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CONSTITUTIONAL, CIVIL, CRIMINAL AND REVENUE LAWS

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

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56.	**Upendra vs. State of U.P., 2022 (119) ACC 746**
57.	**Jay Prakash Verma vs. State of U.P., 2022 (119) ACC 519**
58.	**Amrita Nand alias Tribhuvan Arjariya v. State of U.P., 2022 Cri.L.J. 1964 : AIR Online 2022 All. 1353**
59.	**Mohammad Sadik vs. State of U.P., 2022 (119) ACC 74**
60.	**Karmraj Singh and others vs. State of U.P. and anothers, 2022(5) ADJ 143 (Alld.H.C.)**
61.	**Sujeet Patel @ Golu vs. State of U.P., 2022 (119) ACC 363**
62.	**Sujeet Patel alias Golu v. State of U.P., 2022 Cri.L.J. (NOC) 257 (All) : AIR Online 2022 All. 1135**
63.	**Manoj alias Monu alias Vishal Chaudhary v. State of Haryana, 2022 Cri.L.J. 1507: AIR Online 2022 SC 161**
64.	**Jai Prakash etc. etc. vs. Union Territory, Chandigarh etc. etc., 2022(40) LCD 1113**
65.	**Smt. Sumitra Devi and others vs. M/s. S.G.Rockbuild Pvt. Ltd. and another, 2022(5) ADJ 113 (Alld.H.C.)**
66.	**Moradabad Development Authority vs. M/s. V.R. Construction and Engineering Company, 2022(4) ADJ 422(Alld.H.C.)**
67.	**Shantilata Sethy and another vs. Divisional Manager, New India Assurance Co. Ltd. and another, 2022 ACJ 1233**
68.	**Narsingh Ispat Ltd. vs. Oriental Insurance Co. Ltd. and anaother, 2022 ACJ 1308**
69.	**Satish Chand Sharma (Deceased) vs. Manoj and another, 2022 ACJ 1043**
70.	**Rahisa Begum and another vs. Susheel Chandra Gupta and another, 2022 ACJ 1081**
71.	**New India Assurance Co. Ltd. vs. Satish Chandra Sharma and another, 2022 ACJ 1211**
72.	**R. Valli and others vs. Tamil Nadu State Transport Corporation Ltd., 2022(40) LCD 807**
73.	**Sumathi and others vs. National Insurance Co. Ltd. and another, 2022 ACJ 1315**
74.	**Harikesh and others vs. Arvind Kumar and others, 2022 ACJ 1410**
75.	**Shivdhar Kumar Vashiya vs. Ranjeet Singh and others, 2022 ACJ 1412**
76.	**Afsana and others vs. Kundu Knit Fab. Pvt. Ltd. and another, 2022 ACJ 754**
77.	**Arjun vs. Iffco-Tokio General Ins. Co. Ltd. and another, 2022 ACJ 970**
78.	**Ajaya Kumar Das and another vs. Divisional Manager, National Insurance Co. Ltd. and another, 2022 ACJ 1004**
79.	**Mohd. Zahid vs. State through NCB, 2022 (119) ACC 693**
80.	**Pradeep Kumar and another vs. Post Master General and others, 2022(40) LCD 1083**
81.	**Pradeep Kumar and another vs. Post Master General and others, 2022(40)**

	LCD 1083
82.	**M/s. TRL Krokasi Refractories Ltd. vs. M/s. SMS Asia Pvt. Ltd., 2022 (119) ACC 1005**
83.	**Mohammad Sikandar Bhai vs. State of U.P., 2022 (119) ACC 147**
84.	**M/s. TRL Krosaki Refractories Ltd. v. M/s SMS Asia Private Limited, 2022 Cri.L.J. 1745 : AIR Online 2022 SC 213**
85.	**Jatinder Pal Singh vs. M/s. Statcon Power Controls Ltd. and others, 2022(5) ADJ 337 (Alld. H.C.)**
86.	**Yogesh Kesarwani and another v. Devi Shankar Shukla, 2022 (155) RD 538 – Alld. HC – Lucknow Bench**
87.	**Satta alias Satya Prakash v. State of U.P., 2022 Cri.L.J. (NOC) 250 (All) : AIR Online 2022 All. 1373**
88.	**Monu Thakur vs. State of U.P., 2022 (119) ACC 151**
89.	**K. Shanthamma v. State of Telangana, 2022 Cri.L.J.1238 : AIR Online 2022 SC 182**
90.	**Aziz Uddin v. Rajesh Verma, 2022(1) ARC 901(Alld.).**
91.	**Govind Saran v. Km. Shubhi Mishra, 2022(1) ARC 889(Alld.)**
92.	**A.K. Dubey and another v. Exide Industries Ltd. and others, 2022 (155) RD 372 – Alld. HC**
93.	**Ram Badal Mishra vs. Union of India, 2022(4) ADJ 663 (LB)(Alld.H.C.)**
94.	**The Executive Engineer, Gosikhurd Project Ambadi, Bhandara, Maharashtra Vidarbha Irrigation Development Corporation vs. Mahesh and others, 2022(40) LCD 623**
95.	**Soni Devi vs. State of U.P. and others, 2022(5) ADJ 64 (Alld.H.C.)**
96.	**Mita India Private Limited vs. State of U.P. and others, 2022(5) ADJ 398 (Alld.H.C.)**
97.	**Secy. Basic Edu. Board, Prayagraj and others (In Wria-No. 17495 of 2021) vs. Jubeda Bano, 2022(4) ADJ 1 (LB)(DB)- Alld High Court**
98.	**U.P. Secondary Education Service Selection Board vs. State of U.P. and others, 2022(4) ADJ 7 (DB)] Allahabad High Court.**
99.	**Smt. Sarita Singh vs. State of U.P., 2022(4) ADJ 14 (LB)] Allahabad High Court.**
100.	**Babu Ram and others vs. Om Singh and another, 2022(5) ADJ 239 (Alld.H.C.)**
101.	**Dhondu Ganpat Solunke vs. Dashrath Tukaram Saroshe, AIR 2022 Bombay 140**
102.	**Sri Biswanath Banik and other vs. Smt. Sulanga Bose and anothers, 2022(40) LCD 801**
103.	**Govind Saran v. Km. Shubhi Mishra, 2022(1) ARC 889(Alld.).**
104.	**Prashant Tiwari @ Jannu vs. State of U.P. and others, 2022(4) ADJ 284 (DB)(Alld. H.C.)**
105.	**State of Uttar Pradesh and others vs. Rajit Singh, 2022(4) ADJ 295 (SC)**
106.	**Vikas Yadav vs. State of U.P. and others, 2022(4) ADJ 626 (DB) (Alld.H.C.)**
107.	**Prakash Chandra Agrawal vs. State of U.P. and another, 2022(6) ADJ 466**

	(LB)(Alld.H.C.)
108.	**Pandit Prithi Nath Memorial Society and another vs. State of U.P. and others, 2022(5) ADJ 39 (DB)(Alld.H.C.)**
109.	**Kaushlendra Bahadur Singh vs. State of U.P., 2022(4) ADJ 254 (LB) (Alld.H.C.)**
110.	**Hardev Singh vs. Prescribed Authority, Kashipur and another, 2022(40) LCD 59**
111.	**Hardev Singh vs. Prescribed Authority, Kashipur and another, 2022(40) LCD 590**
112.	**Committee of Management, Adarsh Gramin Vidyalaya Sonakpur, Harthala and others vs. State of U.P. and others, 2022(4) ADJ 85 (DB) (Alld.H.C.)**
113.	**Hori Singh vs. State Bank of India and others, 2022(4) ADJ 152 (LB) (Alld.H.C.)(LB)**
114.	**Pramod Kumar Shukla and another vs. State of U.P. and others, 2022(4) ADJ 681 (Alld.H.C.)**
115.	**Vinod Kumar vs. State of U.P. and others, 2022(5) ADJ 342 (LB) (Alld.H.C.)**
116.	**Sonu Bharti vs. State of U.P. and others, 2022(4) ADJ 556 (Alld.H.C.)**
117.	**Sudhir Singh and others vs. State of U.P. and others, 2022(4) ADJ 26 (DB)- Allahabad High Court.**
118.	**Anoop Kumar Dubey vs. State of U.P. and others, 2022(4) ADJ 66(Alld. H.C.)**
119.	**Smt. Kalawati vs. Board of Revenue and others, 2022(4) ADJ 578 (Alld.H.C.)**
120.	**Sitaram vs. State of U.P. and others, 2022(5) ADJ 90 (Alld.H.C.)**
121.	**Shailesh Kumar Mishra vs. State of U.P. and another, 2022(5) ADJ 443 (DB)(Alld.H.C.)**
122.	**Damodar Das v. Ram Swaroop Ghura, 2022(1) ARC 880(Alld.).**
123.	**Hanuman Prasad Mishra v. Chandra Mohan Purswani, 2022(1) ARC 857(Alld.).**
124.	**Damodar Das vs. Ram Swaroop Ghura, 2022(5) ADJ 56 (Alld.H.C.)**
125.	**Anil Kumar Singh vs. IInd Additional Distt. Judge, Hardoi and others, 2022(6) ADJ 91 (LB)(Alld.H.C.)**
126.	**Isht Deo Gupta v. State of U.P. and others, 2022 AIR CC 1300 (All).**
127.	**Asha Josheph v. Babu C George and others, 2022 AIR CC 1685 (Ker).**
128.	**Dulari and Others v. Board of Revenue, U.P. at Allahabad and Another, 2022 AIR CC 1220 (All.).**
129.	**Dulari and others vs. Board of Revenue, U.P. at Allahabad and another, 2022(40) LCD 676**

Part 1- Supreme Court

Advocates Act, 1961

Advocates Strike/Boycott by Lawyers-Legality-Powers of courts and duty of Bar Council or Bar Association in matter of lawyers' strike Obstruction of court work through ongoing strike by lawyers amounts to contempt of court in view of earlier Supreme Court judgement holding such strikes to be impermissible and illegal.

Powers of courts and duty of Bar Council or Bar Association in matter of lawyers' strike Obstruction of court work through ongoing strike by lawyers amounts to contempt of court in view of earlier Supreme Court judgementholding such strikes to be impermissible and illegal. Lawyers' strikes are contrary to the oath of profess of the advocates itself c Bar Council of India has passed certain resolutions to enforce discipline in Bars - Judicial institution available for persons to seek redressal.**PLR Project Ltd. v. Mahanadi Coalfields Ltd., (2022)2 SCC (Cri.) 144.**

Arbitration Act, 1940

Ss. 30, 33 and 39-Arbitral award-Scope of interference with, by Court. It was held that once arbitrator had interpreted clauses of contract by taking a possible view and had gone to great lengths to analyze several reasons offered by appellant claimant to justify its plea that it was entitled to extension of time to execute the contract.

Arbitration Act, 1940-Ss. 30, 33 and 39-Award of certain amounts in favour of a party. When permissible Arbitrator is final arbiter of disputes between parties and it is not open to a party to challenge award on ground that arbitrator has drawn his own conclusions or has failed to appreciate certain facts. It is beyond jurisdiction of Court to assign to itself, task of construing terms and conditions of contract and its provisions and take a view on certain amounts awarded in favour of a party. **Atlanta Limited through its Managing Director v. Union of India represented by Chief Engineer, Military Engineering Service, (2022) 3 SCC 739**

Arbitration and Conciliation Act, 1996

Ss 5 & 34: Award on issues/matters beyond the scope of the arbitration clause which was invoked, as the issues/matters in question pertained to another distinct agreement, arbitration clause in which latter agreement was not invoked.

Lease agreement, and, dealership agreement in respect of retail outletfor sale of petroleum products. **(Indian Oil Corporation Limited through its Senior Manager v. Shree Ganesh Petroleum Rajgurunagar through its proprietor LaxmanDagduThite, (2022) 4 SCC 463)**

Bihar Public Works Contracts Disputes Arbitration Tribunal Act, 2008 (21 of 2008) Ss. 9(1), 8 and 2(1) - Reference to Arbitration Tribunal - Whether 2008 Act to be in addition to Arbitration and Conciliation Act, 1996 - In view of S. 8 of the 2008 Act, if any of provisions of 2008 Act are in conflict with 1996 Act, latter shall prevail to the extent of conflict - There is no arbitration clause in agreement between parties-Provisions of 1996 Act, thus, held, will have no application. Therefore, reference to Arbitration Tribunal will be governed by 2008 Act.

Arbitration - Bihar Public Works Contracts Disputes Arbitration Tribunal Act, 2008 (21 of 2008)-Ss. 9(1), 13 and 18: Reference to Tribunal Condonation of delay by Arbitration Tribunal on sufficient cause shown and same being confirmed by High Court under S. 13.

Interference with, under Art. 136 of the Constitution by Supreme Court. **Bihar Industrial Area Development Authority and others v. Rama Kant Singh, (2022) 4 SCC 489**

Ss. 11, 8, 16 and 34 -Arbitrability of disputes i.e. the issue of dispute(s) being non-arbitrable/being barred by limitation - Adjudication by arbitrator, as opposed to by Court in a S. 11 proceeding, when there exists an arguable case.

While dealing with petition under S. 11, the Court by default would refer the matter when contentions relating to non-arbitrability are plainly arguable and in such case, the issue of non-arbitrability is left open to be decided by the Arbitral Tribunal

Arbitration and Conciliation Act, 1996 - S. 11 - Communication/ issuance of notice of petition by Bombay High Court when application is filed under S. 11 of the 1996 Act - Non-requirement of, when advocate's notice of filing is duly served. Practice followed on the Original Side of the Bombay High Court - Relevancy of. **Mohammed Masroor Shaikh v. Bharat Bhushan Gupta and others, (2022) 4 SCC 156**

Sections 11 and 34 of Arbitration and Conciliation Act, 1996: Award passed by an arbitrator appointed under 1996 Act by Court with consent of parties despite the existence of *M.P. MadhyasthamAdhikaranAdhiniyam, 1983.*Bindingness ofthe same attains finality i.e. is not appealed against subsequent invocation of arbitration under the 1983 Act regarding identical claims i.e. after an award has already been rendered by the arbitrator appointed under 1996 Act. **M.P. Housing and Infrastructure Development Board and another v. K.P. Dwivedi, (2022) 3 SCC 783**

S. 31(7)(b) - Post-award interest on the interest amount awarded i.e. compound interest, reiterated, is grantable by Arbitral Tribunal. Arbitral Tribunal may award interest on the sum directed to be paid by the award, meaning a sum inclusive of principal sum adjudged and interest.

Arbitration and Conciliation Act, 1996 - Ss. 37 and 34 - Reappreciation of evidence by Court upon challenge to award. It was held that jurisdiction conferred on courts under S. 34 is fairly narrow. Further, when it comes to the scope of an appeal under S. 37 the jurisdiction of an appellate court in examining an order, setting aside or refusing to set aside an award, is all the more circumscribed.

Arbitration and Conciliation Act, 1996 - S. 7 - Arbitration clause/ agreement Existence of Arbitration clause in main/implementation agreement. Applicability ofMoU between the parties.

Contract and Specific Relief - Termination/Repudiation for Breach of Contract: Period of performance was to commence only after certain clearances were obtained by promisee, as stipulated in the contract. It was held that promisee could not purport to terminate contract until it had done its part, as period of performance would not commence until then. **UHL Power Company v. State of Himachal Pradesh, (2022) 4 SCC 116**

S. 34 - Delay beyond the period of 3 months plus 30 days i.e. beyond the period of 30 days after the expiry of prescribed period of 3 months, in filing of application for setting aside an arbitral award.

If a petition is filed under S. 34 beyond the prescribed period of three months, the Court has the discretion to condone the delay only to an extent of thirty days, provided sufficient cause is shown. Further, S. 5 of the Limitation Act is not applicable to condone the delay beyond the

period prescribed under S. 34(3). **Mahindra and Mahindra Financial Services Limited v. MaheshbhaiTinabhaiRathod and others, (2022) 4 SCC 162**

S. 34 as amended by Arbitration and Conciliation (Amendment) Act, 2015. Inapplicability of S. 34 proceedings commenced prior to 23-10-2015.

Patent illegality as a ground for setting aside domestic award arising from an international commercial arbitration. Applicability of S. 34 as amended applies only to S. 34 applications that have been made to the Court on or after 23-10-2015, irrespective of the fact that the arbitration proceedings may have commenced prior to that date.

Arbitration and Conciliation Act, 1996 S. 34 (as existing prior to 23-10-2015)- Breach of fundamental policy of Indian law as per pre-2015 interpretation of S. 34 Whether established - Fair, reasonable and objective decision by Arbitrator. **RatnamSudeshIyer v. Jackie Kakubhai Shroff, (2022) 4 SCC 206**

S 34 (3) proviso: Challenge to award Limitation for Delay of 8 days in filing objection to award, which period of delay fell within 30-day period prescribed in S. 34(3) proviso when delay may be condoned by Court if sufficient cause is shown therefore. "Sufficient cause" if present - Determination of Matters to be considered. **Haryana Urban Development Authority, Karnal v. Mehta Construction Company and another, (2022) 5 SCC 432**

Civil Procedure Code, 1908

S - Transfer petition by wife under Divorce proceedings initiated by respondent husband in the Family Court at Chennai 600 km away from Hyderabad, where wife resides - Wife seeking transfer of proceedings to Hyderabad, allowed. **Pooja Rathod v. TarunRathod, (2022) 4 SCC 514**

Ss 11, 47 and Order XXI, Rule 64-A judgment-debtor cannot be allowed to raise objections as to the method of execution in installments-After having failed to raise the issue in four earlier rounds of litigation, appellants cannot be permitted to raise it now-Original judgment-debtor himself filed a petition under section 47, way back on 2.9.1975 – Before Act 104 of 1976 came into force, there was one view that the provisions of section 11 of the Code had no application to execution proceedings – But under Act 104 of 1976 Explanation VII was inserted under section 11 and it ways that the provisions of this section shall apply to a proceeding for the execution of a decree and reference in this section to any suit, issue or former suit shall be construed as references to a proceeding for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree - Appeal is dismissed.

The appellants cannot be allowed to raise the issue relating to thebreach of Order XXL Rule 64 for the following reasons:

(i) A judgment-debtor cannot be allowed to raise objections as to the method of execution in installments. After having failed to raise the issue in four earlier rounds of litigation, the appellants cannot be permitted to raise it now;

(ii) As we have pointed out elsewhere, the original judgment-debtor himself filed a petition under section 47, way back on 2.9.1975. What is on hand is a second petition under section 47 and, hence, it is barred by res judicata. It must be pointed out at this stage that before Act 104 of

1976 came into force, there was one view that the provisions of section 11 of the Code had no application to execution proceedings. But under Act 104 of 1976 Explanation VII was inserted under section 11 and it says that the provisions of this section shall apply to a proceeding for the execution of a decree and reference in this section to any suit, issue or former suit shall be construed as references to a proceeding for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree;
(iii) Even in the 5th round, the appellants have not pointed out the lay of the property, its dimensions on all sides and the possibility of dividing the same into two or more pieces, with a view to sell one or more of those pieces for the realization of the decree debt;
(iv) The observations in paragraph of the order of the High Court dated 20.12.1990 in C.O. No. 2487 of 1987 that,"none of the parties shall have any claim whatsoever as against the applicant in respect of the purchased property which shall be deemed to be his absolute property on and from the expiry of 15th December 1980", has attained finality;
(v) Section 65 of the Code says that, "where immovable property is sold in execution of a decree and such sale has become absolute, the property shall be deemed to have vested in the purchaser from the time when the property is sold and not from the time when the sale becomes absolute" The sale of a property becomes absolute under Order XXI. Rule 92(1) after an application made under Rule 89, Rule 90 or Rule 91 is disallowed and the Court passes an order confirming the same. After the sale of an immovable property becomes absolute in terms of Order XXI, Rule 92(1), the Court has to grant a certificate under Rule 94. The certificate has to bear the date and the day on which the sale became absolute. Thus a conjoint reading of section 65, Order XXI, Rule 92 and Order XXI, Rule 94 would show that it passes through three important stages (other than certain intervening stages). They are, (i) conduct of sale; (ii) sale becoming absolute; and (iii) issue of sale certificate. After all these three stages are crossed, the 4th stage of delivery of possession comes under Rule 95 of Order XXI. It is at this 4th stage that the appellants have raised the objection relating to Order XXI, Rule 64. It is not as if the appellants were not aware of the fact that the property in entirety was included in the proclamation of sale. Therefore, the claim on the basis of Order XXI, Rule 64 was rightly rejected by the High Court.

In view of the above, he appeal is devoid of merits and, hence, it is dismissed. There will be no order as to costs. **Dipali Biswas and others v. Nirmalendu Mukherjee and others, 2022 (155) RD 89 – SC.**

S.100-Second appeal-Declaratory suit-Judgment and decree of Trial Court dismissing suit of plaintiff-Affirmed by first appellate Court-Reversed in second appeal-Legality-Gift deed – Execution of – Denial of-Appreciation of evidence – Very origin of gift deed disputed by executant during her life – time – Fact in issue in present case is voluntariness and animus necessary for execution of valid gift deed –Which to be examined on basis of evidence led by parties – Decision and determination of fact in issue to be by examination of oral evidence of those persons – Who can vouchsafe for truth offacts in issue – When a person obtains any benefit from another, Court would call upon person who wishes to maintain right to gift, to discharge burden of proving that he exhorted no influence for purpose of obtaining the document – Impugned judgment of High Court chose to ignore and not deal with fact in issue in background of case – But completely influenced by evidence led to support execution and registration of document, and not whether execution was voluntary and in exercise of unfettered will to effect gratuitous transfer of land in favour of plaintiff-Views and findings recorded by lower Court well reasoned and have taken into account several factors that report and contradict claim of a valid

execution of gift deed by donor favouring plaintiff-impugned order of High Court set aside – Judgment and decree passed by Trial Court and affirmed by first appellate Court upheld-Appeal allowed.

The concurrent findings of the lower courts delve into the context and factual aspects surrounding the primary evidence viz., gift deed, to conclude that the plaintiff's case lacks a base for a bona fide claim for a decree of declaration. Appreciation of evidence is an exercise based on facts and circumstances where the preponderance of probability can take varying forms and configurations. What facts and circumstances have to be established to prove the execution of a document depends on the pleas put forward. Ordinarily, no one is expected to sign or execute a document without knowing its contents, but if it is pleaded that the party executing the document did not know the contents thereof then it may, in certain circumstances, be necessary for the party seeking to prove the document to place material before the court to satisfy it that the party who executed the document had the knowledge of its contents,Rao Saheb v. RangnathGopalraoKawathekar (Dead by L.Rs.) and others, (1972) 4 SCC 181. Considering that the very origin of the gift deed was disputed by the executants during her lifetime, the lower courts were right in weighing the evidence of the gift deed on the touchstone of its validity first, rather than its form and content. The fact in issue in the present case is the voluntariness and animus necessary for the execution of a valid gift deed, which is to be examined on the basis of evidence led by the parties who could depose for the truth of this fact in issue. Decision and determination of the fact in issue is by examination of the oral evidence of those personswho can vouchsafe for the truth of the facts in issue. The impugned judgment in the second appeal by the High Court, unfortunately, chose to ignore and not deal with the fact in issue in the background of the casebut was completely influenced by the evidence led to support execution and registration of the document, and not whether the execution was voluntary and in the exercise of unfettered will to effect the gratuitous transfer of land in favour of the plaintiffs. When a person obtains any benefitfrom another, the court would call upon the person who wishes to maintain the right to gift to discharge the burden of proving that he exerted no influence for the purchase of obtaining the document. Corollary to this principle finds recognition in sub-section (3) to Section 16 of the Indian Contract Act, 1872 which relates to pardanashin ladies. The courts can apply this principle to old, illiterate, ailing orinfirm persons who may be unable to comprehend the nature of the document or contents thereof. Equally, one who bargains in the matter of advantage with a person who places confidence in him is bound to show that a proper and reasonable use has been made of that confidence. The burden of establishing perfect fairness, adequacy and equity is cast upon the person in whom the confidence has been reposed. Therefore, in cases of fiduciary relationships when the validity of the transaction is in question, it is relevant to see whether the person conferring the benefit on the other had competent and independent advice. **Keshav and others v. Gian Chand and another, 2022 (155) RD 630 (SC).**

S. 100 and Or. 9 R. 13Proper mode of disposal - Matters at large in second appeal - Ex parte decree Second appeal filed against dismissal of first appeal for default on ground of delay, without any decision on merits in such first appeal. Only permissible course before High Courtwas to consider validity of such first appellate order. High Court in second appealerred in treating the matter as an application under Or. 9 R. 13 and setting aside ex parte decree itself, and remanding suit to trial court for decision afresh on merit. **Mamtaz and others v. Gulsuma alias Kulusuma, (2022) 4 SCC 555**

Civil Procedure Code, 1908 - Or. 23 R. 3 and Ss. 151, 152 & 153 Modification of consent judgment/decree: When not vitiated by fraud, misrepresentation or a patent or obvious mistake Application seeking modification of consent judgment/decree filed under S. 152. Dismissal on considering such application as one under proviso to Or. 23 R. 3 r/w S. 151, when it did not meet the requirements of law. **Ajanta LLP v. Casio Keisanki Kabushiki Kaisha D/B/A Casio Computer Company Limited and another, (2022) 5 SCC 449**

Or. 41 Rr. 4 & 33, Ss. 96, 100 and Or. 20 R. 18-Partition suit - Appeal - Non-appealing plaintiffs - Entitlement to relief in appeal filed by some of the other co-plaintiffs or even the defendant(s) Interchangeability of the parties i.e. plaintiff and defendant in partition suit-Significance of

Property Law Partition/Family Arrangement/Settlement Partition suit-Nature of - Interchangeability of plaintiff and defendant Relief that may be granted by trial court and appellate court to non-appealing parties

Civil Procedure Code, 1908-S. 100-Second appeal -Substantial question of law - Jurisdiction of High Court - Perverse approach of first appellate court in arriving at findings - Held, would give rise to a substantial question of law, thereby justifying High Court to interfere with findings of first appellate court. **AzgarBarid (dead) by legal representatives and others v. Mazambi alias Pyaremabi and others, (2022) 5 SCC 334**

Or 7, R. 11(d)—Rejection of plaint—On ground that suit is barred by limitation and that suit for declaration simpliciter under S. 53A of TP Act is not maintainable against original owner—Validity

The trial court rejected the application under Order VII Rule 11 CPC and refused to reject the plaint. However, the High Court by the impugned judgment and order has set aside the order passed by the trial court and allowed the application under Order VII Rule 11 CPC and has rejected the plaint on the ground that the suit is barred by limitation as well as the suit for a declaration simpliciter under Section 53A of the Transfer of Property Act would not be maintainable.

Now, so far as the issue whether the suit can be said to be barred by limitation or not, at this stage, what is required to be considered is the averments in the plaint. Only in a case where on the face of it, it is seen that the suit is barred by limitation, then and then only a plaint can be rejected under Order VII Rule 11(d) CPC on the ground of limitation. At this stage what is required to be considered is the averments in the plaint. For the aforesaid purpose, the Court has to consider and read the averments in the plaint as a whole. As observed and held by this Court in the case of Ram Prakash Gupta (supra), rejection of a plaint under Order VII Rule 11(d) CPC by reading only few lines and passages and ignoring the other relevant parts of the plaint is impermissible.

While rejecting the plaint, the High Court has also observed and held that the suit for a declaration simpliciter under Section 53A of the Transfer of Property Act against the original owner would not be maintainable and for that reliance is placed upon the decision of this Court in the case of Delhi Motor Company (supra). However, it is required to be noted that even the plaintiffs have also prayed for the decree for a permanent injunction claiming to be in possession and the declaration and permanent injunction as such invoking Section 53A of the Transfer of Property Act. When the suit is for a decree of permanent injunction and it is averred that the plaintiffs are in possession of the suit property pursuant to the agreement and thereafter, they

have developed the land and that they are in continuous possession since more than twelve years and they are also paying taxes to the Corporation, the cause of action can be said to have arisen on the date on which the possession is sought to be disturbed. If that be so, the suit for decree for permanent injunction cannot be said to be barred by limitation. It is the settled proposition of law that the plaint cannot be rejected partially. Even otherwise, the reliefs sought are interconnected. Whether the plaintiffs shall be entitled to any relief under Section 53A of the Transfer of Property Act or not has to be considered at the time of trial, but at this stage it cannot be said that the suit for the relief sought under Section 53A would not be maintainable at all and therefore the plaint is liable to be rejected in exercise of powers under Order VII Rule 11 CPC. **Biswanath Banik vs. Sulanga Bose, AIR 2022 SC 1519**

Or VII, Rule 11-Respondent No. 1 plaintiff filed a suit for a declaration that the plaintiff is a lawful occupier as caretaker/servant of the sole owner of the A schedule property and occupier and adverse possessor of the B Schedule property – Application under Order VII, Rule 11, CPC came to be filed at the behest of appellant defendant with an objection that the suit proceedings at the instance of the respondent No. 1 plaintiff who had pleaded himself to be a caretaker/servant, acquires no interest in the subject property irrespective of his long possession, is not maintainable under the law and as regards the plea of adverse possession is concerned, it lacks material particulars–Trial judge dismissed the application on the premise that these are the subject-matter of disputes which can be examined only after the written statement being filed at the behest of the appellant-defendant and is not within the scope of Order VII Rule 11, CPC-Order of Trial Judge came to be confirmed by the High Court – Appeal against – Held, Trial Court has committed a manifest error in appreciating the pleadings on record from the plaint filed at the instance of respondent No. 1 – Plaintiff who as a caretaker/servant can never acquire interest in the property irrespective of his long possession and the caretaker/servant has to give possession forthwith on demand and so far as the plea of adverse possession is concerned as it lacks material particulars the plaint does not discloses the cause of action for institution of the suit-Order of the Trial Judge which has been confirmed by the High Court is not sustainable on the first principles of law – Appeal is allowed.

After the notice was served. The application under Order VII, Rule 11, CPC came to be filed at the behest of the present appellant-defendant with an objection that the suit proceedings at the instance of respondent No. 1- plaintiff who had pleaded himself to be a caretaker/servant, acquires no interest in the subject property irrespective of long possession, is not maintainable under the law and as regards the plea of adverse possession is concerned, it lacks material particulars.

Consequently, the appeal succeeds and is allowed. The order of the High Court is, hereby, quashed and set aside. The plaint No. T.S. 150/2019, on the file of Ld.2nd Civil Judges (Jr.Div) at Sealdah is, accordingly, rejected. **Himalaya Vintrade Pvt. Ltd. v. Zahid and another, 2022 (155) RD 97 – SC**

Or 14, R.2—Preliminary issue—Mixed issue of law and fact or issue of law depends upon decision of fact cannot be tried as preliminary issue.

The amended provision of Order XIV came up for consideration before the Full Bench of Allahabad High Court in a judgment reported as Sunni Central Waqf Board and Ors. v. Gopal Singh Vishrad and Ors. AIR 1991 ALL 89 It was held that material changes had been brought about by substituting Order XIV Rule 2 of the Code. The word shall in the unamended provision

has been replaced by the word may in the substituted provision, therefore, it is now discretionary for the Court to decide the issue of law as a preliminary issue, or to decide it along with the other issues. It was further held that even all issues of law cannot be decided as preliminary issues and only those issues of law falling within the ambit of clause (a) and (b) of sub-rule (2) of Rule 2 could be decided. The High Court held as under:

22. Under the above provision once the court came to the conclusion that the case or any part thereof could be disposed of on the issues of law only it was obliged to try those issues first and the other issues could be taken up only thereafter, if necessity survived. The court had no discretion in the matter.

This flows from the use of the word it shall try those issues first. Material change has been brought about in legal position by amended O. 14, R. 2 which reads as follows:

24. The word shall used in old O. 14, R. 2 has been replaced in the present Rule by the word may. Thus now it is discretionary for the Court to decide the issue of law as a preliminary issue or to decide it along with the other issues. It is no longer obligatory for the Court to decide an issue of law as a preliminary issue.

25. Another Change brought about by the amended provision is that not all issues of law can be decided as preliminary issues. Only those issues of law can be decided as preliminary issues which fell within the ambit of cls. (a) and (b) of sub-r. (2) of R. 2 of O. 14. Cl. (a) mentions jurisdiction of the Court and clause (b) deals with bar to the suit created by any law for the time being in force. In the present case cl. (a) is not attracted. The case is sought to be brought within the ambit of cl. (b). For bringing it under cl. (b) Limitation Act and the Muslim Waqf Act have been invoked.

The matter has also been examined by this Court in a judgment reported as Ramesh B. Desai and Ors. v. Bipin Vadilal Mehta and Ors. 9 (2006) 5 SCC 638 wherein it was held as under:

> **"**13. Sub-rule (2) of Order 14 Rule 2 CPC lays down that where issues both of law and of fact arise in the same suit, and the court is of the opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to (a) the jurisdiction of the court, or (b) a bar to the suit created by any law for the time being in force. The provisions of this Rule came up for consideration before this Court in Major S.S. Khanna v. Brig. F.J. Dillon [(1964) 4 SCR 409 : AIR 1964 SC 497] and it was held as under: (SCR p. 421)
>
> Though there has been a slight amendment in the language of Order 14 Rule 2 CPC by the amending Act, 1976 but the principle enunciated in the above quoted decision still holds good and there can be no departure from the principle that the Code confers no jurisdiction upon the court to try a suit on mixed issues of law and fact as a preliminary issue and where the decision on issue of law depends upon decision of fact, it cannot be tried as a preliminary issue.

This Court in Ramesh B. Desai held that the principles enunciated in Major S. S. Khanna still hold good and the Code confers no jurisdiction upon the Court to try a suit on mixed issues of law and fact as a preliminary issue and where the decision on issue depends upon the question of fact, it cannot be tried as a preliminary issue. The said finding arises from the provision of

Order XIV Rule 2 clause (a) and (b). After the amendment, discretion has been given to the Court by the expression may used in sub-rule (2) to try the issue relating to the jurisdiction of the Court i.e. territorial and pecuniary jurisdiction, or a bar to the suit created by any law for the time being in force i.e., the bar to file a suit before the Civil Court such as under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and numerous other laws particularly relating to land reforms. Hence, if Order XIV Rule 2 is read along with Order XII Rule 5, the Court is expected to decide all the issues together unless the bar of jurisdiction of the Court or bar to the suit in terms of sub-rule (2) clause (a) and (b) arises. The intention to substitute Rule 2 is the speedy disposal of the lis on a question which oust either the jurisdiction of the Court or bars the plaintiff to sue before the Civil Court.

Court may state that the First Schedule appended to the Code contains the procedure to be applied in respect of the matters coming for adjudication before the Civil Court. Such procedure is handmaid of justice as laid down by the Constitution Bench judgment of this Court reported as Sardar Amarjit Singh Kalra (Dead) by Lrs. v. Pramod Gupta (Smt) (Dead) by Lrs. & Anr. (2003) 3 SCC 272 wherein it was observed as under:

> **"**26. Laws of procedure are meant to regulate effectively, assist and aid the object of doing substantial and real justice and not to foreclose even an adjudication on merits of substantial rights of citizen under personal, property and other laws. Procedure has always been viewed as the handmaid of justice and not meant to hamper the cause of justice or sanctify miscarriage of justice…."

A three Judge Bench in a subsequent judgment reported as Kailash v. Nanhku & Ors. (2005) 4 SCC 480 held that all rules of procedure are handmaid of justice. The language employed by the draftsman of processual law may be liberal or stringent but the object of prescribing procedure is to advance the cause of justice. The Court held as under:

"28. All the rules of procedure are the handmaid of justice. The language employed by the draftsman of processual law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the statute, the provisions of CPC or any other procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations in the ends of justice. The observations made by Krishna Iyer, J. in Sushil Kumar Sen v. State of Bihar [(1975) 1 SCC 774] are pertinent:

"The mortality of justice at the hands of law troubles a judge's conscience and points an angry interrogation at the law reformer.

The processual law so dominates in certain systems as to overpower substantive rights and substantial justice. The humanist rule that procedure should be the handmaid, not the mistress, of legal justice compels consideration of vesting a residuary power in judges to act ex debito justitiae where the tragic sequel otherwise would be wholly inequitable. Justice is the goal of jurisprudence processual, as much as substantive."

29. In State of Punjab v. Shamlal Murari [(1976) 1 SCC 719 : 1976 SCC (L&S) 118] the Court approved in no unmistakable terms the approach of moderating into wholesome directions what is regarded as mandatory on the principle that:

"Processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. Procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice.

In Ghanshyam Dass v. Dominion of India [(1984) 3 SCC 46] the Court reiterated the need for interpreting a part of the adjective law dealing with procedure alone in such a manner as to subserve and advance the cause of justice rather than to defeat it as all the laws of procedure are based on this principle."

This Court in Sugandhi v. P. Rajkumar (2020) 10 SCC 706 held that if the procedural violation does not seriously cause prejudice to the adversary party, Courts must lean towards doing substantial justice rather than relying upon procedural and technical violations. It is not to be forgotten that litigation is nothing but a journey towards truth which is the foundation of justice and the Court is required to take appropriate steps to thrash out the underlying truth in every dispute. It was held as under:

"9. It is often said that procedure is the handmaid of justice. Procedural and technical hurdles shall not be allowed to come in the way of the court while doing substantial justice. If the procedural violation does not seriously cause prejudice to the adversary party, courts must lean towards doing substantial justice rather than relying upon procedural and technical violation. We should not forget the fact that litigation is nothing but a journey towards truth which is the foundation of justice and the court is required to take appropriate steps to thrash out the underlying truth in every dispute. Therefore, the court should take a lenient view when an application is made for production of the documents under sub-rule (3)."

The provisions of Order XIV Rule 2 are part of the procedural law, but the fact remains that such procedural law had been enacted to ensure expeditious disposal of the lis and in the event of setting aside of findings on preliminary issue, the possibility of remand can be avoided, as was the language prior to the unamended Order XIV Rule 2. If the issue is a mixed issue of law and fact, or issue of law depends upon the decision of fact, such issue cannot be tried as a preliminary issue. In other words, preliminary issues can be those where no evidence is required and on the basis of reading of the plaint or the applicable law, if the jurisdiction of the Court or the bar to the suit is made out, the Court may decide such issues with the sole objective for the expeditious decision. Thus, if the Court lacks jurisdiction or there is a statutory bar, such issue is required to be decided in the first instance so that the process of civil court is not abused by the litigants, who may approach the civil court to delay the proceedings on false pretext.

In fact, in a judgment reported as A. Shanmugam v. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam & Ors. (2012) 6 SCC 430, this Court held as under:

"39. Our courts are usually short of time because of huge pendency of cases and at times the courts arrive at an erroneous conclusion because of false pleas, claims, defences and irrelevant facts. A litigant could deviate from the facts which are liable for all the conclusions. In the journey of discovering the truth, at times, this Court, at a later stage, but once discovered, it is the duty of the court to take appropriate remedial and preventive steps so that no one should derive benefits or advantages by abusing the process of law. The court must effectively discourage fraudulent and dishonest litigants.

The different judgments of the High Court referred to above are in consonance with the principles laid down by this Court in Ramesh B. Desai that not all issues of law can be decided as preliminary issues. Only those issues of law can be decided as preliminary issues which fell within the ambit of clause (a) relating to the jurisdiction of the Court and (b) which deal with the bar to the suit created by any law for the time being in force. The reason to substitute Rule 2 is to avoid piecemeal trial, protracted litigation and possibility of remand of the case, where the appellate court differs with the decision of the trial court on the preliminary issues upon which the trial court had decided.

In Abdul Rahman, this Court held as under:

"21. For the purpose of disposal of the suit on the admitted facts, particularly when the suit can be disposed of on preliminary issues, no particular procedure was required to be followed by the High Court. In terms of Order 14 Rule 1 of the Code of Civil Procedure, a civil court can dispose of a suit on preliminary issues. It is neither in doubt nor in dispute that the issues of res judicata and/or constructive res judicata as also the maintainability of the suit can be adjudicated upon as preliminary issues. Such issues, in fact, when facts are admitted, ordinarily should be decided as preliminary issues."

A perusal of the above judgment of this Court shows that it was an admitted fact that issue of resjudicata and of constructive res judicata can be adjudicated as preliminary issue. Since it was an admitted fact, it cannot be said that principle of law has been enunciated that a plea of res judicata can be decided as a preliminary issue.

In Jamia Masjid, the judgment and decree in a second appeal holding that the suit is barred by the principle of res judicata was the subject matter of challenge before this Court. The Court held as under:

26. The court while undertaking an analysis of the applicability of the plea of resjudicata determines first, if the requirements of section 11 CPC are fulfilled; and if this is answered in the affirmative, it will have to be determined if there has been any material alteration in law or facts since the first suit was decreed as a result of which the principle of res judicata would be inapplicable. We are unable to accept the submission of the appellants that res judicata can never be decided as a preliminary issue. In certain cases, particularly when a mixed question of law or fact is raised, the issue should await a full- fledged trial after evidence is adduced. In the present case, a determination of the components of res judicata turns on the pleadings and judgments in the earlier suits which have been brought on the record. The issue has been argued on that basis before the Trial court and the first appellate court; followed by two rounds of proceedings before the High Court (the second following upon an order of remand by this court on the ground that all parties were not heard). All the documentary material necessary to decide the issue is before the court and arguments have been addressed by the contesting sides fully on that basis.

62. In view of the discussion above, Court summarises findings below:

(i) Issues that arise in a subsequent suit may either be questions of fact or of law or mixed questions of law and fact. An alteration in the circumstances after the decision in the first suit, will require a trial for the determination of the plea of res judicata if there arises a new fact which has to be proved. However, the plea of res judicata may in an appropriate case be determined as a preliminary issue when neither a disputed question of fact nor a mixed question of law or fact has to be adjudicated for resolving it;" **Sathyanath vs. Sarojamani, AIR 2022 SC 2242**

Or XLI, Rule 31- - High Court has disposed of the appeal preferred under Order XLI read with section 96 in a most casual and perfunctory manner – Held, there is a total non-compliance of the provisions of the Order XLI, Rule 31 – High Court has failed to exercise the jurisdiction vested in it as a first Appellate Court-High Court has notat all re-appreciated the entire evidence on record and not even considered the reasoning given by Trial Court, in particular, on findings recorded by Trial Court on the issue of willingness-Judgment and order passed by High Court is unsustainable – A direction is issued to appellant-original defendant directing him to refund the amount of Rs. 3,60,001/- with 18% interest from the date of the agreement till the date of realization within a period of eight week – Appeals are allowed.

Applying the law laid down by this court in the aforesaid decisions, if the impugned judgment and order passed by the High Court is considered, in that case, there is a total non-compliance of the provisions of Order XLI, Rule 31, CPC.The High Court has failed to exercise the jurisdiction vested in it as a First Appellate Court;the High Court has not at all re-appreciated the entire evidence on record; and not even considered the reasoning given by the learned Trial Court, in particular, on findings recorded by the learned Trial Court on the issue of willingness. Therefore, as such, the impugned judgment and order passed by the High Court is unsustainable and in normal circumstances, we would have accepted the request of the learned Senior Counsel appearing on behalf of the respondent to remand the matter to the High Court for fresh consideration of appeal. However, even on other points also, the impugned judgment and order passed by the High Court is not sustainable. We refrain from remanding the matter to the High Court and we decide the appeal on the merits.**K.Karuppuraj v. M. Ganesan, 2022 (155) RD 186 – Supreme Court.**

Constitution of India, 1950

Arts. 15(4) and 16(4) - Affirmative action/ Reservation, held, it is well-settled now, is not an exception to the principle of equality. Supreme Court has transformed the equality jurisprudence in India from formal equality to substantial equality/real or factual equality. Thus, special provisions (like reservation) under Arts. 15(4) and 16(4) are not an exception to the principle of equality under Arts. 14, 15(1) and 16(1) but a restatement of the right to equality. Historical disadvantages suffered by certain communities have created structural Inequalities-Special provisions can ameliorate these structural inequalities and provide an equitable setting to level up the weaker sections so that real or factual equality can be ensured and does not remain illusory.

Arts. 15(4) and 16(4) Identification of backward groups or classes, held, depends on common group characteristics of backwardness and not on characteristics of a few individuals who might not possess these characteristics of backwardness.

Arts. 15(4) and 16(4) Merit and reservation are not antithetical. Privileges and advantages enjoyed by forward class candidates vis-à-vis absence thereof in lives of backward class candidates.

Arts. 15(4) and 16(4)- Affirmative action/ Reservation - Permissibility of, at postgraduate level - Held, there is no prohibition on reservation for SEBCS and OBCS in PG courses While on certain occasions, the Court has remarked that there cannot be any reservation in superspeciality courses, the Court has never held that reservations in medical PG courses are impermissible - Reservation in PG courses to a reasonable extent does not violate the equality clause.

Arts. 15(4) and 16(4) - Purpose of creation of all-India quota (AIQ) does not prohibit reservation within AIQ.

Arts. 15(4) and 16(4)- Affirmative action is the power and prerogative of Government to provide reservation. The Government is not required to seek permission of Court before providing reservation in AIQ seats or otherwise, in accordance with law. Providing reservation in the AIQ seats is a policy decision of the Government, which will be subject to the contours of judicial review applicable to every reservation policy.

Arts. 15(4) and 16(4) Change in the seat matrix after registration, held, in present case was not arbitrary and did not invalidate Noti. dt. 29-7-2021. Changing the Rules of the Game principle was held, did not apply herein as there was only a change in seat matrix after registration. No doubt the said principle would apply if there is a change in selection criteria or the procedure for selection after the selection process had commenced. **Neil Aurelio Nunes (OBC Reservation) and others v. Union of India and others, (2022) 4 SCC 1**

Arts. 19, 14 and 21 - Proportionality test to be applied for determining reasonableness of restrictions or limitations on the rights concerned, specifically in the context of Art. 19(6) and more generally under Arts. 14 and 21.

Arts. 19(6), 14 and 21- Cl. 2(iii) of the Revised Guidelines on Merchanting Trade Transactions (MTT) dt. 23-1-2020 i.e. prohibition of MTT transactions concerning personal protection equipment (PPE) products Validity of Four-pronged test of proportionality for determining reasonableness of restriction under Art. 19(6) and violations of fundamental rights - Whether satisfied

Arts. 19(6), 14 and 21 - Reasonableness of restrictions-Four-pronged test of proportionality. First amongst the four pronged test, namely, is the measure in furtherance of a legitimate aim i.e. is the measure designated for a proper purpose, a legitimate goal.

Arts. 19(6), 14 and 21 - Reasonableness of restrictions - Four-pronged test of proportionality - Second, amongst the four-pronged test, namely, is the measure suitable for achieving such legitimate aim - Whether satisfied in present case

Arts. 19(6), 14 and 21- Reasonableness of restrictions Four-pronged test of proportionality - Third, amongst the four-pronged test, namely, is the measure necessary for achieving the aim - Whether satisfied in present case

Held, the analysis of necessity is an extension of evaluating the suitability of a restriction, coupled with an analysis of whether the proposed measure is the least restrictive manner of arriving at the intended legitimate State interest

Arts. 19(6), 14 and 21 - Reasonableness of restrictions - - Four-pronged test of proportionality - Fourth, amongst the four-pronged test, namely, is the measure adequately balanced with the right of the individual - Whether satisfied - Interests of preserving public health in a pandemic - Primacy of

RBI is a special, expert regulatory body that is insulated from the political arena and its decisions are reflective of its expertise in guiding the economic policy and financial stability of the nation. Further, Court must be circumspect that the rights and freedoms guaranteed under the Constitution do not become a weapon in the arsenal of private businesses to disable regulation enacted in the public interest.

Corporations are not considered as "citizens" under the Constitution. Thus, a corporation cannot claim an infringement of rights under Art. 19(1)(g), as this fundamental right is only available to citizens and not to juristic persons. However, over the years, shareholders and business persons have been permitted to maintain petitions in their individual capacity, to allege

infringement of rights under Art. 19. **Akshay N. Patel v. Reserve Bank of India and another, (2022) 3 SCC 694**

Arts. 25, 21, 14 and 19-COVID-19 Pandemic - Funeral rights of Parsi Zoroastrian community - Concern over public health and safety while preserving the sanctity of the Zoroastrian faith - Amicably agreed upon protocol and standard operating procedure (SOP) permitting the claim of Parsi Zoroastrian community to conduct their funeral rights in the Dokhma (Tower of Silence) while complying with the safety standards required during COVID-19 Pandemic Funeral rights thus, permitted to be performed as per said SOP. **Surat Parsi Panchayat Board and another v Union of India and others, (2022) 4 SCC 534**

Arts. 32 and 226- Power of Court to direct CBI to register a regular case, in spite of CBI's decision to close a preliminary enquiry-Existence and exercise of, when warranted.

There is no bar on the constitutional power of Supreme Court to direct CBI to register a regular case, in spite of its decision to close a preliminary enquiry - Supreme Court has the power to direct CBI to conduct an investigation in exceptional cases, even in the exercise of its writ jurisdiction - In the present case, CBI filed a closure report with reference to the preliminary enquiry stating that it did not disclose facts which would warrant the registration of a criminal case Held, there was sufficient material for registration of a regular case in relation to the 26% disinvestment of HZL by the Union Government in 2002 Thus, CBI directed to register a regular case and proceed in accordance with law. **National confederation of officers of Central Public Sector Enterprises and ors. V. Union of India and ors., (2022)2 SCC (Cri.)237**.

Arts. 32 and 226-Maintainability Principle of res judicata - Non-applicability of, to matters involving grave public interest/orders dismissing writ petitions in limine

Principles of res judicata and constructive res judicata, have been applied to the exercise of the writ jurisdiction, including public interest litigation yet the courts have been circumspect in denying relief in matters of grave public importance, on a strict application of procedural rules - Held, while determining the applicability of the principle of res judicata in its writ jurisdiction, the Court must be conscious that grave issues of public interest are not lost in the woods merely because a petition was initially filed and dismissed, without a substantial adjudication on merits - In present case, held, since the three-Judge Bench of Supreme Court rejected the petition filed by Maton Mines Mazdoor Sangh in limine, without a substantive adjudication on the merits of their claim, the present writ petition was not barred by res judicata. **National confederation of officers of Central Public Sector Enterprises and ors. V. Union of India and ors., (2022)2 SCC (Cri.)237**.

Art 226 of Constitution of India: Proper mode of disposal -Connected/Related matters - Consolidated disposal - Challenge to land acquisition-All appeals relating to the same acquisition notifications, held, should have been heard and decided together. Hence, present appeal remanded for decision afresh, to be heard together with the appeals relating to the same acquisition notifications. **Madhya Pradesh Housing Board and another v. Satish Kumar Batra and others, (2022) 4 SCC 559**

Art 226 of Constitution of India: In absence of any jurisdictional error or violation of natural justice or error of law apparent on face of record, interference by High Court in merits of controversy as appellate court impermissible.

Public Sector, Government Companies and Statutory Corporations - Disinvestment - Manner in which permissible Whether the company concerned is a "government company" - Extent of Government ownership of the company concerned - Whether the same is 51% or more.

Arts. 226, 309, 235—Uttar Pradesh Government Conduct Rules, 1956, R. 3—Civil Services Regulations, 1920, Art. 351A—Misconduct

At the outset, it may be noted that maintenance of high standard of conduct and character of the judicial officers has always been a matter of great concern for this court. In C. Ravichandran Iyer Vs. Justice A.M. Bhattacharjee & Ors., this court emphasizing the need to maintain high standard of integrity, honesty and moral vigour by the judges, observed: -

"Judicial office is essentially a public trust. Society is, therefore, entitled to except that a Judge must be a man of high integrity, honesty and required to have moral vigour, ethical firmness and impervious to corrupt or venial influences. He is required to keep most exacting standards of propriety in judicial conduct. Any conduct which tends to undermine public confidence in the integrity and impartiality of the court would be deleterious to the efficacy of judicial process. Society, therefore, expects higher standards of conduct and rectitude from a Judge. Unwritten code of conduct is writ large for judicial officers to emulate and imbibe high moral or ethical standards expected of a higher judicial functionary, as wholesome standard of conduct which would generate public confidence, accord dignity to the judicial office and enhance public image, not only of the Judge but the court itself. It is, therefore, a basic requirement that a Judge's official and personal conduct be free from impropriety; the same must be in tune with the highest standard of propriety and probity. The standard of conduct is higher than expected of a layman and also higher than expected of an advocate. In fact, even his private life must adhere to high standards of probity and propriety, higher than those deemed acceptable for others. **Muzaffar Husain vs. State of U.P., AIR 2022 SC 2216**

Arts. 226 and 32 Maintainability Principle of res judicata - Non-applicability of, to matters involving grave public interest/orders dismissing writ petitions in limine. Power of Court to direct CBI to register a regular case, in spite of CBI's decision to close a preliminary enquiry - Existence and exercise of, when warranted. **National Confederation of Officers Association of Central Public Sector Enterprises and others v. Union of India and others, (2022) 4 SCC 764**

Respondent clerk-cum-cashier in appellant Bank found guilty on various counts inter alia including breach of duty as custodian of public money and dishonesty, fraud/manipulation of documents by forging signature of his widowed sister-in-law etc. in departmental proceedings, pursuant to which punishment of dismissal imposed. **Indian Overseas Bank and others v. Om Prakash Lal Srivastava, (2022) 3 SCC 803**

Art. 227- Scope of Supervisory jurisdiction of High Court. Error apparent on face of record or perversity in the findings or findings being unsupported by evidence. Necessity of Reasoned decision of trial court on elaborate consideration of relevant facts, held, cannot be

interfered with in exercise of supervisory jurisdiction under Art. 227. **Garment Craft v. Prakash Chand Goel, (2022) 4 SCC 181**

Arts. 341 and 342 - SCS/STS - "For the purposes of this Constitution ... in relation to that State" - Implication of, reiterated, is that benefit of status as SC/ST or OBC is granted only in relation to a State on the basis of ordinary and permanent residence of the castes/ classes of persons concerned in that State - Benefit of status of SC/ST or OBC in one State is thus not automatically nor ordinarily transferable to another State upon migration

Reservation, Concession, Exemption, Relaxation and Affirmative Action Migration to Other State/UT- Applicability of principle that a person belonging to SC/ST in relation to his original State of which he is permanent or ordinary resident cannot be deemed to be so in relation to any other State on his migration to that State for the purpose of employment, education Held, applicable to purchase and sale of land belonging to a Scheduled Caste person in a State when said land was allotted to original landowner as Scheduled Caste landless person in the latter State

Election Representation of the People Act, 1950 S. 20(1) - "Ordinarily resident" - Lands purchased by grandfather and father in a State Held, is no ground to presume a person to be ordinarily resident in a constituency in that State - In bainama and in mutation record, address of defendant is shown in State of Punjab - In cross-examination, he has admitted that he was resident of Punjab - Thus, held, he will be deemed to be ordinarily resident in Punjab - Constitution of India, Arts. 341 and 342 -Words and Phrases- "Ordinarily resident"

Tenancy and Land Laws-Rajasthan Tenancy Act, 1955 (3 of 1955) S. 42-Restrictions on transfer of land-Scheduled Caste person belonging to State of Punjab and being an ordinary and permanent resident of State of Punjab - Held, cannot claim benefit of a Scheduled Caste in State of Rajasthan for purpose of purchase of land belonging to a Scheduled Caste person of State of Rajasthan, which was given to original allottee as Scheduled Caste landless person-Sale transaction in favour of Scheduled Caste person belonging to State of Punjab, held, was thus in clear breach of S. 42

Tenancy and Land Laws - Rajasthan Colonization Act, 1954 (27 of 1954) - Ss. 13-A (2) and 13 - Benefit of compounding under S. 13-A (2) When may be granted by Board of Revenue - Held, S. 13-A (2) applies only where ejectment order has been passed, but person against whom ejectment order has been passed has not actually been ejected from the land in question. **Bhadar Ram (Dead) through Legal Representatives v. Jassa Ram and others, (2022) 4 SCC 259**

Arts. 233 and 235-Eligibility requirements for appointment to Higher Judicial Service Power of High Court to prescribe - Scope of -Prescription of minimum age of 35 yrs for appearing for Higher Judicial Service Examination - Validity-Held, prescription of rule providing for minimum/maximum age for entry into service is essentially a policy matter

Art. 233 has provided only for minimum eligibility for appointment as District Judge and has not precluded exercise of rule-making power by High Courts to regulate conditions of service or appointment - Silences of Constitution have to be and are supplemented by those whose duty it is to apply its provisions - Constitution being silent with regard to prescription of minimum age, High Court in exercise of its rule-making power, held, is entitled to prescribe such requirement

Service Law - Judiciary - Recruitment process - Higher Judicial Service Prescription of upper age limit of 42 yrs for entry into DHJS Relaxation of -Circumstances envisaged-Parity - No recruitment done in years 2020 and 2021

Service Law - Judiciary - Recruitment process - Prescription of upper age limit of 32 yrs for appearing in Delhi Judicial Service Examination- Relaxation of Circumstances envisaged - Last examination for recruitment to DJS held in 2019 i.e. no examination held in 2020 for institutional reasons and in 2021 due to CoVID-19 Pandemic. **High Court of Delhi v. Devina Sharma, (2022) 4 SCC 643**

Art. 233—Delhi Higher Judicial Service Rules, 1970, R. 7(2)—Promotion—Post of District Judge Cadre—Reduction of minimum qualifying service

I.A. No. 89454 of 2021 filed by the judicial officers−applicants and I.A. No. 249 of 2009 filed by the High Court of Delhi are allowed in the following terms:

(i) Paragraph 28 (1) (b) of the order dated 21st March, 2002 passed by this Court, is modified and substituted as under:

"25% by promotion strictly on the basis of merit through LDCE of Civil Judges having 7 years qualifying service [(5 years as Civil Judge (Junior Division) and 2 years as Civil Judge (Senior Division) or 10 years qualifying service as Civil Judge (Junior Division)."

(ii) Similarly, in the order dated 20th April 2010 passed by this Court, the direction in paragraph (7), i.e., Thus, we direct that henceforth only 10% of the cadre strength of District Judges be filled up by limited departmental competitive examination with those candidates who have qualified service of five years as Civil Judge (Senior Division), is modified and substituted as under:

"Thus, we direct that henceforth only 10% of the cadre strength of District Judges be filled up by Limited Departmental Competitive Examination with those candidates who have qualified service of 7 years [(5 years as Civil Judge (Junior Division) and 2 years as Civil Judge (Senior Division) or 10 years qualifying service as Civil Judge(Junior Division)."

It is needless to state that since the aforesaid modifications are being directed in the peculiar facts and circumstances pertaining to the DHJS, the said modifications shall apply only insofar as the DHJS is concerned. **All India Judges Association vs. Union of India, AIR 2022 SC 1944**

Sch. VII List I Entry 84 and List II Entry 51 - Waste liquor after distillation not suitable for human consumption - State Legislature, held, has no legislative competence to levy tax on such waste liquor not suitable for human consumption

Constitution makers distributed the term "alcoholic liquor" into two heads viz. (a) for human consumption; and (b) other than for human consumption State Legislature is competent to legislate only with respect - to alcohol suitable for human consumption - Parliament alone is competent to legislate on alcohol not suitable for human consumption. **State of Orissa and others v. Utkal Distilleries Limited, (2022) 5 SCC 326**

Contract and Specific Relief

Contract and Specific Relief-Auctions/Tenders-Reiterated, highest bidder in auction does not acquire any right to have that bid accepted merely because it is the highest bid - Acceptance of highest bid or highest bidder is always subject to conditions of holding the auction and the

right of highest bidder is always provisional to be examined in the context in different conditions in which auction has been held

Constitution of India Art. 226 Scope of Judicial review/ Interference under Art. 226 Contractual matters High Court is not supposed to interfere with decision of the competent authority, unless decision is totally arbitrary or unreasonable - It is not open for High Court to sit like a court of appeal over decision of competent authority and particularly in matters where authority competent of floating tender is best judge of its requirements, therefore, interference otherwise has to be very minimal. **State of Punjab and others v. Mehar Din, (2022) 5 SCC 648**

Consumer Protection Act, 1986

Consumer/Consumer Dispute/Locus Standi "Commercial purpose" - What is and when is not a bar to seeking relief under/invocation of Consumer Protection Act-Dominant intention or purpose test, as to some kind of profit generation as being the main purpose of the activity in question.

Consumer Protection - Consumer/Consumer Dispute/Locus Standi "Commercial purpose" - Relationship between complainant stockbroker and bank granting overdraft facility against shares pledged. **Shrikant G. Mantri v. Punjab National Bank, (2022) 5 SCC 42**

Consumer Forums Quantification - Necessity of adducing material substantiating the alleged loss caused to the complainant - Figure mentioned in complaint without any substantiating material in support thereof, held, not sufficient to warrant awarding the amount stated in the complaint. **Indusind Bank Limited and another v. Simarjit Singh, (2022) 4 SCC 809**

S. 13: Delay in filing written statement, beyond the period of 15 days in addition to 30 days envisaged under S. 13. Where the application seeking condonation of delay was filed prior to 4-3-2020 i.e. prior to date of 5-Judge Bench ruling in Hilli, (2020) 5 SCC 757. Prospective operation of Hilli case is clarified.

It has been held that the 05Judge Bench in *Hilli case* did not make a distinction between applications for condonation which had been decided and those which were pending on the date of the decision. Thus, applications for condonation of delay that were pending or decided before 4-3-2020 would both equally be entitled to the benefit of the position in Mampee, (2021) 3 SCC 673 which directed Consumer Fora to render a decision on merits**. Diamond Exports and another v. United India Insurance Company Limited and others, (2022) 4 SCC 169**

Ss. 24-A and 2(1)(g) - Complaint for deficiency in service Limitation Complaint filed by appellant Cooperative Housing Society for refund of excess taxes and charges paid by appellant to municipal authorities, due to alleged deficiency of service of builder to obtain occupancy certificate that resulted in payment of higher taxes and water charges to municipal authority by members of Society.

It was held that continuous failure to obtain occupancy certificate is continuing wrong, therefore, complaint cannot be said to be barred by limitation.

Consumer Protection Services Housing and Real Estate: Dispute in question whether consumer dispute determination of Complaint filed by appellant Cooperative Housing Society for refund of excess taxes and charges paid by appellant to municipal authorities, due to alleged deficiency of service of builder to obtain occupancy certificate that resulted in payment of higher taxes and water charges to municipal authority by members of Society. It was held that complaint cannot be rejected on ground that it is recovery proceeding and not consumer dispute, and therefore not maintainable. **Samruddhi Cooperative Housing Society Limited v. Mumbai Mahalaxmi Construction Limited, (2022) 4 SCC 103**

S. 35(1)(c) r/w Ss. 38(11) and 2(5)(v) r/w Or. 1 R. 8 CPC: Invocation of S. 35(1)(c), by some of the purchasers/complainants against the builder of residential complex i.e. complaint in a representative capacity is impermissible in the absence of sameness of interest between all purchasers of apartments Sine qua non for invoking S. 35(1)(c) is that all consumers on whose behalf or for whose benefit the provision is invoked, should have the same interest.Further, it is necessary to include in such consumer complaint under S. 35(1)(c), sufficient averments that show sameness of interest.

Consumer Protection Act, 2019 S. 35(1)(c) r/w Ss. 38(11) and 2(5)(v) r/w Or. 1 R. 8 CPC-Sameness of interest vis-à-vis sameness of cause of action- Distinguished - S. 38(11) makes the provisions of Or. 1 R. 8 CPC applicable to cases where the complainant is a consumer referred to in S. 2(5)(v). Further, Or. 1 R. 8 CPC distinguishes persons having the same interest in one suit from persons having the same cause of action and to establish sameness of interest, it is not necessary to establish sameness of the cause of action.

Consumer Protection Act, 2019 - Ss. 35(1), 38(11) and 2(5) - a complaint jointly made by several consumers is permissible, even when the same cannot be made in a representative capacity. **Brigade Enterprises Limited v. Anil Kumar Virmani and others, (2022) 4 SCC 138**

Consumer Protection - Services - Housing and Real Estate - Complaint to enforce sale of immovable property i.e. for execution of the conveyance deed in terms of agreement to sell - Limitation period for filing of such complaint on the expiry of period of notice of complainant's notice for executing the deed of conveyance. Parity with principles for reckoning of limitation for filing of suit for specific performance of agreement to sell.

Evidence Act, 1872 - S. 114 III. (g) - Adverse Inference Presumption against complainant for non-production of record.

Consumer Protection - Services - Housing and Real Estate - Complaint to enforce sale of immovable property i.e. for execution of the conveyance deed in terms of agreement to sell - Readiness and willingness to perform on part of the vendee or buyer. Averments and Proof of - When may be inferred from conduct of and extent of performance already rendered by the vendee or buyer. **BharatiBhattacharjee v. Quazi Md. Maksuduzzaman and others, (2022) 6 SCC 146**

Criminal Procedure Code, 1973

S. 11 – Res Judicata – Application of –

While determining the applicability of the principle of res judicata under Section 11 of the Code of Civil Procedure, 1908, the Court must be conscious that grave issues of public

interest are not lost in the woods merely because a petition was initially filed and dismissed, without a substantial adjudication on merits. There is a trend of poorly pleaded public interest litigations being filed instantly following a disclosure in the media, with a conscious intention to obtain a dismissal from the Court and preclude genuine litigants from approaching the Court in public interest. This Court must be alive to the contemporary reality of "ambush public interest litigations" and interpret the principles of res judicata or constructive res judicata in a manner which does not debar access to justice. The jurisdiction under Article 32 is a fundamental right in and of itself. **National confederation of officers of Central Public Sector Enterprises and ors. V. Union of India and ors., (2022)2 SCC (Cri.)237**.

Ss. 155 to 159 -Transfer of investigation to CBI - When permissible and warranted-Principles summarized.

Under federal design envisaged by Constitution, Police is a State subject under Sch. VII List II of the Constitution - Therefore, investigation of crime should normally be undertaken by State concerned's police, where case is registered There can be situations, where particular crime by virtue of its nature and ramification, is legally capable of being investigated by police from different States or even by other agencies- Entrustment of investigation to CBI is permitted, either with consent of State concerned or on orders of constitutional court However, investigation of crime by multiple authorities transgressing into others domain, is impermissible. **Rhea Chakraborty v. State of Bihar, (2022)1 SCC (Cri.) 699.**

Ss. 156(3), 190, 200, 482, 154(1) and 154(3) Power of Magistrate under S. 156(3) - Prerequisites for exercise of power.Application under S. 156(3) CrPC without affidavit duly sworn by complainant cannot be entertained by Magistrate. **BabuVenkatesh and others v. State of Karnataka and another, (2022) 5 SCC 639**

Ss. 161 & 162 - Interference with investigation - Fixing of venue for examination of accused by investigating agency, by High Court u/s 482 would be unsustainable and improper.

High Court fixing venue for examination of respondent, who had been ignoring summons and evading arrest Said fixing of venue done by High Court allegedly on health grounds, but without there being any material to support the same Held, unsustainable and improper - Officers of Directorate of Revenue Intelligence given liberty to issue appropriate summons to respondent for his appearance at an appropriate place and to proceed in accordance with law. **Union of India v. Rajnish Kumar Tuli, (2022)2 SCC (Cri.) 86.**

Ss. 190, 195, 340, 341 and 343-Ingredients of -Reason for enactment of S. 195- Principles summarized.

Section 190 CrPC states, that a Magistrate may take cognizance of any offence in one of three situations: (a) upon receiving a complaint of facts which constitute such offence; (b) upon a police report of such facts; and (c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed. However, Section 195 CrPC states, that in the offences covered by it, no court shall take cognizance except upon the complaint in writing of a public servant, insofar as the offences mentioned in sub-clause (1)(a) are concerned, and by the complaint in writing of the "court" as defined by sub section (3), insofar as the offences delineated in sub-clause (1)(b) are concerned. The reason for the enactment of Section 195 CrPC has been stated felicitously in Patel Laljibhai Somabhai, (1971)

2 SCC 376. **Patel Laljibhai Somabhai v. State of Gujarat, (1971) 2 SCC 376: 1971 SCC (Cri) 548, relied on**

Ss. 190(1)(b) r/w Ss. 173, 193 & 319 and Ss. 161 & 164 Taking cognizance of offence on basis of police report Protest petition Powers of Magistrate to summon person not arraigned as an accused in police report and whose name also found not featured in Column (2) of such report Stages at which said power can be exercised Power of Magistrate to issue process to such person at stage of cognizance itself, without waiting for S. 319 CrPC stage-Materials that may be considered by Magistrate - Law summarized

Even after process has been issued against some accused on one date, held, process can still be issued by the Magistrate against some other person against whom there is some material on record, but whose name is not included as accused in the charge-sheet - Lastly, Magistrate or court need not wait till stage of S. 319 CrPC to exercise such power

Criminal Procedure Code, 1973-S. 190(1)(b) r/w Ss. 173, 193 & 319 and Ss. 161 & 164-Taking cognizance of offence on basis of police report -Protest petition - Powers of Magistrate to summon person not arraigned as an accused in police report and whose name also found not featured in Column (2) of such report - Materials that must be considered-Scope of

Criminal Procedure Code, 1973- Ss. 190(1)(b) r/w 173, 193 and 319 -Taking cognizance of offence on basis of police report - Protest petition - Summoning of person not arraigned as an accused in police report and whose name also found not featured in Column (2) of such report - Stages at which said power can be exercised - Power to issue process by Magistrate to such person at stage of cognizance itself, without waiting for S. 319 CrPC stage - Law clarified. **Nahar Singh v. State of Uttar Pradesh and another, (2022) 5 SCC 295)**

S.190(1)(b)

The question which we shall be addressing in this appeal is whether a Magistrate taking cognizance of an offence on the basis of a police report in terms of Section 190 (1)(b) of The Code of Criminal Procedure, 1973 (the Code) can issue summons to any person not arraigned as an accused in the police report and whose name also does not feature in column (2) of such report.

In the cases of Raghubans Dubey (supra), SWIL Ltd. (supra) and Dharam Pal (supra), the power or jurisdiction of the Court or Magistrate taking cognizance of an offence on the basis of a police report to summon an accused not named in the police report, before commitment has been analysed. The uniform view on this point, irrespective of the fact as to whether cognizance is taken by the Magistrate under Section 190 of the Code or jurisdiction exercised by the Court of Session under Section 193 thereof is that the aforesaid judicial authorities would not have to wait till the case reaches the stage when jurisdiction under Section 319 of the Code is capable of being exercised for summoning a person as accused but not named as such in police report. We have already expressed our opinion that such jurisdiction to issue summons can be exercised even in respect of a person whose name may not feature at all in the police report, whether as accused or in column (2) thereof if the Magistrate is satisfied that there are materials on record which would reveal prima facie his involvement in the offence. None of the authorities limit or restrict the power or jurisdiction of the Magistrate or Court of Session in summoning an accused upon taking cognizance, whose name may not feature in the F.I.R. or police report.

In the present case, the name of the accused had transpired from the statement made by the victim under Section 164 of the Code. In the case of Dharam Pal (supra), it has been laid

down in clear terms that in the event the Magistrate disagrees with the police report, he may act on the basis of a protest petition that may be filed and commit the case to the Court of Session. This power of the Magistrate is not exercisable only in respect of persons whose names appear in column (2) of the charge-sheet, apart from those who are arraigned as accused in the police report. In the subject-proceeding, the Magistrate acted on the basis of an independent application filed by the de facto complainant. If there are materials before the Magistrate showing complicity of persons other than those arraigned as accused or named in column 2 of the police report in commission of an offence, the Magistrate at that stage could summon such persons as well upon taking cognizance of the offence. As we have already discussed, this was the view of this Court in the case of Raghubans Dubey (supra). Though this judgment dealt with the provisions of the 1898 Code, this authority was followed in the case of Kishun Singh (supra). For summoning persons upon taking cognizance of an offence, the Magistrate has to examine the materials available before him for coming to the conclusion that apart from those sent up by the police some other persons are involved in the offence. These materials need not remain confined to the police report, charge sheet or the F.I.R. A statement made under Section 164 of the Code could also be considered for such purpose. **Nahar Singh vs. State of Uttar Pradesh and another, 2022(4) ADJ 302 (SC)**

S195 CrPC has been construed to be mandatory, being an absolute bar to the taking of cognizance under Section 190 CrPC, unless the conditions of the section are met, as held in Daulat Ram, 1962 Supp (2) SCR 812.

Daulat Ram v. State of Punjab, 1962 Supp (2) SCR 812: AIR 1962 SC 1206: (1962) 2 Cri LJ 286, relied on

S. 227 - Discharge- Jurisdiction of court- Same held to be limited and cannot be exercised by conducting roving enquiries on the aspect of factual inferences.

At this stage, we may note that the jurisdiction of this Court, with regard to Section 227 CrPC, is limited and should not be exercised by conducting roving enquiries on the aspect of factual inferences. This Court in Union of India v. Prafulla Kumar Samal, had an occasion to consider the scope of Section 227 CrPC and it held as under: (SCC pp. 7-8, para 7)

"7. Section 227 of the Code runs thus:

“227. Discharge.-If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing."

The words "not sufficient ground for proceeding against the accused" clearly show that the Judge is not a mere post office to frame the charge at the behest of the prosecution, but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. In assessing this fact, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really his function after the trial starts. At the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. The sufficiency of ground would take within its fold the nature of the evidence recorded by the police or the documents produced before the court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him."

"21. On consideration of the authorities on the scope of Sections 227 and 228 of the Code, the following principles emerge:

(ii) Where the materials placed before the courts disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial."

Therefore, in line with the aforesaid proposition, this case is not an appropriate one to have exercised the power under Section 227 to discharge the respondent-accused herein, having regard to the facts and circumstances of the case. However, it should be noted that this judgment is rendered for a limited purpose, and we have not expressed any opinion on the merits of the case. **State of Gujarat v. Mansukhbhai Kanjibhai Shah, (2022)2 SCC (Cri.) 61.**

S. 313—Statement of accused under S. 313—Admissibility—Rape and murder case

It is true that the entire case of the prosecution rested on the circumstantial evidence, inasmuch as though certain facts were admitted by the appellant-accused in his further statement under section 313 of Cr.P.C., like his visit to the house of the victim on the previous evening of the alleged incident, and he having been arrested and brought back from Bhagalpur, Bihar, as per the transit remand granted by the concerned court, there was no eye witness to the alleged incident. The law with regard to the appreciation of evidence when the case of the prosecution hinges on the circumstantial evidence is very well settled. The five golden principles laid down by this Court in the case of Sharad Birdhichand Sarda vs. State of Mahashtra, 1984 (4) SCC 116 and followed in catena of decisions, are worth reproducing:-

“153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned “must or should” and not “may be” established. There is not only a grammatical but a legal distinction between “may be proved” and “must be or should be proved” as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 Crl LJ 1783] where the observations were made.

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

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

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

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

This Court while dealing with the issue of inculpatory and exculpatory statements of the accused made under Section 313 Cr.P.C. has made very apt observations in case of Mohan Singh vs. Prem Singh & Anr; (2002) 10 SCC 236-

“27. The statement made in defence by the accused under Section 313 CrPC can certainly be taken aid of to lend credence to the evidence led by the prosecution, but only a part of such

statement under Section 313 of the Code of Criminal Procedure cannot be made the sole basis of his conviction. The law on the subject is almost settled that statement under Section 313 CrPC of the accused can either be relied in whole or in part. It may also be possible to rely on the inculpatory part of his statement if the exculpatory part is found to be false on the basis of the evidence led by the prosecution. See Nishi Kant Jha v. State of Bihar [(1969) 1 SCC 347 : AIR 1969 SC 422] : (SCC pp. 357-58, para 23)

"23. In this case the exculpatory part of the statement in Exhibit 6 is not only inherently improbable but is contradicted by the other evidence. According to this statement, the injury which the appellant received was caused by the appellant's attempt to catch hold of the hand of Lal Mohan Sharma to prevent the attack on the victim. This was contradicted by the statement of the accused himself under Section 342 CrPC to the effect that he had received the injury in a scuffle with a herdsman. The injury found on his body when he was examined by the doctor on 13-10-1961 negatives both these versions. Neither of these versions accounts for the profuse bleeding which led to his washing his clothes and having a bath in River Patro, the amount of bleeding and the washing of the bloodstains being so considerable as to attract the attention of Ram Kishore Pandey, PW 17 and asking him about the cause thereof. The bleeding was not a simple one as his clothes all got stained with blood as also his books, his exercise book and his belt and shoes. More than that the knife which was discovered on his person was found to have been stained with blood according to the report of the Chemical Examiner. According to the post-mortem report this knife could have been the cause of the injuries on the victim. In circumstances like these there being enough evidence to reject the exculpatory part of the statement of the appellant in Exhibit 6 the High Court had acted rightly in accepting the inculpatory part and piercing the same with the other evidence to come to the conclusion that the appellant was the person responsible for the crime."

28….

29….

"30. The statement of the accused under Section 313 CrPC is not a substantive piece of evidence. It can be used for appreciating evidence led by the prosecution to accept or reject it. It is, however, not a substitute for the evidence of the prosecution. As held in the case of Nishi Kant [(1969) 1 SCC 347 : AIR 1969 SC 422] by this Court, if the exculpatory part of his statement is found to be false and the evidence led by the prosecution is reliable, the inculpatory part of his statement can be taken aid of to lend assurance to the evidence of the prosecution. If the prosecution evidence does not inspire confidence to sustain the conviction of the accused, the inculpatory part of his statement under Section 313 CrPC cannot be made the sole basis of his conviction."

Once the theory of "last seen together" was established, the accused was expected to offer some explanation as to under which circumstances, he had parted the company of the victim. It hardly needs to be reiterated that in the criminal jurisprudence, the entire burden of proving the guilt of the accused rests on the prosecution, nonetheless if the accused does not throw any light upon the facts which are proved to be within his special knowledge in view of Section 106 of the Evidence Act, such failure on the part of the accused may also provide an additional link in the chain of circumstances required to be proved against him. Of course, Section 106 of the Evidence Act does not shift the burden of the prosecution on the accused, nor requires the accused to furnish an explanation with regard to the facts which are especially within his knowledge, nonetheless furnishing or non-furnishing of the explanation by the accused would be a very crucial fact, when the theory of "last seen together" as propounded by

the prosecution is proved against him, to know as to how and when the accused parted the company of the victim.

In case of Rajender vs. State (NCT of Delhi), (2019) 10 SCC 623, this Court has succinctly dealt with the doctrine of "last seen together" in the light of Section 106 of the Evidence Act. The relevant observations read as under:

"12.2.4. Having observed so, it is crucial to note that the reasonableness of the explanation offered by the accused as to how and when he/she parted company with the deceased has a bearing on the effect of the last seen in a case. Section 106 of the Evidence Act, 1872 provides that the burden of proof for any fact that is especially within the knowledge of a person lies upon such person. Thus, if a person is last seen with the deceased, he must offer an explanation as to how and when he parted company with the deceased. In other words, he must furnish an explanation that appears to the court to be probable and satisfactory, and if he fails to offer such an explanation on the basis of facts within his special knowledge, the burden cast upon him under Section 106 is not discharged. Particularly in cases resting on circumstantial evidence, if the accused fails to offer a reasonable explanation in discharge of the burden placed on him, such failure by itself can provide an additional link in the chain of circumstances proved against him. This, however, does not mean that Section 106 shifts the burden of proof of a criminal trial on the accused. Such burden always rests on the prosecution. Section 106 only lays down the rule that when the accused does not throw any light upon facts which are specially within his/her knowledge and which cannot support any theory or hypothesis compatible with his innocence, the court can consider his failure to adduce an explanation as an additional link which completes the chain of incriminating circumstances."

In Satpal vs. State of Haryana, (2018) 6 SCC 610 this Court observed,

"6. We have considered the respective submissions and the evidence on record. There is no eyewitness to the occurrence but only circumstances coupled with the fact of the deceased having been last seen with the appellant. Criminal jurisprudence and the plethora of judicial precedents leave little room for reconsideration of the basic principles for invocation of the last seen theory as a facet of circumstantial evidence. Succinctly stated, it may be a weak kind of evidence by itself to found conviction upon the same singularly. But when it is coupled with other circumstances such as the time when the deceased was last seen with the accused, and the recovery of the corpse being in very close proximity of time, the accused owes an explanation under Section 106 of the Evidence Act with regard to the circumstances under which death may have taken place. If the accused offers no explanation, or furnishes a wrong explanation, absconds, motive is established, and there is corroborative evidence available inter alia in the form of recovery or otherwise forming a chain of circumstances leading to the only inference for guilt of the accused, incompatible with any possible hypothesis of innocence, conviction can be based on the same. If there be any doubt or break in the link of chain of circumstances, the benefit of doubt must go to the accused. Each case will therefore have to be examined on its own facts for invocation of the doctrine."

Following the above ratio, in the case of Surajdeo Mahto vs. The State of Bihar, (2021) 9 Scale 94, it was held -

"29. The case of the prosecution in the present case heavily banks upon the principle of 'Last seen theory'. Briefly put, the last seen theory is applied where the time interval between the point of when the Accused and the deceased were last seen together, and when the victim is found dead, is so small that the possibility of any other person other than the Accused being the perpetrator of crime becomes impossible.

30. We may hasten to clarify that the fact of last seen should not be weighed in isolation or be segregated from the other evidence led by the prosecution. The last seen theory should rather be applied taking into account the case of the prosecution in its entirety. Hence, the Courts have to not only consider the factum of last seen, but also have to keep in mind the circumstances that preceded and followed from the point of the deceased being so last seen in the presence of the Accused**." Mohd. Firoz vs. State of M.P., AIR 2022 SC 1967**

S438 of Criminal Procedure Code, 1973 - Anticipatory bail re FIR under S. 306 IPCwhile issuing notice, Supreme Court granted interim relief of stay of arrest to appellant He has enjoyed said relief for last more than 32 years. Consequently, held, without making any reflection on merits of matter, order passed by High Court set aside with necessary directions. **DheerajBhadviya v. State of Rajasthan and another, (2022) 6 SCC 63**

Ss. 362, 169 and 173 - Order accepting closure report submitted by police-Recall of, by Magistrate concerned-Permissibility of

In earlier proceedings for quashing of criminal proceedings in present matter, High Court while declining they said relief had directed the police to conduct investigation and submit report notwithstanding the pendency of civil case in the matter - Despite the said clear order of High Court, police not conducting any investigation in view of pendency of civil litigation and ultimately filing a closure report in the matter - It was when a contempt petition was filed before High Court that the police investigated the matter and filed charge-sheet - Meanwhile, though the Magistrate concerned had accepted the closure report without hearing the complainant, but, on anapplication moved by the complainant on the same day, the order accepting closure report was recalled.

Since the previous order of High Court directing the police to conduct investigation and submit report regardless of civil litigation in the matter was clearly binding on the Magistrate concerned, it was wholly impermissible for the said Magistrate to accept the closure report that was filed by police without making any investigation Thus, challenge made to the recall order passed by the Magistrate, not tenable Surendra Singh, (2005) 12 SCC 361 holding that Magistrate has no power to review its order, distinguished in this regard in view of the aforesaid previous order of High Court. **V. Krishna Jetty v. H. V. Suresh and Anr. (2022)2 SCC (Cri.) 113.**

Ss. 378 and 386(a)-Appeal against acquittal-Powers of appellate court in dealing with - Principles –summarized.

In Atley v. State of U.P.3, the approach of the appellate court while considering a judgment of acquittal was discussed and it was observed that unless the appellate court comes to the conclusion that the judgment of the acquittal was perverse, it could not set aside the same. To a similar effect are the following observations of this Court speaking through Subba Rao, J. (as his Lordship then was) in Sanwat Singh v. State of Rajasthan: (Sanwat Singh case, AIR pp. 719-20, para 9)

"9. The foregoing discussion yields the following results: (1) an appellate court has full power to review the evidence upon which the order of acquittal is founded; (2) the principles laid down in Sheo Swarup afford a correct guide for the appellate court's approach to a case in disposing of such an appeal; and (3) the different phraseology used in the judgments of this Court, such as, (i) "substantial and compelling reasons", (ii) "good and sufficiently cogent reasons", and (iii)

"strong reasons" are not intended to curtail the undoubted power of an appellate court in an appeal against acquittal to review the entire evidence and to come to its own conclusion; but in doing so it should not only consider every matter on record having a bearing on the questions of fact and the reasons given by the court below in support of its order of acquittal in its arriving at a conclusion on those facts, but should also express those reasons in its judgment, which lead it to hold that the acquittal was not justified." **Rajesh Prasad v. State of Bihar, (2022)2 SCC(Cri.) 31.**

In Ajit Savant Majagvai v. State of Karnataka", this Court set out the following principles that would regulate and govern the hearing of an appeal by the High Court against an order of acquittal passed by the trial court: (SCC pp. 116-17, para 16)

"16. This Court has thus explicitly and clearly laid down the principles which would govern and regulate the hearing of appeal by the High Court against an order of acquittal passed by the trial court. These principles have been set out in innumerable cases and may be reiterated as under:

(1) In an appeal against an order of acquittal, the High Court possesses all the powers, and nothing less than the powers it possesses while hearing an appeal against an order of conviction.

(2) The High Court has the power to reconsider the whole issue, reappraise the evidence and come to its own conclusion and findings in place of the findings recorded by the trial court, if the said findings are against the weight of the evidence on record, or in other words, perverse.

(3) Before reversing the finding of acquittal, the High Court has to consider each ground on which the order of acquittal was based and to record its own reasons for not accepting those grounds and not subscribing to the view expressed by the trial court that the accused is entitled to acquittal.

(4) In reversing the finding of acquittal, the High Court has to keepin view the fact that the presumption of innocence is still available infavour of the accused and the same stands fortified and strengthenedby the order of acquittal passed in his favour by the trial court.

(5) If the High Court, on a fresh scrutiny and reappraisal of the evidence and other material on record, is of the opinion that there is another view which can be reasonably taken, then the view which favours the accused should be adopted.

(6) The High Court has also to keep in mind that the trial court had the advantage of looking at the demeanour of witnesses and observing their conduct in the Court especially in the witness box.

(7) The High Court has also to keep in mind that even at that stage, the accused was entitled to benefit of doubt. The doubt should be such as a reasonable person would honestly and conscientiously entertain as to the guilt of the accused."

After referring to a catena of judgments, this Court culled out the following general principles regarding the powers of the appellate court while dealing with an appeal against an order of acquittal in the following words: (Chandrappa case10, SCC p. 432, para 42)

"42. from the above decisions, in our considered view, the following d general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Criminal Procedure Code, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances". "Distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasize the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.
(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.
(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

S. 406 and Ss. 154 to 159 and S. 174-Transfer of investigation-As power of transfer of investigation is not available under S. 406 CrPC itself- Exercise of such power under Art. 142 of the Constitutionare conferred with Judge of Supreme Court.

Unnatural death of well-known film star/actor - Transfer petition filed under S. 406, for transfer of FIR filed in home State of the deceased actor by his father the complainant, and all consequential proceedings, to another State, where deceased was residing, where his unnatural death was reported - Allegations of political interference against aforesaid two States, having potential of discrediting investigation - Hence, held, for ensuring public confidence in investigation and to do complete justice in the matter, Single Judge of Supreme Court invoking powers conferred by Art. 142 of the Constitution, and approving transfer of investigation to CBI.

Held, transfer of investigation to CBI, cannot be routine occurrence, but should be in exceptional circumstances - One factor, which, however, is considered relevant for induction of Central Agency, is to retain "public confidence in the impartial working of the State agencies" as was recently reiterated in Arnab Ranjan Goswami, (2020) 14 SCC 12-It is also consistent view of Court, that it is not for accused to choose investigating agency. **Rhea Chakraborty v. State of Bihar, (2022)1 SCC (Cri.) 699.**

S. 438 r/w S. 82 and S. 439(2) — Anticipatory bail after cancellation of regular bail-Whether can be granted – Consideration for.

The petitioner was granted regular bail in a prosecution under Section 15 of the Environment (Protection) Act, 1986. Suffice it is to observe that the bail then came to be cancelled because of non-appearance. Proceedings under Section 174-A of the Penal Code, 1860 ensued leading to his arrest pursuant to which he was released on bail. The petitioner now seeks anticipatory bail pursuant to the cancellation of the regular bail granted to him under Section 15 of the Act.

A person released on bail is already in the constructive custody of law. If the law requires him to come back to custody for specified reasons, we are afraid that an application for anticipatory bail apprehending arrest will not lie. There cannot be an apprehension of arrest by a person already in the constructive custody of the law. We, therefore, reject the prayer for anticipatory bail. **Manish Jain v. Haryana State Pollution Control Board, (2022)1 SCC (Cri.)676.**

S 439: Extent to which reasons are required in a bail order.

Criminal Procedure Code, 1973-S. 439-Determining validity of bail order under appellate power, and, assessment of application for cancellation of bail: The considerations that guide the power of an appellate court in assessing the correctness of an order granting bail stand on a different footing from an assessment of an application for the cancellation of bail. The correctness of an order granting bail is tested on the anvil of whether there was an improper or arbitrary exercise of the discretion in the grant of bail. The test is whether the order granting bail is perverse, illegal or unjustified. On the other hand, an application for cancellation of bail is generally examined on the anvil of the existence of supervening circumstances or violations of the conditions of bail by a person to whom bail has been granted. **Brijmani Devi v. Pappu Kumar and another, (2022) 4 SCC 497**

Under Section 340 CrPC, the procedure in cases mentioned in Section 195 CrPC is set out. The court may make a preliminary enquiry if it thinks necessary, and then record a finding to the effect, that the provisions of Section 195(1)(b) CrPC are attracted, as a result of which, the court itself is then to make a complaint in writing, and send it to a Magistrate of the First-Class having jurisdiction. Where the court declines to make any such complaint, an appeal is provided under Section 341 CrPC. The appellate power of the court under Section 341 can also be invoked, insofar as a complaint has been made under Section 340, by the person so aggrieved. By Section 341(2), the appellate order shall be final and shall not be subject to revision. Finally, a Magistrate to whom a complaint is made under such sections shall proceed to deal with the case, as if it were instituted on a police reportvide Section 343(1). **Bandekar Brothers (P) Ltd. v. Prasad Vassudev Keni and Others, (2022)1 SCC (Cri.)626.**

S. 439- Grant of bail u/s 439 -Necessity of recording reasons - Extent to which reasons are required in a bail order-Principles clarified-

Held, grant of bail under S. 439 though being a discretionary order, but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course and, thus, order for bail bereft of any cogent reason cannot be sustained-Therefore, prima facie conclusion must be supported by reasons and must be arrived at after having regard to the vital facts of the case and, thus, serious nature of accusations and facts having a bearing in the case cannot be ignored, particularly, when the accusations may not be false, frivolous or vexatious in nature but supported by adequate material brought on record so as to enable a court to arrive at a prima facie conclusion. **Brij Mani Devi v. Pappu Kumar and Anr.,(2022)2 SCC(Cri.) 170**.

The relevant principles as to why reasons must be recorded in a bail order under Section 439 CrPC can be summarised as under:

(1) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

(2) Recording of reasons also operates as a valid restraint on any arbitrary exercise of judicial and quasi-judicial or even administrative possible power.

(3) Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.

(4) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(5) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.
(6) Judicial or even quasi-judicial opinions these days can be as different as the Judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.
(7) Insistence on reason is a requirement for both judicial accountability and transparency.
(8) If a Judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.
(9) Reasons in support of decisions must be cogent, clear and succinct. Pretense of reasons or "rubber-stamp reasons" is not to be equated with a valid decision-making process.
(10) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the Judges and decision-makers less prone to errors but also makes them subject to broader scrutiny.
(11) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "due process".

S. 439(2)-Cancellation of bail-Grounds for-Criminal antecedents of accused –

Non-consideration of criminal antecedents of the accused while granting bail, held, can be a factor for cancellation of bail, because of object of cancellation being to protect the fair trial and secure justice being done to the society by preventing the accused who is set at liberty by the bail order from tampering with the evidence in the heinous crime. **Brij Mani Devi v. Pappu Kumar and Anr.,(2022)2 SCC(Cri.)170**

S. 439-Grant of bail under S. 439-Mandatory requirement of recording of reasons. It was held that the requirement of giving reasons for the decision is of the essence and is virtually a part of "due process."

However, the court is not required to give elaborate reasons while granting bail, an order dehors any reasoning whatsoever cannot result in grant of bail. Thus, if bail is granted in a casual manner, the prosecution or the informant has a right to assail the order before a higher forum.

Section 439 of the Criminal Procedure Code, 1973: it was held that the period of custody has to be weighed simultaneously with the totality of the circumstances and the criminal antecedents of the accused, if any.

Criminal Procedure Code, 1973: Grant of bail by cryptic and casual orders, dehors any coherent reasoning, without consideration of the relevant factors for grant of bail is impermissible. Hence, bail quashed. **Jaibunisha v. Meharban and another, (2022) 5 SCC 465**

S. 439—Bail – Grant of

This Court has, on several occasions has discussed the factors to be considered by a Court while deciding a bail application. The primary considerations which must be placed at balance while deciding the grant of bail are: (i) the seriousness of the offence; (ii) the likelihood of the accused fleeing from justice; (iii) the impact of release of the accused on the prosecution witnesses; (iv) likelihood of the accused tampering with evidence.

While such list is not exhaustive, it may be stated that if a Court takes into account such factors in deciding a bail application, it could be concluded that the decision has resulted from a judicious exercise of its discretion, vide Gudikanti Narasimhulu & Ors. vs. Public Prosecutor, High Court of Andhra Pradesh, (1978) 1 SCC 240; Prahlad Singh Bhati vs. NCT of Delhi & Ors., (2001) 4 SCC 280; Anil Kumar Yadav vs. State (NCT of Delhi), (2018) 12 SCC 129.

This Court has also ruled that an order granting bail in a mechanical manner, without recording reasons, would suffer from the vice of nonapplication of mind, rendering it illegal, vide Ram Govind Upadhyay vs. Sudarshan Singh [(2002) 3 SCC 598 ; Kalyan Chandra Sarkar vs. Rajesh Ranjan (supra) ; Prasanta Kumar Sarkar vs. Ashis Chaterjee – [(2010) 14 SCC 496] ; Ramesh Bhawan Rathod vs. Voshanbhai Hirabhai Makwana (Koli) & Ors. – [(2021) 6 SCC 230 ; Brijmani Devi vs. Pappu Kumar & Anr. – Criminal Appeal No. 1663 of 2021 [2021 SCC OnLine SC 1280].

Reference may also be had to recent decisions of this very Bench in Manoj Kumar Khokhar vs. State of Rajasthan & Anr., Criminal Appeal No. 36 of 2022 [2022 SCC OnLine SC 30] and Jaibunisha vs. Meharban & Anr., Criminal Appeal 77 of 2022 [2022 SCC OnLine SC 58], wherein, on engaging in an elaborate discussion of the case law cited supra and after duly acknowledging that liberty of individual is an invaluable right, we have held that an order granting bail to an accused, if passed in a casual and cryptic manner, de hors reasoning which would validate the grant of bail, is liable to be set aside by this Court while exercising jurisdiction under Article 136 of the Constitution of India.

The Latin maxim “cessante ratione legis cessat ipsa lex” meaning “reason is the soul of the law, and when the reason of any particular law ceases, so does the law itself,” is also apposite.

It is not necessary for a Court to give elaborate reasons while granting bail, particularly when the case is at the initial stage and the allegations of the offences by the accused would not have been crystalised as such. There cannot be elaborate details recorded to give an impression that the case is one that would result in a conviction or, by contrast, in an acquittal while passing an order on an application for grant of bail. However, the Court deciding a bail application cannot completely divorce its decision from material aspects of the case such as the allegations made against the accused; severity of the punishment if the allegations are proved beyond reasonable doubt which would result in a conviction; reasonable apprehension of the witnesses being influenced by the accused; tampering of the evidence; the frivolity in the case of the prosecution; criminal antecedents of the accused; and a prima facie satisfaction of the Court in support of the charge against the accused. **Kamla Devi vs. State of Rajasthan, AIR 2022 SC 1524**

S. 439—Bail—Grant of

This Court has, in a catena of judgments, outlined the considerations on the basis of which discretion under Section 439, CrPC has to be exercised while granting bail. In *Gurcharan Singh v. State (Delhi Administration),* (1978) 1 SCC 118 this Court has held as to the various parameters which must be considered while granting bail. This Court held as follows:

“24. …Even so, the High Court or the Court of Session will have to exercise its judicial discretion in considering the question of granting of bail under Section 439(1) CrPC of the new Code. The overriding considerations in granting bail to which we adverted to earlier and which are common both in the case of Section 437(1) and Section 439(1) CrPC of the new Code are the nature and gravity of the circumstances in which the offence is committed; the position and the

status of the accused with reference to the victim and the witnesses; the likelihood, of the accused fleeing from justice; of repeating the offence; of jeopardising his own life being faced with a grim prospect of possible conviction in the case; of tampering with witnesses; the history of the case as well as of its investigation and other relevant grounds which, in view of so many valuable factors, cannot be exhaustively set out."

The above factors do not constitute an exhaustive list. The grant of bail requires the consideration of various factors which ultimately depends upon the specific facts and circumstances of the case before the Court. There is no strait jacket formula which can ever be prescribed as to what the relevant factors could be. However, certain important factors that are always considered, *interalia,* relate to *prima facie* involvement of the accused, nature and gravity of the charge, severity of the punishment, and the character, position and standing of the accused [see *State of U.P. v. Amarmani Tripathi*, (2005) 8 SCC 21].

At the stage of granting bail the Court is not required to enter into a detailed analysis of the evidence in the case. Such an exercise may be undertaken at the stage of trial.

Once bail has been granted, the Appellate Court is usually slow to interfere with the same as it pertains to the liberty of an individual. A Constitution Bench of this Court in *Bihar Legal Support Society v. Chief Justice of India,* (1986) 4 SCC 767 observed as follows:

"3. … It is for this reason that the Apex Court has evolved, as a matter of self discipline, certain norms to guide it in the exercise of its discretion in cases where special leave petition are filed against orders granting or refusing bail or anticipatory bail.…We reiterate this policy principle laid down by the bench of this Court and hold that this Court should not ordinarily, save in exceptional cases, interfere with orders granting or refusing bail or anticipatory bail, because these are matters in which the High Court should normally be the final arbiter."

The above principle has been consistently followed by this Court. In *Prasanta Kumar Sarkar v. Ashis Chatterjee,* (2010) 14 SCC 496 this Court held as under:

"9. We are of the opinion that the impugned order is clearly unsustainable. It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting
bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
(ii) nature and gravity of the accusation;
(iii) severity of the punishment in the event of conviction;
(iv) danger of the accused absconding or fleeing, if released on bail;
(v) character, behaviour, means, position and standing of the accused;
(vi) likelihood of the offence being repeated;
(vii) reasonable apprehension of the witnesses being influenced; and
(viii) danger, of course, of justice being thwarted by grant of bail.

10. It is manifest that if the High Court does not advert to these relevant considerations and mechanically grants bail, the said order would suffer from the vice of nonapplication of mind, rendering it to be illegal….."

In *Mahipal v. Rajesh Kumar*, (2020) 2 SCC 118 this Court followed the holding in *Prasanta Kumar Sarkar (supra)* and held as follows:

"17. Where a court considering an application for bail fails to consider relevant factors, an appellate court may justifiably set aside the order granting bail. An appellate court is thus required to consider whether the order granting bail suffers from a nonapplication of mind or is not borne out from a prima facie view of the evidence on record. It is thus necessary for this Court to assess whether, on the basis of the evidentiary record, there existed a prima facie or reasonable ground to believe that the accused had committed the crime, also taking into account the seriousness of the crime and the severity of the punishment…"

Recently, a three Judges' Bench of this Court in *Jagjeet Singh & Ors. V. Ashish Mishra @ Monu & Anr*. in Criminal Appeal No. 632 of 2022, has reiterated the factors that the Court must consider at the time of granting bail under Section 439 CrPC, as well as highlighted the circumstances where this Court may interfere when bail has been granted in violation of the requirements under the abovementioned section. This Court observed as follows:

"28. We may, at the outset, clarify that power to grant bail under Section 439 of CrPC, is one of wide amplitude. A High Court or a Sessions Court, as the case may be, are bestowed with considerable discretion while deciding an application for bail. But, as has been held by this Court on multiple occasions, this discretion is not unfettered. On the contrary, the High Court of the Sessions Court must grant bail after the application of a judicial mind, following well established principles, and not in a cryptic or mechanical manner."

Reasoning is the life blood of the judicial system. That every order must be reasoned is one of the fundamental tenets of our system. An unreasoned order suffers the vice of arbitrariness. In *Puran v. Rambilas*, (2001) 6 SCC 338 this Court held as under:

"8. …Giving reasons is different from discussing merits or demerits. At the stage of granting bail a detailed examination of evidence and elaborate documentation of the merits of the case has not to be undertaken. What the Additional Sessions Judge had done in the order dated 1192000 was to discuss the merits and demerits of the evidence. That was what was deprecated. That did not mean that whilst granting bail some reasons for prima facie concluding why bail was being granted did not have to be indicated."

In *Kalyan Chandra Sarkar v. Rajesh Ranjan*, (2004) 7 SCC 528 this Court indicated the importance of reasoning in the matter concerning bail and held as follows:

"11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind…"

In *Brij Nandan Jaiswal v. Munna*, (2009) 1 SCC 678, which concerned a challenge to grant of bail in a serious offence, this Court has reiterated the same position as was observed in *Kalyan Chandra Sarkar (supra)*. This Court has held as under:

"12… However, we find from the order that no reasons were given by the learned Judge while granting the bail and it seems to have been granted almost mechanically without considering the pros and cons of the matter. While granting bail, particularly in serious cases like murder some reasons justifying the grant are necessary."

From the above, it is clear that this Court has consistently upheld the necessity of reasoned bail orders, with a special emphasis on matters involving serious offences. In the present case, respondent no. 2 accused has been accused of committing the grievous offence of rape against his young niece of nineteen years. The fact that the respondent no. 2 accused is a habitual offender and nearly twenty cases registered against him has not even found mentioned in the impugned order. Further the High Court has failed to consider the influence that the respondent no. 2 accused may have over the prosecutrix as an elder family member. The period of imprisonment, being only three months, is not of such a magnitude as to push the Court towards granting bail in an offence of this nature.

The impugned order passed by the High Court is cryptic, and does not suggest any application of mind. There is a recent trend of passing such orders granting or refusing to grant bail, where the Courts make a general observation that "the facts and the circumstances" have been considered. No specific reasons are indicated which precipitated the passing of the order by the Court.

Such a situation continues despite various judgments of this Court wherein this Court has disapproved of such a practice. In the case of Mahipal *(supra)* this Court observed as follows:

"25. Merely recording "having perused the record" and "on the facts and circumstances of the case" does not subserve the purpose of a reasoned judicial order. It is a fundamental premise of open justice, to which our judicial system is committed, that factors which have weighed in the mind of the Judge in the rejection or the grant of bail are recorded in the order passed. Open justice is premised on the notion that justice should not only be done, but should manifestly and undoubtedly be seen to be done. The duty of Judges to give reasoned decisions lies at the heart of this commitment. Questions of the grant of bail concern both liberty of individuals undergoing criminal prosecution as well as the interests of the criminal justice system in ensuring that those who commit crimes are not afforded the opportunity to obstruct justice. Judges are dutybound to explain the basis on which they have arrived at a conclusion." **Ms. Y. vs. State of Rajasthan, AIR 2022 SC 1910**

S. 439-Bail-Grant of, without considering relevant aspects and recording reasons is not justified -Principles for grant of bail and considerations to be balanced therefore-Law summarized.

It is trite that the Supreme Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of the Supreme Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

1. whether there is any prima facie or reasonable ground to believe thatthe accused had committed the offence;
2. Nature and gravity of the accusation;
3. Severity of the punishment in the event of conviction;
4. Danger of the accused absconding or fleeing, if released on bail;
5. Character, behavior, means, position and standing of the accused;
6. likelihood of the offence being repeated;
7. reasonable apprehension of the witnesses being influenced; and
8. Danger, of course, of justice being thwarted by grant of bail.

Another factor which should guide the court's decision in deciding a bail application is the period of custody. However, the period of custody has to be weighed simultaneously with the totality of the circumstances and the criminal antecedents of the accused, if any. Further, the circumstances which may justify the grant of bail are to be considered in the larger context of the societal concern involved in releasing an accused, in juxtaposition to individual liberty of the accused seeking bail.

While it is not possible to prescribe an exhaustive list of considerations which are to guide a court in deciding a bail application, the primary requisite of an order granting bail, is that it should result from judicious exercise of the court'sdiscretion. There are no hard-and-fast rules regarding grant or refusal of bail, each case has to be considered on its own merits. The matter always calls for judicious exercise of discretion by the Court. **Manoj Kumar Khokhar v. State of Rajasthan,(2022)2 SCC(Cri.) 1.**

Ss. 439, 2(wa)—Bail—Victim's right to be heard—'Victim' as defined under S.2(wa) is entitled to be heard at stage of adjudication of bail application of accused

It cannot be gainsaid that the right of a victim under the amended Cr.P.C. are substantive, enforceable, and are another facet of human rights. The victims right, therefore, cannot be termed or construed restrictively like a brutum fulmen. Court reiterates that these rights are totally independent, incomparable, and are not accessory or auxiliary to those of the State under the Cr.P.C. The presence of State in the proceedings, therefore, does not tantamount to according a hearing to a victim of the crime.

A victim within the meaning of Cr.P.C. cannot be asked to await the commencement of trial for asserting his/her right to participate in the proceedings. He/She has a legally vested right to be heard at every step post the occurrence of an offence. Such a victim has unbridled participatory rights from the stage of investigation till the culmination of the proceedings in an appeal or revision.

Court may hasten to clarify that victim and complainant/informant are two distinct connotations in criminal jurisprudence. It is not always necessary that the complainant/informant is also a victim, for even a stranger to the act of crime can be an informant, and similarly, a victim need not be the complainant or informant of a felony.

The above stated enunciations are not to be conflated with certain statutory provisions, such as those present in Special Acts like the Scheduled Cast and Scheduled Tribes (Prevention of Atrocities) Act, 1989, where there is a legal obligation to hear the victim at the time of granting bail. Instead, what must be taken note of is that; First, the Indian jurisprudence is constantly evolving, whereby, the right of victims to be heard, especially in cases involving heinous crimes, is increasingly being acknowledged; Second, where the victims themselves have come forward to participate in a criminal proceeding, they must be accorded with an opportunity of a fair and effective hearing. If the right to file an appeal against acquittal, is not accompanied with the right to be heard at the time of deciding a bail application, the same may result in grave miscarriage of justice. Victims certainly cannot be expected to be sitting on the fence and watching the proceedings from afar, especially when they may have legitimate grievances. It is the solemn duty of a court to deliver justice before the memory of an injustice eclipses. **Jagjeet Singh vs. Ashish Mishra @ Monu, AIR 2022 SC 1918**

S. 482-Power of quashing of criminal proceeding – Inherent power under – When should we exercised – Principles reiterated.

The exposition of law on the subject relating to the exercise of the extraordinary power under Article 226 of the Constitution or the inherent power under Section 482 CrPC is well settled and to the possible extent, this Court has defined sufficiently channelized guidelines, to give an exhaustive list of myriad kinds of cases wherein such power should be exercised. This Court has held in para 102 in State of Haryana v. Bhajan Lal as under: (SCC pp. 378-79)

In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised 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 channelized 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 FIR 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 Act concerned (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."

The principles laid down by this Court have consistently been followed, as well as in the recent judgment of three-Judge Bench of this Court in Niharika Infrastructure (P) Ltd. v. State of Maharashtra.

It is no doubt true that the power of quashing of criminal proceedings should be exercised very sparingly and with circumspection and that too in rarest of the rare cases and it was not justified for the Court in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations arbitrary jurisdiction on the Court to act according to its whims and fancies. made in the FIR or the complaint and that the inherent powers do not confer any

arbitrary jurisdiction on the Court to act according to its whims and fancies. **Shaqiya Khan and Shakuntala Prajapati v. State of U.P. and Anr. (2022)2 SCC(Cri.)187**.

S. 482 - Scope of interim order(s) that may be passed by High Court, particularly without hearing the affected part(ies).

- C2C eCommerce Market (Customer to Customer eCommerce Market) - Business of online service/platform for buyers and sellers - Interim order ofHigh Court coercing service provider (appellant viz. OLX India B.V.) to ensure that users proposing to sell goods, through appellant website should attach their id proofs, phone numbers, details of property proposed to be sold and a certificate by specifi ed authority that the proposed seller is not involved in any criminal case similar to case concerned herein and is a genuine owner of property-Unsustainability-Held, High Court should not have passed said interim order more particularly without hearing the appellants-Interim order of High Court set aside Appellant given liberty to raise all issues before High Court. **Olx India B. V. v. State of Haryana and Anr., (2022)2 SCC (Cri.)167**.

S. 482 Scope of interim order(s) that may be passed by High Court, particularly without hearing the affected part(ies).

Business of online service/platform for buyers and sellers - Interim order of High Court coercing service provider to ensure that users proposing to sell goods, through appellant website should attach their id proofs, phone numbers, details of property proposed to be sold and a certificate by specified authority that the proposed seller is not involved in any criminal case similar to case concerned herein and is a genuine owner of property. It was held that High Court should not have passed said interim order more particularly without hearing the appellants. Interim order of High Court set aside and appellant given liberty to raise all issues before High Court. **Olx India B.V. v. State of Haryana and others, (2022) 4 SCC 390**

S.482 of Criminal Procedure Code, 1973: Inherent powers of quashing of criminal proceedings.

S. 482- Quashment - Whether warranted Abuse of process of court - Bald allegations without any material to justify the same - No offence made out from complaint and material placed on record - Proceedings quashed. **Shafiya Khan alias ShakuntalaPrajapati v. State of Uttar Pradesh and another, (2022) 4 SCC 549**

S. 482—Negotiable Instruments Act, Secs. 138, 142(1)(a)—Quashing of order—Order taking cognizance and issuance of process—Complaint of dishonor of cheque

In that view, the position that would emerge is that when a company is the payee of the cheque based on which a complaint is filed under Section 138 of N.I. Act, the complainant necessarily should be the Company which would be represented by an employee who is authorized. Primafacie, in such a situation the indication in the complaint and the sworn statement (either orally or by affidavit) to the effect that the complainant (Company) is represented by an authorized person who has knowledge, would be sufficient. The employment of the terms “specific assertion as to the knowledge of the power of attorney holder” and such assertion about knowledge should be “said explicitly” cannot be understood to mean that the assertion should be in any particular manner, much less only in the

manner understood by the accused in the case. All that is necessary is to demonstrate before the learned Magistrate that the complaint filed is in the name of the "payee" and if the person who is prosecuting the complaint is different from the payee, the authorisation therefor and that the contents of the complaint are within his knowledge. When, the complainant/payee is a company, an authorized employee can represent the company. Such averment and prima facie material is sufficient for the learned Magistrate to take cognizance and issue process. If at all, there is any serious dispute with regard to the person prosecuting the complaint not being authorized or if it is to be demonstrated that the person who filed the complaint has no knowledge of the transaction and, as such that person could not have instituted and prosecuted the complaint, it would be open for the accused to dispute the position and establish the same during the course of the trial. As noted in Samrat Shipping Co. Pvt. Ltd. (supra), dismissal of a complaint at the threshold by the Magistrate on the question of authorisation, would not be justified. Similarly, we are of the view that in such circumstances entertaining a petition under Section 482 to quash the order taking cognizance by the Magistrate would be unjustified when the issue of proper authorisation and knowledge can only be an issue for trial. **M/s. TRL Krosaki Refractories Ltd. vs. M/s. SMS Asia Private Ltd., AIR 2022 SC 1315**

Cancellation of bail for Offence of rape—

In Ram Govind Upadhyay v. Sudarshan Singh and Others, (2002) 3 SCC 598, falling back on an earlier decision in the case of Prahlad Singh Bhati v. NCT, Delhi and Another, (2001) 4 SCC 280, this Court had observed as follows: -

(a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.

(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.

(c) While it is not expected have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.

(d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.

In the case of Prasanta Kumar Sarkar v. Ashis Chatterjee And Another 8 after referring to several precedents, this Court held thus:

"9….. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;

(ii) nature and gravity of the accusation;

(iii) severity of the punishment in the event of conviction;

(iv) danger of the accused absconding or fleeing, if released on bail;

(v) character, behaviour, means, position and standing of the accused;
(vi) likelihood of the offence being repeated;
(vii) reasonable apprehension of the witnesses being influenced; and
(viii) danger, of course, of justice being thwarted by grant of bail.

The aforesaid principles have been restated in several decisions rendered by this Court including Kalyan Chandra Sarkar v. Rajesh Ranjan alias Pappu Yadav and Another, (2004) 7 SCC 528, Narendra K. Amin (Dr.) v. State of Gujarat and Another, (2008) 13 SCC 584, Dipak Shubhashchandra Mehta v. Central Bureau of Investigation and Another, (2012) 4 SCC 134, Abdul Basit alias Raju and Others v. Mohd. Abdul Kadir Chaudhary and Another, (2014) 10 SCC 754, Neeru Yadav v. State of Uttar Pradesh and Another, (2014) 16 SCC 508, Anil Kumar Yadav v. State (NCT of Delhi) and Another, (2018) 12 SCC 129, Mahipal v. Rajesh Kumar alias Polia and Another, (2020) 2 SCC 118, and as recently as in Jagjeet Singh and Others v. Ashish Mishra alias Monu and Another, (2022) SCC online SC 453, Courts have placed the liberty of an individual at a high pedestal and extended protection to such rights, whenever and wherever required.

In a recent decision of a three Judge Bench of this Court in Imran v. Mohammed hava and Another, 2022 SCC OnLine SC 496, it has been held as follows:

23. Indeed, it is a well-established principle that once bail has been granted it would require overwhelming circumstances for its cancellation. However, this Court in its judgment in Vipan Kumar Dhir Vs. State of Punjab and Anr. 3 has also reiterated, that while conventionally, certain supervening circumstances impeding fair trial must develop after granting bail to an accused, for its cancellation by a superior court, bail, can also be revoked by a superior court, when the previous court granting bail has ignored relevant material available on record, gravity of the offence or its societal impact. It was thus observed:-

"9. ……..Conventionally, there can be supervening circumstances which may develop post the grant of bail and are non conducive to fair trial, making it necessary to cancel the bail. This Court in Daulat Ram and Others Vs. State of Haryana observed that:

"Rejection of bail in a non-bailable case at the initial stage and the cancellation of bail so granted, have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted. Generally speaking, the grounds for cancellation of bail, broadly (illustrative and not exhaustive) are: interference or attempt to interfere with the due course of administration of Justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail. However, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial.

Some of the circumstances where bail granted to the accused under Section 439 (1) of the Cr.P.C. can be cancelled are enumerated below: -

a) If he misuses his liberty by indulging in similar/other criminal activity;
b) If he interferes with the course of investigation;
c) If he attempts to tamper with the evidence;
d) If he attempts to influence/threaten the witnesses;
e) If he evades or attempts to evade court proceedings;

f) If he indulges in activities which would hamper smooth investigation;
g) If he is likely to flee from the country;
h) If he attempts to make himself scarce by going underground and/or becoming unavailable to the investigating agency;
i) If he attempts to place himself beyond the reach of his surety.
j) If any facts may emerge after the grant of bail which are considered unconducive to a fair trial.

Court may clarify that the aforesaid list is only illustrative in nature and not exhaustive. **Ms. P. vs. State of M.P., AIR 2022 SC 2183**

Criminal Trail

Proof - Prosecution has to prove its case beyond reasonable doubt and the conviction cannot be based merely on presumptions.

The High Court, while convicting the appellant by the impugned judgment, merely observed that because the accused were prized goons and were absconding and as per the deposition, it could not be said that the appellant was not involved because he was arrested on the spot and taken to police station. In this regard, itis required to observe that the prosecution is required to prove its case beyond reasonable doubt and the conviction cannot be based merely on the basis of presumptions. **Vasudev v. State of M.P. (2022)2 SCC (Cri.) 218**.

Delhi Special Police Establishment Act

Ss. 2, 3, 5 and 6 - Investigation by CBI in a State-Essentialities to be complied with, summarized.

Consent of the State - Where offences committed outside Union Territories and Railway areas - Necessity of taking consent of State under S. 6 before proceeding under the Act - Ascertainment of consent - No rule of universal application prescribed - Whether consent given or not depends upon facts of each case. Once State Government grants consent, it cannot be permitted to take contrary stand on issues relating to consent.

Consent of State when not required - Where offences mentioned under S. 3 are committed within Union Territories, CBI alone has jurisdiction to investigate matter - State Police cannot investigate matter as offence was committed outside jurisdiction of State - Under such condition, consent of State Government not required even if accused is employed concerning affairs of the State Government. **Kunwal Tanuj v. State of Bihar, (2022)2 SCC (Cri.) 89.**

Employees' Compensation Act, 1923

Employees' Compensation Act, 1923 - Ss. 2(1)(e), 3 and 4- Determination of - Functional disability - Necessity of Appellant driver of goods carrier meeting with serious accident resulting in his right upper limb above wrist joint being amputated consequent to which he losing his capacity to drive vehicle.

Employees' Compensation Act, 1923-S.3-Employer's liability to pay compensation: Contention raised before Supreme Court for the first time by respondent that it was not liable to pay compensation since appellant did not possess driving licence to drive commercial goods

carrier. **Arjun S/O Ramanna alias Ramu v. IffcoTokio General Insurance Company Limited and another, (2022) 5 SCC 706**

Environment Law

Precautionary Principle/SustainableDevelopment/Inter-Generational Equity Principle. Delhi Metro providing effective transportation vis-à-vis ecology (Phase IV of MRTS Project). Earlier phases of project had already resulted in loss of vegetation as well as flora and fauna in certain areas -Phase IV of MRTS Project may be a further threat to the ecology of NCT of Delhi/NCR

To meaningfully arrest the problem of declining tree cover, civil society must also be placed with the responsibility to carry out reafforestation activities. While the Court cannot ignore the importance of governmental responsibility in materializing the goals of sustainable development through reafforestation, the Court strongly endorse the idea of collective responsibility towards ensuring a sustainable future. The engagement, inclusion and participation of citizens and perhaps more significantly, the ownership of the sustainable development agenda by empowered citizens and community-level actors will contribute in a significant manner to achieving the economic, social and environmental pillars of the sustainable development agenda.

Citizens, as the ultimate beneficiaries of development, have a critical role to play, not just in terms of effort and action towards the achievement of the environmental goals but also in terms of the associated monitoring of the progress towards these goals.

The term "forest land", occurring in Section 2 of the FC Act, 1980, will not only include "forest" as understood in the dictionary sense, but also any area recorded as forest in the government record irrespective of the ownership. This is how it has to be understood for the purpose of Section 2 of the FC Act, 1980. The provisions enacted in the Forest (Conservation) Act, 1980 for the conservation of forests and the matters connected therewith must apply clearly to all forests so understood irrespective of the ownership or classification thereof. In view of the meaning of the word "forest" in the FC Act, 1980, it is obvious that prior approval of the Central Government is required for any non-forest activity within the area of any "forest". **T. N. GodavarmanThirumulpad, In Re v. Union of Indiaand others, (2022) 4 SCC 289**

Forests, Wildlife and Zoos - Mining and Industry in Forest Area - Kuldiha Wildlife Sanctuary eco-sensitive zone - Elephant corridor used round the year for movement of elephants, herbivores and cats -Regulation of mining of minor minerals (97 stone quarries) and remedial plan- Directions issued. **Binay Kumar Dalei and others v. State of Odisha and others, (2022) 5 SCC 33**

Evidence Act, 1872

S 32(1): Two/multiple declarations -Duty of court-Held, merely because there are two/multiple dying declarations, all the dying declarations are not to be rejected. In such situation, case must be decided on the facts of each case and the court will not be relieved of its duty to carefully examine the entirety of the material on record as also the circumstances surrounding the making of the different dying declarations.

S. 32(1) Dying declaration - Necessity of corroboration - When may dying declaration be accepted even without corroboration - Principles summarized - Held, there is neither a rule of

law nor of prudence to the effect that a dying declaration cannot be acted upon without corroboration - Thus, a dying declaration, if found true and voluntary can be made basis for convicting accused without any corroboration -This will depend on the facts of each case

S. 32(1) - Dying declaration - Recording of, by Magistrate - Evidentiary value - Matters to be considered

Penal Code, 1860 S. 302 r/w S. 34- Multiple conflicting dying declarations - Determination of credibility of - Matters to be considered - First dying declaration recorded by IO making out a case of suicide Second dying declaration recorded by Magistrate clearly implicated the accused Determination of which version was credible - Matters to be considered Medical evidence and other evidence on record

Penal Code, 1860 S. 302 r/w S. 34 - Death by burning - Plea of commission of suicide - Tenability of - Location of the injuries on the body Relevance of - Held, plea of suicide not believable, when injuries found on the body rule out a case of suicide, as in present case. **State of Uttar Pradesh v. Veerpal and another, (2022) 4 SCC 741**

S. 32(1) – Dying declaration – Two/multiple declaration – Duty of Court –

Merely because there are two/multiple dying declarations, all the dying declarations are not to be rejected - In such situation, case must be decided on the facts of each case and the court will not be relieved of its duty to carefully examine the entirety of the material on record as also the circumstances surrounding the making of the different dying declarations. **State of U.P. v. Veerpal and Anr., (2022)2 SCC (Cri.)224**.

S. 32(1) – Dying declaration – Necessity of corroboration – When may dying declaration be accepted even without corroboration – Principle summerised –

Now, on the aspect, whether in the absence of any corroborative evidence, there can be a conviction relying upon the dying declaration only is concerned, the decision of this Court in Munnu Rajalo and the subsequent decision in Paniben v. State of Gujarat are required to be referred to. In the aforesaid decisions, it is specifically observed and held that there is neither a rule of law nor of prudence to the effect that a dying declaration cannot be acted upon without corroboration. It is observed and held that if the Court is satisfied that the dying declaration is true and voluntary it can base its conviction on it, without corroboration. Similar view has also been expressed in State of U.P. v. Ram Sagar Yadav and Ramawati Devi v. State of Bihar. Therefore, there can be a conviction solely based upon the dying declaration without corroboration.

Khushal Rao v. State of Bombay is a watershed judgment on the law on the evidentiary value of dying declarations. This Court laid down the following principles as to the circumstances under which a dying declaration may be accepted, without corroboration.

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

principles governing the weighing of evidence; (5) that a dying declaration which has been recorded by a competent Magistrate in the proper manner, that is to say, in the form of questions and answers, and, as far as practicable, in the words of the maker of the declaration, stands on a much higher footing than a dying declaration which depends upon oral testimony which may suffer from all the infirmities of human memory and human character, and (6) that in order to test the reliability of a dying declaration, the Court has to keep in view, the circumstances like the opportunity of the dying man for observation, for example, whether there was sufficient light if the crime was committed at night; whether the capacity of the man to remember the facts stated, had not been impaired at the time he was making the statement, by circumstances beyond his control; that the statement has been consistent throughout if he had several opportunities of making a dying declaration apart from the official record of it; and that the statement had been made at the earliest opportunity and was not the result of tutoring by interested parties." **State of U.P. v. Veerpal and Anr., (2022)2 SCC (Cri.)224**.

Ss 65A and 65B -: Copies of electronic evidence -Sufficiency of, when duly certified as per S. 65-B- Fact that original electronic evidence was one of the exhibits of the evidence on record, but not played in court, and only the certified copies thereof were played in court.

Murder of deceased in hospital using firearms based principally on CCTV footage of hospital CCTV system. Hard disk of computer system pertaining to the CCTV cameras not played in court, but duly certified version contained in pen drive and compact disc copies of such hard disk played in court.Hard disk in question was always part of record as an exhibit (Ext. P-23)-At no stage, was any objection raised or request made that hard disk itself be played in court - In any case, requisite certification having accompanied held, courts below were not in error in relying upon CCTV footages available through aforesaid sources to ground conviction of the accused concerned. **Taqdir v. State of Haryana, (2022) 4 SCC 321**

Ss. 65-A and 65-B – Copies of electronic evidence – Sufficiency of, when duly certified as per S. 65-B –

The sequence of events captured by the CCTV cameras which were stored in the hard disk and reproduced as Exts. P-86 and P-87, duly accompanied by the requisite certification under Section 65-B of the Evidence Act, 1872, clearly showed the role played by all these assailants. Some of the images definitely showed that they were having firearms in their possession; they entered the room of the deceased and came out in a short while. The sequences of events completely stand corroborated by the injuries suffered by the deceased.

A feeble attempt was made by the learned counsel for these petitioners that the hard disk itself was not played in the Court. It is true that what was actually played in the Court was the version available from Exts. P-86 and P-87. But the hard disk was always part of the record and was available in Court. At no stage, any objection was raised or a request was made that the hard disk itself be played in the Court. In any case, the requisite certification having accompanied Exts. P-86 and P-87, the courts below were not in error in relying upon the CCTV footages available through these sources.

The involvement and the culpability of these petitioners having clearly been made out, we see no reason to entertain their special leave petitions, which are dismissed. The SLP petitioners shall serve out the sentence awarded to them. **Taqdir v. State of Haryana (2022)2 SCC (Cri.)160.**

Family and Personal Laws

Ss 13 (1) (i-b) & 13(1) Exp of Divorce-Desertion as a ground for divorce - Matters to be established - Resumption of cohabitation. - What may constitute intention to resume cohabitation.

Desertion means intentional abandonment of one spouse by other without consent of other and without a reasonable cause. There should be animus deserendi on part of deserting spouse. Whether a case of desertion is established or not will depend on peculiar facts of each case. It is a matter of drawing an inference based on facts brought on record by way of evidence.

Wife staying for one night in her matrimonial home at time of the death of her mother-in-law. Held, cannot be said to be resumption of cohabitation. It was held that the finding of desertion under S. 13(1) (i-b) against the wife, which is otherwise established in the facts of the present case, would not be affected thereby. Hence, decree of divorce under S. 13(1) (i-b), granted. **DebanandaTamuli v. KakumoniKataky, (2022) 5 SCC 459**

S 24 of Hindu Marriage Act, 1955: Interim maintenance: Reduction in capacity to pay of the person liable to pay the maintenance. **Uma Priyadarshini S. v. Suchith K. Nair, (2022) 5 SCC 659**

Hindu Succession Act, 1956 - Ss. 14(1) & (2) and S. 30-Held, a restricted estate can be created by a will in favour of a female, so long as it is a new and independent right and does not amount to the recognition of a pre-existing right as per the principles laid down in *V. Tulasamma, (1977) 3 SCC 99*

Objective of S. 14(1) is to create an absolute interest in case of a limited interest of wife where such limited estate owes its origin to the law as it stood then - Objective cannot be that a Hindu male who owned self-acquired property is unable to execute a will giving a limited estate to a wife if all other aspects including maintenance are taken care of - If it is held so it would imply that if wife is disinherited under will it would be sustainable but if a limited estate is given it would mature into an absolute interest irrespective of intent of testator- That cannot be objective of S. 14(1)

Civil Procedure Code, 1908 S. 11 - Declaratory decree - When binding as res judicata - Principle as clarified in *Shakuntla Devi, (2005) 5 SCC 390*, that if the earlier declaratory decree which is sought to be made the basis of res judicata is delivered by a court without jurisdiction or is contrary to the existing law at the time the issue comes up for reconsideration, such earlier declaratory decree cannot be held to be res judicata in a subsequent case unless protected by any special enactment - Held, not applicable in present case, as declaratory decree in question was passed by competent court and there was no change in law post passing of the said decree. **Jogi Ram v. Suresh Kumar and others, (2022) 4 SCC 274**

Goods and Services Tax Act, 2017

Ss 39, 16, 49(2) and 59 of GST Central Goods and Services Tax Act, 2017:

It was held that as per the scheme of the 2017 Act, the registered person is obliged to do self-assessment of ITC, reckon its eligibility to ITC and of OTL including the balance amount lying in cash or credit ledger primarily on the basis of his office record and books of accounts

required to be statutorily preserved and updated from time to time and that he could do even without the common electronic portal as was being done in the past till recently pre-GST regime. Form GSTR-2A is only a facilitator for taking an informed decision while doing such self-assessment and non-performance or non-operability of Form GSTR-2A or for that matter, other forms, will be of no avail because the dispensation stipulated at the relevant time obliged the registered person to submit returns on the basis of such self-assessment in Form GSTR-3B manually on electronic platform. Also, the registered person is not denied of the opportunity to rectify omission or incorrect particulars, which he could do in the return to be furnished for the month or quarter in which such omission or incorrect particulars are noticed-Central Goods and Services Tax Rules, 2017, Rr. 61(5) and 61(6).

Held, the question of reading down Para 4 of the Circular would have arisen only if the same was to be in conflict with the express provision in the 2017 Act and the Rules framed thereunder. Further, the express provision in the form of S. 39(9) clearly posits that omission or incorrect particulars furnished in the return in Form GSTR-3B can be corrected in the return to be furnished in the month or quarter during which such omission or incorrect particulars are noticed and this very position has been restated in the impugned Circular-Therefore, it is not contrary to the statutory dispensation specified in S. 39(9) Central Goods and Services Tax Rules, 2017, Rr. 61(5) and 61(6). **Union of India v. Bharti Airtel Limited and others, (2022) 4 SCC 328**

Government Contracts and Tenders

Government Contracts and Tenders - Formation of Government Contract - Conduct of auction/Evaluation/Acceptance/Rejection of Bid/ Tender/Scope of judicial review - Interpretation of NIT/bid conditions or criteria made by competent authority Primacy of Scope of judicial review Principles summarized

Author of the tender document, reiterated, is taken to be the best person to understand and appreciate its requirements - Thus, if the interpretation of such author is manifestly in consonance with the language of the tender document or subserving the purchase of the tender, the Court would prefer to keep restraint Further, the technical evaluation or comparison by the Court is impermissible - Thus, even if the interpretation given to the tender document by the person inviting offers is not as such acceptable to the constitutional court, that, by itself, would not be a reason for interfering with the interpretation given, so long as such interpretation is not arbitrary or whimsical

View taken by tender inviting authority, as in the present case in rejection of the technical bid of petitioner for want of fulfilment of "past performance" criterion Non-interference with, when the same is not arbitrary or whimsical

"Smartphones" and "tablets" - Non-consideration of, as belonging to "similar category products" - Decision of authority in not accepting the past performance of bidder in field of "smartphones", when the bid was for "tablets"- Non-consideration of, as baseless or absurd or irrational or illogical i.e. calling for interference. **Agmatel India Private Limited v. Resoursys telecom and others, (2022) 5 SCC 362**

Formation of Government Contract - Cancellation of auction by Court on representations made by third parties, in a purported PIL, on ground that value of the auctioned public property

(land of public temple in present case) that might have been obtained, could have been much more.

Government Contracts and Tenders Public Auction/Tender Conduct of public auction resulting in execution of sale deed in favour of 1 auction-purchaser Proper forum for challenging Error in decision making process adopted by authority in conduction the auction, and sale deed being executed in favour of auction-purchaser Held, remedy in such case is to question sale deed in an appropriate proceeding available under law and not by filing a petition under Art. 226 of Constitution

Maintainability of writ petition or appeal Challenge to their own action by a party, held, not maintainable. Locus standi/Standing to prosecute proceedings further or file appeal. Appeal preferred by heirs of original petitioner. Proceedings initiated by original petitioner were in nature of a public interest litigation and therefore being heir of original petitioner, his wife, held, could not have been permitted to prosecute further with public interest litigation. **K. Kumara Gupta v. Sri Markendaya and Sri OmkareswaraSwamy Temple and others, (2022) 5 SCC 710**

Hindu Marriage Act

S. 13-B Divorce by mutual consent Binding effect of compromise/settlement between parties Extent of - Must be effectuated in complete sense.

Without going into the question whether the appeal was maintainable or not, in our view, appropriate course to be adopted in the matter is to effectuate the understanding as culled out in Para 10 of the consent terms. If the parties had arrived at a settlement and decided to withdraw the cases filed by each of the parties against the other, the compromise ought to be effectuated in complete sense.

The law on the point is well-settled by the decision of this Court in Gian Singh v. State of Punjab[3]. Leaving aside the technicalities, we therefore deem it appropriate to quash the proceedings which were initiated at the instance of the respondent wife i.e. FIR No. 148 of 2015 dated 4-9-2015 registered with Police Station Pathri District Parbhani. Further proceedings in said FIR now stand quashed. **Ganesh v. Sudhir Kumar Srivastava, (2022)2 SCC (Cri.) 136.**

Indian Penal Code, 1860

Ss. 299 and 300 – How it is determined whether culpable homicide tantamounts to murder or not?

Penal Code, 1860-S. 302 or S. 304 [S. 300 Thirdly & Fourthly or Exception 4] - First incident of altercations between the accused and deceased stopped by villagers - Second incident occurring later in which accused causing multiple grievous injuries to vital part of the deceased with great force, which were the main cause of death. It was held that second incident clearly fell within S. 300 (Thirdly and/or Fourthly).

The intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances:

1. nature of the weapon used;
2. whether the weapon was carried by the accused or was picked up from the spot;
3. whether the blow is aimed at a vital part of the body;
4. the amount of force employed in causing injury;
5. whether the act was in the course of sudden quarrel or sudden fight or free-for-all fight;
6. whether the incident occurs by chance or whether there was any premeditation;
7. whether there was any prior enmity or whether the deceased was a stranger;
8. whether there was any grave and sudden provocation, and if so, the cause for such provocation;
9. whether it was in the heat of passion;
10. whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner; and
11. whether the accused dealt a single blow or several blows. **State of Uttarakhand v. Sachendra Singh Rawat, (2022) 4 SCC 227: (2022)2 SCC (Cri.) 147.**

Ss. 302/34 and 201-Death of deceased due to burning in her matrimonial home - Case based on circumstantial evidence Alleged involvement of husband and mother-in-law (both appellant-accused herein) of deceased. Conviction of appellants under Ss. 302/34 and 201 IPC upheld by High Court.

From totality of circumstances and evidence on record, held, prosecution miserably failed to prove entire chain of circumstances which would unerringly establish that alleged act was committed by appellants only and none else. Reliance placed by prosecution on S. 106 of the Evidence Act, held, is also misplaced, inasmuch as S. 106 is not intended to relieve prosecution from discharging its duty to prove guilt of accused. Prosecution having failed to prove basic facts as alleged against appellants, burden could not be shifted on accused by pressing into service provisions contained in S. 106 of the Evidence Act.

Prosecution must discharge its primary onus of proof and establish the basic facts against the accused in accordance with law.Only thereafter may S. 106 be resorted to, depending on the facts and circumstances of each case.

Criminal Trial - Proof - Proof beyond reasonable doubt - Must for establishing guilt of accused Held, it is settled position of law that circumstances howsoever strong cannot take place of proof and that guilt of accused has to be proved by prosecution beyond reasonable doubt

Criminal Trial - Circumstantial Evidence Condition for basing conviction solely on basis of circumstantial evidence- Held, conviction can be based solely on circumstantial evidence but it should be tested on touchstone of law relating to circumstantial evidence that all circumstances

must lead to conclusion that accused is the only one who has committed crime and none else. **Satye Singh and another v. State of Uttarakhand, (2022) 5 SCC 438**

S. 300 – Exception 4 – When applicable – Principles reiterated –

In Dhirajbhai Gorakhbhai Nayak, on applicability of Exception 4 to Section 300 IPC, it was observed and held in para 11 as under: (SCC pp. 327-28).

The Fourth Exception of Section 300 IPC covers acts done in a sudden fight. The said Exception deals with a case of prosecution (sic provocation) not covered by the first exception, after which its place would have been more appropriate. The Exception is founded upon the same principle, for in both there is absence of premeditation. But, while in the case of Exception I there is total deprivation of self-control, in case of Exception 4, there is only that heat of passion which clouds men's sober reason and urges them to deeds which they would not otherwise do. There is provocation in Exception 4 as in Exception 1, but the injury done is not the direct consequence of that provocation. In fact, Exception 4 deals with cases in which notwithstanding that a blow may have been struck, or some provocation given in the origin of the dispute or in whatever way the quarrel may have originated, yet the subsequent conduct of both parties puts them in respect of guilt upon an equal footing. A "sudden fight" implies metal provocation and blows on each side. The homicide committed is then clearly not traceable to unilateral provocation, nor could in such cases the whole blame be placed on one side. For if it were so, the Exception more appropriately applicable would be Exception 1. There is no previous deliberation or determination to fight. A fight suddenly takes place, for which both parties are more or less to be blamed. It may be that one of them starts it, but if the other had not aggravated it by his own conduct it would not have taken the serious turn it did. There is then mutual provocation and aggravation, and it is difficult to apportion the share of blame which attaches to each fighter. The help of Exception 4 can be invoked if death is caused: (a) without premeditation, (b) in a sudden fight, (c) without the offenders having taken undue advantage or acted in a cruel or unusual manner, and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the "fight" occurring in Exception 4 to Section 300 IPC is not defined in IPC. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties had worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two and more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in a cruel or unusual manner. The expression "undue advantage" as used in the provision means "unfair advantage"." **State of Uttrakhand v. Sachindra Singh Rawat, (2022)2 SCC (Cri.) 147.**

Ss 302 & 148 of Penal Code, 1860: Large number of accused involved Determination of culpability of each accused Necessity of parsing evidence carefully in respect of each accused. Deceased hacked to death with hunting sickles.

Criminal Trial - Witnesses - Related witness–It was held that merely because witnesses were relatives of deceased victim, their evidence cannot be discarded solely on aforesaid ground.

Injured witness - Reliability and credibilityof being injured eyewitness, as per settled proposition of law laid down by Supreme Court in catena of decisions, his deposition has greater reliability and credibility. **M. Nageswara Reddy v. State of Andhra Pradesh and others, (2022) 5 SCC 791**

Ss. 302, 149—Evidence Act, Sec. 32—Murder by unlawful assembly—Dying declaration—Corroboration—

In case of omission or error in framing a charge, the accused has to show failure of justice/prejudice caused thereby.

Mere non-framing of a charge Section 149 on face of charges framed against appellant would not vitiate the conviction in the absence of any prejudice caused to them. Considering Section 464 Cr.P.C. it is observed and held that mere defect in language, or in narration or in the form of charge would not render conviction unsustainable, provided the accused is not prejudiced thereby. It is further observed that if ingredients of the section are obvious or implicit in the charge framed then conviction in regard thereto can be sustained, irrespective of the fact that said section has not been mentioned. **State of U.P. vs. Subhash @ Pappu, AIR 2022 SC 1651**

Ss. 302, 498-A and 201 r/w S. 34-Demands for dowry and dowry-related harassment of bride by husband and in-laws culminating in her murder - She done to death by strangulation in her matrimonial home and thereafter attempt made to camouflage her death as one which arose out of burn injuries.

Medical evidence, held, is quite clear that deceased was strangulated first and after her life was extinguished, her body was subjected to post mortem burn injuries in an attempt to camouflage death as one which arose out of burn injuries. Considering entirety of material on record, held, it is not possible to take a different view than one that weighed with courts below. Thus, conviction and sentences recorded against Accused 1 and 2 (husband and mother-in-law of deceased, respectively, both appellant-accused herein), confirmed. **SarepalliSreenivas and others v. State of Andhra Pradesh, (2022) 6 SCC 116**

Ss. 304-B, 306 and 498-A Suicide by wife within seven years of marriage on account of harassment for Dowry death dowry - "Dowry" Demand for money raised by the accused 1 on the deceased for construction of a house, held, falls within the definition of the word "dowry."

Fact that the deceased wife herself joined the accused in asking her mother to contribute money to construct a house, held not material, particularly when she made such a request for money to her mother under pressure Hence, acquittal by High Court under S. 304-B set aside and accused held liable under Ss. 304-B and 498-A-However, conviction under S. 306, held, not sustainable, as prosecution could not prove abetment of commission of suicide on part of the accused, though the cause of death was suicide

Penal Code, 1860-S. 304-B - Term "soon before" - Meaning of - Held, it is a relative term which is required to be considered under specific circumstances of each case and no straitjacket formula can be laid down by fixing any time-limit- Furthermore, the said term is not synonymous with the term "immediately before" and is the opposite of the expression "soon after" as used and understood in S. 114 Ill. (a) of the Evidence Act - Evidence Act, 1872, Ss. 113-B and 114 III. (a)

Penal Code, 1860-S. 304-B-Sentence-Reduction to the minimum prescribed - When warranted - Considering factual position in the present case, sentence imposed by trial court of RI for life directed to be reduced to minimum prescribed i.e. RI for seven years. **State of Madhya Pradesh v. Jogendra and another, (2022) 5 SCC 401**

Ss. 304-B, 201—Evidence Act, Secs. 3, 113-B—Dowry death—Appreciation of evidence—

Supreme Court reiterated law which was laid down in Maya Devi and Anr. vs. State of Haryana(2015) 17 SCC 405, it was held that:

"23. To attract the provisions of Section 304-B, one of the main ingredients of the offence which is required to be established is that "soon before her death" she was subjected to cruelty or harassment "for, or in connection with the demand for dowry". The expression "soon before her death" used in Section 304-IPC and Section 113-B of the Evidence Act is present with the idea of proximity test. In fact, the learned Senior Counsel appearing for the appellants submitted that there is no proximity for the alleged demand of dowry and harassment. With regard to the said claim, we shall advert to while considering the evidence led in by the prosecution. Though the language used is "soon before her death", no definite period has been enacted and the expression "soon before her death" has not been defined in both the enactments. Accordingly, the determination of the period which can come within the term "soon before her death" is to be determined by the courts, depending upon the facts and circumstances of each case. However, the said expression would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. In other words, there must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the death concerned. If the alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the women concerned, it would be of no consequence." [Also refer to G.V. Siddaramesh v. State of Karnataka, (2010) 3 SCC 152 and Ashok Kumar vs. State of Haryana, (2010) 12 SCC 350]

Section 304B IPC read in conjunction with Section 113B of the Evidence Act leaves no manner of doubt that once the prosecution has been able to demonstrate that a woman has been subjected to cruelty or harassment for or in connection with any demand for dowry, soon before her death, the Court shall proceed on a presumption that the persons who have subjected her to cruelty or harassment in connection with the demand for dowry, have caused a dowry death within the meaning of Section 304B IPC. The said presumption is, however, rebuttable and can be dispelled on the accused being able to demonstrate through cogent evidence that all the ingredients of Section 304B IPC have not been satisfied. **Parvati Devi vs. State of Bihar Now State of Jharkhand, AIR 2022 SC 1268**

S 307 - Requisite ingredients in order to attract S. 307, the prosecution has to prove, "whoever does any act, with the intention or knowledge, which may cause death and in furtherance to the said intention and knowledge, he was doing an act towards it."

Ss. 307 and 34: Firing on police party sent to apprehend the accused - Liability of appellant for attempt to murder - Absence of requisite intention and knowledge to attract S. 307, along with other infirmities. **(Vasudev v. State of Madhya Pradesh, (2022) 4 SCC 735)**

Sections 463 to 489C of the Penal Code, 1860: Offences relating to documents and property marks Facts not relevant/not sufficient for giving a clean chit to the accused concerned,

nor for quashment of criminal proceedings - Quashment of FIR by High Court against private respondents on ground that fabrication of documents is permissible if it does not cause loss to the Revenue held completely unsustainable. **MissuNaseem and another v. State of Andhra Pradesh and others, (2022) 4 SCC 807**

S. 307 – Attempt to murder – Requisite ingredients – Reiterated

After hearing the learned counsel for the parties, first of all, it is required to be seen what are the ingredients to prove an offence under Section 307 IPC. On perusal of the provisions, it is apparent that whoever does any act, with the intention or knowledge, which may cause death and in furtherance to the said intention and knowledge, he was doing an act towards it. However, it is required to be seen by the evidence brought on record by the prosecution whether the ingredients to prove, the case of prosecution beyond reasonable doubt, the charge under Sections 307/34 IPC have been established. **Vasudev v. State of M.P. (2022)2 SCC (Cri.) 218**.

S. 498-A – Sentence under – Consideration of mitigating circumstances.

It is required to be noted that as such the trial court has imposed the sentence of one-year RI for the offence under Section 498-A. However, the punishment could have been up to three years' RI. At the time when the incident occurred the appellant was approximately between 60-65 years. The incident is of the year 2006. Therefore, merely because long time has passed in concluding the trial and/or deciding the appeal by the High Court, is no ground not to impose the punishment and/or to impose the sentence already undergone. It is to be noted that the appellant mother-in-law is held to be guilty for the offence under Section 498-A IPC. Being a lady, the appellant, who was the mother in-law, ought to have been more sensitive vis-à-vis her daughter-in-law. When an offence has been committed by a woman by meting out cruelty to another woman i.e. the daughter-in-law, it becomes a more serious offence. If a lady i.e. the mother-in-law herein does not protect another lady, the other lady i.e. daughter-in-law would become vulnerable.

In the present case, even the husband of the victim was staying abroad. The victim was staying all alone with her in-laws. Therefore, it was the duty of the appellant, being the mother-in-law and her family to take care of her daughter-in-law, rather than harassing and/or torturing and/or meting out cruelty to her daughter-in-law regarding jewels or on other issues. Therefore,as such, no leniency is required to be shown to the appellant in this case. There must be some punishment for the reasons stated hereinabove. However, considering the fact that the incident is of the year 2006 and at present the appellant is reported to be approximately 80 years old, in the peculiar facts and circumstances of the case, as a mitigating circumstance, we propose to reduce the sentence from one-year RI to three months' RI with fine imposed by the trial court to be maintained. **Meera v. State by the Inspector of Police, (2022)1 SCC (Cri.) 575.**

Insolvency and Bankruptcy Code, 2016

Ss. 7, 12 and 30- Implementation of approved resolution plan - Directions for Timely completion of CIRP Requirement of - Held, the approved resolution plan has to be implemented at the earliest and that is the mandate under IBC. **Committee of Creditors of Amtek Auto Limited Through Corporation Bank v. Dinkar T. Venkatsubramanian and others, (2022) 4 SCC 754**

Insurance Law

Insurance - Applicability of the principle of Uberrima Fides/ UberrimaeFidei to both parties.

Duties of the insured and insurer to disclose all material facts at contract formation/pre-contract stage or renewal stage, held, include the duty of the insurer or its agent to notify the insured of any material change(s) in the policy terms at the pre-contract or renewal stage. Thusinsurer cannot contend that the insured were under an obligation to enquire into and satisfy themselves in respect thereof, if a new term/modified term had been introduced in the policy at the renewal stage (as in present case)

This duty of the insurer to disclose material terms/new or altered terms at the pre-contract or renewal stage, is all the more onerous where insurance policies are in standard form and consumers hardly have any choice in the matter or any power to negotiate alteration of the terms of the policy

Consumer Protection - Cause of Action - Unfair trade practice/Unfair terms in a contract (particularly in a standard form contract), cannot be enforced, if there is absence of free choice on the part of a consumer.

Insurance - Insurance Regulatory Development Authority (Health Insurance) Regulations, 2016 - Regns. 11 and 13 - Health/Medical insurance - Express provision under the above Regulations of insurer's obligation to inform every policyholder, about any important changes that would affect their choice of the insurance policy/product, at the pre-contract or renewal stage - Obligation of insurer to provide information to existing policyholders, and for them to exercise choice, meaningfully, and choose products suited to their needs at the pre-contract or renewal stage.

Insurance - Health/Medical Insurance — Renewal clause/Renewal of Policy Terms and conditions of old policy - Applicability of, when material change in the policy terms i.e. cap on coverage/limitation under the new policy is not intimated by the insurer/agent to the assured at the renewal stage - If the renewed contract is agreed, in all respects, by both parties, undoubtedly the fresh terms (with restrictions) would be binding, however, that would not be the case when a new term is introduced unilaterally about which the policyholder is in the dark, as in present case

Consumer Protection Services Insurance Breach of duty by insurer to inform the policyholders about the limitations being introduced in new policy at the stage of renewal of the policy - Amounting to deficiency in service Use of the expression "or otherwise"- Relevance of

Contract Act, 1872-S. 22- Unilateral mistake of fact - Held, not ordinarily sufficient to nullify contract or to make it voidable. Clarifying the law on this issue, held, unless the unilateral mistake about the terms of a contract is so serious as to adversely undermine the entire bargain, it does not result in automatic avoidance of a contract or render the contract voidable

Contract and Specific Relief-Standard form contracts - Contracts of adhesion/standard form contract prepared by one party i.e. contracts leaving no room for negotiation- When are not binding - Explained Words and Phrases-"Standard form contracts", "contracts d' adhesion", "contracts of adhesion". **Jacob Punnen and another v. United India Insurance Company Limited, (2022) 3 SCC 655**

Insured vehicle in question was robbed by some miscreants - FIR waslodged immediately on the next day of the occurrence of theft of the vehicle by the complainant and the accused were also arrested and charge-sheeted but the vehicle could not be traced out-However, there was a delay of about five months on the part of the complainant in informing and lodging its claim

before the Insurance Company Insurer repudiated the claim of the complainant on the ground that the complainant had committed the breach of Condition 1 of the insurance contract i.e. only on the ground of delay - It did not doubt the genuineness of the claim- In the present case, following the three-Judge Bench ruling in *Gurshinder Singh, (2020) 11 SCC 612*, held, insurer could not have repudiated the claim merely on the ground that there was a delay in intimating insurer about the occurrence of the theft Consumer Protection Services Insurance. **Jaina Construction Company v. Oriental Insurance Company Limited and another, (2022) 4 SCC 527**

Insurance Contract of Insurance/Policy/Terms/Cover Note Exemption/Exclusion/ Restriction/Limitation/Forfeiture Clauses/Negative Covenants Claim under Deterioration of Stock Policy "DOS Policy", covering stock of potatoes stored in cold storage-Non-grantability of, when incident is covered within the specific exceptions in the policy - Exception in the insurance policy i.e. Clause (vi) stipulating that the insurer would not be liable for damage caused if the temperature in the refrigeration chambers does not exceed 4.4° C or 40° F-Validity and effect of

Insurance Causation/Assessment of Loss/Surveyors, Investigators and Loss Assessors-Surveyor's report-When can be relied on- - Although the surveyor's report is not the last word, there must be a legitimate reason to depart from it. **Shivram Chandra Jagarnath Cold Storage and another v. New India Assurance Company Limited and others, (2022) 4 SCC 539**

Contract of Insurance/Policy/Terms/Cover Note - Obligation to disclose material facts-Principle of *uberrimaefidei* i.e. principle of utmost good faith, held, imposes meaningful reciprocal duties owed by the insured to the insurer and vice versa. That is to say, just as the insured has a duty to disclose all material facts, the insurer must also inform the insured about the terms and conditions of the policy that is going to be issued to him and must strictly conform to the statements in the proposal form or prospectus, or those made through his agents.

Contract and Specific Relief - Standard form contracts: when words are to be construed, resulting in two alternative interpretations then, the interpretation which is against the person using or drafting the words or expressions which have given rise to the difficulty in construction, applies.

Insurance Construction/Interpretation of Policy/Contract-Contra proferentem rule - Applicability of, to insurance policies - Where there is an ambiguity in the contract of insurance or doubt, held, it has to be construed contra proferentem against the insurance company

Health/Medical Insurance - Repudiation of claim on the premise that the insurance policy did not cover pre-existing conditions and complications arising therefrom. When the insured himself unaware of any such condition prior to treatment.

Knowledge of existing condition of Diabetes Mellitus-II and prescription of statins - Held, did not amount to being aware of cardiac ailment or hyperlipidaemia. **Manmohan Nanda v. United India Assurance Company Limited and another, (2022) 4 SCC 582**

Interpretation of Statutes

Technical definitions under one statute should not be imported to another statute which is not in pari materia with the first.

The contention of the respondent is that the term "university" needsto be read in accordance with the UGC Act, wherein only those universitiescovered under Section 20) of the UGC Act are covered under the PC Act.Such an interpretation by importing the technical

definition under a differentAct may not be feasible herein. It is a settled law that technical definitionsunder one statute should not be imported to another statute which is not in parimateria with the first. The UGC Act and the PC Act are enactments which arecompletely distinct in their purpose, operation and object. The Preamble of theUGC Act states that it is

> "An Act to make provision for the coordination and determination of standards in universities, and for that purpose, to establish a University Grants Commission".

On the other hand, the PC Act is an enactment meant to curb the social evil of corruption in the country. As such, the extension of technical definitions used under one Act to the other might not be appropriate, as the two Acts are not in pari materia with one another. **State of Gujarat v. Mansukhbhai Kanjibhai Shah, (2022)2 SCC (Cri.) 61.**

Penal statutes or provisions Need to be interpreted strictly, unless any constitutional considerations are involved, and in cases of ambiguity, the benefit of the same should enure in favour of the accused-

Strict interpretation does not necessarily mean literal interpretation in all cases, rather the interpretation should have regard to the genuine import of the words, taken in their usual sense. **State of Gujarat v. Mansukhbhai Kanjibhai Shah, (2022)2 SCC (Cri.) 61.**

Penal statutes or provisions Ambiguity in - Held, it is settled principle of statutory interpretation, that any ambiguity in penal statute, has to be interpreted in favour of accused.

It is a settled principle of statutory interpretation that any ambiguity in a penal statute has to be interpreted in favour of the accused. It would be absurd and discriminatory for the prosecution to, on one hand, rely on the report of the Public Analyst under Section 13(1) for proving the offence of "misbranding", and on the other hand, claim that the accused cannot avail of their right to challenge the said report as per Sections 13(2) and 13(3) because it is not a case of "adulteration". In such a scenario, the word "adulterated" in Section 13(2) would have to be read as including "misbranded" insofar as it relates to the ingredients of the food article concerned, and the relevant clauses of Section 13 have to be complied with in their entirety. **Alkem Laboratories Ltd. v. State of M.P., (2022)1 SCC (Cri.) 174.**

Labour Laws

Section 33-C (2) of the Industrial Disputes Act, 1947: Recovery of money due from employer

It was held that in application under S. 33-C(2), Labour Court has no jurisdiction to adjudicate dispute of entitlement or basis of claim of workmen and can only interpret award or settlement on which claim is based. Further held, without prior adjudication or recognition of disputed claim of workmen, proceedings for computation of arrears of wages and/or difference of wages claimed by workmen not maintainable. Lastly, benefit sought to be enforced under S. 33-C(2) must necessarily be pre-existing benefit or one flowing from pre-existing right. **Bombay Chemical Industries v. Deputy Labour Commissioner and another, (2022) 5 SCC 629**

Land Acquisition Act

S. 23, 4—Compensation—Sale instances—Whether comparable or not

As per the settled position of law, generally the sale instances with respect to small plots/ parcels of land are not comparable to a large extent of land for the purpose of determining the compensation. In the case of Mahanti Devi v. Jaiprakash Associates Ltd., reported in (2019) 5 SCC 163, after following the decision of this Court in the case of Viluben Jhalejar Contractor v. State of Gujarat, reported in (2005) 4 SCC 789, it is held that in case of acquisition of large tracts of land and the exemplars are of small portion of land, there shall be a suitable deduction towards development costs.

In the case of Manoj Kumar v. State of Haryana, reported in (2018) 13 SCC 96, this Court had an occasion to consider the deductions required to be made when considering transactions pertaining to small developed plots, for determining compensation of large areas and it is held that when a large area is acquired, two kinds of deductions have to be made, i.e., (i) for development, and (ii) in case of exemplar transaction is a small area, the deduction is required to be made to arrive at the value of large tract.

What should be reasonable deduction towards development charges has been considered by this Court in the cases of Lal Chand (supra) and Dyagala Devamma (supra). As held by this Court in the case of Lal Chand (supra), the percentage of deduction for development to be made to arrive at the market value of large tracts of undeveloped agricultural land (with potential for development), with reference to the sale price of small developed plots, varies between 20% to 75% of the price of such developed plots, the percentage depending upon the nature of development of the layout in which the exemplar plots are situated. The decision in the case of Lal Chand (supra) has been subsequently followed by this Court in the case of Maya Devi (Dead) through Lrs. V. State of Haryana, reported in (2018) 2 SCC 474 as well as in the case of Andhra Pradesh Housing Board v. K. Manohar Reddy, reported in (2010) 12 SCC 707.

In the case of Dyagala Devamma (supra), while quashing and setting aside the judgment and order of the High Court making deduction towards development charges at 25% in place of 50% as was deducted by the Reference Court, in paragraphs 19 & 20, it is observed and held as under:

> "19. In addition to these principles, this Court in several cases have laid down that while determining the true market value of the acquired land especially when the acquired land is a large chunk of undeveloped land, it is just and reasonable to make appropriate deduction towards expenses for development of acquired land. It has also been consistently held that at what percentage the deduction should be made varies from 10% to 86% and, therefore, the deduction should be made keeping in mind the nature of the land, area under acquisition, whether the land is developed or not and, if so, to what extent, the purpose of acquisition, etc. It has also been held that while determining the market value of the large chunk of land, the value of smaller pieces of land can be taken into consideration after making proper deduction in the value of lands especially when sale deeds of larger parcel of land are not available. This Court has also laid down that the court should also take into consideration the potentiality of the acquired land apart from other relevant considerations. This Court has also recognised that the courts can always apply reasonable amount of guesswork to balance the equities in order to fix a just and fair market value in terms of parameters specified under Section 23 of the Act. (See Trishala Jain v. State of Uttaranchal [Trishala Jain v. State of Uttaranchal, (2011) 6 SCC 47 : (2011) 3 SCC (Civ) 178] and Vithal Rao v. LAO [Vithal Rao v. LAO, (2017) 8 SCC 558 : (2017) 4 SCC (Civ) 155]". **Union of India vs. Premlata , AIR 2022 SC 1693**

S. 48—Right to Fair Compensation and Transparency and Resettlement Act, 2013, Sec. 24(2)—Acquisition proceedings—Lapse of—

In paragraph 365 to 366, this Court in the case of Indore Development Authority (supra) has observed and held as under:

"365. Resultantly, the decision rendered in Pune Municipal Corpn. [Pune Municipal Corpn. v. Harakchand Misirimal Solanki, (2014) 3 SCC 183 : (2014) 2 SCC (Civ) 274] is hereby overruled and all other decisions in which Pune Municipal Corpn. [Pune Municipal Corpn. v. Harakchand Misirimal Solanki, (2014) 3 SCC 183 : (2014) 2 SCC (Civ) 274] has been followed, are also overruled. The decision in Sree Balaji Nagar Residential Assn. [Sree Balaji Nagar Residential Assn. v. State of T.N., (2015) 3 SCC 353 : (2015) 2 SCC (Civ) 298] cannot be said to be laying down good law, is overruled and other decisions following the same are also overruled. In Indore Development Authority v. Shailendra [Indore Development Authority v. Shailendra, (2018) 3 SCC 412 : (2018) 2 SCC (Civ) 426] , the aspect with respect to the proviso to Section 24(2) and whether "or" has to be read as "nor" or as "and" was not placed for consideration. Therefore, that decision too cannot prevail, in the light of the discussion in the present judgment.

366. In view of the aforesaid discussion, we answer the questions as under:

366.1. Under the provisions of Section 24(1)(a) in case the award is not made as on 112014, the date of commencement of the 2013 Act, there is no lapse of proceedings. Compensation has to be determined under the provisions of the 2013 Act.

366.2. In case the award has been passed within the window period of five years excluding the period covered by an interim order of the court, then proceedings shall continue as provided under Section 24(1)(b) of the 2013 Act under the 1894 Act as if it has not been repealed.

366.3. The word "or" used in Section 24(2) between possession and compensation has to be read as "nor" or as "and". The deemed lapse of land acquisition proceedings under Section 24(2) of the 2013 Act takes place where due to inaction of authorities for five years or more prior to commencement of the said Act, the possession of land has not been taken nor compensation has been paid. In other words, in case possession has been taken, compensation has not been paid then there is no lapse. Similarly, if compensation has been paid, possession has not been taken then there is no lapse.

366.4. The expression "paid" in the main part of Section 24(2) of the 2013 Act does not include a deposit of compensation in court. The consequence of non-deposit is provided in the proviso to Section 24(2) in case it has not been deposited with respect to majority of landholdings then all beneficiaries (landowners) as on the date of notification for land acquisition under Section 4 of the 1894 Act shall be entitled to compensation in accordance with the provisions of the 2013 Act. In case the obligation under Section 31 of the Land Acquisition Act, 1894 has not been fulfilled, interest under Section 34 of the said Act can be granted. Non-deposit of compensation (in court) does not result in the lapse of land acquisition proceedings. In case of non-deposit with respect to the majority of holdings for five years or more, compensation under the 2013 Act has to be paid to the "landowners" as on the date of notification for land acquisition under Section 4 of the 1894 Act.

366.5. In case a person has been tendered the compensation as provided under Section 31(1) of the 1894 Act, it is not open to him to claim that acquisition has lapsed under Section 24(2) due to nonpayment or non-deposit of compensation in court. The obligation to pay is complete by tendering the amount under Section 31(1). The landowners who had refused to

accept compensation or who sought reference for higher compensation, cannot claim that the acquisition proceedings had lapsed under Section 24(2) of the 2013 Act.

366.6. The proviso to Section 24(2) of the 2013 Act is to be treated as part of Section 24(2), not part of Section 24(1)(b).

366.7. The mode of taking possession under the 1894 Act and as contemplated under Section 24(2) is by drawing of inquest report/memorandum. Once award has been passed on taking possession under Section 16 of the 1894 Act, the land vests in State there is no divesting provided under Section 24(2) of the 2013 Act, as once possession has been taken there is no lapse under Section 24(2).

366.8. The provisions of Section 24(2) providing for a deemed lapse of proceedings are applicable in case authorities have failed due to their inaction to take possession and pay compensation for five years or more before the 2013 Act came into force, in a proceeding for land acquisition pending with the authority concerned as on 112014. The period of subsistence of interim orders passed by court has to be excluded in the computation of five years.

366.9. Section 24(2) of the 2013 Act does not give rise to new cause of action to question the legality of concluded proceedings of land acquisition. Section 24 applies to a proceeding pending on the date of enforcement of the 2013 Act i.e. 112014. It does not revive stale and timebarred claims and does not reopen concluded proceedings nor allow landowners to question the legality of mode of taking possession to reopen proceedings or mode of deposit of compensation in the treasury instead of court to invalidate acquisition." **Delhi Development Authority vs. Rajan Sood, AIR 2022 SC 1634**

Ss. 54, 23(1-A) and 18 –Award of Additional compensation by Reference Court in exercise of its power under S. 18.

After appreciating material available on record, Reference Court awarded additional compensation to claimants over and above compensation awarded by Special Land Acquisition Officer. It was held that it could be interfered by High Court only when there is material to support its decision. In present case interference made by High Court under impugned judgment so far as additional compensation assessed by Reference Court is concerned, is neither supported by material on record nor sustainable in law. Additional compensation as awarded by Reference Court restored. **Ambalal Babulal Patel and others v. Group General Manager, ONGC and another, (2022) 3 SCC 691**

Section 23 of Land Acquisition Act, 1894: Determination of compensation -S. 23(1) "thirdly" and "fourthly" concerning "severance" and "injurious affection", respectively, distinguished - S. 23(1) "fourthly" and "sixthly" dealing with expressions "earnings" and "profits", respectively, distinguished. Applicability of these particular clauses of S. 23 in computation of compensation.

Six items of consideration under Section 23(1) for determination of compensation, stated

1. The market value of the land on the date of publication of the notification under Section 4(1).
2. The damage to standing crops or trees, which are on the land at the time of the Collector taking possession.
3. The damage sustained by reason of severing such land from the unacquired land.

4. The damage sustained by reason of the acquisition injuriously affecting the other property, movable or immovable, in any other manner or the earnings, of the person interested.
5. The reasonable expenses incurred by the person interested, in changing his residence or place of business, when he is compelled to do so in consequence of the acquisition.
6. The damage bona fide resulting from diminution of the profits of the land between the time of publication of the declaration under Section 6 and the time of the Collector's taking possession.

S. 54- Adjustment of bank guarantee pursuant to modification of High Court order - Land Acquisition Officer directed to make fresh calculations. **Walchandnagar Industries Limited v. State of Maharashtra and another, (2022) 5 SCC 71**

Motor Vehicles Act, 1988

S. 166 - Contributory negligence - If any - Determination of –

The High Court in its judgment has wrongly recorded that the breadth of the road was 9.5 ft. On the contrary, the breadth of the road was 9.5 steps, which means about 20 ft breadth. It is not in dispute that the deceased Mr Palash Kumar was coming from Kishangarh side to Alwar side and the lorry was coming from Alwar to Kishangarh and there was a collision between two vehicles. The car was coming in correct side. It is clear from the record that the lorry went towards wrong side (right hand side of the road) and collided with the car of the deceased at point "A" and dragged the car from point "A" to point "B" i.e. to the extreme side of the road. These facts would clearly reveal that the driver of the lorry was not only reckless but also negligent in driving the vehicle and collided at point "A" which was the wrong side of the lorry driver and dragged the car to point "B". Looking into the entire discussion made by the High Court in its judgment, it is clear that the High Court has fallen into error by wrongly considering the breadth of the road.

The learned counsel for the appellant submits that the assessment of compensation by MACT as well as by the High Court is improper inasmuch as the appellant is entitled to enhanced compensation. The future prospects of the deceased were not taken into consideration by MACT as well as by the High Court. **Renu Ravi Srivastava v. New India Insurance Co. Ltd. and Anr., (2022)2 SCC (Cri.) 126.**

S. 166—Compensation—Death claim—Split multiplier—

Suitable multiplier is to be applied keeping in view the age of deceased. Method of determination of compensation by applying two multipliers i.e. multiplier till date of retirement and another multiplier after retirement is clearly erroneous. **R. Valli vs. Tamil Nadu State Transport Corporation Ltd. AIR 2022 SC 1096**

Ss 166 & 168: Just compensation - Selection of multiplier - Applying split multiplier i.e. one multiplier up to date of retirement and another multiplier after retirement of deceased held impermissible. Only one multiplier is to be applied keeping in view age of the deceased

based on principles laid down by the Supreme Court. **R. Valli and others v. Tamil Nadu State Transport Corporation Limited, (2022) 5SCC 107**

Narcotic Drugs and Psychotropic Substances Act, 1985

S. 21 [as amended by Amendment Act, 2001] - Scope of –

It provides two tier punishment one for small quantity and another for commercial quantity - Intention of legislature was not to consider only actual content by weight of offending drug for the purpose of determining whether it would constitute "small quantity" or "commercial quantity" - Rather, weight of entire materials/mixture along with neutral material is to be considered for ascertainment of whether the quantity is "small quantity" or "commercial quantity". **Hira Singh v. Union of India, (2022)1 SCC (Cri.) 733.**

Petroleum and Natural Gas Regulatory Board Act, 2006

Oil, Petroleum and Natural Gas - Petroleum and Natural Gas Regulatory Board Act, 2006- S. 16 r/w S. 17 - "Deemed authorisation" clause under S. 16 proviso. Scope of deemed authorization. Extension ofonly entities granted authorisation by the Central Government.

Oil, Petroleum and Natural Gas Petroleum and Natural Gas Regulatory Board (Authorising Entities to Lay, Build, Operate or Expand City or Local Natural Gas Distribution Networks) Regulations, 2008- Regn. 18 Validity of, upheld Held, Regn. 18 is neither arbitrary, nor ultra - vires and the objective underlying Regn. 18, is compatible with the overall objectives of the Act

Oil, Petroleum and Natural Gas - Petroleum and Natural Gas Regulatory Board (Authorising Entities to Lay, Build, Operate or Expand City or Local Natural Gas Distribution Networks) Regulations, 2008- Regn. 18-Evaluation of applications for authorisation - Factors to be considered for-Explained

Doctrines and Maxims - Approbate and Reprobate/Qui Approbat Non Reprobat - Principles underlying the maxim and their applicability.

Interpretation of Statutes Subsidiary Rules Mandatory or directory Use of the expression "may take into consideration. **Adani Gas Limited v. Union of India and others, (2022) 5 SCC 210**

Practice and Procedure

Review/Recall: Whether warranted Abuse of process of court - Matter fully heard and decided on merits Applicants seeking recall as a ruse only to delay the proceedings/not comply, and to escape from contempt proceedings. **Dharmesh S. Jain and another v. Urban Infrastructure Real Estate Fund, (2022) 4 SCC 653**

Delay/Laches/Limitation - Extension of limitation period for all proceedings before courts and tribunals due to COVID-19 Pandemic directed by Supreme Court. It has been held these principles are equally applicable to commercial disputes as specified in the Commercial Courts Act, 2015.

Limitation Act, 1963-S. 4 Expln. - Irregular working of courts due to COVID-19 Pandemic- Deemed closure of court on such days, for purposes of reckoning of limitation, as

being dies non juridicus - Principles explained Held, these principles are equally applicable to commercial disputes as specified in the Commercial Courts Act, 2015

Civil Procedure Code, 1908 - S. 10 and Or. 8 & Or. 5 (as applicable in general and to commercial disputes) - Consideration of S. 10 application by trial court, as a preliminary step, before taking any other steps in the suit - Necessity of Fact that in commercial disputes of the specified value, provisions providing for timelines such as for filing of written statement are to be strictly adhered to, does not mean that such provisions override all other provisions of CPC, such as S. 10. **Prakash Corporates v. Dee Vee Projects Limited, (2022) 5 SCC 112**

Prevention of Corruption Act, 1988

Ss. 2(c)(xi), 7, 8, 10, 13(1)(b) and 13(2) - Discharge/framing of charge – Consideration of –

Charge-sheet specifically disclosed that the respondent allegedly was collecting certain extra amount over the prescribed fees on the pretext of allowing the students to fill up their examination forms Complaint specifically alleged that the respondent demanded an amount of Rupees twenty lakhs to be paid to his co-accused, failing which the daughter of the complainantwould not have been permitted to appear in the examination - Recovery of a large number of cheques during the raid held to be more than sufficient to establish a grave suspicion as to the commission of the alleged offence Hence, impugned order of discharge held not justified and set aside. **State of Gujarat v. Mansukhbhai Kanjibhai Shah, (2022)2 SCC (Cri.) 61.**

S. 7 – Offence under – When established – Proof of demand of bribe by public servant and its acceptance by him, both are a sine quo non for establishing offence u/s 7.

The offence under Section 7 of the PC Act relating to public servants taking bribe requires a demand of illegal gratification and the acceptance thereof. The proof of demand of bribe by a public servant and its acceptance by him is sine qua non for establishing the offence under Section 7 of the PC Act.

In P. Satyanarayana Murthy v. State of A.P.2, this Court has summarised the well-settled law on the subject in para 23 which reads thus: (SCC p. 159).

The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1)(d)(i) and (ii) of the Act and in absence thereof, unmistakably the charge therefor, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act. As a corollary, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under Section 7 or 13 of the Act would not entail his conviction thereunder. **K. Shanthamma v. State of Telangana, (2022)2 SCC (Cri.)193.**

S 7: - Offence under S. 7 relating to public servants taking bribe requires proof of: (a) demand of illegal gratification, and (b) acceptance thereof - Proof of demand of bribe by public servant and its acceptance by him, both are a sine qua non for establishing offence under S. 7. **K. Shanthamma v. State of Telangana, (2022) 4 SCC 574**

Prevention of Food Adulteration Act

Ss. 8,9,11,13 and 14-A – Ingredients of – Summerised.

It may be useful to refer to the relevant provisions of the 1954 Act. It is explained in the Statement of Objects and Reasons of the 1954 Act that prior to its enactment, there were numerous State legislations on the subject of prevention of adulteration of food-stuffs but these lacked uniformity. Hence the need for a Central legislation was felt which could inter alia, provide for a uniform procedure and the constitution of "a Central Food Laboratory to which food samples can be referred to for final opinion in disputed cases".

Section 8 of the 1954 Act provides for the appointment of Public Analysts by the Central or the State Government as the case may be, for the purpose of carrying out analysis and testing of food samples in a given local area. Section 9 provides for the appointment of Food Inspectors for the purpose of inter alia, carrying out inspection of establishments where food articles are manufactured or sold, and seizing food articles which require analysis. Section 14-A mandates vendors of food articles to disclose the name and other particulars of the person from whom the food article was purchased, if the Food Inspector so requires.

Section 11 stipulates the procedure to be followed by Food Inspectors while taking food samples for analysis. It is important to note that the first step of the procedure is to immediately notify on the spot, not only the vendor but also the person whose particulars are disclosed under Section 14-A (which would include a distributor/marketer such as the appellant), that a sample is being sent for analysis. The sample is then divided into three parts-while the first part is sent to the Public Analyst, the other two are deposited with the Local Health Authority as a contingency in case the first part is lost or damaged.

It is this backdrop that Section 13 of the 1954 Act prescribes the subsequent procedure to be followed after the Public Analyst prepares their report:

Report of Public Analyst. – (1)The Public Analyst shall deliver, in such form as may be prescribed, a report to the Local (Health) Authority of the result of the analysis of any article of food submitted to him for analysis.

(2) On receipt of the report of the result of the analysis under sub-section (1) to the effect that the article of food is adulterated, the Local (Health) Authority shall, after the institution of prosecution against the person from whom the sample of the article of food was taken and the person, if any, whose name, address and other particulars have been disclosed under Section 14-A, forward, in such manner as may be prescribed, a copy of the report of the result of the analysis to such person or persons, as the case may be, informing such person or persons that if it is so desired, either or both of them may make an application to the court within a period of ten days from the date of receipt of the copy of the report to get the sample of the article of food kept by the Local (Health) Authority analysed by the Central Food Laboratory.

(2-B) On receipt of the part or parts of the sample from the Local (Health) Authority under sub-section (2-A), the court shall first ascertain that the mark and seal or fastening as provided in clause (b) of sub-section (1) of Section 11 are intact and the signature or thumb impression, as the case may be, is not tampered with, and despatch the part or, as the case may be, one of the parts of the sample under its own seal to the Director of the Central Food Laboratory who shall thereupon send a certificate to the court in the prescribed form within one month from the date of receipt of the part of the sample specifying the result of the analysis.

(3) the certificate issued by the Director of the Central Food Laboratory gut under sub-section (2-B) shall supersede the report given by the Public Analyst under sub-section (1)."

Therefore the purpose of Section 13 is to give a second opportunity to accused persons, against whom prosecution is initiated under the 1954 Act based on the Public Analyst's report, to

get the relevant food sample tested again by the Central Laboratory. Since the Central Laboratory's report will have precedence over that of the Public Analyst, this is a valuable opportunity for accused persons to claim exoneration from criminal proceedings.

It can be seen from the abovementioned provisions that under the scheme of the 1954 Act, the accused has to be given prior notice, as provided under Section 11 that samples of a food article manufactured and/or sold by them have been sent for analysis, before the Public Analyst prepares their report. The 1954 Act does not envisage a situation such as the present case where the sample is sent for analysis, and the Public Analyst's report is also prepared, but the marketer is informed several years later that prosecution is sought to be instituted against them. During such period, the food article being perishable in nature would most probably be incapable of being sent for retesting to the Central Laboratory. **Alkem Laboratories Ltd. v. State of M.P., (2022)1 SCC (Cri.)174.**

S. 13 Purpose of – The purpose is to give second - opportunity to accused persons, against whom prosecution is initiated under above Act, based on Public Analyst's report, to get relevant food sample tested again by Central Laboratory.

Therefore the purpose of Section 13 is to give a second opportunity to accused persons, against whom prosecution is initiated under the 1954 Act based on the Public Analyst's report, to get the relevant food sample tested again by the Central Laboratory. Since the Central Laboratory's report will have precedence over that of the Public Analyst, this is a valuable opportunity for accused persons to claim exoneration from criminal proceedings. **Alkem Laboratories Ltd. v. State of M.P., (2022)1 SCC (Cri.)174.**

Protection of Children from Sexual Offences Act, 2012

Ss. 3(b), 5(m) and 5/6 or 7/8 - "Penetrative sexual assault" as well as "aggravated penetrative sexual assault" -Determination of Penetration of vagina of victim by finger of accused -Age of victim being below twelve years (4 years in present case)

Protection of Children from Sexual Offences Act, 2012 - Ss. 5/6 - Sentence of life imprisonment - Reduction considering extreme old age (70-75 yrs) and serious medical ailment (TB) of accused - Sentence of life imprisonment reduced to 15 yrs' RI (when applicable statutory minimum was 10 yrs at the relevant time) in the peculiar facts and circumstances.

Considering objective of Act and necessity of providing proper legal protection to the children, no leniency can be shown to an accused who committed the offences under the Act, particularly when the same proved by adequate evidence. **Nawabuddin v. State of Uttarakhand, (2022) 5 SCC 419**

Ss 7 to 12, 29 and 30 of Protection of Children from Sexual Offences Act, 2012-"Sexual assault" as defined in S. 7 held that expressions "touches" or "touch" in first part of S. 7, and, "physical contact" in second part of S. 7, cannot be construed as "skin-to-skin" contact. The most important ingredient for constituting offence of "sexual assault" under S. 7 is "sexual intent" and not "skin-to-skin" contact. Neither S. 7 nor any other provision of the POCSO Act even remotely suggests that "direct" physical contact unimpeded by clothing is essential for an offence to be committed Both direct and indirect contact with sexual intent, come within the umbrage of "sexual assault" as defined in S. 7.

Restricting the interpretation of the words "touch" or "physical contact" to "skin-to-skin contact" would not only be a narrow and pedantic interpretation of the provision contained in S. 7 of the POCSO Act, but it would lead to an absurd interpretation of the said provision. The very object of enacting the POCSO Act is to protect the children from sexual abuse. If such a narrow interpretation is accepted, it would lead to a very detrimental situation, frustrating the very object of the Act inasmuch as in that case, to give a few instances, touching the sexual or non-sexual parts of the body of a child with gloves, condoms, sheets or with cloth, though done with sexual intent would not amount to offence of sexual assault under S. 7 of the POCSO Act.

“Any other act” involving "physical contact" in second part of S. 7, held, need not be similar to acts mentioned in first part of S. 7, that is, with regard to sexual parts mentioned in first part of S. 7- Principle of ejusdem generis, held, not applicable in regard to second part of S. 7

It was held that expression "sexual intent" having not been explained in S. 7, it cannot be confined to any predetermined format or structure and it is a question of fact, to be determined in the facts and circumstances of each case.

Further held, on the conjoint reading of Ss. 7, 11, 29 and 30 of the POCSO Act and having regard to the seriousness of the offences under the POCSO Act, though as per S. 11 Explanation, "sexual intent" is a question of fact.The Special Court, when it believes the existence of a fact beyond reasonable doubt, can raise a presumption under S. 30 of the POCSO Act as regards the existence of "culpable mental state" of the accused

Interpretation of Statutes - Rule of lenity i.e. where there is ambiguity in a criminal or penal statute, court must resolve such ambiguity in favour of the accused or strictly construe the statute against the State. Pre-requisite for invoking rule of lenity, held, is that there must be a statutory ambiguity in the first place. Where the legislature has manifested its intention clearly, courts may not manufacture ambiguity in order to defeat that intent. Nor should the court be overzealous in searching for ambiguities or obscurities in words which are plain and clear.

Protection of Children from Sexual Offences Act, 2012: Interpretation of "sexual assault" as defined in S. 7 of the POCSO Act in present case - Purposeful and contextual interpretation and "mischief rule" applied to give effect to legislative intent of the POCSO Act envisioned in Arts. 14, 15(1) and 15(3) of the Constitution to protect dignity of women and children as distinguished from pre-constitutional colonial legislations reflecting the inferior status of women and inadequate provisions for protecting their dignity.

Crimes Against Women and Children Protection of Children from Sexual Offences Act, 2012 - Ss. 7 to 12, 29 and 30- - "Sexual assault" (i) "Touches" in first part of S. 7, held, not to be construed as "skin-to-skin" contact, and (ii) "any other act" involving "physical contact" in second part of S. 7.Further held, need not be similar to acts mentioned in first part of S. 7. **Attorney General for India v. Satish and another, (2022) 5 SCC 545**

Rajasthan Rent Control Act

S. 18—CPC, Sec. O.21, R.35, S.9—Eviction suit—Decree for possession—Jurisdiction of Rent Tribunal.

S. 18 only restricts jurisdiction of Civil Court from date when Act became applicable. Act came into force in respect of premises in question after civil suit for possession was filed, Thus, decree passed by Civil Court is valid and executable

The landlords were the appellants who had filed suit for eviction of the respondents, their tenants. The suit was filed in the civil court. The premises in question were outside the ambit of rent legislation on the day the suit was filed. However, during the pendency of the suit and before it could be finally decided, the area in question was brought within the sweep of rent legislations by requisite notifications. The Supreme Court concluded the issue against the tenants wherein it was held as under:

"18. From the aforesaid discussion in Atma Ram Mittal [Atma Ram Mittal v. Ishwar Singh Punia, (1988) 4 SCC 284] , Vineet Kumar [Vineet Kumar v. Mangal Sain Wadhera, (1984) 3 SCC 352] , Ram Saroop Rai [Ram Saroop Rai v. Lilavati, (1980) 3 SCC 452] , Ramesh Chandra [Ramesh Chandra v. III Addl. District Judge, (1992) 1 SCC 751] and Shri Kishan [Shri Kishan v. Manoj Kumar, (1998) 2 SCC 710] cases, the apparent principles which can be culled out, forming the ratio decidendi of those cases, are as under:

18.1. Rights of the parties stand crystallised on the date of the institution of the suit and, therefore, the law applicable on the date of filing of the suit will continue to apply until the suit is disposed of or adjudicated.

18.2. If during the pendency of the suit, the Rent Act becomes applicable to the premises in question, that would be of no consequence and it would not take away the jurisdiction of the civil court to dispose of a suit validly instituted.

18.3. In order to oust the jurisdiction of the civil court, there must be a specific provision in the Act taking away the jurisdiction of the civil court in respect of those cases also which were validly instituted before the date when protection of the Rent Act became available in respect of the said area/premises/tenancy.

18.4. In case the aforesaid position is not accepted and the protection of the Rent Act is extended even in respect of suit validly instituted prior in point of time when there was no such protection under the Act, it will have the consequence of making the decree, that is obtained prior to the Rent Act becoming applicable to the said area/premises, unexecutable after the application of these Rent Acts in respect of such premises. This would not be in consonance with the legislative intent.

When we apply the principles laid down above to the instant case, we find that this case would fall in the category of Atma Ram Mittal [Atma Ram Mittal v. Ishwar Singh Punia, (1988) 4 SCC 284] and Mansoor Khan [Mansoor Khan v. Motiram Harebhan Kharat, (2002) 5 SCC 462] , etc. as under the scheme of the Rent Act, no protection to the ex-tenants is provided and no provision is made excluding the jurisdiction of the civil courts in respect of pending cases, expressly or impliedly. On the other hand, in the facts of the present case, it needs to be highlighted again that the respondents had not only sublet the premises but had not paid rent for a period of 14 years. His defence was struck off by the civil court and ultimately the suit was even decreed. It is only during the pendency of the appeal that the notification was issued covering the area where the suit premises are situate under the Rent Act. It will be travesty of justice if the appellant landlords are deprived of the fruits of the said decree." **Shankarlal Nadani vs. Sohanlal Jain, AIR 2022 SC 1813**

Registration Act, 1908

Ss 17(1)(e), 17(1)(b) and 17(2)(v) of Registration Act, 1908: Award or document providing for effectuating a division of joint family properties in the future, held, fell under S. 17(2)(v) and was thus exempt from compulsory registration.

Test in such a case is whether document/award itself creates an interest in a specific immovable property or merely creates a right to obtain another document of title. If a document/award does not by itself create a right or interest in immovable property, but merely creates a right to obtain another document, which will, when executed create a right in the person claiming relief, the former document does not require registration and is accordingly admissible in evidence.

Civil Procedure Code, 1908-S. 11-Res judicata - Wrong decision/ Erroneous decision - Earlier decision of court rendered on remand allegedly being erroneous/beyond scope of the remand, on the issue of partition between the parties held, would operate as res judicata as the same could be superseded only through appeals to higher tribunals or courts or through review, if provided by law. **K. ArumugaVelaiah v. P.R. Ramasamy and another, (2022) 3 SCC 757**

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013

Land Acquisition and Requisition - Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 -S. 101-A and Ss. 24 and 101-Denotification - of land in public interest if it becomes unviable or non-essential under S. 101 - Applicability to land acquired or sought to be acquired under Land Acquisition Act, 1894, in State of Haryana as per S. 101-A- Nature and extent of right of landowner under S. 101-A and its correlation with provision of lapsing under S. 24. **Raghubir Singh and another v. State of Haryana and others, (2022) 4 SCC 728**

Service Law

Service Law - Reinstatement/Back Wages/Arrears Reinstatement - Entitlement to-Principles summarized with back wages

Wrongful termination - Entitlement to back wages Denial of back wages to appellant CA, whose termination was found unjustified Impropriety

Held, entitlement to back wages and quantum thereof depend on facts of each case - Where employee is visited with illegal termination or termination actuated by malice, he would be entitled to back wages - Effort of Court must be to restore status quo which is appropriate in facts of each case - Nature of charges, reason for termination and question as to whether employee was gainfully employed elsewhere would need to be considered by Court - Reason given by High Court while denying back wages to appellant viz. "he had not worked during said period" unsustainable - Appellant CA earning some amount while doing account related work during the period - No justification for termination of services of appellant - Appellant awarded 1 Rs 80 lakhs as back wages for period of termination to be paid within stipulated time. **Pradeep S/O Rajkumar Jain v. Manganese Ore (India) Limited, (2022) 3 SCC 683**

Respondent employees granted option to become member of Pension Scheme introduced w.e.f. 1-4-1989 by amending R. 15(ii) of the 1978 Rules, in terms whereof benefit accorded to optees continuously up to 2010, where after it was discontinued on ground that Scheme had become unviable because of financial constraints and consequently R. 15(ii) deleted.

Articles 14 & 16of Constitution of India: Legitimate Expectation and Vested/Accrued rights: held that rules governing promotion, seniority, retirement age, etc. operate in future and hence, person entering service has legitimate expectation that they would be made applicable at appropriate stage and any amendment made thereto would also operate in future. On other hand, vested/accrued rights are existing rights and any amendment made thereto to detriment of employee violative of Arts. 14 and 16 of the Constitution. **Punjab State Cooperative Agricultural Development Bank Limited v. Registrar, Cooperative Societies and others, (2022) 4 SCC 363**

Scope of Article 226 of Constitution of India: Interference with findings of fact- Enquiry Officer finding charges proved against appellant. High Court refraining from reappreciating evidence and/or interfering with findings of enquiry officer which were accepted by disciplinary authority. It was held that the High Court was justified in doing so in exercise of jurisdiction under Art. 226.

Promotion - Entitlement to - After removal from service/compulsory retirement- Almost simultaneous/ concurrent challenge to removal from service and seeking of mandamus for grant of promotion in independent writ petitions - Direction in earlier round of litigation to employer to consider case for promotion on basis of ACRS of previous years, also standing. **Umesh Kumar Pahwa v.Board of Directors UttarakhandGramin Bank and others, (2022) 4 SCC 385**

Pension Qualifying period/service: Though it is settled law that the Rules applicable in matters of determination of pension are those which are in force at the time of retirement, but, held, that does not mean that employer can depart from this principle arbitrarily and confer benefit of Rules in force at the time of appointment, for computation of pension upon one employee and deny the same benefit to another employee who is similarly situated. **Dr. G. Sadasivan Nair v. Cochin University of Science and Technology Represented by its Registrar and others, (2022) 4 SCC 404**

Promotion - Entitlement to - Appellants promotedas Assistant Director (Official Language) on ad hoc/officiating basis during years 1993-95 and 2000- Validity of High Court by impugned judgment recalling judgment dt. 4-11-2011 affirming order of Tribunal directing promotion of appellants in accordance with the 2002 Rules on ground that in Mishri Lal, (2011) 14 SCC 739, it was held that the 2002 Rules were not implemented. **Medini C. and others v. Bharat Sanchar Nigam Limited and others, (2022) 4 SCC 562**

Retirement/Superannuation - Delay in payment of retrial benefits and entitlement to interest. It was held that where there is delay in paying retirement dues to retired employee, for no fault of his, he is entitled to interest on delayed payment. **Dr A. Selvaraj v. C.B.M. College, (2022) 4 SCC 627**

Compulsory Retirement: Not punitive, stigmatic or implying any suggestion of misbehaviour but passed in public interest on basis of subjective satisfaction of Government. Order of compulsory retirement, has to be passed on basis of entire service record, though recent reports carry their own weight. Further held, even uncommunicated adverse remarks can be considered. it was held that courts would not interfere with exercise of power of compulsory retirement, if the same has been done bona fide and on the basis of material available on record.

Thus, held, High Court gravely erred in ruling that merely because there were positive ACRS for some period and a promotion was also granted, that all negative ACRS and penalties

imposed prior to the date of promotion, and uncommunicated adverse remarks were to be ignored. **Central Industrial Security Force v. HC (GD) Om Prakash, (2022) 5 SCC 100**

Promotion Criteria/Eligibility: Seniority-cum merit -Manner in which said criterion is to be applied - Merit- What is -Unblemished service record - Relevance - Held, for promotion, despite difficulty in encapsulating parameters for "merit", unblemished service record of employee could be significant marker- Marred service record, though not an insurmountable bar, must carry consequences, and could be a comparative disadvantage in promotion for selection post.

R. 5-B(8) read with Annexure E of the 1937 Rules envisaging post of Office Superintendent to be "selection post" and criterion for promotion being "seniority-cum-merit" Promotion to post of Office Superintendent in Cantonment Board - Matters to be considered for determining inter se seniority

On facts held, appellant's suitability for promotional post which was a selection post was attributable to her merit and inter se seniority since she had a blemish free service record and was drawing higher pay scale than R-3 in feeder category at the relevant time

Service Law - Promotion-Criteria/Eligibility- Seniority-cum merit -Principles for application of said criterion-Explained through case –law. **Rama Negi v. Union of India and others, (2022) 5 SCC 150**

Service Law - Regularization - Entitlement to regularization - Respondents appointed on contractual basis for period of 11 months (which was continued from time to time), on fixed salary for temporary project - Their employment was continued based on interim order of High Court

Held, respondents were appointed on temporary unit which was not regular establishment and posts on which they were appointed and continued to work were not sanctioned posts-Hence, impugned judgment directing State to consider cases of respondents for regularization sympathetically and if necessary, by creating supernumerary posts, held, unsustainable and without jurisdiction-Further held, fact that respondents continued for 17 long years inconsequential since they continued pursuant to interim order passed by High Court which period needs to be excluded

Constitution of India - Art. 226- Power of High Court to grant relief in the "peculiar facts and circumstances, which is not to be treated as a precedent" Unavailability of - Held, no such power is available to the High Court under Art. 226 and such direction cannot be issued in exercise of jurisdiction under Art. 226. **State of Gujarat and others v. R.J. Pathan and others, (2022) 5 SCC 394**

Specific Relief Act

S. 20—Specific performance—Entitlement—Agreement for sale—Case of plaintiff that there was mortgage over suit property

The present appeal involves a suit for specific performance of an agreement to sell the suit property between the appellants and respondent. The core of the dispute arising from the suit seeking the relief of specific performance under the Specific Relief Act is whether the respondent-plaintiff has performed or has always been „ready and willing‟ to perform his obligations under the contract.

Section 16 of the Specific Relief Act provides certain bars to the relief of specific performance. These include, inter alia, a person who fails to aver and prove that he has performed or has always been „ready and willing‟ to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented and waived by the defendant. In JP Builders v. A Ramadas Rao9, a two-judge Bench of this Court observed that Section 16(c) mandates „readiness and willingness‟ of the plaintiff and is a condition precedent to obtain the relief of specific performance. The Court held:

"25. Section 16(c) of the Specific Relief Act, 1963 mandates "readiness and willingness" on the part of the plaintiff and it is a condition precedent for obtaining relief of grant of specific performance. It is also clear that in a suit for specific performance, the plaintiff must allege and prove a continuous "readiness and willingness" to perform the contract on his part from the date of the contract. The onus is on the plaintiff.

[…]

27. It is settled law that even in the absence of specific plea by the opposite party, it is the mandate of the statute that the plaintiff has to comply with Section 16(c) of the Specific Relief Act and when there is non-compliance with this statutory mandate, the court is not bound to grant specific performance and is left with no other alternative but to dismiss the suit. It is also clear that readiness to perform must be established throughout the relevant points of time. "Readiness and willingness" to perform the part of the contract has to be determined/ascertained from the conduct of the parties." (emphasis supplied)

The Court further observed that "readiness‟ refers to the financial capacity and "willingness‟ refers to the conduct of the plaintiff wanting the performance.

Similarly, in His Holiness Acharya Swami Ganesh Dassji v. Sita Ram Thapar, (1996) 4 SCC 526, a two-judge Bench of this Court observed that „readiness‟ means the capacity of the plaintiff to perform the contract which would include the financial position to pay the purchase price. To ascertain „willingness‟, the conduct of the plaintiff has to be properly scrutinised. The Court noted:

"2. There is a distinction between readiness to perform the contract and willingness to perform the contract. By readiness may be meant the capacity of the plaintiff to perform the contract which includes his financial position to pay the purchase price. For determining his willingness to perform his part of the contract, the conduct has to be properly scrutinised. […] The factum of readiness and willingness to perform the plaintiff's part of the contract is to be adjudged with reference to the conduct of the party and the attending circumstances. The court may infer from the facts and circumstances whether the plaintiff was ready and was always ready and willing to perform his part of the contract. The facts of this case would amply demonstrate that the petitioner/plaintiff was not ready nor had the capacity to perform his part of the contract as he had no financial capacity to pay the consideration in cash as contracted and intended to bide for the time which disentitles him as time is of the essence of the contract." (emphasis supplied)

The precedents of this Court indicate that the plaintiff must establish that he was „ready and willing‟ to perform the contract. In this regard, the conduct of the plaintiff must be consistent.

In evaluating whether the respondent was ready and willing to perform his obligations under the contract, it is not only necessary to view whether he had the financial capacity to pay the balance consideration, but also assess his conduct throughout the transaction.

In the context of the discretion under Section 20 of the Specific Relief Act, several decisions of this Court have considered whether it is appropriate to direct specific performance of a contract relating to the transfer of immovable property, especially given the efflux of time and the escalation of prices of property. In Satya Jain v. Anis Ahmed Rushdie, (2013) 8 SCC 131, this Court held:

"39. The long efflux of time (over 40 years) that has occurred and the galloping value of real estate in the meantime are the twin inhibiting factors in this regard. The same, however, have to be balanced with the fact that the plaintiffs are in no way responsible for the delay that has occurred and their keen participation in the proceedings till date show the live interest on the part of the plaintiffs to have the agreement enforced in law.

40. The discretion to direct specific performance of an agreement and that too after elapse of a long period of time, undoubtedly, has to be exercised on sound, reasonable, rational and acceptable principles. The parameters for the exercise of discretion vested by Section 20 of the Specific Relief Act, 1963 cannot be entrapped within any precise expression of language and the contours thereof will always depend on the facts and circumstances of each case. The ultimate guiding test would be the principles of fairness and reasonableness as may be dictated by the peculiar facts of any given case, which features the experienced judicial mind can perceive without any real difficulty. It must however be emphasised that efflux of time and escalation of price of property, by itself, cannot be a valid ground to deny the relief of specific performance. […]

41. The twin inhibiting factors identified above if are to be read as a bar to the grant of a decree of specific performance would amount to penalising the plaintiffs for no fault on their part; to deny them the real fruits of a protracted litigation wherein the issues arising are being answered in their favour." (emphasis supplied) In directing specific performance of the agreement, this Court in Satya Jain (supra) held that sale deed must be executed for the current market price of the suit property.

In Nirmala Anand v. Advent Corporation (P.) Ltd. and Others, (2002) 8 SCC 146, a three- judge Bench of this Court observed that in case of a phenomenal increase in the price of the land, the Court may impose a reasonable condition in the decree such as payment of an additional amount by the purchaser.

True enough, generally speaking, time is not of the essence in an agreement for the sale of immoveable property. In deciding whether to grant the remedy of specific performance, specifically in suits relating to sale of immovable property, the courts must be cognizant of the conduct of the parties, the escalation of the price of the suit property, and whether one party will unfairly benefit from the decree. The remedy provided must not cause injustice to a party, specifically when they are not at fault. In the present case, three decades have passed since the agreement to sell was entered into between the parties. The price of the suit property would undoubtedly have escalated. Given the blemished conduct of the respondent-plaintiff in indicating his willingness to perform the contract, we decline in any event to grant the remedy of specific performance of the contract. However, we order a refund of the consideration together with interest at 6% per annum. **Shenbagam vs. K.K. Rathinavel, AIR 2022 SC 1275**

S. 37—Injunction—Grant of— Plaintiffs, licensee were permitted to stay in old age home subject to certain payments to meet necessary expenses of food and minor medical care

The issue required to be examined herein is that what is the status of the inmates in the old age home, are they licensee and/or they have a right to stay in the old age home for the lifetime as a matter of right.

Law recognizes three types of possession. One as that of an owner, including co-owners; second as a tenant, when a right is created in the property; and thirdly permissive possession, the possession which otherwise would be illegal or that of as a trespasser.

97. Principles of law which emerge in this case are crystallised as under:

(1) No one acquires title to the property if he or she was allowed to stay in the premises gratuitously. Even by long possession of years or decades such person would not acquire any right or interest in the said property.

(2) Caretaker, watchman or servant can never acquire interest in the property irrespective of his long possession. The caretaker or servant has to give possession forthwith on demand.

(3) The courts are not justified in protecting the possession of a caretaker, servant or any person who was allowed to live in the premises for some time either as a friend, relative, caretaker or as a servant.

(4) The protection of the court can only be granted or extended to the person who has valid, subsisting rent agreement, lease agreement or licence agreement in his favour.

(5) The caretaker or agent holds property of the principal only on behalf of the principal. He acquires no right or interest whatsoever for himself in such property irrespective of his long stay or possession. **Samarpan Varishtha Jan Parisar vs. Rajendra Prasad Agarwal, AIR 2022 SC 2209**

Succession Act, 1925

Ss 372, 384 and 388(2)- Bengal, Agra and Assam Civil Courts Act, 1987-Section 21(1) (b) (As amended by U.P. Act No. 14 of 2015) – Succession certificate –Grant of – Appeal before High Court-Maintainability-In a case where powers under section 388(1) of Act, 1925 to grant or revoke succession certificate conferred to a Court inferior to that of a District Judge-Forum of appeal envisaged is District Judge and that is de hors valuation of petition – Therefore, appeal does not lie to High Court–Appeal directed to be returned to appellant for presentation before Court of competent jurisdiction – Ordered accordingly.

Thus, there is not an iota of doubt that once jurisdiction totake cognizance of and decide a petition for the grant of a succession certificate is invested by the State Government in a Court inferior in grade to the district judge, by virtue of the proviso to sub-section (2) of section 388of the Act, it is the District Judge alone who is competent to entertain and decide the appeal under section 384(1) of the Act. The appeal does not lie to this Court and the forum of appeal is not governed by the value of the subject-matter of succession, or the valuation of the succession petition. **Avadh Ram Shukla, Chela of Late Nirmal Kumar Panigrahi v. Viraganand, Chela of Sri Sita Ram Das Onkar Nath and another, 2022(155) RD 57 (All HC-Lucknow Bench.**

Trade Marks Act, 1999

Ss. 29(2)(c), 29(3) and 29(4)-Trade mark - Infringement of, when the mark is both identical to registered trade mark and used in relation to identical goods/services - S. 29(2) (c) and presumption under S. 29(3), as opposed to S. 29(4).

Ss. 29(2) and 29(4)-While S. 29(2) deals with those situations where the trade mark is identical or similar and the goods covered by such a trade mark are identical or similar, S. 29(4) deals with situations where though the trade mark is identical, the goods or services are not similar.

Intellectual Property Trade Marks Act, 1999 - S. 29(9) Infringement of trade mark Words "RENAISSANCE" and "SAI RENAISSANCE" Consideration of, as being both phonetically as well as visually similar

Trade Marks Act, 1999 S. 30(1) - Twin conditions for applicability of, namely: (i) the use of the impugned trade mark being in accordance with the honest practices in industrial or commercial matters, and (ii) that such a use is not such as to take unfair advantage of or be detrimental to the distinctive character or repute of the trade mark.

Interpretation of Statutes: Basic Rules Contextual/Holistic construction. Construction of a section is to be made of all parts together and it is not permissible to omit any part of it.

Intellectual Property - Trade Marks Act, 1999- Ss. 29 and 30 Acts of infringement of registered trademarks, and passing off. **Renaissance Hotel Holdings INC. v. B. Vijaya Sai and others, (2022) 5 SCC 1**

Transfer of Property Act, 1882

Ss. 41, 3—Powers-of-Attorney Act, 1882, Secs. 1A, 2—Transfer by ostensible owner

It is not always necessary for a plaintiff in a suit for partition to seek the cancellation of the alienations. There are several reasons behind this principle. One is that the alienees as well as the co− sharer are still entitled to sustain the alienation to the extent of the share of the co−sharer. It may also be open to the alienee, in the final decree proceedings, to seek the allotment of the transferred property, to the share of the transferor, so that equities are worked out in a fair manner.

As held by this Court in Church of Christ Charitable Trust and Educational Charitable Society vs. Ponniamman Educational Trust (2012) 8 SCC 706 the document should expressly authorize the agent, (i) to execute a sale deed; (ii) to present it for registration; and (iii) to admit execution before the Registering Authority.

It is a fundamental principle of the law of transfer of property that no one can confer a better title than what he himself has (Nemo dat quod non habet). The appellants sister did not have the power to sell the property to the vendors of the respondent. Therefore, the vendors of the respondent could not have derived any valid title to the property. If the vendors of the respondent themselves did not have any title, they had nothing to convey to the respondent, except perhaps the litigation. **Mrs. Umadevi Nambiar vs. Thamarasseri Roman Catholic Diocese Rep. By Its Procurator Devssia's Son Rev. Father Joseph, Kappil, AIR 2022 SC 1640**

S. 111(g)-: Cancellation of lease-Grounds for False affidavit filed re eligibility criteria for allotment of plot which was subject-matter of the lease concerned. It was held to be a legitimate ground of cancellation of lease. **New Okhla Industrial Development Authority v. Ravindra Kumar Singhvi (dead) through legal representatives, (2022) 5 SCC 591**

Wakf Act, 1995

Trusts and Trustees - Ss. 85 and 83 (as amendedby Amendment Act 27 of 2013) and Ss. 86 to 90, 93, 94(1), 4 to 7, 51 and 52 - Wakf Tribunal - Jurisdiction of Wakf Tribunal to determine "any dispute,question or other matter relating to a wakf and wakf property"- Scope of - Matters in respect of which jurisdiction of civil court is excluded, and mattersin respect of which jurisdiction of civil court is not excluded - Necessity of judicial determination of the same-Explained in detail - Whether subject property is disputed to be wakf property, or, admitted to be wakf property Relevance, if any

Suit for permanent injunction in respect of wakf property, and power to issue temporary injunctions - Whether subject property is disputed to bewakf property, or, admitted to be wakf property - Proper forum - Held, isWakf Tribunal and not civil court

Held, examination of remedies under the Wakf Act, 1995 indicates that jurisdiction of civil court is not totally excluded-The 1995 Act makes a specific reference to court/civil court also in certain places - Ss. 86, 90 and 93 make specific reference to "court" S. 68(6) goes a step further by making a reference to "civil court" Thus, on a cumulative reading of various provisions of the 1995 Act, held, bar of jurisdiction of civil court under the 1995 Act is not total and omnipotent and that there may be cases which may still be entertained by civil courts - Further held, question of bar of jurisdiction of the civil court, has been left for judicial determination

Trusts and Trustees - Wakf Act, 1995-Ss. 85 and 83 (as amendedby Amendment Act 27 of 2013) and Ss. 86 to 90, 93, 94(1), 4 to 7, 51 and 52 - Major changes by brought about by Act 27 of 2013- Explained

Some of the said major changes are as follows-First, it expanded the jurisdiction of Wakf Tribunal even to cover landlord-tenant disputes and the rights and obligations of lessor and lessee - Second, the Amendment Act enlarged the bar of jurisdiction, to cover even Revenue Courts and other authorities- It is relevant to note that the words "eviction of tenant or determination of rights and obligations of the lessor and the lessee of such property" were inserted in S. 83(1), after the words "wakf property", by Amendment Act 27 of 2013- Similarly, the words, "civil court" were substituted by the words "civil court, Revenue Court and other authority", in S. 85, by Amendment Act 27 of 2013

Thirdly, by Act 27 of 2013 the words, "any person interested" were substituted by the words, "any person aggrieved", meaning thereby that even a non-Muslim is entitled to invoke the jurisdiction of the Tribunal-Due to the substitution of the words "any person aggrieved", Act 27 of 2013 has deleted the Explanation under S. 6(1)

Trusts and Trustees - Wakf Act, 1995- Ss. 6, 7 and 85 - Bar on jurisdiction of civil court under Ss. 6 and 7 distinguished from bar under S. 85. **Rashid Wali Beg v. FaridPindari and others, (2022) 4 SCC 414**

U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986

Ss. 2(c), 3—Quashing of proceedings—Gangster—Even a single crime committed by 'Gangster' is sufficient to prosecute such 'gang' member

The short question which is posed for the consideration of this Court is, whether, a person against whom a single FIR/charge sheet is filed for any of the anti-social activities mentioned in section 2(b) of the Gangsters Act, 1986 can be prosecuted under the Gangsters Act. In other words, whether a single crime committed by a Gangster is sufficient to apply the Gangsters Act on such members of a Gang.

All provisions of Gangsters Act, 1986 are to ensure that the offences under the Gangsters Act should be given preference and should be tried expeditiously and that too, by the Special Courts, to achieve the object and purpose of the enactment of the Gangsters Act.

Now so far as the main submission on behalf of the accused that for a single offence/FIR/ charge sheet with respect to any of the anti- social activities, such an accused cannot be prosecuted under the Gangsters Act, 1986 is concerned, on a fair reading of the definitions of Gang and Gangster under the Gangsters Act, 1986, it can be seen that a Gang is a group of one or more persons who commit/s the crimes mentioned in the definition clause for the motive of earning undue advantage, whether pecuniary, material or otherwise. Even a single crime committed by a Gang is sufficient to implant Gangsters Act on such members of the Gang. The definition clause does not engulf plurality of offence before the Gangsters Act is invoked.

A group of persons may act collectively or anyone of the members of the group may also act singly, with the object of disturbing public order indulging in anti-social activities mentioned in Section 2(b) of the Gangsters Act, who can be termed as Gangster. A member of a Gang acting either singly or collectively may be termed as a member of the Gang and comes within the definition of Gang, provided he/she is found to have indulged in any of the anti-social activities mentioned in Section 2(b) of the Gangsters Act.

On a fair reading of the definitions of Gang contained in Section 2(b) and Gangster contained in Section 2(c) of the Gangsters Act, a Gangster means a member or leader or organiser of a gang including any person who abets or assists in the activities of a gang enumerated in clause (b) of Section 2, who either acting singly or collectively commits and indulges in any of the anti-social activities mentioned in Section 2(b) can be said to have committed the offence under the Gangsters Act and can be prosecuted and punished for the offence under the Gangsters Act. There is no specific provision under the Gangsters Act, 1986 like the specific provisions under the Maharashtra Control of Organized Crime Act, 1999 and the Gujarat Control of Terrorism and Organized Crime Act, 2015 that while prosecuting an accused under the Gangsters Act, there shall be more than one offence or the FIR/charge sheet. As per the settled position of law, the provisions of the statute are to be read and considered as it is. Therefore, considering the provisions under the Gangsters Act, 1986 as they are, even in case of a single offence/FIR/charge sheet, if it is found that the accused is a member of a Gang and has indulged in any of the anti-social activities mentioned in Section 2(b) of the Gangsters Act, such as, by violence, or threat or show of violence, or intimidation, or coercion or otherwise with the object of disturbing public order or of gaining any undue temporal, pecuniary, material or other advantage for himself or any other person and he/she can be termed as Gangster within the definition of Section 2(c) of the Act, he/she can be prosecuted for the offences under the Gangsters Act. Therefore, so far as the Gangsters Act, 1986 is concerned, there can be prosecution against a person even in case of a single offence/FIR/charge sheet for any of the anti-social activities mentioned in Section 2(b) of the Act provided such an anti-social activity is by violence, or threat or show of violence, or intimidation, or coercion or otherwise with the object of disturbing public order or of gaining any undue temporal, pecuniary, material or other

advantage for himself or any other person. **Shraddha Gupta vs. State of U.P., AIR 2022 SC 2062**

U.P. Motor Vehicles Taxation Act, 1997

U.P. Motor Vehicles Taxation Act, 1997 - Ss. 2(h), 4, 9, 10, 12 and 20 - Transport vehicle:Liability to pay advance tax taking possession of transport from purchaser, whether liable to pay advance tax and/or claim exemption as financier not putting vehicle to use. Onus of financier in possession to comply with procedural requirements for claiming exemption and/or refund for not putting the vehicle to use. **Mahindra and Mahindra Financial Services Limited v. State of Uttar Pradesh and others, (2022) 5 SCC 525**

Words and Phrases

"Public Duty" – Meaning off –

"Public duty" is defined under Section 2(b) of the PC Act. Evidently, the language of Section 2(b) of the PC Act indicates that any duty discharged wherein the State, the public or community at large has any interest is called a public duty. **State of Gujarat v. Mansukhbhai Kanjibhai Shah, (2022)2 SCC (Cri.) 61.**

"Public Servant" – Meaning off –

The present Act (the 1988 Act) envisages widening of the scope of the definition of the expression "public servant". It was brought in force to purify public administration. The legislature has used a comprehensive definition of "public servant" to achieve the purpose of punishing and curbing corruption among public servants. Hence, it would be inappropriate to limit the contents of the definition clause by a construction which would be against the spirit of the statute. **State of Gujarat v. Mansukhbhai Kanjibhai Shah, (2022)2 SCC (Cri.) 61.**

"Strict Interpretation" – Meaning of –

Strict interpretation does not necessarily mean literal interpretation in all cases, rather the interpretation should have regard to the genuine import of the words, taken in their usual sense Words and Phrases "Strict - interpretation".

"Small quantity" or "Commercial quantity" – Meaning of –

Determining whether the quantity is "small quantity" or "commercial quantity" in relation to narcotic drugs or psychotropic substances in a mixture with one or more neutral substance(s) Weight of entire materials/mixture i.e. including the weight of the neutral material, held, is to be considered for ascertainment of whether the quantity is "small quantity" or "commercial quantity". **Hira Singh v. Union of India, (2022)1 SCC (Cri.)733.**

"Empowerment" – Meaning of –

"Empowerment" spoken of, is jurisdiction of Magistrate to proceed with complaint S. 460 cannot, and does not, apply to cases, in which S. 195 is involved, inasmuch as S. 195 is exception to S. 190, and is absolute bar to taking cognizance of offences mentioned therein, unless drill followed in S. 340 is observed. **Bandekar Brothers (P) Ltd. v. Prasad Vassudev Keni and Others, (2022)1 SCC (Cri.)626.**

Part 2 – High Court

Arbitration and Conciliation Act, 1996

Ss. 2(1)(e), 11, 29-A.

The present application has been filed for extending the time for arbitral award which has been objected by the respondent on the ground of maintainability. The sole question, which arises for consideration is:-

> "whether the application moved under Section 29A of the Act for extending the time for arbitral award is maintainable before this Court or the principal Civil Court as defined under Section 2(1)(e) of the Act."

From the reading of Section 2(1)(e) it is clear that in case of an arbitration other than international commercial arbitration, the principal Civil Court of original jurisdiction or the High Court, which exercises its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration, shall be the court.

While, section 11 provides for power of appointment of arbitrators. Sub-section (2) provides that parties are free to agree on a procedure for appointing the arbitrator or arbitrators. It is where the parties failed to arrive in the appointment of arbitrators that the power has been vested with the High Court with the appointment of arbitrators for domestic arbitration and the Supreme Court in the matters of international commercial arbitration. Sub-sections (4), (5) and (6) read together provide the manner in which these two superior courts step in, in the appointment of arbitrator.

Section 29-A is a substantive provision which was inserted w.e.f. 23.10.2015 for speedy disposal of cases relating to arbitration with the least Court intervention. The statement of objects and reasons to the amending Act No.3 of 2016 provided that as India had been ranked as 178 out of 189 nations in the world in contract enforcement, it is high time that urgent steps are taken to facilitate quick enforcement of contracts, easy recovery of monetary claims and award of just compensation for damages suffered and reduce the pendency of cases in courts and hasten the process of dispute resolution through arbitration, so as to encourage investment and economic activity.

Sub-section (1) of Section 29A provides for the period within which the arbitration proceedings are to be completed i.e. 12 months. Further sub-section (3) of Section 29A takes care that in case the award is not made as per sub-section (1), by the consent of the parties, the period can be extended for further six months.

The Act puts a cap upon extension beyond period of eighteen months and sub-section (4) of Section 29A provides that in case the award is not made within the extended period, it is only the Court on the application of the parties may extend the period. Sub-section (6) of Section 29A is of great relevance as it provides the power to the Court to substitute one or all the arbitrators and the arbitral proceedings shall continue from the stage already reached and on the basis of evidence and material already on record.

Thus, the power to substitute the arbitrator as mandated in sub-section (6) of Section 29A vest only with the Court. This provision cannot be read in isolation but with Section 11, which provides for appointment of arbitrator.

Once the appointment of arbitrator or arbitral Tribunal has been made by the High Court or the Supreme Court exercising power under sub-sections (4), (5) and (6) of Section 11 then the

power to substitute the arbitrator or the Arbitral Tribunal only vest with the said appointing authority i.e. High Court or Supreme Court, as the case may be.

The argument raised from the side opposite that the word "Court' occurring in Section 2(1)(e) means the principal Civil Court and not the High Court cannot be accepted, as once the appointment was made by the High Court exercising power under Section 11, the power to substitute an arbitrator cannot vest under sub-section (6) of Section 29A with the principal Civil Court. **Indian Farmers Fertilizers Cooperative Ltd. vs. M/s. Manish Engineering Enterprises, 2022(4) ADJ 162 (Alld.H.C.)**

Central Goods and Services Tax, 2017-Sections 75(4) and 107

(i) Whether opportunity of personal hearing is mandatory under Section 75(4) of the CGST/UPGST Act 2017?

Liberty is granted to the respondents to pass an order afresh in accordance with law, after affording opportunity of personal hearing to the petitioner.

A copy of this order be sent by the Registrar General of this Court to the Commissioner. Commercial Tax U.P. Lucknow who shall ensure that principles of natural justice as contemplated under Section 75(4) of the CGST/UPGST Act, 2017 be followed by Proper Officers/ Assessing Authorities in the State of Uttar Pradesh. **Bharat Mint and Allied Chemicals vs. Commissioner Commercial Tax and others, 2022(4) ADJ 75 (DB) (Alld.H.C.)**

Civil Procedure Code, 1908

S. 30 and O. XV, R. 5-Striking off defense-Application for-Defense struck off

In the instant case, it is admitted position that defendant/revisionist has deposited the amount not before the Court, where the suit was instituted, but before another Court under the proceeding of S. 30 (1) of U.P. Act No. 13 of 1972-Striking off defense proper. **Satya Narayan Bhagat v. Pitambar Dutt Pandey, 2022(1) ARC 804(Alld.).**

S 100, Order XXIII, Rule 3, Order XXXII, Rule 7.

Where a compromise entered into in a suit by parties is denied by one of them on the ground of fraud or non est factum, is it exclusively the Court which passed the compromise decree that an set it aside and not another Court in a separate suit?

This Substantial Question of Law is answered in the affirmative in terms that in a compromise entered into in a suit by parties, that is denied by one of them on the ground of fraud or non est factum, it is the Court that passed the decree based on the compromise alone that can set it aside on an application made to it; a compromise decree cannot be set aside in a separate suit filed by the party in denial. **Smt. Ramwati vs. Smt. Shakuntala, 2022(5) ADJ 703(All.HC).**

S 100 – Second appeal – Suit for cancellation of sale deed regarding agricultural land – jurisdiction of Civil Court – Where a suit for cancellation of sale deed in respect of an agricultural property does not require and declaration of rights – Same is cognizable by Civil Court – But where cancellation would involve, declaration of rights –The such a suit for cancellation would not be maintainable – Parties must necessarily first get their rights declared from Revenue Court – However, issue of jurisdiction is a mixed question of law and facts –

Defendants raised question regarding maintainability of suit on ground of want of jurisdiction of Civil Court-But Trial Court decided this issue against defendants – Defendant did not prefer appeal nor filed any cross-appeal or raised any objection regarding this issue decided by Trial Court – Therefore, not open for defendants to raise issue of jurisdiction – Therefore, First Appellate Court rightly decreed suit of plaintiff.

As far as the law regarding the maintainability of the suit in respect of cancellation of a sale-deed relating to an agricultural property is concerned, the same has been well-settled by the Apex Court in the case of Sri Ram and another v.Ist Additional District Judge and others, 2001 (3) SCC 24; 2001 (92) RD 241 (SC) so also in the case of Kamla Prasad and others v. Krishna Kant Pathak and others, 2007 (102) RD 378 (SC). The Apex Court while considering the aforesaid issue has noticed the relevant law and the same has also been considered by this Cour5t in the case of Jai Prakash Singh v.Bachchu Lal and others, 2019 SCC Online All 3522 and thereafter succinctly it can be noticed, as under, that where a suit for cancellation of a sale deed in respect of an agricultural property does not require any declaration of rights, the same is cognizable by the Civil Court but where the cancellation would involved, the declaration of rights, then such a suit for cancellation would not be maintainable and the parties must necessarily first get their rights declared from the Revenue Court. The relevant portion of the decision of the Apex Court in the case of Kamla Prasad (supra) is being reproduced herein for ready reference:-

"……14. In this connection, the learned Counsel for the appellant rightly relied upon a decision of this Court in Shri Ram v. Ist ADJ, (2001) 3 SCC 24. In Shri Ram, (2001) 3 SCC 24 A, the original owner of the land sold it to B by a registered sale deed and also delivered possession and the name of the purchaser was entered into revenue records after mutation. According to the plaintiff, the sale deed was forged and was liable to be cancelled. In the light of the above fact, this Court held that it was only a Civil Court which could entertain, try and decide such a suit. The Court, after considering relevant case law on the point, held that where a recorded tenure holder having a title and in possession of property files a suit in Civil Court for cancellation of sale deed obtained by fraud or impersonation could not be directed to institute such suit for declaration in Revenue Court, the reason being that in such a case, prima facie, the title of the recorded tenure holder is not under a cloud. He does not require a declaration of his title to the land.

The Court, however, proceeded to observe: (Shri Ram case, (2001) 3 SCC 24) –

"The position would be different where a person not being a recorded tenure holder seeks cancellation of sale deed by filing a suit in the Civil Court on the ground of fraud or impersonation. There necessarily the plaintiff is r3equired to seek a declaration of his title and, therefore, he may be directed to approach the Revenue Court, as the sale deed being void has to be ignored for giving him relief for declaration and possession".

Apply the principles to the present case at hand, it would first and foremost be noted that the defendants in their written statement had raised the question regarding the maintainability of the suit, however, a specific issue was framed by the Trial Court. Issue NO. (v) has been decided by the Trial Court against the defendants by recording that the defendants had led no evidence in respect of the aforesaid issue. It is also to be noticed that while the plaintiffs preferred the Regular Civil Appeal, the defendants did not file any cross-appeal or raise any objection regarding e No. (v) decided by the Trial Court against the defendants. **Gomti Prasad and other v. Shiv Murat and others, 2022 (155) RD 229 – Alld. HC-Lucknow Bench.**

S 115, Order I, Rule 10, Order XXII, Rule 10 – Specific Relief Act, 1963 – Section 19 (b) – Impleadment application – Allowed by learned Trial Court-Applicants were to be impleaded as respondent No. 3 and 4 who were bona fide purchasers – Plaintiff had filed a suit for specific performance against defendant No. 1 and 2 (respondent Nos. 1 and 2) who were the owner of suit property – Instant revision by the plaintiff against the order impugned by Trial Court – Held, Court below allowed the impleadment application of the respondent Nos. 3 and 4as bona fide purchasers – In the sale –deed, the defendant Nos. 1 and 2 had not disclosed about the pendency of suit proceedings between plaintiff and them – Defendant No. 1 did not oppose the impleadment application and had also filed a suit for cancellation of sale deed which showed that there was no collusion between defendant Nos. 1 and 2 and defendant Nos. 3 and 4 – There was no interim order restraining the defendant Nos. 1 and 2 from alienating the property – A transfer pendente lite would not render the sale void, but only make it subservient to the result of the suit- The Court below had committed no error in allowing the impleadment application as the presence of pendents lite transferee was necessary for complete and effective adjudication of the suit – Revision dismissed.

In view of the law which has been discussed hereinabove and considering the scope of a revision under section 115, CPC in the light of the decision in the case of KesardeoChhamaria (supra) it cannot be said that the Court below has committed any jurisdictional error attracting Clauses (a) to (c) of section 115, CPC nor that the order if it was made in favour of the revisionist would not have disposed off the proceedings for impleadment nor that the order, impugned herein, if allowed to stand, would occasion a failure of justice or cause irreparable injury to the party against whom it is made. As already noticed, in the facts of the case, the presence of the transferee pendent lite is necessary for complete and effective adjudication of the suit and issues involved therein and the Court below has exercised its discretion in the matter, which does not require any interference under Article 115, CPC. **Anil Kumar Singh v. Pappu and other, 2022 (155) RD 379- Alld.HC-Lucknow Bench.**

Or 1, R. 10—Transfer of Property Act, Sec. 52—Impleadment of transferees pendente lite —In suit for specific performance—Validity

It is very well settled that section 52 of the Transfer of Property Act and the doctrine of lis pendens on which it is based do not operate to annul such transfers pendent lite, but, they operate to render the same subservient to the rights of the parties to a litigation. Such transfer is neither illegal nor void ab initio, but the subsequent purchaser is bound by the litigation between the parties to the suit. A reference may be made in this regard to the decision of the Supreme Court of India in the case of Thomson Press (India) Ltd. V. Nanak Builders & Investors (P.) Ltd., (2013) 5 SCC 397 (Paras 26 to 29). If such sale is in violation of any injunction or restraint order than the legal position may be different, but that is not the case here.

The doctrine of lis pendens applies only where the lis is pending before a court. Further pending the suit, the transferee is not entitled as of right to be made a party to the suit, though the court has a discretion to make him a party. But the transferee pendente lite can be added as a proper party if his interest in the subject-matter of the suit is substantial and not just peripheral. A transferee pendente lite to the extent he has acquired interest from the defendant is vitally interested in the litigation, where the transfer is of the entire interest of the defendant; the latter having no more interest in the property may not properly defend the suit. He may collude with the plaintiff. Hence, though the plaintiff is under no obligation to make a lis pendens transferee a party, under Order 22 Rule 10 an alience pendente lite may be joined as party. As already

noticed, the court has discretion in the matter which must be judicially exercised and an alliance would ordinarily be joined as a party to enable him to protect his interests. The court has held that a transferee pendente lite of an interest in immovable property is a representative-in-interest of the party from whom he has acquired that interest. He is entitled to be impleaded in the suit or other proceedings where his predecessor-in-interest is made a party to the litigation; he is entitled to be heard in the matter on the merits of the case."

We may also in this context refer to the decision of the Hon'ble Supreme Court of India in the case of Gurmit Singh Bhatia (supra) upon which great reliance was placed by learned counsel for the revisionist. The said decision has considered the three Judge Bench decision in the case of Kasturi v. Iyyamperumal and ors., (2005) 6 SCC 733. The Supreme court in the case of Kasturi (supra) had the occasion to consider the question - Whether in a suit for specific performance of a contract for sale of a property instituted by a purchaser against the vendor, a stranger or a third party to the contract claiming to have an independent title or possession over the contracted property is entitled to be added as a party-defendant in the suit ? In the said case the person seeking impleadment was claiming adversely to the claim of the vendor, meaning thereby he was setting up a title independent of the parties to the suit, therefore, the Supreme Court declined his claim as it would enlarge the scope of the suit which was a suit for specific performance to one which would become a suit for title viz.-a-viz. the parties thereto, however, the Supreme Court held that in that very context in no uncertain terms that a person who had purchased the contracted property from the vendor was a necessary party. In this context the Supreme Court considered the scope of Order I Rule 10 C.P.C., specifically sub-Rule (2) of order I Rule 10, C.P.C., which empowers the court to add a person who ought to have been joined or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit. The court opined as under:

"7. In our view, a bare reading of this provision, namely, second part of Order 1 Rule 10 sub-rule (2) CPC would clearly show that the necessary parties in a suit for specific performance of a contract for sale are the parties to the contract or if they are dead, their legal representatives as also a person who had purchased the contracted property from the vendor. In equity as well as in law, the contract constitutes rights and also regulates the liabilities of the parties. A purchaser is a necessary party as he would be affected if he had purchased with or without notice of the contract, but a person who claims adversely to the claim of a vendor is, however, not a necessary party. From the above, it is now clear that two tests are to be satisfied for determining the f question who is a necessary party. Tests are (1) there must be a right to some relief against such party in respect of the controversies involved in the proceedings; (2) no effective decree can be passed in the absence of such party."

A three Judge Bench of this court in the case of Kasturi (supra) has very categorically held, as quoted hereinabove, that necessary parties in a suit for specific performance of contract for sale are the parties to the contract or if they are dead, their legal representatives as also a person who had purchased the contracted party from the vendor. It has gone on to hold that "a purchaser is a necessary party, as he would be effected if he has purchased with or without notice of the contract".

Thus, a subsequent purchaser pendent lite is also covered under section 19, but not a person who is not claiming under the vendor, but are claiming against the title of the vendor. Clause (b) of section 19 has already been referred earlier. According to it, a transferee pendente lite who has purchased the property for value in good faith without notice of the original contract

is an exception to the person against whom relief of specific performance can be sought. This, therefore, is an aspect which will have to be seen in the suit proceedings for which presence of the respondent nos. 3 and 4 is necessary, especially as, they will be bound by the decree passed therein. **Anil Kumar Singh vs. Pappu, AIR 2022 All 90**

O.6, R. 17 – Rejection of Amendment application – Neither ingredients of O.6. R. 17 discussed nor any reasoning assigned while dismissing application – Validity of – Application dismissed without due application of mind and in cryptic manner is not proper.

Whenever, an application is filed by a party seeking amendment in the pleadings by way of O.6 R. 17, the duty of the Court is to see as to whether the ingredients mentioned in O. 6 R. 17 are satisfied and if yes, then whether due diligence has been exercised by the party seeking amendment. If the Court comes to the conclusion that the parameters which are contained in O. 6 R. 17 as also the factum of due diligence has been satisfactorily answered by a party, then ordinarily amendment in the pleadings, be it in the plaint or in the written statement, is allowed by the Court. Other factors which the Court has to take into consideration are as to whether the amendment being sought is necessary for the adjudication of the lis or the same is just an endeavour made by a party to fill up the lacunae in the pleadings. The Court has to see as to whether the facts which are being intended to be introduced, were existing at the time of filing of the suit and if yes, then what is the explanation as to why they were not introduced at the time of filing of the suit and if the pleadings which are intended to be introduced are on account of subsequent developments, then the Court has to see whether due diligence has been exercised by the party while coming to the Court seeking amendment in the pleadings. These findings are completely missing in the order of Trial Court. Trial Court has dismissed the application filed by the petitioners without due application of mind and in a cryptic manner. Neither the ingredients of Order 6, Rule 17 have been discussed in the order nor any reasoning has been assigned while dismissing the application as to why the prayer being sought by the plaintiffs could not have been allowed. By simply observing that a preliminary objection was taken by the defendants that at the time of final arguments, an amendment cannot be allowed or that the sale deed was hit by the principle of lis pendens, the duty cast upon the Court while deciding the application under O.6R.17 is not discharged. The mode and manner in which the application filed under O.6 R.17 stood decided by lower Court was erroneous. The writ petition is allowed by setting aside the order dismissing amendment application. **Gulsher and others v. Najar Ali Thru. L.Rs. and others, 2022 AIR CC 1457 (HP).**

O. VII Rule 11- Rejection of Plaint- Factors to be considered.

As observed and held by this Court in the case of Ram Prakash Gupta (supra), rejection of a plaint under Order VII Rule 11(d) CPC by reading only few lines and passages and ignoring the other relevant parts of the plaint is impermissible. In the said decision, in paragraph 21, it is observed and held as under:-

> "21. As observed earlier, before passing an order in an application filed for rejection of the plaint under Order 7 Rule 11(d), it is but proper to verify the entire plaint averments. The abovementioned materials clearly show that the decree passed in Suit No. 183 of 1974 came to the knowledge of the plaintiff in the year 1986, when Suit No. 424 of 1989 titled Assema Architect vs. Ram Prakash was filed in which a copy of the earlier decree was placed on record and thereafter he took steps at the earliest and filed the suit for

declaration and in the alternative for possession. It is not in dispute that as per Article 59 of the Limitation Act, 1963, a suit ought to have been filed within a period of three years from the date of the knowledge. The knowledge mentioned in the plaint cannot be termed as inadequate and incomplete as observed by the High Court. While deciding the application under Order 7 Rule 11, few lines or passage should not be read in isolation and the pleadings have to be read as a whole to ascertain its true import. We are of the view that both the trial court as well as the High Court failed to advert to the relevant averments as stated in the plaint."

From the aforesaid decision and even otherwise as held by this Court in a catena of decisions, while considering an application under Order VII Rule 11 CPC, the Court has to go through the entire plaint averments and cannot reject the plaint by reading only few lines/ passages and ignoring the other relevant parts of the plaint. **Sri Biswanath Banik and other vs. Smt. Sulanga Bose and anothers, 2022(40) LCD 801**

Or VIII, Rule 1 – Written statement – Closure of opportunity to file written statement – Legality – Trial Court never cautioned defendant/revisionist about the closure of opportunity of filing written statement – Directly closing same while rejecting his application praying for dismissal of suit – Since rules of procedure made to advance the cause of justice and not to defeat it – Therefore, opportunityto file written statement given to defendant/revisionist subject to payment of Rs. 25000/- as cost – Revision allowed.

Considering the above authorities, the overall facts and circumstances of the case and the fact that the trial court never passed any order cautioning the defendant/revisionist about the closure of his opportunity of filing a written statement and directly closing the same while rejecting his application, this Court is of the view that one opportunity should have been given t the defendant/revisionist to comply the mandate of Order VII< Rule 1, CPC. In the case of Robin Thapa (supra), the Apex Court permitted the defendant to contest the suit after depositing the cost in execution proceedings of a decree forspecific performance of a contract. The Apex Court in the case of Salem Advocate Bar Association, Tamil Nadu v. Union of India, AIR 2005 SC 3353, clearly held that the rules of procedure are made to advance the cause of justice and not to defeat it. Strict interpretation of Order VIII, Rule 1, CPC would defeat justice.

Accordingly, the impugned order dated 24.11.2017 passed by the court below is hereby set aside. The defendant/revisionist is provided one opportunity of filing his written statement within a period of two weeks from the date of this order subject to payment of Rs. 25000/- as cost for contesting the present proceedings before this Court for no fault on the part of plaintiffs/respondents before filing their written statement. The court below will accept the written statement and proceed with the suit in accordance with law only after payment of the cost of Rs. 25000/ to the plaintiffs/respondents. **Amit Kumar Singh v. Pushpa Devi and another, 2022 (155) RD 730-Alld. HC.**

O. 15, R. 5(1), (2) (U.P. Amendment) – Application for stricking off defence of tenant – On ground of failure to deposit monthly rent during course of suit – Rent not deposited for period of about five years – Effect of.

Under Order XV, Rule 5, CPC, in any suit by a lessor for the eviction of a lessee after the terms on of his tenancy, recovery of rent and damages for use and occupation, the defendant is allowed to deposit on or before the first hearing of the suit, the entire amount ad mitted by him to be due towards arrears of rent and damages for use and occupation with simple interest thereon

at the rate of 9% per annum. By the second part of sub-rule (1) of Rule 5 of Order XV, CPC, the provision obliges the defendant to deposit rent with the Court throughout the pendency of the suit regularly, month by month, within a week of the rent falling due. In the event of default in complying with either of the two requirements, that is to say, deposit of rent at the first date of hearing, or the regular monthly deposit within one week of accrual of rent, the tenant's defence is liable to be struck off. There is only one provision under which the Court can save the tenant's defence, and that is, the sub-rule (2) of Rule 5 of Order XV CPC. Under sub-rule (2) aforesaid, it is provided that the Court before making an order striking off defence may consider any representation made by the tenant, if it is made within ten days of the first hearing or within expiry of one week of the date of accrual of the monthly rent. It has been judicially opined now with much consistency that discretion with the Court to condone the delay in the case of deposit of rent etc. required to be made on the first date hearing is a time period of ten days reckoned from the date of first hearing, and in case monthly deposit of rent, a period of seven days from the date on which the rent falls due or accrues. Thus, in case of deposit of rent during the course of the suit, the Court has a period of seven days alone, during which it may exercise its discretion to condone the tenant's delay in depositing the rent. After passage of period of seven days from the date on which the monthly rent accrues, the Court would have no discretion in the matter. **Gomti Devi v. A.D.J.-I, Unnao and Others, 2022 AIR CC 1006 (All).**

Or XXI Rule 34- Decree for Execution of Document-Sale-deed executed in terms of draft sale-deed submitted by the decree holder without calling upon objections of judgment debtor and considered by the Execution Court- Validity- Held, not valid as being violative to the salutary provisions of Order 21 Rule 34 CPC.

We must notice here that the objections on behalf of the appellant to the execution petition are not be confused with his objections to the proposed sale deed. That the appellant may have raised contentions to the effect that the decree itself is in executable and it was found meritless, would not absolve the court of its duty to proceed with the matter of considering the draft sale deed and the objections thereto under the provisions of Order XXI Rule 34. Subsequent to the impugned order dated 30.05.2019, without objections being invited and considered, the sale deed dated 11.06.2019 came to be executed which was registered. Therefore, we are of the view that this approach of the court in the matter of executing the decree in question clearly contravenes the salutary provisions of Order XXI Rule 34.

In this case, the court is presented with a fait accompli. This is for the reason that putting the cart before the horse, as it were, without giving an opportunity to file objections to the draft sale deed, the order impugned was passed. The sale deed itself has been executed in terms of the draft sale deed without objections being called for and considered. Learned counsel for respondents points out that the case is taken up now to consider the objections by the court. The only course which is available to us is to direct the objections of the appellant to the draft sale deed to be considered. It is, however, pointed out by Mr. Tarun Gupta, learned counsel for the appellant, that the copy of the draft sale deed has not yet been served on the appellant.

In such circumstances, we are inclined to pass the following order:

The appeal is allowed. We set aside the impugned order. We direct that the execution court Civil Judge (Senior Division), Jhajjar shall hand over the copy of the draft sale deed produced by the respondents within a period of two weeks from the date of production of copy of this judgment before the execution court. The appellant will be free to file his objections to the

draft sale deed within a period of three weeks thereafter. Thereafter, after hearing the parties, a decision will be taken on the objections.

Needless to say, in case the sale deed which has been executed on the strength of the draft sale deed is found to be violative of the decree, it will necessarily be set aside, and thereafter, a fresh sale deed must be executed by the execution court. The entire process shall be completed within four months from the date copy of the judgment is produced before the court. **Rajbir vs. Suraj Bhan and another, 2022(40) LCD 1116**

Or XXI, Rules 35, 97 and 101.

The question which emerges for consideration is whether an application filed by a third party objector under Order 21 Rule 97-101 C.P.C. in execution proceedings, the same has to be mandatorily considered after framing of the issues and treating it to be a suit.

Thus, from the conjoint reading of Rule 35 of Order 21, Rule 36 of Order 21 and Rules 97 to 101 of Order 21, it culls out that Rule 35 Order 21 deals with delivery of possession of an immovable property to the decree-holder by delivery of actual physical possession and removing any person in possession who is bound by the decree, while Order 21 Rule 36 provides only for a symbolic possession where the tenant is in actual possession. While Order 21 Rule 97 conceives of cases where delivery of possession to the decree-holder is resisted by any person. “Any person”. “Any person” is wide enough to include even a person not bound by a decree or claiming right in the property on his own including that of a tenant including a stranger. Prior to 1976 Amendment, Rule 101 of Order 21 was different and by virtue of then Rule 103, a person was to file a suit for establishing his right, but post amendment one need not file suit even in such case as all disputes are to be settled by executing court itself finally under Rule 101 of Order 21 C.P.C.

Thus, from the conjoint reading of Rule 35 of Order 21, Rule 36 of Order 21 and Rules 97 to 101 of Order 21, it culls out that Rule 35 Order 21 deals with delivery of possession of an immovable property to the decree-holder by de livery of actual physical possession and removing any person in possession who is bound by the decree, while Order 21 Rule 36 provides only for a symbolic possession where the tenant is in actual possession. While Order 21 Rule 97 conceives of cases where delivery of possession to the decree-holder is resisted by any person. “Any person”. “Any person” is wide enough to include even a person not bound by a decree or claiming right in the property on his own including that of a tenant including a stranger. Prior to 1976 Amendment, Rule 101 of Order 21 was different and by virtue of then Rule 103, a person was to file a suit for establishing his right, but post amendment one need not file suit even in such case as all disputes are to be settled by executing Court itself finally under Rule 101 of Order 21 C.P.C.

Thus, from the reading of provisions of Order 21, Rule 97-101 C.P.C. and decisions rendered by Apex Court, it is clear that executing Court is not obliged to determine a question merely because the resistor or objector has raised it. The question which the executing Court is obliged to determine under Rule 101 must possess two adjuncts. Firstly, such question should have legally arisen between the parties and secondly, it must be relevant for consideration and determination between the parties. **Seth Daryablal Manik Lal Tadaiya and another vs. Siddh Gopal Kudariya and another, 2022(4) ADJ 386 (Alld.H.C.)**

Order XXI, Rules 97, 99 and 101 – Execution proceeding – Application claiming an independent right as an owner in possession of property by a person not a party to a decree

under execution – Maintainability – Not only decree-holder or a person dispossessed in the execution of a decree has a right to make an application to execution Court – But a person who is apprehending dispossession can also make an application to Court – Incumbent upon execution Court to decide=-/adjudicate application/objection of that person to find out his rights over disputed property –Thus, execution Court committed error in rejecting the application of petitioner as not maintainable – Impugned order set aside – Petition allowed –Matter remitted back to executing Court to decide application/objection of petitioner afresh.

In viewof the aforesaid, the issue for determination in the present case is that "whether in absence of an application of the decree-holderbefore the Execution Court complaining/informing to the Court about the obstruction/resistance made by a person in obtaining the possession of the property in decree, the application by a person claiming himself to be in possession of the property in issue/dispute under Order XXI, Rule 97, CPC would be maintainable?" In other words, as to "whether a person in possession of the property claiming independent right as an owner in possession, not a party to a decree under execution could resist such decree by seeking adjudication of his objection under Order XXI, Rule 97, CPC?"

In view of the law declared by the Apex Court, it is settled that whenever an obstruction or resistance is made by a person whomsoever in the execution of the decree by the decree-holder, the Execution Court is under obligation to adjudicate the right, title or interest of the obstructionist/resister in the manner prescribed under Rules 98 to 103 of Order XXI, CPC which is a complete Code in itself and it provides for the concerned parties to have their grievanceonceand for all finally resolved in the execution proceedings. **Salik Ram Singh @ Salik Ram v. Additional District Judge, Court No. 3, Gonda and others, 2022 (155) RD 601 – Alld. HC – Lucknow Bench.**

Or 26, Rr. 13, 14—Report of Advocate Commissioner—Rejection of—Validity—Suit for partition-

At the outset, Order XXVI Rule 13 of the Code of Civil Procedure contemplates as to how in a preliminary decree for partition, the Commission can be effected for partition of immovable property. The law is no more res integra on the aspect as to how Commission is to be effected in respect of partition of immovable property. There can be no hard and fast rule laid down while effecting partition of joint family properties. While effecting partition of joint family properties, it may not be possible to divide any property by metes and bounds. The allocation of properties of un equal value may come to the share of a member of a joint family at the time of effecting partition but for that necessary adjustments have to be made. Sometimes, it may also hap pen that some of the co- sharers on partition may not get any share in immovable property. Therefore, there cannot be any hard and fast rule laid down in that regard. It depends upon the facts and circumstances of each case. It also depends upon the nature of immovable property and the number of such properties as also the number of members amongst who it is required to be divided. Sometimes, it also happen that properties of a larger value may go to one member. Property of a lesser value may go to another. What is necessary is the adjustment of the value by providing for payment by one who gets property of higher value. The Supreme Court in a case of M. L. Subbaraya Setty (Dead) by L.Rs. and others v. M. L. Nagappa Setty (Dead) by L.Rs. and others, reported in (2002) 4 SCC 743 : (AIR 2002 SC 2066), reiterated the position of law in respect of partition of immovable proper ties through the Court Commissioner. **Basant Singh vs. Autar Kaur, AIR 2022 Bombay 113**

Or XLI, Rule 27 – Additional evidence at the appellate stage – Rejected – Legality of – Perusal of material on record and the explanation given by the defendant – appellant-Observation made by the Trial Court with regard to the failure of defendantsto produce any evidence to show that his mother's name was Smt. Shanti Devi and the Khatauni in dispute sought to be adduced as additional evidence could not the available to the defendant because of it being deposited in a wrong record room and it is essential for deciding the main controversy– Considered – Appellate Court has taken a hyper-technical view of the matter by rejecting the application of the defendant-appellant-Order Impugned set aside – Appellate Court directed to decide the application for additional evidence afresh after giving opportunities of hearing – Petition disposed of.

Having considered the judgment rendered by Supreme Court in the matter and also the fact as pleaded in this petition including the observations made by the trial court with regarding to the failure of the defendants to produce any evidence to show that his mother's name was Smt. Shanti Devi and not Smt. Ram Kali at the stage of trial, but also considering the fact that khatauni in question could not be available to the petitioner because of it being deposited in a wrong Record Room and it being essential for deciding the themain controversy, this Court is of the opinion that the Appellate Court has taken a hyper-technical view of the matter by rejecting the application of the petitioner.

The order dated 09.08.2021 passed on Paper No. 14-Ga by the Appellate Court is set aside but the Appellate Court while deciding the application afresh shall also give the opportunity to the respondent to file additional evidence/any documentary proof in his possession to show that the name of the appellant's/petitioner's mother was indeed Smt. Ram Kali and not Smt. Shanti Devi.

This petition is accordingly disposed of. **Ram Kumar v. Gulshan Babau and others, 2022 (155) RD 535 – Alld. HC – Lucknow Bench.**

Commercial Courts Act, 2015

S. 10—Arbitration and Conciliation Act, 1996, Secs. 34, 2(1)(e)—Arbitral award—Setting aside of—Territorial jurisdiction of commercial Court

A perusal of Section 42 of the Arbitration and Conciliation Act, 1996 clearly indicates that if in respect of an arbitration agreement any application under Part I is made in a court, that court alone shall have jurisdiction over the arbitral proceedings and all subsequent applications arising out of that agreement and the arbitral proceedings shall be made in that court and no other court. The first application which is made before a court should have jurisdiction to entertain subsequent applications. Secondly for the purpose of applicability of the Section 42 of Arbitration Act, the court has to decide whether the first application was the application provided in the first part of the Arbitration and Conciliation Act, 1996. Since the application u/s 11 of the Act was an application under Part I of the Arbitration and Conciliation Act, 1996, Section 42 of the Arbitration and Conciliation Act, 1996 will be attracted to the proceedings u/s 34 of the Act. The award passed at New Delhi can be executed in the court at Gautam Buddh Nagar in view of paragraph no. 20 of the judgement of the Apex Court in the case of Sundaram Finance Limited (supra) also. **Hasmukh Prajapati vs. Jai Prakash Associates Ltd., AIR 2022 All. 121**

Constitution of India, 1950

Art. 226- Writ Petition- Maintainability- Alternate Remedy- Order passed under Section 47-A of the Indian Stamp Act, 1899- Statutory remedy of appeal under Section 56 of the Act, 1899, available – Writ Petition dismissed as not maintainable- Propriety.

In appropriate cases the jurisdiction under Article 226 of the Constitution is exercisable even in the wake of availability of alternate remedy, statutory or non- statutory. **Babe Ke Edu. Charitable Society vs. State of U.P. and others, 2022(40) LCD 1196**

Art. 300-A- Criminal Procedure Code, 1973- Section 102.

The aforesaid provision provides that any police officer may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission of any offence. Therefore any police officer may seize any property even if there is suspicion that the same is involved in commissioning of any offence. The property includes Bank account and a police officer in Court's of investigation can seize the account. Therefore once it is found by the investigating officer that the sale consideration received on account of alleged fraudulent transaction has been deposited in the said account, there is no illegality or infirmity in seizure of the account of the petitioner for the purposes of investigation because if the same is not secured, the amount deposited in the said account, which would be a case property, may be withdrawn. The Supreme Court considered the issue in State of Mahaashtra vs. Tapas D. Neogy, (1999)7 SCC 685.

The scope and object of Section 102 Cr.P.C. is to help and assist in investigation and to enable a police officer to collect and collate evidence to be produced to prove the charge complained of and set up in the charge-sheet. There is no requirement of any notice or information to the concerned before seizure.

Sub-section (3) of Section 102 Cr.P.C. provides that every police officer acting under sub-section (1) Cr.P.C. shall forthwith report the seizure to the Magistrate having jurisdiction. The main thrust of learned counsel for the petitioner is that sine the police officer acting under sub-section (1) Cr.P.C., who has seized the account has not reported the concerned Magistrate about the seizure forthwith, and thus seizure has become illegal. Sub-section (3) of Section 102 Cr.P.C. further provides that where the property seized is such that it cannot be conveniently transported to the Court or where there is difficulty in securing the custody of the said property or where the continued retention of the property in police custody may not be considered necessary for the purpose of investigation, he may give custody thereof to any person on his executing a bond undertaking to produce the property before the Court as and when required and to give effect to the further orders of the Court as to the disposal of the same. Therefore the bank account which has been seized and is in the custody of the bank is subject to the further orders of the Court as to the disposal of the same, therefore as per scheme of Code the purpose of information being given to the Magistrate concerned is to bring it to the knowledge of the Court but no consequences thereof has been provided. However the concerned person may move appropriate application for its release etc. from the Court. Knowing it well the petitioner had also, after release from the Jail on bail, moved an application before the concerned Court to know as to under which order the account has been seized, so that he may get the same released through the Court. Therefore once the information in response to the aforesaid application has been submitted to the concerned Court, it is apparent that the in formation has been furnished to the concerned Court. Therefore the seizure would not become illegal on this ground.

In view of submissions of learned counsel for the parties the main issue which falls for our consideration is as to whether Section 102(3) Cr.P.C. is mandatory or directory in nature?

The consequences of non reporting about the seized property have not been provided under the section. In addition, the requirement of reporting in the manner, as stated, is on the part of a public functionary and in view of the law laid down by the Hon'ble Supreme Court, as noticed above, the same is required to be held to be directory unless the consequences thereof are specified. Since the consequences have not been specified, it would be safe to hold that requirement of Section 102(3) Cr.P.C. cannot be termed as mandatory but would be directory in nature.

In view of above scheme of the Code the purpose of information given to the Magistrate regarding seizure of property by the Police Officer is merely to facilitate its disposal in accordance with law during pendency of trial or subsequent thereto. Therefore,non-reporting of the seizure forthwith, as provided under Section 102(3) Cr.P.C., shall not ipso facto render the seizure illegal particularly as non period is specified and it's consequences have not been provided.

In view of the discussions made above this Court is of the considered opinion that there is no infringement of Constitutional right of property of the petitioner under Article 300-A of the Constitution of India. Article 300-A of the Constitution of India only provides that no person shall be deprived of his property save by authority of law. the alleged deprivation of property (freezing of bank account) since is found to be in accordance with applicable law i.e. Code of Criminal Procedure, the action complained of is clearly in consonance with Article 300-A of the Constitution of India. Petitioner's plea of violation of Article 300-A of Constitution of India cannot be pressed to impeach the act of freezing of bank account after such act is held to be as per applicable law i.e. the Code of Criminal Procedure. **Amit Singh vs. State of U.P. and others, 2022(5) ADJ 404 (DB)(Alld.H.C.)**

Contempt of Courts Act, 1971

S. 19- Appeal- Jurisdiction – Ambit & Scope- Law relating to discussed.

The Division Bench referred to the judgments rendered by the Supreme Court in Baradakanta Mishra Vs. Justice Gatikrushna Misra; (1975) 3 SCC 535, Purshotam Dass Goel Vs Justice B.S. Dhillon; (1978) 2 SCC 370, Union of India Vs. Mario Cabral e Sa; (1982) 3 SCC 262, D.N.Taneja vs. Bhajan Lal; (1988) 3 SCC 26, State of Maharashtra vs. Mahboob S. Allibhoy;(1996) 4 SCC 411 and J.S. Parihar Vs. Ganpat Duggar; (1996) 6 SCC 291 and observed that in all the aforesaid cases, it has been held that if the contempt Court refuses to initiate contempt proceedings, an appeal would not be maintainable under Section 19 of Contempt of Courts Act. It referred to the judgment in the case of Midnapore Peoples' Coop. Bank Ltd. & Others (supra) and quoted paragraph 11 thereof and also the judgment rendered in Vinita M. Khanolkar vs. Pragna M. Pai and others; (1998) 1 SCC 500 to say that no appeal even under Chapter VIII Rule 5 of the Rules of the Court would be maintainable. It observed that the contempt proceedings are quasi criminal in nature and, therefore, provisions of Chapter VIII Rule 5 of the Rules of the Court to such proceedings where an order dismissing an application for contempt is challenged would not be attracted except when the contempt court decides to pass orders issuing directions in exercise of powers beyond the Contempt of Courts Act, which order would be referable to the powers vested in the High Court under Article 226 of the Constitution of India rather than the Contempt of Courts Act.

This Court having heard the learned counsel for the parties and having gone through the judgments referred to by the learned Senior Counsel for the appellants and also Mr. Ratnesh

Chandra, learned counsel appearing for the respondent no. 1, finds that the Contempt Judge has expressed a definite opinion in his judgment dated 05.01.2022 that the Writ Court order dated 07.10.2015 has been complied with, even though not in so many words, by observing that no cause of action survives and by consigning the contempt application to record. Such an order dismissing the contempt application would not be amenable to intra Court appeal under Chapter VIII Rule 5 of the Rules of the Court and there is no observation at all in the exercise of writ jurisdiction under Article 226 of the Constitution as argued by the learned Senior Counsel. In view of the judgment in the case of J.S. Parihar vs. Ganpat Duggar; (1996) 6 SCC 291, it will always be open for the appellants to challenge the orders passed by the respondents before the appropriate Forum. **Shivam Das Chandani and others vs. Prabhu N. Singh Posted as Vice Chairman, L.D.A. Lucknow and another, 2022(40) LCD 906**

Criminal Procedure Code

S. 156(3)

Paramount question for consideration in the present petition lies in a narrow compass as to whether non-fulfilment of any promise as made in the Election Manifesto- 2014 amounts to commission of cognizable offence in the eye of law.

It is, thus, clear that the election manifesto promulgated by any political party is a statement of their policy. View, promises and vow during the election, which is not the binding force and the same cannot be implemented through the Courts of law. Even there is no penal provision under any statute to b ring the political parties within the clutches of enforcement authorities, in case, they fail to fulfill their promises as made in the election manifesto.

Learned counsel for the petitioner failed to substantiate his submissions in assailing the orders impugned, as to how cognizable offence is made out in the present matter for the purposes of issuing a direction for investigation as enunciated under Section 156(3) CrPC. Even in a provision as embodied under Section 123 of The Representation of Peoples Act, 1951 only a candidate or his/her agents has been brought under law for adopting a corrupt practices of election but the aforesaid provision is not made applicable on any political party as a whole. **Khurshidurehman S. Rehman vs. State of U.P. and another, 2022(5) ADJ 81 (Alld.H.C.)**

S 164 - Evidentiary value

An application was presented for time to cross examine victim, on the ground that statement under 164 was not available in original, was rejected. The plea was raised that rejection is against the provision of section 172(2) Cr.P.C. as statement under section 164 Cr.P.C. is not having evidentiary value, so proving or disproving of which, shall weigh in decision making of trial, it is only used as an aid in case during examination and cross examination of case in trial by trial court or by accused. This plea was not found sustainable. Statement u/s 164 Cr.P.C. has very limited evidentiary value and is required in only in case where witnesses resile from their earlier statement during examination of chief or cross examination. It was held by the Hon'ble Court that-

"This Court is of the considered opinion that a statement under Section 164 Cr.P.C. has no evidentiary value as such. The proving or disproving of which, shall weigh in the decision making of the learned trial court. It is only used as an aid in case during examination and cross-examination of witness in the trial by the learned trial court or by the accused. 13. This is evident

from perusal of Section 172 (2) of the Code itself as it says that case diary is not to be used as evidence in a case, but an aid to such enquiry or trial.

Since the statement under Section 164 of the Cr.P.C. has only very limited evidentiary value and is required only in case, witnesses resile from such statement during the examination-in chief or the cross-examination, it could not be treated as coming under documentary evidence under Section 294 of the Cr.P.C.

It has been submitted that the original statement under Section 164 Cr.P.C. of the victim was not produced by the prosecution and no reason for the same was also given, therefore, the photocopy of the 164 Cr.P.C. could not be treated as Secondary Evidence and could not be made admissible by the learned Trial Court. The argument regarding admissibility or otherwise of statement under Section 164 Cr.P.C. of the victim can only be considered at the time when the trial has concluded and while considering evidence, the Trial Court gives a finding that the witness/victim has resiled from her statement under Section 164 Cr.P.C. only then its original would be required to verify the contents thereof and to compare the same with the statement made in Examination-in-Chief and the admission if any made in the examination of such a victim. Hence this argument is also rejected as misconceived.

Having considered the arguments made by the learned counsel for the petitioner and learned AGA for the State and also the evidentiary value of a statement the Section 164 Cr.P.C., this Court finds no good ground to show interference in the order impugned dated 08.12.2021.
This Court finds from the perusal of the order that the learned trial court has recorded that the prosecution witness-04 (i.e. the victim) had been summoned and was returned twice and she lived out of station and a last opportunity had already been given for cross-examination which was not availed of by the accused. Such an order cannot be said to be an unreasoned order as argued by the learned counsel for the petitioner." **Vajid Ali v. State of U.P., 2022 Cri.L.J. 1931 : AIR Online 2021 All. 6710**

Ss. 190(1)(b) and 193—Power of Magistrate or Court of Sessions in summoning an accused upon taking cognizance not named in the FIR or police report

In this case, Hon'ble Supreme Court held that for summoning persons upon taking cognizance of an offence, the Magistrate has to examine the materials available before him for coming to the conclusion that apart from those sent up by the police some other persons are involved in the offence. These materials need not remain confined to the police report, charge sheet or the F.I.R. A statement made under Section 164 of the Code could also be considered for such purpose. **Nahar Singh vs. State of U.P., 2022 (119) ACC 994**

S. 197 -

The object of sanction for prosecution whether under Section 197 of the code of criminal procedure is to protect a public servant discharging official duties and functions from harassment by initiation of frivolous criminal proceeding.

Every offence committed by different officer does not attract section 197 of the Code of Criminal Procedure. The protection given under Section 197 of the Criminal Procedure Code has its' limitation. The protection is available only when alleged act done by the public servant is reasonably connected with the discharge of his official duty, an offence committed outside the scope of the duty of the public servant would certainly not require sanction. If in doing official duty public officer if committed any mistake or has been summoned in excess of duty even then

the sanction of the Government as provided under Section 197 of the Criminal Procedure Code is mandatory.

On the question of the stage at which trial court has to examine whether sanction has been obtained and if not whether the criminal proceedings should be nipped in the bud, there are decisions of Apex Court.

On the point of stage at which trial court has to examine sanction question Hon'ble Supreme Court in D.T. Virupakshappa Vs. C. Subash, AIR 2015 12 SCC 231 has held that High court had erred in not setting aside an order of trial court taking cognizance of a complaint in exercise of power under Section 482 Cr.P.C.

The Hon'ble Supreme Court in the case of D. Devaraja vs. Owais Sabeer Hussain reported in [2020 (113) ACC and 904] has held that if the sanction as provided under Section 197 of Criminal Procedure Code has not been taken, the order taking cognizance by the Magistrate will be illegal and the High Court should exercise the power under Section 482 Cr.P.C. to quash the proceeding which was bad for want of sanction.

On the basis of law laid down by Hon'ble Supreme Court as mentioned above, it is well settled that an application under Section 482 Cr.P.C. is maintainable to quash the proceedings, which are ex facie bad for want of sanction. If, on the face of complaint, the act alleged appears to have a reasonable relationship with official duty power under Section 482 Cr.P.C. would have to be exercised to quash the proceedings to prevent abuse of process of Court.

In view of the facts and circumstances stated above, I am of the view that learned Magistrate has illegally taken cognizance of the offence summoning the applicants under section 427 IPC, which is ex facie bad for want of sanction. **Mahendra Pal Singh Lekhpal and another vs. State of U.P. and another, 2022(5) ADJ 139 (Alld.H.C.)**

Ss. 239 and 482—IPC, Ss. 419, 420, 465 and 466—

In this case, Hon'ble High Court reiterated the law laid down by Hon'ble Apex Court in State of Karanataka Vs. Muniswamy and others (1997) 2 SCC 699 that court while deciding discharge application has to record its reasons while rejecting the discharge application perusal of record and reasons to be recorded are must.

Further the Hon'ble High Court referred to the case decided by Allahabad High Court in Smt. Kalawati Vs. State of U.P. decided on 11.7.1990 passed in Crl. Revision No. 1012 of 1990 wherein it has been held that though the full statements of the witnesses need not be discussed but prima facie case should be briefly indicated.

The Hon'ble Court held that the court has to see whether the material placed before the court have been properly explained. If there are two views emerging then the court has to examine discharge application filed under Section 227 Cr.P.C. by discussing the evidences on record and then forming the opinion to pass order on the application. **Smt. Shila Devi vs. State of U.P., 2022 (119) ACC 482**

Ss. 368 and 482—IPC, S. 406/34—Quashing of criminal proceedings—Petition for-Maintainability of prosecution on ground of limitation—

In this case, Hon'ble Supreme Court reiterated in law laid down in Sarah Mathew v. Institute of Cardio Vascular Diseases by its director Dr. K.M. Cherian & Ors.: (2014) 2 SCC 62 and held that the enunciations and declaration of law by the Constitution Bench do not admit of any doubt that for the purpose of computing the period of limitation under Section 468 CrPC, the relevant date is the date of filing of the complaint or the date of institution of prosecution and not

the date on which the Magistrate takes cognizance of the offence. **Amritlal vs. Shantilal Soni, 2022 (119) ACC 682**

S. 372—IPC, Ss. 147, 148, 302 and 302/149—Acquittal thereunder—

In this case, Hon'ble High Court reiterated the law laid down in Mallikarjun Kodagali case and observed that it is not in dispute that in view of the judgment of the Hon'ble Apex Court in Mallijarjun Kodagali case , the appeal can be filed in the light of proviso to section 372 CrPC and there is no requirement to file an application to grant leave to appeal. However, this provision was not in force in the year 2002 as there was not in force in the year 2002 as there is no specific provision that this is no specific provision that this amendment is retrospective in nature. Hon'ble Courts viewed that provision of section 5 of Limitation Act is, therefore, not available to the appellant and in fact, this appears to be a meaningless attempt on the part of the appellant to file this appeal by invoking the provision of section of Limitation Act. **Toofani vs. State of U.P., 2022 (119) ACC 376**

S. 401(3)—IPC, Secs. 147, 148, 324, 326 r/w section 149—Conviction—Sustainability—

In this case, Hon'ble High Court held that in the present case, the High Court has erred in quashing and setting aside the order of acquittal and reversing and/or converting a finding of acquittal into one of conviction and consequently convicted the accused, while exercising the powers under Section 401 Cr.P.C. The order of conviction by the High Court, while exercising the revisional jurisdiction under Section 401 Cr.P.C., is therefore unsustainable, beyond the scope and ambit of Section 401 Cr.P.C., more particularly sub-section (3) of Section 401 Cr.P.C.

Where under the Cr.P.C. an appeal lies, but an application for revision has been made to the High Court by any person, the High Court has jurisdiction to treat the application for revision as a petition of appeal and deal with the same accordingly as per sub-section (5) of Section 401 Cr.P.C., however, subject to the High Court being satisfied that such an application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interests of justice so to do and for that purpose the High Court has to pass a judicial order, may be a formal order, to treat the application for revision as a petition of appeal and deal with the same accordingly. **Joseph Stephen vs. Santhanasamy, 2022 (119) ACC 239**

S. 482—Information Technology (Amendment) Act, 2008—Sec. 67—IPC, Sec. 500—Quashing of criminal proceedings

The Hon'ble High Court viewed that at the stage of summoning the accused, the court below is not required to go into the merit and demerit of the case. Genuineness or otherwise of the allegations cannot be even determined at the stage of summoning the accused. The appreciation of evidence is a function of the trial court. This Court in exercise of power under Section 482 Cr.P.C. cannot assume such jurisdiction and put an end to the process of trial provided under the law. It is also settled by the Apex Court in catena of judgments that the power under Section 482 Cr.P.C. at pre-trial stage should not be used in a routine manner but it has to be used sparingly, only in such appropriate cases, where allegations made in First Information Report or charge-sheet and the materials relied in support of same, on taking their face value and accepting in their entirety do not disclose the commission of any offence against the accused. The disputed question of facts and defence of the accused cannot be taken into consideration at this pre-trial stage, which can be more appropriately gone into by the trial court at the appropriate stage. **Niyaz Ahmad Khan vs. State of U.P., 2022 (119) ACC 411**

Ss. 482, 244, 245 Cr.P.C., S 420 IPC - Discharge Application

Accused file an application before magistrate requesting direction to investigate regarding genuineness of handicapped certificate which was subject matter of the case. It was held that it was incumbent upon magistrate before passing any final order on discharge application to direct for investigation to verify the genuineness of handicapped certificate to resolve the issue. It was also held that magistrate should not show undue haste in deciding discharge application without verifying the genuineness of certificate. It was also held that rejection of discharge application on ground that evidence u/s 244 Cr.P.C. is yet to come and accused not appeared and obtained bail was not proper. Discharge can be granted even before any evidence is recorded u/s 244 Cr.P.C. the matter was remanded to pass fresh order. **Ram Surat Verma v. State of U.P., 2022 Cri.L.J. (NOC) 171 (All.) : AIR Online 2021 All. 4560**

Criminal Trial

Appellant convicted and sentenced for offences punishable under sections 148, 450, 376 read with section 149, IPC alongwith five other accused persons—Legality—Appreciation of evidence

In this case the Hon'ble High Court referred in Rohtas vs. State of Haryana, (2016) 6 SCC 589, in which the Apex Court has held that the prosecution cannot seek to prove a fact during trial through a witness which such witness had not stated to police during investigation, evidence of that witness regarding the said improvement cannot be relied upon.

The Hon'ble High Court further observed that thus, in view of the above law laid down by Hon'ble Apex Court in Rohtas vs. State of Haryana, the fact of light of lantern at the time of alleged incident was introduced for the first time before the Court, which comes in the category of improvement, hence, it cannot be relied upon as a source of light. **Soran vs. State of U.P., 2022 (119) ACC 109**

Customs Act, 1962

S. 2(34)-

A "Proper Officer" is one, who is defined in Section 2(34) as the officer of Customs, either by the Board or by the Commissioner of Customs, who is assigned specific functions. **M/s. Sultan Tanneries and Leather Products vs. Union of India and others, 2022(5) ADJ 98 (DB) (Alld.H.C.)**

Dowry Prohibition Act

S. 21—IPC, Secs. 304-B, 306, 498-A—Judgment of acquittal passed by the High Court—Justifiability—

In this case, Hon'ble Supreme Court observed as "in the facts of the instant case, we are of the opinion that the trial Court has correctly interpreted the demand for money raised by the respondents on the deceased for construction of a house as falling within the definition of the word "dowry". The submission made by learned counsel for the respondents that the deceased was also a party to such a demand as she had on her own asked her mother and maternal uncle to

contribute to the construction of the house, must be understood in the correct perspective. It cannot be lost sight of that the respondents had been constantly tormenting the deceased and asking her to approach her family members for money to build a house and it was only on their persistence and insistence that she was compelled to ask them to contribute some amount for constructing a house. The Court must be sensitive to the social milieu from which the parties hail. The fact that the marriage of the deceased and the respondent No.1 was conducted in a community marriage organization where some couples would have tied the knot goes to show that the parties were financially not so well off. This position is also borne out from the deposition of P.W.-1 who had stated that he used to bear the expenses of the couple. Before the marriage of the deceased also, P.W.-1 had stated that he used to bear her expenses and that of her mother and brother [his sister and nephew] as her father had abandoned them. In this background, the High Court fell in an error in drawing an inference that since the deceased had herself joined her husband and father-in-law, respondents herein and asked her mother or uncle to contribute money to construct a house, such demand cannot be treated as a "dowry demand". On the contrary, the evidence brought on record shows that the deceased was pressurized to make such a request for money to her mother and uncle. It was not a case of complicity but a case of sheer helplessness faced by the deceased in such adverse circumstances. **State of M.P. vs. Jogendra, 2022 (119) ACC 317**

Employee's Compensation Act, 1923

S. 3(1) –Death- Arising out of and in the course of employment.

But nevertheless this court also recognized that stress and strain arising during the course of employment could be one of the factors that may lead to the presumption of accidental injury if the evidence brought on record establishes a greater probability which satisfies a reasonable man that the work contributed to the causing of the personal injury, the same would be enough for the workman to succeed. This court agreed that this would be a matter of fact to be established on evidence.

A finding of fact cannot be overturned by the High Court unless it is perverse, especially in an appeal that would lie only on a substantial question of law.

The post-mortem report indicated congestion and enlargement of the liver as well as the gallbladder. Therefore, the High Court concluded, even in the absence of histopathological FSL report, that no accident arose out of employment. This is wholly presumptuous and the manner in which the High Court interpreted a welfare legislation cannot be approved.

If the compensation has not been deposited so far, the insurance company shall deposit the same within four weeks. If it had been deposited and that has not yet been disbursed, the Commissioner, Employee's Compensation shall do so after proper identification, within a period of four weeks. No order as to costs. **Maman Singh and another vs. United India Insurance Co. Ltd. and another, 2022 ACJ 730**

Employees State Insurance Corporation Act, 1948

Ss 1(5), 1(4), 2(12)-

'ESI' Act was enacted to provide certain benefits to the employees in case of sickness, maternity and employment injury and for certain other matters in relation thereto. The intent and purpose of the Act was to provide benefits to the sections of the society who work within the

factories and any other establishments [if notified under Section 1(5) of the Act]. Clearly the intent of the Act is to provide socio economic benefits to a class of the society covered under the Act.

A plain reading of Section 1(4) of the Act clearly provides that the Act at the first instance was made applicable to all factories including the factories belonging to the Government but excluding the seasonal factories. Proviso of sub-section 4 excludes factory or establishment be longing to or under the control of the Government whose employees are otherwise in respect of benefits substantially similar or superior to the benefits provided under this Act.

A plain reading of the said sub-section leaves no room for doubt that it is applicable to the factories at the first instance. The term ‘factory’ has been defined under Section 2(12) to mean any premises where ten or more persons are employed and in any part of which, a manufacturing process is being carried on. The word 'manufacturing process' itself finds definition under Section 2(14-AA) and incorporates the meaning assigned to the term ‘manufacturing process’ under the Factories Act.

It is important to note that the definition of the word ‘manufacturing process’ as defined under Section 2(14-AA) was inserted under the ESI Act w.e.f. October 20, 1989 by virtue of ESI (Amendment) Act No. 29 of 1989. Prior to the said amendment the meaning of ‘manufacturing process’ as specified under the Factories Act was not applicable to the 'ESI Act' and thus to that extent the amendment incorporated w.e.f. 20.10.1989 would apply prospectively and would not apply prior to the said amendment coming into force. **U.P. Cooperative Federation Ltd. and another vs. The Employees State Insurance Corporation and others, 2022(5) ADJ 503 (LB) (Alld.H.C.)**

Evidence Act

Subject-Section 3 Evidence Act, Rustic Witness and the appreciation of evidence.

While discussing the appreciation of evidence of a rustic villager. It was held that:

“From the examination of witnesses of facts namely P.W.-1, P.W.-2, P.W.-3 and P.W.-5, it comes out not only from the examination-in-chief but also from the cross-examination that they are rustic villagers, uneducated, men of low profile, doing agricultural work. P.W.-2 "Bahadur", a retired workman of the Deoria Sugar Mill is also an agriculturist and uneducated villager of District Deoria. Nothing has been extracted contrary to this status of the witness or suggested to them by the learned defence counsel. Such witnesses cannot be expected to possess the photographic memory and recall details of the incident mathematically.”

The testimony of related witness and its reliability was also discussed, Hon’ble court held that:

“P.W.-1 being real uncle of the deceased "Ramashre" and P.W.-2 also being a near relative of the family, their evidence is required to be carefully scrutinized. It is the settled legal preposition that the evidence of closely related witnesses is required to be carefully scrutinized and appreciated before any conclusion is made to rest upon to convict the accused in a given case. In case the evidence has a ring of truth to it, is cogent, credible and trustworthy, it can and certainly be relied upon.

No general assumption can be drawn that the related witnesses must also be an interested witnesses. A relative witness is a natural witness, a close relative like P.W.-1, the real uncle of the deceased "Ramashre" in the present case and Bahadur, a near relative of the family, cannot

be dis-regarded as interested witnesses. The term "interested" postulates that the witness must have some interest in having the accused, somehow or the other, convicted for some anonymous or for some other reason. In the light of this principle we have to consider the argument of the learned counsel for the appellants that all eye witnesses being related to deceased are interested witnesses and their version requires scrutiny with care, caution and circumspection and when their evidence is scanned with said parameters, it does not stand to the said test and the case set forth by the prosecution gets corroded and principle of proof beyond reasonable doubts gets shattered.

In Vijendra Singh v. State of Uttar Pradesh with Mahendra Singh v. State of Uttar Pradesh3, the Apex Court has held in para 31 as under:-

> "31. In this regard reference to a passage from Hari Obula Reddy v. State of A.P. [Hari Obula Reddy v. State of A.P., (1981) 3 SCC 675 : 1981 SCC (Cri) 795] would be fruitful. In the said case, a three-Judge Bench has ruled that : (SCC pp. 683-84, para 13) "[it cannot] be laid down as an invariable rule that interested evidence can never form the basis of conviction unless corroborated to a material extent in material particulars by independent evidence. All that is necessary is that the evidence of the interested witnesses should be subjected to careful scrutiny and accepted with caution. If on such scrutiny, the interested testimony is found to be intrinsically reliable or inherently probable, it may, by itself, be sufficient, in the circumstances of the particular case, to base a conviction thereon."

It is worthy to note that there is a distinction between a witness who is related and an interested witness. A relative is a natural witness. The Court in Kartik Malhar v. State of Bihar [Kartik Malhar v. State of Bihar, (1996) 1 SCC 614 : 1996 SCC (Cri) 188] has opined that a close relative who is a natural witness cannot be regarded as an interested witness, for the term "interested" postulates that the witness must have some interest in having the accused, somehow or the other, convicted for some animus or for some other reason."

While discussing the reliability of the testimony regarding the presence of injured witnesses at the scene of crime the Court held that:

In the present case, the presence of the witnesses on the spot is proved and established by their evidence without any contradiction or inconsistency, therefore, the credibility of the witnesses cannot be thrashed out for their being relative only as witnesses interested in false implication, in seeing the accused persons behind the bars.

In the present case, the evidence as to the presence on the spot of the incident at the relevant time and date of the incident not only proved probable and natural but is found to be free from contradictions, exaggeration or embellishment. Some minor contradictions or inconsistency are immaterial, irrelevant details which are not in the capacity in anyway corrode the credibility of witness cannot be labelled as omission or contradictions. This settled legal principle has been reiterated in various decisions of the Apex Court. One of the witnesses to the occurrence as himself been injured in the incident is P.W.-5 "Dwarika Nath Tiwari". This witness though had not seen the accused persons but with all certainty, he had proved the place of incident, the relevant date and time of the occurrence and the manner of commission of crime by throwing hand grenades on the deceased. His presence on the spot is proved and also corroborated with the evidence of other witnesses of fact namely P.W.-1, P.W.-2 and P.W.-3. His testimony cannot be discarded as his presence on the spot cannot be doubted particularly in view of the fact that immediately after lodging of the first information report, the injured witness (P.W.-5) had been medically examined without any loss of time on the same date. The injured witness had been put

through gruelling cross-examination but nothing could be elicited to discredible his testimony. It is held by the Apex Court in Brahm Swaroop and Another v. State of Uttar Pradesh (Supra)5 as under :-

> "It is a settled legal proposition that while appreciating the evidence of a witness, minor discrepancies on trivial matters, which do not affect the core of the prosecution 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 the prosecution case, even if present, would not itself prompt the court to reject the evidence on minor variations and discrepancies. After exercising care and caution and shifting through the evidence to separate truth from untruth, exaggeration and improvements, the court comes to a conclusion as to whether the residuary evidence is sufficient to convict the accused. 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 basis version of the prosecution witness. As the mental capabilities of a human being cannot be expected to be attuned to absorb all the details, minor discrepancies are bound to occur in the statements of witnesses."

Hon'ble Court while discussing the rule of evidence and the maxim "falsus in uno falsus in omnibus" reiterated the law laid down by Hon'ble Supreme Court and held that:

"The Apex Court in Sucha Singh and Another v. State of Punjab (Supra) has held in para 18 as under:-

> "To the same effect is the decision in State of Punjab v. Jagir Singh (AIR 1973 SC 2407) and Lehna v. State of Haryana (2002 (3) SCC 76). Stress was laid by the accused-appellants on the non-acceptance of evidence tendered by some witnesses to contend about desirability to throw out entire prosecution case. In essence prayer is to apply the principle of "falsus in uno falsus in omnibus" (false in one thing, false in everything). This plea is clearly untenable. Even if major portion of evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, notwithstanding acquittal of number of other co-accused persons, his conviction can be maintained. It is the duty of Court to separate grain from chaff. Where chaff can be separated from grain, it would be open to the Court to convict an accused notwithstanding the fact that evidence has been found to be deficient to prove guilt of other accused persons. Falsity of particular material witness or material particular would not ruin it from the beginning to end. The maxim "falsus in uno falsus in omnibus" has no application in India and the witnesses cannot be branded as liar. The maxim "falsus in uno falsus in omnibus" has not received general acceptance nor has this maxim come to occupy the status of rule of law. It is merely a rule of caution. All that it amounts to, is that in such cases testimony may be disregarded, and not that it must be disregarded. The doctrine merely involves the question of weight of evidence which a Court may apply in a given set of circumstances, but it is not what may be called 'a mandatory rule of evidence'. (See Nisar Alli v. The State of Uttar Pradesh (AIR 1957 SC 366). Merely because some of the accused persons have been acquitted, though evidence against all of them, so far as direct testimony went, was the same does not lead as a necessary corollary that those who have been convicted must also be acquitted. It is always open to a Court to differentiate accused who had been acquitted from those who were convicted. (See Gurucharan Singh and Anr. v. State of Punjab (AIR 1956 SC 460). The doctrine is a dangerous one specially in India for if a

whole body of the testimony were to be rejected, because witness was evidently speaking an untruth in some aspect, it is to be feared that administration of criminal justice would come to a dead- stop. Witnesses just cannot help in giving embroidery to a story, however, true in the main. Therefore, it has to be appraised in each case as to what extent the evidence is worthy of acceptance, and merely because in some respects the Court considers the same to be insufficient for placing reliance on the testimony of a witness, it does not necessarily follow as a matter of law that it must be disregarded in all respects as well. The evidence has to be shifted with care. The aforesaid dictum is not a sound rule for the reason that one hardly comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggeration, embroideries or embellishment. (See Sohrab s/o Beli Nayata and Anr. v. The State of Madhya Pradesh 1972 3 SCC 751) and Ugar Ahir and Ors. v. The State of Bihar (AIR 1965 SC 277). An attempt has to be made to, as noted above, in terms of felicitous metaphor, separate grain from the chaff, truth from falsehood. Where it is not feasible to separate truth from falsehood, because grain and chaff are inextricably mixed up, and in the process of separation an absolutely new case has to be reconstructed by divorcing essential details presented by the prosecution completely from the context and the background against which they are made, the only available course to be made is to discard the evidence in toto. (See Zwinglee Ariel v. State of Madhya Pradesh (AIR 1954 SC 15) and Balaka Singh and Ors. v. The State of Punjab. (AIR 1975 SC 1962). As observed by this Court in State of Rajasthan v. Smt. Kalki and Anr. (AIR 1981 SC 1390), normal discrepancies in evidence are those which are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence and those are always there however honest and truthful a witness may be. Material discrepancies are those which are not normal, and not expected of a normal person. Courts have to label the category to which a discrepancy may be categorized. While normal discrepancies do not corrode the credibility of a party's case, material discrepancies do so. These aspects were highlighted recently in Krishna Mochi and Ors. v. State of Bihar etc. (JT 2002 (4) SC 186). Accusations have been clearly established against accused-appellants in the case at hand. The Courts below have categorically indicated the distinguishing features in evidence so far as acquitted and convicted accused are concerned."

The Hon’ble Court also discussed about a discrepancy and corroboration of medical evidence and ocular evidence. While discussing the Hon’ble Court quoted some of the judgment of Hon’ble Apex Court:

In Shivaji Sahab Rao Bobade v. State of Maharashtra (Supra), it is held in para 18, which is reproduced hereunder:-

"18. Some attempt was made to show that the many injuries found on the person of the deceased and the manner of their infliction as deposed to by the eyewitnesses do not tally. Three is no doubt that substantially the wounds and the weapons and the manner of causation run congruous. Photographic picturisation of blows and kicks and hits and strikes in an attack cannot be expected from witnesses who are not fabricated and little turns on indifferent incompatibilities. Efforts to harmonise humdrum details betray police tutoring, not rugged truthfulness."

The argument of the learned counsel as to the discrepancy in the statement of prosecution witness with regard to the number of bombs thrown over the deceased "Ramashre" and the expert opinion as to the blast injuries might have been caused by one bomb only. This argument

is not tenable in view of the distorted condition of the dead body from the blast injuries which show that the brain had flown out of the skull and entire face had been cut and ruptured. One cannot with all certainty speculate about the number of bombs causing blast such injuries fatal to the deceased. In this regard, para "16' of the judgment of Hon'ble the Apex Court in case of Thaman Kumar v. State (UT of Chandigarh)8 is reproduced hereunder:-

> "The conflict between oral testimony and medical evidence can be of varied dimensions and shapes. There may be a case where there is total absence of injuries which are normally caused by a particular weapon. There is another category where though the injuries found on the victim are of the type which are possible by the weapon of assault, but the size and dimension of the injuries do not exactly tally with the size and dimension of the weapon. The third category can be where the injuries found on the victim are such which are normally caused by the weapon of assault but they are not found on that portion of the body where they are deposed to have been caused by the eye-witnesses. The same kind of inference cannot be drawn in the three categories of apparent conflict in oral and medical evidence enumerated above. In the first category t may legitimately be inferred that the oral evidence regarding assault having been made from a particular weapon is not truthful. However, in the second and third category no such inference can straightway be drawn. The manner and method of assault, the position of the victim, the resistance offered by him, the opportunity available to the witnesses to see the occurrence like their distance, presence of light and many other similar factors will have to be taken into consideration in judging the reliability of ocular testimony."

In this matter the court also discussed about the plea of defence regarding Ante Timed FIR and held that:

> Section 154 (1) of the Criminal Procedure Code, 1973 is quoted hereunder:-
>
> "Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read Over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf."

According to the language of the aforesaid provision, every information relating to the commission of offence whether given in writing or reduced into writing shall be signed by the persons giving it hence, the person who gives the information and who has to sign the information has to choose which particular information relating to the cognizable offence is to be given in the first information report. The first information report has to be reported almost immediately after the incident occurs as reasonably as practicably possible or after the knowledge of the incident is made known. Sometimes as convenient to the policemen, the first information report is not lodged immediately. Plea of first information report lodged ante time means that time and date has also been changed by the prosecution to suit their purpose, if there is a clear evidence that the first information report was ante timed then it loses it's value.

In this way Hon’ble Court discussed on several matter related to the criminal proceeding and trial and confirmed the judgment of conviction and order of sentence in Sessions Trial. **Prahlad and others v. State of U.P., 2022 Cri.L.J. 2363 : AIR Online 2022 All. 1486.**

Ss. 5,6 POCSO Act, Ss 118, 45

It was alleged that accused-neighbour of informant enticed and took four years old victim girl in bushed and sexually assaulted her, after luring victim girl to bushes, accused disrobed himself and victim before fondling her private parts, he also stated to have penetrated her vagina with her fingers. This version was supported by doctor who examined victim girl, the victim narrated entire incident to doctor, doctor noticed redness and swelling around victims vagina, though other witness to seem to have turned hostile. There was no reason to doubt deposition of doctor. The testimony of victim and doctor is supported by medical evidence which established and proved that accused penetrated his finger in vagina of victim. It was also held that case would fall u/s 3(b) of POCSO and such penetrative sexual assault committed on girl aged four years shall constitute aggravated penetrative sexual assault punishable u/s 6. It was held that the testimony of victim and doctor supported the medical evidence and it was sufficient to convict accused u/s 5 & 6 of POCSO Act.

It was also held by the Court that any act of sexual assault or sexual harassment to children should be viewed very seriously and no leniency should be shown to accused committing them. In this matter the accused aged approximately 65 years at the time of commission of offence, he was neighbor of victim girl and took advantage of absence of her parents, this demonstrate the mindset of accused because as a neighbor it was duty of accused to protect victim girl rather than exploiting her innocence and vulnerability. While determining the sentence it was held that accused does not deserve any sympathy or leniency. It was also held that at relevant time minimum punishment provided u/s 6 was 10 years R.I. and which may extend to imprisonment for life. Accused were aged 70-75 years at the time of hearing of criminal appeal and suffering from tuberculosis, considering such mitigating circumstances life sentence of accused was converted to 15 years R.I. with fine/compensation. **Nawabuddin v. State of Uttrakhand, 2022 Cri.L.J. 1441: AIR Online 2022 SC 94**

S. 302, 34 IPC, Appreciation of Evidence

The matter was related to a conviction by a trial court based on ocular testimony of related witnesses. The brief facts are as such accused persons allegedly on account of quarrel regarding victory and defeat in gambling assaulted deceased by sickles resulting in his death. During trial witnesses deposed that informant was also playing gambling along with deceased and accused persons at time of incident, this fact was not stated before investigating officer. There was no statement on oath as to from where sickles came suddenly in hand of accused person at time of incident. Informant deposed that after incident, he put dead body of his brother under supervision of other witnesses, whereas other witness deposed that after informant went to his house, he also went to his house and dead body was alone at place of incident.

At the time of incident four persons were present at the place of incident, two persons out of them did not deposed before court. There was delay in lodging FIR, the delay was around eleven and half hour and it was not explain by the prosecution. The dead body of deceased was brought to the house of deceased instead of lodging report, it created doubt not only time of lodging of FIR but also about genuineness of prosecution case. There were also lapses in investigation regarding collection of blood stained soil and plain soil from both the places that is the place of incident and house of deceased. Investigation officer not recovered the murder weapon, sickles, allegedly used in commission of murder. The testimonies of the witnesses were with other contradiction also hence they were held not reliable. The Hon’ble court held that prosecution failed to prove guilt of accused persons beyond reasonable doubt. Hence, the

conviction was set aside. **Ram Asrey and others v. State of U.P., 2022 Cri.L.J.(NOC) 145 (All.) : AIR Online 2022 All. 1089**

Ss. 302, 325, 96 IPC, Section 14 Evidence Act

IN a matter of murder of a victim the plea of private defence was taken. Defence of accused was that deceased was armed with country made pistol and accompanied by 6 to 7 other persons reached his house, after scuffle between them which occurred some time ago. As soon as deceased aimed upon accused, he fired gun shot in private defence causing his death. No injury was caused to accused or any other member of his family. There was no damage to his property even no country made pistol was recovered from spot or near dead body. There where major contradiction found in testimony of accused and witness on point that 6 to 7 persons came at his house and exhorted deceased to kill accused. It was also held that accused was not able to prove any circumstances leading to exercise of right of private defence. Prosecution witnesses proved facts and no major contradiction occurred in their evidence. Testimony of prosecution witnesses were corroborated by medical evidence accused fired upon deceased with intention to kill him.

While discussing the issue of common intention it was found that co-accused assaulted victim for ousting cattle of accused from his field, causing serious injuries, when informant reached house of accused to make a complaint about distraction of paddy crop by cattle both accused got and enraged then accused went inside their houses and came back with their weapons. Both the accused were cusions and lived in separate houses, which were adjacent. There was nothing in record that suggest that both accused planed with each other to kill deceased. No meeting of minds between accused and co-accused was established. Hence, it was held that both accused would be liable for their individual acts. Co-accused assaulted victim with lathi causing injury and gun shot injury causing death of deceased was caused by accused. It was held that conviction of co-accused for offence u/s 302 read with Section 34 was setaside and that for offence u/s 325 IPC was confirmed. In this way conviction for offence of murder of accused was held proper. **Raj Kumar and another v. State, 2022 Cri.L.J. 2227 : AIR Online 2022 All. 1416**

S. 302 IPC, S. 3- Testimony of sole eye witness.

The brief facts are as such – the accused allegedly murder deceased on account of dispute regarding payment of money. As per testimony of informant deceased was taken from his house by accused on pretext of carrying bricks for sale and would divide and sale proceed in equal share. This statement was in variance with stand taken if FIR, further informant deposed that accused came to his house after two days and informed him that his father has consumed excessive liquor and was having difficulty in breathing and it was also stated that he was lying on tractor trolley on his house. There was contradiction in this statement. Other family member as well as villager were not examined. It was also highly improbable that informant did not make any inquiry regarding none returned of deceased and accused on next day. The statement of informant on certain important aspects was not consistent with testimony of other prosecution witnesses. The sole testimony of informant was not found to be credible. The inquest report and post mortem report do not indicate that deceased consumed liquor as alleged by prosecution. It was also doubtful that serious injuries would have been inflicted by accused on road in front of his home, surrounded on both side by village abadi.

The prosecution story was shrouded with mystery, the last seen theory was not proved. It was also stated that the dead body found in tractor trolley belonging to accused was found parked

inside his house, therefore burden was upon him to prove his innocence, but it was found in evidence that place where body was found was not inside the house of accused but was accessible to public at large. Thus, burden of proof was not on accused to prove his innocence. It was held by the Hon'ble Court the testimony of informant was not of sterling quality so as to be relied upon without hesitation at his face value. Considering the nature of evidence produced and contradictions accused was entitled to acquittal. **Rajpal v. State of U.P., 2022 Cri.L.J. (NOC) 150 (All.) : AIR Online 2022 All. 462**

S. 302 IPC, S 3, Circumstantial Evidence, Motive, Recovery of Fire Arm

There was allegation that accused murder three persons in same night, by firing gun shot. All bodies however were found at different places, located at quite a distance each other. Witnesses before whom accused allegedly confess of killing all victims, turned hostile from beginning. Ballistic report did not indicate that all bullets were fired from same weapon. The report was not able to connect recovered bullets with country made pistol alleged to be recovered at instance of accused. It was held that mere similarity in the manner of killing and commonality of motive cannot ground to conclude that all murder are committed by same accused. Moreover evidence lead by the prosecution confined to the murder of one deceased thus, accused cannot be held guilty of two of three murders.

The motive allegedly was that deceased was demanding share in property but accused denied that, in connection there with deceased was held by other two deceased. On that account there used to be regular fights and bickering between parties. There was no cogent explanation from the accused in their statement recorded under 313 Cr.P.C. It was held that the motive though might not be too strong, was never the less has been proved. It was also held that motive can however only provide a link to other circumstances but it not by itself sufficient record conviction.

In this matter there was recovery of fire arm at the instance of the accused and there were allegation that accused murdered three persons in same night, by firing gun shot. It was held that weapon alleged to be recovered at pointing out of accused could not be connected by forensic evidence, with bullet recovered from body of two deceased. Moreover the memorandum of recovery not witnessed by any public witness and place from recovery was made was open field having direct access from road. The recovery of weapon was not made by digging out weapon from beneath the surface of earth rather, it was alleged to have been search out from field. Disclosure statement was also doubtful. Therefore recovery of country made pistol cannot be taken as a circumstance to link accused with murder of deceased. Therefore accused entitled to be acquitted.

In this matter there was testimony of sole eye witness, that she saw accused running away from crime scene, with one of them holding fire arm, soon after gunshot was heard. This eye witness came up with her version for first time after over two years of death of deceased and she had not given her statement to I.O. during investigation. She even did not move any application before police that she is conversant with facts relevant to case, instead she gave her testimony only after all witnesses were examined. She explains the late deposition as she was threatened by accused. It was held that salience of eye witness for over two years casts a serious doubt on her trustworthiness. It was also held that eye witness altered her version during the course of testimony further, incident was of night and source of light was not disclosed. Prosecution to failed to bring home guilt against either of accused in respect of three murders. It was also held that the burden was on the prosecution and the investigating agency played an important role in

this regard. The investigation was completely absent in regard of CDR details, tower location of mobile phone and very simplistic approach was adopted by investigating agency by presuming as if same set of accused committed all three murders. There was although discrepancy between ballistic and medico legal report. Therefore it was held that the reference for confirmation of death penalty had to be answered in negative, due to acquittal of accused, reference was rejected. **Chandan Singh v. State of U.P., 2022 Cri.L.J.(NOC) 160 (All.) : AIR Online 2021 All. 6018.**

Financial Hand Book- Vol. II, Part II to IV

Rules 56(a),9(21), 9(28) and 9(31)- Civil Service Regulations –Rule 14- Notional increment-

The Court believes that in view of argument advanced by respective parties, the questions which arise for consideration of this Court is that:

(i) what the word "afternoon" used in Rule 56(a) of Financial Hand Book, Vol. II, Part II to IV connotes in the context of expression 'retirement of an employee on the last day of the month';

(ii) whether the respondent has rightly placed reliance upon Rule 14 of Civil Service Regulation to deny the benefit of notional increment to the petitioner;

(iii) whether the petitioner can be denied the be3nefit of notional increment on the ground that the petitioner was not in service on the date when the increment was due to the petitioner.

The inescapable conclusion from the preceding discussion is that the Government servant is considered retired at 12:00 a.m. i.e. midnight on the last working day, and his last working day in the establishment is considered working day. As a result, the respondent's denial of an increment to the petitioner based on Proviso to Rule 56 of the Fundamental Rule and Regulation 14 of the CSR is erroneous and unsustainable in law.

As a consequence of the preceding discussion, it can be easily concluded that a Government employee is entitled to one increment as a matter of right after completing one year of service which becomes due on the following day of the year's end; what remains thereafter is the enforcement of such right in the form of monetary benefit.

Since the benefit of increment has accrued to the Government servant for the service rendered by him during his service period, there, such benefit earned by the Government cannot be denied on the pretext that the Government servant has retired on the day on which he is entitled to receive such benefit and it does not form part of emoluments under Rule 34 for calculating the pension. The Court believes that the denial of notional increment on the aforementioned grounds is nothing but an abuse of process of law and is an arbitrary act of the respondents, as such is hit by Article 14 of the Constitution of India.

Now coming to the facts of the present case, undisputedly the petitioner had retired on 30.6.2016 and the increment for the service rendered by him for the past one year i.e. 1.7.2015 to 30.6.2016 became due to him on 1.7.2016. The denial of the increment to the petitioner on the ground that the last day of the service of the petitioner was not the last working day and the petitioner had retired in the afternoon cannot be sustained given discussions aforesaid; as from the discussion aforesaid, it is evident that the last working day of the petitioner is 30.6.2016 till 12:00 p.m. Thus, the petitioner had completed one full year from 1.7.2015 to 30.6.2016. Consequently, he cannot be denied the benefit of notional increment which fell due on 1.7.2016 as the right to get increment is an accrued right for the services rendered for one year, and the next date on the conclusion of the year is only the date on which he is entitled to receive the

monetary benefit. Thus, for grant of notional increment, it is immaterial that the petitioner was not in service on the day when it fell due. Accordingly, this Court believes that the order impugned is not sustainable. **Uday Narayan Mishra vs. State of U.P. and others, 2022(5) ADJ 164 (Alld.H.C.)**

Hindu Marriage Act, 1955

S. 13(1)(b)

(B) Whether desertion without a reasonable cause and without the consent of the party aggrieved during the wedlock shall amount to cruelty under Section 13 of the Hindu Marriage Act?"

(C) Whether it is open to the High Court to pass a decree of divorce on the ground of irretrievable break down of marriage in a petition brought for divorce under Section 13 of the Hindu Marriage Act. 1955?"

Substantial Question of Law (B) is, therefore, answered in the affirmative to hold that the long desertion and separation of a spouse would constitute mental cruelty within the meaning of Section 13(ib) of the Hindu Marriage Act.

In the circumstances, Substantial Question of Law (C) is answered in the negative and it is held that this Court has no power to grant a decree of divorce under Section 13 of the Hindu Marriage Act on the ground of irretrievable break-down of marriage. **Deepak Bose vs. Shrabonee Bose, 2022(4) ADJ 328 (Alld.H.C.)**

Hindu Succession Act, 1956

S. 14(1)- Provisions- Object & Scope of – Female Hindu-Conferment of Limited Rights in the Estate through Will- Claim for absolute ownership in the property- Entitlement- Held, if a limited estate is given it would mature into an absolute interest irrespective of the intent of testator cannot be objective of Section 14(1) of the Act.

There is no doubt that Section 14 of the said Act is the part of the said Act to give rights of a property to a Hindu female and was a progressive step. Sub-Section (1) of Section 14 of the said Act makes it clear that it applies to properties acquired before or after the commencement of the said Act. Any property so possessed was to be held by her as full owner thereof and not as a limited owner. The Explanation to sub-Section (1) of Section 14 of the said Act defines the meaning of "property" in this sub-section to include both movable and immovable property acquired by the female Hindu by inheritance or devise or a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, or by her skill or exertion, or by purchase or by prescription or in any other manner whatsoever, including *stridhana*. The Explanation is quite expansive.

Sub-Section (2) of Section 14 of the said Act is in the nature of a proviso. It begins with a 'non-obstante clause'. Thus, it says that "nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court...." etc. where a restricted estate in such property is prescribed. In our view the objective of sub-Section (2) above is quite clear as enunciated repeatedly by this Court in various judicial pronouncements, i.e., there cannot be a fetter in a owner of a property to give a limited estate if he so chooses to do including to his wife but of course if the limited estate is to

the wife for her maintenance that would mature in an absolute estate under Section 14(1) of the said Act.

In the light of the aforesaid passage, Sections 14(1) & 14(2) of the said Act were entered by the Court. The word "possessed" was held to be used in a wide sense not requiring a Hindu woman to be an actual or physical possession of the property and it would suffice if she has a right in the property. The discussion in para 33 thereafter opines that the intention of the Parliament was to confine sub-section (2) of Section 14 of the said Act only to two transactions, viz., a gift and a will, which clearly would not include property received by a Hindu female in lieu of maintenance or at a partition. The intention of the Parliament in adding the other categories to sub-section (2) was merely to ensure that any transaction under which a Hindu female gets a new or independent title under any of the modes mentioned in Section 14(2) of the said Act.

We may add here that the objective of Section 14(1) is to create an absolute interest in case of a limited interest of the wife where such limited estate owes its origin to law as it stood then. The objective cannot be that a Hindu male who owned self-acquired property is unable to execute a Will giving a limited estate to a wife if all other aspects including maintenance are taken care of. If we were to hold so it would imply that if the wife is disinherited under the Will it would be sustainable but if a limited estate is given it would mature into an absolute interest irrespective of the intent of the testator. **Jogi Ram vs. Suresh Kumar and other, 2022(40) LCD 610**

S. 14(1)

In the light of the above decisions of the Hon'ble Apex Court the following principles appear to be clear:

(1) that the provisions of Section 14, of the 1956 Act must be liberally construed in order to advance the object of the Act which is to enlarge the limited interest possessed by a Hindu widow which was in consonance with the changing temper of the times;

(2) it is manifestly clear that sub-section (2) of Section 14 does not refer to any transfer which merely recognises a pre-existing right without creating or conferring new title on the widow. This was clearly held by this Court in Badri Parshad's case (supra).

(3) that the Act of 1956 has made revolutionary and far-reaching changes in the Hindu society and every attempt should be made to carry out the spirit of the Act which has undoubtedly supplied a long felt need and tried to do away with the invidious distinction between a Hindu male and female in matters of intestate succession;

(4) that sub-section (2) of Section 14 is merely a proviso to. subs. (1) of Section 14 and has to be interpreted as a proviso and not in a manner so' as to destroy the effect of the main provision. **Kamlesh Shukla and others vs. Smt. Annapurna Devi and another, 2022(4) ADJ 259 (Alld. H.C.)**

The question, which is involved in the present case, is whether an objection filed under Section 11(2) of the Act, 1960 by an unrecorded tenure holder would be legally maintainable and whether such an unrecorded tenure holder is entitled to be heard by the Prescribed Authority in respect of the land, which has been declared surplus and, which is claimed to be of such an unrecorded tenure holder.

If a person has acquired right, title and interest by a legal and valid instrument of sale-deed, will or dedication, then he would be required to be issued notice even if his name is not recorded as tenure holder in the revenue record and, if the land of such a person is treated to be

land holding of the tenure holder to whom notice under Section 10(2) of the Act, 1960 was issued and proceedings got finalized, such a person would be entitled to file an objection under Section 11(2) of the Act, 1960 and the Prescribed Authority should decide the objection after giving opportunity for adducing evidence by such person and other affected persons. **Ram Krishna Math and others vs. State of U.P. and others, 2022(4) ADJ 265 (LB)(Alld. H.C.)**

Income Tax Act, 1961

S. 282 and 282A.

Thus, considering the provisions of Section 282 and 282A of the Act, 1961 and the provisions of Section 13 of the Act, 2000 and meaning of the word "issue" we find that firstly notice shall be signed by the assessing authority and then it has to be issued either in paper form or be communicated in electronic form by delivering or transmitting the copy thereof to the person therein named by modes provided in section 282 which includes transmitting in the form of electronic record. Section 13(1) of the Act, 2000 provides that unless otherwise agreed, the dispatch of an electronic record occurs when it enters into computer resources outside the control of the originator. Thus, the point of time when a digitally signed notice in the form of electronic record is entered in computer resources outside the control of the originator i.e. the assessing authority that shall the date and time of issuance of notice under section 148 read with Section 149 of the Act, 1961. **Daujee Abhushan Bhandar Pvt. Ltd. vs. Union of India and others, 2022(4) ADJ 187 (DB)(Alld.H.C.)**

Information Technology Act, 2000

S. 67, S. 500 of IPC

There were allegations of sharing objectionable morphed photos of persons holding esteemed positions like that of Prime Minister or a Cabinet Minister of Facebook. The question was about the cognizable offence was made of or not. The Hon'ble Court held that at the stage of cognizance/summoning order, only prima facie satisfaction of court about existence of sufficient ground to proceed in the matter is required. It was also held that there is immediate need to check the misuse of social media as remedial majors directions were issued to government to take appropriate remedial majors/steps in order to control and eradicate said proliferating and booming devastating menace, to stop misuse of social media platform and to maintain healthy atmosphere in society. Hon'ble Court held that-

"Having examined the matter in its entirety, here it would be apposite to mention that this Court is of the view that it is beyond the shadow of doubt that social media is a global platform for exchange of thoughts, opinions and ideas. The internet and social media has become an important tool through which individuals can exercise their right to freedom of expression but the right to freedom of expression comes with its own set of special responsibilities and duties. It does not confer upon the citizens the right to speak without responsibility nor does it grant unfettered licence for every possible use of language. There is an immediate need to check the exploitation of social media platforms that has political and societal reverberations that go well beyond hacked systems and stolen identities. Use of Cyberspace by some people to vent out their anger and frustration by travestying the Prime Minister, Key-figures holding the highest office in the country or any other individual is abhorrent and violates the right to reputation of others. These kind of acts, posting and sharing unhealthy materials with unparliamentary language and

remarks, etc. on social media without any solid basis cause a deleterious effect on the society at large, ergo in order to protect the reputation and character of individuals, it should be completely stopped. Since such incidents are on rise in a civilized society day by day and are polluting the minds of people, therefore, now it is high time to evolve some more and full proof screening mechanism to regulate, check and control the unhealthy posts on social media. It would be fair enough to state that such persons who are deliberately involved in such acts directly or behind the curtain with oblique motive or to settle their score adopting different modus-operandi are hazardous to the civilized society and they are not entitled for any sympathy in justice delivery system. High Courts are sentinels of justice with extraordinary and inherent power to ensure that rights and reputation of people are duly protected. Considering the gravity and nature of offence as well as misuse of social media platforms, this Court cannot shut its eyes. The Government is also not expected to act as a silent spectator.

Accordingly, Government is directed to take appropriate remedial measures/steps in order to control and eradicate such proliferating and booming devastating menace, to stop the misuse of social media platforms and to maintain healthy atmosphere in the society, which is the most important and essential factor for a civilized society."

In this matter Court held that the case does not falls in the category recognized by the Apex Court for quashing the criminal proceeding of the Trial Court at pre trial stage. This criminal proceeding cannot be said to be abuse of process of court. Hence, there is no good ground to invoke inherent power u/s 482 Cr.P.C. and cognizance/summoning order not liable to be quashed. **Niyaz Ahmad Khan v. State of U.P., 2022 Cri.L.J. 2027 : AIR Online 2022 All. 1072**

Indian Penal Code

S. 302—Conviction—Sustainability

In this case, Hon'ble High Court discussed the law governing trial of deaf and dumb and said that the law as it stands is that there is no bar to proceed against a deaf and dumb accused on a charge of a criminal offence. But, whenever a criminal proceeding is drawn against a deaf and dumb person, the endeavor should be that he understands the proceedings. If the Court finds that he understands the proceedings, the trial must proceed in the ordinary way. However, while doing so, Courts have to see to it that the trial is fair and the accused gets a chance of putting up such defences as he may have.

In the case at hand, the Court below had satisfied itself that the accused could communicate, though in low lisping tone, and could understand the proceeding. This satisfaction is reflected in the order sheet of the trial Court as well as the impugned judgment. Interestingly, after oral examination, under section 313 CrPC, the appellant submitted a written statement. In that written statement, dated 24.12.2005, he could not place his defence properly before the police. This written statement no where stated that he could not understand the evidence led against him during the course of trial or that he needed a sign language interpreter to place his case properly before the Court. There is also no prayer in that written statement for his medical examination. Further there appears no application of the Counsel representing the appellant to provide a sign language interpreter to enable the Counsel to communicate with the appellant or for the appellant to communicate with the Court. Under illustration (e) to section 114 of the Evidence Act, 1872 there is a legal presumption that judicial and official acts have been regularly performed. In these circumstances once the Court had recorded its satisfaction with regard to the

ability of the accused to understand and communicate, and there being no application before that Court questioning its satisfaction or praying for services of a sign language interpreter for the accused, in Court's view, an unrebutted legal presumption with regard to the regularity of the judicial act would operate against the accused-appellant.

Hon'ble High Court, consequently affirmed that judgment and discussed the appeal. **Charan Singh vs. State of U.P., 2022 (119) ACC 799**

S. 302—Conviction—Sustainability

In this case, Hon'ble High Court observed that with regard to section 27 of the Act, what is important is discovery of the material object at the disclosure of the accused but such disclosure alone would not automatically lead to the conclusion that the offence was also committed by the accused. In fact, thereafter, burden lies on the prosecution to establish a close link between discovery of the material objects and its use in the commission of the offence. What is admissible under Section 27 of the Act is the information leading to discovery and not any opinion formed on it by the prosecution.

Suspicion, however, strong is not sufficient to be taken as proved. The conviction and death sentence imposed on the accused is totally unsustainable in law, therefore, appeal is liable to be allowed and the impugned judgment and order of conviction and sentence is liable to be set aside. **Sanjay vs. State, 2022 (119) ACC 835**

Ss 302, 300, 376, 326-A, 354, 354A, 452 IPC, Section 5, 6, 7, 8, 29, and 30 of POCSO

Delegation were of rape and murder, accused allegedly sexually assaulted minor victim and when victim resisted his action, accused set her ablaze. It was held that for the purpose of conviction prosecution must prove fundamental facts in order to take benefit of the presumption u/s 29 further operation of presumptive provision in section 29 and 30 are limited to offences specified therein the Hon'ble court after the detailed analysis held that

"In the light of the decisions noticed above, the legal position that emerges is that though the presumption of innocence is a human right but there can be statutory exceptions to it. A statutory provision laying down the procedure for holding an accused guilty of an offence by raising a presumption with regard to his guilt, must meet the tests of being fair, just and reasonable as enshrined in Articles 14 and 21 of the Constitution of India. To ensure that a statutory provision putting a reverse burden on the accused does not violate the mandate of Articles 14 and 21 of the Constitution, it has to be interpreted in a manner that it does not lead to absurd result such as mistaken conviction on mere failure to lead satisfactory evidence in defence after submission of police report. As a result, the courts have been consistent in holding that the burden to prove his innocence can be cast on the accused with the aid of presumptive clause only where the prosecution succeeds in proving the basic or foundational facts with regard to commission of the offence by the accused in respect of which the presumption is available to the prosecution under the statute. Mere registration of a case punishable under the statute, without proving the foundational facts with regard to its commission by the accused, will not ipso facto shift the burden on to the accused to prove his innocence. More so, because to prove a negative is difficult, if not impossible. It is only when a foundation is laid to prove, at least prima facie, existence of a fact that one can expect a person, called upon to refute its existence, to lead evidence negating its existence. Interpreting the provisions of section 29 of the Act in a manner that it puts absolute burden on the accused to prove a negative i.e. innocence, even in absence of prosecution proving the basic facts with regard to commission of specified offence(s) by the

accused, in our view, would lead to complete miscarriage of justice and thereby render the provisions of section 29 of the Act vulnerable and in the teeth of Articles 14 and 21 of the Constitution. We, therefore, hold that to take the benefit of the presumptive provisions of section 29 of the POCSO Act, the prosecution, by leading legally admissible evidence, would have to prove the foundational or basic facts in respect of commission of the offence(s) specified therein by the accused. Mere submission of police report against the accused in respect of the offence(s) specified in section 29 of the POCSO Act would not absolve the prosecution of its responsibility to lead legally admissible evidence to prove the foundational facts with regard to their commission by the accused.

At this stage, we may clarify that though the presumptive provisions contained in sections 29 and 30 are there in the Act but their operation is limited to the offences specified therein. No doubt, by virtue of sub-section (2) of section 28 of the Act, while trying an offence under the Act, a Special Court has also to try an offence other than the offence referred to in sub-section (1) of section 28 of the Act (i.e. the offences punishable under the Act), with which the accused may, under the Code of Criminal Procedure, 1973, be charged at the same trial but, as the presumptive provisions of section 29 are applicable only to the offences specified therein, they would not apply to prove an offence of murder punishable under section 302 IPC. In our view therefore, the trial court completely misunderstood the true import of the presumptive provisions contained in section 29 of the POCSO Act.

Now, reverting to the facts of the present case, as we have already noticed the entire prosecution evidence, we find that the prosecution has been successful in establishing the following: that a first information report was lodged by PW-1 (who is not an eye witness) in respect of an incident in which PW-1's daughter got burnt; that PW-1's daughter was a child; that in a burnt condition PW-1's daughter was admitted in the hospital on 16.04.2019 and was medically examined by PW-6 and PW-9 on that day; that she stayed alive in the hospital till her death, which took place on 01.05.2019; that her injury report (Ex. Ka-6), dated 16.04.2019 disclosed that the victim had suffered thermal burns to the extent of 80% - 85% referable to kerosene oil burns; that victim's internal medical examination, dated 16.04.2019, by PW-9 disclosed a rupture of her hymen at 7 O'clock position; and that the victim died due to septicemia as a result of burn injuries sustained by her. However, with regard to the participation of the accused appellant in causing thermal burn injuries to the victim or making a penetrative sexual assault on the victim, the prosecution witnesses of fact in their deposition have not supported the story taken in the first information report. Rather, they claimed that the victim got accidentally burnt while cooking food as kerosene oil bottle slipped and fell on the gas burner. The prosecution witnesses also did not depose about the presence of the accused-appellant in the house at the time of the incident. Thus, by the evidence on record, the prosecution has not been able to prove that the accused-appellant entered the house of the victim, misbehaved with her, or sexually assaulted her in any manner, and, thereafter, set her on fire. In absence of admissible evidence to prove the foundational facts of commission of penetrative sexual assault, or sexual assault, on the victim by the accused, the presumptive provisions of Section 29 of the POCSO Act would not get attracted as against the accused -appellant and, therefore, in our view, the judgment of the trial court is vitiated by a wrong approach in law.

The question that now arises for our consideration is whether there is any admissible evidence on the basis of which the conviction could be sustained. In this regard, the trial court placed reliance on Paper no. 39Ka/1, alleged dying declaration of the deceased and on statement of PW-2 in her statement in chief that because of the incident FIR was lodged against Monu Thakur. Before we

deal with the dying declaration (Paper No.39 Ka/1), we shall examine the import of the statement made by PW-2 referred to above. It is well settled that for proper appreciation of oral testimony, the testimony has to be read in its entirety. Picking up a stray sentence, out of context, and coming to a conclusion is not at all permissible. The statement of PW-2 on which the trial court placed reliance is not that the FIR was lodged because Monu Thakur (the accused appellant) committed the act. Rather, it is that because of the incident, FIR was lodged against Monu Thakur. This statement in our view is not sufficient to conclude that the prosecution was successful in proving the foundational facts so as to trigger the presumption against the accused appellant under section 29 of the Act. Having said that, we shall now examine whether, in view of the alleged dying declaration of the victim/deceased (Paper No.39 Ka/1), stated to have been recorded on 16.04.2019, the appellant is liable to be convicted for the charged offences.

A dying declaration is admissible under Section 32(1) of the Evidence Act as an exception to the rule against hearsay evidence. If a dying declaration is duly proved and is found truthful, it can on its own form the basis of conviction. But before a dying declaration is relied upon by the court its making would have to be proved by legally admissible evidence. Unfortunately, in the instant case, neither the recording Magistrate nor the doctor, who certified the mental and physical condition of the victim, has been examined. Even if we assume that the concerned doctor was examined as one of the prosecution witnesses, he stated nothing about the dying declaration, probably, because the public prosecutor might not have deemed it necessary to lead evidence in that regard. Interestingly, the I.O. (PW-7) states that he came to know about the dying declaration having been recorded on 01.05.2019, the day the victim died. Notably, on death of the victim, the investigation was taken over by PW-8 from PW-7. But, surprisingly, even PW-8 does not proceed to record statement of the recording magistrate and does not enlist him as a witness. Thus, though the dying declaration (Paper No.39 Ka/1) is on record but this dying declaration has not been exhibited and it has also not been put to the accused while recording his statement under Section 313 CrPC, a fortiori, the same cannot be read and form basis of conviction. Consequently, we have no hesitation in holding that the conviction recorded by the trial court is unsustainable and is liable to be set aside."

Hence the conviction was set aside and reference for confirmation of death penalty was rejected. **Monu Thakur v. State of U.P., 2022 Cri.L.J. 1838 : AIR Online 2022 All. 1371**

Ss. 302/34 and 201—Conviction—Sustainability—

In this case, Hon'ble Supreme Court discussed burden of proof on prosecution & Sec. 106 of Evidence Act. The Hon'ble Court observed that the prosecution having failed to prove the basic facts as alleged against the accused, the burden could not be shifted on the accused by pressing into service the provisions contained in section 106 of the Evidence Act. There being no cogent evidence adduced by the prosecution to prove the entire chain of circumstances which may compel the court to arrive at the conclusion that the accused only had committed the alleged crime. The Trial Court and the High Court had committed gross error of law in convicting the accused for the alleged crime, merely on the basis of the suspicion, conjectures and surmises. **Satye Singh vs. State of Uttarakhand, 2022 (119) ACC 626**

Ss. 302/34—Conviction—Sustainability

In this case, Hon'ble High Court reiterated the law laid down in the case of Moti Lal Vs. State of U.P. 2009(7) Supreme 632, the Apex Court has ruled that the non-examination of scribe of the F.I.R. is not fatal to the prosecution case. Likewise in the case of Anil Kumar Vs. State of

U.P. (2003)3 SCC 569 where scribe of the F.I.R. who was not an eye-witness, was not examined, the Apex Court observed that there was no necessity to examine him. He could have thrown no light on the prosecution case, therefore, no prejudice can be said to have been caused to the appellants.

Further Hon'ble Court held that no doubt the witnesses of fact examined in the case are real brother and father of the deceased but Relationship itself is not a ground to reject the testimony of the witnesses, rather the law is that a relative would be the last person to leave the real culprit and falsely implicate any other person.

Therefore, relationship of eye-witnesses inter se, cannot be a ground to discard their testimony. There is no reason to presume the false implication of the appellants at the instance of the eye-witnesses. It would also be illogical to think that the witnesses would screen the real culprits and substitute the appellants for them. **Bachcha Pandey @ Subhas vs. State of U.P., 2022 (119) ACC 774**

Ss. 302 and 148—Judgment of acquittal—Sustainability—

In this case, Hon'ble Supreme Court discussed the case of Annareddy Sambasiva Reddy in which the Apex Court observed and held that mere non-framing of a charge under Section 149 on face of charges framed against appellant would not vitiate the conviction in the absence of any prejudice caused to them. Considering Section 464 Cr.P.C. it is observed and held that mere defect in language, or in narration or in the form of charge would not render conviction unsustainable, provided the accused is not prejudiced thereby. It is further observed that if ingredients of the section are obvious or implicit in the charge framed then conviction in regard thereto can be sustained, irrespective of the fact that said section has not been mentioned.

Considering the facts and circumstances of the case, the Hon'ble Apex Court held that merely because the weapon used is not recovered cannot be a ground not to rely upon the dying declaration, which was recorded before the Executive Magistrate, which has been proved by the prosecution.

It is true that the prosecution has not established and proved, who actually inflicted the knife blow. However, from the medical evidence on record and even from the deposition of the doctors, it has been established and proved by the prosecution that the deceased sustained an injury by knife blow, which is inflicted by one of the six to seven persons, who participated in commission of the offence. From the dying declaration it has been established and proved that the respondent – accused Subhash @ Pappu was part of the unlawful assembly, who participated in the commission of the offence. Pappu s/o Baijnath – respondent herein was specifically named by the deceased in the dying declaration. Therefore, even if the role attributed to the respondent - accused was that of hitting the deceased by a hockey stick, in that case also for the act of other persons, who were part of the unlawful assembly of inflicting the knife blow, the respondent accused can be held guilty of having committed the murder of deceased Bengali, with the aid of Section 149 IPC.

In the present case, six to seven persons were part of the unlawful assembly and they used force or violence and one of them used a deadly weapon, namely, knife and therefore, being a part of the unlawful assembly, the respondent accused can be held to be guilty for the offence of rioting and for the use of force/violence as a member of such an unlawful assembly. Therefore, the respondent was rightly convicted by the Trial Court for the offence under Section 148 IPC.

The impugned judgment and order passed by the High Court acquitting the accused for the offence punishable under Section 302 IPC is hereby quashed and set aside. The respondent accused is held guilty for the offence under Section 304 Part I r/w Section 149 IPC and for the offence under Section 148 IPC. **State of U.P. vs. Subhash @ Pappu, 2022 (119) ACC 950**

S. 302—Arms Act, 1959, S. 25—Conviction—Sustainability

Section 173(2) of the CrPC calls upon the investigating officer to file his final report before the court. It being a report, is nothing but a piece of evidence. It forms a mere opinion of the investigating officer on the materials collected by him.

In this case, Hon'ble Supreme Court observed that the evidence of the investigating officer is not indispensable. The evidence is required for corroboration and contradiction of the other material witnesses as he is the one who links and presents them before the court. Even assuming that the investigating officer has not deposed before the court or has not cooperated sufficiently, an accused is not entitled for acquittal solely on that basis, when there is other incriminating evidence available on record.

Further the Hon'ble High Court observed that mere non-examination of the witness per se will not vitiate the case of the prosecution. It depends upon the quality and not the quantity of the witnesses and its importance. If the court is satisfied with the explanation given by the prosecution along with the adequacy of the materials sufficient enough to proceed with the trial and convict the accused, there cannot be any prejudice. Similarly, if the court is of the view that the evidence is not screened and could well be produced by the other side in support of its case, no adverse inference can be drawn. Onus is on the part of the party who alleges that a witness has not been produced deliberately to prove it.

The Hon'ble Court took the judicial note of the factual scenario that the trial courts are adjourning the cross examination of the private witnesses after the conclusion of the cross examination without any rhyme or reason, at the drop of a hat. Long adjournments are being given after the completion of the chief examination, which only helps the defense to win them over at times, with the passage of time. Thus, reiterated that the trial courts shall endeavor to complete the examination of the private witnesses both chief and cross on the same day as far as possible. [Rajesh Yadav vs. State of U.P., 2022 (119) ACC 978]

Ss. 302/149, 324/149 and 148—Conviction—Sustainability

In this case, Hon'ble High Court discussed the ratio of the decision of the Apex Court in Swamy Shraddananda Alias Murali Manohar Mishra as approved in Union of India vs. V. Sriharan and considered in Vikas Yadav that the power to impose the modified punishment providing for any specified term of incarceration or till the end of convict's life, as an alternate to death penalty, can be exercised only by the High Court and the Apex Court and not by any other inferior Court. However, the ratio of the Constitution Bench in Godse's case (supra), i.e. the fundamental principle that a sentence of imprisonment for life is an imprisonment which last till the last breath of the convict has been consistently approved.

Further, section 28 of the Criminal Procedure Code empowers the Court to impose sentence authorized by law. Section 302 IPC authorizes the Court to either award life imprisonment of death. The minimum sentence is life imprisonment and maximum is death. The Court cannot curtail the minimum sentence as authorized by the statute. It, therefore, cannot curtail the sentence for life and fix a period of incarceration of a life convict. Life imprisonment as held in Godse's case (supra) means the whole of the period of convict's natural life which is

subject to the power of the appropriate Government to grant remission under section 432 of the Criminal Procedure Code read with section 433-A. **Phool Singh vs. State of U.P., 2022 (119) ACC 918**

Ss. 302 and 376—Conviction—Sustainability

In this case, Hon'ble High Court on the basis of faulty investigation observed that Most importantly, blood and other biological material was not collected from the accused for DNA profiling as per the requirement of section 53-A CrPC. It is difficult to accept that if the accused appellant had committed rape and had left his trouser on the spot, there would be no material available for DNA profiling. This raises a question regarding the bona fides of the investigation. More so, when the initial report was with regard to the involvement of two persons. Further, rape of an aged woman, who is a stranger to the accused, baffles us. It was therefore a case where the investigating agency ought to have been diligent and circumspect because of the fundamental principle of criminal jurisprudence that fouler the crime stricter the proof. But, here, in the age of scientific advancement, the investigation was anything but scientific. There is no forensic evidence to link the appellant with the crime. Therefore, the benefit of doubt must go to the accused. Consequently, the appeal is allowed. **Upendra vs. State of U.P., 2022 (119) ACC 746**

Ss. 323, 504, 506 and 427—Summoning order issued

The Hon'ble High Court referred to the Full Bench of this Court In re : Provision of section 14-A of SC/ST (Prevention of Atrocities) Amendment Act, 2015 and others vs. Nil and others, 2019 (106) ACC 1, in which court held that "a petition under the provisions of Article 226/227 of the Constitution of India cannot invoke in cases and situations where an appeal would lie under section 14-A. In so far as the powers of the Court with respect to the revisional jurisdiction is concerned, Court finds that the provisions of section 397 Cr.P.C. stand impliedly excluded by virtue of special provisions made in section 14-A. This, Court hold also in light of his finding that the word "order" as occurring in sub-section (1) of section 14-A would also include intermediate orders" and held that from the Full Bench decision of this Court, it is abundantly clear that appeal under section 14-A (1) of SC/ST Act would lie against intermediate order. The order of taking cognizance of offences is an intermediate order against which appeal would lie under section 14-A of SC/ST Act. **Jay Prakash Verma vs. State of U.P., 2022 (119) ACC 519**

S. 376 IPC, Ss.7,9,10 POCSO, Ss. 3,8, 118 Evidence Act

The allegation were regarding the sexual assault by an accused of 60 years against a victim aged 4 years that accused touched here private parts and he got touched his private part from her after the incident accused absconded. The question was regarding the appreciation of evidence. It was found that victim child could understand the questions put to her and was able to give rational answers. Mother, Father and counsel may to create confidence in the mind of a child witness inquire regarding what evidence she have to give but for this reason she cannot be said to be a tutored witness. It was held that statement of victim was believable and corroborated by evidence of her mother.

It was also held that the POCSO Act is legislated to eradicate the menace of children becoming victim of sexual offence. So, the provision should be interpreted applying mischief rule. Hon'ble Court discussed elaborately as under-

"Perusal of the above provision does indicate that it is for the accused to prove the contrary that he has not committed or abetted the commission of an offence under sections

3, 5, 7, and section 9 of the POCSO Act and, in case, he fails to do so, presumption would operate against him leading to his conviction under the provision of the Act. It cannot be disputed that no presumption is absolute and every presumption is rebuttable. It cannot be said that the presumption under Section 29 of the POCSO Act is absolute. It would come into operation only when prosecution is first able to establish the fact and that would form the foundation of the presumption under Section 29 of the POCSO Act to operate. Otherwise, entire burden would be on the accused to prove the contrary. Such position of law or interpretation of presumption under section 29 of the POCSO Act cannot be accepted as it would clearly violate the constitutional mandate and no person can be deprived of liberty, except in accordance with the procedure established by law.

From the above ruling, nowhere it is provided that certificate regarding the competency of the child witness is mandatory if it is recorded it is so far so good, but if the court has put the question to understand his intellect to understand the question and if he replied the rational answer and thereafter his examination was recorded without recording the certificate regarding the competency of the witness and he was thereafter cross examined by counsel for the accused and had replied satisfactorily and given rational answer, therefore, in above circumstances not appending the certificate by the trial judge regarding the competency of the witness is of no consequence and it will not make his statement inadmissible.

It is proved that the victim X (PW-3) was about four years at the time of occurrence and has narrated the entire incident to her mother, which is admissible.

From the evidence of PW-1 informant Avadhesh Kumar Soni and PW-2 Smt. Khusbu and from the statement of Investigating Officer that during raid several times at the house of accused, he was found absent, proved that he was absconded after the occurrence.

In view of above, it appears that victim X could understand the question put to her and was able to give rational answer and has sufficient intellect and understanding the question put to her and give rational answer, therefore, in such circumstances in absence of certificate, it cannot be said that she was not competence witness.

Here it is also clarified that Section 118 of the Evidence Act is coused in negative words. Therefore, if the court declares anybody as not competent witness, he or she will be incompetent witness. Regarding competence of the witness no certificate is needed as per Section 118 of the Evidence Act. PW-3 victim X in examination-in-chief has deposed that accused Amrita Nand @ Tribhuvan Arjariya, who is present in the court is that Baba who called her in his house and on his calling she entered into his house and, thereafter, he laid her on the bed. She has further stated that at that time she was weeping and accused has given her toffee and taken off her chaddhi and also lured for giving laddoo. She has further stated that accused has touched her private parts and clarified that accused has touched her urinal place (susu) with his finger. She has further stated that accused has also put off her clothes. She has also corroborated the testimony given under Section 164 Cr.P.C. and deposition in cross examination that the police has inquired from her and her mother and father gave her pajama to the police. She has also corroborated in her cross examination that Baba has taken off her clothes and she has not urinated there. Further she has stated that she was told by his father and mother what statement she has given.

Keeping in view the facts and circumstances of the case, it is quite apparent that the mother and father and the counsel may, to create confidence in the mind of a child witness, inquire her regarding what evidence she has to give. In such circumstances, it cannot be said that she is tutored witness. She has supported the entire incident and told the entire incident to her

mother, which was testified by her mother, which is admissible under Section 8 of the Evidence Act. On the day of occurrence informant was not at his house and has gone to Kanpur to take raw material for preparing the ornaments and when he returned from there, thereafter, on the next day the first information report was lodged, therefore, sufficient explanation has been given by prosecution regarding delay in lodging the first information report.

In this case the accused was about 60 years and from the evidence it transpires that he laid victim X on the bed and taken off her clothes and also taken off his clothes and has touched her private parts and he got touched his private part from her and thereafter he has gone to bring the rope, which shows that in meanwhile if the victim did not escape from there, what could would happened to her it cannot be imagined."

Hence, conviction and sentence was upheld by the Court. **Amrita Nand alias Tribhuvan Arjariya v. State of U.P., 2022 Cri.L.J. 1964 : AIR Online 2022 All. 1353**

S. 406—Cr.P.C., S. 397/401—Acquittal thereunder—Legality—Misappropriation of stridhan

In this case, the Hon'ble High Court held that from the provisions of section 6 of Dowry Prohibition Act it is clear that complainant was entitled to receive possession of the articles which were given at the time of marriage and were in possession of the accused. Refusal in this regard will attract section 406 IPC and if there is sufficient and reliable evidence on record then accused may be convicted.

In this case the Court found that there was no record to prove the charge under section 406 IPC and hence finding of acquittal recorded by the Court below cannot be interfered. **Mohammad Sadik vs. State of U.P., 2022 (119) ACC 74**

S. 500-

From the perusal of Section 499 IPC, it is apparent that the present matter can fall under 8th exception, but the question is whether at the time of issuing summons, on the basis of exceptions to Section 499 IPC, a criminal defamation complaint can be dismissed?

The law is well-settled that a person, who pleads the exception has the burden to prove the same and, therefore, at the stage of issuing summons, it is not possible to give advantage of any exceptions to Section 499 IPC including 8th exception to the accused persons, as accused can only take advantage of the same during trial. **Karmraj Singh and others vs. State of U.P. and anothers, 2022(5) ADJ 143 (Alld.H.C.)**

Juvenile Justice (Care and Protection of Children) Act, 2000

S. 12- IPC, Ss. 302, 201, 394 and 411—Bail—Application for- Dismissal- Legality-

In this case hearing on bail application, Hon'ble High Court observed that the D.P.O. report is also not favourable to the revisionist (child in conflict with law). It is clearly stated in it that his company is not good and his friendship is with persons older than his age. He has also bad habit of drugging. Hence the finding of the Juvenile Justice Board that there appears reasonable ground to believe that his release is liable to bring him into association with any known criminal, cannot be said to be unreasoned and perverse. Considering his participation in the crime and the circumstances in which he has committed the heinous offence and also taking into account his mental, physical capacity and also ability to understand the gravity of the offence, his release on bail will defeat the ends of justice. His bail application has rightly been

rejected by the Juvenile Justice Board and appeal by the appellate Court. Both the Courts below have not committed any legal error in rejecting the bail application. **Sujeet Patel @ Golu vs. State of U.P., 2022 (119) ACC 363**

S 12, 18 - Bail to Juvenile

The allegations against juvenile was that he committed murder of his maternal grandfather, committed loot in his house, mutilated his body and threw away to conceal identity. The D.P.O. report shows that his company was not good and his friendship was with persons older than his age, he had also bad habit of drugging. Considering juvenile participation in crime and circumstances in which he has committed heinous offence and also taking into account his mental physical capacity and also ability to understand gravity of offence, his release on bail was considered to defeat the ends of justice. Hence, the bail was rejected.

The Hon'ble Court while deciding the Criminal Revision held that, "As the revisionist is an accused of heinous offence and in between the age group of 16-18 years, the provisions of section 18(1) and 18(2) are not applicable. The board after preliminary assessment has transferred the case for trial to the children court (POCSO court) under the provisions of section 18(3) of the Act. The limit of maximum three years stay at special home will also not be applicable. Section 21 will apply, which provides as follows:- "21. No child in conflict with law shall be sentenced to death or for life imprisonment without the possibility of release, for any such offence, either under the provisions of this Act or under the provisions of the Indian Penal Code or any other law for the time being in force." 12. This Court in Criminal Appeal No.4418 of 2019 (Radhika (juvenile) v. State of U.P.), decided 05.08.2019, in para no.32 has made the following observations:- "[32] This in fact is a dichotomy, whereby a juvenile delinquent is being released on bail except those above three conditions provided under Section 12(Proviso) of the Act, that too as a matter of right. On the other hand, they shall be tried as adults and could be awarded any sentence as per the discretion of the court provided under the law, except the life sentence and death sentence. This dichotomous situation could be resolved by taking the recourse of "object" of the legislation and Para 4 of the Statement of object and reasons, clearly mandates that the enactment of Juvenile Justice Act, 2000 was ill-equipped to tackle child offenders between the age group of 16-18 years and involved in heinous offences, like, murder, gang rape, solitary-rape, bride burning etc. and to resolve this impasse, the court holds that for the purposes of bail to the adolescent offender between the age group of 16-18 years, involved in the heinous offence like murder, solitary-rape, gang-rape, bride burning, drug trafficking, the beneficial legislation for the purposes of bail under Section 12 of the Act shall not apply in its present shape and format. It would be no more as a matter of right to such delinquent minor, who is involved in heinous offences. It is not possible to furnish exhaustive list of such offences but it definitely connotes the same meaning as defined in Section 2(33) of the Act. While deciding the bail of such delinquent offender ranging between the age group of 16-18 years would be discretionary upon the court, which shall in addition to those grounds provided under Section 12(Proviso) of the Act, also take into account with regard to his mental, physical capacity, ability to understand the gravity of that heinous offence, including their respective participation in the crime and the circumstances wherein he/they has/have allegedly committed that particular grave and serious offence. All these factors too are determinative factors while adjudicating the bail applications of juvenile offenders in the age group of 16-18 years, else it would be a mockery of legislation and the object of the present legislation would reduce to naught." The aforesaid view is a reasoned one and I am also in agreement with it. While deciding the bail application of a

delinquent offender between the age group of 16-18 years in addition to the ground provided under section 12 (proviso of the act), his mental, physical capacity, ability to understand the gravity of that heinous offence, including his participation in the crime and the circumstances wherein he has committed the heinous offence could also be taken into consideration." **Sujeet Patel alias Golu v. State of U.P., 2022 Cri.L.J. (NOC) 257 (All) : AIR Online 2022 All. 1135**

S. 68, Rule 12(3)(b)- J.J. Rules 2007

The matter was related to Juvenile in conflict with law and regarding determination of age of offender. It was alleged that appellant accused waylaid car of informant and snatched Rs. 22 lacks from all occupants of car. It was held that the plea of juvenility has to be raised in bona fide and truthful manner. There was no matriculation or equivalent certificate submitted by appellant, instead he rely on the date of birth certificate issued by school first attended. The school record was found unreliable and was procured only to support plea of Juvenility. The appellant had not referred to date of birth certificate in his application. It was held that the claim of juvenility cannot be based on document which is dubious in nature. It was also held that as per birth certificate appellant was born at house, such births are suppose to be reported by head of household to registrar. The birth certificate registered many years after birth and not immediately or not within prescribed time period, cannot be relied upon to determine the claim of juvenility.

The reliability of ossification test report was also discussed, the medical board opined about the age of appellant to be between 23 to 24 years. Ossification test varies based on individual characteristic hence its reliability has to be examined in each case. The medical report determining the age of a person has never been considered by courts of law as also by medical scientist to be conclusive in nature. It was held conclusion of medical board not helpful to determine age of appellant to be less than 18 years on the date of commission of offence in this case.

Discussing reliability of family register it was held that it is a question of fact that how much evidentiary value can be attached with family register, family register is being maintained in accordance with rule framed under statute. Birth Certificate issued by corporation or municipal authority or a panchayat is however a relevant document to prove juvenility and family register is not a birth certificate. **Manoj alias Monu alias Vishal Chaudhary v. State of Haryana, 2022 Cri.L.J. 1507: AIR Online 2022 SC 161**

Land Acquisition Act, 1894

Enhancement in Compensation- Market Value- Determination- Exemplars/ Sale Instances- Scope- Reference Court declined to take into account the exemplars holding that the same pertains to small plots –High Court taken a cut off @ 50% of the average value of sale instances for determination of market value of the land in question- Propriety.

Looking to the location and the purpose for which the lands have been acquired, in the peculiar facts and circumstances of the case, we are of the opinion that if a deduction of 40 % is applied instead of 50% as applied by the High Court, it will meet the end of justice and it can be said to be a fair market value for the acquired lands. Therefore, if a deduction of 40% is applied, it will come to Rs.13,54,200/per acre. The present appeals are required to be allowed in part to the aforesaid extent. **Jai Prakash etc. etc. vs. Union Territory, Chandigarh etc. etc., 2022(40) LCD 1113**

Legal Services Authorities Act, 1987

**National Legal Services Authority (Lok Adalat) Regulations, 2009-
Regulations 17(5), 17(6), 13-**

In the present case, it is clear that no award has been drawn, as per Appendix- I. No order of refund of court fees has been passed nor the signatures of the parties has been verified by the members of Lok-Adalat before recording the compromise or settlement between the parties. The members of the Lok-Adalat were required to ensure that the parties affixed their signatures only after fully understanding the terms of settlement arrived at as per sub-clause (5) of Regulation 17 of Regulations of 2009 and the settlement is not unreasonable, illegal nor one-sided and the parties have entered into settlement voluntarily and not on account of any threat, coercion or undue influence. The Members of Lok Adalat have been cautioned under Regulation 17 (6) to ensure that Lok Adalats are not used by unscrupulous parties to commit fraud, forgery, etc.

From the above consideration, it is clear that the impugned award was passed in gross violation of the provisions of the Act of 1987 and the Regulations of 2009 by a single member in the purported capacity of Lok Adalat. The petition under Article 227 of the Constitution of India is hence maintainable in view of Regulation 12 (3) of Regulations of 2009 since there is gross violation of procedure prescribed under Section 20 of the Act of 1987 and also the regulations framed in exercise of powers conferred by Section 29 of the Legal Services Authorities Act, 1987, duly notified vide notification F.No. L/28/09/NALSA. **Smt. Sumitra Devi and others vs. M/s. S.G.Rockbuild Pvt. Ltd. and another, 2022(5) ADJ 113 (Alld.H.C.)**

Limitation Act, 1963

Ss 14 and 5 - Arbitration and Conciliation Act, 1996- Section 34(3) and 34(2).

The question here is: Whether the delay that has been occasioned in making the application under Section 34(2) of the Act of 1996 can be regarded as one seeking benefit of Section 14 of the Limitation Act, without expressly saying so or praying in those terms?

It must, therefore, be held that that merely because the application made by the appellant does not formally invoke Section 14 of the Limitation Act, the Court below could not have turned its face away from considering the appellant’s case, invoking benefit of the provisions of Section 14 of the Limitation Act, if that is otherwise made out on the terms of the Statute and the facts and evidence. It has been noticed while referring to the decision in Consolidated Engg. Enterprises vs. Irrigation Deptt. (supra that five facts are to be established in order to invoke the provisions of Section 14 that are enumerated in paragraph No. 21 of the report. It postulates that both the prior and subsequent proceedings are civil proceedings prosecuted by the same part; the prior proceeding had been prosecuted with due diligence and in good faith; the failure of the earlier proceeding was due to defect of jurisdiction of other similar cause; the earlier and the later proceeding relate to the same matter in issue; and both the proceedings were in a Court. These principles have been further explained with greater precision in M.P. Steel Corporation. **Moradabad Development Authority vs. M/s. V.R. Construction and Engineering Company, 2022(4) ADJ 422(Alld.H.C.)**

Motor Vehicles Act, 1988

S. 4-A (3)(a) Award of compensation –Whether claimants the date of accident till realization- yes.

Section 2(1)(m) of the Act defines ‘wages’ toinclude “any privilege or benefit which is capable of being estimated inmoney, other than a travelling allowance or the value of any travellingconcession or a contribution paid by the employer of an employee towardsany pension or provident fund or a sum paid to anemployee to cover anyspecial expenses entailed on him by the nature of his employment”.Therefore, Rs 25 that was paid by as food expense by the employer wouldfall within the ‘special expenses’ that he was entitled to by the nature of hisemployment which is specifically excluded by the provision. Therefore, thetotal compensation to be paid is as follows: (50 per cent of Rs. 2400) x 218.47= Rs.2,62,164. The respondent No.1 is directed to pay Rs. 2,62,164 along withinterest at 12 per cent from the date of accident till it is realised. **Shantilata Sethy and another vs. Divisional Manager, New India Assurance Co. Ltd. and another, 2022 ACJ 1233**

Insurance- Standard fire and special perils policy- Repudiation of claim- Whether exclusion clause is attracted.

The policy covers explicitly a liability arising out of the damage to the property of the insured due to riots or the use of violent means. Hence, the decision to repudiate the policy cannot be sustained. Under the insurance policy, there are different limits prescribed for various acts covered by the policy. In the impugned Judgment, it is noted that the parties had filed affidavitsinlieu of evidence before the Commission. An adjudication will have to be made on the quantum of the amount payable to the appellant after appreciating the evidence on record, including the valuation reports. However, the valuer appointed by the respondent insurance company has valued the loss caused to the appellant at approximately Rs.89,00,000/. We, therefore, propose to direct the respondent to deposit the said amount with the Commission with liberty to the appellant to make an application for withdrawal.

As there was no warrant for applying the Exclusion Clause, the impugned judgment and order will have to be set aside, and by restoring the complaint filed by the appellant, the same will have to be ordered to be heard by the Commission afresh. **Narsingh Ispat Ltd. vs. Oriental Insurance Co. Ltd. and anaother, 2022 ACJ 1308**

Ss. 165 and 168- Setting aside of ex parte award and passing of fresh award after the death of claimant.

We deem it fit to rely on the Judgment of the Apex Court in the case of A.V. Padma, 2012 ACJ698(SC), wherein the Apex Court has considered the Judgment rendered in General Manager, Kerala State Road Transport Corporation, Trivandrum vs. Susamma Thomas, 1994 ACJ(SC) Paras 5 to 7 of A.V. Padma's Judgment read as under:-

> “Thus, sufficient discretion has been given to the Claims Tribunal not to insist on investment of the compensation amount in long-term fixed deposit and to release even the whole amount in the case of literate persons. However, the Tribunals are often taking a very rigid stand and are mechanically ordering in almost all cases that the amount of compensation shall be invested in long-term fixed deposit. They are taking such a rigid and mechanical approach without understanding and appreciating the distinction drawn

by this Court in the case of minors, illiterate claimants and widows and in the case of semi-literate and literate persons. It needs to be clarified that the above guidelines were issued by this Court only to safeguard the interests of the claimants, particularly the minors, illiterates and others whose amounts are sought to be withdrawn on some fictitious grounds. The guidelines were not to be understood to mean that the Tribunals were to take a rigid stand while considering an application seeking release of the money. The guidelines cast a responsibility on the Tribunals to pass appropriate orders after examining each case on its own merits.However, it is seen that even in cases when there is no possibility or chance of the feed being frittered away by the beneficiary owing to ignorance, illiteracy or susceptibility to exploitation, investment of the amount of compensation in long term fixed deposit is directed by the Tribunals as a matter of course and in a routine manner, ignoring the object and the spirit of the guidelines issued by this Court and the genuine requirements of the claimants. Even in the case of literate persons, the Tribunals are automatically ordering investment of the amount of compensation in long term fixed deposit without recording that having regard to the age or fiscal background or the strata of the society to which the claimant belongs or such other considerations, the Tribunal thinks it necessary to direct such investment in the larger interests of the claimant and with a view to ensure the safety of the compensation awarded to him. The Tribunals very often dispose of the claimant's application for withdrawal of the amount of compensation in a mechanical manner and without proper application of mind. This has resulted in serious injustice and hardship to the claimants. The Tribunals appear to think that in view of the guidelines issued by this Court, in every case the amount of compensation should be invested in long term fixed deposit and under no circumstances the Tribunal can release the entire amount of compensation to the claimant even if it is required by him. Hence a change of attitude and approach on the part of the Tribunals is necessary in the interest of justice.

6. In this case, the victim of the accident died on 21.7.1993. The award was passed by the Tribunal on 15.2.2002. The amount of compensation was enhanced by the High Court on 6.7.2006. Neither the Tribunal in its award nor the High Court in its order enhancing compensation had directed to invest the amount of compensation in long term fixed deposit. The Insurance Company deposited the compensation amount in the Tribunal on 7.1.2008. In the application filed by the appellants on 19.6.2008 seeking withdrawal of the amount without insisting on investment of any portion of the amount in long-term deposit, it was specifically stated that the first appellant NO.1 is an educated lady who retired as a Superintendent of the Karnataka Road Transport Corporation, Bangalore. It was also stated that the second appellant No. 2 Poornachandrika is a M.Sc. degree holder and the third appellant Shalini was holding Master Degree both in Commerce and in Philosophy. It was stated that they were well versed in managing their lives and finances. The first appellant No. 1 was already aged 71 years and her health was not very good. She required money for maintenance and also to put up construction on the existing house to provide dwelling house for her second daughter who was a co-owner along with her. The second daughter was stated to be residing in a rented house paying exorbitant rent which she could not afford in view of the spiralling costs. It was further stated in the application that the appellant No.1 was obliged to provide a shelter to the first daughter Poornachandrika. It was pointed out that if the money was locked up in a nationalised bank, only the bank would be benefited by the deposit as they give a paltry

interest which could not be equated to the costs of materials which were ever increasing. It was further stated that the delay in payment of compensation amount exposed the appellants to serious prejudice and economic ruin. Along with the application, the appellant Nos. 2 and 3 had filed separate affidavits supporting the prayer in the application and stating that they had no objection to the amount being paid to the first appellant No.1.

7. While rejecting the application of the appellants, the Tribunal did not consider any of the above-mentioned aspects mentioned in the application. Unfortunately, the High Court lost sight of the said aspects and failed to properly consider whether, in the facts and circumstances of the case, there was any need for keeping the compensation amount in long term fixed deposit." **Satish Chand Sharma (Deceased) vs. Manoj and another, 2022 ACJ 1043**

Contributory negligence

The term negligence means failure to exercise care towards others which a reasonable and prudent person would in a circumstance or taking action which such a reasonable person would not. Negligence can be both intentional or accidental which is normally accidental. More particularly, it connotes reckless driving and the injured must always prove that the either side is negligent. If the injury rather death is caused by something owned or controlled by the negligent party then he is directly liable otherwise the principle of *'res ipsa loquitur'* meaning thereby 'the things speak for itself' would apply.

The principle of contributory negligence has been discussed time and again. A person who either contributes or author of the accident would be liable for his contribution to the accident having taken place.

The Division Bench of this Court in Bajaj Allianz General Insurance Co.Ltd. v. Smt. Renu Singh, FAFO No. 1818 of 2012; decided on 19.7.2016 has held as under:

Negligence means failure to exercise required degree of care and caution expected of a prudent driver. Negligence is the omission to do something which a reasonable man, guided upon the considerations, which ordinarily regulate conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do. Negligence is not always a question of direct evidence. It is an inference to be drawn from proved facts. Negligence is not an absolute term, but is a relative one. It is rather a comparative term. What may be negligence in one case may not be so in another. Where there is no duty to exercise care, negligence in the popular sense has no legal consequence. Where there is a duty to exercise care, reasonable care must be taken to avoid acts or omissions which would be reasonably foreseen likely to caused physical injury to person. The degree of care required, of course, depends upon facts in each case. On these broad principles, the negligence of drivers is required to be assessed.

It would be seen that burden of proof for contributory negligence on the part of deceased has to be discharged by the opponents. It is the duty of driver of the offending vehicle to explain the accident. It is well settled law that at intersection where two roads cross each other, it is the duty of a fast moving vehicle to slow down and if driver did not slow down at intersection, but continued to proceed at a high speed without caring to notice that another vehicle was crossing, then the conduct of driver necessarily leads to conclusion that vehicle was being driven by him rashly as well as negligently.

Tenth Schedule appended to Motor Vehicle Act, 1939 contain statutory regulations for driving of motor vehicles which also form part of every Driving License. Clause (6) of such Regulation clearly directs that the driver of every motor vehicle to slow down vehicle at every intersection or junction of roads or at a turning of the road. It is also provided that driver of the vehicle should not enter intersection or junction of roads unless he makes sure that he would not thereby endanger any other person. Merely, because driver of the Truck was driving it on the left side of road would not absolve him from his responsibility to slow down vehicle as he approaches intersection of roads, particularly when he could have easily seen, that the car over which deceased was riding, was approaching intersection.

In view of the fast and constantly increasing volume of traffic, motor vehicles upon roads may be regarded to some extent as coming within the principle of liability defined in *Rylands v. Fletcher*, (1868) LR 3 HL 330. From the point of view of pedestrian, the roads of this country have been rendered by the use of motor vehicles, highly dangerous. 'Hit and run' cases where drivers of motor vehicles who have caused accidents, are unknown. In fact such cases are increasing in number. Where a pedestrian without negligence on his part is injured or killed by a motorist, whether negligently or not, he or his legal representatives, as the case may be, should be entitled to recover damages if principle of social justice should have any meaning at all.

These provisions (section 110A and sec.110B of Motor Act, 1988) are not merely procedural provisions. They substantively affect the rights of the parties. The right of action created by Fatal Accidents Act, 1855 was 'new in its species, new in its quality, new in its principles. In every way it was new. The right given to legal representatives under Act, 1988 to file an application for compensation for death due to a motor vehicle accident is an enlarged one. This right cannot be hedged in by limitations of an action under Fatal Accidents Act, 1855. New situations and new dangers require new strategies and new remedies.

Even if courts may not by interpretation displace the principles of law which are considered to be well settled and, therefore, court cannot dispense with proof of negligence altogether in all cases of motor vehicle accidents, it is possible to develop the law further on the following lines; when a motor vehicle is being driven with reasonable care, it would ordinarily not meet with an accident and, therefore, rule of res-ipsa loquitor as a rule of evidence may be invoked in motor accident cases with greater frequency than in ordinary civil suits.

By the above process, the burden of proof may ordinarily be cast on the defendants in a motor accident claim petition to prove that motor vehicle was being driven with reasonable care or that there is equal negligence on the part of the other side. **Rahisa Begum and another vs. Susheel Chandra Gupta and another, 2022 ACJ 1081**

Leg injury- Sufferer was government employ- had about 4 years of service till his retirement.

The respondent No.1 at the time of the injury, was 56 years old and hadabout 4 years of service till his retirement. The High Courtalso failed to notice that the injury certificate did not relate topermanent disability in the entire body, and had certified 75 per centdisability to the lower limbs. As noted above, the respondent No.1is not immobilized. He can perform and undertake daily choreswithout help and assistance.

The MACT had noticed allthese pertinent facts and had awarded compensation under thefollowing heads:-

1	On account of injuries caused,pain, deprivation of amenities of life, shortening of long life, inconvenience, sadness disappointment, depression and mental and physical agony.	Rs . 1,50,000
2	The inconvenience due toinjuries in carrying out day to day/routine work	Rs . 1,50,000
3	Special expenditure on transport	Rs . 50,000
4	Under Medical expenses	Rs . 94,500
5	Expenses on medical attendantand nutritious food during treatment in hospital.	Rs . 9,500
6	Amount of earned leave.	Rs . 1,57,000
7	For transport expenses to andfro the Hospital	Rs . 10,000
	Total	Rs . 6,21,000

Keeping in view the aforesaid position, along with the factsthat the respondent No.1 had undergone an operation and an implanthad been fixed on his vertebrae causing him physical pain,discomfort and possible decrease in lifespan, and that he thoughentitled to pension and retirement benefits, has lost theopportunity to take up post-retirement employment, we deem it appropriate to enhance the compensation of Rs. 6,21,000 by a further amount of Rs.3,79,000. Inother words, the first respondent No. 1 is entitled to receive totalcompensation of Rs. 10,00,000 in all. **New India Assurance Co. Ltd. vs. Satish Chandra Sharma and another, 2022 ACJ 1211**

S. 166- Determination of Compensation- Loss of dependency- Split Multiplier- Applicability.

The deceased was riding a two-wheeler when a bus belonging to the respondent dashed into his vehicle. The deceased suffered head injuries and died instantly. He was born on 11.4.1956 and was 54 years old on the date of accident. On the basis of income and age, the Motor Accident Claim Tribunal, Chennai 1 awarded a compensation of Rs.13,82,628/-.

The High Court affirmed the findings recorded by the learned Tribunal in respect of multiplier of 3 upto the date of superannuation and thereafter multiplier of 8 keeping in view the dependency of life for 10 years. The High Court maintained the amount of compensation on account of dependency but enhanced the compensation under the conventional heads, so as to award a sum of Rs.15,12,628/-.

In Pranay Sethi, this Court held that the age of the deceased is the basis for applying suitable multiplier and that the compensation is to be determined keeping in view the future prospects. The future prospects were held to 15% in respect of a deceased between the age of 50 to 60 years.

Thus, we find that the method of determination of compensation applying two multipliers is clearly erroneous and run counter to the judgment of this Court in Pranay Sethi, affirming the judgment in Sarla Verma. Since the deceased was 54 years of age on the date of incident, therefore, the suitable multiplier would be 11 as per the judgment of this Court in Sarla Verma approved by this Court in Pranay Sethi. **R. Valli and others vs. Tamil Nadu State Transport Corporation Ltd., 2022(40) LCD 807**

Fatal accident- Apex Court observed that split multiplier cannot be applied unless specific reason is recorded and the finding of High Court that deceased was to retire in 4 years cannot be construed as a reason for applying split multiplier- Tribunal's award restored.

In normal course, the compensation is to be calculated by applying the multiplier, as per the judgment of this Court in the Case of SARLA VERMA. Split multiplier cannot be applied unless specific reasons are recorded. The finding of the High Court that the deceased was having leftover service of only four years, cannot be construed as a special reason, for applying the split multiplier for the purpose of assessing the compensation. In normal course, compensation is to be assessed by applying multiplier as indicated by this Court in the judgment in the case of SARLA VERMA. As no other special reason is recorded for applying the split multiplier, judgment of the High Court is fit to be set aside by restoring the award of the Tribunal. **Sumathi and others vs. National Insurance Co. Ltd. and another, 2022 ACJ 1315**

Fatal accident enhancement of compensation.

It is admitted fact that deceased was working as ME-II and drawing salary to the tune of Rs. 12,989 per month. When 50 per cent deduction is made, then the dependency will come to Rs. 6,494.50 50per cent of the amount is to be added towards future prospects taking monthly dependency to Rs. 9,741.75 or Rs. 1,16,901 per annum. When multiplier of 18 is applied, then total quantum of pecuniary compensation will come out to Rs. 21,04,218. Over and above this, a sum of Rs. 30,000 will be admissible under the head of non-pecuniary damages taking total compensation to Rs. 21,34,218 in place of Rs. 5,24,340 awarded by the learned Claims Tribunal. Therefore, there will be enhancement to the tune of Rs. 16,09,878 over and above what has been awarded by learned Tribunal. Other terms and conditions of the award shall remain intact except that this enhanced amount will be invested in the joint names of the claimants in a five year recurring deposit account of Indian Post Office and the claimants will be entitled to use interest on the principal amount for a period of five years. **Harikesh and others vs. Arvind Kumar and others, 2022 ACJ 1410**

Multiple injuries- Tribunal awarded Rs. 19,98,000 which was enhanced by the High Court to Rs. 27,36,541- Apex Court considering prolonged hospitalization and multiple operations undergone allowed Rs. 3,00,000 towards 'loss of amenities and joy' and 'pain and suffering' instead of Rs. 1,00,000 awarded by High Court and enhanced the award from Rs.27,36,541 to Rs. 29,36,541.

Having heard learned counsel for the claimant and looking to the grievous injuries suffered by the claimant and permanent partial disability and prolonged hospitalisation and the operations performed for right sub-frontal craniotomy and evacuation of basal frontal contusion

(03.10.2011); repair of right ear (03.10.2011); closed unreamed tibial interlock nailing (03.10.2011); and Tracheostomy (05.10.2011), we are of the opinion that Rs. 50,000/- awarded towards loss of amenities, joy and Rs. 50,000/- awarded towards pain and sufferings respectively can be said to be on the lower side. In the facts and circumstances of the case, we are of the opinion that under the aforesaid heads, namely, loss of amenities, joy and towards pain and sufferings respectively, if a further sum of Rs.2,00,000/- (over and above Rs.1,00,000/- (Rs. 50,000/- on each count) is awarded, it will meet the ends of justice. **Shivdhar Kumar Vashiya vs. Ranjeet Singh and others, 2022 ACJ 1412**

Nexus between injuries and death –there was nexus between accidental injuries and death of the deceased- SC Held.

The injured was admitted in his hospital for more than 3 months and remained under treatment for a very long time. He had developed quadriplegia. A person who is confined to bed and suffering from quadriplegia, the death cannot be for any other reason but on account of injuries suffered by him. **Afsana and others vs. Kundu Knit Fab. Pvt. Ltd. and another, 2022 ACJ 754**

Employee's compensation Act 1923 Sec. 2(1)(1)- Whether the appellant suffered total disablement which is defined in clause (1) of Sub-section (1) of section (2) of the said Act.

There is no dispute that the appellant suffered disablement of permanent nature. The disablement has incapacitated him from doing the work which he was capable of doing. The said work was of driving a vehicle. Therefore, the learned Commissioner for Workmen's Compensation was right in holding that the disability of the appellant will have to be treated as 100 per cent. Hence, the case of the appellant will be covered by the definition of 'total disablement'.

Therefore, the impugned judgment cannot be sustained and will have to be set aside. **Arjun vs. Iffco-Tokio General Ins. Co. Ltd. and another, 2022 ACJ 970**

Employee's compensation Act 1923

S. 4-A(3)(a)- Interest- Whether High Court erred in disallowing interest.

The submission that the award of interest should be after the expiry of 30 days from the date of accident. Thus, there was no legal basis for the High Court to delete the order of payment of interest.

Section 4-A stipulates payment of interest at the rate of 12 per cent per annum from the date of accident; moreover High Court erred in interfering with the award of interest when appeal was dismissed on the ground of limitation; Commissioner's award restored. **Ajaya Kumar Das and another vs. Divisional Manager, National Insurance Co. Ltd. and another, 2022 ACJ 1004**

Narcotic Drugs and Psychotropic Substances Act, 1985

S. 29 read with S. 21(c)—Conviction—Sustainability—

In this case, the Hon'ble Supreme Court discussed the law on Sec. 427 Cr.P.C. as under :-

(i) If a person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment, such subsequent term of imprisonment would normally commence at the expiration of the imprisonment to which he was previously sentenced.

(ii) Ordinarily the subsequent sentence would commence at the expiration of the first term of imprisonment unless the court directs the subsequent sentence to run concurrently with the previous sentence.

(iii) The general rule is that where there are different transactions, different crime numbers and cases have been decided by the different judgments, concurrent sentence cannot be awarded under Section 427 of Cr.P.C.

(iv) Under Section 427 (1) of Cr.PC the court has the power and discretion to issue a direction that all the subsequent sentences run concurrently with the previous sentence, however discretion has to be exercised judiciously depending upon the nature of the offence or the offences committed and the facts in situation. However, there must be a specific direction or order by the court that the subsequent sentence to run concurrently with the previous sentence. **Mohd. Zahid vs. State through NCB, 2022 (119) ACC 693**

Negotiable Instruments Act, 1881

S. 9- 'Holder in due course'- Burden to prove- Held, the burden of proving that the 'holder' is a 'holder in due course' lies on the person claiming to be so.

Distinction is required to be drawn between 'holder' and 'holder in due course', an expression defined in Section 9 in the following manner:

> "9. "Holder in due course".—"Holder in due course" means any person who for consideration became the possessor of a promissory note, bill of exchange or cheque if payable to bearer, or the payee or indorsee thereof, if **(Subs. by Act 8 of 1919. s. 2, for "payable to, or to the order of, a payee,")** [payable to order,] before the amount mentioned in it became payable, and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title."

As per Section 9, a 'holder in due course' is a person who for consideration has become a possessor of the instrument if payable to a bearer or if payable to the order to the person mentioned, i.e. the payee, or becomes the indorsee thereof. Holder in due course means the original holder or a transferee in good faith, who has acquired possession of the negotiable instrument for consideration, without having sufficient cause to believe that there was any defect in the title of the person from whom he has derived the title. Negotiation in case of transfer should be before the amount mentioned in the negotiable instrument becomes payable. Clause (g) ["(g) that holder is a holder in due course:- that the holder of a negotiable instrument is a holder in due course:

provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him."] to Section 188 ["118. Presumptions as to negotiable instruments- Until the contrary is proved, the following presumptions shall be made:

xx xx xx] states that unless contrary is proved the 'holder' of a negotiable instrument is presumed to be a 'holder in due course'. But the proviso qualifies the presumption, where the instrument has been obtained from its lawful owner or a person in lawful custody thereof by means of an offence or fraud or has been obtained from the maker or acceptor thereof by means of an offence or fraud or by an unlawful consideration. In such cases the burden of proving that the 'holder' is a 'holder in due course' lies on the person claiming to be so. **Pradeep Kumar and another vs. Post Master General and others, 2022(40) LCD 1083**

S. 10- 'Payment in due course'- Definition –Scope- Held, the payment should be in both good faith and without negligence as mere good faith is not sufficient.

Section 10 of the NI Act, which defines the expression 'payment in due course' and reads as follows:

> " 'Payment in due course' means payment in accordance with the apparent tenor of the instrument in good faith and without negligence to any person in possession thereof under circumstances which do not afford a reasonable ground for believing that he is not entitled to receive payment of the amount therein mentioned."

When payment is made in accordance with the apparent tenor of the instrument in good faith and without negligence to a person in possession thereof, it is payment in due course. The requirement in Section 10 that the payment should be in both good faith and without negligence is cumulative. Thus, mere good faith is not sufficient. Consequently, Section 3(22) of the General Clauses Act, 1897, which defines 'good faith' as an act done honestly, whether done negligently or not, is not sufficient to hold that the payment made was 'payment in due course' under the NI Act. Ascertainment of whether the act of payment is in good faith and without negligence is by examination of the circumstances in which payment is made. **Pradeep Kumar and another vs. Post Master General and others, 2022(40) LCD 1083**

S. 138/142—NI ACT., S. 482 Cr.P.C

The Hon'ble Supreme Court observed that when a company is the payee of the cheque based on which a complaint is filed under Section 138 of N.I. Act, the complainant necessarily should be the Company which would be represented by an employee who is authorized. Prima-facie, in such a situation the indication in the complaint and the sworn statement (either orally or by affidavit) to the effect that the complainant (Company) is represented by an authorized person who has knowledge, would be sufficient. The employment of the terms "specific assertion as to the knowledge of the power of attorney holder" and such assertion about knowledge should be "said explicitly" as stated in A.C. Narayanan (supra) cannot be understood to mean that the assertion should be in any particular manner, much less only in the manner understood by the accused in the case. All that is necessary is to demonstrate before the learned Magistrate that the complaint filed is in the name of the "payee" and if the person who is prosecuting the complaint is different from the payee, the authorization therefore and that the contents of the complaint are within his knowledge. When, the complainant/payee is a company, an authorized employee can represent the company. Such averment and prima facie material is sufficient for the learned Magistrate to take cognizance and issue process. **M/s. TRL Krokasi Refractories Ltd. vs. M/s. SMS Asia Pvt. Ltd., 2022 (119) ACC 1005**

Ss. 138 and 142—Cr.P.C., S. 482—Quashing of summoning order—Application for—Sustainability—Cause of action—Delay in filing complaint—

In this case, Hon’ble High Court discussed the law on limitation in matters of NI Act. The Court observed that in the case of Sadanandan Bhadran Vs. Madhavan Sunil Kumar reported in (1998) 6 SCC 514, Hon’ble Supreme Court has dealt with the provision of Section 20 of the Civil Procedure Code and cause of action has been dealt which is relevant in the present case. Para 6, 7 & 8 of the said judgment is reproduced as below:-

“6. In a generic and wide sense (as in Section 20 of the Civil Procedure Code, 1908) ‘cause of action' means every fact which it is necessary to establish to support a right or obtain a judgment. Viewed in that context, the following facts are required to be proved to successfully prosecute the drawer for an offence under Section 138 of the Act:

(a) that the cheque was drawn for payment of an amount of money for discharge of a debt/liability and the cheque was dishonoured;

(b) that the cheque was presented within the prescribed period;

(c) that the payee made a demand for payment of the money by giving a notice in writing to the drawer within the stipulated period; and

(d) that the drawer failed to make the payment within 15 days of the receipt of the notice.

If we were to proceed on the basis of the generic meaning of the term 'cause of action' certainly each of the above facts would constitute a part of the cause of action but then it is significant to note that clause (b) of Section 142 gives it a restrictive meaning, in that, it refers to only one fact which will give rise to the cause of action and that is the failure to make the payment within 15 days from the date of the receipt of the notice. The reason behind giving such a restrictive meaning is not far to seek. Consequent upon the failure of the drawer to pay the money within the period of 15 days as envisaged under clause (a) of the proviso to Section 138, the liability of the drawer for being prosecuted for the offence he has committed arises, and the period of one month for filing the complaint under Section 142 is to be reckoned accordingly. The combined reading of the above two sections of the Act leaves no room for doubt that cause of action within the meaning of Section 142 arises - and can arise - only once.

7. Besides the language of Sections 138 and 142 which clearly postulates only one cause of action there are other formidable impediments which negates the concept of successive causes of action. One of them is that for dishonour of one cheque there can be only one offence and such offence is committed by the drawer immediately in his failure to make the payment within fifteen days of the receipt of the notice served in accordance with clause (b) of the proviso to Section 138. That necessarily means that for similar failure after service of fresh notice on subsequent dishonour the drawer cannot be liable for any offence nor can the first offence be treated as non est so as to give the payee a right to file a complaint treating the second offence as the first one. At that stage it will not be a question of waiver of the right of the payee to prosecute the drawer but of absolution of the drawer of an offence, which stands already committed by him and which cannot be committed by him again.

8. The other impediment to the acceptance of the concept of successive causes of action is that it will make the period of limitation under clause of Section 142 otiose, for, a payee who failed to file his complaint within one month and thereby forfeited his right to prosecute the drawer, can circumvent the above limitative clause by filing a complaint on the basis of a fresh presentation of the cheque and its dishonour. Since in the interpretation of statutes the Court always presumes that the legislature inserted every part thereof for a purpose and the legislative intention is that the very part should have effect the above conclusion cannot be drawn for, that will make the provision for limiting the period of making the complaint nugatory.”

The Hon'ble Court held that the entire complaint filed by opposite party no.2 does not indicate any reason as to why delay took place in filing the complaint. The averment regarding the delay and time-barred complaint is made in para 11 and 12 of the instant application and the opposite party no.2 has not denied the contents of para 11 and 12 while giving reply in para 10 of the counter affidavit the opposite party no.2 has said that case is argumentative and suitable reply will be given at the time of argument. The opposite party no.2 has rather admitted the contents of para 11 and 12 because vague reply has been given. The complaint filed by the opposite party no.2 does not satisfy the test envisaged in Sections 138 and 142 of the N.I. Act. **Mohammad Sikandar Bhai vs. State of U.P., 2022 (119) ACC 147**

Ss. 138, 142

There was complaint of dishonor of cheque. The General Manager (Accounting) filed complaint on behalf of company. The plea was raised that complainant was not competent for want of authorization. Complaint was filed in the name of Company through General Manager who was authorized by M.D. of Company to institute criminal proceedings, including proceeding under N.I. Act to represent company and take all necessary action in the court of SDJM. His specimen signature was also attested by M.D. M.D. also delegated power by Board of Directors that delegation document disclosed that complaint was filed by on behalf of "Payee". It was held that in the cases of dishonor of cheque when company is payee of cheque, complainant necessarily should be the company which would be represented by an authorized employee. It was also held that when cheques were dishonor notices were issued by complainant that is General Manager (Accounting). Hence the person who had knowledge of transaction and was witness to it has been authorized and has instituted complaint on behalf of company. Thus the quashing of order on that count was liable to set aside. **M/s. TRL Krosaki Refractories Ltd. v. M/s SMS Asia Private Limited, 2022 Cri.L.J. 1745 : AIR Online 2022 SC 213**

Ss 138 and 142.

It is clear from the perusal of the complaint that there is no specific averment that applicant is involved in day-to-day affairs of the company. There is only general allegation that applicant is a Director of the company. The document filed by the applicant establishes that the applicant was a nominee Director and who has now resigned.

Considering the aforesaid facts and the law propounded on the point it is clear that in absence of specific allegations about the applicant he cannot be prosecuted for any offence under section 138 N.I. Act. The learned Magistrate has failed to consider the matter properly. The order of summoning regarding applicant is unjust and illegal and cannot be sustained. **Jatinder Pal Singh vs. M/s. Statcon Power Controls Ltd. and others, 2022(5) ADJ 337 (Alld. H.C.)**

Partition Act, 1893

S. 4- Transfer of Property Act, 1882 – Section 44 – Transfer of undivided share of one of the co-owners in dwelling house to a stranger to family – Right of transferee – A stranger to a family who becomes transferee of an undivided share of one of the co-owners in a dwelling house belonging to undivided family – Cannot claim a right of joint possession of house with other co-owners of dwelling house – Court has power to compel a stranger who acquired by purchasing a share in family dwelling house, when he seeks partition – To sell his share to members of family who are owners of rest of house at a valuation to be determined by Court.

Partition Act, 1893 – Section 4 – Valuation of share of stranger purchaser – Relevant date for – Even though the date on which right to purchase crystallizes i.e. on a date, the party makes an application undertaking to buy a share of stranger purchaser be taken as threshold date on which valuation of share of property may be ascertained – But at the same time it must be seen in context and proximity of time with the date on which order regarding sale passed by Court – However, it cannot be a date prior but must be the date of making an unconditional offer to purchase either by making a separate application or otherwise by making undertaking in pleading.**Yogesh Kesarwani and another v. Devi Shankar Shukla, 2022 (155) RD 538 – Alld. HC – Lucknow Bench.**

Protection of Children from Sexual Offences (POCSO) Act, 2012

S 5, 6, 29, S 3 Evidence Act

There was prompt FIR regarding unnatural offence in which accused allegedly committed act of sodomy on minor victim boy. The FIR was prompt and ruled out any possibility of deliberation, concoction and false implication. It was stated in FIR that accused was apprehended on spot while committing act of sodomy on victim. The testimony of informant father and mother of victim found trustworthy which gets corroboration from medical report. From perusal of medical report and supplementary medical report prepared by Doctor, it was proved that victim sustained injuries, three contusions, but said medical report was not proved by prosecution. In this case accused tried to manipulate and temper with evidence as signature of father and mother of victim were fraudulently obtained in affidavit denying such incident. No evidence of any enmity to falsely implicate the accused was shown. It was held that prosecution proved beyond reasonable doubt that accused committed grave offence punishable u/s 377 IPC and Section 5, 6 POCSO Act the conviction held proper.

Hon’ble court also observed that, Hon'ble Apex Court in State of Andhra Pradesh v. Thummala Anjaneyulu (2010) 14 S.C.C. 621 held that where First Information Report was lodged promptly with independent eyewitness included in the First Information Report and the spontaneity of the FIR also supports eyewitness account, the prosecution case is liable to be relied on. Hon'ble Apex Court in Jai Prakash Singh v. State of Bihar (2012) 4 S.C.C. 379 in para '12' has observed as follows:-

The FIR in a criminal case is a vital and valuable piece of evidence though may not be substantive piece of evidence. The object of insisting upon prompt lodging of the FIR in respect of the commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the names of the eyewitnesses present at the scene of occurrence. If there is a delay in launching the FIR, it loses the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of large number of consultations/deliberations. Undoubtedly, the promptness in lodging the FIR is an assurance regarding truth of the informant's version. A promptly lodged FIR reflects the firsthand account of what has actually happened, and who was responsible for the offence in question. {(Vide Thulia Kali v. State of Tamil Nadu, (1972) 3 SCC 393, State of Punjab v. Surja Ram (1995) Supp (3) SCC 419, Girish Yadav v. State of M.P. (1996) 8 SCC 186, and Takdir Samsuddin Sheikh v. State of Gujarat (2011) 10 SCC 158.) }

While discussing about the presumption under Section 29 of the POCSO Act Hon'ble Court held that:

> "Section 29-Presumption as to certain offences -Where a person is prosecuted for committing or abetting or attempting to commit any offence under sections 3, 5, 7 and section 9 of the this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be, unless the contrary is proved."

Perusal of the above provision does indicate that it is for the accused to prove the contrary that he has not committed or abetted the commission of an offence under sections 3, 5, 7, and section 9 of the POCSO Act and, in case, he fails to do so, presumption would operate against him leading to his conviction under the provision of the Act. It cannot be disputed that no presumption is absolute and every presumption is rebuttable. It cannot be said that the presumption under Section 29 of the POCSO Act is absolute. It will come into operation only when prosecution is first able to establish the fact and that would form the foundation of the presumption under Section 29 of the POCSO Act to operate. Otherwise, entire burden would be on the accused to prove the contrary. Such position of law or interpretation of presumption under section 29 of the POCSO Act cannot be accepted as it would clearly violate the constitutional mandate and no person can be deprived of liberty, except in accordance with the procedure established by law. **Satta alias Satya Prakash v. State of U.P., 2022 Cri.L.J. (NOC) 250 (All) : AIR Online 2022 All. 1373**

Ss. 7/8 and 5/6—IPC, Ss, 354, 354-K, 326-A, 452, 302 and 376—Cr.P.C., S. 366(1)—Conviction—Death penalty—Sustainability

In this case, the Hon'ble High Court discussed Sec. 29 POCSO Act presumption and observed as though the presumptive provisions contained in sections 29 and 30 are there in the Act but their operation is limited to the offences specified therein. No doubt, by virtue of sub-section (2) of section 28 of the Act, while trying an offence under the Act, a Special Court has also to try an offence other than the offence referred to in sub-section (1) of section 28 of the Act (i.e. the offences punishable under the Act), with which the accused may, under the Code of Criminal Procedure, 1973, be charged at the same trial but, as the presumptive provisions of section 29 are applicable only to the offences specified therein, they would not apply to prove an offence of murder punishable under section 302 IPC.

Further in this case, Hon'ble High Court observed that A dying declaration is admissible under Section 32(1) of the Evidence Act as an exception to the rule against hearsay evidence. If a dying declaration is duly proved and is found truthful, it can on its own form the basis of conviction. But before a dying declaration is relied upon by the court its making would have to be proved by legally admissible evidence. Unfortunately, in the instant case, neither the recording Magistrate nor the doctor, who certified the mental and physical condition of the victim, has been examined. Even if we assume that the concerned doctor was examined as one of the prosecution witnesses, he stated nothing about the dying declaration, probably, because the public prosecutor might not have deemed it necessary to lead evidence in that regard. Interestingly, the I.O. (PW-7) states that he came to know about the dying declaration having been recorded on 01.05.2019, the day the victim died. Notably, on death of the victim, the investigation was taken over by PW-8 from PW-7. But, surprisingly, even PW-8 does not proceed to record statement of the recording magistrate and does not enlist him as a witness. Thus, though the dying declaration (Paper No.39 Ka/1) is on record but this dying declaration

has not been exhibited and it has also not been put to the accused while recording his statement under Section 313 CrPC, a fortiori, the same cannot be read and form basis of conviction. Consequently, we have no hesitation in holding that the conviction recorded by the trial court is unsustainable and is liable to be set aside. **Monu Thakur vs. State of U.P., 2022 (119) ACC 151**

Prevention of Corruption Act, 1988

Ss 7, 13 (1)(d), (2)

The matter was related to acceptance of bribe in a trap case. The accused was commercial tax officer who allegedly demanded bribe of Rs. 3000/- for issuing assessment order.

While appreciating the evidence Hon'ble Court held that the complainant in his cross examination accepted that exemption from payment of commercial tax was allowed. Hence, he was not required pay commercial tax it was also stated that issuance of final assessment order was only procedural formality. No one accompanied complainant inside the chamber of accused at time of trap. Hence complainant was only witness to alleged demand and acceptance. During cross examination complainant that his version regarding demand was improvement. It was held that story of demand of bribe was highly doubtful and in absence of any other reliable evidence the demand has not been conclusively proved. Hence, conviction was set aside.

In this matter Hon'ble Court referred to its earlier decision in the case of P. Satyanarayana Murthy v. District Inspector of Police, State of Andhra Pradesh and another, AIR 2015 SC 3549, the proof of demand of illegal gratification, thus, is the gravamen of the offence under Section 7 and 13(1)(d)(i) and (ii) of the act and in absence thereof unmistakably the charge therefore, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act. As a corollary, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under section 7 or 13 of the Act would not entail his conviction thereunder. **K. Shanthamma v. State of Telangana, 2022 Cri.L.J.1238 : AIR Online 2022 SC 182.**

Provincial Small Cause Courts Act, 1887

S. 15 -Ejectment suit-On ground of arrears of rent after determination of tenancy, Act No. 13/1972 not applicable, the shop in dispute new construction @ Rs. 10,000/- p.m.-Suit dismissed holding the shop not new construction based on plaintiff's admission made in plaint of the earlier suit-Legality of-

The Trial Judge seems to have been so fascinated and overwhelmed by the admission made in the plaint that he has bestowed no consideration to the fact that the foundation of the statutory demolition proceeding was a new construction done by the plaintiff in the year 2003. The demolition order was served upon the plaintiff, as he alleges, in the plaint giving rise to Suit No. 85 of 2004 on 4.12.2003. If the Trial Judge had taken into consideration the demolition order passed in the year 2003, he might have reached a different conclusion about the fact whether the demised shop was a new construction or not. There is nothing on record to show that the demolition order was set aside or revoked, holding the demised shop to be an older construction. Rather, the demolition proceedings appear to have been compounded, which would prima facie

indicate that the demised shop, being a new construction, was a factual position that was acquiesced into by the plaintiff and established by the Development Authority. The finding of the Trial Court, therefore, on the issue that the demised shop is an old construction, an integral part of Premises No. 1/208, to which the Act is applicable, is vitiated for non-consideration of material evidence. Also, the finding is manifestly illegal, because it proceeds on a wrong notion of the law that an admission made in the plaint of an earlier suit inter se the plaintiff and the Development Authority is virtually to be regarded as conclusive proof of the fact or an estoppel by pleading against the plaintiff, as if it were. The correct legal position is that the admission made in the said plaint, though admissible, it is open to the plaintiff to explain it by other evidence that it did not represent the true state of facts.

Since this Court is of opinion that the Trial Court is required to re-examine the issue about the construction of the building being a new one, dating to the year 2003, the decree passed by the Trial Judge would have to be set aside, with a remand to the Trial Court to determine the question afresh, whether the Act is applicable to the demised shop. In doing that, the Trial Court shall bear in mind the guidance in this judgment and will consider all relevant evidence on the point; not just the admission of the plaintiff in the plaint of Suit No. 85 of 2004. Any further evidence led by parties shall also be considered. If the finding is that the demised shop is indeed a construction raised in the year 2003, it goes without saying that the Act would not govern the tenancy. In that event, the rate of rent or default would all become irrelevant.

In the result, this revision succeeds and is allowed in part. The impugned judgment and decree dated 18.1.2013 passed by the Additional District Judge, Court No. 6, Agra in S.C.C. Suit No. 21 of 2005 is set aside. The suit shall stand restored to the file of the learned Trial Judge for trial and decision afresh, in accordance with the remarks in this judgment and on the point required to be re-determined. The Trial Court shall proceed to try and decide the suit, after affording necessary opportunity to both parties in accordance with law, within a period of six months of the receipt of a copy of this judgment. Since the matter is a small cause suit, that is one of the year 2004, the Trial Judge shall fix one date of effective hearing every week. Both parties shall appear before the Trial Court on 20.4.2022. There shall be no order as to costs. **Aziz Uddin v. Rajesh Verma, 2022(1) ARC 901(Alld.).**

S. 15 and 25-Transfer of Property Act, 1882, S. 106 and 114-Ejectment suit-After determination of tenancy by means of notice under Section 106, T.P. Act-Suit decreed holding shop in dispute exempted from operation of U.P. Act No. 13 of 1972, relationship of landlord and tenant between the parties, quit notice valid Legality of-

A perusal of the notice to quit involved here would show that it does not effect a termination of tenancy in presenti, permitting the tenant to stay in the demised shop for thirty days as a matter of grace or on licence or at sufferance. Clearly, the notice says in Paragraph No. 4 that "tenancy shall be terminated immediately after the expiry of the period of 30 days of the receipt of this notice". This notice, for the worst, would fall in Category E enumerated in Abdul Jalil, and more specifically, in Category C, both of which have been held to be notices bringing about a valid determination of tenancy. Quite apart, though nothing has been brought to the notice of this Court during the course of hearing, that the principles in Abdul Jalil regarding the validity of various categories of notices, have been overruled by a Larger Bench, or by their Lordships of the Supreme Court, the perspective of the law regarding the validity of a notice has fairly changed to lean in favour of the view that what matters is the intention of the landlord to determine the lease, where Section 106 of the Act of 1882 governs the rights of parties. It is not

so much about the words employed as it is about the intent. In this connection, reference may be made to the decision of this Court in B.R. Trading Company and another v. Dharam Raj Sahu and others, 2007 SCC OnLine All 885:2008 (3) ARC 149 (SC).

This Court does not intend to go into the details of how much the arrears of rent were and if the deposit claimed to be made at the hearing of the suit under Section 114 of the Act last mentioned is sufficient to relieve the defendant of his liability from eviction. The moot point is whether in a suit instituted on the basis of a notice simplicitor to terminate a tenancy under Section 106 of the Act of 1882, the provisions of Section 114 providing for relief against the eviction, upon deposit of certain outstandings, would be available to the defendant. This question has engaged attention of this Court in B.R. Trading Company (supra) and in another decision in Vinod Kumar and others v. Arya Samaj Mandir, 2016 SCC OnLine All 2938: 2016 (2) ARC 669 (SC). The principle is that if the notice to quit comes by on account of forfeiture of the lease for violating an express condition thereof, which provides for a right to the lessor to re-enter, a notice under Section 111(g) of the Act of 1882 may issue, and if that be the case, a suit based on a notice forfeiting the lease may attract the provisions of Section 114 of the Act of 1882, providing a locus poententiae to the tenant against forfeiture. It has been opined in Vinod Kumar that in a case where there is no written lease and the tenancy is governed by oral compact, the provisions relating to forfeiture would not come into play. The question of forfeiture generally arises if there is a written lease carrying terms that entitle the lessor to re enter, if violated by the tenant and the lease is for a specific duration or perpetual in nature. The entire gamut of provisions of Sections 111, 112, 113 and 114 of the Act of 1882 would not apply in the case of a tenancy that is month-to-month, which can be terminated by a notice simplicitor under Section 106 of the Act of 1882, without the question of forfeiture at all figuring.

The defendants is granted six months' time to vacate the demised shop, subject to the condition that he deposits within a month the entire arrears of rent and mesne profits, besides all other sums of money due under the impugned decree with the Trial Court and also furnishes an undertaking that he will handover peaceful possession of the demised shop to the plaintiff on expiry of six months of date. In the event of default, the decree will become executable forthwith. **Govind Saran v. Km. Shubhi Mishra, 2022(1) ARC 889(Alld.).**

S. 25 – Civil Procedure Code, 1908 – Order VI, Rule 17-Amendment application for – Dismissal – Legality – Trial Court has to be cautious while granting or rejecting an amendment once trial commences – Once trial commenced, party making an application for amendment has to spell out clearly the cause which prevented it from bringing amendment prior to commencement of trial – Plaintiff revisionist filed a suit for damages violating terms of lease agreement – Plaintiff fully aware that lease agreement had to come to an end on 31.10.2014 – Remedy for evicting defendant from premises let out was already available to him at that time – Which he did not choose to claim – No whisper as to why delay caused on part of plaintiff in filing amendment – Present amendment is a fresh cause of action and by amendment, suit for damages cannot be amended by adding relief of arrears of rent and ejectment – Therefore, Trial Court rightly rejected amendment application of plaintiff – Revisionist-Revision dismissed.

The present amendment is a fresh cause of action and by the amendment, the suit for damages cannot be amended. Moreover, the relief, which is being claimed by the revisionist through amendment, was available to him when the suit for damages was filed by him on 10.12.2014 as the lease agreement had already expired on 31.10.2014 and the plaintiff could have claimed the relief for arrears of rent and ejectment, but he chose to press the relief of

damages on the basis of Clause 3© of the lease agreement, which had come to an end on 31.10.2014.

Thus, this Court finds that post amendment in Order VI, Rule 17, CPC, which was brought in the year 2002, the party seeking amendment has to adhere to the proviso while making an application in case of commencement of trial. It is not disputed to either of the parties that after framing of issues in the year 2016, 2 issues had already been decided and the oral evidence of plaintiff has already concluded. It is well settled that section 17 of Act, 1887 provides that provisions of Code of Civil "Procedure is applicable in the matters dealt by the Judge, Small Cause Court under the Act, 1887. **A.K. Dubey and another v. Exide Industries Ltd. and others, 2022 (155) RD 372 – Alld. HC.**

Railway Claims Tribunal Act, 1987

S. 23 -

Considering the aforesaid submissions, the following point of determination is being framed:

(i) Whether the Tribunal erred in law in rejecting the claim application on the ground of limitation without adverting the purpose of the Railway Claims Tribunal At, 1987?

It is no doubt true that the claim was filed with considerable delay but the Tribunal was required to have taken a pragmatic approach to advance the cause of merit and justice instead of rejecting the application for condonation of delay merely on the ground of delay of three years and six months.

Considering the fact that claim application was filed in terms of a beneficial enactment, it was incumbent upon the Tribunal to have taken a pragmatic and justice oriented approach in condoning delay in filing claim application which related to death of the claimant's son. The tribunal has not recorded any finding that delay occasioned in finding the claim was deliberate, willful or intentional on the part of claimant. Without recording any such finding, the Tribunal was not required to have rejected the claim application. As a result the point of determination is answered in the affirmative in favour of appellant**. Ram Badal Mishra vs. Union of India, 2022(4) ADJ 663 (LB)(Alld.H.C.)**

Right to Fair Compensation and Transparency in Land Acquisition Act, 2013

S. 114- Repeal of the Land Acquisition Act, 1894 (Old Act)- Effect- Land acquisition proceedings initiated under the Old Act but no award made till the repeal Act of 1894 i.e. 31.12.2013- Award made under Section 24(1)(a) of the Act of 2013- Period of Limitation- Applicability.

A statute which is prospective in its direct operation cannot be called as retrospective because a part of the requisites for its action is drawn from time antecedent to its passing. Another cardinal principle of interpretation is that a construction which results in unreasonably harsh and absurd results must be avoided. These dictums being relevant would help us resolve and answer the question in issue.

The expressions "relating to" or "in relation to" are words of comprehensiveness which may have a direct as well as indirect significance depending on the context.

Therefore, the expression ‘relating to’ when used in legislation has to be construed to give effect to the legislative intent when required and necessary by giving an expansive and wider meaning. Given this trend in interpretation, the words “all the provisions of this Act relating to the determination of compensation” must not be imputed a restricted understanding of the word ‘relating’ only to the substantial provisions on calculation of compensation, that is, Sections 26 to 30 of the 2013 Act. Rather, the expression should be given an expansive meaning so as to include the provision on limitation period for calculation of compensation that is, Section 25 of the 2013 Act.

40. In view of the aforesaid discussion, we hold as under:

(i) Section 25 of the 2013 Act would apply to the awards made and published under Section 24(1)(a) of the 2013 act.

(ii) The limitation period for passing/making of an award under Section 24(1) (a) in terms of Section 25 of the 2013 Act would commence from 1st January 2014, that is, the date when the 2013 Act came into force.

(iii) Period during which the Court order would inhibit action on the part of the authorities to proceed with the making of the award would be excluded while computing the period under Section 25 of the 2013 Act.

(iv) Accordingly, period of 79 days from 26th May 2014 when the High Court had stayed operation of the notification dated 19th March 2014, till the new notification dated 13th August 2014 was issued has to be excluded.

(v) The award purportedly dated 30th October 2014, was in any case duly made on or before the extended date of 20th March 2015. Hence, the concerned award is valid.

(vi) The State of Maharashtra may conduct an inquiry in reference to the imputation regarding manipulation and backdating of the subject award and take such remedial and corrective action as may be necessary and to ensure such situations do not arise in future.

The impugned judgment setting aside the award and holding that the acquisition proceedings had lapsed is, accordingly, set aside. It is held that the acquisition proceedings had not lapsed and the award is legal and valid. The appeals are allowed in the aforesaid terms without any order as to costs. **The Executive Engineer, Gosikhurd Project Ambadi, Bhandara, Maharashtra Vidarbha Irrigation Development Corporation vs. Mahesh and others, 2022(40) LCD 623**

Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989

S 14-

Now the question before this Court is to see, whether the Magistrate can directly take cognizance of offence punishable under SC/ST Act or it is the Special Court constituted under Section 14 of the Act, which has the jurisdiction to take cognizance in view of amendment made in provisions of SC/ST Act, Amended Act 2015 (Act No.1 of 2016) and the second question before this Court is, whether the Special Judge can treat the application under Section 156 (3) Cr.P.C. as a complaint case or not.

Therefore, the question as to whether the Magistrate can directly take cognizance of offence punishable under SC/ST Act or it is the Special Court constituted under Section 14 of the Act, 1989 which has the jurisdiction to take cognizance in view of amendment made in provisions of SC/ST Act, Amended Act 2015 (Act No.1 of 2016). The reply thereto is that Magistrate has absolutely no jurisdiction to entertain and take cognizance of offence under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Vide second proviso to Section 14 (1) of SC/ST Act, Act No.1 of 2016, the Special Courts constituted under the aforesaid Act have been empowered to take cognizance of offence directly under this Act with effect from 1.1.2016 and therefore, the powers vested under Section 190 (1) (a) Cr.P.C. has come to an end.

Therefore, the answer to the second question that the Special Judge can treat the application under Section 156(3) Cr.P.C. as a complaint case or not? Answer is "No" in view of the Rule 5(1) of the amendment Act. **Soni Devi vs. State of U.P. and others, 2022(5) ADJ 64 (Alld.H.C.)**

Service Law

Certified Standing Order[Clause 21.

There is a distinction between the abandonment of services and unauthorized absence from duty which is a misconduct. In the latter case the employee/workman is charged with unauthorised absence from duty and the employer has to hold a domestic enquiry. However when the conditions prerequisite for finding that the workman had abandoned his service are established no such enquiry is necessary. Principles of natural justice cannot be cast in a straight jacket formula and vary from case to case. The principles of natural justice in labour jurisprudence are applied to ensure transparencyand fairness in the employer and employee dealings which in turn promote industrial peace. **Mita India Private Limited vs. State of U.P. and others, 2022(5) ADJ 398 (Alld.H.C.)**

Recruitment

In our opinion, when we examine the Government Orders dated 5.3.2021 and 4.12.2020 what we find is that the said Government Orders have been issued with a purpose. The purpose, in our view, is that no candidate should be permitted to rectify any mistake committed by him/her while filling up online application form so as to avoid have ultimate impact on smooth conduct of the selection process and to avoid many alternation or change in the inter se merit of the candidates which would lead to any alternation/change in the final merit/select list. If a candidate furnishes some information in his/her online application form which, as is a present

case, does not put him/her in any advantaged situation, in our considered opinion, such efforts are not liable to be treated as the basis for rejecting the candidature of such a candidate.

In a case where a candidate indicates more marks than he/she has actually obtained he/she puts himself/herself in an advantaged position. Similarly in a case where a candidate indicates less marks then total marks prescribed in an examination conducted by the Examining Body then in this situation as well the candidate puts himself/ herself in an advantaged position. In both these situations, if the application form contains such mistake, it will not only impede the smooth selection process but such mistake will have the potential of altering or changing the inter se merit of the candidates as also the entire final merit/ select list.

In our opinion, the guidelines issued by means of the Government Order dated 1.12.2018 and the provisions contained in the Government Orders dated 5.3.2021 and 4.12.2020 are meant to check and prevent any such situation where the selection process gets impeded or such mistake has the potential of altering inter se merit of the candidate as also the final list/select list.

From the aforequoted portion of the judgment in the case of Rahul Kumar (supra) rendered by Hon'ble Supreme Court, it is abundantly manifest that rigor of the government Order is clear according to which whenever any undue advantage ensures to the candidate on account of the discrepancy committed by him/her while filling up online application form, then the candidature of such a candidate must be cancelled. However, if by the discrepancy committed while filling up online application form the candidate concerned puts herself in a disadvantaged situation his/her candidature need not be cancelled but such a candidature will be reckoned with such disadvantage as projected in the application form.

In the present case, the facts as discussed above, which are not in dispute, clearly establish that on account of error while indicating the high school marks in her online application form due to inadvertent mistake, the respondent-petitioner neither put herself in disadvantaged position nor in an advantaged position. The percentage of the marks of the respondent-petitioner in her high school examination is 89.3% and it is this percentage which was taken into account by the appellant-State authorities while reckoning the quality point marks. In such a situation it cannot be said by any stretch of imagination that by mistakenly indicating the High School marks in her on-line application form the respondent-petitioner put herself in any advantaged position so as to make her candidature liable for cancellation.

We have already observed that the Government Orders dated 5.3.2021 and 4.12.2020 as also the guidelines contained in the Government Order dated 1.12.2018 are to be given effect to. However, any mindless application of the provisions contained in the said Government Orders has the potential of denying rightful claim of a deserving candidate who not only qualified in the written examination but also was ultimately selected in the final select list. The validity of the Government Order dated 5.3.2021 has already been upheld by this Court in the case of Jyoti Yadav and another (supra) but so far as its application is concerned. Hon'ble Supreme Court in the case of Rahul Kumar (supra) has made it absolute clear that the candidature of a candidate is liable to be cancelled only in case such a candidate puts himself/herself in an advantaged position by committing some mistake while submitting the on-line application form. **Secy. Basic Edu. Board, Prayagraj and others (In Wria-No. 17495 of 2021) vs. Jubeda Bano, 2022(4) ADJ 1 (LB)(DB)- Alld High Court**

The primary issue, which requires consideration in the present set of appeals, is as to whether the rejection of candidature of the candidates, who had attempted questions in a subject not selected by them, was legally sustainable. In the case in hand, while appearing in the

competitive examination for selection as Assistant Teacher, in the subject of Social Science, there were four parts/subjects, namely Geography, History, Economics and Civics. Out of these the candidates had to opt for two subjects. The candidates opted for two subjects. However, while answering the questions by blackening the spots in the OMR Sheets, they had attempted questions in three subjects. As a result of which their applications were rejected. It is sought to be claimed as an error.

The argument raised is that the answers to the subjects selected by the candidates be evaluated, leaving the third one where wrongly certain questions have been answered. Identical argument was considered by a Division Bench of this Court vide judgment dated January 27, 2022 in Special Appeal No. 33 of 2022, titled as Vinay Kumar vs. State of U.P.**,** and after dealing with various orders passed by this Court and relying upon the judgment of Hon'ble the Supreme Court, it has been opined that any error committed by a candidate, even if inadvertent, in filling up the OMR Sheet, cannot be condoned and his candidature is liable to be rejected, for which clear instructions had been issued.

The instructions as mentioned in the OMR Sheet, clearly provided that for any error, the application would be rejected.

In the process of recruitment, thousands of candidates appear. If, at this stage also, it is found that they are casual in their approach and could not properly go through the instructions, which are mandatory, their presence of mind and intelligence level can very well be imagined.

Even otherwise, the re-evaluation of OMR Sheets of candidates, who had wrongly filled the columns therein, may not be possible after the result has been declared and the candidates have been recommended for appointment. It may entail change in the software, as a result of which the sanctity of the examination itself may be compromised. **U.P. Secondary Education Service Selection Board vs. State of U.P. and others, 2022(4) ADJ 7 (DB)] Allahabad High Court.**

Salary-Refund –Unjust Enrichment

Thus, it is also well settled that the doctrine of restitution is also applicable to interim orders and a litigant would not be allowed to gain by swallowing the benefits yielding out of the interim order. If the petition is dismissed, the injury, if any, caused by the act of the Court is required to be undone and, the gain, which the party would have earned as a result of interim order of the Court would be restored to or conferred on the other party, otherwise it would lead to unjust consequences.

In the present case, since the petitioners had drawn the salary on the strength of the interim order dated 21.02.2005 although same was not extended after the writ petition was dismissed for non-prosecution on 25.01.2006, the petitioners are required to refund the salary drawn by them illegally and, therefore, the petitioners are directed to refund the amount of salary with interest @ 6% per annum within a period of two months from today. **Smt. Sarita Singh vs. State of U.P., 2022(4) ADJ 14 (LB)] Allahabad High Court.**

Specific Relief Act, 1963

S. 16(c)

The substantial questions of law involved in this appeal read:

(1) Whether a suit for specific performance can be decreed without an issue about readiness and willingness being framed?

(2) Whether a suit for specific performance can be decreed without an issue of readiness and willingness being framed where the issue is substantially suited between parties?

(3) Whether specific performance can be granted in relation to agricultural land that has been the subject matter of consolidation operations where the vendee has been moved to different plots, different from those that are subject matter of the suit agreement.

Therefore, Substantial Question of Law (1) is answered in the affirmative, in terms that a suit for specific performance can be decreed without an issue about readiness and willingness being framed, provided readiness and willingness are substantially pleaded and proved by the parties' evidence, where the parties have gone to trial conscious of the plea, with opportunity to the defendants, to dispel the same. Substantial Question of Law No.2 is also answered in the affirmative, accordingly.

In the opinion of this Court, therefore, Substantial Question of Law No.3 must be answered in the negative, in terms that where agricultural land subject matter of consolidation, that is agreed to be sold, is consolidated and the defendant-vendor is moved to different plots, the contract would frustrate; but it would not frustrate where substantially, the subject matter of the suit agreement remains the same, with minor or negligible changes. **Babu Ram and others vs. Om Singh and another, 2022(5) ADJ 239 (Alld.H.C.)**

S. 38—Permanent injunction—To restrain defendant from dispossessing plaintiff and removing crops from suit property—

In the case of Jharkhand State Housing Board v. Shri Didar Singh (2019) 17 SCC 692 : (AIR 2018 SC (Supp) 1159) the Hon'ble Apex Court made the following observations-

"11. 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 the title and when he raises a cloud over the title of the plaintiff, then necessarily in those circumstances, plaintiff can not maintain a suit for bare injunction".

Similarly in Anathula Sudhakar v. P. Buchi Reddy (Dead) by L.Rs. and others (supra) the Hon'ble Apex Court explained the general principles as to when a mere suit for permanent injunction will lie and when it is necessary to file a suit for declaration and/or possession with injunction as a consequential relief. Following are the observations of the Hon'ble Apex Court:

"13. The general principles as to when a mere suit for permanent injunction will lie, and when it is necessary to file a suit for declaration and/or possession with injunction as a con sequential relief, are well settled. We may refer to them briefly.

13.1. Where a plaintiff is in lawful or peaceful possession of a property and such possession is interfered or threatened by the defendant, a suit for an injunction simpliciter will lie. A person has a right to protect his possession against any person who does not prove a better title by seeking a prohibitory injunction. But a person in wrongful possession is not entitled to an injunction against the rightful owner.

13.2. Where the title of the plaintiff is not disputed, but he is not in possession, his remedy is to file a suit for possession and seek in addition, if necessary, an injunction. A person out of possession, cannot seek the relief of injunction simpliciter, without claiming the relief of possession.

13.3. Where the plaintiff is in possession, but his title to the property is in dispute, or under a cloud, or where the defendant asserts title thereto an there is also a threat of dispossession from the defendant, the plaintiff will have to sue for declaration of title and the con sequential relief of injunction. Where the title of the plaintiff is under a cloud or in dispute and he is not in possession or not able to establish possession, necessarily the plaintiff will have to file a suit for declaration, possession and injunction". **Dhondu Ganpat Solunke vs. Dashrath Tukaram Saroshe, AIR 2022 Bombay 140**

Statutory Provisions

High Court of Judicature at Allahabad [Admin. 'G-II' Section], Noti. No. 159/2-22, Allahabad, dated April 11, 2022 and published in the U.P. Gazette, Part 1-Ka, dated 16th April, 2022, pp. 227-238, No. 16

In a compliance of the directions issued by Hon'ble Supreme Court vide Judgment dated 11-1-2022 passed in Miscellaneous Application No. 1852 of 2019 in Criminal Appeal No. 1101 of 2019, Smruti Tukaram Badade v. State of Maharashtra, the High Court of Judicature at Allahabad is pleased to make the following scheme i.e. **"Vulnerable Witnesses Deposition Centres Scheme 2022"** for Subordinate Courts of Uttar Pradesh, which shall come into force with immediate effect.

Whereas The Hon'ble Supreme Court of India in State of Maharashtra Vs. Bandu @ Daulat; (2018) 11 SCC 163 has issued certain directions for setting up Special Centres for examination of vulnerable witnesses in criminal cases so as to facilitate the conducive environment for recording statement of such witnesses and issued directions to all the High Courts to adopt the guidelines framed in this regard by the Delhi High Court with requisite modifications and also keeping in view the judgment dated 11-1-2022 passed by the Hon'ble Supreme Court of India in Smruti Thkaram Badade Versus State of Maharashtra and Another, Misc. Application No. 1852 of 2019 In Re: Criminal Appeal No. 1101 of 2019 whereby certain directions were issued to all the High Courts pertaining to the establishment, functioning and framing of scheme/guidelines for the establishment and functioning of Vulnerable Witnesses Deposition Centres, following scheme is promulgated/adopted in order to regulate the recording of evidence of the vulnerable witnesses in criminal cases.

OBJECTIVES OF THE SCHEME

1. To elicit and secure complete, accurate and reliable evidence from vulnerable witnesses;
2. to minimize harm or secondary victimization of vulnerable witnesses in anticipation and as a result of participation in the criminal justice system;
3. to ensure that the accused's right to a fair trial is also maintained.

Applicability

Unless otherwise provided, this scheme shall govern the examination of vulnerable witnesses during criminal trial, who are victims or witnesses of crime.

1. **Short title, extent and commencement**.—This scheme shall be called 'Vulnerable Witnesses Deposition Centre Scheme, 2022'. It will apply to all criminal courts in Uttar Pradesh

subordinate to The High Court of Judicature at Allahabad. The Scheme shall come into operation w.e.f. the date notified by the High Court of Judicature at Allahabad.

2. **Construction of the scheme**.—This scheme shall be liberally construed to uphold the interests of vulnerable witnesses and to promote their maximum accommodation without prejudice to the right of the accused to a fair trial.

3. **Definitions**.—

a. Vulnerable Witness—Following witnesses shall be regarded as vulnerable witness—

I. A witness who has not attained 18 years of age.

II. Victims of offences under Sections 354 and 377 IPC.

III. Victims of offences under Sections 376, 376-A, 376-B, 376-C and 376-D IPC.

IV. Victims of offences defined under The Protection of Children from Sexual Offences Act, 2012

V. Witnesses suffering from "mental illness" as defined under Section 2(S) of the Mental Healthcare Act, 2017 read with Section 118 of the Indian Evidence Act, 1872.

VI. Any speech or hearing impaired person suffering from any other disability rendering such persons, in the opinion of the court, as vulnerable witness.

VII. Any witness deemed to have a threat perception under the Witness Protection Scheme, 2018 of the Central Government.

VIII. Any other victim or witness deemed to be vulnerable by the concerned court.

b. Support Person—Means and includes guardian ad litem, legal aid lawyer, facilitators, interpreters, translators and any other person appointed by court or any other person appointed by the court to provide support, accompany and assist the vulnerable witness to testify or attend judicial proceedings.

c. In-Camera Proceedings—Means proceedings pertaining to criminal matters or parts thereof wherein the public generally or any particular person may not be allowed to participate, for good reason as provided u/s 327 of the Code of Criminal Procedure.

d. Concealment of identity of witness—Means and includes any condition prohibiting publication of the name, address and other particulars of the vulnerable witness, which may lead to the identification of the witness.

e. Comfort Items—Comfort items mean any article which shall have a calming effect on a vulnerable witness at the time of deposition.

f. Competence of a Vulnerable Witness—Every vulnerable witness shall be competent to testify unless the court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions due to tender age, disease, either of body or mind, or any other cause of the same kind. Explanation: A mentally ill person may also be held competent unless he/she is prevented by his/her lunacy to understand questions.

g. Court House Tour—A pre-trial tour of court room to familiarize a vulnerable witnesses with the environment and the basic process of adjudication and roles of each court official.

h. Descriptive Aids—A human figure model, anatomically correct dolls or a picture or anatomical diagrams or any other aids deemed appropriate to help a vulnerable witness to explain an act or a fact.

i. Live-Link—'Live-link' means and includes a live television link, audio-video electronic means or other arrangement whereby a witness, while absent from the courtroom is nevertheless present in the court room by remote communication using technology to give evidence and be cross-examined.

j. Special Measures—Means and includes the use of any mode, method and instrument etc. considered necessary for providing assistance in recording deposition of vulnerable witnesses.

k. Testimonial Aids—Means and includes screen; live-links, image and/or voice altering devices; or any other technical devices.

l. Secondary Victimization—Means victimization that occurs not as direct result of a criminal act but through the response of institutions and individuals to the victim.

m. Revictimization—Means a situation in which a person suffers more than one criminal incident over a period of time.

n. Waiting Room—A safe place for vulnerable witnesses where they can wait. It may have toys, books, T.V. etc. which can help in lowering the anxiety of such witnesses.

4. **Special Measures**.—The court may direct as to which, special measure will be used to assist a particular eligible witness in providing the best evidence.

5. **Applicability of Scheme to all Vulnerable Witnesses**.—For the avoidance of doubt, it is made clear that this scheme shall apply to all vulnerable witnesses, regardless of which party is seeking to examine the witness.

6. **No adverse inference to be drawn from special measures**—The fact that a witness has had the benefit of a special measure to assist them in deposition, shall not be regarded in any way whatsoever as being adverse to the position of the other side and this should be made clear by the Judge at the time of passing order in terms of this scheme to the parties when the vulnerable witness is examined and when the final judgment is pronounced.

7. **Identification of stress causing factors of adversarial Criminal Justice System**. — Factors which cause stress on vulnerable witness, rendering them further vulnerable and impeding complete disclosure by them shall, amongst others, include:

(i) Using in appropriate language during examination in chief, cross examination or re examination.

(ii) Delays and continuances.

(iii) Testifying more than once.

(iv) Prolonged/protracted hours of court proceedings.

(v) Lack of communication between professionals including police, doctors, lawyers, prosecutors, investigators, psychologists etc.

(vi) Fear of public exposure.

(vii) Lack of understanding of complex legal procedures.

(viii) Face-to-face contact with the accused.

(ix) Practices which are insensitive to developmental needs.

(x) Inappropriate and prolonged cross-examination.

(xi) Lack of adequate support and victims services.

(xii) Sequestration of witnesses who may be supportive to the child.

(xiii) Placement that exposes the vulnerable witness to intimidation, pressure, or continued abuse.

(xiv) Inadequate preparation for fearless and robust testifying.

(xv) Worry about not being believed especially when there is no evidence other than the testimony of the vulnerable witness.

(xvi) Formalities of court proceedings and surroundings including formal dress of members of the judiciary and legal personnel.

8. **Competency of Vulnerable Witness**.—(i) Every vulnerable witness shall be presumed to be qualified as a witness unless prevented by the following:

(a) Age.

(b) Physical or mental disability leading to recording a finding of doubt regarding the ability of such witness to perceive, remember, communicate, distinguish truth from falsehood or appreciate the duty to tell the truth, and/or to express the same. Explanation: The court shall conduct a competency assessment before recording the testimony of such witness on an application of either prosecution or defence or suo motu.

9. **Persons allowed at competence assessment**.—Only the following, in the discretion of the court, may be allowed to attend the competence assessment:

(i) The Judge and such court personnel deemed necessary and specified by order of the Judge concerned;

(ii) the counsel for the parties;

(iii) the guardian ad litem;

(iv) one or more support persons for the child; and

(v) the accused, unless the court determines that competence requires to be and can be fully evaluated in his absence.

(vi) Any other person, who in the opinion of the court can assist in the competence assessment.

10. **Conduct of competence assessment**.—The assessment of a child as to his/her competence as a witness shall be conducted only by the Judge.

11. **Developmentally appropriate questions**—The questions which may be asked to assess the competency of the vulnerable witness shall be appropriate and commensurate to the age and developmental level of the vulnerable witness; shall not be related to the issues at trial; and shall focus on the ability of the vulnerable witness to remember, communicate, distinguish between truth and falsehood and appreciate the duty to testify truthfully.

12. **Continuing duty to assess competence**.—The court shall have a duty of continuously assessing the competence of the vulnerable witnesses throughout their testimony and to pass appropriate orders, as and when deemed necessary.

13. **Pre-trial visit of Witnesses to the Court**.—Vulnerable witness shall be allowed a pre trial tour of the court, along with the support person to enable such witnesses to familiarize himself with the layout and atmosphere of the court; and may also include visit to and explanation of the following:

(1) The location of the accused in the dock;

(ii) court officials (what their roles are and where they sit);

(iii) who else might be in the court, for example those in the public gallery;

(iv) the location of the witness box;

(v) a run-through of basic court procedure;

(vi) the facilities available in the court;

(vii) discussion of any particular fears or concerns with the intermediaries, Prosecutors and the Judge to dispel the fear, trauma and anxiety in connection with the prospective deposition at court; and

(viii) demonstration of any special measures applied for, and granted, for example practising on the live-link and explaining who will be able to see them in the courtroom and showing the use of screens (where it is practical and convenient to do so).

14. **Meeting with the Judge**—The Judge may meet a vulnerable witness, suo motu, on reasons to be recorded or on an application of either party in the presence of the prosecution and defence counsels or in their absence as the case may be, before they give evidence, for explaining the court process in order to help them in understanding the procedure and giving their best evidence.

15. **Appointment of Guardian ad litem**—The court may appoint any person as guardian ad litem as per law to a witness who is a victim of, or a witness to a crime having regard to his/her best interests after considering the background of the guardian ad litem and his/her familiarity with the judicial process, social service programs, giving preference to the parents of the child, if qualified. The guardian ad litem may also be a member of bar/practicing advocate, except a person who is a witness or informant in any proceeding involving the vulnerable witness.

16. **Duties of Guardian ad litem**.—It shall be the duty of the guardian ad litem so appointed by court to:

(i) Attend all depositions, hearings, and trial proceedings in which a vulnerable witness participates.

(ii) Make recommendations to the court concerning the welfare of the vulnerable witness, keeping in view the needs and impact of the proceedings on such witness.

(iii) Explain in the language understandable to the vulnerable witness, all legal proceedings, including police investigations, in which the witness is involved.

(iv) Assist the vulnerable witness and his/her family in coping with the emotional effects of crime and subsequent criminal or non-criminal proceedings in which the witness is involved.

(v) Remain with the vulnerable witness while the vulnerable witness waits to testify.

17. **Legal assistance**.—A vulnerable witness may be provided with legal assistance by the court either at the request of the support person, if one has been designated or pursuant to an order of the court on its own motion, if the court considers the assignment of a lawyer to be in the best interests of the vulnerable witness, throughout the trial.

18. **Court to allow presence of support persons**.—(a) A court shall allow suo motu or on request, verbal or written, of the vulnerable witness testifying at a judicial proceeding to have the presence of one person of his own choice to provide him support who shall remain within his/her view and if the need arise may accompany such witness to witness stand, provided that such support person shall not completely obscure the child from the view of the opposing party or the Judge.

(b) The court may allow the support person to hold the hand of the vulnerable witness or take other appropriate steps to provide emotional/moral support to the vulnerable witness in the course of the proceedings. f ':

(c) The court shall instruct the support persons not to prompt, sway, or influence the vulnerable witness during his/her testimony. The support person shall also be directed

that he/ she shall under no circumstances discuss the evidence to be given by the vulnerable witness.

19. **The testimony of support person to be recorded prior**.—A testimony of the support person, if he/she also happens to be a witness, shall be recorded, ahead of the testimony of the vulnerable witness.

20. **Court to appoint facilitator**.—(i) To assist the vulnerable witnesses in effectively communicating at various stages of trial and or to coordinate with the other stake holders such as police, medical officer, prosecutors, psychologists, defence counsels and courts, the court may allow use of facilitators.

(ii) The court may, suo motu or upon an application presented by either party or a support person of vulnerable witnesses may appoint a facilitator, if it determines that such witness is finding it difficult to understand or respond to questions asked.

Explanation: (i) The facilitator may be an Interpreter, a Translator, Child Psychologist, Psychiatrist, Social Worker, Guidance Counselor, Teacher, Parent, or relative of such witness who shall be under oath to pose questions according to meaning intended by the counsel.

(ii) If the court appoints a facilitator, the respective counsels for the parties shall pose questions to the vulnerable witness only through the facilitator, either in the words used by counsel or, if the vulnerable witness is not likely to understand the same, in words or by such mode as is comprehensible to the vulnerable witness and which convey the meaning intended by counsel.

21. **Right to be informed**.—A vulnerable witness, his or her parents or guardian, his or her lawyer, the support person, if designated, or other appropriate person designated to provide assistance shall, from their first contact with the court process and throughout that process, be promptly informed by the court about the stage of the process and, to the extent feasible and appropriate, about the following:

(a) Procedures of the criminal justice process including the role of vulnerable witnesses, the importance, timing and manner of testimony, and the ways in which proceedings will be conducted during the trial;

(b) existing support mechanisms available for a vulnerable witness when participating in proceedings, including making available appropriate person designated to provide assistance;

(c) specific time and places of hearings and other relevant events;

(d) availability of protective measures;

(e) relevant rights of child victims and witnesses pursuant to applicable laws, the Convention on the Rights of the Child and other international legal instruments, including the Guidelines and the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by the United Nations General Assembly in its resolution 40/34 of 29 November 1985;

(f) the progress and disposition of the specific case, including the apprehension, arrest and custodial status of the accused and any pending changes to that status, the prosecutorial decision and relevant post-trial developments and the outcome of the case.

22. **Language, interpreter and other special assistance measures**.—

(a) The court shall ensure that proceedings relevant to the testimony of a vulnerable witness or victim are conducted in a language that is simple and comprehensible to such witness.

(b) If a witness needs the assistance of interpretation into a language or mode that he/she understands, an interpreter may be provided, free of charge.

(c) If, in view of the age, level of maturity or special individual needs, which may include but are not limited to disabilities if any, ethnicity, poverty or risk of revictimization, the child requires special assistance measures in order to testify or participate in the justice process, such measures may be provided free of cost.

23. **Waiting area for Vulnerable Witness**.—The courts shall ensure that a waiting area for vulnerable witnesses with the support person, lawyer of the witness facilitation, if any, is separate from waiting areas used by other persons. The waiting area for vulnerable witnesses should be furnished so as to make a vulnerable witness comfortable.

24. **Duty to provide comfortable environment**.—It shall be the duty of the court to ensure comfortable environment for the vulnerable witness by issuing suitable directions and also by supervising, the location, movement and deportment of all persons in the courtroom including the parties, their counsels, witnesses, support persons, guardian ad litem, facilitator, and court personnel. The witness may be allowed to testify from a place other than the witness chair. The witness chair or other place from which the vulnerable witness testifies may be turned to facilitate his/her testimony but the opposing party and his/her counsel must have a frontal or profile view of the witness even by a video-link, during the recording of testimony of the such witness. The witness chair or other place from which the child testifies may also be rearranged to allow the child to see the opposing party and his/her counsel, if he/she chooses to look at them, without turning his/her body or leaving the witness stand. While deciding to make available such environment, the Judge may be dispensed with from wearing his judicial robe.

25. **Testimony during appropriate hours**.—The court may order that the testimony of the vulnerable witness may be recorded at a particular time of the day within court hours, when the vulnerable witness is well-rested.

26. **Recess during testimony**.—The vulnerable witness may be allowed reasonable periods of breaks while undergoing depositions as often as necessary depending on his developmental need.

27. **Measures to protect the privacy and well-being of Vulnerable Witness and victims**. –

(I) At the request of the victim or vulnerable witness, his or her parents or guardian, his or her lawyer, the support person, other appropriate person designated to provide assistance, or the court on its own motion, taking into account the best interests of the witness, may order one or more of the following measures to protect the privacy and physical and mental well-being of the vulnerable witness and to prevent undue distress and secondary victimization—

(a) Expunging from the public record any names, addresses, workplaces, professions or any other information that could be used to identify the witness;

(b) forbidding the defence lawyer and persons present in court room from revealing the identity of the witness or disclosing any material or information that would tend to identify the witness:

(c) ordering the non-disclosure of any records that identify the witness, until such time as the court may find appropriate;

(d) assigning a pseudonym or a number to a witness, in which case the full name and date of birth of the witness shall be revealed to the accused within a reasonable period for the preparation of his or her defence;

(e) efforts to conceal the features or physical description of the witness giving testimony or to prevent distress or harm to the witness, including testifying:

(i) behind screen;

(ii) using image-or voice-altering devices;

(iii) through examination in another place, transmitted simultaneously to the courtroom by means of video-link; and

(iv) through a qualified and suitable intermediary, such as, but not limited to, an interpreter for witness with hearing, sight, speech or other disabilities; t) holding closed sessions;

(g) if such witness refuses to give testimony in the presence of the accused or if circumstances show that the witness may be inhibited from speaking the truth in that person's presence, the court shall give orders to temporarily remove the accused from the courtroom to an adjacent room with a video-link or a one-way mirror visibility into the court room. In such cases, the defence lawyer shall remain in the courtroom and may question the witness, and the accused's right of confrontation shall thus be guaranteed; and

(h) taking any other measure that the court may deem necessary, including, where applicable, anonymity, taking into account the best interests of the witness and the rights of the accused.

(2) Any information including name, parentage, age, address, etc. revealed by the victim or vulnerable witness which enables identification of the person of the witness, shall be kept in a sealed cover on the record and shall not be made available for inspection to any party or person. Certified copies thereof shall also not be issued. The reference to the child victim or vulnerable witness shall be only by the pseudonym assigned in the case.

28. **Directions for Subordinate Court Judges**.—

(a) Vulnerable witnesses shall receive high priority and shall be handled as expeditiously as possible, minimizing unnecessary delays and continuances. (Whenever necessary and possible, the court schedule will be altered to ensure that the testimony of the vulnerable witness is recorded on sequential days, without delays).

(b) Judges and court staff should ensure that the developmental needs of vulnerable witnesses are recognized and accommodated in the arrangement of the courtroom.

(c) Separate and safe waiting areas and passage thereto should be provided for vulnerable witnesses.

(d) Judges should ensure that the developmental stages and needs of vulnerable witnesses are identified recognized and addressed throughout the court process by requiring usage of appropriate language, by timing hearings and testimony to meet the attention span and physical needs of such vulnerable witnesses by allowing the use of testimonial aids as well as interpreters, translators, when necessary.

(e) Judges should be flexible in allowing The vulnerable witnesses to have a support person

present while testifying and should guard against unnecessary sequestration of support persons.

(f) Hearings involving a vulnerable witness may be scheduled on days/time when the

witness is not in inconvenienced or is not disruptive to routine/ regular schedule of such witness.

29. **Allowing proceedings to be conducted in camera**.—

(a) When a vulnerable witness testifies, the court may order the exclusion from the courtroom of all persons, who do not have a direct interest in the case including members of the press. Such an order may be made to protect the right to privacy of the vulnerable witness, or if the court determines on the record that requiring the vulnerable witness to testify in open court would cause psychological harm to him, hinder the ascertainment of

truth, or result in his inability to effectively communicate due to embarrassment, fear, or timidity.

(b) In making its order, the court shall consider the developmental level of the vulnerable witness, the nature of the crime, the nature of his/her testimony regarding the crime, his/her relationship to the accused and to persons attending the trial, his/her desires, and the interests of his/her parents or legal guardian.

(c) The court may, motu proprio exclude the public from the courtroom if the evidence to be produced during trial is of such character as to be distressing, personal, offensive to decency or public morals.

30. **Live-link television testimony in criminal cases where the Vulnerable Witness is involved**.—

(a) The prosecutor, counsel or the guardian ad litem may apply for an order that the testimony of the child be taken in a room outside the courtroom and be televised to the courtroom by live-link television.

(b) In order to take a decision of usage of a live-link the Judge may question the child in chambers, or in some comfortable place other than the courtroom, in the presence of the support person, guardian ad litem, prosecutor, and counsel for the parties. The questions of the Judge shall not be related to the issues at trial but to the feelings of the child about testifying in the courtroom.

(c) The court on its own motion, if deemed appropriate, may pass orders in terms of (a) or any other suitable directions for recording the evidence of a vulnerable witness.

31. **Provision of screens, one-way mirrors, and other devices to facilitate Vulnerable Witness**—The court may, suo motu or on an application made by the prosecutor or the guardian ad litem, order that the chair of the vulnerable witness or that a screen or other device be placed in the courtroom in such a manner that the child cannot see the accused while testifying. The court shall issue an order stating the reasons and describing the approved courtroom arrangement.

32. **Factors to be considered while considering the application under Guidelines 30 and 31**.—The court may order that the testimony of the vulnerable witness be taken by live link television if there is a substantial likelihood that the vulnerable witness would not provide a full and candid account of the evidence if required to testify in the presence of the accused, his/her counsel or the prosecutor as the case may be.

The order granting or denying the use of live-link television shall state the reasons therefore and shall consider the following:

(a) The age and level of development of the vulnerable witness;

(b) his/her physical and mental health, including any mental or physical disability;

(c) any physical, emotional, or psychological harm related to the case on hand or trauma experienced by the witness;

(d) the nature of the alleged offence and circumstances of its commission;

(e) any threats against the vulnerable witness;

(f) his/her relationship with the accused or adverse party;

(g) his/her reaction to any prior encounters with the accused in court or elsewhere;

(h) his/her reaction prior to trial when the topic of testifying was discussed with him by parents or professionals;

(i) specific symptoms of stress exhibited by the vulnerable witness in the days prior to testifying:

(j) testimony of expert or lay witnesses;

(k) the custodial situation of the child and the attitude of the members of his/her family regarding the events about which he/she will testify; and

(l) other relevant factors, such as court atmosphere and formalities of court procedure.

33. **Mode of questioning**.—To facilitate the ascertainment of the truth the court shall exercise control over the examination-in-chief, cross-examination and re-examination of vulnerable witness in following manner—

(a) Ensure that questions are stated in a form appropriate to the developmental level of the vulnerable witness;

(b) protect vulnerable witness from harassment or undue embarrassment, prolong cross examination; and

(c) avoid waste of time by declining questions which the court considers unacceptable due to their being improper, unfair, misleading, needless, repetitive or expressed in language that is too complicated for the witness to understand.

(d) The court may allow the child witness to testify in a narrative form.

(e) Questions shall be put .to the witness only through the court.

34. **Rules of and law with regard to the deposition to be explained to the Witnesses**—

The court shall explain to a vulnerable witness to listen carefully to the questions and to tell the whole truth, by speaking loudly and not to respond by shaking head in 'yes' or 'no' and also to specifically state that the witness does not remember where he/she has forgotten something and to clearly ask when the question is not understood.

A gesture by a child to explain what had happened shall be appropriately translated and recorded in the child's deposition.

35. **Objections to questions**.—Objections to questions should be couched in amanner so as not to mislead, contuse, frighten a vulnerable witness.

36. **Allow questions in simple language**.—The court shall allow the questions to be put in simple language avoiding slang, esoteric jargon, proverbs, metaphors and acronyms. The court must not allow the question calling words capable of two-three meanings, questions having use of both past and present in one sentence, or multiple questions which is likely to confuse a witness. Where the witness seems confused instead of repetition of the same question, the court should direct for its re-phrasing.

Explanation:

(i) The reaction of vulnerable witness shall be treated as sufficient clue that question was not clear so it shall be rephrased and put to the Witness in a different way.

(ii) Given the witness developmental level, excessively long questions shall be required to be rephrased and thereafter put to witness.

(iii) Questions framed as compound or complex sentence structure; or two part questions or those containing double negatives shall be rephrased and thereafter put to witness.

37. **Testimonial aids**.—The court shall permit a child to use testimonial aids as defined in the definition clause.

38. **Protection of privacy and safety**.—

(a) **Confidentiality of records**—Any record regarding a vulnerable witness shall be confidential and kept under seal except upon written request and order of the court, the record shall only be made available to the following:

(i) Members of the court staff for administrative use;

(ii) the Public Prosecutor for inspection;

(iii) defence counsel for inspection;

(iv) the guardian ad litem for inspection: and

(v) other persons as determined by the court.

(b) **Protective order**—The depositions of the vulnerable witness recorded by video-link shall be video recorded except under reasoned order requiring the special measures by the Judge. However where any videotape or audiotape of a vulnerable witness is made, it shall be under a protective order that provides as follows:

(i) A transcript of the testimony of the vulnerable witness shall be prepared and maintained on record of the case. Copies of such transcript shall be furnished to the parties of the case.

(ii)Tapes may be viewed only by parties, their counsel, their expert witness, and the guardian ad litem.

(iii)No person shall be granted access to the tape, or any part thereof unless he/she signs a written affirmation that he has received and read a copy of the protective order; that he submits to the jurisdiction of the court with respect to the protective order; and that in case of violation thereof, he/she will be subject to the contempt power of the court.

(iv) Each of the tapes, if made available to the parties or their counsel, shall bear the following cautionary notice:

"This object or document and the contents thereof are subject to a protective order issued by the court in (case title), (case number). They shall not be examined, inspected, read, viewed, or copied by any person, or disclosed to any person, except as provided in the protective order. No additional copies of the tape or any of its portion shall be made, given, sold, or shown to any person without prior order of the court. Any person violating such protective order is subject to the contempt power of the court and other penalties as prescribed by law."

(v)No tape shall be given, loaned, sold, or shown to any person except as ordered by the court.

(vi)This protective order shall remain in full force and effect until further order of the court.

(c) **Personal details during evidence likely to cause threat to physical safety of vulnerable witness to be excluded**—A vulnerable witness has a right at any court proceeding not to testify regarding personal identifying information, including his/her name, address, telephone number, school, and other information that could endanger his/her physical safety or his/her family. The court may, however, require the vulnerable witness to testify regarding personal identifying information in the interest of justice.

(d) **Destruction of videotapes and audiotapes**—Any videotape or audiotape of a child produced under the provisions of these guidelines or otherwise made part of the court record shall be destroyed as per rules to be framed by the High Court of Judicature at Allahabad later on.

39. **Protective measures**—At any stage in the justice process where the safety of a victim or vulnerable witness is deemed to be at risk, the court shall arrange to have protective measures put in place for the victim or vulnerable witness, as the case may be. Those measures may include the following-

(a) Avoiding direct or indirect contact between a child victim or witness and the accused at any point in the justice process;

(b) restraint orders;

(c) a pretrial detention order for the accused or with restraint or "no contact" bail conditions which may be continued during trial;

(d) protection for a child victim or witness by the police or other relevant agencies and safeguarding the whereabouts of the child from disclosure; and

(e) any other protective measures that may be deemed appropriate.

40. **Savings**—In case of any confusion in the interpretation of any clause of the scheme, mentioned herein above, the order of the presiding Judge, be final and conclusive unless such order has been challenged at any higher forum.

Note: See also “Scheme for Compensation to Victims of hit and run motor accidents, 2021.

Ministry of Road Transport and Highways, Noti.No. G.S.R., dated February 25, 2022 and Published in the Gazette of India, Extra, Part-2, Section 3 (i), dated 25 February, 2022, PP. 9-15, No. 160.

The Criminal Procedure (Identification) Act, 2022

[Act 11 of 2022]

[18th April, 2022]

An Act to authorize for taking measurements of convicts and other persons for the purposes of identification and investigation in criminal matters and to preserve records and for matters connected therewith and incidental thereto

Be it enacted by Parliament in the Seventy-third Year of the Republic of India as follows—

Prefatory Note—Statement or Objects and Reasons,—The Identification of Prisoners Act, 1920 was enacted to authorize the taking of measurements and photographs of convicts and other persons. The term measurements used in the said Act is limited to allow for taking of finger impressions and foot print impressions of limited category of convicted and non-convicted persons and photographs on the order of a Magistrate.

2. New "measurement" techniques being used in advanced countries are giving credible and reliable results and are recognized world over. The Act does not provide for taking these body measurements as many of the techniques and technologies had not been developed at that point of time. It is, therefore, essential to make provisions for modem techniques to capture and record appropriate body measurements in place of existing limited measurements.

3. The said Act, in its present form, provides access to limited category of persons whose body measurements can be taken. It is considered necessary to expand the "ambit of persons" whose measurements can be taken as this will help the investigating agencies to gather sufficient legally admissible evidence and establish the crime of the accused person.

4. Therefore, there is a need for expanding the scope and ambit of the "measurements" which can be taken under the provisions of law as it will help in unique identification of a person involved in any crime and will assist the investigating agencies in solving the criminal case.

5. The Criminal Procedure (Identification) Bill, 2022 provides for legal sanction for taking appropriate body measurements of persons who are required to give such measurements and will make the investigation of crime more efficient and expeditious and will also help in increasing the conviction rate.

6. The said Bill, inter alia, seeks-

(i) to define "measurements" to include finger-impressions, palm-print and foot-print impressions, photographs, iris and retina scan, physical, biological samples and their analysis, etc.;

(ii) to empower the National Crime Records Bureau of India to collect, store and preserve the record of measurements and for sharing, dissemination, destruction and disposal of records; (in) to empower a Magistrate to direct any person to give measurements

(iv) to empower police or prison officer to take measurements of any person who resists or refuses to give measurements.

7. The Bill seeks to achieve the above objectives.

1. **Short title and commencement.**—(]) This Act may be called the Criminal Procedure (Identification) Act, 2022.

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

2. **Definitions**.—(l) In this Act, unless the context otherwise requires,—

(a) "Magistrate" means,-

(i) in relation to a metropolitan area, the Metropolitan Magistrate;
(ii) in relation to any other area, the Judicial Magistrate of the first class; or
(iii) in relation to ordering someone to give security for his good behaviour or maintaining peace, the Executive Magistrate;
(b) "measurements" includes finger-impressions, palm-print impressions, foot-print impressions, photographs, iris and retina scan, physical, biological samples and their analysis, behavioural attributes including signatures, handwriting or any other examination referred to in Section 53 or Section 53-A of the Code of Criminal Procedure, 1973 (Act 2 of 1974);
(c) "police officer" means the officer-in-charge of a police station or an officer not below the rank of Head Constable;
(d) "prescribed" means prescribed by rules made under this Act;
(e) "prison officer" means an officer of prison not below the rank of Head Warder.
(2) Words and expressions used herein and not defined but defined in the Indian Penal Code (Act 45 of 1860) and the Code of Criminal Procedure, 1973 (Act 2 of 1974) shall have the same meanings respectively assigned to them in those Codes.

3. **Taking of measurement**.—Any person, who has been,—

(a) convicted of an offence punishable under any law for the time being in force; or

(b) ordered to give security for his good behaviour or maintaining peace under Section 117 of the Code of Criminal Procedure, 1973 (Act 2 of 1974) fora proceeding under Section 107 or Section 108 or Section 109 or Section 110 of the said Code; or

(c) arrested in connection with an offence punishable under any law for the time being in force or detained under any preventive detention law,

shall, if so required, allow his measurement to be taken by a police officer or a prison officer in such manner as may be prescribed by the Central Government or the State Government:

Provided that any person arrested for an offence committed under any law for the time being in force (except for an offence committed against a woman or a child or for any offence punishable with imprisonment for a period not less than seven years) may not be obliged to allow taking of his biological samples under the provisions of this section.

4. **Collection, storing, preservation of measurements and storing, sharing, dissemination, destruction and disposal of records**.—(1) The National Crime Records Bureau shall, in the interest of prevention, detection, investigation and prosecution of any offence under any law for the time being in force,—
(a) collect the record of measurements from State Government or Union territory Administration or any other law enforcement agencies;
(b) store, preserve and destroy the record of measurements at national level;
(c) process such record with relevant crime and criminal records; and
(d) share and disseminate such records with any law enforcement agency, in such manner as may be prescribed.
(2) The record of measurements shall be retained in digital or electronic form for a period of seventy-five years from the date of collection of such measurement:

Provided that where any person, who has not been previously convicted of an offence punishable under any law with imprisonment for any term, has had his measurements taken according to the provisions of this Act, is released without trial or discharged or acquitted by the court, after exhausting all legal remedies, all records of measurements so taken shall, unless the court or Magistrate, for reasons to be recorded in writing otherwise directs, be destroyed from records.

(3) The State Government and Union territory Administration may notify an appropriate agency to collect, preserve and share the measurements in their respective jurisdictions.

5**. Power of Magistrate to direct a person to give measurements**.—Where the Magistrate is satisfied that, for the purpose of any investigation or proceeding under the Code of Criminal Procedure, 1973 (Act 2 of 1974) or any other law for the time being in force, it is expedient to direct any person to give measurements under this Act, the Magistrate may make an order to that effect and in that case, the person to whom the order relates shall allow the measurements to be taken in conformity with such directions.

6. **Resistance to allow taking of measurements**.—(I) If any person who is required to allow the measurements to be taken under this Act resists or refuses to allow taking of such measurements, it shall be lawful for the police officer or prison officer to take such measurements in such manner as may be prescribed.

(2) Resistance to or refusal to allow the taking of measurements under this Act shall be deemed to be an offence under Section 186 of the Indian Penal Code (Act 45 of 1860).

7. **Bar of suit**.—No suit or any other proceeding shall lie against any person for anything done, or intended to be done in good faith under this Act or any rule made thereunder.

8. **Power to make rules**.—(]) The Central Government or the State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

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

(a) the manner of taking measurements under Section 3;

(b) the manner of collection, storing, preservation of measurements and sharing, dissemination, destruction and disposal of records under sub-section (1) of Section 4;

(c) the manner of taking of measurements under sub-section (1) of Section 6;

(d) any other matter which is to be prescribed, or in respect of which provision is to be made.

(3) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

(4) Every rule made by the State Government under this Act shall be laid, as soon as may be after it is made, before each House of the State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House.

9. **Power to remove difficulties**.—(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as appear to it to be necessary for removing the difficulty:

Provided that no such order shall be made under this section after the expiry of three years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament. 1

10. **Repeal and saving**.—(I) The Identification of Prisoners Act, 1920 (Act 33 of 1920) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken or purported to have done or taken including any rule, regulation, or any proceedings taken, any rule made or any rule made or any direction given or any proceedings taken or any penalty or fine imposed under the repealed Act this Act shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been mdone or taken under the corresponding provisions of this Act.

(3) The mention of particular matters in sub-section (2) shall not be held to prejudice or affect the general application of Section 6 of the General Clauses Act, 1897 (Act 10 of 1897) with regard to the effect of repeal.

Transfer of Property Act, 1882

S. 53-A- Part Performance of Agreement- Suit for Declaration and Permanent Injunction- Maintainability.

While rejecting the plaint, the High Court has also observed and held that the suit for a declaration simpliciter under Section 53A of the Transfer of Property Act against the original owner would not be maintainable and for that reliance is placed upon the decision of this Court in the case of Delhi Motor Company (supra). However, it is required to be noted that even the plaintiffs have also prayed for the decree for a permanent injunction claiming to be in possession and the declaration and permanent injunction as such invoking Section 53A of the Transfer of Property Act. When the suit is for a decree of permanent injunction and it is averred that the plaintiffs are in possession of the suit property pursuant to the agreement and thereafter, they have developed the land and that they are in continuous possession since more than twelve years and they are also paying taxes to the Corporation, the cause of action can be said to have arisen on the date on which the possession is sought to be disturbed. If that be so, the suit for decree for permanent injunction cannot be said to be barred by limitation. It is the settled proposition of law that the plaint cannot be rejected partially. Even otherwise, the reliefs sought are interconnected. Whether the plaintiffs shall be entitled to any relief under Section 53A of the Transfer of Property Act or not has to be considered at the time of trial, but at this stage it cannot be said that the suit for the relief sought under Section 53A would not be maintainable at all and therefore the plaint is liable to be rejected in exercise of powers under Order VII Rule 11 CPC.

In view of the above and for the reasons stated above, the High Court has committed a grave error in allowing the application under Order VII Rule 11 CPC and rejecting the plaint. The High Court has exceeded in its jurisdiction in rejecting the plaint while exercising the powers under Order VII Rule 11 CPC. The impugned judgment and order passed by the High Court is unsustainable both, on law as well as on facts.

For the reasons stated hereinabove, the present appeal succeeds. The impugned judgment and order passed by the High Court allowing the C.O. and quashing and setting aside the order passed by the trial court refusing to reject the plaint under Order VII Rule 11 CPC and consequently rejecting the plaint under Order VII Rule 11 CPC is hereby quashed and set aside.
Sri Biswanath Banik and other vs. Smt. Sulanga Bose and anothers, 2022(40) LCD 801

S. 106 – Notice terminating tenancy – validity of –

This Court, while examining the precise words to be employed in order to qualify as a valid notice under Section 106 of the Act of 1882, remarked that there is no prescribed form or language which alone would qualify for a valid notice under Section 106 of the Act of 1882. It was held that the notice, as aforesaid has to be liberally construed and read as a whole in order to find out the intention of the landlord or the lessor. **Govind Saran v. Km. Shubhi Mishra, 2022(1) ARC 889(Alld.).**

U.P. Control of Goondas Act, 1970

S 3(1), 6 and 15 –U.P. - Rule 4.

In so far as the issuance of show-cause notice under Section 3(1) of the U.P. Act No. VIII of 1971 is concerned, the notice can be issued when the conditions prescribed under Section 3(1) of the aforesaid Act are fulfilled and on the basis of the aforesaid, a notice in writing has been issued to the person concerned informing him of the general nature of material allegations against him and a reasonable opportunity of tendering an explanation regarding the same is provided. It is to be noted that the show-cause notice so issued by the District Magistrate under the Act is for the purpose of calling n explanation in order to ascertain whether the proceedings under Section 3 of U.P. Act No. VIII of 1971 may be proceeded with against the person concerned or not.

It is to be seen that against a show-cause notice, the writ petition may be premature as the show-cause does not give rise to any cause of action as no adverse order which effects the right of the party is in operation and unless the same is issued to the person concerned, the litigant have no right to challenge the show-cause notice. It is also the settled law that the writ petition would lie when some right of the party is infringed. Further, where the show-cause notice alleged to have been issued without jurisdiction of the authority, to do so, the writ petition would lie. **Prashant Tiwari @ Jannu vs. State of U.P. and others, 2022(4) ADJ 284 (DB)(Alld. H.C.)**

Disciplinary Enquiry

So far as the quashing and setting aside the order of punishment imposed by the Disciplinary Authority applying the Doctrine of Equality on the ground that other officers involved in the incident have been exonerated and/or no action has been taken against them, is concerned, we are of the firm view that on the aforesaid ground, the order of punishment could not have been set aside by the Tribunal and the High court. The Doctrine of Equality ought not to have been applied when the Enquiry Officer and the Disciplinary Authority held the charges proved against the delinquent officer. The role of the each individual officer even with respect to the same misconduct is required to be considered in light of their duties of office. Even otherwise, merely because some other officers involved in the incident are exonerated and/or no action is taken against other officers cannot be a ground to set aside the order of punishment when the charges against the individual concerned - delinquent officer are held to be proved in a departmental enquiry. There cannot be any claim of negative equality in such cases. Therefore, both the Tribunal as well as the High Court have committed a grave error in quashing and setting aside the order of punishment imposed by the Disciplinary Authority by applying the Doctrine of Equality.

It appears from the order passed by the Tribunal that the Tribunal also observed that the enquiry proceedings were against the principles of natural justice in as much as the documents mentioned in the charge sheet were not at all supplied to the delinquent officer. As per the settled proposition of law, in a case where it is found that the enquiry is not conducted properly and/or the same is in violation of the principles of natural justice, in that case, the Court cannot reinstate the employee as such and the matter is to be remanded to the Enquiry Officer/Disciplinary Authority to proceed further with the enquiry from the stage of violation of principles of natural justice is noticed and the enquiry has to be proceeded further after furnishing the necessary documents mentioned in the charge sheet. **State of Uttar Pradesh and others vs. Rajit Singh, 2022(4) ADJ 295 (SC)**

U.P. Gangsters and Anti Socil Activities (Prevention Act, 1986

S 18 -

The question, in our opinion, is not with regard to ouster of jurisdiction of writ Court under Article 226 of the Constitution of India inasmuch as it has already been held that judicial review therein is a basic feature of Constitution of India and, the constitutional remedy, in that regard, cannot be ousted under a statute (See: L. Chandra Kumar vs. Union of India and others, AIR (1997)3 SCC 261).

We are of the considered view that merely because the provision s of Chapter XXIX of the Code of Criminal Procedure are made applicable in Section 18 of the Act of 1986, it would not mean that appeal would be restricted only to an order of acquittal or conviction, s is contemplated in the Code of Criminal Procedure. Chapter XXIX APPEALS in the Code of Criminal Procedure begins with Section 372 Cr.P.C. as per which no appeal shall lie from any judgment or order of a criminal Court except as provided for by in the code or by any other law for the time being in force. Even the code of criminal procedure contemplates filing of appeal in matters other than conviction and acquittal [See: Section 458(2) Cr.P.C. in which an appeal lies in respect of release of property to the Court to which appeal ordinarily lie from convictions by the Magistrate]. Section 18 in the Act of 1986 providing for appeal is any other law providing for appeal in terms of Section 372 of the Code. The Act of 1986 is otherwise a special Act and its provisions would prevail over general law by virtue of Section 20 of the Act of 1986 since its provisions would prevail, notwithstanding anything in consistent therewith contained in any other enactment.

Reference to Code of Criminal Procedure in Section 18, and its applicability mutais mutandis, must therefore be restricted to the procedural part. Any limitation on the scope of appeal under Section 18 to conviction or acquittal, by applying the provisions of Chapter XXIX of the Code otherwise would go contrary to the plain language of Section 18 which permits filing of appeal against any judgment or order of the Court and would be hit by Section 20 of the Act of 1986.

Any order or judgment, referred to in Section 18 would include an order for release of property where the Court upon inquiry under Section 17 finds that the property was not acquired by a Gangster as a result of commission of any offence triable under the Act of 1986. The determination by the Court, on the question whether property is acquired by Gangster as a result of an offence triable under the Act, would be an order and, therefore, the remedy of an appeal would clearly be available in such circum stances. With utmost respect, we therefore do not subscribe to the view taken by learned Single Judge in Badan Singh (supra) that an appeal would not lie against the determination made by the competent Court on the question as to whether the property subjected to attachment is a property acquired by the Gangster, as a result of commissioning of an offence triable under the Act.

We may also note that offences under the Act of 1986 are to be tried by special Courts constituted under Section 5 of the Act of 1986. By virtue of sub-section (4) of Section 5 only Sessions Judge or Additional Sessions Judge in the State can man the Special Court under the Act of 1986 and, therefore, an appeal against his order would lie as per Chapter XXIX of the Code only to the High Court. Once that be so, a writ otherwise would not be entertained directly against the order passed under Section 15 of the Act of 1986 by the District Magistrate. **Vikas Yadav vs. State of U.P. and others, 2022(4) ADJ 626 (DB)(Alld.H.C.)**

U.P. Government Servants (Discipline and Appeal) Rules, 1999

Rule 7.

It is not merely the duty of the inquiry officer to comply with the Rule 7 but also the duty of the punishing authority, while passing order of punishment, to ensure that the inquiry is conducted as per the procedure prescribed. **Prakash Chandra Agrawal vs. State of U.P. and another, 2022(6) ADJ 466 (LB)(Alld.H.C.)**

U.P. Higher Education Services Commission Act, 1980

Art. 19(1)(g) of Constitution of India.

The constitutional validity of an Act can be challenged only on two grounds, viz. (i) lack of legislative competence; and (ii) violation of any of the Fundamental Rights guaranteed in Part III of the Constitution or of any other constitutional provision. Except the above two grounds, there is no third ground on the basis of which the law made by a competent legislature can be invalidated. The ground of invalidation must necessarily fall within the four corners of the aforementioned two grounds. In considering the validity of a Statute the presumption is always in favour of constitutionality and the burden is upon the person who attacks it to show that there has been transgression of constitutional principles. For sustaining the constitutionality of an Act, a Court may take into consideration matters of common knowledge, reports, preamble, history of the times, object of the legislation and all the other facts which are relevant. It must always be presumed that the legislature understands and correctly appreciates the need of its own people and that discrimination, if any, is based on adequate grounds and considerations. The courts will be justified in giving a liberal interpretation in order to avoid constitutional invalidity. Where a Statute is silent or is inarticulate, the Court would attempt to transmutate the inarticulate and adopt a construction which would lean towards constitutionality albeit without departing from the material of which the law is woven. These principles give rise to rule of reading down the provisions if it becomes necessary to uphold the validity of the law. While examining the challenge to the constitutionality of an enactment, the court is to start with the presumption of constitutionality and try to sustain its validity to the extent possible. The court cannot approach the enactment with a view to pick holes or to search for defects of drafting, much less inexactitude of language employed. An act made by the legislature represents the will of the people and that cannot be lightly interfered with. It is presumed that the legislature expresses wisdom of the community, does not intend to exceed its jurisdiction and correctly appreciates the need of its own people. **Pandit Prithi Nath Memorial Society and another vs. State of U.P. and others, 2022(5) ADJ 39 (DB)(Alld.H.C.)**

U.P. Imposition of Ceiling on Land Holdings Act, 1960

S. 4-a, S 4-A.

It is no doubt correct that Section 4-A of Act of 1960 leaves a discretion upon the authorities concerned to direct local inspection to be made wherever it consider necessary. However, it is also apparent from a reading of Section 4-A of Act of 1960 that it is the statutory mandate that the Prescribed Authority is first required to examine the relevant Khasras for the said three years. Local inspection as such is meant merely to be corroborative and cannot form the basis for determination of irrigated land, keeping in view the specific provisions of Section 4-

A of Act of 1960. Thus, the Prescribed Authority could not have made local inspection and the statement of Lekhpal at best is merely corroborative.

The aspect of matter whether a plot can be held to be irrigated or otherwise under Section 4-A of Act of 1960 has been dealt with by a judgment of this Court in State of U.P. vs. District Judge and others, (2007)4 AWC 3700 (Allahabad), in which it has been held that for determination of irrigated land under Section 4-A of Act of 1960, it is essential that there must be irrigation facility and decision regarding irrigation facility and growing of crops is required to be taken on the basis of Khasras of 1378 to 1380 Faslis. It is held that for the aforesaid determination, that examination of the said Khasras is imperative since there is specific column indicating the source of irrigation.

Similar is the view taken in the decision of this Court is State of U.P. through Collector vs. Mukh Ram Singh and another, 1991 RD 312, where under it has been held that simply because there are two tube-wells near the disputed plot, it cannot be held that in view of Section 4-A and clause thirdly of that Section to record that it is an irrigated plot unless and until there is a finding based on appreciation of evidence including entries in Khasras that it come within the zone of command area. **Kaushlendra Bahadur Singh vs. State of U.P., 2022(4) ADJ 254 (LB) (Alld.H.C.)**

S. 3(9)- 'Holding'- Meaning of.

" Section 3(9) :-

(9) "holding" means the land or lands held by a person as a , sirdar, asami of Gaon Sabha or an asami mentioned in Section 11 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950, or as a tenant under the U.P. Tenancy Act, 1939, other than a sub-tenant, or as a Government lessee, or as a sub-lessee of a Government lessee, where the period of the sub-lease is co-extensive with the period of the lease;" **Hardev Singh vs. Prescribed Authority, Kashipur and another, 2022(40) LCD 590**

S. 3(11)- 'Tenure-Holder'- Meaning of. (Para 19).

Section 3(17) :-

"Tenure-Holder" means a person who is the holder of a holding but [except in Chapter III] does not include -

(a) a woman whose husband is a tenure-holder;

(b) a minor child whose father or mother is a tenure-holder;

Condition No. 9 of the Grant lays down the conditions to be fulfilled in the event of lessee transferring the lease land or a portion thereto except transfer by way of an inheritance. Conditions laid down by Clause 9 of the grant has been made inapplicable in case of sub-leases made by the lessee while sub-letting the land in the ordinary course of agriculture. **Hardev Singh vs. Prescribed Authority, Kashipur and another, 2022(40) LCD 590**

U.P. Junior High School (Payment of Salaries of Teachers and other Employees) Act, 1978

Educational Institution- Grand in Aid- Validity of Amendment.

The Challenge:

The petitioners herein are recognized institutions imparting education from Classes I to VIII. They have been categorized in four categories in view of the submissions of the learned Advocate General:

Category A- Unaided Junior High Schools

Category B- Primary Sections recognized first and Junior High Scholl.

Category C- Junior High School regognized first and attached primary sections later.

Category D- Recognized primary and junior High Schools receiving grant-in-aid by wrong orders.

Some of the petitioners institutions had been receiving grant-in-aid and salary of the teachers of the primary sections/school which had been withdrawn by individual orders passed by the Special Secretary. Basic Education and some of the petitioners institutions have been denied grant on the ground that the grant-in-aid cannot be accorded to a primary institution after introduction of the amendments by U.P. Act No. 2 of 2018 and U.P. Act No. 3 of 2018 in the Act' 1972 and the Act' 1978; respectively (in short Amendment Acts 2017)

For the reasoning as aforesaid, we dispose of the present bunch of writ petitions in the following manner:

1. The petitioner' institutions falling in group 'A' cannot sustain the challenge to the validity of the Amendment to the 1978' Act by U.P. Act No. 3 of 2018, being unaided Junior High Schools.
2. The petitioners institutions falling in Group 'B' and 'C' are held to be covered under the provisions of the Payment of Salaries Act' 1978, as amended by 2017 Amendment namely the U.P. Act No. 3 of 2018

Consequently, the State shall reconsider their claims for providing grant-in-aid in light of the principle of 'composite integrality' or "oneness of the institution" evolved in Jai Ram Singh (Supra) as approved above.

3. The petitioners institutions falling in group 'D' may laly their claim before the appropriate authority, if they incidentally fall in Group 'B' and 'C'. However, such institutions which do not fall in Group 'B' and 'C' would not be entitled to the benefit of this decision. **Committee of Management, Adarsh Gramin Vidyalaya Sonakpur, Harthala and others vs. State of U.P. and others, 2022(4) ADJ 85 (DB) (Alld.H.C.)**

Disciplinary proceedings

The only argument which has been advanced by the learned counsel for the petitioner, is that even if the petitioner did not deny the documents submitted in support of the charges by the presenting officer, it was the duty of the presenting officer to prove the contents of the documents by examining the witnesses and since the witnesses have not been examined to prove the contents of the documents, the charges against the petitioner did not get proved and, therefore, the punishment order, appellate order and the order passed in review are liable to be quashed.

It is well-settled that in a domestic inquiry strict and sophisticated rules of evidence under the Indian Evidence Act are not applicable. The evidence which has probative value of reasonable nexus and credibility, can be placed reliance in support of the allegations. Section 56 of the Indian Evidence Act provides that admitted facts need not be proved.

The right of cross-examination accrues in disciplinary proceedings if the statement of a person, who has testified, is in dispute. If there is no dispute regarding the documents and the facts, in such a case there is no requirement for cross-examination. When on the question of facts

there was no dispute, no real prejudice would be caused to a party aggrieved by an order, by absence of any formal opportunity of cross-examination per se does not invalidate or vitiate the decision arrived at fairly. **Hori Singh vs. State Bank of India and others, 2022(4) ADJ 152 (LB)(Alld.H.C.)(LB)**

U.P. Lokayukta and UP- Lokayuktas Act, 1975

Ss. 12(4), 17(3).

It was, therefore, emphasized by the Apex Court that even by way of final order the departmental enquiry or the charge-sheet could not have been quashed. The law on this point is that the Courts are, therefore, not to grant stay/quash the disciplinary proceedings nor they should go into the correctness or otherwise of the charge leveled in the charge-sheet and the departmental inquiry should be allowed to continue uninterrupted to court to its natural conclusion.

In the case of charges framed in a disciplinary enquiry, the tribunal or Court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. The tribunal or the Court cannot take over the functions of the disciplinary authority to go into. Indeed, even after the conclusion of their disciplinary proceedings, if the matter comes to Court or tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be.

From the aforesaid legal positions, it is clear that in some very rare and exceptional cases the High Court can quash a charge-sheet or show-cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter. **Pramod Kumar Shukla and another vs. State of U.P. and others, 2022(4) ADJ 681 (Alld.H.C.)**

U.P. Panchayat Raj Act, 1947

Section 12C.

Scheme of Chpater IIA is clear and makes provisions for decision on all the disputes, which arise prior to election being held, in terms of the mandate of Section 6A of the Act whereas in terms of Chapter III-A, once the election process starts and culminates , the challenge to the election can be done only by virtue of preferring an election petition under Section 12C of the Act, to clarify, the powers exercised by prescribed authority prior to holding of the elections pertaining to disqualifications are to be decided in terms of the mandate of Section 6A of the Act, however, once the election process starts any challenge to the election can take place only by filing an election petition under Section 12C of the Act. **Vinod Kumar vs. State of U.P. and others, 2022(5) ADJ 342 (LB)(Alld.H.C.)**

U.P. Police Regulations –Regulation 492 and 493

Lamed counsel for the petitioner further submits that departmental proceedings has been initiated against the petitioner on the same set of facts and evidence as that in the criminal case.

Learned counsel for the petitioner further submits that on one hand the petitioner is facing criminal proceedings and on the other hand departmental proceedings have been initiated against him relying upon the same set of facts and evidence, therefore, the departmental proceedings should be kept in abeyance till the conclusion of criminal case.

He further submits that the petitioner has e act been convicted in the criminal case, hence without conclusion of the criminal case, the departmental proceedings cannot be initiated for the same set of facts and evidence. The criminal case and departmental proceeding are based on

same set of fact and same evidence, as such continuance of departmental inquiry, is not at all justifiable and consequentially directive be issued for withholding departmental proceeding till criminal trial is not over.

If departmental proceedings and criminal case are based on similar set of facts and charges in criminal case against delinquent employee is of grave nature which involves complicated question of fact and law, it would be desirable to stay the departmental proceedings till conclusion of criminal case. Whether complicated question of fact and law are involved or not will depend upon the nature of the offence, and the case lodged against the employee on the basis of evidence and material collected during the investigation or as reflected in the charge-sheet. Thus it is clear that departmental proceeding can proceed, as there is no bar and only when nature of charge in criminal case are grave and complicated question of fact and law are involved, then departmental proceedings can be stayed and further also in contingency when departmental enquiry would seriously prejudice delinquent in his defence at the trial, and even these facts cannot be considered in isolation to stay departmental proceeding but due regard will have to be given to the fact that departmental proceedings cannot e unduly delayed.

There is a consensus of judicial opinion on a basic principle that proceedings in a criminal case and departmental proceedings can go on simultaneously, except where departmental proceedings and criminal case are based on the same set of facts and the evidence in both the proceedings is common. Basis for this proposition is that proceedings in a criminal case and the departmental proceedings operate in distinct and different jurisdictional areas. In the departmental proceedings, the factors operating in the mind of the Disciplinary Authority may be many, such as enforcement of discipline, or to investigate the level of integrity of delinquent or other staff. The standard of proof required in those proceedings is also different from that required in a criminal case. While in departmental proceedings, the standard of proof is one of preponderance of the probabilities, in a criminal case. While in departmental proceedings, the standard of proof is one of preponderance of the probabilities, in a criminal case, the charge has to be proved by the prosecution beyond reasonable doubt.

The principles which govern a disciplinary enquiry are distinct from those which apply to a criminal trial. In a prosecution for an offence punishable under the criminal law, the burden lies on the prosecution to establish the ingredients of the offence beyond reasonable doubt. The accused is entitled to presumption of innocence. The purpose of a disciplinary proceeding by an employer is to enquire into an allegation of misconduct by an employee which results in a violation of the service rules governing the relationship of employment. Unlike a criminal prosecution where the charge has to be established beyond reasonable doubt, in a disciplinary proceeding, a charge of misconduct has to be established on a preponderance of probabilities. The rules of evidence which apply to a criminal trial are distinct from those which govern a disciplinary enquiry.

The issue as to whether disciplinary proceedings can be held at the time when the delinquent employee is facing the criminal trial, has also been considered from time to time. In State of Rajasthan vs. B.K. Meena and others, AIR 1997 SC 13, the Hon’ble Supreme Court has dealt with the issue.

Bare perusal of Regulations 492 and 493 would go to show that whenever a police officer has been judicially tried, the Supreintendent must await the decision of the judicial appeal, if any before deciding whether further departmental action is necessary. Regulation 493 mentions that it will not be permissible for the Suprintendent of Police in the course of a departmental proceeding against Police Officer who has been tried judicially to re-examine the truth of any

facts in issue at his judicial trial and the finding of the Court on these facts must be taken as final. Division Bench of this Court in the Case of Kedar Nath Yadav v. State of U.P., 2005(3) E &C 1955, while considering these very Regulations has taken the view, that even after enforcement of 1991 Rules, these two Regulations continue to hold the field. **Sonu Bharti vs. State of U.P. and others, 2022(4) ADJ 556 (Alld.H.C.)**

U.P. Public Services (Reservation For Physically Handicapped, Dependents of Freedom Fighters And Ex-Servicemen) Act, 1993

S. 2(c).

QUESTIONS OF DETERMINATION

(a) Whether Section 2(c) of the Act 1993 is ultra vires of Articles 14 and 16 of the Constitution of India?

In summation of the discussion made herein above, we hold: -

A. Section 2(c) of the U.P. Public Services (Reservation For Physically Handicapped, Dependents of Freedom Fighters And Ex-Servicemen) Act, 1993 is *intra vires* and not in violation of the Article 14 and 16 of the Constitution of India. **Sudhir Singh and others vs. State of U.P. and others, 2022(4) ADJ 26 (DB)- Allahabad High Court.**

Transfer Order

The law on the transfer is too settled to reiterate that if the transfer is made contrary to transfer policy or executive order, it does not confer any vested right upon an employee to challenge it.

After considering the submission made by the parties as well as careful consideration of the law laid down by the Supreme Court, I am of the view that this Court cannot interfere with the transfer matter as the Government servant has no vested right to continue at a place of his choice. The Government can transfer the officer/employee in the administrative exigency and in public interest. However, if a transfer is made against the executive instructions or transfer policy, the competent authority must record brief reason in the file for deviating from the transfer policy or executive instructions and the transfer must be necessary in the public interest or administrative exigency. **Anoop Kumar Dubey vs. State of U.P. and others, 2022(4) ADJ 66(Alld. H.C.)**

U.P. Revenue Code, 2006

S.36 and 37-

The question of the maintainability of a writ petition against orders passed in mutation proceedings has come up before this Court earlier and it has consistently been held that normally the High Court in exercise of its discretionary jurisdiction does not entertain writ petitions against such orders which arise out of summary proceedings.

The mutation proceedings being of a summary nature drawn on the basis of possession do not decide any question of title and the orders passed in such proceedings do not come in the way of a person in getting his rights adjudicated in a regular suit. It is for this reason that it has consistently been held that such petitions are not to be entertained in exercise of powers under Article 226 of the Constitution of India. The consistent legal position with regard to the nature of mutation proceedings, as has been held in the previous decisions, may be stated as follows :-

(i) mutation proceedings are summary in nature wherein title of the parties over the land involved is not decided;

(ii) mutation order or revenue entries are only for the fiscal purposes to enable the State to collect revenue from the person recorded;

(iii) they neither extinguish nor create title;

(iv) mutation in revenue records does not have any presumptive value on the title and no ownership is conferred on the basis of such entries;

(v) the order of mutation does not in any way effect the title of the parties over the land in dispute; and

(vi) such orders or entries are not documents of title and are subject to decision of the competent court.

A question would however arise as to whether any exception can be carved out to the aforesaid settled position with regard to non-interference in matters arising out of mutation proceedings in exercise of powers under writ jurisdiction, and if so what would the facts and circumstances under which a writ petition may be entertained in such matters.

Having regard to the foregoing discussion the exceptions under which a writ petition may be entertained against orders passed in mutation proceedings would arise where :

(i) the order or proceedings are wholly without jurisdiction;

(ii) rights and title of the parties have already been decided by a competent court, and that has been varied in mutation proceedings;

(iii) mutation has been directed not on the basis of possession or on the basis of some title deed, but after entering into questions relating to entitlement to succeed the property, touching the merits of the rival claims;

(iv) rights have been created which are against provisions of any statute, or the entry itself confers a title by virtue of some statutory provision;

(v) the orders have been obtained on the basis of fraud or misrepresentation of facts, or by fabricating documents;

(vi) the order suffers from some patent jurisdictional error i.e. in cases where there is a lack of jurisdiction, excess of jurisdiction or abuse of jurisdiction;

(vii) there has been a violation of principles of natural justice. **Smt. Kalawati vs. Board of Revenue and others, 2022(4) ADJ 578 (Alld.H.C.)**

S. 98(1)- U.P. Revenue Code Rules, 2016, R.99(8)-

The conditions which are required to be satisfied while considering grant of permission by the Collector to a bhumidhar belonging to a scheduled caste seeking to transfer land belonging to him have been clearly specified under the proviso to sub-section (1) of Section 98 read with sub-rule (8) of Rule 99, the reference made in the orders impugned to any other circumstances and on the basis thereof to reject the application of the petitioner seeking grant of permission to transfer, would therefore render the exercise of the discretionary power as ultra vires and invalid. **Sitaram vs. State of U.P. and others, 2022(5) ADJ 90 (Alld.H.C.)**

S. 234(3)

Now comes the question as to whether the constitutional validity of the provisions of the U.P. Land Record Manual can be questioned in a writ petition styled as a Public Interest Litigation.

We are of the opinion that only a person who has suffered from some legal injury can challenge the Act/ orders/Rules etc. in a Court of law. Writ petition under Article 226 of the Constitution of India is maintainable for the purpose of enforcing a statutory or legal right, where there is a complaint of breach of statutory duty on the part of the Authorities. The rule of locus standi in PIL requires no rigid litmus test but Courts are empowered to examine the case on settled parameters. The dominant object of PIL is to ensure the observance of the provisions of the Constitution or the Law, which can be best achieved to advance the cause of a community or disadvantaged groups.

In the case at hand, we find that the U.P. Land Record Manual merely provides the manner and procedure to maintain the land records. Section 234(3) of the U.P. Revenue Code, 2006 provides that the Land Record Manual in force on the date of commencement of the Revenue Code, 2006, shall continue to remain in force, to the extent they are not inconsistent with the provisions of the Revenue Code, 2006 until amended rescinded or repealed by any regulations made under this Section. **Shailesh Kumar Mishra vs. State of U.P. and another, 2022(5) ADJ 443 (DB)(Alld.H.C.)**

U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972

S. 21(1) (a) – Release application on ground of personal use and occupation – consideration for

Damodar Das, the landlord filed for release of shop bearing No. 193, situate at Mohalla Sarrafa Bazar, Jhansi, under Section 21(1)(a) of the Act, that was in the tenancy occupation of Ram Swaroop Ghura. The application was registered on the file of the Prescribed Authority/Judge, Small Cause Court, Jhansi as P.A. Case No. 63 of 2007.

Release application allowed on ground of bona fide need Appeal against allowed, holding the release application not maintainable – Appellate Court wrongly looked into the issue of partition amongst the family members, or so as to speak, a family settlement bringing about an informal partition, as if he were seized of a title matter inter se the Co-sharers, involving validity of the partition-There is not a hint of an issue between the co landlords/co-owners about the arrangement/family partition, where the demised shop has fallen to the landlord's share-The need bona fide and comparative hardship in favour of landlord-Allowing of the release application proper.**Damodar Das v. Ram Swaroop Ghura, 2022(1) ARC 880(Alld.).**

S. 21 (1) (a) and 22 Release application – for establishing in an independent business – Release application allowed holding need bona fide and comparative hardship in favour of landlord-Challenged under on ground Rent Appeal should have been dismissed in default and not on merits as appellants counsel failed to appear in view of O. XLI, R. 17, CPC – Validity of

In the instant case, Hon’ble High Court observed that despite several opportunities time to vocate the premises allowed.

Held-Despite several opportunities being given to the appellant for arguing Appeal on merits such opportunitywas not availed of-The Rent appeal was to be decided within six months as per direction of Hon'ble High Court, other direction of High Court's judgment of Rent Appeal to be decided within two months, and that the Appellant would not seek any adjournments also there but the Counsel for appellant not appeared-Respondent has decree in his favour, Execution already filed The need bona fide, comparative hardship in favour of landlord-Allowing of release application proper, time to vacate the premises allowed. **Hanuman Prasad Mishra v. Chandra Mohan Purswani, 2022(1) ARC 857(Alld.).**

S 21(1)(a)-

It is well-settled that every adult member of the family is entitled to establish his independent business and if the family have a property where that need can be satisfied, more so if the particular member holds that property, it ought to be released in favour of that person who does not have premises to establish and run his independent business.

The principle, that subsequent events can be taken note of in proceedings for release, has the approval of the Supreme Court in Ram Kumari Barnwal vs. Ram Lakhan (Dead), 2007(68) ALR 136. **Damodar Das vs. Ram Swaroop Ghura, 2022(5) ADJ 56 (Alld.H.C.)**

S. 21(1)(a) and 3(g)-

The specific need that the landlord set up has come to an end with his life that the long course of these proceedings have defeated by sheet lapse of time. Even if a member of the landlord’s family, within the meaning of Section 3(g) of the Act were alive, the prayer for release

could have been considered because the landlord had sought release for the purpose of his residence and to set up his chamber. The bona fide need for the purpose of the landlord's residence would include the interest of a person who was a member of his family, particularly one who was residing with the landlord, within the meaning of Section 3(g) of the Act. Here, the landlord's wife was not staying with him and upon his death, has not come forward to seek substitution in his stead.

The heirs and LRS, who have been substituted, claim on the basis of a registered will dated 19.6.2020. It is the case of the heirs and LRs themselves set out in the affidavit that they have filed, in support of the substitution application, that they are the landlord's nephews. They are the sons of his brother Vishnu Pal Singh. No doubt, they have stepped into the landlord's shoes, but the landlord's bona fide need cannot ensure to their benefit. If the landlord's widow or a son had asked to pursue release for the purpose of his/their residence, being members of his family as defined under Section 3(g) of the Act, they would be entitled to maintain the release application. This would be so because a member of the landlord's family would be sharing the landlord's bona fide need for residential purpose. Here, the heirs and LRs who have come on record are the sons of the landlord's brother and claim through a testamentary disposition. Thus, if the heirs and LRs of the landlord do have a case of bona fide need of their own, it would be generically different and unconnected to the landlord's case. If the heirs and LRs of the landlord have a case of bona fide need as aforesaid, they would be free to pursue it by instituting appropriate proceedings before the Prescribed Authority or other Court of competent jurisdiction, as may be advised. However, so far as the present writ petition is concerned, no relief can be granted in favour of the heirs and LRs of the landlord. **Anil Kumar Singh vs. IInd Additional Distt. Judge, Hardoi and others, 2022(6) ADJ 91 (LB)(Alld.H.C.)**

U.P. Urban Planning and Development Act, 1973

S. 18(6), (4) – Appeal – Maintainability – S. 18(4) does not envisage action by way of cancellation of allotment, entitling allottee to execution of a lease – Appeal against such cancellation, not maintainable.

Sub-section (4) of Section 18 does not envisage action by way of cancellation of allotment, entitling the allottee to the execution of a lease. It speaks about forfeiture of a concluded lease with a decision to re-enter by the Authority for the lessee's failure to construct or substantially construct within the covenanted time. Therefore, an order of the kind passed against Rakesh Gupta, cancelling his allotment is not an order even remotely made under subsection (4) of Section 18. Quite apart, the order dated 02.05.2019 issued by the Authority is not even an order canceling Rakesh Gupta's allotment. It is just a communication of the fact to the petitioner that at some point of time in the past, Rakesh Gupta's allotment had been cancelled by the Authority on account of non-payment of the specified consideration agreed upon by parties. Also, for another reason, the order of the Authority would not be one that falls within the terms sub-section (4) of Section 18. It is so because what was allotted to Rakesh Gupta was a constructed house and not open land to construct upon.

Thus, in the opinion of this Court, no appeal under sub-Section (6) of Section 18 of the Act of 1973 lay to the District Judge from the order dated 02.05.2019 passed by the Authority. It is, therefore, held that Misc. Appeal No. 54 of 2019 ought not to has been entertained by the District Judge or decided on merits by the Additional District Judge, as it was neither competent nor maintainable. It is made clear that this Court has not expressed its opinion about the rights of

the petitioner, either way, and if some remedy is open to the petitioner under the law against the action of the Authority, he is free to pursue it. **Isht Deo Gupta v. State of U.P. and others, 2022 AIR CC 1300 (All).**

Words and Phrases

Ready and Willing – Meaning of.

The words "ready and willing" are simple words and all that they mean is that a plaintiff, in order to succeed in a suit for specific performance must aver and prove that he has performed or has throughout been prepared to do his part under the contract, that preparedness may not, however be mere verbal show of readiness to do his part. It should be backed by the means to perform his part of the contract when called upon to do so. The plaintiff does not have in such a case to go about jingling money to demonstrate his capacity to pay the purchase price, all that the plaintiff has to do in such a situation is to be really willing to purchase the property when the time for doing so comes and to have the means to arrange for payment of the consideration payable by him. There could, therefore, be no objection if they owner raises the money for payment when the time for doing so comes as CI. (1) OF THE Expl. to S. 16© clearly enacts that money need be produced only when directed by the court. **Asha Josheph v. Babu C George and others, 2022 AIR CC 1685 (Ker).**

U.P.Z.A. & L.R. Act, 1951

S. 157-AA (as inserted by U.P. At (90 of 1997), S. 167 – Transfer of Land – Restriction curtained in S. 157 –AA-Whether applies where both transferor and transferee are members of Scheduled Caste? Held, "Yes".

As per the terms of the scheme of the provision, even a transfer by bhumidhar belonging to a scheduled caste to a person also belonging to a scheduled caste is to be in according with the order of preference under sub-section (1) It, therefore, follows that a member of a scheduled caste who has obtained the status of a bhumidhar with transferable rights under Section 131-B also does not have a free choice to transfer the land to any member of the scheduled caste. The transfer which is permissible is to be as per the preferences prescribed. The order of preference under sub-section (1) and sub-section (2) are clearly to subserve the purpose of the legislative enactment which is for furtherance of the objective of land reforms and to protect the vulnerable section of the society from injustice and exploitation. The prior approval of the Assistant Collector as required under sub-section (4) is thus contemplated so as to ensure that the permission which is sought is in accord with the scheme of the provision under the Sections 157-AA and as per the order of preference provided under sub-section (1). The transfer of the land in question having admittedly been made without the previous approval of the Assistant Collector concerned, the same would be hit by provision contained under sub-section (4) of Section 157-AA and such transfer being in contravention of the section, the same was rendered void by virtue of the mandate under Section 166 and the necessary consequences under Section 167 were liable to follow. **Dulari and Others v. Board of Revenue, U.P. at Allahabad and Another, 2022 AIR CC 1220 (All.).**

S. 166 & 167- Provisions- Scope & Applicability.

In construing a remedial statute, the Courts are required to give the terms of the statute the widest amplitude which its language would permit.

Section 157-AA was inserted in terms of the U.P. Zamindari Abolition and Land Reforms (Amendment) Act, 1997 (U.P. Act No.9 of 1997) with effect from May 23, 1997 providing for restrictions on transfer by members of scheduled castes becoming bhumidhar under Section 131-B.

Section 157-AA provides that no person belonging to scheduled caste having become a bhumidhar with transferable rights under Section 131-B shall have the right to transfer the land by way of sale, gift, mortgage or lease to a person other than a person belonging to a scheduled caste and the same shall be in the order of preference as contained sub-section (1) of the said section.

The transfer of the land in question having admittedly being made without the previous approval of the Assistant Collector concerned, the same would be hit by provision contained under sub-section (4) of Section 157-AA and such transfer being in contravention of the section, the same was rendered void by virtue of the mandate under Section 166 and the necessary consequences under Section 167 were liable to follow.

Te recommendation made as per the order date 28.03.2007 passed by the Additional Collection for vesting of the land in the State Government, is in accord with the provisions contained under sub-clause (a) of sub-section (1) of Section 167, and there is no infirmity in the said order. The subsequent order dated 16.12.2021 passed by the Board of Revenue, U.P. Allahabad rejecting the revision of the petitioners and affirming the order of the Additional Collector also cannot be faulted with for the same reason. **Dulari and others vs. Board of Revenue, U.P. at Allahabad and another, 2022(40) LCD 676**