in which she can reveal her identify as required by the Rules of the appellate court. The Court can verify the details but in the material which is placed in the public domain the name of the victim shall not be disclosed. The application moved by the victim should be heard by the court in chamber and the name should not be reflected even in the cause list till such matter is decided. Any document disclosing the name and identity of the victim should not be in the public domain. Neither IPC nor the CrPC define the phrase "identify of any person'. Section 228-A IPC clearly prohibits the printing or publishing "the name or any matter which may make known the identity of the person". It is obvious that not only the publication of the name of the victim is prohibited but also the disclosure of any other matter which may make known the

identity of such victim. Court is clearly of the view that the phrase "matter which may make known the identity of the person" does not solely mean that only the name of the victim should not be disclosed but it also means that the identity of the victim should not be discernible from any matter published in the media. The intention of the law makers was that the victim of such offences should not be identifiable so that they do not face any hostile discrimination or harassment in the future.

Sub-section (2) of Section 228A IPC makes an exception for police officials who may have to record the true identity of the victim in the police station or in the investigation file. Court is not oblivious to the fact that in the first information report (for short 'FIR') the name of the victim will have to be disclosed. However, this should not be made public and especially not to the media. Court is of the opinion that the police officers investigating such cases and offences should also as far as possible either use a pseudonym to describe the victim unless it is absolutely necessary to write down her identity. We make it clear that the copy of an FIR relating to the offence of rape against a women or offences against children falling within the purview of POCSO shall not be put in the public domain to prevent the name and identity of the victim from being disclosed. The Sessions Judge/Magistrate/Special Court can for reasons to be recorded in writing and keeping in view the interest of the victim permit the copy of the FIR to be given to some person(s). Some examples of matters where her identity will have to be disclosed are when samples are taken from her body, when medical examination is conducted, when DNA profiling is done, when the date of birth of the victim has to be established by getting records from school etc.. However, in these cases also the police officers should move with circumspection and disclose as little of the identity of the victim as possible but enough to link the victim with the information sought. We make it clear that the authorities to which the name is disclosed when such samples are sent, are also duty bound to keep the name and identity of the victim secret and not disclose it in any manner except in the report which should only be sent in a sealed cover to the investigating agency or the court. There can be no hard and fast rule in this behalf but the police should definitely ensure that the correspondence or memos exchanged or issued wherein the name of the victim is disclosed are kept in a sealed cover and are not disclosed to the public at large. They should not be disclosed to the media and they shall also not be furnished to any person under the Right to Information Act, 2015. We direct that the police officials should keep all the documents in which the name of the victim is disclosed in a sealed cover and replace these documents by identical documents in which the name of the victim is removed in all records which may be scrutinised by a large number of people. The sealed cover can be filed in the court along with the report filed under Section 173 CrPC.

As far as clause (b) of sub-section (2) of Section 228A IPC is concerned, if an adult victim has no objection to her name being published or identity being disclosed,

she can obviously authorize any person in writing to disclose her name. This has to be a voluntary and conscious act of the victim. There are some victims who are strong enough and willing to face society even after their names are disclosed. Some of them, in fact, help other victims of rape and they become a source of inspiration to other rape victims. Nobody can have any objection to the victim disclosing her name as long as the victim is a major.

As far as sub-section (3) of Section 228A IPC is concerned, Court would like to make it clear that the IPC clearly lays down that nobody can print or publish any matter in relation to any proceedings falling within the purview of Section 228A and in terms of Section 327(2) CrPC. These are in camera proceedings and nobody except the presiding officer, the court staff, the accused, his counsel, the public prosecutor, the victim, if at all she wants to be present or the witness shall be there. It is the bounden duty of all of them to ensure that what happens in court is not disclosed outside. This is not to say that there can be no reporting of such cases. The press can report that the case was fixed before Court and some witnesses were examined. It can report for what purpose the case was listed but it cannot report what transpired inside the court or what was the statement of the victim or the witnesses. The evidence cannot be disclosed. Court is not elaborating and dealing with the issue of publication in press in greater detail since this issue is engaging our attention in Nivedita Jha's case but it is clear that nobody can be permitted to violate Section 327(3) CrPC, the language of which is very clear and unambiguous. **Nipun Saxena V. Union of India, (2019) 2 SCC 703**

Sec. 302 r/w Sec. 34 and 148—

The question that falls for determination in this case is whether the High Court was right in setting aside the acquittal of the Appellants and convicting them for an offence of murder. While holding that there is no limitation placed on the power to review the evidence in an appeal against acquittal, Lord Russell in Sheo Swarup v. King-Emperor, 1934 SCC OnLine PC 42, held:

"9. .. .. the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate Court in disturbing a finding of fact arrived at by a 1 (1934) 36 BOM LR 1185 ¶9 11 Judge who had the advantage of seeing the witnesses." **Mohd. Akhtar Alias Kari vs. State of Bihar, (2019) 2 SCC 513**

Ss. 302, 148, 149 - Evidence act, S. 3 – Murder, rioting and unlawful assembly - Appeal by accused against his conviction for offence of murder - Prosecution not

challenging acquittal of accused and other co-accused persons for offence of rioting and unlawful assembly, hence attaining finality – No case of prosecution that some more unknown persons other than co-accused persons were present with accused at the time of occurrence so that accused still be convicted as member of unlawful assembly with such unknown persons - Conviction of accused by High court for offence of rioting and unlawful assembly by reconsidering part of Trial Courts judgment which is not under challenge and attend finality, erroneous.

In this view of the matter, there was no occasion for the High Court to have gone into this question in an appeal filed by the accused (appellant herein) as the same had attained finality.

Second, in any event, five co-accused persons having also been acquitted of the charges framed against them under section 148/149 IPC, no case was made out against the appellant for his conviction under section 148/149 Ibid. In other words, once it was held by the Sessions judge that all the six accused persons could not be convicted under section 148/149 ibid and were accordingly acquitted and no appeal having been filed by the state against this part of the order, the High court was not justified in convicting the appellant under section 148/149 IPC.

Third, as mentioned above, it is not in dispute that the prosecution had named six accused persons as being the member of "unlawful assembly" of which the appellant was one.

It is not the case of prosecution that even though these six accused persons were acquitted of the charges framed under section 148/149 IPC, yet there was some more unknown persons present at the time of occurrence with the appellant other than five named accused person and, therefore, the appellant could still be convicted under section 148/149 as the member of an unlawful assembly with such unknown persons notwithstanding the acquittal of five accused persons. **Ramvir** V. **State of UP 2019 (1) ALJ 395** SC

Sec. 306 – Requirement of

It is necessary to refer to Section 306 IPC and Section 107 IPC which reads as under:

"306. Abetment of suicide.- If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

107. Abetment of a thing.- A person abets the doing of a thing, who-

First.- Instigates any person to do that thing; or

Secondly.- Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly.- Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1.- A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing."

Conviction under Section 306 IPC is not sustainable on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused, which led or compelled the person to commit suicide. In order to bring a case within the purview of Section 306 IPC, there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under Section 306 IPC.

To satisfy the requirement of "instigation", though it is not necessary that actual words must be used to that effect or what constitutes "instigation" must necessarily and specifically be suggestive of the consequence.

Yet a reasonable certainty to incite the consequence must be capable of being spelt out. Where the accused had, by his acts or omission or by a continued course of conduct, created such circumstances that the deceased was left with no other option except to commit suicide, in which case, an "instigation" may have to be inferred. A word uttered in a fit of anger or emotion without intending the consequences to actually follow, cannot be said to be instigation.

Thus, to constitute "instigation", a person who instigates another has to provoke, incite, urge or encourage the doing of an act by the other by "goading" or "urging forward". The dictionary meaning of the word "goad" is "a thing that stimulates someone into action; provoke to action or reaction" **Rajesh Vs. State of Haryana 2019 (1) Supreme 523**

Sec. 306 - Proof of Abatement

The essential ingredients of the offence under Section 306 I.P.C. are: (i) the abetment; (ii) the intention of the accused to aid or instigate or abet the deceased to commit suicide. The act of the accused, however, insulting the deceased by using abusive language will not, by itself, constitute the abetment of suicide. There should be evidence capable of suggesting that the accused intended by such act to instigate the deceased to commit suicide. Unless the ingredients of instigation/abetment to commit suicide are satisfied, accused cannot be convicted under Section 306 I.P.C. **Arjunan v. State, AIR 2019 SC43.**

Sec. 307 – Scope of

To justify a conviction under this section it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The section makes a distinction between an act of the accused and its result, if any. Such an act may not be attended by any result so far as the person assaulted is concerned, but still there may be cases in which the culprit would be liable under this section. It is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted. What the Court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in this section. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof.

It must be noted that Section 307 IPC provides for imprisonment for life if the act causes "hurt". It does not require that the hurt should be grievous or of any particular degree. The intention to cause death is clearly attributable to the accused since the victim was strangulated after throwing a telephone wire around his neck and telling him that he should die. We also do not find any merit in the contention on behalf of the accused that there was no intention to cause death because the victim admitted that the accused were not armed with weapons. Very few persons would normally describe the Thums up bottle and a telephone wire used, as weapons. That the victim honestly admitted that the accused did not have any weapons cannot be held against him and in favour of the accused. **State of Madhya Pradesh v. Kanha alias Omprakash, AIR 2019 SC 713.**

Sec.375 – Rape & Consensual Sex

There is a clear distinction between rape and consensual sex. The court, in such cases, must very carefully examine whether the complainant had actually wanted to marry the victim or had mala fide motives and had made a false promise to this effect only to satisfy his lust, as the later falls within the ambit of cheating or deception. There is also a distinction between mere breach of a promise and not fulfilling a false promise. If the accused has not made the promise with the sole intention to seduce the prosecutrix to indulge in sexual acts, such an act would not amount to rape. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused and not solely on account of the misconception created by accused, or where an accused, on account of circumstances which he could not have foreseen or which were beyond his control, was unable to marry her despite

having every intention to do. Such cases must be treated differently. If the complainant had any mala fide intention and if he had clandestine motives, it is a clear case of rape. The acknowledged consensual physical relationship between the parties would not constitute an offence under Section 376 of the IPC. **Dr. Dhruvaram Murlidhar Sonar v. State of Maharashtra, AIR 2019 SC 327**

Sec.406

It is necessary to refer to Sections 405 and 406 of the IPC in order to ascertain, whether in the facts and circumstances of the present case, an offence under Section 406 is made out against the Appellants. Section 405 and 406 of the IPC reads as follows: -

"405. Criminal breach of trust.—Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".

[Explanation [1].—A person, being an employer [of an establishment whether exempted under section 17 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), or not] who deducts the employee's contribution from the wages payable to the employee for credit to a Provident Fund or Family Pension Fund established by any law for the time being in force, shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said law, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.]

[Explanation 2.—A person, being an employer, who deducts the employees' contribution from the wages payable to the employee for credit to the Employees' State Insurance Fund held and administered by the Employees' State Insurance Corporation established under the Employees' State Insurance Act, 1948 (34 of 1948), shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said Act, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.]

406. Punishment for criminal breach of trust.—Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

The essence of the offence lies in the use of the property entrusted to a person by that person, in violation of any direction of law or any legal contract which he has

made during the discharge of such trust. **Anand Kumar Mohatta v. State (Govt. of NCT of Delhi) Department of Home, AIR 2019 SC 210**

Sec. 420/406

Merely because the original accused might not have paid the amount due and payable under the agreement or might not have paid the amount in lieu of one month Notice before terminating the agreement by itself cannot be said to be a cheating and/or having committed offence under Sections 406 and 420 of the IPC as alleged. **Vinod Natesan V. State of Kerala, AIR 2019 SC 296.**

Sec. 497—

Section 497 IPC does not bring within its purview an extra marital relationship with an unmarried woman or a widow. The dictionary meaning of ―adultery‖ is that a married person commits adultery if he has sex with a woman with whom he has not entered into wedlock. As per Black's Law Dictionary, ‗adultery' is the voluntary sexual intercourse of a married person with a person other than the offender's husband or wife. However, the provision has made it a restricted one as a consequence of which a man, in certain situations, becomes criminally liable for having committed adultery while, in other situations, he cannot be branded as a person who has committed adultery so as to invite the culpability of Section 497 IPC. Section 198 CrPC deals with a―person aggrieved‖. Sub-section (2) of Section 198 treats the husband of the woman as deemed to be aggrieved by an offence committed under Section 497 IPC and in the absence of husband, some person who had care of the woman on his behalf at the time when such offence was committed with the leave of the court. It does not consider the wife of the adulterer as an aggrieved person. The offence and the deeming definition of an aggrieved person, as we find, is absolutely and manifestly arbitrary as it does not even appear to be rational and it can be stated with emphasis that it confers a licence on the husband to deal with the wife as he likes which is extremely excessive and disproportionate. We are constrained to think so, as it does not treat a woman as an abettor but protects a woman and simultaneously, it does not enable the wife to file any criminal prosecution against the husband. Indubitably, she can take civil action but the husband is also entitled to take civil action. However, that does not save the provision as being manifestly arbitrary. That is one aspect of the matter. If the entire provision is scanned being Argus-eyed, we notice that on the one hand, it protects a woman and on the other, it does not protect the other woman. The rationale of the provision suffers from the absence of logicality of approach and, therefore, we have no hesitation in saying that it suffers from the vice of Article 14 of the Constitution being manifestly arbitrary. That is one aspect of the matter. If the entire provision is scanned being Argus-eyed, it is clear that on the one hand, it protects a woman and on the other, it does not protect the other woman.

The rationale of the provision suffers from the absence of logicality of approach. **Joseph Shine V. Union of India, (2019) 3 SCC 39 : 2019 CRI.L.J. 1 SC (Five Judges Bench)**

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Industrial Disputes Act:

S. 25-H 0 Requirement of

Held: The object behind enacting Section 25(H) of the ID Act is to give preference to retrenched employee over other persons by offering them reemployment in the services when the employer takes a decision to fill up the new vacancies.

Section 25(H) of the ID Act is required to be implemented as per the procedure prescribed in Rule 78 of the Industrial Disputes (Central) Rules, 1957 (hereinafter referred to as "the ID Rules") which, in clear terms, provides that Section 25(H) of the ID Act is applicable only when the employer decides to fill up the vacancies in their set up by recruiting persons. It provides for issuance of notice to retrenched employee prescribed therein in that behalf.

So, in order to attract the provisions of Section 25(H) of the ID Act, it must be proved by the workman that firstly, he was the "retrenched employee" and secondly, his exemployer has decided to fill up the vacancies in their set up and, therefore, he is entitled to claim preference over those persons, who have applied against such vacancies for a job while seeking reemployment in the services.

The regularization of an employee already in service does not give any right to retrenched employee so as to enable him to invoke Section 25 (H) of the ID Act for claiming reemployment in the services. The reason is that by such act the employer do not offer any fresh employment to any person to fill any vacancy in their set up but they simply regularize the services of an employee already in service. Such act does not amount to filling any vacancy. **Management of the Barara Cooperative Marketing - Cumprocessing Society Ltd. V. Workman Pratap Singh 2019 (1) Supreme 195: AIR 2019 SC 228**

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Interpretation of Statutes:

If the intention of the rule-making authority is to make a later general rule to apply to all services in the State, for which different earlier special rules exist, then the existing special rules will give way to such later general rule. That is, where the general rule is made subsequent to the special rule and the language of the general rule signified that it was intended to apply to all services and prevail over any prior special rules, the intention of the rule-making authority should be given effect by applying the subsequent general rule instead of the earlier special rule.

When General rules are made subsequent to special rules, the general rules will apply. Wrongly appointed person has no right to the post. **V.K. Girija V. Reshma Parayil and others, 2019 (1) Supreme 179**

Reading the word “shall” in Section 47 of the Act as “may” would only mean that a party applying for enforcement of the award need not necessarily produce before the Court a document mentioned therein “at the time of the application”. We make it clear that the said interpretation of the word “shall” as “may” is restricted only to the initial stage of the filing of the application and not thereafter. Courts in certain jurisdictions have taken a strict view regarding the filing of the documents for enforcement of a foreign award. Courts in many other jurisdictions have taken the opposite view that the application for enforcement of the foreign awards does not warrant rejection for non-filing of the relevant documents including the award and the arbitral agreement. We need not adjudicate on this issue as the subject matter of this case does not relate to the non-filing of the arbitration agreement during the enforcement proceedings. There is no dispute that the arbitration agreement has been brought on record by both the parties. **P.E.C. Limited v. Anstbulk Shipping SDN BHD, AIR 2019 SC 105**

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Motor Vehicles Act:

Sec. 50 – Scope of –

In terms of Section 50 of the Act, the transfer of a vehicle ought to be registered within 30 days of the sale. Section 50(1) of the Act obliges the transferor to report the fact of transfer within 14 days of the transfer. In case the vehicle is sold outside State, the period within which the transfer ought to be reported gets extended. On the other hand, the transferee is also obliged to report the transfer to the registering authority within whose jurisdiction the transferee has the residence or place of business where the vehicle is normally kept. Section 50 thus prescribes timelines within which the transferor and the transferee are required to report the factum of transfer. As per Sub-Section 3 of said Section 50, if there be failure to report the fact of transfer, fine could be imposed and an action under Section 177 could thereafter be taken if there is failure to pay the amount of fine. These timelines and obligations are only to facilitate the reporting of the transfer. It is not as if that if an accident occurs within the period prescribed for reporting said transfer, the transferor is absolved of the liability. **Prakash Chand Daga v. Saveta Sharma, AIR 2019 SC 66**

Sec. 168—

There is no restriction that the Court cannot award compensation exceeding the claimed amount, since the function of the Tribunal or Court under Section 168 of the Motor Vehicles Act, 1988 is to award "just compensation". The Motor Vehicles Act is a beneficial and welfare legislation. A "just compensation" is one which is reasonable on the basis of evidence produced on record. It cannot be said to have become time barred. **Ramla V. National Insurance Company Ltd., (2019)2 SCC 192**

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NDPS Act:

Sec. 80 – Requirements of-

Section 80 of the N.D.P.S Act, clearly lays down that application of the Drugs and Cosmetics Act is not barred, and provisions of N.D.P.S. Act can be applicable in addition to that of the provisions of the Drugs and Cosmetics Act. The statute further clarifies that the provisions of the N.D.P.S. Act are not in derogation of the Drugs and Cosmetics Act, 1940.

The N.D.P.S. Act, should not be read in exclusion to Drugs and Cosmetics Act, 1940. Additionally, it is the prerogative of the State to prosecute the offender in accordance with law. **State of Punjab V. Rakesh Kumar, AIR 2019 SC 84**

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Negotiable Instrument Act:

Sec. 138 – Scope of

Held: There is nothing in the provisions of Sec. 138 of the act that forbids the holder of the cheque to make successive presentation of the cheque and institute the criminal complaint based on the second or successive dishonor of the cheque on its presentation.

It is trite that the object underlying Section 138 of the Act is to promote and inculcate faith in the efficacy of banking system and its operations giving creditability to negotiable instruments in business transactions and to create an atmosphere of faith and reliance by discouraging people from dishonouring their commitments which are implicit when they pay their dues through cheques. The provision was intended to punish those unscrupulous persons who issued cheques for discharging their liabilities without really intending to honour the promise that goes with the drawing up of such a negotiable instrument. It was intended to enhance the acceptability of cheques in settlement of liabilities by making the drawer liable for penalties in case the cheque was dishonoured and to safeguard and prevent harassment of honest drawers. one of the salutary principles of interpretation of statues is to adopt an interpretation which promotes and advances the object sought to be achieved by the legislation, in preference to an interpretation which defeats such object. This Court has in a lonh line of decisions recognized purposive interpretation as a sound principle for the courts to adopt while interpreting statutory provisions.

A prosecution based on a second or successive default in payment of the cheque amount should not be impermissible simply because no prosecution based on the first default which was followed by statutory notice and a failure to pay had not been launched. If the entire purpose underlying Section 138 of the Negotiable Instruments Act is to compel the drawers to honour their commitments made in the course of their business or other affairs, there is no reason why a person who has issued a cheque which is dishonoured and who fails to make payment despite statutory notice served upon him should be immune to prosecution simply because the holder of the cheque has not rushed to the court with a complaint based on such default or

simply because the drawer has made the holder defer prosecution promising to make arrangements for funds or for any other similar reason. There is in our opinion no real or qualitative difference between a case where default is committed and prosecution immediately launched and another where the prosecution is deferred till the cheque presented again gets dishonoured for the second or successive time. **M/S. Sicagen India Ltd. V. Mahindra Vadineni 2019 (3) Supreme 129**

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Protection of Child from Sexual offences Act (POCSO):

Sec. 23—Requirement of—

Sub-section (1) of Section 23 prohibits any person from filing any report or making any comments on any child in any form, be it written, photographic or graphic without first having complete and authentic information. No person or media can make any comments which may have the effect of lowering the reputation of the child or infringing upon the privacy of the child. Sub-section (2) of Section 23 clearly lays down that no report in any media shall disclose identity of a child including name, address, photograph, family details, school, neighbourhood or any other particulars which may lead to the disclosure of the identity of the child. This clearly shows that the intention of the legislature was that the identity of the child should not be disclosed directly or indirectly. The phrase 'any other particulars' will have to be given the widest amplitude and cannot be read only ejusdem generis. The intention of the legislature is that the privacy and reputation of the child is not harmed. Therefore, any information which may lead to the disclosure of the identity of the child cannot be revealed by the media. The media has to be not only circumspect but a duty has been cast upon the media to ensure that it does nothing and gives no information which could directly or indirectly lead to the identity of the child being disclosed.

No doubt, it is the duty of the media to report every crime which is committed. The media can do this without disclosing the name and identity of the victim in case of rape and sexual offences against children. The media not only has the right but an obligation to report all such cases. However, media should be cautious not to sensationalise the same. The media should refrain from talking to the victim because every time the victim repeats the tale of misery, the victim again undergoes the trauma which he/she has gone through. Reportage of such cases should be done sensitively keeping the best interest of the victims, both adult and children, in mind. Sensationalising such cases may garner Television Rating Points (TRPs) but does no credit to the credibility of the media.

Where a child belongs to a small village, even the disclosure of the name of the village may contravene the provisions of Section 23(2) POCSO because it will just require a person to go to the village and find out who the child is. In larger cities and metropolis like Delhi the disclosure of the name of the city by itself may not lead to the disclosure of the identity of the child but any further details with regard to the

colony and the area in which the child is living or the school in which the child is studying are enough (even though the house number may not be given) to easily discover the identity of the child. In our considered view, the media is not only bound not to disclose the identity of the child but by law is mandated not to disclose any material which can lead to the disclosure of the identity of the child. Any violation of this will be an offence under Section 23(4). **Nipun Saxena V. Union of India, (2019) 2 SCC 703**

Sec. 25—Scope of—

Sec. 25 POCSO states that statements of the child recorded under Section 164 CrPC which permits an advocate to be present will not be applicable in the case of children. Trials under POCSO are conducted by the Special Court which is expected to be child friendly and specifically provides that the Special Court shall not permit aggressive questioning or character assassination of the child. **Nipun Saxena vs. Union of India, (2019) 2 SCC 703**

Sec. 37—

Sec. 37 provides that all trials under POCSO are to be conducted in camera unless otherwise specifically decided for reasons to be recorded by the Special Court. A bare reading of Section 24(5) and Section 33(7) makes it amply clear that the name and identity of the child is not to be disclosed at any time during the course of investigation or trial and the identity of the child is protected from the public or media. Furthermore, Section 37 provides that the trial is to be conducted in camera which means that the media cannot be present. The entire purpose of the POCSO is to ensure that the identity of the child is not disclosed unless the Special Court for reasons to be recorded in writing permits such disclosure. This disclosure can only be made if it is in the interest of the child and not otherwise. One such case where disclosure of the identity of the child may be necessary can be where a child is found who has been subjected to a sexual offence and the identity of the child cannot be established even by the investigating team. In such a case, the Investigating Officer or the Special Court may allow the photograph of the child to be published to establish the identity. It is absolutely clear that the disclosure of the identity can be permitted by the Special Court only when the same is in the interest of the child and in no other circumstances. Court is of the view that the disclosure of the name of the child to make the child a symbol of protest cannot normally be treated to be in the interest of the child. **Nipun Saxena V. Union of India, (2019) 2 SCC 703**

<u>Practice & Procedure</u>:

It is the sole discretion of the appellate authority under the Act to decide the appeal based on the facts involved in the appeal, and legal provisions which

eventually result in passing a judicial order. No higher court can pass such directions merely on anticipation of an order being passed by an appellate authority. It is only after the order is passed, that the aggrieved person has a legal right to take recourse to a legal remedy available in law against such order by approaching to a higher forum and pray for grant of appropriate relief against such order. **Manish S. Pardasani V. (M/s Wine Kornder) V. Inspector State Excise, P-1, Division, Mumbai (SUBURBS), (2019) 2 SCC 660**

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Presidency Small Cause Courts Act:

Sec. 41-Counter-claim-Seeking eviction of plaintiff from suit land and arrears of rent-Maintainability of-In suit for specific performance of contract (lease deed) in relation to suit land, plaintiffs exercising their right to purchase the suit land from defendant on fulfillment of the conditions set out therein-Counter-claim not maintainable in view of S. 41 of the presidency Small Cause Courts Act, 1882, Hence rightly rejected.

Mahadev P. Kambeker (D) TR. LRs. V. Shree Krishna Woolen Mills Pvt. Ltd., 2019(1) ARC 584 (S.C.)

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Prevention of Corruption Act:

Sec. 5(2) – Sentencing

Reading of Section 5 (2) of the PC Act shows that it provides that any public servant, who commits criminal misconduct, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to seven years and shall also be liable to fine.

It is, therefore, clear that the Court is empowered to impose a sentence, which may vary from 1 year to 7 years with fine. However, in a particular case, the Court finds that there are some special reasons in favour of the accused then the Court is empowered to impose imprisonment of less than one year provided those special reasons are set out in writing in support of imposing sentence less than one year. So far as imposing of fine is concerned, it is mandatory while imposing any jail sentence. How much fine should be imposed depend upon the facts of each case.

Determining the adequacy of sentence to be awarded in a given case is not an easy task, just as evolving a uniform sentencing policy is a tough call. That is because the quantum of sentence that may be awarded depends upon a variety of factors including mitigating circumstances peculiar to a given case. The courts generally enjoy considerable amount of discretion in the matter of determining the quantum of sentence. In doing so, the courts are influenced in varying degrees by the reformative, deterrent and punitive aspects of punishment, delay in the conclusion of the trial and legal proceedings, the age of the accused, his physical/health condition, the nature of the offence, the weapon used and in the cases of illegal gratification the amount of bribe, loss of job and family obligations of the accused are also some of the

considerations that weigh heavily with the courts while determining the sentence to be awarded. The courts have not attempted to exhaustively enumerate the considerations that go into determination of the quantum of sentence nor have the courts attempted to lay down the weight that each one of these considerations carry. That is because any such exercise is neither easy nor advisable given the myriad situations in which the question may fall for determination. Broadly speaking, the courts have recognized the factors mentioned earlier as being relevant to the question of determining the sentence. **Ambi Ram V. State of Uttarakhand 2019 (2) Supreme 43**

S.13, S.19 - Illegal gratification - Filing of fresh charge sheet - Validity - Earlier order of sanction found to be invalid - Accused was neither tried nor was there full-fledged trial - Filing of fresh charge sheet for offences under S. 13(1)(c),(d),(e) r. w. S. 13(2) after obtaining valid sanction - Not barred under principles of 'double jeopardy'. Double jeopardy - Principles of - Applicability. Criminal P.C. (2 of 1974), S.300 -

Constitution of India, Art.20(2) - Under Art. 20(2) of the Constitution of India, no person shall be prosecuted and punished for the same offence more than once. S. 300 Cr.P.C. lays down that a person once convicted or acquitted, cannot be tried for the same offence. In order to bar the trial of any person already tried, it must be shown - (I) that he has been tried by a competent court for the same offence or one for which he might have been charged or convicted at that trial, on the same facts; (ii) that he has been convicted or acquitted at the trial; and (iii) that such conviction or acquittal is in force. Where the accused has not been tried at all and convicted or acquitted, the principles of 'double jeopardy' cannot be invoked at all. In present case, even before commencement of trial, the respondent/accused was discharged due to lack of proper sanction, there was no impediment for filing the fresh/supplementary charge sheet after obtaining valid sanction. Unless there is failure of justice on account of error, omission or irregularity in grant of sanction for prosecution, the proceedings under the Act could not be vitiated. By filing fresh charge sheet, no prejudice is caused to the respondent nor would it result in failure of justice to be barred under the principles of 'double jeopardy'. Special Court once it found that there was no valid sanction, it should have directed the prosecution to do the needful. The Special Court has not given sufficient opportunities to produce valid prosecution sanction from the competent authority. The Special Court erred in refusing to take cognizance of the case even after production of valid prosecution sanction obtained from the competent authority and the High Court was not right in affirming the order of the Special Court. The Special Court and the High Court were not right in holding that the filing of the fresh charge sheet with proper sanction order for prosecution was barred under the principles of 'double jeopardy'.

State of Mizoram v. Dr. C. Sangnghina 2019 CRI. L. J. SC 393

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Principles of Natural Justice:

The basic fundamental principle of law that no order can be passed by any court in any judicial proceedings against any party to such proceedings without hearing and giving such party an opportunity of hearing.

Principle of natural justice demands that the party to the proceedings must be heard by the Court before passing any order in relation to the subject-matter of such proceedings.

The fact that a person is made a party to the judicial proceedings in relation to a certain dispute has a legitimate right to raise an objection that before passing any order in such proceedings, he should be at least heard and his views/stand in relation to the subject-matter of the proceedings be taken into consideration. The Court is duty-bound to hear all such person(s) by giving them an opportunity to place their stand. **Johra V. State of Haryana, (2019) 2 SCC 323(1) Supreme 516**

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Rent Control and Eviction:

Sec. 12 – Scope

Held: The section, on **a plain reading, is clear and specific. The criteria to be fulfilled for an order of eviction** under the provision are:

(i) that the non-residential accommodation is required bona fide by the landlord for the purpose of continuing or starting his business or that of any of his major sons; and

(ii) that the landlord or such person has no other reasonably suitable non-residential accommodation of his own in his occupation in the city or town concerned." The legislature in enacting the provision has taken ample care to avoid any arbitrary or whimsical action of a landlord to evict his tenant. The statutory mandate is that there must be first a requirement by the landlord which means that it is not a mere whim or a fanciful desire by him; further, such requirement must be bona fide which is intended to avoid a mere whim or desire. The "bona fide requirement" must be in praesenti and must be manifested in actual need which would evidence the court that it is not a mere fanciful or whimsical desire. The legislative intent is made further clear by making the provision that the landlord has no other reasonably suitable residential accommodation of his own in his occupation in the city or town concerned. This requirement lays stress that the need is pressing and there is no reasonably suitable alternative for the landlord but to get the tenant evicted from the accommodation. Similar statutory provision is made in clause (e) of Section 12(1) of the Act in respect of accommodation let for residential purposes. Thus, the legislative mandate being clear and unambiguous, the court is duty-bound to examine not merely the requirement of the landlord as pleaded in the eviction petition but also whether any other reasonably suitable non-residential accommodation in his occupation in the city/town is available…." **Hukumchandra (D) Thru Lrs. vs Nemi Chand Jain 2019 (37) LCD 683**

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Right to Privacy:

Social security schemes and programmes are a medium of existence of a large segment of society. Social security schemes in India, such as the PDS, were introduced to protect the dignity of the marginalized. Exclusion from these schemes defeats the rationale for the schemes which is to overcome chronic hunger and malnutrition. Exclusion is violative of human dignity. As discussed previously in detail, the statistics recorded in government records and the affidavits filed by the petitioners point out glaring examples of exclusion due to technical errors in Aadhaar. The authentication failures in the Aadhaar scheme have caused severe disruptions particularly in rural India. Exclusion as a consequence of biometric devices has a disproportionate impact on the lives of the marginalized and poor. This Court cannot turn a blind eye to the rights of the marginalized. It may be the fashion of the day to advance the cause of a digital nation. Technology is undoubtedly an enabler. It has become a universal unifier of our age. Yet, the interface between technology and basic human rights cannot be oblivious to social reality. Compulsive linking of biometrics to constitutional entitlements should not result in denial to the impoverished. There exists a digital divide. To railroad those on one side of that divide unconcerned about social and technical constraints which operate in society is to defeat the purpose of social welfare. The Court has to be specifically conscious of the dignity of the underprivileged. The Court must fulfill its role of protecting constitutional values even if it affects a small percentage of the population. The exclusion errors in this case have led to grave injustice to the marginalized. The Court, therefore, has to play an active role in protecting their dignity.

The institution of rights places a heavy onus on the State to justify its restrictions. No right can be taken away on the whims and fancies of the State. The State has failed to justify its actions and to demonstrate why facilitating the targeted delivery of subsidies, which promote several rights such as the right to food for citizens, automatically entails a sacrifice of the right to privacy when both these rights are protected by the Constitution. One right cannot be taken away at the behest of the other especially when the State has been unable to satisfy this Court that the two rights are mutually exclusive. The State has been unable to respond to the contention of the 352 petitioners that it has failed to consider that there were much less rights invasive measures that could have furthered its goals. The burden of proof on the State was to demonstrate that the right to food and other entitlements provided through the Aadhaar scheme could not have been secured without the violating the fundamental rights of privacy and dignity. Dworkin in his classical book "Taking Rights Seriously", while answering the question whether some rights are so important that the

State is justified in doing all it can to maintain even if it abridges other rights, states that:

> "But no society that purports to recognize a variety of rights, on the ground that a man's dignity or equality may be invaded in a variety of ways, can accept such a principle??? If rights make sense, then the degrees of their importance cannot be so different that some count not at all when others are mentioned."

There is no antinomy between the right to privacy and the legitimate goals of the State. An invasion of privacy has to be proportional to and carefully tailored for achieving a legitimate aim. While the right to food is an important right and its promotion is a constitutional obligation of the State, yet the right to privacy cannot simply and automatically yield to it. No legitimate goal of the State can be allowed at the cost of infringement of a fundamental right without passing the test of constitutionality. While analysing the architecture of Aadhaar, this Court has demonstrated how the purported safeguards in the Aadhaar architecture are inadequate to protect the integrity of personal data, the right of informational self-determination and above all rights attributable to the privacy-dignity-autonomy trilogy. It is also concluded that the Aadhaar scheme is capable of destroying different constitutional identities. The financial exclusion caused due to errors in Aadhaar based authentication violate the individual's right to dignity. The Aadhaar scheme causes an unwarranted intrusion into fundamental freedoms guaranteed under the Indian Constitution since the respondents have failed to demonstrate that these measures satisfy the test of necessity and proportionality. **K.S. Puttaswamy (Retd.) V. Union of India, (2019) 1 SCC 1**

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Rule of Law:

The essence of rule of law is to preclude arbitrary action. Dicey, who propounded the rule of law, gave distinct meaning to this concept and explained that it was based on three kindred features, which are as follows:

(i) absence of arbitrary powers on the part of authorities;

(ii) equality before law; and

(iii) the Constitution is part of the ordinary law of the land.

There are three aspects of the rule of law, which are as follows:

(a) A formal aspect which means making the law rule.

(b) A jurisprudential or doctrinal aspect which is concerned with the minimal condition for the existence of law in society.

(c) A substantive aspect as per which the rule of law is concerned with properly balancing between the individual and society.

When we talk of jurisprudential rule of law, it includes certain minimum requirements without which a legal system cannot exist and which distinguished a legal system from an automatic system where the leader imposes his will on everyone else. Professor Lon Fuller has described these requirements collectively as the 'inner morality of law'. In addition to jurisprudential concept, which is important and an essential condition for the rule of law, the substantive concept of the rule of law is equally important and inseparable norm of the rule of law in real sense. It encompasses the 'right conception' of the rule of law propounded by Dworkin. It means guaranteeing fundamental values of morality, justice, and human rights, with a proper balance between these and the other needs of the society. Justice Aharon Barak, former Chief Justice of Israel, has lucidly explained this facet of rule of law in the following manner:

> "The rule of law is not merely public order, the rule of law is social justice based on public order. The law exists to ensure proper social life. Social life, however, is not a goal in itself but a means to allow the individual to live in dignity and develop himself. The human being and human rights underlie this substantive perception of the rule of law, with a proper balance among the different rights and between human rights and the proper needs of society. The substantive rule of law "is the rule of proper law, which balances the needs of society and the individual". This is the rule of law that strikes a balance between society's need for political independence, social equality, economic development, and internal order, on the one hand, and the needs of the individual, his personal liberty, and his human dignity on the other. The Judge must protect this rich concept of the rule of law."

The 'rule of law', which is a fine sonorous phrase, is dynamic and ever expanding and can be put alongside the brotherhood of man, human rights and human dignity. About the modern rule of law, Professor Garner observed:

> "The concept in its modern dress meets a need that has been felt throughout the history of civilization, law is not sufficient in itself and it must serve some purpose. Man is a social animal, but to live in society he has had to fashion for himself and in his own interest the law and other instruments of government, and as a consequence those must to some extent limit his personal liberties. The problem is how to control those instruments of government in accordance with the Rule of Law and in the interest of the governed." **K.S. Puttaswamy (Retd.) vs. Union of India, (2019) 1 SCC 1**

<u>Rules of Procedure</u>:

Held: "A code of procedure must be regarded as such. It is procedure something designed to facilitate justice and further its ends: not a penal enactment for punishment and penalties; not a thing designed to trip people up. Too technical a

construction of sections that leaves no room for reasonable elasticity of interpretation should therefore be guarded against (provided always that justice is done to both sides) lest the very means designed for the furtherance of justice be used to frustrate it. Our laws of procedure are grounded on a principle of natural justice which requires that men should not be condemned unheard, that decisions should not be reached behind their backs, that proceedings that affect their lives and property should not continue in their absence and that they should not be precluded from participating in them. Of course, there must be exceptions and where they are clearly defined they must be given effect to. But taken by and large, and subject to that proviso, our laws of procedure should be construed, wherever that is reasonably possible, in the light of that principle." **The Commissioner, Mysore Urban Development Authority V. S.S. Sarvesh, 2019 (37) LCD 594**

Socio Economic Factors:

There is no doubt that the socio-economic factors relating to a convict should be taken into consideration for the purposes of deciding whether to award life sentence or death sentence. One of the reasons for this is the perception (perhaps misplaced) that it is only convicts belonging to the poor and disadvantaged sections of society that are awarded capital sentence while others are not. Although Bachan Singh v. State of Punjab2 does not allude to socio-economic factors for being taken into consideration as one of the mitigating factors in favour of a convict, the development of the law in the country, particularly through the Supreme Court, has introduced this as one of the factors to be taken into consideration. In fact, in Bachan Singh this Court recognised that a range of factors exist and could be taken into consideration and accepted this position.

There are numerous other circumstances justifying the passing of the lighter sentence; as there are countervailing circumstances of aggravation. "We cannot obviously feed into a judicial computer all such situations since they are astrological imponderables in an imperfect and undulating society." Nonetheless, it cannot be over-emphasised that the scope and concept of mitigating factors in the area of death penalty must receive a liberal and expansive construction by the courts in accord with the sentencing policy writ large in Section 354(3). Judges should never be bloodthirsty. Hanging of murderers has never been too good for them.3 Facts and Figures, albeit incomplete, furnished by the Union of India, show that in the past, courts have inflicted the extreme penalty with extreme infrequency — a fact which attests to the caution and compassion which they have always brought to bear on the exercise of their sentencing discretion in so grave a matter. It is, therefore, imperative to voice the concern that courts, aided by the broad illustrative guide-lines indicated by us, will discharge the onerous function with evermore scrupulous care and humane concern, directed along the highroad of legislative policy outlined in Section 354(3)

viz. that for persons convicted of murder, life imprisonment is the rule and death sentence an exception. A real and abiding concern for the dignity of human life postulates resistance to taking a life through law's instrumentality. That ought not to be done save in the rarest of rare cases when the alternative option is unquestionably foreclosed. **M.A. Antony V. State of Kerala, AIR 2019 SC 194**

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Specific Relief Act:

Sec. 14(3) (C)

Held : The issue which has been raised before this Court is whether Section 14(3)(c) of the Act is a bar to a suit by a developer for specific performance of a development agreement between himself and the owner of the property. In dealing with this issue, the court needs to assess whether the word "defendant" in Section 14(3)(c)(iii) has the effect of confining the scope of the suit for specific performance only to a particular class (consisting of owners) or whether a purposive interpretation to the legislation would be required, so as to provide a broader set of remedies to both owners and developers. In deciding this issue the court will need to scrutinize the nature of a development agreement.

Section 14 provides thus:

"14. Contracts not specifically enforceable-

(1) The following contracts cannot be specifically enforced, namely -

(a) a contract for the non-performance of which compensation in money is an adequate relief;

(b) a contract which runs into such minute or numerous details or which is so dependent on the personal qualifications or volition of the parties, or otherwise from its nature is such, that the court cannot enforce specific performance of its material terms;

(c) a contract which is in its nature determinable; (d) a contract the performance of which involves the performance of a continuous duty which the court cannot supervise.

(2) Save as provided by the Arbitration Act, 1940 (10 of 1940), no contract to refer present or future differences to arbitration shall be specifically enforced; but if any person who has made such a contract (other than an arbitration agreement to which the provisions of the said Act apply) and has refused to perform it, sues in respect of any subject which he has contracted to refer, the existence of such contract shall bar the suit.

(3) Notwithstanding anything contained in clause (a) or clause (c) or clause (d) of sub-section (1), the court may enforce specific performance in the following cases-- (a) where the suit is for the enforcement of a contract,-

(i) to execute a mortgage or furnish any other security for securing the repayment of any loan which the borrower is not willing to repay at once:

Provided that where only a part of the loan has been advanced the lender is willing to advance the remaining part of the loan in terms of the contract; or
(ii) to take up and pay for any debentures of a company;
(b) where the suit is for-
(i) the execution of a formal deed of partnership, the parties having commenced to carry on the business of the partnership; or
(ii) the purchase of a share of a partner in a firm;
(c) where the suit is for the enforcement of contract for the construction of any building or the execution of any other work on land:
Provided that the following conditions are fulfilled, namely: - (i) the building or other work is described in the contract in terms sufficiently precise to enable the court to determine the exact nature of the building or work;
(ii) the plaintiff has a substantial interest in the performance of the contract and the interest is of such a nature that compensation in money for non-performance of the contract is not an adequate relief; and
(iii) the defendant has, in pursuance of the contract, obtained possession of the whole or any part of the land on which the building is to be constructed or other work is to be executed."
Section 14(1) provides categories of contracts which are not specifically enforceable. Sub-section (3) of Section 14 is an exception to clauses (a), (c) and (d) of sub-section (1). Though the species of contract stipulated in clauses (a), (c) and (d) of sub-section (1) cannot be specifically enforced, a suit for specific performance of contracts of that description will be maintainable if the conditions set out in sub-clauses (i), (ii) and (iii) of clause (c) of Section 14(3) are satisfied.
The consistent position of the common law is that courts do not normally order specific performance of a contract to build or repair. But this rule is subject to important exceptions, and a decree for specific performance of a contract to build will be made only upon meeting the requisite requirements under law. The discretion to grant specific performance is not arbitrary or capricious; it is governed by principles developed in precedents. The judge must exercise the discretion in a judicious manner. Circumstances bearing on the conduct of the plaintiff, such as delay, acquiescence and breach or some other circumstances outside the contract, may render it inequitable to enforce it.
"... the court does not normally order specific performance of a contract to build or repair. However, this rule is subject to important exceptions, and a decree for specific performance of a contract to build will be made if the following conditions are fulfilled:
(1) that the building work is defined by the contract between the parties;
(2) that the plaintiff has a substantial interest in the performance of the contract of such a nature that he cannot be adequately be compensated in damages;

(3) that the defendant is in possession of the land on which the work is contracted to be done." **Sushil Kumar Agarwal V. Meenakshi Sadhu 2019 (1) Supreme 367: 2019 (1) ARC 193**

Sec. 38 - Suit for permanent injunction-To protect his possession-Suit decreed by all Courts holding plaintiff able to prove his possession he can maintain a simplicitor suit for injunction without seeking relief for injunction-Sustainability of-Defendant relaying upon the land acquisition proceedings and possession certificate could successfully raise cloud over the title of plaintiff and in those circumstances plaintiff ought to have sought for relief of declaration-Courts below erred in entertaining the suit for injunction-Decreetal of suit improper.

It is well settled by catena of Judgments of this Court that in each and every case where the defendant disputes the title of the plaintiff it is not necessary that in all those cases plaintiff has to seek the relief of declaration. A suit for mere injunction does not lie only when the defendant raises a genuine dispute with regard to title and when he raises a cloud over the title of the plaintiff, then necessarily in those circumstances, plaintiff cannot maintain a suit for bare injunction. **Jharkhand State Housing Board V. Didar Singh and Another, 2019(1) ARC 404, S.C.**

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Transfer of Property Act:

Sec. 54- Plea of Undue influence-

Insofar as the plea of undue influence, merely because the parties are related to each other or merely because the executant was old or of weak character, no presumption of undue influence can arise. Court must scrutinise the pleadings to find out that such plea has been made out before examining whether undue influence was exercised or not.

Under Section 16(1) of the Indian Contract Act a contract is said to be induced by undue influence where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other. This shows that the court trying a case of undue influence must consider two things to start with, namely, (1) are the relations between the donor and the donee such that the donee is in a position to dominate the will of the donor and (2) has the donee used that position to obtain an unfair advantage over the donor? **Jamila Begum v. Shami Mohd., AIR 2019 SC 72.**

Sec. 60 – Scope of

Section 60 of the Transfer of Property Act, 1882 provides that at any time after the money becomes due, the mortgagor has a right, on payment or tender, at a proper time and place, of the mortgage-money to require the mortgagee to deliver the mortgage deed and all documents relating to the mortgaged property, and where the

mortgagee is in possession of the mortgaged property, to deliver possession thereof to the mortgagor.

The right of redemption can be extinguished as provided in proviso to Section 60 of the Transfer of Property Act. It can be extinguished either by the act of the parties or by decree of a court. The expression "act of parties" refers to some transaction subsequent to the mortgage, standing barred from the mortgage transaction. **Jamila Begum v. Shami Mohd., AIR 2019 SC 72.**

Sec. 111

Sec. 111 of TP Act deals with the determination of lease. Clauses (a) to (h) set out the grounds on which a lease of an immoveable property can be determined.

A fortiori, the parties did not intend to surrender the tenancy rights despite entering into an agreement of sale of the tenanted property. In other words, if the parties really intended to surrender their tenancy rights as contemplated in clauses € or (f) of Section 111 of the TP Act while entering into an agreement to sell the suit house, it would have made necessary provision to that effect by providing a specific clause in the agreement. It was, however, not done. ON the other hand, we find that the conditions set out in the agreement do not make out a case of express surrender under clause (e) or implied surrender under clause (f) of Section 111 of the TP Act. **H.K. Sharma v. Ram Lal, AIR 2019 SC 682.**

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Wakf Act:

Ss. 6, 7 and 85-Specific Relief Act, 1963, S. 38 - Plaintiff/Waqf Board filed suit in Court of Civil Judge for grant of permanent injunction-To restraining respondents from raising any construction and changing the position from agricultural to residential of the property in any manner-After constitution of Wakg Tribunal, the suit transferred to Wakf Tribunal-Respondent filed application before Tribunal for rejection of plaint on ground Tribunal has no jurisdiction to entertain the suit and Civil Court alone has jurisdiction to entertain suit-Application or respondent rejected-Revision against allowed by High Court-Sustainability of- The view of High Court that right, title and interest of a non-muslim to the wakf in a property cannot be put in jeopardy is contrary to statutory scheme as contained in S. 6 of Act, 1995-Defendant in W.S. pleaded the suit property not wakf property, when issue in suit is as to whether suit property is wakf property or not it is covered by specific provision of S. 6 and 7 of Wakf Act, 1995, hence it is required to be decided by Tribunal under S. 83 and bar under S. 85 shall come into existence with regard to jurisdiction of Civil Court-Impugned order of High Court set aside.

Sec. 83-Jurisdiction of Civil Court-Applicability of bar-Civil Court shall have jurisdiction to entertain suit and proceedings which are not required by or under the Act, 1995 to be determined-Explained.

Coming to Section 83 which relates to bar of jurisdiction of Civil Court, the relevant words are "any dispute, question or other matter relating to a wakf or wakf property" which is required by or under this Act to be determined by the Tribunal. Thus, bar of jurisdiction of Civil Court is confined only to those matters which are required to be determined by the Tribunal under this Act. Thus, Civil Court shall have jurisdiction to entertain suit and proceedings which are not required by or under the Act, 1995 to be determined. Thus, answering the question of jurisdiction, question has to be asked whether the issue raised in the suit or proceeding is required to be decided under the Act, 1995 by the Tribunal, under any provision or not. In the event, the answer is affirmative, the bar of jurisdiction of Civil Court shall operate.

Right, title and interest of a non-Muslim to the Wakf in a property cannot be put in jeopardy is contrary to the statutory scheme as contained in Section 6 of the Act, 1995. Thus, the reason of the High Court to allow the revision petition is wholly unfounded. The defendant in written statement has pleaded that the suit property is not Wakf property. When issue in the suit is as to whether suit property is Wakf property or not it is covered by specific provision of Sections 6 and 7 of the Wakf Act, 1995, hence, it is required to be decided by the Tribunal under Section83 and bar under Section 85 shall come into existence with regard to jurisdiction of Civil Court. In this context, in the judgment in Haryana Wakf Board vs. Mahesh Kumar, (2014) 16 SCC 45, this Court has laid down that the question as to whether the suit property is a Wakf property is a question which has to be decided by the Tribunal. In the above case plaint was returned by the Appellate Court under Order VII Rule 10 for presentation before the Tribunal which view was upheld by this Court.

Civil Appeal No.92 of 2019 is, thus, fully covered by the judgment of this Court in Haryana Wakf Board vs. Mahesh Kumar. The defendant having pleaded that suit property is not a Wakf property, the question has to be decided by the Tribunal. Thus, the High Court has committed error in allowing the revision petition. Thus, this appeal deserves to be allowed. **Punjab Wakf Board V. Sham Singh Harike, Punjab Wakf Board Vs. Teja Singh, 2019(1) ARC 511 (S.C.)**

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Words and Phrases:

Development agreement

The expression "development agreement" has not been defined statutorily. In a sense, it is a catch-all nomenclature which is used to be describe a wide range of agreements which an owner of a property may enter into for development of immovable property. As real estate transactions have grown in complexity, the nature

of these agreements has become increasingly intricate. Broadly speaking, (without intending to be exhaustive), development agreements may be of various kinds:

(i) An agreement may envisage that the owner of the immovable property engages someone to carry out the work of construction on the property for monetary consideration. This is a pure construction contract;

(ii) An agreement by which the owner or a person holding other rights in an immovable property grants rights to a third party to carry on development for a monetary consideration payable by the developer to the other. In such a situation, the owner or right holder may in effect create an interest in the property in favour of the developer for a monetary consideration;

(iii) An agreement where the owner or a person holding any other rights in an immovable property grants rights to another person to carry out development. In consideration, the developer has to hand over a part of the constructed area to the owner. The developer is entitled to deal with the balance of the constructed area. In some situations, a society or similar other association is formed and the land is conveyed or leased to the society or association;

(iv) A development agreement may be entered into in a situation where the immovable property is occupied by tenants or other right holders. In some cases, the property may be encroached upon. The developer may take on the entire responsibility to settle with the occupants and to thereafter carry out construction; and

(v) An owner may negotiate with a developer to develop a plot of land which is occupied by slum dwellers and which has been declared as a slum. Alternately, there may be old and dilapidated buildings which are occupied by a number of occupants or tenants. The developer may undertake to rehabilitate the occupants or, as the case may be, the slum dwellers and thereafter share the saleable constructed area with the owner.

When a pure construction contact is entered into, the contractor has no interest in either the land or the construction which is carried out. But in various other categories of development agreements, the developer may have acquired a valuable right either in the property or in the constructed area. The terms of the agreement are crucial in determining whether any interest has been created in the land or in respect of rights in the land in favour of the developer and if so, the nature and extent of the rights.

In a construction contract, the contractor has no interest in either the land or the construction carried out on the land. But, in other species of development agreements, the developer may have acquired a valuable right either in the property or the constructed area. There are various incidents of ownership of in respect of an immovable property. Primarily, ownership imports the right of exclusive possession and the enjoyment of the thing owned. The owner in possession of the thing has the right to exclude all others from its possession and enjoyment.

The right to ownership of a property carries with it the right to its enjoyment, right to its access and to other beneficial enjoyments incidental to it. (B Gangadhar v BG Rajalingam (1995) 5 SCC 239 at para 6). Ownership denotes the relationship between a person and an object forming the subject matter of the ownership. It consists of a complex of rights, all of which are rights in rem, being good against the world and not merely against specific persons. There are various rights or incidents of ownership all of which need not necessarily be present in every case. They may include a right to possess, use and enjoy the thing owned; and a right to consume, destroy or alienate it. (Swadesh Ranjan Sinha v Haradeb Banerjee (1991) 4 SCC).

An essential incident of ownership of land is the right to exploit the development, potential to construct and to deal with the constructed area. In some situations, under a development agreement, an owner may part with such rights to a developer. This in is essence is a parting of some of the incidents of ownership of the immovable property. There could be situations where pursuant to the grant of such rights, the developer has incurred a substantial investment, altered the state of the property and even created third party rights in the property or the construction carried out to be carried out. There could be situations where it is the developer who by his efforts has rendered a property developable by taking steps in law. In development agreements of this nature, where an interest is created in the land or in the development in favour of the developer, it may be difficult to hold that the agreement is not capable of being specifically performed.

For example, the developer may have evicted or settled with occupants, got land which was agricultural converted into non-agricultural use, carried out a partial development of the property and pursuant to the rights conferred under the agreement, created third party rights in favour of flat purchasers in the proposed building. In such a situation, if for no fault of the developer, the owner seeks to resile from the agreement and terminates the development agreement, it may be difficult to hold that the developer is not entitled to enforce his rights. This of course is dependent on the terms of the agreement in each case. There cannot be a uniform formula for determining whether an agreement granting development rights can be specifically enforced and it would depend on the nature of the agreement in each case and the rights created under it. **Sushil Kumar Agarwal V. Meenakshi Sadhu 2019 (1) Supreme 367**

“Human Dignity”— Meaning of

While undertaking the analysis of the judgment in K.S. Puttaswamy, (2017)10 SCC 1, Court has mentioned that one of the attributes laid down therein is that the sanctity of privacy lies in its functional relationship with dignity. Privacy is the constitutional core of human dignity. In the context of Aadhaar scheme how the concept of human dignity is to be applied assumes significance.

In Common Cause v. Union of India, (2018) 5 SCC 1, the concept of human dignity has been explained in much detail. The concept of human dignity developed in the said judgment was general in nature which is based on right to autonomy and right of choice and it has become a constitutional value. In the last 40 years or so, this Court has given many landmark judgments wherein concept of human dignity is recognised as an attribute of fundamental rights. In the earlier years, though the meaning and scope of human dignity by itself was not expanded, this exercise has been undertaken in last few years. Earlier judgments have mentioned that human dignity is the intrinsic value of every human being and, in the process, a person's autonomy as an attribute of dignity stands recognized. The judgments rendered in the last few years have attempted to provide jurisprudential basis to the concept of human dignity itself.

The basic principle of the dignity and freedom of the individual is common to all nations, particularly those having democratic set up. Democracy requires us to respect and develop the free spirit of human being which is responsible for all progress in human history. Democracy is also a method by which we attempt to raise the living standard of the people and to give opportunities to every person to develop his/her personality. It is founded on peaceful co-existence and cooperative living. If democracy is based on the recognition of the individuality and dignity of man, as a fortiori we have to recognize the right of a human being to choose his sex/gender identity which is integral to his/her personality and is one of the most basic aspect of self-determination, dignity and freedom. In fact, there is a growing recognition that the true measure of development of a nation is not economic growth; it is human dignity. **K.S. Puttaswamy (Retd.) vs. Union of India, (2019) 1 SCC 1**

"Reasonable expectation"— Meaning of

"Reasonable expectation" involves two aspects. First, the individual or individuals claiming a right to privacy must establish that their claim involves a concern about some harm likely to be inflicted upon them on account of the alleged act. This concern 'should be real and not imaginary or speculative'. Secondly, 'the concern should not be flimsy or trivial'. It should be a reasonable concern. It has to be borne in mind that the concept of 'reasonable expectation' has its genesis in the US case laws. UK judgments adopted the test of reasonable expectation from the US jurisprudence. The ECHR and ECJ judgments reveal a little divergence with regard to right of privacy. The ECHR in general adopts the approach that 'a person's reasonable expectation as to privacy may be significant, although, not necessarily conclusive factor'.

Reasonable expectation of privacy is a broad concept which takes into account all the circumstances of the case. They include attributes of the claimants, the nature of the activity in which the claimant was engaged, the place at which it was happening, the nature and purpose of the intrusion, the absence (or presence) of

consent, the effect on the claimant and the purpose for which information is taken. Therefore, when a claim of privacy seeks inclusion in Article 21 of the Constitution of India, the Court needs to apply the reasonable expectation of privacy test. It should, inter alia, see:

(i) What is the context in which a privacy claim is set up?

(ii) Does the claim relate to private or family life, or a confidential relationship?

(iii) Is the claim a serious one or is it trivial?

(iv) Is the disclosure likely to result in any serious or significant injury and the nature and extent of disclosure? **K.S. Puttaswamy (Retd.) V. Union of India, (2019) 1 SCC 1**

PART – 2 (HIGH COURT)

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Arbitration and Conciliation Act:

Sec. 6 – The intent of the parties – expressed in the term of this agreement – Arbitration agreement – a district and separable agreement from the principal contract

The above discussion leads to the following conclusions:-

(a) Section 7 of the Act, 1996 defines "Arbitration agreement" to mean an agreement by the parties to submit to arbitration all or certain disputes which have arisen or may arise between them in respect of a defined legal relationship, whether contractual or not. An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

(b) An arbitration clause in a commercial contract is an agreement inside an agreement. The parties make their commercial bargain but in addition agree on a private tribunal to resolve any issues that may arise between them.

(c) This is known as the doctrine of separability and Section 7 of the Act, 1996 provides a statutory codification of the previous case law on this subject. The arbitration agreement is a distinct and separable agreement from the underlying or principal contract.

(d) The basic principle which must guide judicial decision-making is that arbitration is essentially a voluntary assumption of an obligation by contracting parties to resolve their disputes through a private tribunal. The intent of the parties is expressed in the terms of their agreement. Where commercial entities and persons of business enter into such dealings, they do so with a knowledge of the efficacy of the arbitral process. The commercial understanding is reflected in the terms of the agreement between the parties. The duty of the court is to impart to that commercial understanding a sense of business efficacy. **M/s Swatantra Properties (P) Ltd. V. M/s Airplaza Retail Holdings Pvt. Ltd., 2019 (1) ALJ 409**

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Civil Procedure Code:

Sec. 9 and O. 6, R.17- A suit- issue of maintainability as preliminary issue and decision of an amendment application-Priority to decision-Preliminary issue and decision of a amendment application-Priority to decision-Preliminary issue framed by Civil Court has not been decided and the village has been denotified during the pendency of the suit would be of no relevance in view of specific bar put by S. 49 of Act, 1953 as it applies not only to the questions adjudicated by the consolidation authorities but also to those which could or ought to have been taken for adjudication before it-The relief claimed by way of amendment application moved by the plaintiff would be of not such relevance on the question of maintainability of the suit-Trial Court required to decide the maintainability

of the suit in light of the fact during interregnum, the village underwent consolidation operations and the suit land lies in an area which was within the jurisdiction of the consolidation authorities.

Sec. 9- Maintainability of a suit-Relating to an agricultural land before the Civil Courts, revenue Courts and consolidation Courts-Legal position enumerated.

In the light of the said legal position, in the instant case, it has to be seen by the Civil Court as to whether the principal or real relief in the dispute in question could have been adjudicated by the consolidation authorities, if it would have been taken before it during the consolidation operations. If the answer is yes, the suit would necessarily be dismissed as the bar of Section 49 of the Act, 1953 would then apply. The fact that the preliminary issue was framed by the civil Court but has not been decided and the village has denotified during the pendency of the suit, would be of no relevance in view of the specific bar put by Section 49 as it applies not only to the questions adjudicated by the consolidation authorities but also to those which could or ought to have been taken for adjudication before it.

In the instant suit, the amendment application has been filed seeking relief of cancellation of the sale deed on the ground that it was executed by a imposter.

In the said scenario, the relief claimed by way of amendment application moved by the plaintiff in the year 2016, would be of not much relevance on the question of maintainability of the suit. The trial Court is, therefore, require to decide the issue of maintainability of the suit in the light of the fact that during the interregnum, the village underwent consolidation operations and the suit land lies in an area which was within the jurisdiction of the Consolidation authorities. **Parmanand Ojha V. Om Prakash and 8 others, 2019(1) ARC 750 Alld.**

Sec. 96 - Specific Relief Act, 1963, S. 16 (c)- Suit for specific performance of an agreement to sell-Suit decreed-Suit barred by limitation, plaintiff failed to show he was ready and willing to get the sale deed executed within period of limitation-Plea of-Held-Judgment in previous suit cannot be construed as to provide a cause of action to plaintiff to file suit for specific performance, this remedy was available to plaintiff when earlier suit dismissed, he did not avail said remedy and allowed period of limitation to expire once period of limitation expired, the same cannot be extended or deemed to be extended even by a Court's order-The suit was barred by limitation-Requirement of showing readiness and willingness was not discharged by plaintiff-Decreetal of suit improper, hence set aside.

M/s. Darvesh Sahkari Avas Samiti Ltd. Vs. M/s. Doctors Sahkari Grah Nirman Samiti Ltd., 2019(1) ARC 425 Alld.

Sec. 96 – First appeal – Jurisdiction of District Judge

Once an order that could not be assailed under Section 105 read with Order XLIII Rule 1-A CPC in First Appeal No. 4/2011, the same was thus not open to be challenged in a regular first appeal as well.

the District Judge was not well within his power to entertain the First Appeal No. 5 of 2011 under Section 96 CPC inasmuch as the order dated 21.12.2010/14.1.2011 passed in Misc. Case No. 13/2007 setting aside the compromise decree dated 23.12.1976 under Order XXIII Rule-3 read with Section 151 CPC was not a decree passed by a subordinate court.

once it is held that the order dated 21.12.2010/14.1.2010 was not a decree of a subordinate court and the same for all purposes would be an order passed by the District Judge himself. **Aqeel Ahmad v. Third Additional District Judge, Unnao, 2019 (2) ALJ 87**

Sec. 151 – Dismissal of suit – supperssion of material facts – Dismissal of suit by exercising inherent powers under S. 151 proper

Non-disclosure of execution of the sale deeds and that of recording of the name of the respondent No.4 in the relevant revenue records is nothing but suppression of material facts for which responsibility is to be saddled only on the party bringing any legal action by instituting a suit. If any material fact is concealed by any party bringing any legal action in any court of law and if such fact is so material that it has potential of not only of changing nature of the proceedings but also of changing of the result of the suit, such suppression, would amount to playing fraud on the court as well.

If an element of fraud is present in a given set of facts and circumstances of a case, every court is vested with inherent powers to set aside its order even without issuing notice. It is the duty of the court to protect the solemnity of its proceedings and in case of suppression of material facts, the purity and solemnity of such proceedings get polluted and vitiated moment any such factum of suppression of material fact or fraud played upon the court is brought to the notice of the court, there should not be any hesitation of any kind to take immediate action to set the proceedings right. It is the duty of the court to ensure that any fraud played upon it, is not allowed to succeed or perpetuate. **Ramesh Chaturvedi v. State of U.P., 2019 (2) ALJ 292**

Sec. 151-Application raising objection with regard to jurisdiction of Civil Court-Pending preparation of final decree-On ground Civil Court not competent to pass the preliminary decree of a partition with regard to open place of land, which is Bhumidhari Land, can be only passed by revenue Court-Application rejected-Objection as to jurisdiction ought to have been taken by petitioner at or before determination of issues before the Court of first instance, by not taking objection before the stage of grant of preliminary decree, he has admitted the

nature of suit land being 'Abadi' and having submitted himself to the jurisdiction of the Civil Court, he cannot be allowed to raise the objection at this stage-There is no dispute the suit land lies in Non. Z.A. area-Final decree has to be prepared in conformity with the preliminary decree-At the stage of preparation of final decree, no exception can be taken to the merits of the preliminary decree which has been affirmed by with dismissal of first appeal by High Court and SLP by Apex Court-Rejection proper.

The objection as to the jurisdiction of the Civil Court to grant a decree of partition, in view of bar of Section 331 of the Act 1950, ought to have been taken by the petitioner at or before determination of issues before the Court of first instance so as to determine the right of the plaintiff to seek partition of the suit land. By not taking this objection before the stage of grant of preliminary decree, he has admitted the nature of the suit land being 'Abadi' and having submitted himself to the jurisdiction of the Civil Court, he cannot be allowed to raise this objection at an advance stage of preparation of final decree that too when the preliminary decree was subjected to challenge by him before the High Court and the Supreme Court. The plea taken by the petitioner that the suit land is not 'Sehan' land of two houses, is thus frivolous and is an effort to frustrate the partition decree. And moreover, there is not dispute about the fact that the suit land lies in a Non-Z.A. area and is being used for the last more than 30 years as 'Sehan' of their houses both by the plaintiff and the defendant.

Further the final decree has to be prepared in conformity with the preliminary decree. At the stage of preparation of final decree, no exception can be taken at to the merits of the preliminary decree, which has been affirmed with the dismissal of the first appeal by the High Court and Special Leave Petition by the Apex Court. **Rameshwar Prasad Verma Vs. Smt Seetamani Devi Kushwaha, 2019 (1) ARC 468 Alld.**

Ss. 151, 86, O. 23, R.3 – Recall of order – setting aside the compromise decree – civil judge can entertain application for setting aside compromise decree under S. 151 C.P.C.

In the present case, undisputedly the property i.e. plots no. 1843 and 1847 is the waqf property, therefore, the competence of the Mutawalli to enter into a compromise had come to be questioned in Misc. Case No. 13/2007 which was allowed. The question, however, is as to whether the court of Civil Judge, Senior Division, Unnao, which had rendered the original compromise decree, was competent to entertain such an application.

It is no more res integra that an application for setting aside a compromise decree can be entertained by the same court which has rendered the decree. This position is clear from the proviso appended to Order XXIII Rule 3 CPC extracted hereinabove wherein the phrase used i.e. 'the court' would imply the same court. Such

a view stands fortified when reference to the judgments reported in (2014) 15 SCC 471-Para 11 and 12, (2012) 5 SCC 525-Para 9 and 10 and (2006) 5 SCC 566-Para 6, 11 and 12 is made. The Court may also note that once the statutory power vested by virtue of Section 22 of Bengal, Agra and Assam Act, 1887 was exercised by the District Judge to transfer the First Appeals no. 12/1974 and 13/1974 instituted under Section 96 CPC to the court of civil judge, for adjudication, the jurisdiction for setting aside a compromise decree rendered in the said appeals, unless altered under Section 22 of the Bengal, Agra and Assam Civil Courts Act, 1887 or Section 24 CPC, would vest in the same court. The statutory appellate power once delegated in a case would not revive in the District Judge unless an order as permissible under law was passed. **Aqeel Ahmad v. Third Additional District Judge, Unnao, 2019 (2) ALJ 87**

O. 6, R.17- Amendment of Plaint/Original release application-On ground since amendment permitted in written statement hence it is necessary to amend plaint-Amendment allowed in part-Second amendment application with same plea- On ground amendment necessary for determining real questions in controversy-Amendment rejected-Subsequent events are to be considered while considering release application based on bona fide need of landlord-The assertion respondent's sons has opened a huge nursing home and that the respondent is keeping the shop closed and would thus suffer no hardship is a relevant consideration while deciding the release application-Courts below erred in rejecting the amendment it does not fall within the ambit of consequential amendment-Since P.A. permitted respondent/tenant to amend W.S. it was in interest of justice amendment of plaint should have been allowed-Rejection improper, hence amendment allowed. **Ajay Prakash Agrawal V. Dr. Smt. Urmila Agrawal, 2019(1) ARC 769 Alld.**

O. 6, R.17; O.41, R. 2 and 3 r/w Ss. 107 and 151-Amendment application-For amendment of memo of appeal-Consideration of-

The grounds which are sought to be added in the memo of appeal at the appellate stage are identical in nature, rather the same are based on the said facts and on basis of which trail Court had already rejected the application moved under O. XIV, R. 5 r/w S. 151, CPC and the same has not been challenged before the higher Court, so the same attained finality

Amendment application rejected. **Rajiv Sahai amd another Vs. Wg Cdr. Ashok Kumar Sahi (Retd.), 2019(1) ARC 622 Alld.**

O. 7, R.10, 11 and 14- Application under O. VII, R. 11-Trial Court while considering the application whether can consider documents filed in support of the plaint or not-Consideration of-The Court is empowered to consider the

documents filed under O. VII, R. 14, being filed in support of allegations/averments made in plaint as basis of suit/plaint, at the time of dealing with the application moved either under R. 10 or under R. 11, CPC-Explained.

The Court is empowered to consider the documents filed under Order 7 Rule 14, being filed in support of allegations/averments made in the plaint as basis of suit/plain, at the time of dealing with the application moved either Under Rule 10 or Under Rule 11 of the CPC. **Prem Kumar Rastogi V. M/s. On-Up Automobiles Pvt. Ltd. and others, 2019(1) ARC 819 Alld. (L.B.)**

O.9, R.13 read with Sec. 151- Recall application-For recall of release order under S. 21(1) (a) of Act No. 13/1972 which was passed on basis of compromise-Application rejected holding on ground a person not party to the proceedings cannot maintain such application-The resistance offered by petitioner would fall within the ambit of O. 21, R. 97, CPC, although the provisions of O. 21, R. 97 do not specifically apply to release proceedings, but this Court has applied the principles of the said provisions to S. 23 of the Act No. 13/1972, where a third party offers resistance claiming independent right and not bound by the release order, his rights are then required to be decided under S. 23 of the Act before the release order is executed-Rejection of application improper, matter remitted to P.A. for fresh decision.

It is noteworthy that the Prescribed Authority, which was executing the release order, was aware of the resistance offered by the petitioner to the delivery of possession, claiming not bound by the release order passed against his brother. The resistance offered by the petitioner would fall within the ambit of Order 21 Rule 97 CPC. Although provisions of Order 21 Rule 97 do not specifically apply to release proceedings but this Court has applied the principles of the said provisions to Section 23 of the Act, where a third party offers resistance claiming independent right and not bound by the release order. His rights are then required to be decided under Section 23 of the Act before the release order is executed.

In the instant case, the Prescribed Authority, which had passed the release order and was also executing the same, was, therefore, under legal obligation to decide the claim and the resistance offered by the petitioner to the executing of the release order. However, the Court below, without at all examining the claim of the petitioner, rejected the application solely on the ground that application filed by the petitioner is not maintainable, as he is stranger to the proceedings. This Court is of considered opinion that the view taken by the Court is manifestly illegal and in ignorance of the legal position mentioned above and as such, the impugned order cannot be sustained and is hereby quashed. **Ram Sumer V. Sri Krishna @ Sri Kishan 5 others, 2019(1) ARC 795 Alld.**

O. 9, R. 13-Provincial Small Cause Courts, Act, 1887, S. 17- Application for setting aside ex parte decree-The Application accompanied by application under S. 5 Limitation Act-Application rejected-On ground petitioner failed to comply with provisions of S. 17 of PSCC Act which is mandatory in character-Legality of-Ex parte decree passed in suit on 22.2.2012, the application under O. 9, R. 13 CPC filed on 11.7.2013, alongwith delay, however alongwith the application petitioner did not file any application for permission to furnish security of decreetal amount not deposited the amount payable under the decree-The deposit made much after filing of the application was of no avail and the Courts below perfectly justified in not giving benefit of the said deposit while construing compliance of S. 17 of the Act-The service of summons was held sufficient on the basis of the endorsement made by postman that the defendant had refused to take delivery of the summons-Rejection of the application proper.
Smt. Sanju Dubey V. Khasgi Devi Ahilya Bai Holker Charities Thru' Raja Singh, 2019(1) ARC 443 Alld.

O.9, R. 13-Provincial Small Cause Courts Act, 1887, S. 17-Restoration application-For setting aside ex parte decree- Ex parte decree set aside, application allowed-Despite a specific plea taken by plaintiff/landlord that there was no compliance of S. 17 of the Act, trial Court has not examined the said issue at all-There is also no finding in the impugned order that there was any sufficient cause for not-appearance of the defendant before the Trial Court of that summons were not duly served upon him-An application under O. IX, R. 13, CPC could not be allowed unless the Court is satisfied regarding sufficiency of cause for not- appearance-Allowing of the application improper, hence set aside, matter remanded for decision of restoration afresh.

In *Kedar Nath v. Mohan Lall Kesarwani and others, 2002, (1) ARC 186*, the Supreme Court has held that the requirement of depositing the decreetal amount of filing of application for furnishing security, is a mandatory requirement and unless the same is complied with, the restoration application could not be entertained on merits. In the impugned order, as noted above, despite a specific plea taken by the plaintiff-landlord that there was no compliance of Section 17 of the Act, the trial Court has not examined the said issue at all. There is also no fining in the impugned order that there was any sufficient cause for non-appearance of the defendant before the trial Court or that summons were not duly served upon him. It is well settled that an application under Order 9 Rule 13 CPC could not be allowed unless the Court is satisfied regarding sufficiency of cause for not appearance. **Saloni Lal V. Mohit, 2019(1) ARC 600 Alld.**

O. 21, R. 30 – Hindu Marriage Act (25 of 1955) – S. 24 - Execution – Order of maintenance – Is executable as money decree

The contention that the interim maintenance awarded by the First Appellate Court would be payable until the date of conclusion of execution proceedings, therefore, cannot be accepted. However, the order passed under Section 24 of the Act, 1955 is executable as a money decree. The executing court is required to proceed to execute the same as the money decree by adopting the mode of execution provided under Order 21 Rule 30 of the Code of Civil Procedure, 1908. **Smt. Madhu Mishra alias Gudia v. Prem Kumar Mishra, 2019 (2) ALJ 303**

O.22 R.10 r/w O.1, R. 10-Substitution/Impleadment application-On behalf of purchase of suit property-During pendency of appeal-Application allowed-During subsistence of status quo order sale-deed executed, hence impleadment/substitution cannot be allowed-Plea of-Held-Status quo passed as to maintain the nature of suit property, parties were not restrained from alienating the suit property during pendency of the appeal-There is no prohibition against the transferee pendent lite to join proceeding, he may be allowed to be joined as a proper party under O. 1, R. 10, CPC or may be substituted as assignee of the transferor, a party to the suit-Allowing of the application proper.

The status quo order was passed so as to maintain the nature of the suit property as on the date of institution of the suit. However, the said status quo order cannot be read to mean that the parties were restrained from alienating the suit property during the pendency of the appeal.

There is no prohibition against the transferee pendente lite to join the proceeding. He may allowed to be joined as a proper party under Order 1 Rule 10 CPC or may be substituted as asignee of the transferor, a party to the suit. Upon joining, he may contest the suit not to assert his own right but to defend the right of the transferor from whom he acquired interest in the immovable property, which is subject matter of the suit, being representative in interest of the said party. The doctrine of *lis pendens* under Section 52 of the Act is intended to strike any attempt of the parties to the litigation to circumvent the jurisdiction of the court, in which a dispute or right or interest for immovable property is pending, by private dealing which may remove the subject matter of litigation from the ambit of the court's power to decide the pending dispute or frustrate the decree. The whole object of doctrine of *lis pendens* is to subject the parties to the litigation as well as others, who seeks to acquire rights in immovable property, which are subject matter of litigation, to the powers and jurisdiction of the court and to prevent the object of a pending action from being defeated. **Dushyant Kumar and 5 others V. Aswani Kumar Singh and 25 others, 2019(1) ARC) 480 Alld.**

O. 22, R.3-House and Rents-Substitution application-On death of original plaintiff-Substitution moved by son of original plaintiff to be substituted in place of his father-Substitution allowed-Petitioner who is merely a tenant has no right to contend that the Will executed by original plaintiff is contrary to the last wish of original owner of the property-Purpose of substitution is to carry forward the litigation after death of the original party, said purpose is duly served by bringing on record son of deceased plaintiff-Allowing of substitution application proper.

The purpose of substitution is to carry forward the litigation after death of the original party. The said purpose is duly served by bringing on record son of the deceased plaintiff. **Kewang V. Smt. Jareena Peeters (Deceased) and another, 2019(1) ARC 767 Alld.**

O. 39, Rr. 1 and 2 and O. 42, R. 1(r)-Temporary injunction application-In suit for permanent injunction to restrain Krishi Utpaadan Mandi Samiti from releasing the interest amount from the plaintiff/appellant-Application rejected holding the interim relief claimed in the suit is also to the same effect-The interim relief as claimed if granted would amount to grant of final relief of the suit and as such is not permissible at the interim stage-Rejection proper.

The interim relief claimed in the suit is also to the same effect. The interim relief as claimed, if granted, would amount to grant of the final relief of the suit and as such is not permissible at the interim stage. **Jogendra Yadav V. Krishi Utpaadan Mandi Samit, 2019(1) ARC 106**

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Constitution of India:

Art. 14 – Principles of natural justice – speaking order

A "speaking order" means an order speaking for itself. To put it simply, every order must contain reasons in support of it.

Giving of reasons in support of an order is considered to be the third principle of natural justice. According to this, a party has a right to know not only the result of the enquiry but also the reasons in support of the decision. **State of U.P. v. Chashamveer Singh, 2019 (2) ALJ 36**

Arts. 227, 22 – Habeas Corpus – illegal detention – confinement of young girl along with child in Nari Niketan would not be conducive for development of either of them as she has right to live in her matrimonial home Directions issued to release her

The confinement of the petitioner in Nari Niketan would be in violation of her rights under Article 21 of the Constitution of India. It is apparent that the petitioner went against the wishes of her family members and got married to Sonu Gautam

whereupon criminal proceedings were initiated vide FIR No. 0257 of 2018. The petitioner has made her stand clear in the course of investigation of the said case while giving her statement under Section 164 Cr.P.C. to the effect that she was in love with Sonu Gautam and got married to him, and the child has been born out of the wedlock.

It is evident from the stand of the prosecutrix/the petitioner that Sony Gautam has not committed the offence, as alleged.

From the above it is also clear that the petitioner does not want to live in her paternal home for the fear of her life, as has been stated by her in the statement recorded under Section 164, Cr.P.C.

The hyper technicalities cannot be taken into account to allow the petitioner and her child to remain in Nari Niketan. Court taken judicial view of the matter that confinement of young girl, particularly alongwith child in Nari Niketan would not be conducive for the development of either of them. **Smt. Rani Kashyap v. State of U.P., 2019 (1) ALJ 573 (LB)**

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Criminal Procedure Code:

Ss. 4 & 5 – in respect of Scheduled Caste and Scheduled Tribes

The provisions of this special enactment would also clearly have overriding effect over other enactments including the Cr.P.C. in light of Sections 4 and 5 thereof. While Section 4(2) of the Cr.P.C. provides that all offences under any other law are to be investigated, enquired into, tried and otherwise dealt with in accordance with its provisions, this statutory mandate is subject to the provisions in any other enactment which may regulate the manner of enquiring into, trying or dealing with offences. Section 5 only preserved those enactments which incorporated or embodied specific provisions contrary to the Code which were in force at the time when Cr.P.C. was promulgated. The provisions of the Cr.P.C. therefore would apply only in a situation where an enactment did not make any provision for investigation, enquiry or trial independently or where it was silent on these aspects. The 1989 Act however erects a comprehensive machinery for enquiry, investigation and trials of offences under the Act. It is therefore evident that it is the provisions of this special enactment which must prevail when it is found that its provisions prescribe a procedure inconsistent with those in the Cr.P.C. The answer to the first part of the question formulated by us, must necessarily be in the affirmative and we do therefore hold that the provisions of section 439 Cr.P.C. clearly stand eclipsed in light of the special procedure put in place by the 1989 Act. It is manifest that the concurrent powers recognised as existing in the High Courts by virtue of Section 439 Cr.P.C. stand impliedly excluded and overridden. **In re Provisions of Section 14-A of SC/ST Amendmetn Act, 2015, 2019 (106) ACC 1 (Alld.)**

Sec. 145/146 – Attachment of property

Held - The scheme of Sections 145 & 146 is that the Magistrate, on being satisfied about the existence of a dispute likely to cause a breach of the peace, issues a preliminary order stating the grounds of his satisfaction and calling upon the parties to appear before him and submit their written statements. Then he proceeds to peruse the statements, to receive and to take evidence and to decide which of the parties was in possession on the date of the preliminary order. On the other hand if he is unable to decide who was in such possession or if he is of the view that none of the parties was in such possession he may say so. If he decides that one of the parties was in possession, he declares the possession of such party. In the other two situations he attaches the property. Thus a proceeding begun with a preliminary order must be followed up by an enquiry and end with the Magistrate deciding in one of three ways and making consequential orders. There is no half way house, there is no question of stopping in the middle and leaving the parties to go to the civil court. Proceeding may however be stopped at any time if one or other of the parties satisfies the Magistrate that there has never been or there is no longer any dispute likely to cause a breach of the peace. If there is no dispute likely to cause a breach of the peace, the foundation for the jurisdiction of the Magistrate disappears. The Magistrate then cancels the preliminary order. This is provided by Section 145 sub-section (5). Except for the reason that there is no dispute likely to cause a breach of the peace and as provided by Section 145(5), a proceeding initiated by a preliminary order under Section 145(1)(S) must run its full course. **Smt. Ram Devi v. State of U.P., 2019 (106) ACC 363 (Alld.)**

Sec.154 - FIR - Reliability - Inquest report through bearing crime number not disclosing starting and closing time of same - Not sufficient to disbelieve FIR - Also testimony of one of witnesses that inquest was conducted in police station cannot be a reason to doubt FIR - When testimony of another witness about preparing same at spot of occurrence is corroborated by that of investigating officer.

Referring to these facts as also inquest report (Ext. Ka-5), learned counsel for appellant has urged that non-mentioning of starting time and closing time in inquest report itself indicates that F.I.R. was not in existence at that time. If submission raised by learned counsel for appellant is minutely analyzed in light of entire evidence adduced in the matter, the same is not acceptable. Crime number has been clearly mentioned in the inquest report. Non-disclosure of starting and closing time of inquest itself is not sufficient to disbelieve that F.I.R. was not in existence at the time mentioned therein, especially when PW-3 Investigating Officer has clearly stated that entire police papers were prepared at the place of occurrence itself. Statement of PW-3 also finds support with the statement of PW-1. Statement made by PW-2 on this point may be contrary to the statement of PW-1 and PW-3 but only on this ground statement

of PW-1 and PW-3 cannot be disbelieved. It might be possible that due to pressure of lengthy cross-examination, such type of statement was given by PW-2. Statement made by PW-2 in this regard is not supported by any other evidence. Thus, we are of the view that neither F.I.R. was lodged belatedly nor its existence on the date and time mentioned in chik F.I.R. is doubtful. **Sadhu Singh V. State of UP, 2019 (1) ALJ 311**

Sec. 154 - FIR-whether ante timed-Incident happened at 02:00 a.m. and FIR lodged around 04:15 – Information firstly informed her brother-in-law about incident and thereafter he reached place of occurrence, and then proceeded to the police station - Mere presence of police at Spot cannot attribute and interference by Police, Specially in absence of any evidence - time gap in occurrence of incident and filing of FIR, corroborated and substantiated by Chik Fir and GD report as well - FIR not ante timed

Learned counsel for the appellants has raised vital question regarding lodging of the first information report to be ante-time, on the premise that the complainant, first informed her brother-in-law and after he reached the place of occurrence, she proceeded for police station concerned and lodged the first information report. Indisputably the incident took place around 02:00 a.m. on 30.06.2009 and the first information report was lodged on 30.06.2009 at 04:15 a.m. In this context the oral testimony of PW-1, complainant and eyewitness of the alleged crime, is to be taken into account, where she has categorically stated that she lodged the first information report at the police after getting it scribed by a villager, though in her cross-examination she has also stated about the information being forwarded to her brother-in-law and the report being lodged after he arrived at the place of occurrence, but such statement cannot falsify the fact that the first information report was lodged at 04:15 a.m., which is also corroborated and substantiated by the prosecution documents namely chik F.I.R. and G.D. as well. The first information report of the incident, which took place at 02:00 a.m. on 30.06.2009, has been lodged at 04:15 a.m. on the same day neither appears to be ante-time nor any delay can be attributed to the same. **Kaushal Kumar Verma and another V. State of UP, 2019(2) ALJ 285**

Sec. 162(2)

Nature of the impugned order passed by the Magistrate, obviously under Section 167 of the Code which provides for the procedure to be adopted by the police, if investigation cannot be completed in twenty-four hours. The police produces the accused in custody and also relevant papers before the Magistrate and prayed for the detention of the accused in judicial or police custody. The Magistrate looks into the material placed before him and is expected to apply his mind before passing an order at that stage. Thus although the matter is at initial stage of the investigation, the

Magistrate while passing order under Section 167 of the Code, performs judicial functions.

Now, if the Magistrate decides to remand the accused to judicial custody, a warrant is prepared and signed by him requiring the Superintendent Jail to detain that person in jail for a period to be clearly specified therein. Undoubtedly, the person is detained for committing some offence punishable under some statute. The Magistrate has, therefore, to mention in his order the relevant section which stands attracted. He is, in my opinion, within his rights to go through the contents of the report of the occurrence and form an opinion in regard to the section under which the accused is to be detained in jail and he is legally empowered to direct the preparation of the warrant accordingly. The Magistrate is not bound by the opinion of the Investigating Officer in regard to the applicability of the section under which the alleged offence falls. True, while doing so, a Magistrate has not to make a sort of salvaging operation for arriving at a conclusion as to which section of the statute stands attracted but he can undoubtedly, prima facie, look into the contents of the first information report and disagree with the opinion formed by the police about the penal provision which covers the case. The matter can be elucidated by examples:

(i) The contents of a report, prima facie, make out a case of simple theft but the Investigating Officer writes, the offence, falls under Section 395 of the Indian Penal Code.

(ii) The recitals of report and the medical report do not disclose the user of any dangerous weapon for causing grievous hurt, yet the police registers it as a crime under Section 326 of the Indian Penal Code. Such examples can be multiplied. The Magistrate is, in my opinion, well within his rights to differ from the police and can direct for the detention of the accused under relevant section of the Statute. The instant case falls in this category and it is idle to contend that the orders of this nature cause interference with the investigation." **Barkat v. State of U.P., 2019 (106) ACC 412 (Alld.)**

Sec. 202

Holding inquiry by a Magistrate by himself or by any police officer, as Magistrate thinks fit, has been inserted in sub-section (1) of Section 202, Cr.P.C. by Criminal Procedure (Amendment) Act 2006, w.e.f. 23.6.2006. Prior to this, there was no such provision in the Statute. The reason behind inserting the mandatory provision was that false cases were being filed in bulk against persons residing at far off places for harassment. The purpose behind holding inquiry in respect of accused residing beyond the territorial jurisdiction of Magistrate was to have check over filing of false and frivolous complaints. Intention of law maker was that by holding inquiry by Magistrate himself, or by a Police Officer, or by such other person as he thinks fit, filing of false complaint case may be checked and it was with regard to accused

residing at far off places, and not with regard to those whose cases are based on documentary evidences, or though they are residents of far off places but closely related with complainant, as in such cases and there is a little chance of false implication. Therefore, in such cases, if satisfied, Magistrate can straightway issue process against accused residing at far off places even without holding inquiry under sub-section (1), and his decision can not be challenged on account of being violative of mandatory provision.

Whether statutory provision is mandatory or directory depends on the intention of law maker and not on the language used, where a statute prescribes a particular act to be done in a particular manner laying down special consequences or failure to comply with, then it will be mandatory, otherwise it will be directory. **Mohit Sahney v. State of U.P., 2019 (106) ACC 441 (Alld.)**

Sec. 204(2) – Discharge application moved on ground of non-compliance of Sec. 204(2) Cr.P.C.

Held - Section 204 (2) and (3) of Cr. P.C., 1973) were meant for protection of the accused person and that their disregard was likely to be injurious to the accused, but at the same time it may be argued, that merely non-filing of a list of witnesses before the summons are issued and not attaching a copy of the complaint with the summons, are not matters, which by themselves, are calculated to seriously prejudice the accused, if a copy of the complaint is supplied to him as soon as he appears in court and if the required list of witnesses is also actually filed in court when the accused appears. It is further held that it would be permissible to argue that the language used in Section 204 (1-B) Cr.P.C. is neither negative not prohibitive nor exclusive. Furthermore, so far as filing a list of witnesses is concerned, being only time provision, it may be argued to have been intended to be merely directory, as filing of the list just after the issue of process may not cause any serious injury or wrong. Further it is held that Section does not say that if no list is filed before the accused is summoned, then none can be filed later. It was further held that there does not seem to be any legal bar even to the filing of supplementary list of witnesses, though the reliability and trustworthiness of the supplementary list of witnesses may be open to consideration. Further it is held that the question is undoubtedly not free from difficulty but after considering the matter from all aspects, it could be said that provision of clause (1-B) of Section 204, Cr.P.C., is merely directory in the sense that failure to attach a copy of the complaint with the summons does not by itself completely invalidate or nullify the issue of process. The court's decision to issue process cannot be deemed to have been necessarily and automatically invalidated by the omission of the ministerial officers to attach a copy of the complaint with the summons. Supply of such a copy to the accused on or before his appearance, may cure the defect under sections 537 Cr.P.C.. Therefore the case law relied upon by the

learned counsel for the revisionist himself is not supporting his argument that for want of attaching list of witnesses with summons sent to the accused would invalidate the summoning order.

The jurisdiction of Magistrate under Section 204 (1) to issue summons or warrant in the first instance, as the case may be, if he is satisfied that there was sufficient ground for proceeding cannot be taken away by the failure on the part of the complainant to file a list of prosecution witnesses. **Surendra Kumar Towari v. State of U.P., 2019 (106) ACC 110 (Alld)**

Sec. 439 - Juvenile justice Act, 2015, Ss. 12, 101 – Bail - Allegations of stalking and sexually assaulting minor - Jurisdiction - Juvenile Justice Board (JJB), after noticing parameters for denial of bail to Juvenile, passed cryptic order that release of Juvenile on bail for defeat ends of justice - No reason recorded by JJB and support of its conclusion – Sessions Judge while considering appeal against order of JJB, exercised original jurisdiction and appellate jurisdiction - Neither objections raised against order of JJB rejection bail application considered, nor any reason recorded for agreement or disagreement with other of JJB - Judgment of sessions court not passed and conformity with S. 101 of act - Liable to be set aside.

This Court, thus, in accordance with its duty has examined the orders passed by the two courts below. The Juvenile Justice Board after noticing the parameters on which bail may be denied to a juvenile and in all other eventualities granted, has opined in a rather cryptic determination that release of the juvenile on bail would result in the ends of justice being defeated, and, also, it would expose him to moral, physical and psychological danger. The reasons for that conclusion have not been detailed, but the Board has, in a way, looked at the matter in the perspective that a juvenile's plea for bail has to be considered. Beyond this nothing more need be said about the order of the Board as that has met with appellate approval of the learned Sessions Judge.

A reading of the impugned judgment passed by the learned Additional Sessions in appeal that has been extracted above does not as much as spare a hint that he has exercised jurisdiction or discharged duties as a court of appeal.

In the considered opinion of this Court, the impugned judgment passed by the Appellate Judge reads like another original judgment after that of the Juvenile Justice Board. There is no consideration of the grounds of objections raised in appeal to the Juvenile Justice Board's determination while rejecting the bail plea of the revisionist and then a record of reasons of agreement or disagreement with the judgment of the court of first instance with reference to those grounds. This Court, therefore, holds that the judgment of the Appellate Court impugned here is not at all in conformity with the obligations of a court of appeal under Section 101 of the Act. For the said reason

alone, the impugned judgment dated 21.12.2017 passed by the learned Additional Sessions Judge is not sustainable. This Court must, before parting with the matter, place on record that the learned counsel for the revisionist has urged a number of grounds in challenge to both judgments passed by the courts below. All of them are required to be determined. But since this Court finds that the Appellate Court has not discharged its obligations under the law to decide the appeal brought before it as a court of appeal with plenary jurisdiction to undertake a review of the court of first instance, both on facts and law, the numerous grounds urged by the learned counsel for the revisionist on merits of the plea for bail are not being addressed at this stage. All those are to be considered by the Appellate Court. This Court may also add that anything said in this judgment may not be considered by the Appellate Court to which this matter is being remanded as expression of opinion on merits of the bail plea. The Appellate Court would be free to decide on all questions of facts and law canvassed before it in support of bail plea in appeal. **Rohit (Minor) Vs. State Of U.P. And Another 2019 (1) ALJ 17**

Sec. 482 – Quashing of summoning order

The Code of Criminal Procedure is not only exhaustive but also a self contained Code. Upon consideration, this Court is of the opinion that in the facts and circumstances of the case the proper course for the Magistrate was to proceed ahead with the complaint case which came into existence subsequent to the order dated 20th May, 2017, whereby the second police report dated 11th April, 2013 confirming the earlier final report dated 17th August, 2013 was rejected vide order dated 20th May, 2017 and it was directed that the case shall proceed as a complaint case. The proceedings, which have commenced subsequent to the second complaint dated 1st September, 2014 filed by the complainant-opposite party no.2 are wholly not maintainable and amount to an abuse of the process of the Court. The Code of Criminal Procedure provides the aggrieved person, the remedy of lodging an F.I.R. in respect of a cognizable offence. In case the F.I.R. is not registered, then the aggrieved person can approach the Magistrate by filing an application under Section 156 (3) Cr.P.C. or by filing a complaint in terms of Section 190 Cr.P.C. However, there is no provision in the Code of Criminal Procedure which permits the complainant to pursue the remedy of lodging of an F.I.R. and before the culmination of the proceedings arising out of the said F.I.R. either way file a complaint. **Jaykarn Sing V. State of U.P., 2019 (1) ALJ 445**

Sec. 482

Held - It is, by now well settled, that the provisions of Section 145 and 146 Cr.P.C. form an integrated scheme, and, the two cannot be read in isolation, which is the precise folly that the Magistrate appears to have committed in issuing a direction

to the above effect. The provisions of Sections 145 and 146(1) Cr.P.C., work together to authorize attachment in three kinds of situations, viz., the first, where there is not only apprehension of breach of peace over dispute relating to immoveable property, but the apprehension is such that the Magistrate considers it to be an emergency; the second, where the Magistrate, at the end of a full course of proceedings under Section 145 Cr.P.C., is unable to decide as to which of the two rival parties claiming actual possession on the date of the preliminary order or two months prior to, is in possession; and, the third, where the Magistrate decides that none of the parties were in possession on the date of preliminary order, or within the two months ante-dating it. It is only in the second and the third of the contingencies that the Magistrate, under the integrated scheme of Sections 145(1) and 146(1) Cr.P.C., is entitled to pass an order that attachment made shall continue until a decision about right, title and possession by a decree or order of a court of competent jurisdiction. However, in the first contingency, the Magistrate can direct attachment to continue, until decision by him of proceedings, initiated under the preliminary order under Section 145(1) Cr.P.C. on the basis of written statements of parties, and, the evidence led. Attachment made in the contingency of an emergency is not determinative of proceedings under Section 145(1) Cr.P.C., that must run their full course and reach logical conclusion, in the hands of the Magistrate. It is not that, an attachment made in view of an emergency, contemporaneously with an order under Section 146(1) Cr.P.C. can be the end of the matter, with the Magistrate leaving the attachment intact until decision about title or possession by a court of competent jurisdiction. That contingency can arise once the proceedings under Section 145(1)/ 146(1) Cr.P.C. have run their full course, and the Magistrate reaches conclusions enumerated hereinabove, as the second and the third possibility.

Ss. 145 and 146 of the Criminal Procedure Code together constitute a scheme for the resolution of a situation where there is a likelihood of a breach of the peace because of a dispute concerning any land or water or their boundaries. If Section 146 is torn out of its setting and read independently of Section 145, it is capable of being construed to mean that once an attachment is effected in any of the three situations mentioned therein, the dispute can only be resolved by a competent court and not by the Magistrate effecting the attachment. But Section 146 cannot be so separated from Section 145. It can only be read in the context of Section 145. Contextual construction must surely prevail over isolationist construction. Otherwise, it may mislead. That is one of the first principles of construction. Let us therefore look at Section 145 and consider Section 146 in that context. Section 145 contemplates, first, the satisfaction of the Magistrate that a dispute likely to cause a breach of the peace exists concerning any land or water or their boundaries, and, next, the issuance of an order, known to lawyers practising in the criminal courts as a preliminary order, stating the grounds of his satisfaction and requiring the parties concerned to attend his Court and to put in

written statements of their respective claims as regards the fact of actual possession of the subject of dispute. A preliminary order is considered so basic to a proceeding under Section 145 that a failure to draw up a preliminary order has been held by several High Courts to vitiate all the subsequent proceedings. It is by making a preliminary order that the Magistrate assumes jurisdiction to proceed under Sections 145 and 146. In fact, the first of the situations in which an attachment may be effected under Section 146 of the 1973 Code has to be "at any time after making the order under sub-section (1) of Section 145" while the other two situations have, necessarily, to be at the final stage of the proceeding initiated by the preliminary order. Now, the preliminary order is required to enjoin the parties not only to appear before the Magistrate on a specified date but also to put in their written statements. Sub-section (3) of Section t45 prescribes the mode of service of the preliminary order on the parties. Sub-section (4) casts a duty on the Magistrate to peruse the written statements of the parties, to receive the evidence adduced by them, to take further evidence if necessary and, if possible, to decide which of the parties was in possession on the date of the preliminary order. If the Magistrate decides that one of the parties was in possession he is to make a final order in the manner provided by sub-section (6). Provision for the two situations where the Magistrate is unable to decide which of the parties was in possession or where he is of the view that neither of them was in possession is made in Section 146 under which he may attach the subject of dispute until the determination of the rights of parties by a competent court. The scheme of Sections 145 and 146 is that the Magistrate, on being satisfied about the existence of a dispute likely to cause a breach of the peace, issues a preliminary order stating the grounds of his satisfaction and calling upon the parties to appear before him and submit their written statements. Then he proceeds to peruse the statements, to receive and to take evidence and to decide which of the parties was in possession on the date of the preliminary order. On the other hand if he is unable to decide who was in such possession or if he is of the view that none of the parties was in such possession he may say so. If he decides that one of the parties was in possession, he declares the possession of such party. In the other two situations he attaches the property. Thus a proceeding begun with a preliminary order must be followed up by an enquiry and end with the Magistrate deciding in one of three ways and making consequential orders. There is no half way house, there is no question of stopping in the middle and leaving the parties to go to the civil court. Proceeding may however be stopped at any time if one or other of the parties satisfies the Magistrate that there has never been or there is no longer any dispute likely to cause a breach of the peace. If there is no dispute likely to cause a breach of the peace, the foundation for the jurisdiction of the Magistrate disappears. The Magistrate then cancels the preliminary order. This is provided by Section 145 sub-section (5). Except for the reason that there is no dispute likely to cause a breach of the peace and as provided by Section 145(5), a proceeding initiated

by a preliminary order under Section 145(1) must run its full course. Now, in a case of emergency, a Magistrate may attach the property, at any time after making the preliminary order. This is the first of the situations provided in Section 146(1) in which an attachment may be effected. There is no express stipulation in Section 146 that the jurisdiction of the Magistrate ends with the attachment. Nor is it implied. Far from it. The obligation to proceed with the enquiry as prescribed by Section 145 sub-section (4) is against any such implication. Suppose a Magistrate draws up a preliminary order under Section 145(1) and immediately follows it up with an attachment under Section 146(1), the whole exercise of stating the grounds of his satisfaction and calling upon the parties to appear before him and submit their written statements becomes futile if he is to have no further jurisdiction in the matter. And yet he cannot make an order of attachment under Section 146(1) on the ground of emergency without first making a preliminary order in the manner prescribed by Section 145(1). There is no reason why we should adopt a construction which will lead to such inevitable contradictions. We mentioned a little earlier that the only provision for stopping the proceeding and cancelling the preliminary order is to be found in Section 145(5) and it can only be on the ground that there is no longer any dispute likely to cause a breach of the peace. An emergency is the basis of attachment under the first limb of Section 146(1) and if there is an emergency, none can say that there is no dispute likely to cause a breach of the peace**. Vinod Mittal v. State of U.P., 2019 (106) ACC 380 (Alld.)**

Sec. 482 – Same relief on second applicants u/s 482

If a fresh criminal petition under Section 482 of the Code is filed by the 17 18 respondents for transferring the investigation from State Police authorities to CBI after bringing certain subsequent events that had taken place after the disposal of the original criminal petition if there be any, it would be open for the High Court to entertain such application if it is warranted and decide the same in accordance with law for which we express no opinion on merit. **Balendra v. State of U.P., 2019 (106) ACC 749 (Alld.)**

Sec. 482

Held - extra-ordinary power under Article 226 or the inherent powers under Section 482 of the Code of Criminal Procedure can be exercised by the High Court either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised:

(1) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
(2) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
(3) where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
(4) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
(6) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.
(7) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge." **Smt. Manjeet Kaur v. State of U.P., 2019 (106) ACC 761 (Alld)**

Sec. 483

Held - The law is well settled that when prosecution is sought to be quashed at an initial stage, the Court has to only examine the allegations made in the FIR / complaint / charge-sheet as to whether on the basis of materials on record, a case of prima facie commission of offence is made out or not. If prima facie case is disclosed, the Court may refuse to quash the same. Where going by the allegations, no offence whatsoever is made out or prosecution is based on malafides or is an abuse of the process of the Court, this Court may quash the criminal prosecution. **Vinod Kumar Gupta v. State of U.P., 2019 (106) ACC 378 (Alld.)**

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Criminal Trial:

Hostile witness

"Evidence of hostile witness need not be rejected ipso facto on that count. Parties can take advantage of advantageous portions therein. However, court has to be extremely cautious & circumspect in such acceptance."

"Evidence of hostile witnesses need not be rejected en-bloc but should be considered with caution - court should look for corroboration." **Pratap V. State, 2019 (106) ACC 355 (Alld.)**

Held - "When two views are possible, appellate Court should not reverse the Judgment of acquittal merely because the other view was possible. When Judgment of trial Court was neither perverse, nor suffered from any legal infirmity or non consideration/misappropriation of evidence on record, reversal thereof by High Court was not justified". **Brijbhan Singh v. State of U.P., 2019 (106) ACC 428 (Alld.)**

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Evidence Act:

Sec. 3 – Appreciation of evidence

"While appreciating evidence of a witness, minor discrepancies on trivial matters, which do not affect the core of prosecution's case, may not prompt the court to reject the evidence in its entirety. Irrelevant details which do not in any way corrode the credibility of a witness cannot be labelled as omissions or contradictions. Difference in some minor details, which does not otherwise affect the core of prosecution case, even if present, wound not itself prompt the court to reject the evidence on minor variations and discrepancies. After exercising care and caution and sifting through the evidence to separate truth from untruth, exaggeration and improvements, the court comes to a conclusion as to whether residuary evidence is sufficient to convict the accused the same can be relied upon. Thus, an undue importance should not be attached to omissions, contradictions and discrepancies which do not go to the heart of the matter and shake the basic version of prosecution witness. As the mental capabilities of a human being cannot be expected to be attuned to absorb all details, minor discrepancies are bound to occur in the statements of witnesses. **Raj Nath v. State of U.P., 2019 (2) ALJ 436**

Sec. 3 – Reliability of solitary witness

Held - As far as argument regarding solitary nature of evidence is concerned we are convinced that this is not sustainable. It is settled law that conviction of accused can be based solely on the testimony of solitary witness, if same is found wholly reliable. There is no rule of law or evidence which says that corroboration is required for the testimony of solitary witness provided the sole witness passes the test of reliability. We have absolutely no doubt that so long single eye witness is wholly

reliable witness, courts will have no difficulty in basing conviction on his sole testimony. **Alwar Dhanuk V. State of U.P., 2019 (106) ACC 57 (Alld)**

Sec. 27

"As an exception, Section 27 of the Indian Evidence Act provides that a confessional statement made to a police officer or while an accused is in police custody, can be proved against him, if the same leads to the discovery of an unknown fact. The rationale of Sections 25 and 26 of the Indian Evidence Act is, that police may procure a confession by coercion or threat. The exception postulated under Section 27 of the Indian Evidence Act is applicable only if the confessional statement leads to the discovery of some new fact. The relevance under the exception postulated by Section 27 aforesaid, is limited "...as it relates distinctly to the fact thereby discovered....". The rationale behind Section 27 of the Indian Evidence Act is, that the facts in question would have remained unknown but for the disclosure of the same by the accused. Discovery of facts itself, therefore, substantiates the truth of the confessional statement." **Shyam Dhanak v. State, 2019 (106) ACC 371 (Alld.)**

Sec.32(1) – Cr. P.C. (2 of 1974), S.161 - Statement by victim- Admissibility as dying declaration - Victim dying three months after recording of statement under S. 161 of Cr. P.C. - Said statement of victim after his death is covered under S. 32(1) of Act - Hence, relevant and admissible as dying declaration.

We have noticed that this Court has laid down that statement under Section 161 Cr.P.C., which is covered under Section 32(1) is relevant and admissible. Thus, we do not find any error in the judgment of the trial court as well as of the High Court in relying on the statement of the injured recorded by the I.O. on 05.12.1990.

It is also relevant to notice that I.O. in his cross-examination has stated that he went on the night of 30.11.1990 to the Medical College to record the statement but as his condition was serious, he was not examined. Thus, reliance on the statement made on 05.12.1990 to the I.O. does not lead to any suspicious circumstances so as to discard the value of such statement. The statement, which was made by the victim on 05.12.1990 was to the following effect:-

"My name is Bhaskar Sahu, S/o. Kaibalya Sahu, present/permanent Resident of Village – Langal Dei, P.S. Digapahandi Dist. Gangnam, Today, i.e. on 05.12.1920, being at the Medical College ward I hereby give my verbal statement that, I was going to Belapada from our Village Langal Del on 28.11.1990 at about 6:30 to 7:00 O'clock on my bi-cycle. On my way near the bridge of Belapada Village, inhabitant of our village namely Pradeep Bisoi, S/o. Madhab Bisoi and some of his friends were waiting to kill me. They had come by a Scoter. I don't know others. Near the Belapada Bridge, all of a sudden Pradeep Bisoi threw a Bomb towards me which was defused after hitting my right leg for which I fell down on the road. When I started running,

trying to save my life, at that time Pradeep Bisoi came running after me and dealt a kati blow on my right solder, for which I fell down bloodstained. Thereafter from a bottle carried by him, he poured acid on my head, face, chest and also on my entire body To save my life. I threw away my black color vest from my body. Looking at my critical condition, Pradeep Bisoi and his friends left that place. After that, the son of Khalia Pati of our village saw me, and while taking me by the help of a cycle, my brother Surendar Sahu got that news and Tarini Sahu, and Kishnath Bisoi and Bidhyadhara Babu of our village reached to me and my brother immediately admitted me in the Berhampur Medical Collage. Otherwise I would have died on the spot. Because of our previous enmity, Pradeep Bisoi was trying to kill me. But I was just saved. There is no chance of my survival." **Pradeep Bisoi alias Ranjit Bisoi v. State of Odisha. 2019 CRI. L. J. 702(All.)**

Sec.45 - Medical evidence - Determination of time of death – Faecal Matter and digested food found present in stomach of deceased - Mere presence of semi digested food in stomach cannot be conclusive in itself to determine time of death - Direct evidence available on record regarding time of incident to be 4:00 a.m. in morning - Court cannot speculate time of occurrence to be midnight, merely on basis of faecal matter in intestine of deceased - Deceased who have died at 4:00 a.m. in morning

Regarding existence of faecal matter and gases in intestines and digestive food in stomach, it is settled that presence of semi digested food in the stomach of deceased is not conclusive in itself for determining time of death. The State of the contents of the stomach found at the time of medical examination is not a safe guide for determining the time of occurrence because that would be a matter of speculation, in the absence of reliable evidence on the question as to when the deceased had his last meal and what that meal consisted of. Further, presence of faecal matter in the intestines is also not conclusive, as the deceased might be suffering from constipation. Where there is positive direct evidence about time of occurrence, it is not open to court to speculate about the time of occurrence by the presence of faecal matter in the intestines. In villages, rural people usually go to answer the call of nature before sunrise, no such generalization is possible. It depends upon habit of the individual, the state of his health, particularly of his digestive system, weather and several other factors. Time required for digestion may depend upon the nature of food. Process of digestion is largely delayed in the case of vegetable food consumed by Indians. Time varies according to digestive capacity. The process of digestion is not uniform. It varies from individual to individual. Digestion varies with the state of gastric mucosa. It also depends on the health of person at particular time. [vide : 1971 Criminal L.J. 1511 (V 77 C 445), Sheo Darshan v. State of Uttar Pradesh, AIR 1971 SC 1794, State of Uttar Pradesh v. Shanker, AIR 1981 SC 897, Lachman Singh versus State, AIR

1952 SC 167, Nihal Singh versus State, AIR 1965 SC 26 and Shivaji versus State, AIR 1973 SC 2622].

On the basis of digestive food and faecal matter as well as gases found in stomach and intestines, it cannot be held in present case that deceased was done to death in midnight by unknown person. If settled proposition of law, as discussed here-in-above, is taken into consideration, forming of opinion on the basis of aforesaid facts would be only speculation. Thus time of death of deceased could not be doubted in this case. Finding recorded by Trial Court is based on correct appreciation of evidence. We have also re-appreciated prosecution evidence and found no error in Trial Court finding on this issue. **Virendra Singh Alias Vijendra and another vs State of UP, 2019(2) ALJ 267**

Sec. 106

The pristine rule is that the burden of proof is on the prosecution to prove the guilt of the accused. The doctrine of presumption as laid down under Section 106 of the Evidence Act is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt. The presumption under Section 106 of the Evidence Act would apply in a case where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn that the accused has committed the murder of her husband. In the instant case, no one had seen the accused and her husband together or inside the house prior to the murder. The possibility of third person coming in between and committing murder cannot be ruled out, inasmuch as, the accused had offered explanation in her statement under Section 313 Cr.P.C. that she was not present in the house on the date of murder rather was called by the complainant from her maika afterwards.

The section is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt. But the Section would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, failed to offer any explanation which might drive the court to draw a different inference.

The provisions of Section 106 of the Evidence Act itself are unambiguous and categoric in laying down that when any fact is especially within the knowledge of a person, the burden of proving that fact is upon him. Thus, if a person is last seen with the deceased, he must offer an explanation as to how and when he parted company. He must furnish an explanation which appears to the Court to be probable and satisfactory. If he does so he must be held to have discharged his burden. If he fails to offer an explanation on the basis of facts within his special knowledge, he fails to discharge the burden cast upon him by Section 106 of the Evidence Act. In a case resting on circumstantial evidence if the accused fails to offer a reasonable

explanation in discharge of the burden placed on him, that itself provides an additional link in the chain of circumstances proved against him. Section 106 does not shift the burden of proof in a criminal trial, which is always upon the prosecution. It lays down the rule that when the accused does not throw any light upon facts which are specially within his knowledge and which could not support any theory or hypothesis compatible with his innocence, the Court can consider his failure to adduce any explanation, as an additional link which completes the chain.

Reference may also be made to Nibaran Chandra Roy vs. King Emperor12, wherein it was held that the fact that the accused person was found with a gun in his hand immediately after a gun was fired and a man was killed on the spot from which the gun was fired may be strong circumstantial evidence against the accused, but it is an error of law to hold that the burden of proving innocence lies upon the accused under such circumstances. It, therefore, follows that whatever force a presumption arising under Section 106 of the Indian Evidence Act may have in civil or in less serious criminal cases, in a trial for murder, it is extremely weak in comparison with the dominant presumption of innocence. Thus the principle is that in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and is incapable of explanation upon any other reasonable hypothesis except his guilt. The settled principle is that all the links of chain of evidence must be proved beyond reasonable doubt and they must exclude the hypothesis of guilt of any other person than the accused. **Smt. Makkhan v. State, 2019 (106) ACC 82 (Alld)**

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Indian Penal Code:

Sec.302 – Evidence Act, S.3 - Murder – Appreciation of Evidence - accused allegedly fired gunshot at deceased out of prior enmity, resulting in his death – Eye-witness deposed details of incident attributing specific roles of firing gunshot to accused - medical evidence proving homicidal death caused due to firearm injury, supported testimony of eye-witness - After receiving injury, deceased specifically shouted that accused assaulted him - Accused identified by eye-witnesses in torch lights right after incident- involvement of accused in committing murder of deceased proved beyond reasonable doubt – Conviction, proper.

So far as involvement of accused-appellants in this case is concerned, role of firing has been assigned to accused-appellant Virendra Singh alias Vijendra. Medical evidence if compared with role assigned to accused-appellant Virendra Singh alias Vijendra, it is clear that injuries found on body of deceased can be caused with one fire. Prosecution case is also that only one fire was made upon deceased. Deceased has also made oral dying declaration and has stated that "हाय विजेंद्रा ने मार डाला". If aforesaid facts are taken into consideration in its totality, then it clearly emerges that involvement of accused-appellant Virendra Singh alias Vijendra in present case has

been proved by prosecution from its evidence beyond reasonable doubt. Dying declaration also finds support with statement of P.W.1 and P.W.2 to the extent that when they flashed their torch lights, they found accused-appellant Virendra Singh alias Vijendra armed with country made pistol. Dying declaration said to have been made in this case finds support not only with oral version of prosecution evidence, but also finds support with medical evidence. Thus involvement of accused-appellant Virendra Singh alias Vijendra for committing murder of deceased Dharampal has been proved by prosecution and finding of Trial Court regarding guilt of accused-appellant Virendra Singh alias Vijendra for offence under Section 302 IPC simplicitor need no interference. **Virendra Singh Alias Vijendra and another V. State of UP, 2019(2) ALJ 267**

Sec. 302 – Evidence Act S. 8 Murder – Motive – In FIR, informant stated that accused had old enmity with deceased, owing to land dispute – while deposing before court, informant additionally stated about illicit relation between deceased and mother of accused, on point of motive for committing offence - motive as deposed before court not stated by informant at any prior time - even if fact of illicit relation not taken in consideration, enmity between parties still provided motive to accused - other corroborating evidence produced or record - merely on ground that fact of illicit relations were mentioned first time in court, entire prosecution case cannot be disowned.

As far as motive is concerned, in F.I.R. only this much is mentioned that there was an old enmity between parties and also accused bore enmity with deceased due to purchase of a land. When P.W.1 was examined before Court on oath, an additional fact was stated by him on point of motive that there were illicit relations between mother of accused and deceased and due to that reason accused has committed this offence. Submission of learned counsel for accused-appellants is that this fact was stated for the first time during trial. Neither it was stated to investigating officer nor finds place in F.I.R. Thus prosecution was not able to prove motive. If submission raised by learned counsel for the parties are minutely analyzed in the light of entire evidence, it is evident that motive regarding illicit relations was stated for the first time before the Court. If this fact is not taken into consideration on the point of motive, then also prosecution has come up with specific motive of enmity. If suggestion made by defence to prosecution witnesses as well as statement recorded under section 313 Cr.P.C. are taken into consideration cumulatively, it is evident that defence themselves have admitted that they were falsely implicated in this matter due to enmity which would be clear from questions no.10 and 11 put to accused-appellant Mahipal alias Mahipala. It may be mentioned here that enmity is a double edged weapon. At a time, it may be a reason to commit offence and at the same time it may also be a reason for false implication. Meaning thereby, same motive may play role of

either side. Since, in the present matter, there is dying declaration said to have been made by deceased when fire is said to have been made upon him and there is also testimony of witnesses, merely on this basis that fact of illicit relations of deceased with mother of accused was stated for the first time during trial, entire prosecution case cannot be disowned or thrown out. **Virendra Singh Alias Vijendra and another V. State of UP, 2019(2) ALJ 267**

Sec.302-Evidence Act, Sec.32 - Murder – Words Uttered by Deceased after Receiving gunshot – whether amounts to Dying Declaration – Accused Stated to have Shouted that Accused Assaulted him, right after receiving injuries – Witness reached at Spot Immediately after hearing cries of deceased and he was found dead- words uttered by deceased right before his death can very well used as his dying declaration

In instant case, if above settled proposition of law is applied and compared with facts and evidence available on record, it emerges that words "हाय विजेंद्रा ने मार डाला" were disclosed by deceased just after receiving injuries. When witnesses reached at spot immediately after incident, deceased was found dead. Meaning thereby, aforesaid declaration was made by deceased when he was about to die. It is also clarified that oral declaration made by a person could be used as dying declaration. Therefore, finding of Trial Court on point of dying declaration said to have been made by deceased in this case is based on correct appreciation of facts and evidence. Words uttered by deceased just after receiving firearm injuries before his death have been proved by P.W.1 and these facts not only find place in written report lodged on the day of incident within 2½ hours of F.I.R., but were also stated to Investigating Officer as well as before the Court in his statement made on oath. Lengthy cross-examination has been made. Nothing has come out to disbelieve the dying declaration said to have been made by deceased and to negate finding of Trial Court. **Virendra Singh Alias Vijendra and another vs State of UP, 2019(2) ALJ 267**

Sec. 304-A – Medical negligence

Held - Between civil and criminal liability of a doctor causing death of his patient the court has a difficult task of weighing the degree of carelessness and negligence alleged on the part of the doctor. For conviction of a doctor for alleged criminal offence, the standard should be proof recklessness and deliberate wrong doing i.e. a higher degree of morally blameworthy conduct.

To convict, therefore, a doctor, the prosecution has to come out with a case of high degree of negligence on the part of the doctor. Mere lack of proper care, precaution and attention or inadvertence might create civil liability but not a criminal one. The courts have, therefore, always insisted in the case of alleged criminal offence against doctor causing death of his patient during treatment, that the act complained

against the doctor must show negligence or rashness of such a higher degree as to indicate a mental state which can be described as totally apathetic towards the patient. Such gross negligence alone is punishable."

To fasten criminal liability on a doctor or surgeon, the degree of negligence to be proved has to be very high, which their Lordships have described, as gross negligence or recklessness. It cannot be held attracted to a doctor's professional acts, while treating a patient, merely on account of lack of necessary care, attention and skill, though the last three deficiencies may invite action at the civil law for negligence, subject to much of what turns on evidence, and, application of the law to it. But, to make out a case of criminal negligence, much more has to be proved, as that is what has been spoken of in para 26 of the report in Suresh Gupra (supra). What, however, cannot be lost sight of, while dealing with the applicants' prayer to quash this complaint at the threshold, is the fact that in Suresh Gupta (supra), the Magistrate had before him, the complete record and documentary evidence in the form of medical papers relating to the treatment, on the basis of which it was urged on behalf of the doctor, that no case worth proceeding with, for the criminal offence under Section 304-A IPC, was made out. The Magistrate had passed a detailed order discussing what the surgical procedure undertaken was, where and how it went wrong, to the understanding of the Magistrate, and, on that basis an opinion was formed by the Magistrate to proceed. At that stage, the doctor had approached the High Court by a Petition under Section 482 Cr.P.C., seeking to quash the proceedings before the Magistrate, that was dismissed by the order impugned before their Lordships. A perusal of the decision in Suresh Gupta (supra) also shows, that the court had the advantage of a medical investigation into the cause of death of the patient, where a postmortem examination was done by a Special Board of Doctors, comprising four doctors, constituted by the Investigating Agency, that was also there in the picture. There were minutely differing opinions expressed by three doctors on the one hand, and, one on the other, with Dr. Jagannathan, from the Special Medical Board, speaking out exculpatory in favour of accused doctor on the foot of his detailed medical reasoning. The other three doctors of the Board also had not said anything much inculpatory. **Dr. A.K. Gupta-Preeti Hospital v. State of U.P., 2019 (106) ACC 387 (Alld.)**

Sec. 420

To constitute an offence under section 420, there should not only be cheating, but as a consequence of such cheating, the accused should have dishonestly induced the person deceived (i) to deliver any property to any person, or (ii) to make, alter or destroy wholly or in part a valuable security (or anything signed or sealed and which is capable of being converted into a valuable security). **Bhule Singh v. State of U.P., 2019 (106) ACC 798 (Alld)**

Sec. 467/471

Held - The condition precedent for an offence under sections 467 and 471 is forgery. The condition precedent for forgery is making a false document (or false electronic record or part thereof). This case does not relate to any false electronic record. Therefore, the question is whether the first accused, in executing and registering the two sale deeds purporting to sell a property (even if it is assumed that it did not belong to him), can be said to have made and executed false documents, in collusion with the other accused.

An analysis of section 464 of Penal Code shows that it divides false documents into three categories:

1. The first is where a person dishonestly or fraudulently makes or executes a document with the intention of causing it to be believed that such document was made or executed by some other person, or by the authority of some other person, by whom or by whose authority he knows it was not made or executed.
2. The second is where a person dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part, without lawful authority, after it has been made or executed by either himself or any other person.
3. The third is where a person dishonestly or fraudulently causes any person to sign, execute or alter a document knowing that such person could not by reason of (a) unsoundness of mind; or (b) intoxication; or (c) deception practised upon him, know the contents of the document or the nature of the alteration.

In short, a person is said to have made a `false document', if (i) he made or executed a document claiming to be someone else or authorised by someone else; or (ii) he altered or tampered a document; or (iii) he obtained a document by practicing deception, or from a person not in control of his senses.

When a document is executed by a person claiming a property which is not his, he is not claiming that he is someone else nor is he claiming that he is authorised by someone else. Therefore, execution of such document (purporting to convey some property of which he is not the owner) is not execution of a false document as defined under section 464 of the Code. If what is executed is not a false document, there is no forgery. If there is no forgery, then neither section 467 nor section 471 of the Code are attracted. **Bhule Singh v. State of U.P., 2019 (106) ACC 798 (Alld)**

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Limitation Act:

Sec. 5 – Condonation of delay – Filling of application on incorrect facts – Delay cannot be condoned

The appellants had full knowledge about the proceedings of the Original Suit No. 591 of 1979 and also about the disposal of the Writ Petition(C) No. 19550 of 1985 and the appellants have filed application for condonation of delay with incorrect

facts. Both the First Appellate Court and the High Court recorded concurrent findings that the appellants have filed the application for condonation of delay with incorrect facts and were negligent in pursuing the matter and rightly refused to condone the delay. Court found no perversity or infirmity in the impugned order warranting interference and the appeal is liable to be dismissed. **Mohd. Sahid v. Raziya Khanam, 2019 (1) ALJ 168**

Sec. 425

Held - When substantial justice and technical consideration are pitted against each other, cause of substantial justice deserves to be preferred for the reason that other side cannot claim to have vested right in injustice being done because of non-deliberate delay.

The law of limitation is enshrined in the maxim interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of Limitation are not meant to destroy the rights of the parties; rather the idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

Time-barred cases should not be entertained by Courts as the rights which have accrued to others by reason of delay in approaching the Court, cannot be allowed to be disturbed unless there is a reasonable explanation for the delay. The vested rights of the parties should not be disrupted at the instance of a person who is a guilty of culpable negligence.

"The primary function of a Court is to adjudicate the dispute between the parties and to advance substantial justice. The time-limit fixed for approaching the Court in different situations is not because on the expiry of such time a bad cause would transform into a good cause. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy for the redress of the legal injury so suffered. The law of limitation is thus founded on public policy."

"In exercising discretion under Section 5 of the Limitation Act, the Courts should adopt a pragmatic approach. A distinction must be made between a case where the delay is inordinate and a case where the delay is of a few days. Whereas in the former case the consideration of prejudice to the otherwise will be a relevant factor so the case calls for a more cautious approach...."

the delay in filing an appeal or revision, all should ordinarily be condoned unless the facts are so clinching that even a man of ordinary prudence may not accept the explanation offered for condoning the delay. **Balpreet Singh v. State of U.P., 2019 (106) ACC 138 (Alld)**

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Juvenile Justice (Care and Protection of Children) Act:

Sec.101 - Powers of High Court - Difference between appellate and original jurisdiction - Court while exercising appellate jurisdiction against order of Juvenile Justice Board, cannot write judgment or order in same fashion or with same approach of Court of first instance.

Jurisdiction of Court of appeal and that of Court exercising original jurisdiction, are generically different. Court of original jurisdiction adjudicates upon cause brought by parties on facts and law in first instance and renders judgment that may be termed as an original judgment or order. In essence it adjudicates upon controversy between parties in its nascent form where one party alleges right which other denies and Court on evidence led by parties in support of their respective cases decides cause in accordance with law leading to judgment or order in cause before which there is none. It is determination in first instance and that is essence of exercise of Court of original jurisdiction. Appellate Court cannot exist in absence of Court of first instance. Going by fundamental nature of appellate jurisdiction, Court of appeal cannot write judgment or order in same fashion or with approach of Court of first instance; Court of appeal has to have approach of review of what Court of first instance has done, and, in doing so, it has to look at judgment of original Court with critical eye. It has to test that judgment with reference to grounds raised in challenge to it by way of appeal and then decide whether judgment rendered by original Court is correct or fallacious, in whole or in part. Jurisdiction of Appellate Court is, therefore, one of review of what original Court has done in first instance. It is in this sense that two jurisdictions are generically different. **Rohit (Minor) V. State of Uttar Pradesh and Anr. 2019 CRI. L. J. 375(All.)**

Practice and Procedure:

Adverse possession-Plea of against co-heir-A co-heir has no right to claim his title against other co-heir on the basis of long possession over the disputed property.

In so far as the title of plaintiff through 'adverse possession' is concerned, the evidence on record shows that the plaintiff is one of the co-heirs of Tribhuwan Nath's property. The legal position in this regard is well settled that a co-heir has no right to claim his title against other co-heir, on the basis of long possession over the disputed property. **Lavkush Malviya V. Smt. Suman Devi and 2 others, 2019(1) ARC 88**

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Protection of Women from Domestic Violence Act:

Attractability of

The essential ingredients to attract the applicability of the provisions of the Act are as under:-

(i) Claimant must be a person aggrieved i.e. a woman who is or has been in a domestic relationship;

(ii) Domestic relationship should be between 2 individuals who live or have lived in a shared household, related by blood, marriage or a relationship in the nature of marriage, adoption or are family members living together as a joint family;

(iii) The individuals should be living in a shared household where the person aggrieved lives or has at any stage lived. **Uma Shanker v. State of U.P., 2019 (106) ACC 100 (Alld.)**

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Real Estate (Regulation and Development):

Sec. 58 – Court Fees Act, S. 5 – CPC – S. 2(2) – Appeal – Can be recognized as decree only for limited purpose of execution

The proceedings before the R.E.R.A. are not in the nature of a suit instituted by filing a plaint rather on a complaint. Accordingly, proceedings before the R.E.R.A. cannot be termed as a suit. Thus the decision or order of R.E.R.A. or by the Appellate Tribunal on an appeal arising out of such proceedings would not be a decree within the meaning of Section 2(2) C.P.C.

By creating a legal fiction, the order of the Appellate Tribunal has been recognised to be a decree only for limited purpose of execution but not for the purposes of filing an appeal against it. It is settled law that in applying legal fiction one should not travel beyond the limits for which it has been created. Therefore, for the purposes of appeal under Section 58 of the R.E.R.A. the decision or order of the Appellate Tribunal would remain to be an order simplicitor and would not be a decree within the meaning of Section 2(2) of the C.P.C. **M/s Supertech Ltd. V. Subrat Sen, 2019 (1) ALJ 1**

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Specific Relief Act:

Sec. 16 (c)-Readiness and willingness-Meaning-"Willingness" is a mental process, "readiness" refers to something to do translating that into action and is proceeded by necessary preparation for being in a position to be ready-Explained.

M/s. Darvesh Sahkari Avas Samiti Ltd. V. M/s. Doctors Sahkari Grah Nirman Samiti Ltd., 2019(1) ARC 425 Alld.

Sec. 31 – Cancellation of sale deed – validity – defendant's witness failed to give details of money collected by him for sale consideration – cancellation of sale deed, proper

Clearly amount of Rs.20,000/- was paid the plaintiffs only to avoid any dispute between the parties and getting the sale deed of plot no.1186 and this cannot lead to any presumption that if the plaintiffs were aware of the agreement to sale dated 26.08.1980 they must have been aware of the sale deed dated 26.08.1980, also executed by Nazir in favour of defendant no.1. The lower appellate court has considered the burden of proof regarding the case of old persons which is akin to

pardanashi woman. The finding of the lower appellate court that the burden of proof due execution of sale deed with a healthy mind by Nazir was on defendants since they were beneficiaries of the sale deed. The lower appellate Court has also considered and found that the passing of consideration to Nazir has not been proved from the evidence on record. The finding of fact recorded by the lower appellate Court are based on proper appreciation of evidence do not require any interference in Second Appeal.

The lower Appellate Court was right in placing burden of proof on defendants to prove that Nazir needed money when he executed the sale deed in favour of defendant no.1. **Smt. Munazri v. Mohammad Akil, 20019 (1) ALJ 188**

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Statutory Provisions:

The National Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities (Amendment) Act, 2018[1]

[No. 35 of 2018) [29th December, 2018)

BE it enacted by Parliament in the Sixty-ninth Year of the Republic of India as follows:—

1. Short tile .- This Act may be called the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities (Amendment) Act, 2018.

2. Amendment of Section 4.- In the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 (44 of 1999) (hereinafter referred to as the principal Act), in section 4,—

(a) in sub-section (1), the words "or until his successor shall have been duly appointed, whichever is longer" shall be omitted;

(b) after sub-section (1), the following sub-section shall be inserted, namely:—

"(1A) The Central Government shall initiate the process for appointment of the Chairperson or Member, as the case may be, at least six months prior to the expiry of the term of office of such Chairperson or Member.";

(c) in sub-section (3), the following proviso shall be inserted, namely:—

"Provided that the Central Government may, in case of a casual vacancy in the office of the Chairperson, by order in writing, direct an officer of appropriate level, to perform the functions of the Chairperson until such vacancy is filled in.".

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[1] Published in the Gazette of India, Extra., Part II, Section 1, dated 12 Janyary, 2019 2019 LLT Part II Page I

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3. Amendment of Section 5.- In section 5 of the principal Act, in sub-section (1), in the proviso, for the words “until the appointment of his successor is made by the Central Government”, the words “until his resignation is accepted by the Central Government” shall be substituted.

Right of Children to Free and Compulsory Education (Amendment) Act, 2019[2]

An Act further to amend the Right to Children to Free and Compulsory Education Act, 2009

Be it enacted to Parliament in the Sixty-ninth Year of the Republic of India as follows:-

1. Short tile and commencement .- (1) This Act may be called the The Right of Children to Free and Compulsory Education (Amendment) Act, 2019.

2. Substitution of new section for Section 16.- In the Right of Children to free and Compulsory Education Act, 2009 (35 of 2009) (hereinafter referred to as the principal Act), for Section 16, the following section shall be substituted, namely -

"16. *Examination and holding back in certain cases*.- (1) There shall be a regular examination in the fifth class and in the eighth class at the end of every academic year.

(2) If a child fails in the examination referred to in sub-section (1), he shall be given additional instruction and granted opportunity for re-examination within a period of two months from the date of declaration of the result.

(3) The appropriate Government may allow schools to hold back a child in the fifth class or in the eighth class or in both classes, in such manner and subject to such conditions as may be prescribed, if he fails in the re-examination referred to in sub-sec. (2):

Provided that the appropriate Government may decide not to hold back a child in any class till the completion of elementary education.

(4) No child shall be expelled from a school till the completion of elementary education.".

3. Amendment of Section 38 .- In Section 38 of the Principal Act, in sub-section (2), after clause (f), the following clause shall be *inserted*, namely:—

"(fa) the manner and the conditions subject to which a child may be held back under sub-section (3) of section 16;".

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[2] Published in the Gazette of India, Extra., Part II, Section 1, dated 11th January, 2019, pp. 1-2, No. 2. - 2019 LLT Part II Page 3

The Muslim Women (Protection of Rights on Marriage) Second Ordinance, 2019[3]

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Chapter I
PRELIMINARY

1. Short title, extent and commencement.- (1) This ordinance may be called the The Muslim Women (Protection of Rights on Marriage) Second Ordinance, 2019.

(2) It shall extent to the whole of India except the State of Jammu and Kashmir.

(3) It shall be deemed to have come into force on the 19th day of September, 2018.

2. Definitions.- In this Ordinance, unless the context otherwise requires,-

(a) "electronic form" shall have the same meaning as assigned to it in clause (r) of sub-section (1) of Section 2 of the Information Technology Act, 2000 (21 of 2000);

(b) "talaq" means talaq-e-biddat or any other similar form of talaq having the effect of instantaneous and irrevocable divorce pronounced by a Muslim husband; and

(c) "Magistrate" means a Judicial Magistrate of the first class exercising jurisdiction under the Code of Criminal Procedure, 1973 (2 of 1974), in the area where the married Muslim woman resides.

CHAPTER II
DECLARATION OF TALAQ TO BE VOID AND ILLEGAL

3. Talaq to be void and illegal.- Any pronouncement of talaq by a Muslim husband upon his wife, by words, either spoken or written or in electronic form or in any other manner whatsoever, shall be void and illegal.

4. Punishment for pronouncement talaq.- Any Muslim husband who pronounces talaq referred to in Section 3 upon his wife shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine.

CHAPTER III
PROTECTION OF RIGHTS OF MARRIED MUSLIM WOMEN

5. Subsistence allowance.- Without prejudice to the generality of the provisions contained in any other law for the time being in force, a married Muslim

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[3] Promulgated by President on February 21, 2019 and published in the Gazette of India, Extra., Part-II, Section 1, dated 21st February, 2019, pp. -16 No. 10.

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woman upon whom talaq is pronounced, shall be entitled to receive from her husband such amount of subsistence allowance for her and dependent children as may be determined by the Magistrate.

6. Custody of minor children.- Notwithstanding anything contained in any other law for the time being in force, a married Muslim woman shall be entitled to custody of her minor children in the event of pronouncement of talaq by her husband, in such manner as may be determined by the Magistrate.

7. Offences to be cognizable, compoundable, etc.- Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),-

(a) an offence punishable under this Ordinance shall be cognizable, if information relating to the commission of the offence is given to an officer in charge of a police station by the married Muslim woman upon whom talaq is pronounced or any person related to her by blood or marriage;

(b) an offence punishable under this Ordinance shall be compoundable, at the instance of the married Muslim women upon whom talaq is pronounced with the permission of the Magistrate, on such terms and conditions as he may determined;

(c) no person accused of an offence punishable under this Ordinance shall be released on bail unless the Magistrate, on an application filed by the accused and after hearing the married muslim woman upon who talaq is pronounced, is satisfied that there are reasonable grounds for granting bail to such person.

8. Repeal and Savings.- (1) The Muslim Women (Protection of Rights on Marriage) Ordinance, 2019 (Ord. 1 of 2019) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the Muslim Women (Protection of Rights on Marriage) Ordinance, 2019 (Ord. 1 of 2019) shall be deemed to have been done or taken under the provisions of this Ordinance.

The Aadhaar and Other Laws (Amendment) Ordinance, 2019 *

[No. 9 of 2019]

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(Promulgated by the President in the Seventieth Year of the Republic of India)

An Ordinance to amend the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services Act, 2016 and further to amend the Indian Telegraph Act, 1885 and the Preservation of Money-laundering Act, 2002

PART I

PRELIMINARY

1. Short title and commencement.- (1) This Ordinance may be called the Aadhaar and Other Laws (Amendment) Act, 2019.

(2) It shall come into force at once.

PART II

AMENDMENTS TO THE AADHAAR (TARGETED DELIVERY OF FINANCIAL AND OTHER SUBSIDIES, BENEFITS AND SERVICES) ACT , 2016

2. Amendment of section 2.- In section 2 of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 (hereafter in this Part referred to as the principal Act),—

(i) for clause (a), the following clause shall be substituted, namely:—

‘(a) “Aadhaar number” means an identification number issued to an individual under sub-section (3) of section 3, and includes any alternative virtual identity generated under sub-section (4) of that section;’;

(ii) after clause (a), the following clause shall be inserted, namely:—

‘(aa) “Aadhaar ecosystem” includes enrolling agencies, Registrars, requesting entities, offline verification-seeking entities and any other entity or group of entities as may be specified by regulations;

(iii) after clause (b), the following clauses shall be inserted, namely:—

‘(ba) “Adjudicating Officer” means an adjudicating officer appointed under sub-section (1) of section 33B;

(bb) “Appellate Tribunal” means the Appellate Tribunal referred to in sub-section (1) of section 33C;’;

(iv) after clause (i), the following clause shall be inserted, namely:—

‘(ia) “child” means a person who has not completed eighteen years of age;’;

(v) after clause (p), the following clauses shall be inserted, namely:—

‘(pa) “offline verification” means the process of verifying the identity of the Aadhaar number holder without authentication, through such offline modes as may be specified by regulations;

(pb) “offline verification-seeking entity” means any entity desirous of undertaking offline verification of an Aadhaar number holder;’.

3. Amendment of section 3.- In section 3 of the principal Act, after sub-section (3), the following sub-section shall be inserted, namely:—

“(4) The Aadhaar number issued to an individual under sub-section (3) shall be a twelve-digit identification number and any alternative virtual identity as an alternative to the actual Aadhaar number of an individual that shall be generated by the Authority in such manner as may be specified by regulations.”.

4. Insertion of new section 3-A.- After section 3 of the principal Act, the following section shall be inserted, namely:—

“3-a. Aadhaar number of children.- “3A.(1) The enrolling agency shall, at the time of enrolment of a child, seek the consent of the parent or guardian of the child, and inform the parent or guardian, the details specified under sub-section (2) of section 3.

(2) A child who is an Aadhaar number holder may, within a period of six months of attaining the eighteen years of age, make an application to the Authority for cancellation of his Aadhaar number, in such manner as may be specified by regulations and the Authority shall cancel his Aadhaar number.

(3) Notwithstanding anything in section 7, a child shall not be denied any subsidy, benefit or service under that section in case of failure to establish his identity by undergoing authentication, or furnishing proof of possession of Aadhaar number, or in the case of a child to whom no Aadhaar number has been assigned, producing an application for enrolment.”.

5. Amendment of section 4.- In section 4 of the principal Act, for sub-section (3), the following sub-sections shall be substituted, namely:—

“(3) Every Aadhaar number holder to establish his identity, may voluntarily use his Aadhaar number in physical or electronic form by way of authentication or offline verification, or in such other form as may be notified, in such manner as may be specified by regulations.

Explanation.— For the purposes of this section, voluntary use of the Aadhaar number by way of authentication means the use of such Aadhaar number only with the informed consent of the Aadhaar number holder.

(4) An entity may be allowed to perform authentication, if the Authority is satisfied that the requesting entity is—

(a) compliant with such standards of privacy and security as may be specified by regulations; and

(b)(i) permitted to offer authentication services under the provisions of any other law made by Parliament; or

(ii) seeking authentication for such purpose, as the Central Government in consultation with the Authority, and in the interest of State, may prescribe.

(5) The Authority may, by regulations, decide whether a requesting entity shall be permitted the use of the actual Aadhaar number during authentication or only an alternative virtual identity.

(6) Every requesting entity to whom an authentication request is made by an Aadhaar number holder under sub-section (3) shall inform to the Aadhaar number holder of alternate and viable means of identification and shall not deny any service to him for refusing to, or being unable to, undergo authentication.

(7)Notwithstanding anything contained in the foregoing provisions, mandatory authentication of an Aadhaar number holder for the provision of any service shall take place if such authentication is required by a law made by Parliament.".

6. Amendment of Section 8.- In section 8 of the principal Act,—

(a) in sub-section (2),—

(i) in clause (a), after the words "consent of an individual", the words, "or in the case of a child obtain the consent of his parent or guardian" shall be inserted;

(ii) after clause (b), the following proviso shall be inserted, namely:—

"Provided that the requesting entity shall, in case of failure to authenticate due to illness, injury or infirmity owing to old age or otherwise or any technical or other reasons, provide such alternate and viable means of identification of the individual, as may be specified by regulations.";

(b) in sub-section (3),after the words"for authentication", the words "or in the case of a child, his parent or guardian" shall be inserted.

7. Insertion of new Section 8-A.- After section 8 of the principal Act, the following section shall be inserted, namely:—

"8A.(1) Every offline verification of an Aadhaar number holder shall be performed in accordance with the provisions of this section.

(2) Every offline verification-seeking entity shall,—

(a) before performing offline verification, obtain the consent of an individual, or in the case of a child, his parent or guardian, in such manner as may be specified by regulations; and

(b) ensure that the demographic information or any other information collected from the individual for offline verification is only used for the purpose of such verification.

(3) An offline verification-seeking entity shall inform the individual undergoing offline verification, or in the case of a child, his parent or guardian the following details with respect to offline verification, in such manner as may be specified by regulations, namely:—

(a) the nature of information that may be shared upon offline verification;

(b) the uses to which the information received during offline verification may be put by the offline verification-seeking entity; and

(c) alternatives to submission of information requested for, if any.

(4) No offline verification-seeking entity shall—

(a) subject an Aadhaar number holder to authentication;

(b) collect, use, or store an Aadhaar number or biometric information of any individual for any purpose;

(c) take any action contrary to any obligation on it as may be specified by regulations.".

8. Substitution of new Section for Section 21.- For section 21 of the principal Act, the following section shall be substituted, namely:—

"21. Officers and other employees or Authority.- (1) The Authority shall appoint such officers and employees as may be required for the discharge of its functions under this Act.

(2) The salaries and allowances payable to, and the other terms and conditions of service of, the officers and employees of the Authority shall be such as may be specified by regulations.".

9. Insertion of new Section 23-A.- After section 23 of the principal Act, the following section shall be inserted, namely:—

"23-A. *Power of Authority to issue directions*.- (1) The Authority may for the discharge of its functions under this Act, or any rules or regulations made thereunder, by order, issue such directions from time to time to any entity in the Aadhaar ecosystem, as it may consider necessary.

(2) Every direction issued under sub-section (1) shall be complied with by the entity in the Aadhaar ecosystem to whom such direction is issued.".

10. Substitution of new Section for Section 25.- For section 25 of the principal Act, the following section shall be substituted, namely:—

"25. Fund.- (1) There shall be constituted a Fund to be called the Unique Identification Authority of India Fund and there shall be credited thereto—

(a) all grants, fees and charges received by the Authority under this Act; and

(b) all sums received by the Authority from such other sources as may be decided upon by the Central Government.

(2) The Fund shall be applied for meeting—

(a) the salaries and allowances payable to the Chairperson and members and administrative expenses including the salaries, allowances and pension payable to or in respect of officers and other employees of the Authority; and

(b) the expenses on objects and for purposes authorised by this Act.".

11. Amendment of Section 29.- In section 29 of the principal Act,—

(a) for sub-section (3), the following sub-section shall be substituted, namely:—

"(3) No identity information available with a requesting entity or offline verification-seeking entity shall be—

(a) used for any purpose, other than the purposes informed in writing to the individual at the time of submitting any information for authentication or offline verification; or

(b) disclosed for any purpose, other than purposes informed in writing to the individual at the time of submitting any information for authentication or offline verification:

Provided that the purposes under clauses (a) and (b) shall be in clear and precise language understandable to the individual.";

(c) in sub-section (4), for the words "or core biometric information", the words "demographic information or photograph" shall be substituted.

12. Amendment of Section 33.- (i) in sub-section (1),—

(a) for the words "District Judge", the words "Judge of a High Court"shall be substituted;

(b) in the proviso, after the words "hearing to the Authority", the words "and the concerned Aadhaar number holder" shall be inserted;

(c) after the proviso, the following proviso shall be inserted, namely:—

"Provided further that the core biometric information shall not be disclosed under this sub-section.".

(ii) in sub-section (2), for the words "Joint Secretary", the word "Secretary" shall be substituted.

13. Insertion of new Chapter VI-A.- After Chapter VI of the principal Act, the following Chapter shall be inserted, namely:—

"CHAPTER VIA

CIVIL PENALTIES

33A. Penalty for failure to comply with provisions of this Act, rules, regulations and directions.-

(1) Where an entity in the Aadhaar ecosystem fails to comply with the provision of this Act, the rules or regulations made thereunder or directions issued by the Authority under section 23A, or fails to furnish any information, document, or return of report required by the Authority, such entity shall be liable to a civil penalty which may extend to one crore rupees for each contravention and in case of a continuing failure, with additional penalty which may extend to ten lakh rupees for every day during which the failure continues after the first contravention.

(2) The amount of any penalty imposed under this section, if not paid, may be recovered as if it were an arrear of land revenue.

33B. Power to adjudicate.-

(1) For the purposes of adjudication under section 33A and imposing a penalty thereunder, the Authority shall appoint an officer of the Authority, who is not below the rank of a Joint Secretary to the Government of India and possessing such qualification and experience as may be prescribed, to be an Adjudicating Officer for holding an inquiry in such manner as may be prescribed.

(2) No inquiry under sub-section (1) shall be initiated except by a complaint made by the Authority.

(3) While holding an inquiry, the Adjudicating Officer shall—

(a) provide the entity in the Aadhaar ecosystem against whom complaint is made, an opportunity of being heard;

(b) have the power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which, in the opinion of the Adjudicating Officer, may be useful for or relevant to the subject matter of the inquiry.

(4) If the Adjudicating Officer, on such inquiry, is satisfied that the entity in the Aadhaar ecosystem has failed to comply with any provision of this Act or the rules or regulations made thereunder or directions issued by the Authority under section 23A, or has failed to furnish any information, document, or return of report required by the Authority, the Adjudicating Officer may, by order, impose such penalty under section 33A as he thinks fit.

33C. Appeals to Appellate Tribunal.-

(1) The Telecom Disputes Settlement and Appellate Tribunal established under section 14 of the Telecom Regulatory Authority of India Act, 1997,

shall be the Appellate Tribunal for the purposes of hearing appeals against the decision of the Adjudicating Officer under this Act.

(2) A person or entity in the Aadhaar ecosystem aggrieved by an order of the Adjudicating Officer under section 33B, may prefer an appeal to the Appellate Tribunal within a period of forty-five days from the date of receipt of the order appealed against, in such form and manner and accompanied with such fee as may be prescribed:

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

(3) On receipt of an appeal under sub-section (2), the Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(4) The Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the Adjudicating Officer.

(5) Any appeal filed under sub-section (2) shall be dealt with by the Appellate Tribunal as expeditiously as possible and every endeavour shall be made by it to dispose of the appeal within six months from the date on which it is presented to it.

(6) The Appellate Tribunal may, for the purpose of deciding an appeal before it, call for the records relevant to disposing of such appeal and make such orders as it thinks fit.

33D. Procedure and powers of the Appellate Tribunal.- The provisions of sections 14-I to 14K (both inclusive), 16 and 17 of the Telecom Regulatory Authority of India Act, 1997 shall, mutatis mutandis , apply to the Appellate Tribunal in the discharge of its functions under this Act, as they apply to it in the discharge of its functions under that Act.

33E. Appeal to Supreme Court of India.-

(1) Notwithstanding anything contained in the Code of Civil Procedure, 1908 or in any other law for the time being in force, an appeal shall lie against any order, not being an interlocutory order, of the Appellate Tribunal to the Supreme Court on any substantial question of law arising out of such order.

(2) No appeal shall lie against any decision or order made by the Appellate Tribunal which the parties have consented to.

(3) Every appeal under this section shall be preferred within a period of forty-five days from the date of the decision or order appealed against:

Provided that the Supreme Court may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

33F. Civil Court not to have jurisdiction.- No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an Adjudicating Officer appointed under this Act or the Appellate Tribunal is empowered, by or under this Act to determine, and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.".

14. Amendment of Section 38.- In section 38 of the principal Act, for the words "three years", the words "ten years" shall be substituted.

15. Amendment of Section 39.- In section 39 of the principal Act, for the words "three years", the words "ten years" shall be substituted.

16. Substitution of new section for Section 40.- For section 40 of the principal Act, the following section shall be substituted, namely:—

"40. Penalty for unauthorised use by requesting entity or offline verification seeking entity.- Whoever,—

(a) being a requesting entity, uses the identity information of an individual in contravention of sub-section (2) of section 8; or

(b) being an offline verification-seeking entity, uses the identity information of an individual in contravention of sub-section (2) of section 8A, shall be punishable with imprisonment which may extend to three years or with a fine which may extend to ten thousand rupees or, in the case of a company, with a fine which may extend to one lakh rupees or with both.".

17. Amendment of Section 42.- In section 42 of the principal Act, for the words "one year", the words "three years" shall be substituted.

18. Amendment of Section 47.- In section 47 of the principal Act, in sub-section (1), the following proviso shall be inserted, namely:—

"Provided that the court may, on a complaint made by an Aadhaar number holder or individual take cognizance of any offence punishable under section 34 or 35 or 36 or 37 or 40 or section 41.".

19. Insertion of new Section 50-A.- After section 50 of the principal Act, the following section shall be inserted, namely:—

"50A. Notwithstanding anything contained in the Income Tax Act, 1961 or any other enactment for the time being in force relating to tax on income, profits or gains, the Authority shall not be liable to pay income tax or any other tax in respect of its income, profits or gains.".

20. Amendment of Section 51.- In section 51 of the principal Act, for the words "Member, officer", the words "Member or officer" shall be substituted.

21. Amendment of Section 53.- In Sec. 53 of the principal Act, in sub-Sec. (2),—

(i) after clause (a) the following clause shall be inserted, namely:—

"(aa) the purpose for which the requesting entity may be allowed by the Authority to perform authentication under sub-clause (ii) of clause (b) of sub-section (4) of section 4; "

(ii) after clause (g), the following clauses shall be inserted, namely:—

“(ga) the qualification and experience of, and the manner of appointment of, the Adjudicating Officer under sub-section (1) of section 33B;

(gb) the form, manner, and fee for an appeal to be filed under sub-section (2) of section 33D;”.

22. Amendment of Sec. 54. - In Sec. 54 of the principal Act, in sub-section (2),—

(i) for clause (a), the following clause shall be substituted, namely:—

“(a) the entities or group of entities in the Aadhaar ecosystem under clause (aa), the biometric information under clause (g) and the demographic information under clause (k), the process of collecting demographic information and biometric information from the individuals by enrolling agencies under clause (m), and the modes of offline verification of Aadhaar number holder under clause (pa) of section 2;”;

(ii) after clause (b), the following clauses shall be inserted, namely:—

“(ba) the manner of generating an alternative virtual identity under sub-section (4) of section 3;

(bb) the manner in which cancellation of an Aadhaar number may be carried out under sub-section (2) of section 3A.”;

(iii) after clause (c), the following clauses shall be inserted, namely:—

“(ca) standards of privacy and security to be complied with by the requesting entities under sub-section (4) of section 4;

(cb) the classification of requesting entities under sub-section (5) of section 4;”

(iv) after clause (f), the following clauses shall be inserted, namely:—

“(fa) the alternate and viable means of identification of individual under the proviso to clause (b) of sub-section (2) of section 8;

(fb) the manner of obtaining consent under clause (a) of sub-section (2), the manner of providing information to the

individual undergoing offline verification under sub-section (3 , and the obligations of offline verification-seeking entities under clause (c) of sub-section (4), of section 8A;".

23. Omission of Section 57.- Section 57 of the principal Act shall be omitted.

PART III

AMENDMENT TO THE INDIAN TELEGRAPH ACT , 1885

24. Amendment of Section 4 of Act 13 of 1885.- In section 4 of the Indian Telegraph Act, 1885, after sub-section (2), the following sub-sections shall be inserted, namely:—

'(3) Any person who is granted a license under the first proviso to sub-section (1) to establish, maintain or work a telegraph within any part of India, shall identify any person to whom it provides its services by—

(a) authentication under the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016; or

(b) offline verification under the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016; or

(c) use of passport issued under section 4 of the Passports Act, 1967; or

(d) use of any other officially valid document or modes of identification as may be notified by the Central Government in this behalf.

(4) If any person who is granted a license under the first proviso to sub-section (1) to establish, maintain or work a telegraph within any part of India is using authentication under clause (a) of sub-section (3) to identify any person to whom it provides its services, it shall make the other modes of identification under clauses (b) to (d) of sub-section (3) also available to such person.

(5) The use of modes of identification under sub-section (3) shall be a voluntary choice of the person who is sought to be identified and no person shall be denied any service for not having an Aadhaar number.

(6) If, for identification of a person, authentication under clause (a) of sub-section (3) is used, neither his core biometric information nor the Aadhaar number of the person shall be stored.

(7) Nothing contained in sub-sections (3), (4) and (5) shall prevent the Central Government from specifying further safeguards and conditions for compliance by any person who is granted a license under the first proviso to sub-section (1) in respect of identification of person to whom it provides its services.

Explanation.—The expressions "Aadhaar number" and "core biometric information" shall have the same meanings as are respectively

assigned to them in clauses (a) and (j) of section 2 of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016.’.

PART IV

AMENDMENT TO THE PREVENTION OF MONEY-LAUNDERING ACT, 2002

25. Insertion of new Section 11-A.- In Chapter IV of the Prevention of Money-laundering Act, 2002 (hereafter in this Part, referred to as the principal Act), before section 12, the following section shall be inserted, namely:—

'11A. Verification of identity by Reporting Entity.- (1) Every Reporting Entity shall verify the identity of its clients and the beneficial owner, by—

(a) authentication under the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 if the reporting entity is a banking company; or

(b) offline verification under the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016; or

(c) use of passport issued under section 4 of the Passports Act, 1967; or

(d) use of any other officially valid document or modes of identification as may be notified by the Central Government in this behalf:

Provided that the Central Government may, if satisfied that a reporting entity other than banking company, complies with such the standards of privacy and security under the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016, and it is necessary and expedient to do so, by notification, permit such entity to perform authentication under clause (a):

Provided further that no notification under the first proviso shall be issued without consultation with the Unique Identification Authority of India established under sub-section (1) of section 11 of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 and the appropriate regulator.

(2) If any reporting entity performs authentication under clause (a) of sub-section (1), to verify the identity of its client or the beneficial owner it shall make the other modes of identification under clauses (b), (c) and (d) of sub-section (1) also available to such client or the beneficial owner.

(3) The use of modes of identification under sub-section (1) shall be a voluntary choice of every client or beneficial owner who is sought to be identified and no client or beneficial owner shall be denied services for not having an Aadhaar number.

(4) If, for identification of a client or beneficial owner, authentication or offline verification under clause (a) or clause (b) of sub-section (1) is used, neither his core biometric information nor his Aadhaar number shall be stored.

(5) Nothing in this section shall prevent the Central Government from notifying additional safeguards on any reporting entity in respect of verification of the identity of its client or beneficial owner.

Explanation .—The expressions "Aadhaar number" and "core biometric information" shall have the same meanings as are respectively assigned to them in clauses (a) and (j) of section 2 of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016.'.

26. Amendment of Section 12.- In section 12 of the principal Act, in sub-section (1), clauses (c) and (d) shall be omitted.

27. Amendment of Section 73.- In section 73 of the principal Act, in sub-section (2), clauses (j) and (jj) shall be omitted.

BACK TO INDEX

Transfer of Property Act:

Sec. 106-Notice terminating tenancy-Validity of-Two months prior notice was required to be given as per agreement entered into between the parties hence the notice given invalid-Plea of-

Held: After expiry of the agreement, tenant/revisionist became tenant on month to month rent and, therefore, the notice of 30 days give under S. 106 T.P. Act Valid. **Rishabh Agrawal V. Om Prakash Chaurasiya, 2019(1) ARC 208**